

TOWARDS ELIMINATING NUCLEAR WEAPONS: LOCATING THE INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT IN THE SHIFTING LEGAL LANDSCAPE

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I INTRODUCTION

On 6 August 1945, a white flash appeared over Hiroshima. Seconds later, the city was flattened. Tens of thousands of people were dead. In the midst of this appalling devastation, one solitary hospital could be seen. The Hiroshima Red Cross Hospital inexplicably remained intact, desperately trying to treat the thousands of people who came through its doors.

Dr. Marcel Junod, a health delegate for the International Committee of the Red Cross (ICRC) became the first non-Japanese doctor to bear witness to the utter destruction and suffering and to deliver assistance. His reports back to ICRC headquarters remain as an unsettling reminder of the indiscriminate and unparalleled suffering wrought by these weapons.¹

With its mandate for humanitarian activities enshrined in international humanitarian law (IHL), the International Red Cross

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¹ Marcel Junod, 'The Hiroshima Disaster' (1982) 231 *International Review of the Red Cross* 274.

and Red Crescent Movement (Movement) has a long and proud history in shaping developments in IHL and the issue of nuclear weapons is no exception, particularly given the organisation's non-partisan focus on the public health and humanitarian consequences of the use of various weapons. In November 2011, at the highest deliberating body of the International Red Cross and Red Crescent Movement (the Council of Delegates) an historic resolution was passed called *Working towards the elimination of nuclear weapons* (the 'Resolution').²

This note will provide readers with some context surrounding the Movement's impetus to advocate for the elimination of nuclear weapons and how the Movement is committed to being part of the increased urgency to find a diplomatic, legal and political solution to the threats posed by the existence of such weapons. It will then examine the legal and political landscape that formed the basis of the historic Resolution passed at the Council of Delegates.

II THE HUMANITARIAN IMPERATIVE

There are no humanitarian or medical solutions to the existence of nuclear weapons and only limited humanitarian responses due to the catastrophic damages the use of these weapons cause. The destruction of hospitals, medical supplies and death of health care and humanitarian workers must be a factor taken into account in any discussion on the use of these weapons. From the Movement perspective, for too long this debate has been framed in terms of military doctrine and on the basis of power politics. Rather, the essence of any discussion about these horrific weapons must ultimately be about human beings, about our global collectivity (that what binds us together is bigger than what divides us) about the fundamental rules of international law (in particular IHL) and about the collective future of humanity.

² Council of Delegates, *Resolution 1: Working Towards the Elimination of Nuclear Weapons* (31st International Conference of the Red Cross Red Crescent, Doc CD/11/R1, 26 November 2011).

Humanity and universality are key reasons for us to contribute to the growing global concern surrounding nuclear weapons. Last year, the world mourned and marked almost seven decades since the unspeakable horrors were unleashed upon Hiroshima and Nagasaki. This experience and what we continue to learn about its long-term implications must be central to any debate on the further use of nuclear weapons.

There are also other stories to tell – not as devastating as the narrative of Hiroshima and Nagasaki's story – but important to share and connect together. Our own part of the world, Australia and the Pacific, has our own sadness to add to the voices of Japan. Between 1952 and 1963 Australia was the site for the testing of ten nuclear weapons in two locations. The impact on Aboriginal peoples in the area of that testing – many of them not adequately warned – continues today.

Yami Lester, a dignified gentleman from Walatina (population of 50) was 10 years old at the time of one of the nuclear tests in Emu Junction. He completely lost his sight due to the testing and many of his family continue to suffer from various health effects caused by the impact of the testing and the subsequent radiation. In Yami's words he describes his experience after the initial explosion:

It wasn't long after that a black smoke came through. A strange black smoke, it was shiny and oily. We thought it was a dust storm but we knew it wasn't...it was different. It didn't take long til this black smoke was all over us, moving quietly through the trees. It was big, we could see it everywhere. It covered the sun, this black, shiny, quiet smoke. The sun couldn't shine through, everything went dark. I had no idea what it was, but the elders called it 'manu manu' which means devil or evil spirit; they knew it was bad.³

The impact of this was not only terrible for Yami, his family and

³ Eve Massingham, 'Blinded by the bomb: the story of Yami Lester' (2011) 2 *Australian Red Cross International Humanitarian Law Magazine – Nuclear Weapons: A Unique Threat to Humanity* 14.

many other communities at the site of the testing, but also on the natural environment both then and now. There have also been struggles for acknowledgement and compensation as a result of the testing. Yami states:

War makes me scared. War is scary. But war with nuclear bombs would be even scarier – just thinking about it makes me shiver. Those nuclear bombs are no good, we gotta make sure nobody uses them, and we gotta support anyone who's trying to stop them...people like me aren't always listened to but we gotta try.⁴

III 'WORKING TOWARDS ELIMINATING NUCLEAR WEAPONS'

The historic Council of Delegates Resolution regarding the elimination of nuclear weapons was passed on 26 November 2011 and co-sponsored by over 30 National Red Cross and Red Crescent Societies (including the Japanese Red Cross, Norwegian Red Cross, Australian Red Cross and Iranian Red Crescent) and had strong support on the floor of the meeting, with countries from the Netherlands to Vietnam and Austria to Fiji speaking passionately in favour of the resolution.

The resolution was developed to help ensure that the Movement plays an active role in the changing context of the nuclear disarmament debate. The resolution has three main intentions:

1. Help further re-frame the international debate on these weapons on the basis of their human costs and international humanitarian law implications;
2. Ensure that States, authorities, members of parliament, civil society organisation and other entities correctly understand the Movement's position and concerns on nuclear weapons; and
3. Provide a policy framework to support public activities on nuclear weapons by Red Cross and Red Crescent National Societies that are ready to work on this issue on a national basis.

⁴ Ibid 15.

The final Resolution arose from extensive consultations between the ICRC, National Societies and the International Federation of the Red Cross. The content of the resolution and ‘map’ of the different ‘steps’ it relies upon are detailed below.

The Resolution begins with the following preamble:

...deeply concerned about the destructive power of nuclear weapons, the unspeakable human suffering they cause, the impossibility of controlling their effect in space and time, the threat they pose to the environment and to future generations and the risks of escalation they create;⁵

This wording builds upon specific paragraphs of the 1996 International Court of Justice Advisory Opinion on the Legality of the Threat or Use of Nuclear weapons (the ICJ Decision), which notes, in particular, issues relating to the lack of technical capacity to contain the destructive power of these weapons and raises the environmental issues as a key part of the debate.⁶

The next elements of the preamble are sourced from the ICRC President's 2010 speech to the Geneva Diplomatic missions:⁷

- concerned also by the continued retention of tens of thousands of nuclear warheads, the proliferation of such weapons and the constant risk that they will again be used;
- disturbed by the serious implications of any use of nuclear weapons for humanitarian assistance activities and food production over wide areas of the world;
- believing that the existence of nuclear weapons raises profound questions about the extent of suffering that humans are willing to inflict, or to permit, in warfare.⁸

⁵ Council of Delegates, above n 2.

⁶ *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep 226, paras 35, 36.

⁷ Jakob Kellenberger, President of the ICRC, ‘Bringing the Era of Nuclear Weapons to an End’ (Speech delivered to Geneva diplomatic missions, Geneva, 20 April 2010).

⁸ Council of Delegates, above n 2.

Thus this section addresses the political issues of retention and proliferation by bringing the focus back to the humanitarian consequences including difficulty of medical and humanitarian response, food security and the philosophical problems posed by even the existence of these weapons.

This is followed by the Movement welcoming important recent developments including:

renewed diplomatic efforts on nuclear disarmament, in particular commitments made of States at the 2009 United Nations Security Council Summit on Nuclear Non-Proliferation and Nuclear Disarmament, the 2010 Review Conference on the Treaty on Non-proliferation of Nuclear Weapons and the Treaty Between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Offensive Arms... [and] the commitments made by States at the highest levels in the above fora to create the conditions for a world free of nuclear weapons through concrete action in the fields of nuclear non-proliferation and nuclear disarmament.⁹

The resolution then moves to note the legal norms identified by the ICJ decision,¹⁰ namely that the principles and rules of IHL apply to nuclear weapons and that the threat or use of such weapons would generally be contrary to the principles and rules of IHL.¹¹

The direct experiences of the Movement and the previous work and statements on this topic are raised next, including several previous resolutions adopted by the International Conferences of the Red Cross and Red Crescent¹² and Council of Delegates¹³ and

⁹ Ibid.

¹⁰ *Legality of the Threat or Use of Nuclear Weapons (Advisory Opinion)* [1996] ICJ Rep 226, para 105(E).

¹¹ Council of Delegates, above n 2.

¹² International Red Cross Red Crescent Movement, *Resolution XXIV*, 17th International Conference of the Red Cross Red Crescent (1948); International Red Cross Red Crescent Movement, *Resolution XVIII*, 18th International Conference of the Red Cross Red Crescent (1953); International Red Cross Red Crescent Movement, *Resolution XVIII*, 18th International Conference of

statements of the President of the ICRC¹⁴ as well as first hand relief provided by the Movement including:

testimony of atomic bomb survivors, the experience of the Japanese Red Cross and ICRC in assisting victims of the atomic bomb blast in Hiroshima and Nagasaki and the knowledge gained through the ongoing treatment of survivors by the Japanese Red Cross Atomic Bomb Survivors Hospital.¹⁵

The resolution then sets out legal and humanitarian arguments as to why the Movement is involved in this issue drawn from previous statements made by the Movement on this issue:¹⁶

convinced that the Red Cross and Red Crescent Movement has an historic and important role to play in efforts to create the conditions for a world without nuclear weapons,

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 principles of distinction, precaution, and proportionality.¹⁷

The penultimate section of the Resolution which appeals to States, is based on a number of sources, in particular the Nuclear Posture

the Red Cross Red Crescent (1953); Resolution XXVIII, 20th International Conference of the Red Cross Red Crescent (1965); Resolution XIV, 22nd International Conference of the Red Cross Red Crescent (1977); Resolution XIII, 24th International Conference of the Red Cross Red Crescent (1981).

¹³ Council of Delegates, *Resolution 7: Preventing humanitarian consequences arising from the development, use and proliferation of certain types of weapons* (Doc CD/09/12.2, 26 November 2009).

¹⁴ Kellenberger, above n 7.

¹⁵ Council of Delegates, above n 2.

¹⁶ Kellenberger, above n 7; ICRC 'The weapons issue: ICRC statement to the United Nations' (Statement of the ICRC at the 51st session of the United Nations General Assembly, New York, 19 October 1996).

¹⁷ Ibid.

Review Report of the United States of 2010,¹⁸ the Joint statements of Presidents Obama and Medvedev in 2009,¹⁹ the Treaty on the Non-Proliferation of Nuclear Weapons,²⁰ the Council of Delegates resolution of 2009²¹ and the ICJ Case unanimous conclusions. The call to action appeals to States:

- to ensure that nuclear weapons are never again used, regardless of their views on the legality of such weapons;
- to pursue 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.²²

Finally the Resolution affirms the obligations of the Movement itself on this issue including engaging with a variety of civil society actors and the general public as well as governments, specifically, it:

calls on components of the Movement, utilising the framework of humanitarian diplomacy;

- to engage, to the extent possible, in activities to raise awareness among the public, scientists, health professionals and decision-makers of the catastrophic humanitarian consequences of any use of nuclear weapons, the international humanitarian law issues that arise from such use and the need for concrete actions leading to the prohibition of use and elimination of such weapons,
- to engage, to the extent possible, in continuous dialogue with governments and other relevant actors on the humanitarian and international humanitarian law issues associated with nuclear weapons and to disseminate the Movement position outline in this resolution.²³

¹⁸ United States Department of Defense, *Nuclear Posture Review Report of the United States*, April 2010, ix, 16, <<http://www.defense.gov/npr/docs/2010%20nuclear%20posture%20review%20report.pdf>>.

¹⁹ Joint Statement by President Barack Obama of the United States of America and President Dmitry Medvedev of the Russian Federation on Nuclear Cooperation, London, April 2009.

²⁰ *Treaty on the Non-Proliferation of Nuclear Weapons*, opened for signature 1 July 1968, 729 UNTS 161 (entered into force 5 March 1970), art 6.

²¹ Council of Delegates, above n 2, para 5.

²² Council of Delegates, above n 2.

²³ *Ibid.*

IV CONCLUDING COMMENTS

This resolution is carefully crafted; it builds upon many of the promising legal and political developments that have occurred in recent years from a variety of fora. It is a strong step, which must be further built upon in the years to come. The call to National Red Cross and Red Crescent Societies (such as Australian Red Cross) is an exciting one – in Australia copies of the resolution have been sent to all members of Federal parliament and the Red Cross has received letters of support from all political parties. Australian Red Cross has undertaken a range of creative humanitarian diplomacy activities, from seminars and presentations (often with civil society actors, in particular International Physicians for the Prevention of Nuclear War (IPPNW) and International Coalition for the Abolition of Nuclear weapons (ICAN)), the creation of a magazine devoted to the topic, and social media campaigns involving new technologies such as Facebook with simulations of the impact of these weapons (to date with a social reach of almost one million people), as well as short clips from celebrities and survivors. It has also held youth competitions to fold paper cranes, conducted media interviews, engaged with the 82 Mayors of Peace across Australia, instigated 'flash mobs' throughout the country, held a law student 'moot' competition on the theme and of course, co-hosted the conference in Adelaide entitled 'Towards Eliminating Nuclear Weapons'. More recently we have also encouraged people to visit a website to upload and share a photo or video of something that they could not live without to highlight what is at stake while nuclear weapons continue to exist.

The resolution has also given interested and concerned National Societies the authority to work with dedication and urgency on raising awareness about the devastating and multi-faceted consequences posed by the use of nuclear weapons and posing suggested answers to the problem. We are working across the globe with our National Societies, sharing our experiences and gaining new insights and ideas and the work of the Movement internationally is also gaining momentum. Importantly, the Movement resolution on nuclear weapons has re-engaged

international discussions on humanitarian impact, rather than it merely being a debate about military and security issues. On 19-20 November 2012, over 25 National Societies met in Vienna to discuss the topic of nuclear weapons. Hosted by the Austrian, Australian, Canadian, Japanese and Norwegian Red Cross, the two day meeting also included the ICRC and IFRC. With a particular focus on implementing the Resolution, the meeting heard from world experts on topics such as the health and environmental impacts of the use of the weapons, and legal and political developments that have occurred on this topic in the last 12 months. The resulting 'Vienna Declaration' has now been shared across the Movement and provides a number of actions listed for consideration by National Societies to raise awareness of this issue and the 2011 Resolution, including attending a further Movement meeting on implementing the Resolution in Hiroshima in March 2013.

The work of the Movement has also been a catalyst for an inter-governmental conference hosted by the Norwegian Ministry of Foreign Affairs in March 2013 on the humanitarian impacts of nuclear weapons. Over 120 states attended this historic conference and the ICRC and IFRC were also represented, with Australian Red Cross forming part of the IFRC delegation. United Nations agencies also participated. Since then, there have been landmark joint-statements made by South Africa on behalf of 80 countries²⁴ and New Zealand²⁵ on behalf of 125 countries, focused exclusively on the humanitarian impact of nuclear weapons and explicitly referencing the 2011 Resolution. A follow-up conference to Oslo is also planned for early 2014 in Mexico to progress this debate.

²⁴ Ambassador Abdul Samad Minty, 'The Humanitarian Impact of Nuclear Weapons' (Joint-statement by South Africa on behalf of 80 Countries at the at the Second Session of the Preparatory Committee for the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Geneva, 24 April 2013).

²⁵ Ambassador Dell Higgie, 'The Humanitarian Impact of Nuclear Weapons' (Joint-statement by New Zealand on behalf of 125 Countries at the United Nations General Assembly First Committee, New York, 21 October 2013).

Finally, as the Movement prepares for the next Council of Delegates in Sydney, a further resolution has been tabled that builds on the 2011 Resolution and introduces a four-year action plan for National Societies to engage with governments and key stakeholders on this issue. It is hoped that these exciting developments will further spur other National Societies and governments to fully engage with this topic and eventually result in strong commitments from States around the world fully commit to creating a world without nuclear weapons.

The principles of the International Red Cross and Red Crescent Movement do not permit moral indifference in the face of the terrifying effects of a weapon that defies our common humanity, calls into question the most fundamental principles of international humanitarian law, and threatens the continued existence of the human species. Today humanity stands at a crossroads. We must all harness our passions, our art, and our medical, scientific, political and legal knowledge to deal with this threat. It is deeply hoped that the Movement resolution and our continuing work can help play a crucial role in ensuring that the right choice is made.