

Nuclear Law & Disorder

by Douglas Roche

One would like to say that world attention will be focussed on the 2005 Review Conference of the Nuclear Non-Proliferation Treaty (NPT), that governments will rush to implement the 13 Practical Steps to nuclear disarmament already agreed on, that the combined actions of the political and civil order will greatly reduce the present high level of danger of the use of nuclear weapons.

Unfortunately, in the real world of political disorder that we live in, none of this is likely to occur. One risks being labelled a “dreamer” or worse, an “idealist,” for expressing the straightforward yet maddeningly complex truth that governments have a solemn duty to eliminate the very weapons that can doom humanity.

For twenty years I have followed the tortuous history of the NPT, as leader of the Canadian delegation to the 1985 Review Conference, as an author writing about the 1995 Review and Extension Conference, and as Chairman of the Middle Powers Initiative working closely with a number of governments at the 2000 Review Conference. I have attended all three preparatory meetings for the 2005 Conference. There is no doubt in my mind that the present crisis is the worst the NPT has experienced. The treaty is on the verge of collapse, and the proliferation of nuclear weapons, both among those who already have them and those who want them, is staring us in the face. It is truly shocking that the public knows so little about the nature of the danger and that governments, for the most part, are so desultory in their approach to the upholding of law.

While NPT meetings have never been free of conflict, the battles of the past were frequently patched over by an application of goodwill and a minimum show of trust. Now the goodwill and trust are gone largely because the nuclear-weapons States (NWS) have tried to change the rules of the game. At least before, there was recognition that the NPT was obtained through a bargain, with the NWS agreeing to negotiate the elimination of their nuclear weapons and share nuclear technology for peaceful purposes in return for the non-nuclear States shunning the acquisition of nuclear weapons.

Adherence to that bargain enabled the indefinite extension of the treaty in 1995 and the achievement of an “unequivocal undertaking” in 2000 toward elimination through a programme of 13 Practical Steps. Now the US is rejecting the commitments of 2000 and premising its aggressive diplomacy on the assertion that the problem of the NPT lies not in the NWS’s own actions but in the lack of compliance by States such as North Korea and Iran. The United Kingdom, France and Russia are abetting the US in the new tactics of shifting attention away from Article VI disarmament commitments and towards break-out States.

Brazil bluntly warned: “The fulfillment of the 13 steps on nuclear disarmament agreed during the 2000 Review Conference have been significantly — one could even say systematically — challenged by action and omission, and various reservations and selective interpretation by Nuclear Weapon States. Disregard for the provisions of Article VI may ultimately affect the nature of the fundamental bargain on which the Treaty’s legitimacy rests.”

The whole international community, nuclear and non-nuclear alike, is concerned about proliferation. But the new attempt by the NWS to gloss over the discriminatory aspects of the NPT, which are now becoming permanent, has caused the patience of the members of the Non-Aligned Movement to snap. They see a two-class world of nuclear haves and have-nots becoming a permanent feature of the global landscape. They see the US researching the development of a new, “usable” nuclear weapon and NATO, an expanding military alliance, clinging to the doctrine that nuclear weapons are “essential.” In such chaos, the NPT is eroding and the prospect of multiple nuclear-weapons States, a fear that caused nations to produce the NPT in the first place, is looming once more.

Compounding the nuclear risk is the threat of nuclear terrorism, which is growing day by day. It is estimated that 40 countries have the knowledge to produce nuclear weapons, and the existence of an extensive illicit market for nuclear items shows the inadequacy of the present export control system. Despite the arduous efforts of the International Atomic Energy Agency (which is seriously underfunded

relative to the inspection responsibilities it has been given), the margin of security is, as IAEA Director General Mohamed ElBaradei put it, “thin and worrisome.” US Senator Edward Kennedy of Massachusetts goes further. “If Al Qaeda can obtain or assemble a nuclear weapon, they will certainly use it – on New York or Washington or any other major American city. The greatest danger we face in the days and weeks and months ahead is a nuclear 9/11, and we hope and pray that it is not already too late to prevent.”

New Agenda, New Bridge

Security Council Resolution 1540, requiring all States to take measures to prevent non-State actors from acquiring nuclear, chemical and biological weapons, is a helpful step to stemming proliferation. The Proliferation Security Initiative of the US seeks to interdict the transfer of nuclear materials on the high seas. The constant monitoring by the IAEA, where it is able to operate, gives a measure of confidence. Yet, as Russia conceded at the NPT Third Preparatory Meeting in 2004, “Terrorists are smart and resourceful and are willing to go to any length to get hold of the weapons of mass destruction production components in order to strike at innocent people.” The eminent physicist, Frank von Hippel, says “nothing could be simpler” than for terrorists to obtain highly enriched uranium and set off an explosive device with power equal to that of the Hiroshima bomb.

The task awaiting the 2005 Review of the NPT is to convince the nuclear-weapons States that the only hope of stopping the proliferation of nuclear weapons is to address nuclear disarmament with the same eagerness. This is precisely the stance taken by Foreign Ministers of the New Agenda Coalition (Brazil, Egypt, Ireland, Mexico, New Zealand, South Africa and Sweden), who recently wrote: “Nuclear non-proliferation and nuclear disarmament are two sides of the same coin and both must be energetically pursued.”

The New Agenda, which showed impressive leadership at the 2000 NPT Review in negotiating the 13 Practical Steps with the nuclear-weapons States, is now clearly reaching out to other middle power States to build up what might be called the “moderate middle” in the nuclear weapons debate. The New Agenda resolution presented to United Nations General Assembly was much leaner and more attractive to the non-nuclear States of NATO than previously.

This strategy was rewarded when eight NATO States — Belgium, Canada, Germany, Lithuania, Luxembourg, The Netherlands, Norway and Turkey — voted for the resolution, an action which effectively built a bridge between NATO and the New Agenda. The overall vote was 135 in favour, 5 opposed and 25 abstentions. Although the three Western nuclear-weapons States maintained their opposition to the New Agenda’s overtures, the new “bridge” shows

that a group of centrist States may be in position to produce a positive outcome for the 2005 NPT Review.

The priorities for action, as identified by the New Agenda, would not be difficult to achieve provided the nuclear-weapons States cooperate on: early entry-into-force of the Comprehensive Test Ban Treaty; reduction of non-strategic nuclear weapons and non-development of new types of nuclear weapons; negotiation of an effectively verifiable fissile material cut-off treaty; establishment of a subsidiary body to deal with nuclear weapons at the Conference on Disarmament; and compliance with the principles of irreversibility and transparency and development of verification capabilities.

A new common front may yet be able to inject new life into the only worldwide legal instrument we have to stop the spread of nuclear weapons.

But it is precisely this co-operation, or rather lack of it, between the nuclear haves and have nots that is the central issue. There has been little co-operation in the 35-year history of the NPT. Will the recognition of new dangers finally jolt governments into action? Much will now depend on the actions taken by the re-elected Bush Administration in the US.

It seems to me that the only way to stop the NPT erosion is for a new burst of energy to be shown by the middle power States — the New Agenda, non-nuclear NATO, the European Union and a few other like-minded States — to shore up and influence the centre positions in the nuclear weapons debate. Even though India, Pakistan and Israel continue to shun the NPT, it is also in the interests of these countries to cooperate in implementing the New Agenda’s list of priorities.

Can we expect this burst of energy if parliamentarians and the public remain docile? A new common front of an awakened civil society and caring middle power States may yet be able to inject new life into the only worldwide legal instrument we have to stop the spread of nuclear weapons.

Douglas Roche, O.C. is a Senator Emeritus in Canada, former Canadian Ambassador for Disarmament, Chairman of the Middle Powers Initiative, and author of “The Human Right to Peace.” E-mail: djroche@shaw.ca