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**SIDE EVENT REPORT: NUCLEAR WEAPONS**

**AND INTERNATIONAL LAW**

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This event on 18 October was sponsored by the Permanent Missions of New Zealand and Switzerland to the UN. Ambassador Dell Higgie of New Zealand moderated, noting in her opening remarks that international law issues are too often ignored in discussions about nuclear weapons. Ambassador Benno Laggner of Switzerland offered brief concluding remarks, noting the commitment made in the outcome document of the 2010 nuclear Non-Proliferation Treaty Review Conference to comply consistently with the obligations of international humanitarian law.

Professor Daniel Thürer of the University of Zurich presented an analysis and critique of the landmark

1996 opinion of the International Court of Justice (ICJ) on the legality of the use or threatened use of nuclear

weapons. He prefaced his remarks by noting that the legality of such weapons had been sharply questioned

by international law experts almost immediately after the bombing of Hiroshima and Nagasaki. At that

time, critics noted the failure to discriminate between military and civilian targets, as well as the lack of

any military necessity for the attacks. Thus Professor Thürer suggested that nuclear weapons are already illegitimate under international law. The first statement on this subject by the International Committee of the

Red Cross was issued as early as 1950.

Professor Thürer elicited surprise and some controversy by suggesting that it might have been better if the

ICJ in 1996 had declined to hear the case; its decision has caused significant misunderstanding and confusion, since the failure to definitively condemn the use of nuclear weapons even in existential self-defense has been wrongly construed as an affirmative approval of such use. Other panelists took issue with this view, asserting that the ICJ decision, while not conclusively resolving all the issues, had helped to undermine the legitimacy of nuclear weapons.

Professor Roger Clark of Rutgers School of Law [and member of the LCNP Consultative Council] argued that nuclear weapons are already condemned by existing international law, since their use would constitute war crimes under the Rome Statute. He also argued that depending on the circumstances, the use of nuclear weapons could also constitute crimes against humanity, genocide, and “grave breaches” of the Geneva Conventions. He noted that the existing international conventions on these subjects are “weapons-neutral”: while not explicitly mentioning nuclear weapons, they certainly do not exempt any use of such weapons which would otherwise fall within their terms.

Professor Andrew Clapham, Director of the Geneva Academy of IHL and HR, noted that much discussion

about the legality of nuclear weapons has neglected the distinction between the lawfulness of using force

(*jus ad bellum*) and the law of armed conflict (*jus in bello*). Even if a state is justified in using force in

self-defense, it is still obligated in such use to observe the principles of international humanitarian law, such

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as the prohibition on attacking civilian populations and the obligation to minimize civilian casualties. The

requirement of proportionality, which is often misunderstood, requires that the responding use of force be

limited to what is necessary to repel the attack.

In the discussion that followed the panelists agreed that, although nuclear weapons may be illegal under existing international law, a convention is needed for purposes of verification and enforcement. A suggestion was made from the audience that a future program in this series should address the disarmament obligations

of the nuclear weapons states under Article VI of the Non-Proliferation Treaty.