


Alternatives

In collaboration with  centre for alternatives

Let Sanity Prevail: Rollback Now!

From the Alternatives Desk

LATELY I have been puzzled by many a sane scholar and social critic, who have otherwise been active in promoting cooperation amongst South Asian states, particularly between India and Pakistan, resigning to a belief that "nuclear South Asia" would be no less stable than before! As far as they are concerned, only a Command and Control structure in the like of Western nuclear powers would suffice to make the region stable. In putting their position of following the West on nuclear development, they seem to remain oblivious of two factors specific to the region:

One, India and Pakistan are the only two nuclearized countries in the world having the distinction of fighting **three direct wars** in the last fifty-three years of their existence as independent states. Moreover, both the countries are still in a state of animosity, trying to contain each other's threat by opting for higher military expenditure and more sophisticated arsenal.

Two, the dreadful consequence of a **nuclear accident** in the like of Chernobyl or a **nuclear war** between India and Pakistan in the otherwise over populated South Asia. One recent study on the subject showed that a nuclear detonation of 15 kiloton (the kind of bomb dropped on Hiroshima in 1945) over Bombay would kill between 160,000 to 866,000 and a detonation of 150 kiloton (typical of more modern hydrogen bombs) would kill between 736,000 to 8,660,000. Similar would be the consequence if nuclear bombs were dropped over any other large, densely populated South Asian city, such as Lahore, Dhaka, Karachi or Delhi.

The above two factors are more than good enough reasons for the governments of the two states - India and Pakistan - to rollback and denuclearize their respective countries. If South Africa, Brazil and Argentina can rollback on their nuclear programs there is no earthly reason why India and Pakistan cannot. I can say with some certainty that a step back in the field of nuclear development would prove **two steps forward** for the lives and livings of the people of this region.

DIPLOMATIC JUDO

The NPT and the Abolition of Nuclear Weapons

by Zia Mian and M. V. Ramana

PROGRESS on nuclear arms control has become a case of one step forward, two steps back. Despite the end of the Cold War and collapse of the Soviet Union, the conclusion of a Comprehensive Test Ban Treaty, after more than forty years of effort, and despite the judgement by the International Court of Justice, the Canberra Commission report, and the public calls by numerous retired military and political leaders to abolish nuclear weapons, the goal of a nuclear weapon free world seems more distant now than it did a decade ago when, at the Reykjavik Summit in 1986, Presidents Gorbachev and Reagan discussed the elimination of nuclear weapons. At the moment, the five nuclear weapon powers, especially the US and Russia, are unwilling to even consider disarmament. The US in particular seems to be investing in a modernized, lean-and-mean, nuclear armed future.

In this paper we explore a route by which the States possessing nuclear weapons can be brought lawfully to the negotiating table by those that don't.

Nuclear Disarmament Efforts at the UN General Assembly

The very first resolution passed by the United Nations General Assembly (UNGA) in 1946 called for nuclear disarmament. It is a testament to the failure of the UN that, represented by the UN that there have been hundreds of resolutions calling for the same goal since then, all to no avail. By and large, the nuclear-weapon States (NWS) have treated UNGA resolutions as little more than pious sentiment on the part of the larger international community.

The extent to which the NWS, especially the US, are prepared to go to frustrate the wishes of the international community is evident in the way the United States, almost in complete isolation, opposed a special session of all UN member States, which the vast majority of countries, including the European Union, wanted to be convened in 1999 to discuss a disarmament and security agenda for the 21st century. Such sessions have been convened in 1978, 1982 and 1988.

Faced with such intransigence on the part of the powerful it is not surprising that, as with ordinary citizens in society who are denied justice, the non-nuclear States have turned to law. They have increasingly started to look at the issue of nuclear weapons in the context of international law, and to be more precise about exactly what the community of nations means by nuclear disarmament. In 1994, following the lead of the World Health Organization, the UNGA posed the question, "Is the threat or use of nuclear weapons in any circumstances permitted under international law?", to the International Court of Justice (or World Court). Responding to this, the Court held that "the threat or use of nuclear weapons is generally not contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law." Further, the Court went on to state, 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 and effective international control."

Based on this ruling, on 6 November 1996, Malaysia introduced an important resolution, calling for compliance with the World Court opinion. This was adopted on 10 December 1996 with the support of 115

States; there were 22 votes against and 32 abstentions. Significantly, the nuclear-weapon States, other than China, were opposed. Law, it seems, was not meant for them. In a separate vote, a paragraph underlining the World Court's statement on the obligation to negotiate nuclear disarmament was supported by 139 States. In 1997 and 1998, follow-up resolutions to this were again introduced by Malaysia and were adopted with 116 and 123 votes in favour respectively.

Although the starting point for these resolutions is the unanimous opinion of the World Court judges that there exists an obligation for States to "pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament," their thrust is a call for negotiations leading to "an early conclusion of a nuclear weapon convention prohibiting the development, production, testing, deployment, stockpiling, transfer, threat or use of nuclear weapons and providing for their elimination." What is significant is that these resolutions put the demand for a Nuclear Weapons Convention (NWC) - a treaty

tions, as with the CTBT, because of the relatively small size of India's fissile material stocks compared to those held by the NWS. The main dispute in the Fissile talks will be over the question of existing stockpiles of fissile material possessed by the nuclear-weapon States. The disputes have prevented actual negotiations on a Fissile ban from starting despite a negotiating mandate.

A Non-STARTer?

In response to calls for a multilateral treaty on nuclear disarmament, the NWS, especially the US and Russia, have stressed bilateral negotiations aimed at limiting and reducing "strategic" armaments - the START treaties.

It is important to be clear what has and has not been achieved by the START process. The numbers usually quoted as the levels of warheads left after implementation of these START agreements are misleading; these numbers only refer to active operational weapons. In all, the US stockpile with the Department of Defense contains three categories of warheads: active operational warheads, along with spares kept at the bases where nuclear

Changing the dynamic, that has emerged only too clearly since the end of the cold war, will require changing the rules of the game of disarmament. The overwhelming majority of the international community can, if it chooses, exercise its right to dub those who insist on maintaining nuclear weapons at all costs, as being outside the pale.

banning nuclear weapons simulation to those already banning chemical and biological weapons - into the international arena for the first time. The chief obstacle to disarmament through the UN system is the fact that while the UNGA has clear proposals for what to negotiate, and where, the UNGA is unable to organise collective action to pursue the goals of the international community if it faces resistance from the major powers.

Impasse at the CD

It is widely believed that the most appropriate forum to handle issues of disarmament is the Conference on Disarmament (CD). The CD has achieved some success with the Chemical Weapons Convention (CWC) and the Biological Weapons Convention (BWC). It has even made progress with measures to prevent horizontal proliferation, such as the partial test ban treaty and the Comprehensive Test Ban Treaty (CTBT). However, on the question of controlling the arsenals of the NWS, the CD has failed to find any way of making progress.

There has been some hope for talks on the Fissile (or Fissile Material Cutoff), largely because the NWS place a high priority on trying to limit the size of the possible arsenals of the (as yet) non-deployed nuclear-weapon States (India, Pakistan, and Israel). Fully aware of the effects of such a cutoff on its nuclear ambitions, India, for a while, blocked progress on the fissile ban claiming that the treaty should be firmly linked to a time-bound program for nuclear disarmament. However, as part of its efforts to ease international pressure in the aftermath of its May 1998 nuclear tests, India relaxed its objections and has started participating in the negotiations at Geneva. However, as negotiations develop, hardliners in India may force renewed objec-

tions, as with the CTBT, because of the relatively small size of India's fissile material stocks compared to those held by the NWS. The main dispute in the Fissile talks will be over the question of existing stockpiles of fissile material possessed by the nuclear-weapon States. The disputes have prevented actual negotiations on a Fissile ban from starting despite a negotiating mandate.

It is important to be clear what has and has not been achieved by the START process. The numbers usually quoted as the levels of warheads left after implementation of these START agreements are misleading; these numbers only refer to active operational weapons. In all, the US stockpile with the Department of Defense contains three categories of warheads: active operational warheads, along with spares kept at the bases where nuclear

weapons are deployed; augmentation or "hedge" warheads not necessarily associated with active nuclear delivery systems; and reliability replacements kept in storage. Beyond these categories, the Energy Department has custody of retired warheads and the "strategic reserve." Russia also keeps several thousand warheads in reserve.

If all these categories are included, it has been estimated that the US and Russia still have over 30,000 weapons. In all, the five nuclear-weapon States hold, between them, over 36,000 weapons.

The START process is, moreover, not designed to lead to nuclear disarmament. This follows from the nature of the reductions - the START process only counts the numbers of delivery vehicles and not the fundamental core of the nuclear weapons - the pits made of fissile material.

To make matters worse, the START process is now stalled. The Russian Duma is refusing to ratify START II. Since the US refuses to move forward unilaterally on START III, it seems highly unlikely that START will go much further in leading to lower numbers of nuclear weapons, let alone their complete elimination, at any time in the near future. The recent US decisions to expand NATO and to deploy anti-ballistic missile systems as soon as it is feasible are only likely to strengthen Russian resolve to maintain its nuclear arsenal.

clear arms as a cornerstone of its national security for the "indefinite future". Likewise, partly in response to NATO expansion, Russia is reportedly considering increasing its reliance on nuclear weapons.

Since the START process is strictly bilateral, the non-nuclear-weapon States (NNWS) have little control over either the nature or pace of the reductions. As Miguel Marin-Bosch is said to have observed: the non-nuclear-weapon States had been forced to play in the arena of the cold war and now must learn to play in Yankee stadium.

The NPT - Disarmament in the Indefinite Future?

The lack of leverage that the NNWS have over the NWS is no secret. But for over two decades there was some kind of pressure that the NWS had to be sensitive to. It came from the NPT. The Treaty came with a built-in time bomb: after twenty-five years the Treaty had to be reviewed and decision made as to whether to extend it or not. It was for this reason that the START process was offered by NWS, and the US in particular, as evidence that they are meeting their commitment under Article VI of the NPT to work towards nuclear disarmament.

When the time came, the options for extension at the 1995 NPT Review and Extension Conference (NPTREC) were, to put it simply, two-fold. Either an extension, which allowed for more Review and Extension conferences in future, at each of which it would have to be decided whether the NPT would survive or not, perhaps based on progress made towards disarmament. Or an unconditional and indefinite extension, with a review process that had nothing hinging on the outcome of such a review. Realizing what would result from an indefinite extension, at the 1995 extension conference the NNWS seemed to have preferred some kind of a conditional rolling extension. This was not to be. The nuclear-weapon States, led by the US, forced through an indefinite extension.

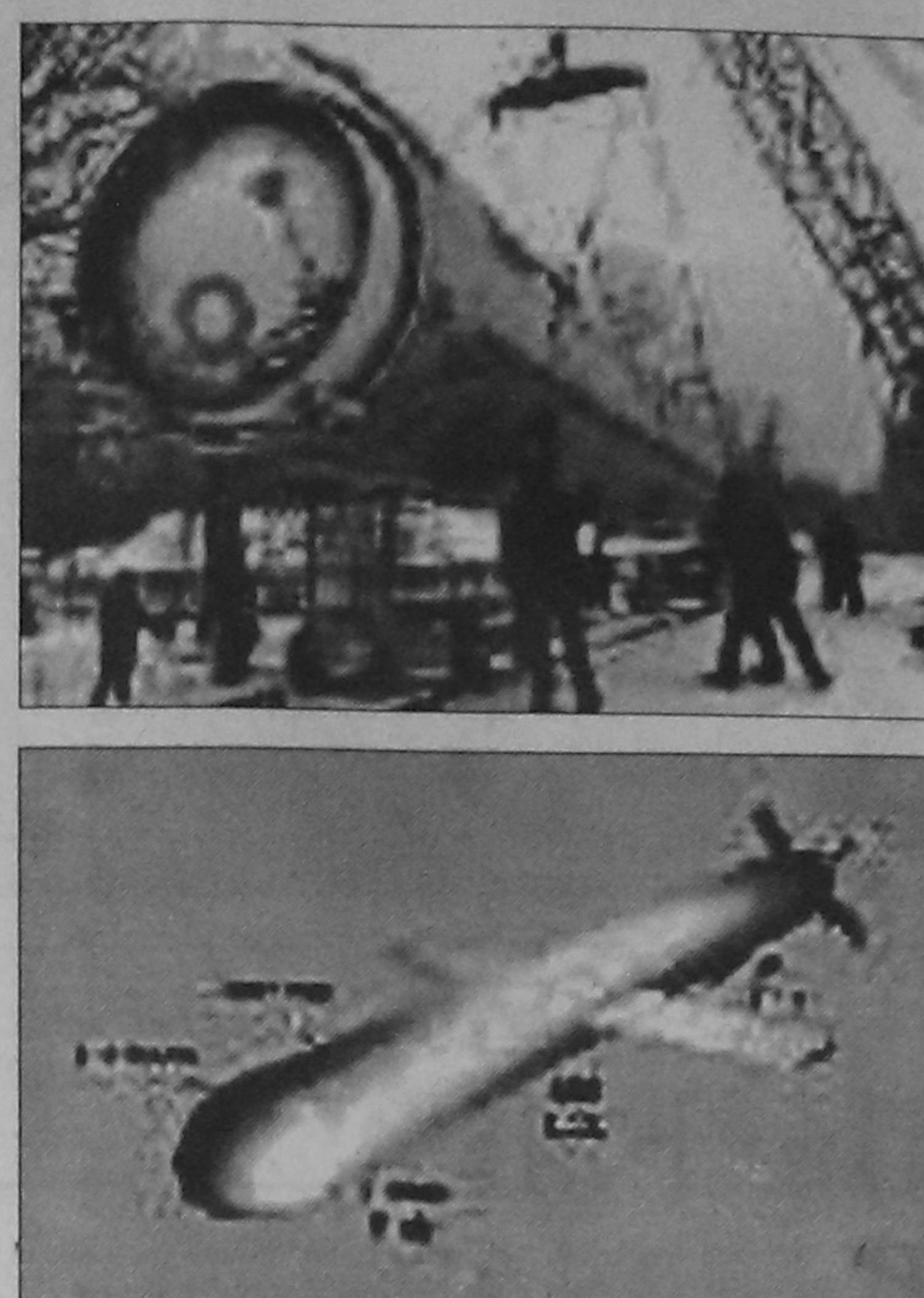
The present impasse and bleak future for disarmament have led to calls for a "peasants' revolt" - a mass withdrawal by NNWS from the NPT - unless the NWS agree in some forum to start genuine negotiations designed to ultimately rid the world of nuclear weapons. There is, however, no need, yet, for civil disobedience in the world of nuclear weapons; the law is still firmly on the side of the NNWS. As the World Court pointed out, it is the NWS who have to fulfill their Article VI obligations. The NNWS can still call the NWS to court to demand their lawful rights to a nuclear weapon free world.

A Way Out?

At the first PrepCom meeting for the 2000 NPT Review Conference, as part of the NGO presentations to the delegates, one of the authors (ZM) pointed out that the signatories of the NPT could use Article VII of the NPT to force negotiations towards nuclear disarmament. This article concerns the process for amending the treaty. It stipulates that any party to the Treaty can submit an amendment to the Treaty. Then, if one third of the Parties to the Treaty (about 60 States) indicate their support, the Depositary Governments for the treaty must convene a conference to consider the amendment.

Such an amendment can be written expressly as a fulfillment of the commitment to disarm (Article VII) and to transform the NPT itself into a Nuclear Weapons Convention. The

Continued on page 9



LAW AND CIVIL SOCIETY

Resources for Nuclear Disarmament

by John Burroughs

AS we work to build a campaign to halt and reverse nuclearization of South Asia, I suggest we consider the lessons of 50 years of activism in the United States. During the Cold War years, the focus was on partial measures, the Partial Test Ban Treaty, the Comprehensive Test Ban Treaty, the agreements to cap and then to reduce the US and Soviet/Russian arsenals. The conceptual framework was one of ensuring "stability" and of preventing the spread of nuclear weapons; arms control and non-proliferation were the great catch phrases of those years. A whole industry grew up around this framework, not only in the government, but in think tanks, universities, non-governmental organizations. The thinking of the peace movement was deeply influenced by this environment.

Thus when the Berlin Wall came down, US groups were not prepared effectively to demand and advocate nuclear disarmament, i.e. the abolition of nuclear weapons. The old thinking still held sway. To be sure, some of the smaller groups, of which I have been a member, have called for abolition, and as I mentioned an embryonic abolition movement has been formed, but then several of the key small groups (like the Lawyers' Committee on Nuclear Policy and Western States Legal Foundation) had been advocating nuclear disarmament during the Cold War years!

Law and resource

As a representative of the International Association of Lawyers Against Nuclear Arms, and its US affiliate, the Lawyers' Committee on Nuclear Policy, it is natural for me to emphasize the contribution that law can make to nuclear disarmament. Given widespread violation, particularly by the United States, of the UN Charter, the disarmament obligation of the Nuclear Non-Proliferation Treaty, human rights instruments, it is tempting to be cynical about international law, to dismiss its importance. I believe this is a mistake. While we must keep our eyes wide open to hypocrisy, we must see law as a resource, just as we see other products of the human spirit as resources.

In 1983 there was a mass demonstration at the Lawrence Livermore National Laboratory in California, one of the two principal nuclear weapons design and development laboratories in the United States (the other one is at Los Alamos in New Mexico). 2000 people were arrested, and held in jail for two weeks. In a local traffic court, my organization at the time, Western States Legal Foundation, argued on behalf of the protesters that they were acting reasonably and lawfully to prevent planning and preparation (Nuremberg Charter) for the commission of war crimes and crimes against humanity. The protesters were nonetheless convicted, and arguments from international law have remained marginal in US political discourse.

More than a decade later, however, the same arguments were being made by governments before the International Court of Justice (World Court), the judicial branch of the United Nations, at the hearings in the nuclear weapons advisory opinion case in The Hague. One of the points of argument was the Nuclear Non-Proliferation Treaty. India rightly has denounced the treaty as discriminatory, as the codification of a nuclear apartheid. And yet, as the arguments showed, the NPT does contain the seeds of universality. On the first day of the hear-

ings, October 30, 1995, Gareth Evans, Foreign Minister of Australia, argued to the Court that the norm of non-possession of nuclear weapons under the NPT "must now be regarded as reflective of customary international law". He stated that "if humanity and the dictates of the public conscience demand the prohibition of such weapons for some states, it must demand the same prohibition for all States. And following the end of the Cold War, there can no longer be, if there ever was, any practical imperative for treating nuclear-weapon States and non-nuclear-weapon States differently."

The Court essentially accepted that argument, unanimously concluding 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". Although not stated explicitly, the Court's reasoning made it quite clear that this obligation applies to all states, including those outside the NPT. The Court stated that "virtually the whole of [the international] community" has been involved in the adoption of unanimous General Assembly resolutions regarding nuclear disarmament, and that fulfilling the Article VI nuclear disarmament obligation is "an objective of vital importance to the whole of the international community".

A global regime which makes safety the result of terror and can speak of survival and annihilation as twin alternatives makes peace and human future dependent upon terror. This is not a basis for world order which this Court can endorse.

While the Court declined to confront deterrence head on, it did hold that a threat of use of illegal force is itself illegal. The illegal threat of use of nuclear weapons is inherent in the postures of deterrence (hair trigger deployment, declared policies of massive retaliation, first use, defence of "vital interests", etc.) now continuously maintained by the nuclear weapon states. So there is a legal dimension to the argument that Pakistan and India must not emulate the Permanent Five by deploying their weapons pursuant to doctrines of deterrence, because to do so is to increase the degree of illegality. Judge Weeramantry of Sri Lanka, recently retired from the Court, explained his rejection of deterrence in this way:

A global regime which makes safety the result of terror and can speak of survival and annihilation as twin alternatives makes peace and human future dependent upon terror. This is not a basis for world order which this Court can endorse.

One thing abolitionist civil society groups have become more clear about in the last five years, drawing on the World Court opinion, and stimulated in part by the insights of General Lee Butler, former commander of US strategic forces, is that nuclear disarmament requires an unequivocal rejection of the theology of nuclear deterrence and of the claim that international peace and security and global stability can and should be based on nuclear deterrence. Deterrence instead

must be squarely recognized as illegal, immoral, and irresponsible. Despite its ambiguities, the World Court opinion at bottom strongly supports the delegitimization of deterrence. And this view is becoming more and more widespread. As Arundhati Roy perceptively observed, that is why India's adoption of the soulless, deadening rhetoric of deterrence has sounded so hollow and anachronistic.

So what, the cynic may say - the nuclear weapon states have ignored the World Court opinion, as they have ignored Article VI of the NPT. The cynic can make a good case here. Five years after the fall of the Berlin Wall, in 1994, the Pentagon completed its Nuclear Posture Review, which made unmistakably clear that the US remains committed to a large arsenal and to doctrines of massive retaliation and first use. By 1995, it was also well established that the US intended, through the Stockpile Stewardship program of computer simulations, subcritical tests, laser fusion generated explosions, etc., to maintain nuclear superiority indefinitely, with or without underground testing. The 1996 ICJ opinion has produced no change in official discourse in Washington, as dramatically illustrated by the Senate non-debate on the CTBT. The defeat of the CTBT in the Senate reflected in large part the doubts of Republican senators that Stock-

pile Stewardship is adequate to achieve the objective of nuclear superiority, but the objective itself was not questioned by any party to the debate, including the Clinton Administration. Other aspects of the Washington political climate in this decade: The US could not even have a truthful, searching discussion of its atomic bombings of cities in Japan, and members of Congress continue to assert triumphantly that the nuclear threat won the Cold War. I do not believe that historical research will bear out this assertion, but even if it was true, it is hardly a matter for jubilation.

Despite all this, the law as stated by World Court is penetrating discussion of these issues, slowly to be sure, not only in the United Nations General Assembly or among small abolitionist groups, but also in mainstream "arms control" NGOs in Washington and in Congressional caucuses. Stated another way, in the US, law is beginning to move from traffic courts to the halls of Washington.

Strength and power of civil society

Another resource, sometimes not fully appreciated, is found in the civil society. Let me give some examples.

In the United States, demonstrations at the Nevada Test Site involved thousands of people at a time, with as many as 2000 people arrested at a time. These demonstrations were little noticed by the media and apparently by the US government, but they probably did make some difference in US

policy calculations - remember US testing was stopped in 1992. And the Nevada Test Site demonstrations were definitely noticed in Kazakhstan, where a powerful anti-nuclear movement succeeded in shutting down the principal Soviet test site in Semipalatinsk. That campaign was named the Nevada-Semipalatinsk Movement, in recognition of the link with demonstrations in the United States!

In 1991, the Partial Test Ban Treaty Amendment Conference took place at the United Nations in New York. While this treaty banning tests everywhere except underground was not amended at the conference, the conference did isolate the United States. Soon thereafter, the US Congress enacted a moratorium on testing, and negotiations on a Comprehensive Test Ban Treaty began in Geneva at the Conference on Disarmament. The Partial Test Ban Treaty Amendment Conference was initiated by Parliamentarians for Global Action, a non-governmental organization, though its members are parliamentarians, in a several year campaign in the late 1980s. Despite the refusal of the US Senate to approve the CTBT in 1999, I believe that full-scale underground nuclear testing is on its way out, that a global non-testing norm is emerging. We must ensure that this norm becomes firmly entrenched, and also challenge forms of laboratory testing and development that nuclear weapon establishments are using to replace underground testing.

In the World Court Project, supported by over 700 groups worldwide, civil society succeeded in inspiring and supporting Non-Aligned Movement countries which obtained the advisory opinion on nuclear weapons from the International Court of Justice.

In the Middle Powers Initiative, international disarmament NGOs have launched a campaign to support and embolden non-nuclear weapon countries, like the New Agenda Coalition, in their efforts to inject some life into the nuclear disarmament process.

Scientists, lawyers, and former diplomats, coordinated by the Lawyers' Committee on Nuclear Policy, drafted a Model Nuclear Weapons Convention, which subsequently was circulated in the United Nations by Costa Rica. The model convention sets out the institutional framework for the prohibition and elimination of nuclear forces.

In 1995, the Abolition 2000 Global Network was formed at the Nuclear Non-Proliferation Treaty Extension Review Conference, immediately attracting the adherence of 200 groups around the world. The Network today comprises almost 1500 1400 groups worldwide. Its program remains the same, including:

- * commence multilateral negotiations leading toward the early conclusion of a nuclear weapons convention;
- * de-alert, de-mate, and disable nuclear forces globally;
- * cease the design and development of nuclear weapons;
- * commit to non-use of nuclear weapons and reject deterrence;
- * move away from reliance on nuclear power providing the infrastructure and materials for weapons programs, including through the establishment of an International Sustainable Energy Agency.

In January 1997, Abolition 2000 held its annual meeting on the island of Moorea, in Polynesia (Tahiti), a year after the end of French testing there. The

Continued on page 9