

“Beyond International Humanitarian Law: Implications for Disarmament Diplomacy”

Remarks by Paul Meyer, Senior Fellow, The Simons Foundation, at side event

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When the 2010 NPT Review Conference included in its final document its recognition of the catastrophic humanitarian consequences of any use of nuclear weapons it was not setting out a revelation. This was after all a reality and a direct function of the destructive power inherent in a nuclear weapon that has been known for decades.

What was new, however, was its articulation in an official text of the 190 states parties of this core international security treaty. For this reference introduced, as an official position, a novel perspective into the proceedings which hitherto had been couched in the well-worn formulas of nuclear weapons policy. That fresh perspective was essentially to point out the incompatibility of nuclear use (or the threat of that use) with international humanitarian law, while reminding states of their obligation to comply with this law.

This observation provoked some dissent in the ranks of NPT NWS and NNWS. When a subset of NNWS decided to elaborate on this new theme within the NPT at the 2012 PrepCom with a statement, only sixteen states were prepared to associate themselves with this statement. Several states, usually seen as champions of IHL declined to sign on. These states, Germany, Canada, the Benelux, Italy amongst them seemed to feel that by endorsing this view they would be in contradiction with another strong commitment in their foreign and security policy – their alliance commitment within NATO. For NATO states retain nuclear deterrence as a core element of their defence strategy and that deterrence strategy is predicated on the willingness to use nuclear weapons if deterrence fails.

The fact that deterrence is posited on threatening to do something in certain circumstances, which would constitute a violation of IHL makes it a problematic policy to support for many states, but support it they still do. When under the leadership of Switzerland a further statement on the humanitarian dimension of nuclear disarmament was made during last fall's UN General Assembly, 34 states associated themselves with the joint statement although this obviously remains a small sub-set of NPT states parties. In so far as NATO states were concerned, only Denmark, Iceland and Norway joined in the statement and it is probable that this latest eruption of a nuclear conscience will not prompt a review let alone a rejection of the Alliance's current nuclear policy.

The NATO states however are only a minority of NPT members and the larger question is the effect, if any, of the 2010 NPT RevCon conclusion on how NPT states parties approach their commitments under the treaty. The spotlight here will naturally be on the five NWS and their Art VI obligations.

The initial reaction of the NWS is not promising – they decided to boycott the March Oslo Conference devoted to the humanitarian consequences of nuclear weapons. This was not a PR success and seemed to reflect the “lowest common denominator” result that tends to be a feature of P5 consultations. Perhaps they felt it was easier not to show up than to have to try and defend the compatibility of their nuclear postures and doctrines with the tenets of IHL. An alternative and wiser course would have had them participate in Oslo and while not contesting the accuracy of the 2010 NPT RevCon statement (which let us recall they were party to) go on to defend their intention to achieve nuclear disarmament before it even gets to that point where nuclear use would be considered. In the current context, an acceleration of progress on nuclear disarmament and the maintenance of high levels of restraint on the part of states possessing nuclear weapons is probably the most we can aspire to.

In my view, there will only be diminishing returns from efforts to reformulate or elaborate on the brief, but highly significant reference made to the humanitarian consequences of nuclear weapons use achieved at the 2010 NPT RevCon. What would constitute a more practical follow-up to that declaration would be to focus on the steps necessary to prevent any use of a nuclear weapon. This means continuing to press for more rapid and comprehensive progress on nuclear disarmament, as the elimination of nuclear arms remains the only sure guarantee against their use. It also means concentrating in the interim on measures of prevention that should diminish the risk of a nuclear detonation through accident, misperception or miscalculation. Such measures have already featured in the agreed outcomes of NPT meetings. In particular the commitment to reduce the operational readiness of deployed nuclear forces is a key step of prevention. It is also both a practical and symbolic manifestation of the radically different political relationships that now exist amongst the NPT NWS. The activism of the so-called “de-alerting group” of states is to be commended in this regard, with their sustained advocacy for changes in these dangerous high-alert nuclear postures that threaten us all. There are also complementary steps, such as decreasing the role of nuclear weapons in security policies and developing verification capacities, which have already been agreed at NPT RevCons but which await more action.

How best to encourage these steps on the part of the NWS remains a challenge for the international community. The diplomatic achievement of the 2010 RevCon in drawing attention to the horrendous humanitarian consequences of nuclear weapon use has once again introduced a moral argument for fulfilling NPT commitments in addition to the international

security factors that led to the bargain set out in the treaty. Appeals to morality tend not to have a long shelf life in official multilateral discussions. They can however help mobilize public opinion in a way that eventually can influence political thinking. The moral dimension, inherent in IHL, can be made more influential when combined with accountability mechanisms that measure the extent to which states are matching their deeds to their words. The NPT has been notoriously weak in institutional support and accountability practices. Civil society has tried to fill this gap through assessment reports that monitor compliance with NPT commitments. There are excellent “report cards” that have been prepared by Reaching Critical Will and the Centre for Nonproliferation & Disarmament at the Australian National University, but states also need to improve accountability within the NPT. Given that all NPT states parties have agreed to the 2010 RevCon final document, including its humanitarian section, it should be a priority task for members to enhance internal accountability in order to assess how states are actually fulfilling their obligations under the treaty and in this way being true to the conclusions commonly arrived at. It is probably only by these means that the practical implications for achieving the NPT goals of the historic references made at the RevCon in 2010 can really be judged.

Thank you for your attention.