

# Workshop III

## Towards the Establishment of a Legal Framework to Ban Nuclear Weapons

Date: November 3, 2013 14:00-16:30

Venue: Nagasaki Atomic Bomb Museum Hall

Participants: About 120 people



### Coordinators



#### **Satoshi Hirose**

(Japan, Professor, Vice-Director, Research Center for Nuclear Weapons Abolition, Nagasaki University (RECNA))



#### **Alyn Ware**

(New Zealand, Global Coordinator, Parliamentarians for Nuclear Non-proliferation and Disarmament (PNND))

### Panelists



#### **Tilman Ruff**

(Australia, Co-President, International Physicians for the Prevention of Nuclear War (IPPNW))



#### **Kenichi Okubo**

(Japan, Secretary General, Japan Association of Lawyers Against Nuclear Arms (JALANA))



**Mitsuru Kurosawa**  
(Japan, Professor, Osaka Jogakuin University)



**Yasushi Noguchi**  
(Japan, Director, Arms Control and Disarmament Division,  
Disarmament, Non-Proliferation and Science Department,  
Ministry of Foreign Affairs)

Satoshi Hirose opened the session with an overview of the political background to the development of a legal framework to ban nuclear weapons. He indicated two key questions to consider; one, the content to be included and legal instruments, and two, the process to formulate such contents. The main purpose he indicated of the legal instruments is very clear, to prohibit nuclear weapons. He noted that there are many specialists in relevant fields who could mobilize their expertise to formulate these legal instruments once the process had begun. But so far, the negotiation and process for legal instruments to ban nuclear weapons has been monopolized by governments.

He believes we must learn from other fields, like human rights and also humanitarian laws in which ordinary citizens have been participating in the formal processes in a range of contexts as victims, as potential victims and also as beneficiaries of the outcome of the negotiations.

He called for a greater involvement of civil society and the development of the legal framework to ban nuclear weapons.

I gave a summary of the legal norms supporting a nuclear abolition framework and the legal instruments required to establish such a framework and the forums in which such a framework could be negotiated.

I cited the 1996 International Court of Justice Advisory Opinion on the legality of the threat or use of nuclear weapons, which affirms that the threat or use of nuclear weapons would be generally be illegal and that it's an unconditional obligation to negotiate and to achieve the complete elimination of nuclear weapons. There have been additional legal developments since 1996 such as the establishment of the international criminal court, and the resolution of the International Committee of the Red Cross, which would strengthen the norm against the nuclear weapons.

Legal instruments to ban nuclear weapons can be developed at national, regional, likeminded, or global levels. I concentrated mostly on a global ban, the nuclear weapons convention, which would provide for the complete prohibition and elimination of nuclear weapons.

Other speakers looked at a range of the national, regional, likeminded, and the nuclear weapons convention. On the negotiating forums, I outlined a few such as the conference on disarmament, the United Nations General Assembly including the recently established open ended working group, a like-minded process and the P5 process, which for example, is being promoted Global Zero.

Tilman Ruff discussed the humanitarian framework for abandoning nuclear weapons drawing from prohibitions on other inhumane and indiscriminate weapons including Dum-Dum bullets, chemical weapons, biological weapons, landmines, and cluster munitions.

He noted the support of governments and civil society for nuclear weapons convention and the growing global acknowledgment of the catastrophic humanitarian consequences of the use of nuclear weapons, and he argued that the non-nuclear weapon states are leading the humanitarian framework. They cannot eliminate nuclear weapons by themselves, but they can advance the goals of a nuclear weapons free world by taking national measures and negotiating a likeminded treaty prohibiting nuclear weapons, which would be a step towards the nuclear weapons convention.

Mitsuru Kurosawa discussed the differences between a ban treaty and a nuclear weapons convention noting that there is sometimes a confusion between the two. A nuclear weapons convention would provide a comprehensive prohibition of the use, threat of use, transfer, and possession of nuclear weapons and would provide a phased process for their elimination. It would necessarily include the nuclear weapons states and those under nuclear alliance relationships in order to provide a global prohibition. A ban treaty would include similar prohibitions against the use, threat of use, and possession, but would be negotiated possibly by likeminded non-nuclear weapon states not having to wait for all the other states to be engaged. It would thus not establish at the beginning a universal prohibition nor an immediate process for elimination. But it may constitute a substantive step toward the total elimination just like what happened in chemical weapons.

Kenichi Okubo argued that a nuclear weapons convention would be the ideal agreement, but that initial steps should be taken possibly a convention prohibiting use of nuclear weapons and regional prohibitions such as nuclear weapon free zones. He noted that the Japanese Government does not yet support an unconditional ban on use of nuclear weapons in contrast to the position on an unconditional ban on chemical weapons and nor do they get support of Northeast

Asian nuclear weapon free zone. He called for civil society and political action to change government policy and noted primarily the importance of engaging parliamentarians. In Japan, one step he indi-

cated would be to enshrine the antinuclear principles into domestic legislation.

Yasushi Noguchi noted that Japan has taken a number of initiatives on nuclear disarmament including participation in the non-proliferation and disarmed initiative, and an annual resolution at the United Nations, and that Japan recently supported the two joint statements of governments on the humanitarian consequences of nuclear weapons, one led by New Zealand and the other led by Australia. However, as long as Japan continues to rely on nuclear deterrence, he indicated that Japan is unable to support a nuclear weapons convention but that Japan could pave the way for conditions for a nuclear weapons free world by emphasizing the effects of the use of nuclear weapons.

There are a range of questions on issues including the conference on disarmament, the difference between a step by step and a building block approach, what is required to monitor nuclear disarmament, how can parliamentarians be further engaged, and what is the difference between the New Zealand and Australian humanitarian consequence statements, and some other questions on nuclear weapons free zones.

In reply, I won't go through all the answers because I don't have time. I'll just pick a few, but on the conference on disarmament, it was noted that the conference has now established an informal working group after 17 years of deadlock. There is a possibility for progress. On the difference between the step by step and building block approach, it was explained that the building block approach was presented to the UN open-ended working group by Japan on behalf of themselves and a number of other states, and was an attempt to provide a bridge between the step by step process and a comprehensive process taking elements from both.

The difference from the step-by-step process is that the building blocks has some of the same elements but doesn't say they need to be done one after the other. They could be done at the same time, and that other elements could be added to the building block approach that aren't in the step-by-step process. On the issue of engaging parliamentarians, it was noted that civil society should take a more active role in contacting the parliamentarians and highlighting the nuclear weapons issue, so that this would be elevated in the list of priorities for the parliamentarians. One way of doing this is to refer to the Inter-Parliamentary Union, which is currently undertaking a program of looking at the role of parliaments to achieve a nuclear weapons free world. And Japan is a member of the Inter-Parliamentary Union along with 160 other parliaments.

On the difference between the humanitarian consequences statements, it was noted that the New Zealand's statement focused on humanitarian consequences of nuclear weapons and has received

the highest number of countries in support. The Australian-led statement focuses on both humanitarian consequences and security issues. There was an opinion expressed that the Australian-led statement attempts to weaken the humanitarian framework by making it conditional upon military security rather than on human security. On the nuclear weapon free zones, I won't mention much of the discussion but of course it was already part of a panel in the morning, but it was noted that Northeast Asian Nuclear Weapon Free Zone was an important proposal to help build security in this region including to reverse the nuclear policy of North Korea and lower the role of nuclear weapons in the Japanese and South Korean security doctrines. Arigato gozaimasu.