AGENCY FOR THE PROHIBITION OF NUCLEAR WEAPONS
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INTERNATIONAL SEMINAR
"Roads to Nuclear Disarmament: a Case of Convergence in Diversity"

Humanitarian Approach to Nuclear Weapons

Statement *by*

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The following comments are made in a personal capacity and do not engage the Agency and its Member States.

The series of International Conferences on the Humanitarian Impact of Nuclear Weapons held in Oslo, Nayarit and Vienna in 2013 and 2014 is a welcome novelty in the frustrating struggle against the calamity imposed upon us since 1945. To be sure, the relationship between the use or threat of use of nuclear weapons and the international law applicable to armed conflict has been the object of attention and discussion since that time. However, the format of those three international Conferences, none of them aiming at negotiations, had not been previously used for the discussion of the humanitarian question.

In spite of that, States sent delegations to those Conferences: 127 to Oslo, 146 to Nayarit and 160 to Vienna. In any case, assurances were probably provided by the organizers that no formal document would come out from the Conferences, the host countries merely issuing summaries under their own responsibility.

The organizers were concerned to ensure the participation of the nuclear-weapon states (NWS), which refrained to do so in Oslo and Nayarit, certainly wishing to avoid the risk of engaging in any kind of negotiation. Enough assurances must have been provided for the Vienna Conference allowing the attendance of the United States and the United Kingdom.

The Conferences on the Humanitarian Impact are welcome because they bring to the forefront a real problem that is more conducive to awakening the conscience and interest of public opinion and many governments. The fact is that discussions on nuclear weapons, both among States and between interested private circles, have gradually become a technical matter at least since the most recent achievement, namely the Test-Ban Treaty. The specialized non-governmental organizations, many of them of a highly sophisticated level, can be classified as academic think-tanks rather than as opinion makers or public opinion movements.

This is a reason for pursuing the discussions concerning the humanitarian consequences of the use of nuclear weapons. They concern human life, our survival.

The Treaty of Tlatelolco, signed in 1967, addressed the humanitarian impact of nuclear weapons in its Preamble, which reads:

> "… the incalculable destructive power of nuclear weapons has made it imperative that the legal prohibition of war should be strictly observed in practice if the survival of civilization and of mankind itself is to be assured;
>
> and

> … nuclear weapons, whose terrible effects are suffered, indiscriminately and inexorably, by military forces and civilian population alike, constitute, through the persistence of the radioactivity they release, an attack on the integrity of the human species and ultimately may even render the whole earth uninhabitable;"

Nuclear weapons fit in any definition of "weapons of mass destruction" either international or national as for example in the U.S. CODE (section 2332a). There is no question whatsoever against the necessity for the complete prohibition of biological (bacteriological) and chemical weapons as weapons of mass destruction. Even the few States still outside the respective Conventions do not deny their validity.

Weapons of mass destruction, according to this very designation, cannot, among many other aspects, be in conformity with the principle of distinction in International Humanitarian Law, since they necessarily affect combatants and civilians without discrimination.

Even before the explosion of the first atomic bomb, the most involved scientists became aware of the tragic results brought by their discoveries. The Bohr memorandum (1944) and the Franck report (June 1945), to mention two outstanding examples, showed a bitter conscience of the indiscriminate and unsurpassed power of destruction created by what they called "the Project". More acute, however, was their foresight of the inevitable competition that was about to be opened. In other words, they had a clear understanding of the humanitarian consequences of "the Project" and still more of the ensuing political effects.

Those authoritative documents favoured a demonstration detonation of the bomb showing the senselessness of opening an arms race. At that point in time, it was undeniably known that Germany had not attempted to develop such a bomb. In June 1945, there was no doubt that Japan was defeated. In spite of that, Hiroshima was destroyed with its population. Days later, a different device was dropped on Nagasaki under still less militarily sound pretexts. The reason is that these were not military, but political deeds.

The history of nuclear weapons shows a natural linearity in the sense of their political finality, in spite of changing circumstances and varying possible target countries. The arsenal of each nuclear weapon state (NWS), recognized or not by the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), has its specific *raison d´être* and obeys its proper logic. In spite of this diversity, all of them respond to a similar concern. That common concern of NWS is translated by the word "security".

In the jargon of nuclear disarmament, NWS, in particular the Soviet Union/Russia, have consistently insisted on the inclusion, in official multilateral documents about any measure of reduction of weapons, of the phrase "undiminished security for all", "all" standing for the five NWS. It was not easy to obtain the modified version "undiminished and increased security" in the final document of the VIII NPT Review Conference in 2010 (NPT/Conf.2010/50 pg. 21 action 5) so that all the other members of the international community would have recognized their right to security. In this new wording "undiminished" stands for NWS and "increased" for all the rest.

At the core of the problem is the compound security and self-defence, the latter term constituting a right guaranteed by Article 51 of the UN Charter, although subject to the conditions of necessity and proportionality. Security and self-defence are considered by NWS as necessary elements in the practice of deterrence, which is the most apparent, but not exclusive object of nuclear weapons.

That is why the NWS felt not really affected by the Advisory Opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons, of 8 July 1996, since it formally accepted the exception under Article 51. Moreover, the Court expressly affirmed it could not ignore the practice referred to as "policy of deterrence".

Besides security, the other element that founds, commands military nuclear policy is power. Apart from being able to deter any nuclear weapon assault, a State, by the fact that it possess nuclear weapons, ascends to a category superior to all the other States. The inequality among NWS is not so relevant for two main reasons. First: even the smallest arsenal constitutes a deterrent. Second: every NWS aims at specific targets or has its own specific concerns, as it was pointed out.

These aspects explain why the humanitarian approach does not have enough leverage to move the NWS towards disarmament. Emblematic of this posture is the cynicism showed by the Russian Federation in the recent debate in the I Committee of the General Assembly. "Russia treats with respect the opinion of a number of states that decided to discuss the humanitarian impact of nuclear weapons. We are not in any way allergic to such discussions. The problem, however, is that the discussion of "humanitarian impact" distracts the attention from addressing practical tasks in the area of nuclear disarmament". Consequently, Russia was absent in Vienna.

These considerations may sound sceptical concerning the value of the humanitarian approach as a means to seek the elimination of nuclear weapons. No one in good faith denies that the conscience of evil helps to bring about virtue. In the pursuit of nuclear disarmament we must, as the French say, "*faire feu de tout bois*".

Despite the doubts we may have on the efficacy of the humanitarian approach to nuclear weapons, we may ask ourselves why it is useful to give greater importance to this approach. Possibly because it is convenient to foster the interest of civil society in participating in the debate. After all, the survival of humankind and the sustainability of an inhabitable world are concerns that affect us all. Furthermore, by considering the humanitarian approach to nuclear weapons, citizens may have a revelatory encounter with the meaning, impact and danger of the mere existence of these weapons.

Beyond the threat of nuclear war, the possibilities of human error, accidents and of criminal acts are a permanent menace. The high risk − either of a nuclear accident or of unintentional use of nuclear weapons− is unacceptable to humankind and remains present so long as these weapons exist.

The Conventions prohibiting biological and chemical weapons were preceded by the conscience of their intrinsic inhumanity. There is no weapon of mass destruction more inhumane, indiscriminate and powerful than a nuclear weapon, and yet it has not been prohibited by a specific convention.

On the other hand, one should admit that International Humanitarian Law has never succeeded in banning a weapon considered by the more powerful countries to be effective and necessary for their security and for their capacity to inflict effective harm.

The nuclear scare, experienced during the 1950s, could now take the form of greater interest of the international community in the humanitarian approach to nuclear weapons. It could become an instrument to overcome what we could call the "nuclear complacency" that was installed since the end of the Cold War.

It ensues that the arduous and long path of changing strategic views by means of negotiations is the only way of reaching results. The humanitarian approach, nevertheless, can contribute to that by raising awareness of the risk posed by the sole existence of these weapons.

To illustrate the opportunity of the humanitarian approach, it is fit to dedicate this text to the memories of the American physicist Harry K. Daghlian, and the Canadian physicist, Louis Slotin. At Los Alamos, Daghlian experimented the production of a nuclear chain reaction by approaching different substances to a plutonium sphere, and so did Slotin, by approaching together two spheres of enriched uranium and separating them apart, by means of two screwdrivers. Both of them lost control of their experiments. Daghlian died three weeks later, on 21 August 1945, at 24 years of age. Slotin died on 26 May 1946, after nine days of terrible suffering, at the age of 35. They were the first two victims of what is conventionally called a criticality accident.