

Report on the 2012 ACDC Panel Discussion

“Outlawing Nuclear Weapons: Time for a New International Treaty?”

International Law Weekend, Fordham Law School, 10/27/12

Moderator: John H. Kim, Co-Chair, Arms Control & Disarmament Committee, ABILA

Panelists:

- Randy Rydell, Senior Political Officer, UN Office of High Representative for Disarmament Affairs
- David Krieger, Founder and President, Nuclear Age Peace Foundation; Co-Author, *The Path to Zero* (With Richard Falk, 2012)
- Douglas Roche, Founding Chair, Middle Powers Initiative; former Chair, UN GA's Disarmament Committee; former Canadian Senator & Ambassador for Disarmament; Author, *How We Stopped Loving the Bomb* (2011)

Reporter: Ryan Scoville

Moderator's Opening Remarks

Mr. Kim said that ACDC dedicated the panel discussion to the memory of Charles D. Siegal, Esq., who passed away in August 2012. Mr. Siegal was a member of ACDC as well as a former president of ABILA. Mr. Kim also noted that the panel was held incidentally on the 50th anniversary of the Cuban Missile Crisis.

The possibility of the use of nuclear weapons by nuclear weapons states cannot be ruled out at this time, as these states reserve the right to use nuclear weapons under limited circumstances. For instance, the 2010 Nuclear Posture Review (US) states that the United States would consider the use of nuclear weapons “in extreme circumstances to defend the vital interests of the United States or its allies and partners.” The Obama Administration has also made an implied threat of the use with respect to Iran by stating that “all options are on the table.”

According to Richard Falk, Esq., “Nuclear weaponry and strategy represent terrorist logic on the grandest scale imaginable.” The threat or use of nuclear weapons would also violate international humanitarian law in general.

However, due to the some uncertainty left in the 1996 ICJ opinion, which could not rule definitely whether the threat and use of nuclear weapons would be unlawful under all circumstances, it is incumbent upon the international community to adopt a new treaty prohibiting the threat or use of nuclear weapons as soon as possible, to clarify the law and pave the way for abolition of nuclear weapons. This panel will discuss the available options and proposals regarding such a treaty.

I) Randy Rydell

Dr. Rydell thinks that the real question is whether it is time to apply democracy and the rule of law in the effort to achieve the abolition of nuclear weapons. There have been positive trends in bringing democracy to the nuclear disarmament. For example, based on a review of the General Assembly resolutions, the International Campaign to Abolish Nuclear Weapons (ICAN) has concluded that 146 out of 193 states support the goal of a nuclear weapon convention, while another 22 states are on the fence on the issue. Only 26 states oppose such a convention for abolition. Only four states that support a convention are from the European Union, and only one is a member of NATO (Norway). However, four states with nuclear weapons also support the idea of such a convention. The level of support in the United Nations is therefore significant. Moreover, Secretary General Ban Ki Moon's five-point nuclear disarmament plan has received

significant support. Resolutions passed by parliaments around the world support the cause of nuclear disarmament. The Inter-Parliamentary Union and European Parliament have endorsed Secretary-General Ban's proposal. The same is true of the U.S. Conference of Mayors. States-parties to the NPT have referred to the possibility of a convention, and in 2011 the ICRC adopted a resolution supporting the goal of a convention. Every year states put forward a resolution in the General Assembly to commence negotiations on a convention, but certain nuclear weapons states have refused to support such efforts.

In addition to the democratic trends, there have been developments with regard to the rule of law. The original approach was universal disarmament, but that has given way to partial measures. Efforts have included developing greater compliance with non-proliferation and disarmament treaties, broader state participation, efforts to create additional NWFZs, efforts to bring signed treaties into force (e.g., the CTBT), etc.

Obstacles still exist, however. These include vested interests for the preservation of nuclear weapons, the absence of an institutional infrastructure for disarmament (e.g., the lack of an international disarmament agency), the prevalence of arguments against disarmament, technical problems in the field of verification, the difficulty of sustaining public attention, the need to dissuade the use of preconditions, the persistence of the doctrine of deterrence, the absence of private foundation support, and the lack of congruence in international commitments by states.

Complete nuclear disarmament will ultimately require an international treaty. Timing and phasing are other important aspects of the disarmament process. The combination of public pressure, engagement from the international community, and enlightened leadership will be necessary to move ahead. Different parts of the United Nations may need to become more involved.

II) David Krieger

Dr. Krieger began by recounting a story from the Cuban Missile Crisis: A Soviet ship dropped depth charges to signal to a nearby Soviet submarine that it needed to surface. The captain of the submarine, however, misunderstood this signal for a U.S. attack and prepared to fire a 10KT nuclear torpedo against a U.S. vessel in the vicinity. The only reason this did not happen is that one of the three officers whose approval was required for firing refused to sign off on the decision. If he had approved, there would have been a nuclear war. The example shows the precariousness of that crisis.

Dr. Krieger also recounted recent litigation in which he was involved. A group of protestors, including him, went to Vandenberg Air Force Base and allegedly trespassed on government property. Their goal was to persuade military leadership to reconsider the utility of ICBM tests. During the ensuing litigation, the government brought a motion in limine to preclude discussion about U.S. nuclear policy, but the defendants countered that the U.S. policy should have been the focal point. The United States has not fulfilled its obligations under NPT Article 6, is committing crimes against the environment and future generations, and has breached the trust of the international community.

It is past time for a new international treaty. The hard part is developing sufficient international political will, which is missing right now. All three prongs of Article 6 of the NPT have been violated by the United States and other nuclear powers. Bold action by non-nuclear weapons states is needed. The premise for such action is that nuclear weapons are a threat to civilization. There needs to be a sense of urgency.

Actions that non-nuclear states could take: (1) announce a boycott of the 2015 NPT review conference if nuclear states have not commenced negotiations by 2015 for a nuclear weapon convention; (2) commence legal action against nuclear weapons states for breach of Article 6 obligations; (3) withdraw from the NPT as a protest; and (4) declare the NPT null and void as a result of the failure of the nuclear states to fulfill their obligations. Dr. Krieger favors the first two of these steps.

III) Douglas Roche

Ambassador Roche argued that human rights and other considerations make it urgent to develop a new abolition treaty. He argued that it is hard to reconcile continuing improvements in human civilization with the reality that nuclear weapons are still around. There are still 20,000 nuclear weapons in existence. He opposes confining the nuclear discussion to Iran. Nuclear states will not by themselves give up their weapons, but may respond to a developing norm against the weapons that may be advanced by middle-power states such as Germany, Japan, and Canada. A model treaty (“nuclear weapon convention”) has been around for more than 10 years now. We are at a stage where 2/3 of states have already voted to commence negotiations on such a treaty, but they simply have not taken action because of the opposition of the main nuclear states.

Generally speaking, the subject of nuclear disarmament is not on the radar in the U.S. Presidential candidates do not discuss it. In fact, the United States and Russia are modernizing their nuclear weapons. The Secretary General has been rebuffed by nuclear states. However, the legal and political conditions necessary for a convention are present and need to be invoked.

IV) Q & A Session

**Moderator’s Q: Many civil society groups and NAM states call for an immediate, comprehensive nuclear weapon convention, while the U.S. government supports a step-by-step approach. What is your opinion on a third approach such as negotiating a simple treaty prohibiting the threat or use of nuclear weapons, through a process similar to the adoption of the Ottawa landmine treaty?*

Response by Dr. Krieger: The focus should be banning possession, not simply the threat or use of nuclear weapons. The ICJ’s advisory opinion on nuclear weapons suggests that the threat or use of nuclear weapons is illegal because no use of nuclear weapons could possibly comply with international humanitarian law.

Response by Dr. Rydell: After World War I, the 1925 Geneva Protocol outlawed the use of chemical and biological weapons. A comprehensive chemical weapons convention took approximately 70 years after that. We cannot wait another 70 years. It is doubtful that recognized nuclear weapons states would sign such a treaty because it would conflict with their doctrines on nuclear deterrence. Umbrella states that benefit from possession would also oppose outlawing nuclear weapons. The result is that the treaty would not be universal and would not be terribly effective. There are five metrics for evaluating the quality of disarmament agreements: (1) verification, (2) transparency, (3) universality, (4) irreversibility and (5) binding character. A simple prohibition treaty cannot meet these metrics.

Comment by Moderator: Even a simple prohibition treaty, signed by a majority of nations, would help to establish a new norm that might deter nuclear weapon states from use, while discouraging aspiring states from developing the bomb. It may serve as a good stepping stone toward negotiating a comprehensive nuclear weapon convention.

**Audience Q: What about the possibility of stockpile reductions through reciprocal measures?*

Dr. Krieger: United States supports bilateral reduction negotiations between the U.S. and Russia. But the U.S. can, in fact, take some unilateral measures such as adopting a no-first-use policy and take weapons off hair-trigger alert.

Dr. Rydell: Reciprocal measures are complimentary to, rather than a substitute for, an international treaty approach.

*Audience Q: *Regardless of who wins the presidential election in the U.S., nuclear policy will not change much. Given that, what are the alternative ways of bringing about change?*

Dr. Krieger: Public education and advocacy are critical.

Ambassador Roche: If Obama wins, he will probably have the Comprehensive Test Ban Treaty reintroduced in the Senate.

Moderator's Concluding Remarks

Mr. Kim thanked all the panelists for their insights!

He agreed that the non-NWSs should take more leadership role in promoting a new treaty outlawing nuclear weapons since we cannot expect the NWSs to do the job by themselves. He urged the participants to conduct further research on the topic on their own. One good source of info on this topic is *Eliminating Nuclear Threats*, a study report issued by the International Commission on Nuclear Non-Proliferation and Disarmament (www.icnnd.org).

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