

NEW ZEALAND RED CROSS



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WARS, LAWS + HUMANITY



New Zealand's engagement with
International Humanitarian Law

World War Two. Nagasaki. A few moments after the 9 August 1945 bombardment.

Right: World War Two. Nagasaki. First aid for a victim burned by the atom bomb.



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THE FIGHT TO ELIMINATE NUCLEAR WEAPONS

1990s NEW ZEALAND

Lyndon Burford, University of Auckland

New Zealand has played a leading role in promoting consideration of humanitarian concerns in the global discussion of nuclear disarmament, concerns voiced by the International Red Cross Red Crescent Movement since the devastating effects of the bombings in Japan in 1945.

Starting in 1988, a non-governmental initiative known as the World Court Project, started and led in large part by New Zealanders, lobbied to have the International Court of Justice (ICJ) give an advisory opinion on the legal status of nuclear weapons. In 1994, New Zealand was the only Western-aligned country to vote for the UN General Assembly resolution requesting such an advisory opinion. The resolution succeeded, despite what the Canadian Ambassador described as 'hysterical' opposition from the Western nuclear weapon states.

In the ICJ hearings that followed, the New Zealand Government argued that nuclear weapons reduce international security, and advocated the outlawing of nuclear weapons: 'the answer to the question put to the Court should be no; the threat or use of nuclear weapons should no longer be permitted under international law'. New Zealand also stated that international humanitarian law (IHL), sometimes known as the law of armed conflict, applied to nuclear weapons, just as it does to all other weapons. New Zealand highlighted in particular key tenets of IHL including military necessity;

It is difficult to envisage how any use of nuclear weapons could be compatible with the requirements of international humanitarian law, in particular the rules of distinction, precaution and proportionality.

International Red Cross and Red Crescent Movement, 2011.

proportionality; distinguishing between military personnel and civilians and avoiding severe environmental damage; as well as respect for the sovereignty of non-participating states. New Zealand concluded:

“Even if it may not yet be possible to say that, in every circumstance, international law proscribes the threat or use of nuclear weapons, there can be little doubt that the law has been moving in that direction. In New Zealand’s view, the sooner that point is reached, through the progressive development of international law, including the negotiating process, the more secure the international community will be.”

In 1996, the ICJ delivered its Advisory Opinion on nuclear weapons, finding unanimously that, ‘there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to complete nuclear disarmament under strict and effective international control’. The Court also found that any nuclear weapons use must respect IHL, and that ‘a threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law.’

Since that time, New Zealand has consistently affirmed the incompatibility of nuclear weapons with IHL, and the need to comply at all times with IHL. In 2000, for example, when it ratified the Statute of the International Criminal Court (ICC), New Zealand made an interpretive declaration to the effect that regardless of whether a State was acting in self-defence, ‘it would be inconsistent with principles of international humanitarian law to purport to limit the scope of Article 8 [dealing with war crimes] to events that involve conventional weapons only’. In effect, New Zealand asserted that any use of nuclear weapons was very likely to constitute a war crime, and that the ICC could have jurisdiction to prosecute the individuals involved in the use of nuclear weapons.

Following the first mention of IHL in the context of the Nuclear Non-Proliferation Treaty (NPT) diplomatic conference in 2010, New Zealand again led the international community in calling for consideration of humanitarian issues in the context of a use of nuclear weapons.

In 2010, parties to the NPT expressed ‘deep concern’ at the ‘catastrophic humanitarian consequences’ of nuclear weapons use, and affirmed that States are obliged to comply with IHL at all times. Since then, New Zealand has helped lead efforts to highlight humanitarian issues related to nuclear weapons. New Zealand’s Ambassador for Disarmament, Dell Higgie, has played a central role in building international support for a statement on the humanitarian consequences of nuclear weapons, with support increasing from 16 countries in 2012 to 159 in 2015. New Zealand’s statement to the 2015 NPT Review Conference recalled the 1995 statement from National Party Prime Minister, Jim Bolger: “Just as we have international treaties which debar the use of chemical or biological weapons, we will eventually move to a similar sort of treaty ... regarding nuclear weapons.”

Leadership from the Key Government in this area has not been so clear, however; it disbanded the position of Minister for Disarmament in 2011. The Key Government has also not endorsed the ‘Humanitarian Pledge,’ which commits signatories ‘to cooperate with all relevant stakeholders, States, international organisations, the International Red Cross and Red Crescent Movements, parliamentarians and civil society, in efforts to stigmatise, prohibit and eliminate nuclear weapons in light of their unacceptable humanitarian consequences and associated risks.’ This omission is incongruous given the leadership shown by New Zealand officials in this area, and given that New Zealand’s closest partners in the nuclear field, the New Agenda Coalition, have all endorsed the Pledge ■


HOW CAN I HELP?

It is essential that we all work together to ensure that these weapons are eliminated and never used again.

Please support the call for the elimination of nuclear weapons.

Fold a paper crane and take a photo of yourself with it (or a photo of just your crane). Upload to social media and use **#hiroshima70**

 **@nzredcross**

 **facebook.com/NewZealandRedCross**
or tag **New Zealand Red Cross**

 **@NZRedCross**

 **hello@redcross.org.nz**

Tag your friends in your post to spread the word – the more photos, the greater the impact.



Hearing before the International Court of Justice on the legality of the threat or use of nuclear weapons 1995.

