

# Alternatives

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## Let Sanity Prevail: Rollback Now!

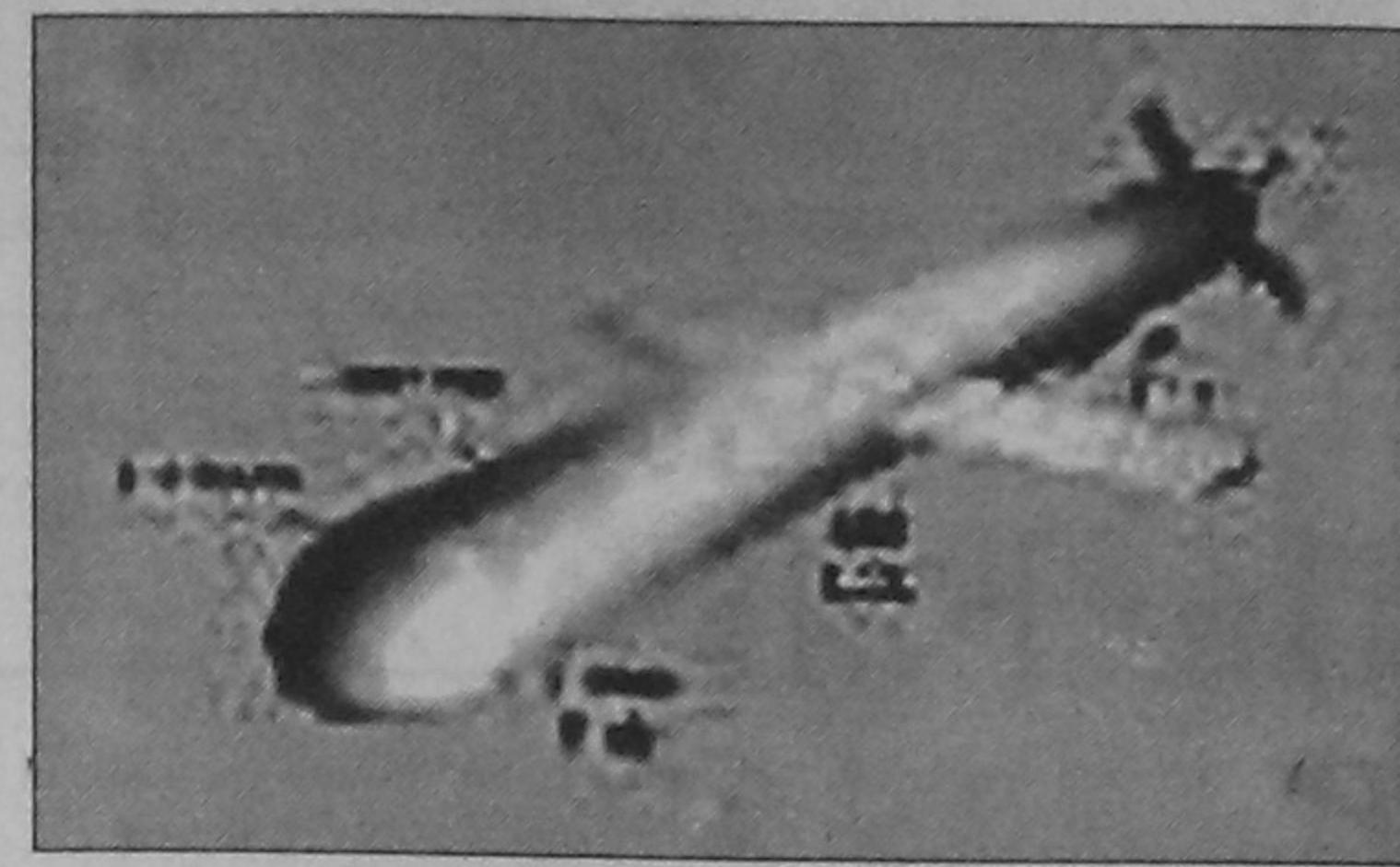
From the *Alternatives* Desk

**L**ATELY 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 arsenals.

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

**P**ROGRESS 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 to represent 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 sentiments 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 would generally be 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 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 major 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

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 Fissban talks will be over the question of existing stockpiles of fissile material possessed by the nuclear-weapon States. These disputes have prevented actual negotiations on a Fissban from starting despite a ne-gotiating 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

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 NWS have over the NPT is no secret. But for over two decades there was some kind of pressure that the NWS had to be sensitive to it. 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 NWS 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.

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The present impasse and bleak future for disarmament have led to calls for a "peasants' revolt" - a mass withdrawal by NWS 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 NWS. As the World Court pointed out, it is the NWS who have to fulfill their Article VI obligations. The NWS can still call the NWS to demand their lawful rights to a nuclear weapon free world.

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## LAW AND CIVIL SOCIETY Resources for Nuclear Disarmament

by John Burroughs

On 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.

Today's 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.

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.

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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 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 weapons 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 and 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 towards the early conclusion of a nuclear weapons convention;
- de-alert, de-mate, and dismantle nuclear forces globally;
- cease the design and development of nuclear weapons;
- commit to non-use of nuclear weapons and reject deterrence;

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

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