

Title	Humanitarian Approach to Nuclear Abolition
Author(s)	Kurosawa, Mitsuru
Citation	Osaka University Law Review. 2015, 62, p. 13-28
Version Type	VoR
URL	<a href="https://hdl.handle.net/11094/54630">https://hdl.handle.net/11094/54630</a>
rights	
Note	

*Osaka University Knowledge Archive : OUKA*

<https://ir.library.osaka-u.ac.jp/>

Osaka University

## Humanitarian Approach to Nuclear Abolition

*Mitsuru KUROSAWA*\*

### **Abstract**

The purpose of this article is to examine the contents and significance of a humanitarian approach to nuclear abolition, which has recently been hotly discussed as a new approach to nuclear abolition. I will discuss its background and contents and some theoretical issues such as the relationships between international humanitarian law and nuclear weapons as well as between international humanitarian law and international disarmament law. I conclude that the new approach is based on the change in and widening of the concept of security and that this new approach could be very useful for making progress toward nuclear disarmament.

### **I Introduction**

In recent arguments on nuclear disarmament, a humanitarian approach to nuclear abolition, as a new approach, has become a focal point in place of the traditional approach, which has argued for individual and concrete nuclear disarmament measures. As there has been almost no progress in nuclear disarmament through the traditional approach, a new approach has been proposed in order to make a new advance towards a world without nuclear weapons.

In this paper, first I will examine the background and contents of the humanitarian approach to nuclear abolition by taking recent activities into account. Second, I will survey some theoretical issues, such as the relationships between international humanitarian law and nuclear weapons, the relationships between international humanitarian law and international disarmament law, the content and challenge of “a treaty banning nuclear weapons” proposed as a humanitarian approach, and finally examine the expansion of the concept of security and the shift of emphasis in security in the context of nuclear disarmament.

---

\* Professor, Osaka Jogakuin University, Professor Emeritus, Osaka University

## **II Recent Progress in the Argument**

### ***Discussion at the 2010 NPT Review Conference***

The 2010 NPT review conference for the first time clearly referred to the humanitarian approach to nuclear disarmament in its final document adopted by consensus. The Conference expressed its deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons and reaffirmed the need for all states at all times to comply with applicable international law, including international humanitarian law.

A direct reference to this point was made by the Foreign Minister of Switzerland, Micheline Calmy-Rey, in her general debate statement, where she said the following<sup>1)</sup>:

Nuclear weapons have no use, they are immoral and illegal . . . They are illegal by their very nature with regard to the international humanitarian law because they are indiscriminate in their effect, and their use violates without exception all fundamental principles and rules of international humanitarian law . . . As a nuclear war would threaten the very survival of our common humankind, a debate should be launched concerning the legitimacy of the use of nuclear weapons regardless of the legitimacy of the motive of defence that can be invoked. In addition to military and legal considerations, Switzerland's aim is to bring the humanitarian aspect to the heart of the current debate on nuclear disarmament. In fact, it is necessary to ask the question at which point the right of States must yield to the interests of humanity.

### ***New Movements by the United States***

President Obama's address in Prague also constitutes the background for the humanitarian approach to nuclear abolition. Emphasizing the importance of pursuing a world without nuclear weapons, he mentioned that the threat of global nuclear war has gone down but the risk of a nuclear attack has gone up. He stated the following:

Now, understand, this matters to people everywhere. One nuclear weapon exploded in one city — be it New York or Moscow, Islamabad

---

1) 2010 NPT Review Conference, Statement by Switzerland, General Debate, 4 May 2010.

or Mumbai, Tokyo or Tel Aviv, Paris or Prague — could kill hundreds of thousands of people. And no matter where it happens, there is no end to what the consequences might be — for our global safety, our security, our society, our economy, to our ultimate survival<sup>2)</sup>.

The Nuclear Posture Review submitted by the Obama Administration in April 2011 states that “It is in the U. S. interest and that of all other nations that the nearly 65-year record of nuclear non-use be extended forever. As President Ronald Reagan declared, ‘A nuclear war cannot be won and must never be fought<sup>3)</sup>.’”

The U. S. Nuclear Employment Strategy of June 2013 emphasizes the fundamental principles of the laws of armed conflict, stating “The new guidance makes clear that all plans must also be consistent with the fundamental principles of the Law of Armed Conflict. Accordingly, plans will, for example, apply the principles of distinction and proportionality and seek to minimize collateral damage to civilian populations and civilian objects. The United States will not intentionally target civilian populations or civilian objects<sup>4)</sup>.”

The U. S. also stated at the 2013 Preparatory Committee that “We share concerns about the profound and serious consequences of nuclear weapons use and have articulated our deep and abiding interest in extending forever the 68-year record of non-use<sup>5)</sup>.”

#### ***Contribution by the International Committee of the Red Cross (ICRC)***

One of the most important sources of support for the recent argument for a humanitarian approach is that of the International Committee of Red Cross (ICRC). First, just a few days before the 2010 NPT review conference, its president, Jacob Kellenberger, stated the following in his

---

2) The White House, Office of the Press Secretary, “Remarks by President Barak Obama,” Prague, Czech Republic, April 5, 2009. <[http://www.whitehouse.gov/the\\_press\\_office/Remarks-By-President-Barak-Obama-In-Prague-As-Delivered/](http://www.whitehouse.gov/the_press_office/Remarks-By-President-Barak-Obama-In-Prague-As-Delivered/)>

3) U. S. Department of Defense, *Nuclear Posture Review Report*, April 2010. <<http://www.defense.gov/npr/docs/2010%20Nuclear%20Posture%20Review%20Report.pdf>>

4) U.S. Department of Defense, Report on Nuclear Employment Strategy of the United States Specified in Section 491 of 10 U.S.C., June 19, 2013. <[http://www.defense.gov/pubs/ReporttoCongressNuclearEmploymentStrategy\\_Section491.pdf](http://www.defense.gov/pubs/ReporttoCongressNuclearEmploymentStrategy_Section491.pdf)>

5) Second Session of the Preparatory Committee for 2015 NPT Review Conference, Statement by the U. S., General Debate, April 22, 2013.

official address<sup>6)</sup>:

In the light of this finding (of the ICJ), the ICRC finds it difficult to envisage how any use of nuclear weapons could be compatible with the rules of international humanitarian law . . . . The ICRC therefore appeals today to all States to ensure that such weapons are never used again, regardless of their views on the legality of such use.

In October 2011, the Council of Delegation of the Red Cross and the Red Crescent adopted a resolution titled “Working towards the Elimination of Nuclear Weapons”, which contained the following<sup>7)</sup>:

1. Emphasizes the incalculable human suffering that can be expected to result from any use of nuclear weapons, the lack of any adequate humanitarian response capacity and the absolute imperative to prevent such use,
2. Finds it difficult to envisage how any use of nuclear weapons could be compatible with the rules of international humanitarian law, in particular the rules of distinction, precaution and proportionality.
3. Appeals to all States:
  - to insure that nuclear weapons are never again used, regardless of their views on the legality of such weapons.
  - to pursue in good faith and conclude with urgency and determination negotiations to prohibit the use of and completely eliminate nuclear weapons through a legally binding international agreement, based on existing commitments and international obligations.

Since the ICRC is an organization that provides humanitarian assistance in armed conflicts, its statement and the resolution played an important role in advancing the debate on this issue in the international society and providing very clear guidance against the use of nuclear weapons.

---

6) International Committee of the Red Cross, “Bringing the Era of Nuclear Weapons to an End,” Statement by Jakob Kellenberger, President of the ICRC, to the Geneva Diplomat Corps, Geneva, 20 April 2010. <<http://www.icrc.org/eng/resources/-statement/nuclear-weapon-statement-200410.htm>>

7) ICRC International Committee of the Red Cross, Council of Delegations 2011: Resolution 1, “Working towards the Elimination of Nuclear Weapons,” 26 November 2011. <<http://www.icrc.org/eng/resources/documents/resolution/council-delegates-resolution-1-2011.htm>>

***Joint Statements on Humanitarian Consequences of Nuclear Weapons***

First, in May 2012 at the preparatory committee of the NPT review conference, Switzerland read a joint statement on the humanitarian dimension of nuclear disarmament on behalf of sixteen states promoting the humanitarian approach as a multilateral enterprise for the first time, the main contents of which are as follows<sup>8)</sup>:

    Serious concerns related to humanitarian dimensions of nuclear weapons have been voiced repeatedly . . . . If such weapons were to be used again, be it intentionally or accidentally, immense humanitarian consequences would be unavoidable.

    It is of utmost importance that these weapons never be used again, under any circumstances. The only way to guarantee this is the total, irreversible and verifiable elimination of nuclear weapons . . . All states must intensify their efforts to outlaw nuclear weapons and achieve a world free of nuclear weapons.

Second, at the UN General Assembly in October 2012, a joint statement of the same title was read by Switzerland on behalf of 34 states. The central message is that, “It is of utmost importance that nuclear weapons are never used again, under any circumstances. The only way to guarantee this is the total, irreversible and verifiable elimination of nuclear weapons . . . . All states must intensify their efforts to outlaw nuclear weapons and achieve a world free of nuclear weapons<sup>9)</sup>.”

Third, at the NPT preparatory committee in April 2003, South Africa read a “Joint Statement on Humanitarian Consequences of Nuclear Weapons” on behalf of 80 states. Its main message is that, “It is in the interest of the very survival of humanity that nuclear weapons are never used again, under any circumstances . . . All efforts must be exerted to eliminate this threat. The only way to guarantee that nuclear weapons will

---

8) First Session of the Preparatory Committee for the 2015 NPT Review Conference, “Joint Declaration on the Humanitarian Dimension of Nuclear Disarmament,” 2 May 2012. <<http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom12/statements/2May.IHL.pdf>>

9) 67<sup>th</sup> Session of the United Nations General Assembly First Committee, “Joint Statement on the Humanitarian Dimension of Nuclear Disarmament,” New York, 22 October 2012. <[http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com12/statements/22Oct\\_Switzerland.pdf](http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com12/statements/22Oct_Switzerland.pdf)>

never be used again is through their total elimination<sup>10)</sup>.”

The content of this statement is different from those of the previous ones in that they asked to outlaw nuclear weapons. The statement was toned-down in order to increase the number of supporting states by eliminating the reference to the outlawing of nuclear weapons. This increased the number of supporting states from 34 to 80 by adding some NATO members. However, this did not change the stance of many other NATO states, Japan, or Australia. Japan contemplated the possibility of supporting it, but decided not to participate because it did not consider that the phrase “nuclear weapons are never used again under any circumstances” could be accepted under the current security circumstances in Northeast Asia.

Fourth, at the UN General Assembly in October 2013, New Zealand read “the Joint Statement on Humanitarian Consequences of Nuclear Weapons” representing 125 states<sup>11)</sup>. The main message is the same as the previous one stating that, “It is in the interest of the very survival of humanity that nuclear weapons are never used again, under any circumstances . . . All efforts must be exerted to eliminate the threat of these weapons of mass destruction.” Japan joined this kind of joint statement for the first time. One reason was that the Government was criticized very strongly by Japanese citizens, particularly by the *Hibakusha* (survivors of nuclear bombings) in Hiroshima and Nagasaki.

The Japanese Government explained its change in attitude by saying that the statement reflected the Japanese position. More precisely, it is because the following passage was included: “The catastrophic consequences of nuclear weapons affect not only governments, but each and every citizen of our interconnected world. They have deep implications for human survival; for our environment; for socio-economic development; for our economies; and for the health of future generations. For these reasons, we firmly believe that awareness of the catastrophic consequences of nuclear weapons must underpin all approaches and efforts towards

---

10) Second Session of the Preparatory Committee for the 2015 NPT Review Conference, “Joint Statement on the Humanitarian Consequences of Nuclear Weapons,” delivered by South Africa, 24 April 2013.

11) UNGA68: First Committee, “Joint Statement on the Humanitarian Consequences of Nuclear Weapons,” delivered by Ambassador Dell Higgie, New Zealand, 21 October 2013.

nuclear disarmament<sup>12)</sup>.” All approaches include a practical step-by-step approach that Japan supports.

On the same day at the UN General Assembly, Australia read a joint statement of the same title on behalf of 17 states allied with the U. S. The statement, welcoming the joint statement by New Zealand, states that “Banning nuclear weapons by itself will not guarantee their elimination without engaging substantively and constructively those states with nuclear weapons, and recognizing both the security and humanitarian dimensions of the nuclear weapons debate<sup>13)</sup>.” Japan was the only state that supported both joint statements.

### *International Conferences on Humanitarian Impact of Nuclear Weapons*

The International Conference on the Humanitarian Impact of Nuclear Weapons was held in Oslo in March 2013 hosted by the Government of Norway.

The objective was to present a fact-based understanding of the humanitarian impacts of nuclear weapon detonations and to facilitate an informed discussion of these effects with stakeholders from states, the United Nations, other international organizations, and civil society. Delegations from 127 countries as well as several UN organizations, the International Red Cross movement, representatives of civil society, and other relevant stakeholders participated. However, the five nuclear-weapon states jointly refused to participate<sup>14)</sup>.

Discussions were conducted during the following three sessions.

Working session 1: Immediate humanitarian impact of nuclear detonation

Working session 2: Wider impact and longer-term consequences

Working session 3: Humanitarian preparedness and response

At the summary session, the Minister of Foreign Affairs of Norway,

---

12) Second Session of the Preparatory Committee for the 2015 NPT Review Conference, “Joint Declaration on the Humanitarian Impact of Nuclear Weapons,” delivered by South Africa, 24 April 2013.

13) UNGA68: First Committee, “Joint Statement on the Humanitarian Consequences of Nuclear Weapons,” delivered by Ambassador Peter Woolcott, 21 October 2013.

14) On the opposition to the concept of humanitarian approach by the nuclear-weapon states, see John Borrie and Tim Caughley, “After Oslo: Humanitarian Perspectives and the Changing Nuclear Weapons Discourse,” John Borrie and Tim Caughley (eds.), *Viewing Nuclear Weapons through a Humanitarian Lens*, UNIDIR, Geneva, Switzerland, 2013, pp. 95-117.



Espen Barth Eide, submitted the Chair's summary. He pointed out that the following three key points were discerned from the presentations and discussions<sup>15)</sup>.

- 1) It is unlikely that any state or international body could address the immediate humanitarian emergency caused by a nuclear weapon detonation in an adequate manner and provide sufficient assistance to those affected. Moreover, it might not be possible to establish such capacities, even if it were attempted.
- 2) The historical experience from the use and testing of nuclear weapons has demonstrated their devastating immediate and long-term effects. While political circumstances have changed, the destructive potential of nuclear weapons remains.
- 3) The effects of a nuclear weapon detonation, irrespective of cause, will not be constrained by national borders, and will affect states and people in significant ways, regionally and globally.

Patricia Lewis and Heather Williams praised this conference highly for its relevance and importance, stating as follows<sup>16)</sup>:

The Oslo Conference on the humanitarian impacts of nuclear weapons represented a shift away from Cold War-based concepts, such as nuclear deterrence, and towards a fresh discussion on what exactly nuclear weapons are and what they do . . . . The primary outcomes of the Conference were that it did, indeed, advance discourse on nuclear weapon issues beyond Cold War concepts, namely by focusing on the facts about nuclear detonations, including their characteristics and effects of people and the environments.

This conference was also evaluated highly in the joint statement of 80 states adopted just after it as follows:

The March 2013 Conference on the Humanitarian Impact of Nuclear Weapons held in Oslo presented a platform to engage in a fact-

---

15) Chair's Summary Humanitarian Impact of Nuclear Weapons, Oslo, 4-5 March 2013. <[http://www.regjeringen.no/en/dep/ud/what-new/Speeches-and-articles/e\\_speeches/2013/nuclear-summary.html?id=716343](http://www.regjeringen.no/en/dep/ud/what-new/Speeches-and-articles/e_speeches/2013/nuclear-summary.html?id=716343)>.

16) Patricia Lewis and Heather Williams, "The Meaning of the Oslo Conference on the Humanitarian Impacts of Nuclear Weapons," John Borrie and Tim Caughley (eds.), *Viewing Nuclear Weapons through a Humanitarian Lens*, UNIDIR, Geneva, Switzerland, 2013, p. 78.

based discussion on the impact of a nuclear weapons detonation. The broad participation at the Conference reflects the recognition that the catastrophic effects of a detonation are of concern and relevance to all. A key message from experts and international organizations is that no State or international body could address the immediate humanitarian emergency caused by a nuclear weapon detonation or provide adequate assistance to victims.

The Second Conference on the Humanitarian Impact of Nuclear Weapons was held in Nayarit, Mexico in February 2014 with the participation of 146 governments, the United Nations, the ICRC, and NGOs. The five nuclear-weapon states did not attend this conference either.

The conference, after hearing the testimony of the *Hibakusha*, discussed the issues during the following four sessions<sup>17)</sup>.

Session I: From Oslo to Nayarit

Session II: The challenges of a nuclear weapon detonation to national, regional and global economic growth and sustainable development.

Session III: The impact of a nuclear weapon detonation on global public health.

Session IV: The risk of nuclear blast and other effects of a nuclear weapon detonation.

The Chair's Summary of the Conference says that the Nayarit Conference succeeded in presenting a fact-based approach to facilitate an informed discussion of these effects. Some key conclusions can be extracted from the presentations and discussion.

- 1) The effects of a nuclear weapon detonation are not constrained by national borders.
- 2) Beyond the immediate death and destruction caused by the detonation, social-economic development will be hampered and the environment will be damaged.
- 3) Today the risk of nuclear weapons use is growing globally and the risks of accidental, mistaken, unauthorized or intentional use of these weapons grow significantly.
- 4) No state or international organization has the capability to address or

---

17) "Second Conference on the Humanitarian Impact of Nuclear Weapons, Programme." <<http://www.sre.gob.mx/en/images/cih/draftprogramme04febrero.pdf>>

provide the short and long term humanitarian assistance and protection.

In addition, the Chair emphasized that “We need to take into account that, in the past, weapons have been eliminated after they have been outlawed. The broad-based and comprehensive discussions on the humanitarian impact of nuclear weapons should lead to the commitment of states and civil society to reach new international standards and norms, through a legally binding instrument. It is the view of the Chair that the Nayarit Conference has shown that time has come to initiate a diplomatic process conducive to this goal<sup>18)</sup>.”

At the conference, the Government of Austria announced that it would hold the third conference in Vienna in December 2014.

### **III International Humanitarian Law and Nuclear Weapons**

The argument for a humanitarian approach includes not only legal aspects but also many others. However, the argument based on international humanitarian law occupies a central place, and the relationships between international humanitarian law and nuclear weapons has been widely debated.

#### ***Advisory Opinion by the International Court of Justice***

The full-scope argument on the legal aspect of the use of nuclear weapons took place when the International Court of Justice (ICJ) gave an advisory opinion on the “legality of the threat or use of nuclear weapons” in 1996 in response to a request by the UN General Assembly<sup>19)</sup>.

The Court takes into account certain unique characteristics of nuclear weapons and explains the cardinal principles contained in the texts constituting the fabric of humanitarian law. Turning to the applicability of the principles and rules of humanitarian law to a possible threat or use of nuclear weapons, the Court indicates that in the view of the vast majority of states as well as writers there can be no doubt as to the applicability of humanitarian law to nuclear weapons.

---

18) “Second Conference on the Humanitarian Impact of Nuclear Weapons, Chair’s Summary,” Nayarit, Mexico, 14 February 2014. <<http://www.sre.gob.mx/en/index.php/humanimpact-nayarit-2014>>

19) International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996.

In view of the unique characteristics of nuclear weapons, the use of nuclear weapons in fact seems scarcely reconcilable with respect for such requirements. Nevertheless, the Court considers that it does not have sufficient elements to enable it to conclude with certainty that the use of nuclear weapons would necessarily be at variance with the principles and rules of law applicable in armed conflict in any circumstances.

The Court replies that “There is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such,” and concludes 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.”

### ***Recent Arguments***

In the final document of the 2010 NPT review conference, the conference expressed its deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons and reaffirmed the need for all states at all times to comply with applicable international law, including international humanitarian law. Unlike the ICJ’s opinion that says the use of nuclear weapons would “generally” be contrary to international humanitarian law, the document says “any” use of nuclear weapons would be contrary and all states must comply “at all times” with international humanitarian law. As a result, it is argued that there is a transition from general prohibition to comprehensive prohibition of the use of nuclear weapons<sup>20</sup>.

The President of the ICRC argues that in the light of ICJ’s finding, the ICRC finds it difficult to envisage how any use of nuclear weapons could be compatible with the rules of international humanitarian law. The Council Delegations of the International Red Cross and Red Crescent Movement finds it difficult to understand how any use of nuclear weapons could be compatible with the rules of international humanitarian law, particularly the rules of distinction, precaution and proportionality.

### ***Challenges***

Traditionally, nuclear-weapon states have been very negative toward

---

20) Middle Power Initiative, *The Humanitarian Imperative for Nuclear Disarmament*, September 5, 2010, p. 7.

the proposition that laws of armed conflicts or international humanitarian law would apply to the use of nuclear weapons. However, now it is generally agreed that international humanitarian law applies to the use of nuclear weapons, as the advisory opinion by the ICJ in 1996 clearly indicated.

The next question based on the application of international humanitarian law to the use of nuclear weapons is whether all use of nuclear weapons is contrary to international humanitarian law or whether only certain uses are illegal. The ICJ explains that in view of the unique characteristics of nuclear weapons, the use of such weapons in fact seems scarcely reconcilable with rules of law applicable in armed conflict, but concludes that there is in neither customary nor conventional international law any comprehensive and universal prohibition. As a result, the Court replies that the use of nuclear weapons would “generally” be contrary to the rules of international humanitarian law.

In contrast, the final document of the 2010 NPT review conference expresses its deep concern at the catastrophic humanitarian consequences of “any” use of nuclear weapons and reaffirmed the need for all states “at all times” to comply with international humanitarian law. Unlike the ICJ opinion, this could be interpreted as a comprehensive prohibition. The ICRC finds it difficult to envisage how any use of nuclear weapons could be compatible with the rules of international humanitarian law.

The first measure we should take is to ask nuclear-weapon states to state clearly under what circumstances they think it would be legal to use nuclear weapons. In the ICJ case, a nuclear-weapon state presented as an example the case of using nuclear weapons against an isolated warship in the open seas as an exercise of the right of self-defense. However, there has been no precise discussion on this issue. Nuclear-weapon states should show the cases where the use of nuclear weapons can be legal, as an exception to its general illegality, as the consequences of the use of nuclear weapons have become clearer as a result of scientific discussions based on facts.

The second measure is to start negotiations on a treaty prohibiting the use of nuclear weapons. The use of chemical and biological weapons was prohibited by the Geneva Protocol of 1925. About half a century later, the treaties prohibiting them comprehensively and demanding their destruction were concluded. Today, as there is a strong movement towards a nuclear

weapons convention, some may say that it seems to be too little to pursue a treaty prohibiting only the use of nuclear weapons. However, a treaty prohibiting the use should be strongly pursued from the viewpoints of easier realization and also logical supremacy.

#### **IV International Humanitarian Law and International Disarmament Law**

The logical characteristic of a humanitarian approach to nuclear disarmament is that if nuclear weapons were to be used, immense humanitarian consequences would be unavoidable. It is in the interest of humanity itself that these weapons never be used again, and the only way to guarantee this is the total elimination of nuclear weapons. The humanitarian approach demands the elimination of nuclear weapons beyond the issue of their non-use, and its implementation through making a treaty for their total elimination.

The former, the prohibition of their use, is an issue for international humanitarian law, and the latter, their elimination, is an issue for international disarmament law. International humanitarian law has been called laws in armed conflict and historically international laws in war. On the other hand, international law dealing with nuclear weapon possession and elimination is international disarmament law, and this is within international law in peacetime. The dichotomy between two kinds of international law is necessary and indispensable even now when war is generally prohibited<sup>21)</sup>.

Historically, the former belongs to *jus in bello*, and the latter deals with peacetime. The recent argument that it is in the interest of humanity itself that nuclear weapons never be used and accordingly the only way to guarantee this is their total elimination is very attractive and seems to be logical. However, from the legal point of view, the two issues are completely different in terms of the time and object of application. It would be necessary to show the transition from one to the other more convincingly.

#### **V A New Proposal for a Treaty Banning Nuclear Weapons**

In the context of the humanitarian approach to nuclear disarmament,

---

21) Gören Lysén, *International Regulation of Armament: the Law of Disarmament*, Iustus Forlag AB, Uppsala, 1990, pp. 55-56.

international NGOs have recently proposed starting negotiations on a treaty banning nuclear weapons. The main characteristics of this proposal are first to start negotiations without the participation of nuclear-weapon states and second making a treaty dealing with the prohibition of the use and possession of nuclear weapons, delegating their elimination and verification to a later stage. The main purposes of this proposal are to spread the consciousness that nuclear weapons are illegal by first prohibiting them and to promote a change in the perception of nuclear weapons. They say that the treaty would decrease the possibility of the use of nuclear weapons and would be useful from the humanitarian point of view<sup>22)</sup>.

The proposal is rather progressive as almost all other proposals for a nuclear weapons convention were based on the premise that nuclear-weapon states would participate and play a central role in negotiations. The Model Nuclear Weapons Convention, which was submitted by international NGOs just after the ICJ advisory opinion confirming an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament, was premised on the expectation that nuclear-weapon states would participate. The proposals by the Global Zero Commission and the Mayors for Peace Conference are also based on the leadership of nuclear-weapon states.

On the other hand, the recent proposal does not presume the participation of nuclear-weapon states in the negotiations and asserts that only a group of non-nuclear-weapon states could start negotiations. They are following the examples of the Anti-Personnel Landmine Treaty and Treaty on Cluster Munitions. These two treaties were initiated not by those who possess many such weapons but by middle power states with assistance by international NGOs and were adopted. The former was conducted as the Ottawa process and the latter as the Oslo process. They are different from the recently proposed treaty banning nuclear weapons in that they provide for the destruction of relevant weapons, while the proposed treaty would only prohibit their use and possession.

---

22) Article 36 and Reaching Critical Will, *A Treaty Banning Nuclear Weapons: Developing a Legal Framework for the Prohibition and Elimination of Nuclear Weapons*, May 2014. <<http://www.reachingcriticalwill.org/images/documents/Publications/a-treaty-banning-nuclear-weapons.pdf>>; International Campaign to Abolish Nuclear Weapons, *Ban Nuclear Weapons Now*, July 2013. <<http://www.icanw.org/wp-content/uploads/2012/08/BanNuclearWeaponsNow.pdf#>>

It is arguable whether what was possible in the cases of anti-personnel landmines and cluster munitions will also be possible in the case of nuclear weapons. Anti-personnel landmines and cluster munitions have been used widely in recent armed conflicts, but nuclear weapons have not been used since 1945. Landmines and cluster munitions are useful in armed conflicts, but their destructive power is completely different from that of nuclear weapons. Further, nuclear weapons are mainly maintained for nuclear deterrence and are the central element of a country's military power, but landmines and cluster munitions have never occupied the central place in any nation's military power.

In the cases of landmines and cluster munitions, their inhuman aspect was strongly emphasized because many women and children have been killed by these weapons. As a result, the humanitarian aspect made sense in leading to the conclusion of the treaties. However, in the case of nuclear weapons, although they are inhuman, they are rather more relevant from a strategic point of view<sup>23)</sup>.

## VI Conclusion: Nuclear Disarmament and the Concept of Security

Concerning such developments, Rebecca Johnson argues that a humanitarian-centered approach has begun to reframe nuclear debates and lists the following four factors: 1) the growing importance accorded to international humanitarian law, 2) a growing awareness of the humanitarian consequences of unleashing nuclear weapons, 3) a weakening of faith in the efficacy of nuclear deterrence, and 4) a gradual realization by civil society and non-nuclear-weapon states that they have rights, responsibilities, and high security stakes in nuclear decision-making<sup>24)</sup>.

Historically, the concept of security emerged as 'national security', meaning how to maintain and strengthen national security against military threats. This fundamental concept remains even today. With the birth of the League of Nations and then the United Nations in the twentieth

---

23) On the comparison of two kinds of weapons and its implication, see John Borrie, "Viewing Nuclear Weapons through a Humanitarian Lens: Context and Implications," John Borrie and Tim Caughley (eds.), *Viewing Nuclear Weapons through a Humanitarian Lens*, UNIDIR, Geneva, Switzerland, 2013, pp. 32-34.

24) Rebecca Johnson, "The NPT in 2010-2012: A Control Regime Trapped in Time," *Decline or Transform: Nuclear Disarmament and Security beyond the NPT Review Process*, Acronym, 2012, pp. 27-28.



century, ‘international security’, meaning security between states, has been emphasized. The most important purpose of the United Nations is to maintain international peace and security as stated in its Charter. Under this concept, international organizations are expected to play a certain role, but security means military security here.

The issue of disarmament has traditionally been about maintaining security between states. Specifically, states are the subjects, and military security is the content. Its main purpose is to maintain the military balance and strategic stability between states. These measures are called arms control.

This traditional concept of security was changed and widened when a new concept of security was introduced: human security<sup>25)</sup>. The security of human beings is emphasized in place of the security of a state or nation. The new concept includes not only military aspects but also economic, social, human rights, development, environmental, and energy aspects.

A humanitarian approach to nuclear disarmament, which is the focus of this article, started from the catastrophic consequence of the use of nuclear weapons, focuses on human beings rather than states, and includes not only military aspects but also human rights, environment, and development aspects. This approach emerged as concept of security changed and is expected to contribute usefully to the progress of nuclear disarmament.

---

25) See Tim Caughley, “Tracing Notions about Catastrophic Humanitarian Consequences,” John Borrie and Tim Caughley (eds.), *Viewing Nuclear Weapons through a Humanitarian Lens*, UNIDIR, Geneva, Switzerland, 2013, pp. 22-23.