Intervention by Wildfire>_ at OEWG

Monday 9 May 2016

I would like to talk about the excellent working paper by Canada, A/AC.286/WP.20. It begins with an examination of the legal gap: lots of tortuous legal argumentation, and seems to say there can only be a legal gap if there isn’t one. But this has already been expertly covered by the ambassador of New Zealand.

The gap idea is really very simple. Unlike CW and BW, nuclear weapons are not prohibited under international law. But given their unacceptable humanitarian consequences and their nature as WMD, they should be. So that is the gap we want to fill.

Now if you don’t want to fill this gap, presumably you think nuclear weapons should be legal, at least in some circumstances. But if you think that, why did you join the NPT? And are you really committed to that treaty? Your position is rather ambiguous. When countries like Germany and the Netherlands say that we “need to take the important security dimensions of nuclear weapons into account”, what do they mean exactly? It’s ambiguous. Do they mean that nuclear weapons should be legal, because they serve a useful security purpose? Having taken the “important security dimensions” into account, do these countries want to retain nuclear weapons, or to eliminate them?

This brings me to most interesting part of Canada’s WP.20. In paras 9 and 10, Canada sets out very clearly one of the key advantages of a treaty banning nuclear weapons. Which is odd, because Canada generally argues against such a treaty. But let’s take a look:

“Strategic implications of precipitous negotiations on a ban on nuclear weapons: ... it is possible that the imposition of a ban might have the unintended consequence of imperiling the stability achieved under the NPT. 10. For instance, proponents of this approach may incorrectly assume that all non-nuclear weapon States, by virtue of having already signed the NPT, would also sign a ban treaty. It is quite conceivable, however, that some NPT States Parties may actually be reluctant to do so, particularly if they are in regions where proliferation threats exist. Such a situation would generate new doubts about the actual commitment of these countries to their NPT obligations ... In other words, a ban, negotiated without adequate engagement of major parties, risks creating a less certain world of the sort that existed before the entry into force of the NPT ...”

Now, can anyone think of an NPT non-nuclear-weapon state that might be reluctant to sign a ban treaty? What about one that has consistently criticised and resisted such a treaty? We had a few speaking earlier today: Hungary, Germany, Belgium, Poland and ... Canada! Let’s imagine a ban treaty is concluded and Canada does not sign. Would this "generate new doubts" about Canada’s
commitment to its NPT obligations? Why yes, Canada, you’re absolutely right – that is exactly what it would do.

THAT IS THE POINT OF THE BAN TREATY.

Non-nuclear-weapon states will not be able to stay out of a ban treaty without calling into question their compliance with the NPT. That is why nuclear alliance states like Canada will eventually have little choice but to join the treaty, and will consequently be obliged to review their reliance on nuclear weapons. And this is why a ban treaty, even without the involvement of the nuclear-armed states, is a powerful means of changing the status quo. It will remove the current ambiguity and oblige all nations to decide whether they want nuclear weapons to be legal or illegal. I’m grateful to Canada for going to the trouble of writing a working paper on this, just so it’s clear for everyone.