

Celebration of the 40th anniversary of the International Institute of Humanitarian Law.

Round Table on “Global Violence:Consequences and Responses”

Presentation by Ambassador Carlo Trezza on

“Arms Control and international humanitarian law”

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The humanitarian factor was the original motive that prompted the international community to engage in the field of disarmament and non proliferation. Limitations and prohibitions of weapons which cause excessive sufferings or “unacceptable harm” both to warriors and civilians go back to antiquity. Restrictions on the types of weapons permitted in armed conflicts have existed for thousands of years, ancient codes of war prohibited means and methods of warfare considered inhumane. The attention was mainly concentrated on conventional weapons since, until the 20th century; they were the only weapons available. But even today humanitarian disarmament is principally focused on these weapons since they are the ones being used in current international and domestic conflicts and cause practically all the victims and sufferings. But the casualties and sufferings caused by chemical weapons during World War I were the determining factor that led to the Geneva Protocol of 1925 prohibiting the use of chemical/biological weapons in armed conflicts, thus

opening the chapter of humanitarian disarmament with regard to weapons of mass destruction.

I shall not dwell on the various types of weapons prohibited by the Convention on Certain Conventional Weapons which, with its five protocols, is the main “corpus” of humanitarian law dedicated to humanitarian disarmament. Another speaker has been asked to deal with this issue. Let me only say that such a fundamental body of legislation, which has the advantage of having been negotiated in a genuinely multilateral framework, is being challenged and superseded by complementary and competing negotiating processes developed by countries seeking higher standards in the field of humanitarian disarmament. This is mainly the case of the Ottawa Convention of 1997 on the ban of antipersonnel land mines, the provisions of which go beyond the norm on mines contained in the CCW Protocol 2. The main feature of the Ottawa Convention is the prohibition of the possession, use, transfer and stockpile of a whole category of weapons which kill and maim civilians and military during periods which go well beyond the duration of the conflicts in which they were used. But another peculiarity of the convention is that it was launched by a relatively small number of countries animated by a common desire of a more ambitious norm to be finalized within a time frame which was not achievable by a genuinely multilateral process. The Ottawa process was used as the main term of reference and precedent for the latest achievement in the field of humanitarian disarmament: the Oslo Convention on the prohibition of cluster munitions which entered into force on August 1 of this year. The type of weapons object of this

convention is different but most of the features of the new agreement are similar to the Ottawa convention. The main difference is that, unlike the landmines agreement, which provides for a total ban, the Oslo convention allows exceptions for some very specific munitions which are considered as not causing unacceptable harm. Like the Ottawa negotiation, the Oslo process was initiated by a small number (46) of likeminded countries and in both cases the entry into force was achieved in a relatively short time if compared to the longer period which is usually necessary to finalise an agreement in a genuinely multilateral framework. The other side of the coin, however, is that many of the international major players, the main possessors, producers and in some cases users of such weapons did not participate in the negotiating process. Countries like the United States, Russia, China, India, Pakistan and others have as a common denominator the fact that they have not adhered neither to the Ottawa nor to the Oslo conventions. This is probably the main weakness of the two processes and makes universalization one of their main goals and challenges. Nonetheless, with 133 signatures and 156 ratifications for Ottawa and 107 signatures and 30 ratifications for the more recent Oslo Convention, a critical mass of participation has been reached and the very existence of these conventions has conditioned the behaviour even of countries which have not adhered to them. They would now be much more prudent before using or even exporting weapons which have been universally stigmatized through the two conventions. Some countries accepted to adhere to the conventions without having participated in the negotiations.

The introduction of the nuclear arms into the strategic equation after World War II changed the nature and the objectives of disarmament and arms control. The very existence of weapons of mass destruction and their possession by some states had an impact on the strategic balance and obliged the international community to extend the arms control/non proliferation discourse beyond the humanitarian factor. Chemical, biological and nuclear arsenals became a prime element of the disarmament agenda. The prohibition of use, prompted by humanitarian reasons, was inadequate to maintain the strategic balance: prohibitions had to be extended to production and possession and to include also destruction of stocks and verification. The ban on use contained in the Geneva Protocol of 1925 was therefore strengthened by the adoption of the Biological Weapons Convention of 1972 and the Chemical Weapons Convention in 1993 which provide both for a total ban. Both Conventions, but particularly the latter, are considered “success stories” since they prohibit, in a legally binding way, whole categories of WMDs. In the case of chemical weapons such a commitment is verifiable and implemented by a permanent international organization: the OPCW, based in the Hague.

There is a tendency to put chemical/biological and nuclear arms in the same basket. However nuclear weapons are different from many angles. There is first of all a juridical difference: unlike chemical and biological weapons, nuclear weapons are not totally prohibited. Moreover, although chemical weapons have been used in recent conflicts, they are no longer considered to have significant military value: they

can kill people but, unlike nuclear weapons, cannot destroy military targets: weapons of terror rather than weapons of war.

Negotiations on nuclear weapons have so far taken place for strategic reasons rather than on humanitarian grounds. However the international community addressed the humanitarian issue notably on the occasion of the advisory opinion of the International Court of Justice of 1996 on the legality of the threat or use of nuclear weapons. The question of the compatibility of the threat or use with international humanitarian law was addressed. The Court unanimously indicated that the threat or use of nuclear weapons should be compatible with the requirements of the international law applicable to armed conflicts and to principles of humanitarian law; the use would be generally contrary to such laws. However the Court could not conclude definitively whether the threat or use would be lawful or unlawful “in extreme circumstances of self-defence in which the very survival of a State would be at stake”. The Court also unanimously indicated the obligation to pursue and bring to conclusion negotiations leading to nuclear disarmament .

No major evolution took place in the following years on this question; one may recall, however that the so called “negative security assurances”, widely debated at the Conference on Disarmament and within the NPT process embody the concept, which has humanitarian implications, that nuclear weapons should not be used against non nuclear- weapons states. One may also recall the historic speech made by US President Barak Obama in Prague in April 2009 where the moral implications of the use of nuclear weapons were mentioned. The pro- active role of the UN Secretary

General in promoting nuclear disarmament also deserves to be acknowledged. The International Committee of the Red Cross has consistently stigmatized the use of weapons of mass destruction in general and on April of this year, on the eve of the NPT Review Conference, the President of the ICRC, Dr. Jakob Kellenberger made a major public statement to the Geneva Diplomatic Corps, solely dedicated to nuclear weapons. He concluded with an appeal to seize “the unique opportunities now at hand to bring the era of nuclear weapons to an end”.

The objective, more and more widely shared by the international community, of a world without nuclear weapons, has humanitarian implications. Such an objective was consensually recognized in the Action Plan agreed last May at the NPT Review Conference in New York. The Conference also expressed, for the first time, 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”. The humanitarian dimension has thus been affirmed as an issue susceptible of further discussion. Its presence in the consensual part of NPT final document of last May is one of the significant conclusions of that Conference.