

PANEL TWO

THE ROLE OF THE UNITED NATIONS

Moderator: Ariana N. Smith⁺

Panelists: Hon. Izumi Nakamitsu^{}; Dr. John Burroughs^{**}; Allison Pytlak^{***}*

ARIANA SMITH:

This panel will dig more deeply into the role of the United Nations as well as civil society engagement in the UN system related to nuclear disarmament. In addition to Ms. Nakamitsu, I'm pleased to welcome to the conversation, Dr. John Burroughs, Senior Analyst at Lawyers Committee on Nuclear Policy, and Ms. Allison Pytlak, Program Manager of Reaching Critical Will, the disarmament program of the Women's International League for Peace and Freedom.

After we hear from our panelists, I look forward to opening the floor to the audience. So please use the Q&A function to submit your questions to any or all of our panelists at any time during the program, and we'll aim to get to as many as we can. And with that, I'll turn the floor over now to Ms. Allison Pytlak.

ALLISON PYTLAK:

Thank you, Ariana, and hello to everybody in our virtual audience today. Thank you very much to the event organizers for including the Women's International League for Peace and Freedom on this panel and in your event. So in my remarks, I'm going to build a bit on what we've just heard from the high representative about the different treaties, instruments and various fora that together make up the legal regime relating to nuclear weapons.

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I will also highlight and describe the role of civil society in advancing international law on nuclear weapons at the UN, as well as beyond. We know that the UN is a house made up of its member states who are the ultimate decision makers and responsibility holders. But that being said, there is a lot of scope for other actors to contribute and engage, which sometimes may not be as obvious from the outside.

So we've now just heard about the legal architecture in which different nuclear weapons treaties were negotiated, or the architecture that they create. And in case you're feeling as though this is a bit of an alphabet soup of acronyms and abbreviations, or you're wondering how all of these bodies and fora are connected to one another, but are separate, but still under the UN umbrella, I'm going to do a quick, but also non-exhaustive mapping.

There are six main organs of the UN: the UN General Assembly, the UN Security Council, and the International Court of Justice are three of these six. And we've heard some of them referenced in the high representative's remarks just now. And I think that John will speak to some of the others in his presentation.

They all have distinct mandates and responsibilities as well as ways of working and modalities for non-governmental participation. And these delineations can be helpful for practical reasons to get things done. But at the same time, I would say that there is a strong and probably growing argument against being cautious about artificial siloing. This comes through a little bit later on what I'm going to say on human rights.

The General Assembly is the main deliberative organ of the UN. It is composed of representatives from all of its member states, each of which has a vote. And within the General Assembly, there are six different committees. The First Committee is the one that relates to international security and disarmament. It meets once a year for about four to five weeks. In fact, the 2020 session just wrapped up two days ago. And it is where resolutions on disarmament matters are negotiated and adopted.

Nuclear weapons are a very significant part of the First Committee's work each year. To give an example, I did a quick tally before this presentation, and I believe that around one third, maybe 22 of the just over 60 resolutions that were adopted during the 2020 session were within the nuclear weapons cluster. And the way in which states talk about nuclear weapons within their

statements, and then the nature of the resolutions include the full range of issues: testing, use, disarmament, nonproliferation, and specific regional issues.

And the First Committee's resolutions have been able to give rise to other initiatives. So very recently, the Treaty on the Prohibition of Nuclear Weapons, or TPNW that we just heard about, it began in the First Committee where a resolution adopted in 2016 gave member states the mandate to negotiate the treaty. And it is now a standalone instrument and will enter into force as binding international law in January, but it has origins in the GA (in the First Committee) and will always have a close relationship with the UN and the secretariat, including because of certain provisions within the agreement.

If we look a bit further back in time, we see that the 1996 ICJ advisory opinion, that John will talk more about, also has its roots in a decision taken by the GA, and the initial discussions that led to the development and negotiation of the nuclear NPT were also had in the General Assembly. Now while the first committee of the GA is focused on international security and disarmament, the Security Council has primary responsibility for the maintenance of international peace and security, which means that there is sometimes the potential for overlap between the topics that the bodies discuss. Although member states try to be very clear about maintaining the delineation, once in a while what I would call "turf issues" come up. And we're seeing that a little bit right now with respect to chemical weapons. The Security Council has 15 members and each one has one vote. It's important to note that under the Charter, however, all member states are obligated to comply with what the Security Council decides on. Relevant debates and resolutions within the Security Council relating to nuclear weapons have tended to focus more on non-proliferation than on disarmament, which might not come as a surprise, considering that the five permanent members of the council are nuclear-armed states.

Turning away from New York and to Geneva, I'd like to talk a little bit about the Human Rights Council and the human rights mechanisms. The Human Rights Council also came out of the General Assembly in 2006. It is an intergovernmental body within the UN system composed of 47 states, and it is responsible for strengthening the promotion and protection of human rights, for

addressing human rights violations, and making recommendations on them. It meets in Geneva and has, over time, set up different mechanisms and institutions by which it does its work. This includes things like the universal periodic reviews (UPRs), which is a peer review system among states in the area of human rights. In addition, a lot of major human rights treaties also have treaty bodies by which they evaluate and monitor the performance and implementation of their requirements by their states parties. So for example, the Convention to End All Forms of Discrimination Against Women (CEDAW), has the CEDAW committee.

The Human Rights Committee is the body of independent experts that monitors implementation of the International Covenant on Civil and Political Rights. You may be wondering, why is she talking about the human rights parts of the United Nations? This is a meeting about nuclear weapons, we should be talking about its security bodies and security frameworks. But international human rights law is extremely relevant, and some would argue that it is an underused or overlooked part of international law for addressing the illegality of nuclear weapons, particularly in contexts where IHL does not apply. The use of nuclear weapons is a violation of the right to life, as the Human Rights Committee concluded in its General Comment 36 of 2018, which John will talk more about. There have been more than 10 recommendations made to states in the context of their UPRs to sign the Treaty on the Prohibition of Nuclear Weapons.

And actually, just moments before I logged into this conference today, I had an email from a colleague in Geneva who said that there were, I think, 10 more additional recommendations made in this last round of the Committee's session. The Human Rights community and its peer review mechanisms have also been a good place for civil society to engage in this work. WILPF has raised concerns about nuclear weapons or urged states to join different nuclear weapons treaties in our submissions to the UPR and to CEDAW committee reviews, as well as statements that we've made in the Council. John can correct me if I'm wrong, but I believe that LCNP has also made submissions to the Human Rights Committee and to the Human Rights Council. So, I wanted to share this, because while it might be a bit less obvious or not an immediate go-to place, the human rights mechanisms are also a very important part of the landscape.

So turning now to civil society and what we do and how we fit in, I want to make a few broad points. First, it's important always to remember that civil society, that that term sounds a bit monolithic, but we're not. We're incredibly diverse in what we do and where we come from and the motivations that bring us to this work. And because of that diversity, we can offer a lot of different information, perspectives, and support across a very wide range of nuclear weapons issues and their related subtopics, as well as bring along support from diverse bases and constituencies. Second point is that I think it's helpful to be mindful that when we talk about civil society advancing international law at the UN, there are the activities that we can do when we're physically there and in the room and at the meetings. And these are things like organizing side events, launching reports, bilateral advocacy, delivering statements.

But also, those things that we do elsewhere but that are related to UN decision-making and processes. And I'm thinking about the national advocacy and the national movement building that really feeds into and can influence the meetings that are happening in the UN setting. Maybe a general thought about the value-add of civil society: I feel very much that working in global networks or alliances, like the International Campaign to Abolish Nuclear Weapons (ICAN), for example, we're really able to talk to each other and have a good picture of what's happening in other countries. Maybe more than those who are based exclusively in one location are able to. And that kind of global network and being able to deploy the information that we're hearing and insights on the ground, it gives us connections to what's happening in different places to tell stories and build narratives and spot trends.

Finally, I really feel that the role of civil society is evolving constantly. And this is probably, in general, moving in a good direction where there are more opportunities and ways to engage than there were in the past. Although during the COVID-19 pandemic, the landscape has changed a lot for us in terms of access, but at the same time, every forum has its own rules and the ability of civil society to access, participate, support, or influence, it varies a lot across all of these different forums and bodies. There's not an easy way to generalize or standardize this, or a one size fits all description. So, with my few minutes remaining, if I still have them, I just want to end off by sharing a little bit about the role of civil

society in shaping narrative and discourse and from their compelling action towards the creation of nuclear weapons law. And the most straightforward way to do that would be to give a little case study or look more closely at the TPNW.

To appreciate this, we need to time travel a little bit. We need to take a step back and remember that for many, many decades, international talks about nuclear weapons, whether in the context of bilateral arms control agreements, or the NPT, were very much divorced from any consideration of the impact of the weapon itself. And that's because the weapon was viewed as acceptable and even as necessary to security or for stability. For me personally, this has always felt very hard to imagine. In part it might be because I began my career with the International Campaign to Ban Landmines (ICBL) and have worked subsequently in other humanitarian disarmament groups where this has always been the central motivation for pursuing disarmament or arms control.

And it was, in part, those campaigns, in particular the successes of the ICBL and the Cluster Munition Coalition, that were able to inspire anti-nuclear activists to see that the way forward for nuclear disarmament and abolition at the UN had to start with changing the discourse. Doing that requires changing the belief that these weapons are necessary for security and for stability and looking at them for what they are and for what they do to people and to the planet. The path to making that shift is what is referred to as the "humanitarian initiative" within nuclear disarmament. We've heard about it already from the high representative, so I won't outline all the different steps and statements along that path. But it was this discourse change that really paved the way for the TPNW, as well as discontent among non-nuclear arm states, with the status quo and the lack of progress on the disarmament commitments contained in NPT Article VI. But it's also why the TPNW is the kind of treaty that it is. It's a treaty with concern about preventing humanitarian suffering at its core.

It's a treaty with an acknowledgement of *hibakusha*, with provisions relating to victim assistance and environmental remediation, to women's participation, and the disproportionate impact of nuclear weapons on women. And it was for this work that ICAN was awarded the Nobel Peace Prize, quite literally for our work to draw attention to the catastrophic humanitarian consequences of any use of nuclear weapons. So I wanted to share

this as a way to give a little glimpse into what goes into making international law on nuclear weapons or what can be possible. I've been very lucky to have participated in and attended negotiations of the Convention on Cluster Munitions, the Arms Trade Treaty, and the TPNW. And while the TPNW may be unusual amongst other nuclear weapons agreements for having the scale of civil society involvement and momentum, it is very much in keeping and expands on the body of humanitarian disarmament treaties more broadly, which I really hope can be a model for the future. Thank you.

ARIANA SMITH:

Thank you so much, Allison. I find particularly valuable your highlighting the interrelated nature of the human rights, security, and disarmament frameworks. That was very helpful, so thank you again. Dr. John Burroughs, John, we'll turn it over to you now.

JOHN BURROUGHS:

Thank you, Ariana. I appreciate Allison's remarks and the remarks of Ms. Nakamitsu. I also want to underline that UN Secretary-General António Guterres has been vocal on the subject of nuclear disarmament. His predecessors, Ban Ki-Moon and Kofi Annan, were similarly outspoken.

I'll take as my starting point the 1996 nuclear weapons advisory opinion of the judicial branch of the United Nations - the International Court of Justice, the highest court in the world on general questions of international law. Now, Allison has talked about civil society; this was an instance of significant civil society involvement. The opinion resulted from a major collaborative effort between states, mostly from the Non-Aligned Movement, a very large group of mostly Global South states, and civil society in the form of the World Court Project, a coalition of over 700 groups. I'll address two strands of the Court's opinion, the first regarding use of nuclear arms, and the second regarding the disarmament obligation.

The legality of use of nuclear weapons has been considered by the United Nations General Assembly since 1961, when the body adopted Resolution 1653 by a divided vote. The resolution declared that such use "is contrary to the rules of international law and to the laws of humanity." You can see that this theme has a very

long history in the context of United Nations. But the General Assembly's 1994 resolution requesting the International Court of Justice (ICJ) to render an advisory opinion on the matter set in motion an entirely different and extraordinary process. The General Assembly asked the Court to opine on the following question: "Is the threat or use of nuclear weapons in any circumstance permitted under international law?" Over two weeks of dramatic hearings in November 1995, 22 states made oral arguments, and another 23 made written submissions only. All together 45 states participated, the largest number to do so in ICJ proceedings to that date.

In its opinion released in July 1996, early on the Court acknowledged "the unique characteristics of nuclear weapons, and in particular, their destructive capacity, their capacity to cause untold human suffering, and their ability to cause damage to generations to come." In a key passage, the Court observes that the "overriding consideration of humanity is at the heart of the law of armed conflict." It goes on to state that under that law: "Methods and means of warfare, which would preclude any distinction between civilian and military targets, or which would result in unnecessary suffering to combatants, are prohibited. In view of the unique characteristics of nuclear weapons, the use of such weapons, in fact, seems scarcely reconcilable with respect for such requirements."

The Court accordingly found that the threat or use of nuclear arms is "generally" contrary to international humanitarian law. However, the Court declined to assess the legality of low-yield nuclear weapons in remote areas, and we've already been hearing about that this morning, and of use of nuclear arms in reprisal against a nuclear attack or when a state's survival is endangered. So the Court's opinion was not definitive, but it is also fair to say that the thrust of its reasoning was toward illegality in all circumstances.

This strand of the Court's opinion has reemerged in developments since then. Notably, in a provision of the outcome document of the 2010 NPT Review, the Conference "expresses its deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons and reaffirms the need for all states at all times to comply with applicable international law, including international humanitarian law." This was a document agreed by

all states, including the five nuclear weapons states. The provision did not say that use is illegal, but the implication is fairly obvious.

The 2017 Treaty on the Prohibition of Nuclear Weapons, the TPNW, as we've already heard, was animated by a recognition of the unacceptable consequences of use of nuclear weapons. An operative provision prohibits any threat or use of nuclear weapons by a state party. The preamble deserves attention also, because it is the negotiating states' view of the principles, including legal principles, applicable to all states, not just states that join the treaty. In the preamble, it is stated that the negotiating states consider that any use of nuclear weapons violates the law. There is an excellent recitation of rules and principles of international humanitarian law in the preamble to the treaty, which was contributed by the International Committee of the Red Cross.

So the view taken in the TPNW goes beyond the ICJ's finding of general illegality and rules out use in all circumstances. We do not know what the impact of the TPNW is going to be over coming years or decades. But there is something I can say for sure right now, and that is that the TPNW is an important contribution to the ongoing process of delegitimizing nuclear weapons.

Then in 2018 the UN Human Rights Committee adopted General Comment 36, which addresses a wide range of issues relating to the right to life set out in Article 6 of the International Covenant on Civil and Political Rights. The Committee's finding regarding nuclear weapons is powerful and unambiguous: "The threat or use of weapons of mass destruction, in particular nuclear weapons, which are indiscriminate in effect and are of a nature to cause destruction of human life on a catastrophic scale, is incompatible with respect for the right to life and may amount to a crime under international law."

Despite these developments, in the two-plus decades since the ICJ rendered its opinion, nuclear-armed states have done little to reduce the role of nuclear weapons in their security postures, let alone acknowledge that their use is incompatible with the law of armed conflict. On the positive side, nuclear weapons have not been detonated in war and the contradiction between reliance on nuclear arms and what the Court called "elementary considerations of humanity" is being exposed with renewed energy.

There is a second strand to the Court's opinion, just as important, or possibly more important, than the first strand. It concerns a question which the Court was not asked: the nature of the disarmament obligation set forth in Article VI of the NPT and other international law. Article VI requires the pursuit of negotiations in good faith on effective measures relating to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control. The Court unanimously concluded: "There exists an obligation to pursue in good faith, and bring to a conclusion, negotiations leading to nuclear disarmament in all its aspects under strict and effective international control."

The Court's construction of Article VI clarifies that negotiation of an instrument or instruments eliminating nuclear arms would advance the objective of general complete disarmament in the same way that conventions on biological and chemical weapons advance that objective. The Court also explained that the obligation is one of result, nuclear disarmament, as well as conduct, good-faith negotiations. Essentially the same approach to interpretation of Article VI was taken by the 2000 NPT Review Conference when it adopted an "unequivocal undertaking by the nuclear weapon states to accomplish the total elimination of their nuclear arsenals."

Also important is, that while the Court did not explicitly say so, its reasoning strongly implies that the obligation is universal, extending to those nuclear-armed states not party to the NPT, namely India, Israel, North Korea and Pakistan.

In an annual resolution following up on the ICJ opinion first adopted in 1996, the General Assembly called for all states to negotiate a comprehensive convention providing for elimination of nuclear weapons. The Chemical Weapons Convention would have provided a starting point for such negotiations. The US, UK, France, and Russia showed no interest and opposed the resolution. The TPNW, championed by non-nuclear weapon states, was a response to this stalemate. It provides a framework but not detailed provisions for an elimination process. Another initiative was the nuclear disarmament cases brought in the International Court of Justice by the Marshall Islands in 2014. Those cases were dismissed on procedural grounds.

The International Court of Justice's advisory opinion came at a high point of multilateral disarmament diplomacy. The Chemical Weapons Convention had been negotiated, the NPT had been indefinitely extended, and negotiation of a Comprehensive Nuclear-Test-Ban Treaty was nearly complete. Since then, efforts toward consolidating a multilateral disarmament regime have been stymied. The test ban treaty has not been brought into force, due in part to US failure to ratify. And there have been no multilateral negotiations relating to control and elimination of nuclear weapons with the participation of nuclear-armed states; they did not participate in the TPNW negotiations. Despite all this, I believe there will be a return to disarmament diplomacy. That's because there is no avoiding that nuclear weapons pose a threat to every nation and person on earth, and control and elimination of the weapons is necessary to ending that threat.

ARIANA SMITH:

Thank you so much to John and to Allison and Ms. Nakamitsu. There's so much to discuss in what the three of you have brought to today's panel. And we do have a handful of questions coming in already, and I'll just remind our audience to feel free to put those into the Q & A box. We have about 15 minutes, 20 minutes, to go through questions. And I would love to be able to bring yours to our panelists. I'm going to start with a question that came in just a few moments ago, directed toward you, John. This is from Ted Daley with Citizens for Global Solutions in Los Angeles. And Ted referenced that, John, you were one of the framers of the Model Nuclear Weapons Convention, which contained elaborate provisions on verification, adjudication, enforcement, phases of disarmament, even involving intrusions on national sovereignty. He notes that most of these are absent from the TPNW and asks if you would like to comment on how both of these came to pass and what the eventual consequences might be for the impact of the TPNW.

JOHN BURROUGHS:

I actually was just a minor contributor to the Model Nuclear Weapons Convention. It was drafted by people from my organization, Lawyers Committee on Nuclear Policy, International Physicians for the Prevention of Nuclear War, International

Network of Engineers and Scientists Against Proliferation, and others. And it was circulated in the United Nations by Costa Rica, and then later Costa Rica and Malaysia. I think it was a significant contribution and was based on the surge of multilateralism in the 1990s. As I mentioned, you had the Chemical Weapons Convention, the most far-reaching disarmament treaty ever negotiated, which has provisions on verification and enforcement. The test ban treaty similarly has very extensive provisions. But the Western nuclear weapons states and Russia were not interested in pursuing a nuclear weapons convention. The idea of a convention led quite directly to the Treaty on the Prohibition of Nuclear Weapons.

On the civil society side, groups in the International Campaign Against Nuclear Weapons (ICAN), which had been supporting the idea of a comprehensive convention, eventually changed to a simpler approach, what became the Treaty on Prohibition of Nuclear Weapons. It does not include extensive provisions relating to verification and enforcement, but rather provides a framework for setting up such mechanisms, leaving that to a later date, if and when nuclear-armed states either together or individually want to join the treaty. Generally, it is conceivable that an individual nuclear-armed state would join the TPNW at some point. But what seems much more likely is that there would be a process of multilateral or plurilateral negotiation, which would address issues relating to verification and enforcement, and that could lead to those states joining the TPNW, or to the construction of a complementary instrument to the TPNW.

ARIANA SMITH:

Thank you, John, I think that's very helpful. And the next question we have coming in, I believe, is directed toward Ms. Nakamitsu from Duke and Han from Radio Free Asia, Korean Service, who would like to know your thoughts on how international society can best go about engaging with North Korea to denuclearize, particularly in looking toward a new U.S. administration coming in.

IZUMI NAKAMITSU:

Thank you. The issues related to the denuclearization of the Korean Peninsula and the Democratic People's Republic of Korea (a.k.a. North Korea) is, I believe, one of the most difficult, specific

cases that the international community has been grappling with for many, many years. And I think the UN's position will remain unchanged, which is that no matter how difficult the actual realization of the denuclearization objective, the only way to actually achieve it is, number one, through a resumption of regular dialogue and negotiations. Without that, we cannot even take the first step. And the fact that, under the Trump Administration, it had started, and now is suspended, for the time being, is what concerns us. You know, the fact that it is not taking place at the moment. We hope that the new Administration, when it comes in, will have a renewed energy towards resuming such a dialogue on a regular basis. And I think we all agree at the international level that we have to actually look at those issues very comprehensively. We cannot just simply look at the denuclearization aspect of it, but there will have to be accompanying political dialogues about making sure that the sustainable solutions to the region will also be part of the broader discussions.

And then of course, those discussions will have to be coupled with what kind of verification measures need to accompany the denuclearization part of it. It's very complex, it's been there for a long time. I would actually personally say that it is one of the most difficult, specific cases. I have my personal views, which I would not bore you with for this conference. But I think the first step really is to resume on a regular sustained basis, diplomatic efforts, which I believe we cannot postpone any further.

ARIANA SMITH:

Thank you so much. John or Allison, if you have additional comments, feel free to jump in. Otherwise, we have got a couple other questions I can throw at you.

So going back to the TPNW, Jean Krasno, professor at City College of New York - and I'll just mention one of the people who first drew me into this field, so thank you - has posed the question, what is the role of the UN in hosting the conference of parties for the TPNW? How will that look going into the new year? Whoever wants to take this can, or I can pick one of you. Allison, I think that you, from the civil society engagement side, might have some thoughts as to how this might look, and I'll let John and Ms. Nakamitsu chime in as well.

ALLISON PYTLAK:

Yeah, absolutely. I won't speak to the role of the UN as I'm not the UN. And I also just want to say hi to Jean who was my Thesis Advisor in grad school, so I'm quite happy to have your question and see you on the event today.

First, meetings of states parties, they're very big deals. They're often where important decisions are taken that will govern how decisions are made in future meetings. It will set the tone. So I think these are things that we're now finally, in a phase where we're able to start thinking about in really tangible ways, now that the timeline is a little more clear since we achieved the 50th ratification. Certainly, from the civil society side, we're going to want to maximize this moment. I think we're hoping for a robust civil society participation in the conference following on from models of other treaties as well.

But I think that while there is sort of the public facing aspect of it, we're also thinking closely about the decisions that will be made there and what the implications will be for the future operation of the treaty. So there is both the substantive planning for it as well as the sort of more external facing moment of celebration in a lot of ways.

ARIANA SMITH:

Wonderful. Okay. If there are no more thoughts on that, I think that it'll be really interesting to see how this opportunity plays out, and very exciting to see the first time states parties come together and how the treaty regime develops after entry into force.

IZUMI NAKAMITSU:

As the secretariat, of course we are ready to support the first meeting of state parties, which is going to be convened within one year of entry into force. Austria has already offered to host such a meeting and we are now starting to think about organizational aspects. Of course, next year is a very heavy calendar of events when it comes to disarmament with the NPT, Biological Weapons Convention, and CCW; they all have review conferences. So it will be very busy next year, but we are definitely ready. Just one thing that I want to say, of course, is that it is important, this first meeting in terms of symbolic meaning. But also, I think the states parties to the TPNW have a very important opportunity to make sure that the

vision of this treaty is not to replace the NPT, but indeed it is going to complement and reinforce the obligations contained in Article VI of the NPT.

And I hope that there will be at least a handful of non-ratifying states that will attend as observers, and I am informed that a number of countries are reflecting on that possibility as well. So those are some of the issues that are on our mind as of now. And of course, we look forward to working with the States parties to this treaty.

ARIANA SMITH:

Thank you so much.

JOHN BURROUGHS:

Just one note, is that not everybody listening in may know that the five-year NPT Review Conference is currently scheduled for August of 2021 at the UN in New York. It was originally supposed to take place in May of 2020. So that's another important meeting. As Ms. Nakamitsu said, it's going to be quite a full schedule if, for example, the TPNW meeting takes place in late 2021 and then there's also the Review Conference in August. We'll see if the conference actually can be held depending on the state of the pandemic, and also the conditions under which it's held may be somewhat restrictive.

ARIANA SMITH:

Absolutely. I think that that is a really good point. And it's really interesting that we're heading into a year with so many landmark conferences to be had and there's a lot of opportunity. I don't want us to go too over time, so I have one or two more questions here I'll raise. So this is for you John, how do you evaluate, and others can also please chime in, if you have thoughts, how do you evaluate the role and effectiveness of customary law in relation to the advisory opinion and the TPNW in terms of arriving at the total prohibition of nuclear weapons.

JOHN BURROUGHS:

I'm supposed to give a short answer to this Ariana?

ARIANA SMITH:

As well as you can manage.

JOHN BURROUGHS:

The advisory opinion applied customary international law because it applied rules and principles of international humanitarian law, which are based in treaties, but which are also considered to be customary law that is applying to all states - universal law. If the question is directed toward how the TPNW will contribute to the development of customary international law, I'll just briefly say this: It certainly reinforces the principles of IHL that it basically is applying in prohibiting threat and use of nuclear weapons and that are cited in the preamble. And it's a very useful reference point for that. Beyond that, as to other norms in the treaty, most importantly, the norm or the prohibition of the possession of nuclear weapons, will that someday become a customary rule of international law? The question of when a customary international law rule comes into effect is a question over which international lawyers hold long and learned discussions.

But let me just give an example. The NPT has almost every state in the world as a party. There're just four parties with nuclear weapons outside the NPT: North Korea, India, Pakistan, and Israel. As I mentioned, when the Court addressed the question of the disarmament obligation, its reasoning strongly implied that that obligation is universal. First of all, the Court cited the fact that early on there were unanimous resolutions adopted in the UN General Assembly calling for the global elimination of nuclear weapons. Secondly, there is just the sheer number of states that are party to the NPT. So at least from a sort of shall I say conservative point of view, there would have to be a lot of parties, many more than 50, to the TPNW before international lawyers would start talking about the establishment of customary international law. On the other hand, there are norms that are not legal norms. There are norms that are moral and political in character, and clearly the TPNW is already contributing to a norm against nuclear weapons in their possession and development and testing, as well as their threaten and use.

CHARLES MOXLEY:

Before we end this panel, Ariana, may I draw your attention to the question from Hans Corell, a venerable figure in this field. He was the Under-Secretary-General for Legal Affairs and the Legal Counsel of the UN for many years. He has a question for the High Representative that perhaps you might want to attend to.

ARIANA SMITH:

Yes, I see this question here. And Mr. Corell's question is, what is your view about the role of the United Nations Security Council with respect to nuclear disarmament? And he notes that in his view, the Council must lead by example.

IZUMI NAKAMITSU:

Yes, indeed. I would very much like the Council to lead in this very important international peace and security issue. And I mean, likewise, I very much hope that they will start to, or they will return to leadership and unity on other weapons of mass destruction issues, most notably the chemical weapons issues as well. I think it's important to highlight that historically, the Security Council has spoken to issues related to nuclear weapons and nuclear disarmament. Of course, going back to a long time ago, 2009 I think, they did actually address the issue of threats caused by nuclear weapons. But successively in connection to the importance of the NPT as a cornerstone of international security, they have been in fact speaking to these issues. Recently, it's been difficult on those thematic important issues, of course. And this is a reflection of the division between, most notably of course the P5, the permanent members that are also nuclear-weapons States as well.

So I think no one would disagree. In fact, everyone will agree that the Security Council has to lead by example and speak to the importance of making progress in nuclear disarmament. And of course, on a case-by-case basis, Iran, nuclear issues, the DPRK – these have been regular agenda items for the Security Council. So both on the general importance of nuclear disarmament and also nonproliferation in a case-by-case context, I think the importance of the Security Council actions and decisions, and I would say unity and leadership, really cannot be overstated. It is critical.

ARIANA SMITH:

Excellent. So we are running out of time, but I would really love to end this panel on a forward looking note. So I recognize that this question is one that we can discuss for a very long time, and I regret that we don't have that time, but I'll just ask for a few parting words if you have them to the question of, given how we've discussed the ebb and flow of multilateral diplomacy and how that has been effective in the past and how it's hit some roadblocks more recently, how might you envision some of the more effective strategies to advance disarmament now and moving into the future? And again, it's a big question, but the highlights of your thoughts we would so appreciate.

IZUMI NAKAMITSU:

Did you want me to start?

ARIANA SMITH:

Sure. That would be great. Thank you.

IZUMI NAKAMITSU:

Thank you for that question. I think it's very important. I mean, one thing is of course, to protect and maintain the existing norms and legal frameworks, but also to strengthen what we have. But for the past two years or so, from the United Nations, including from the Secretary-General, we have started a collective reflection on a new vision or new approaches on nuclear disarmament. Actually, not just on nuclear disarmament. The world is a very different place today, even compared to just a decade ago, with huge advancements of science and technology, an evolution of the context from bipolar to multipolar, the regional powers and regional tensions with nuclear overtones in at least three regions of the world. All of these things actually do impact the nuclear disarmament discourse as well.

So we believe that now is the time for starting a collective reflection on a new vision going forward. It's no longer simply a technical discussion or political discussions in silos, but we need to have an overview of how the world actually has to look at nuclear issues together with science and technology, missiles, and outer space. All these things now have to be given a fresh look. And

perhaps after the NPT Review Conference next year, it will be an important step forward for all of us to take.

JOHN BURROUGHS:

One thing that's been encouraging recently is that the U.S. government started talking about the need to broaden negotiations beyond just the U.S. and Russia. In particular, they were referring to bringing China in. Then Russia said, we should also bring in the UK and France. For a long time, it's been assumed that the arms control discussions were between the U.S. and Russia. So this is a bit of an opening. Finally, perhaps we can look forward to a time when negotiations on arms control or disarmament, in terms of reductions, verification, et cetera, are not just between U.S. and Russia. I think that's an opening we should take advantage of.

Let me just address one thing to the U.S. participants in this conference. There's an allergy to multilateralism and multilateral treaties in the U.S., and it's not just the Trump administration. It goes back about two decades to when ratification of the Comprehensive Nuclear-Test-Ban Treaty was rejected by the U.S. Senate. It's not just in the nuclear sphere. One example, and there are many, but one example: The U.S. Navy supports ratification of the Law of the Sea Treaty. Nonetheless, the forces opposing multilateralism as an infringement on US sovereignty, that's the way they frame this, are so strong in Washington that the Law of the Sea Treaty cannot be ratified. This needs to be overcome, and we have a high procedural hurdle in terms of treaties because two thirds of the Senate must approve ratification of a treaty. But ways need to be found to change the discussion about multilateral treaties in the United States and probably to build bridges to those who oppose the U.S. joining such treaties. I think this is important to the future of disarmament.

ARIANA SMITH:

Excellent. Thank you. Allison, I'll turn it over to you for the last word of this panel.

ALLISON PYTLAK:

Thank you. I'm going to actually borrow from something that several of us came together and published when the NPT 2020 Review Conference was postponed. More than 90 NGOs came together on a joint statement to NPT states parties, John worked a lot on that, others in the audience, I see your names as well. And one of the messages in that was that the tools exist, but implementation is lacking. And I think that if we want to take a forward-looking view on this, that message it says a lot and it holds a lot. But we also need to ask why, why is it lacking? And from there, we get to the point of political will. I've just spent about five weeks listening to UN First Committee meetings, which I've been going to probably since around 2010 or 2011.

And I really . . . It's hard to not feel pessimistic. Over the last couple of years, I think the back and forth and the tit-for-tat between certain countries, a small group of countries, but powerful countries, it's getting louder and more vitriolic, and it's worrying to listen to that. So it's hard to not be pessimistic. But at the same time, I think I also see a lot of good commitment in the other direction and a wanting to turn this around. So I think that what we need to do is continue down this discourse change that I was speaking about earlier in my presentation. And that as long as nuclear weapons continue to be seen as a sign of protection or a means of protection, then they're going to continue to be clung to and held onto and used in that way and seen as necessary for security. So what we really need to do is to shift that thinking. We've started, and we've made some good dents, but we need to continue down that road because the arguments about "creating conditions" or waiting for the security environment to be right-well, I don't see the efforts to make it right at the moment.

ARIANA SMITH:

Excellent. Thank you so much to Allison, John, and Ms. Nakamitsu. This was, I think, a very illuminating panel for all of us and a really engaging discussion. I will turn it back over to our master of ceremonies here as we head into our lunchtime session. Thank you again to our panelists.

CHARLES MOXLEY:

Okay. Thank you all very much. As you can all see, we have tried to fit so much into the day that perhaps we owe an apology to

our audience, because any one of these panels, frankly, could go all day. We do intend to have follow-up programs on these topics, but we are up against the clock now. We have Governor Brown ready to come on. So I think, with consent from the ABA, we'll proceed to Governor Brown and the panel that follows him, and after that, we will hear the statement from the President of the ABA, which we all look forward to. So I apologize to our audience for the over-packed nature of what we're doing, but we're trying to cover a lot. I suggest, instead of a whole lunch break, we just take five and then maybe bring our lunches here and continue with the program.

So, in five minutes, I will introduce and turn the discussion over to Jonathan Granoff, who will have a dialogue with Governor Brown, which is going to be fascinating. We all know who Governor Brown is, of course. But not everyone knows about his deep interest/involvement in nuclear weapons issues. This is going to be truly fascinating for all of us.