

I wish you all an inspiring and encouraging finale of our Annual Meeting! Thilo, over to you.

REMARKS AND QUESTIONS BY THILO MARAUHN*

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It is my pleasure to be with you on this occasion, if only virtually. This year's annual meeting has as an overall theme: "Personalizing International Law." For this year's closing plenary, we thought of a truly important topic: "International Law Needs People: Humanitarian Arms Control and the Peace Movement." Nuclear war, whether big or small, would have disastrous consequences for humankind. Nuclear arms control is crucial—not least in light of the humanitarian consequences. Following the failure of nuclear weapon states to implement Article VI of the Nuclear Non-Proliferation Treaty (NPT), NGOs and governments of non-nuclear weapon states pushed for the Treaty for the Prohibition of Nuclear Weapons (TPNW). Given the role of civil society, of individuals, in this process, and given current circumstances, we want to discuss whether there is both a need and an opportunity to enhance international law and increase lawmaking and implementation by leveraging these actors. We will do so against the background of two distinct developments which I will highlight in opening the panel:

First, since February 24, 2022 we have been faced with Russia's armed attack on Ukraine. Russian President Putin justified the attack, among other reasons, by claiming that Ukraine had nuclear ambitions. He also raised the possibility of Russia using nuclear weapons if other states obstructed Russian action in Ukraine. Taken together with Putin raising the alert level of Russia's "deterrent forces" we see a case of "nuclear blackmail." A nuclear escalation spiral could, even accidentally, lead to the use of nuclear weapons in Europe: a worst-case scenario. Looking backward, on the basis of the Budapest memorandum, Ukraine transferred all nuclear "leftovers" of the Soviet nuclear arsenal stationed in Ukraine during the Cold War (then including 4,200 tactical nuclear weapons and up to 1,900 strategic nuclear warheads) to Russia and became a member of the NPT in 1994. In return, the Budapest memorandum included security assurances for the benefit of Ukraine. Russia, already with its annexation of Crimea in 2014, but even more so with its armed attack of 2022, has blatantly violated the Budapest Memorandum. What are the implications thereof for nuclear arms control? What does this mean for the credibility and reliability of security assurances?

I am turning to a second story, which at first sight is much more positive. On January 22, 2021, the TPNW entered into force, a treaty that was negotiated against the will of some of the world's most powerful states, and ignored by many others. But civil society organizations and a group of small and middle powers managed to negotiate a treaty giving voice to the frustration and concerns of non-nuclear-weapon states about the lack of nuclear disarmament. As of now the Treaty on the Prohibition of Nuclear Weapons has been signed by eighty-six states, with sixty ratifications. This treaty both questions the practice of nuclear deterrence, which is based on nuclear weapons possession as a strategy to prevent nuclear war, and aims to reduce the risk of nuclear war. What is important in this context is that a broad coalition of governmental and non-governmental actors was successful in centering the humanitarian consequences of nuclear weapons in the international debate. The focus was on human security, not state security. Irrespective of its practical consequences, and irrespective of the fact that the relationship between the TPNW and the NPT is not a "love affair," I believe that both treaties should be considered as complementary to each other.

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In the following we want to link these two stories to each other, believing that nuclear arms control is ever more important today and that civil society, both groups and individuals play a decisive role in reducing the threat of nuclear war.

I have with me three distinguished panelists who I warmly welcome. It is an honor to introduce you all at once. Jody Williams, peace activist and Nobel Peace Prize winner 1997 for her work on banning landmines through the International Campaign to Ban Landmines. Emma Verhoeff, deputy head of the political department at the Embassy of the Kingdom of the Netherlands in the United States, previously with the Netherlands Permanent Mission in Vienna dealing with the International Atomic Energy Agency (IAEA) and the Comprehensive Nuclear Test Ban Treaty (CTBT). Jeffrey Price, Foreign Policy Institute at the Johns Hopkins School of Advanced International Studies, also a practicing international lawyer, previously delegation leader and senior Department of Defense representative to significant multilateral negotiations, also experienced in nuclear disarmament negotiations with Russia, Ukraine, Kazakhstan. and Belarus.

I have prepared a number of questions for consideration of the panelists:

Given the current situation, let us now start our analysis with a brief discussion of the armed conflict between Russia and Ukraine, and its impact on arms control and nuclear disarmament.

The Budapest Memorandum of 1994 includes obligations by Russia, the United States, and the United Kingdom (complemented by weaker assurances of France and the People's Republic of China) to refrain from the threat or the use of force against Belarus, Kazakhstan, or Ukraine. The Memorandum has been violated by Russia in 2014 with the annexation of Crimea, in 2018 with the Kerch Strait incident and in 2022 by launching the armed attack on Ukraine. Do you see this instrument losing relevance in nuclear arms control in light of the armed conflict between Russia and Ukraine?

In a recent poll by the Associated Press and the NORC Center for Public Affairs Research Nearly 85 percent of people surveyed said they fear the United States could be drawn into Putin's war in Ukraine, and nearly three-quarters of the respondents felt that the likelihood that nuclear weapons will be used anywhere in the world had increased. Has civil society underestimated the risks of nuclear war? Why did NGOs not succeed in placing this higher on the agenda in the past?

Are governments, civil society, and experts still experienced enough in engaging over the nuclear issue? Do we fail to understand the logic of nuclear deterrence, with its subtleties of signaling and risks of inadvertent escalation? Do we underestimate language?

Before turning to further details of nuclear arms control and civil society, I wonder whether or not the current crisis weakens international law.

I believe that international law no longer is in the hands of diplomats, academics, and other experts only. We may argue that ownership in international law has changed. Humans, the general public, civil society, have acquired such ownership. Do you believe that the current crisis has weakened international law, notwithstanding wider ownership?

Turning to international law and the UN Security Council, which plays a role in international peace and security in general, but also in the context of nuclear arms control, considering, among others, the Non-Proliferation Treaty, but also, among others, UN Security Council Resolution 1540, do you think the Council will be able to live up to its responsibility in the future, irrespective of where this crisis leads to?

Given your experience, and taking into account the fact that the UN General Assembly on March 2, 2022, by a vote of 141 to 5 (Russia, Belarus, Eritrea, Syria, North Korea), with thirty-five

abstentions, clearly demanded that Russia “immediately, completely and unconditionally withdraw all of its military forces from the territory of Ukraine within its internationally recognized borders,” do you see the First Committee and the General Assembly regaining importance in nuclear arms control as a consequence of the current situation?

International law plays an important role. And it does so in arms control and disarmament. Let me take this as a starting point to dive into a discussion of the failure of nuclear weapons states (NWS) to meaningfully implement Article VI of the Non-Proliferation Treaty. Let us briefly recall its wording: “Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.” Is the wording meaningless? Too weak? Not taken seriously? Why did Article VI fail to generate results?

Article VI has been on the agenda of Review Conferences. Why did it not generate better results? I recall discussions about a (never submitted) non-paper on specifying the obligations included in Article VI with the help of documents adopted at Review Conferences. Do governments fail to make use of subsequent state practice in order to further develop such treaty obligations?

Why do you believe Article VI failed to become a driver of nuclear arms control and disarmament? Does it lack incentives pushing governments into the right direction?

Does Article VI place the matter in wrong hands? Why do you think civil society has failed to push governments forward on the basis of Article VI? Is it misconstrued as an obligation?

We have seen that NGOs, small and middle powers, have been successful in bringing about the Treaty on the Prohibition of Nuclear Weapons. Let me focus on the negotiations leading to the conclusion of the treaty first:

Compared to the First Committee of the UN General Assembly and even more in distinction to the Conference on Disarmament, what have been the advantages of the negotiating format used in the process leading up to the TPNW?

When and why do you think are NGOs taken seriously in treaty negotiations. In contrast to the landmines campaign, the International Campaign to Abolish Nuclear Weapons could not point to “one victim every 20 min,” but to the survivors of Hiroshima and Nagasaki only. What is it that help NGOs to be taken note of by governments in treaty negotiations?

The Netherlands was the only European NATO member state to participate in the negotiations. Can you illustrate the reasons for following such an approach and highlight some of the experiences made in the negotiating process?

I would like to develop this a little further, first focusing on the idea of “humanitarian disarmament.” In international law, the term “humanitarian” is most often used in the context of the law of armed conflict, being partly labeled as humanitarian law. What is so special about a humanitarian dimension of arms control and/or disarmament?

Does the victim perspective help in promoting nuclear disarmament? In human rights cases, claims must meet the victim requirement in order to get access to a court. What are the benefits of a changing perspective, namely thinking about human suffering?

What does it mean for you if governments adopt a “humanitarian approach?” Does this provide a better outfit for power politics—or does this represent a distinct self-perception of governments pushing for this? Is this more closely linked to perceptions of human rights, of responsible governance, of a rules-based international order?

The First Committee of the UN General Assembly focuses on “Disarmament and International Security.” Is there any place for humanitarian considerations in this context?

I have one more question directly related to “personalizing international law.” My colleague Janne Nijman, has recently contributed a chapter to a volume on “Portraits of Women in International Law,” focusing on Bertha von Suttner, an activist, not an international lawyer. What is the potential of individuals in contributing to nuclear disarmament, to arms control law? Is there a downside to the power of individuals?

And: the International Campaign to Abolish Nuclear Weapons (ICAN) was honored for its efforts to advance the Treaty on the Prohibition of Nuclear Weapons and awarded the Nobel Peace Prize in 2017. It is noteworthy that many nuclear disarmament movements over the past seven decades had struggled for this. With Abolition 2000 there was even a global NGO network available. But ICAN was able to get this going in less than a decade. Do we need a peace movement in the broader sense or do we have competition as between various NGOs?

REMARKS BY JODY WILLIAMS*

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I. THE IMPORTANCE OF NGO PARTICIPATION IN DISARMAMENT

I have thought a lot about the extent to which civil society has underestimated the risk or probability of nuclear war. I do not think that civil society—normal human beings, if you will—has underestimated the threat of nuclear weapons, nuclear war, and the annihilation of life on the planet. Certainly, after the Vietnam period and the nuclear contest disarmament was higher on the agenda. As I contemplate, I always wondered why the anti-Vietnam movement did not solidify into a movement to bring about change consistently. We just see it as a movement to end U.S. participation in the war. This is certainly a noble goal, but it is not moving us toward a different system or view of war.

Furthermore, NGOs are still not universally loved, especially when it comes to international law, treaty-making and diplomacy. It was not until the Mine Ban Treaty, and the handful of governments that chose to step out of the UN negotiating system during the Convention on Certain Conventional Weapons (CCW), that NGOs were treated as full participants in the negotiations of that treaty. I still recall when the foreign minister of Canada had a small meeting after the CCW Review collapsed and NGOs challenged the governments in the room to meet again in Ottawa to sign the landmine ban treaty. The Great Powers were totally freaked out. Who was this upstart? How did this foreign minister of Canada dare challenge the UN structure, where decisions could be made in advance through of the consensus rule? The consensus rule also really only means that one state can dictate international law. It was not until NGOs participated, and showed that we had knowledge and were serious and committed to removing these weapons, that states grudgingly accepted NGO participation. I still believe some wish they never let NGOs participate, but their participation led us to the 2008 Convention on Nuclear Safety and the Treaty on the Prohibition of Nuclear Weapons in 2017. In my view, these have been different instruments, simply because of coordinated NGO participation. Yet, increased NGO participation does not fully change things. The system itself needs to change. We need to rebuild the international system in a different way. I think the UN definitely needs an overhaul as it reflects the international structure after World War II. We are so far away from the post-World War II structure, that it is absurd that the structure still persists in that fashion. I hope NGOs will play a big role in bringing about that debate.

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