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Viewing Nuclear Weapons through a Humanitarian Lens

John Borrie and Tim Caughley *editors*

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UNIDIR
United Nations Institute for Disarmament Research
Geneva, Switzerland



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CONTENTS

Foreword	ix
About the authors	xi
Introduction	2
The contributions in this volume.....	9
Acknowledgments.....	13
Chapter 1: Tracing notions about humanitarian consequences	
Tim Caughley	14
Summary	14
Background	14
Significance of the expression of concern	15
Evolution of the notion of humanitarian consequences in law.....	15
Humanitarian consequences: current context	18
Factors contributing to recent changes in disarmament discourse and strategy	22
Conclusion	27
Chapter 2: Viewing nuclear weapons through a humanitarian lens: context and implications	
John Borrie	29
Summary	29
Context	29
For and against a humanitarian lens	31
Transforming unpropitious environments	35
Evidence of humanitarian consequences	35
Reframing	36
Restructuring discourse	37
Constructively upsetting the status quo through successive phases of cooperative effort	38
Building blocks	40
Implications	41

Chapter 3: Legitimizing and delegitimizing nuclear weapons

Nick Ritchie	44
The importance of legitimacy	45
Legitimizing nuclear weapons	46
NPT	47
The state system	49
Hegemonic moral certitude	52
Delegitimizing nuclear weapons	55
The NPT's legitimacy deficit.....	56
Negative legitimacy and consent	60
Illegitimacy and humanitarianism	62
Legitimacy, validity, and global order	70
Conclusion	75

Chapter 4: The meaning of the Oslo Conference on the humanitarian impacts of nuclear weapons

Patricia Lewis and Heather Williams	78
Introduction	78
The Oslo Conference: background to the initiative	79
Oslo Conference: objectives	80
Oslo attendance	83
A new discourse, a new forum	87
Conclusion	93

Chapter 5: After Oslo: humanitarian perspectives and the changing nuclear weapons discourse

John Borrie and Tim Caughley	95
Summary	95
Introduction	95
Context	96
Reactions of the NPT nuclear-weapon states	97
What "steps"?	100
Do new initiatives on curbing nuclear weapons fail to relate to NPT goals?	105
Do the high-level meeting, OEWG, and Oslo Conference initiatives undermine faithful implementation of the 2010 NPT Action Plan?	108

Should nuclear disarmament only be dealt with through established channels?	112
Conclusion	115
Chapter 6: Responding to the detonation of nuclear weapons: a United Nations humanitarian perspective	
Simon Bagshaw	118
The humanitarian impact of a nuclear weapon detonation ...	121
United Nations humanitarian response in the case of nuclear accidents	123
United Nations humanitarian response in the case of a nuclear weapon detonation	125
Conclusion	128
Chapter 7: The catastrophic humanitarian consequences of nuclear weapons: the key issues and perspective of the International Committee of the Red Cross	
Lou Maresca	131
The revelations of Hiroshima	131
Is there a capacity to assist the survivors of a nuclear detonation?	133
Nuclear weapons and international humanitarian law	136
The efforts of the International Red Cross and Red Crescent Movement on nuclear disarmament	138
Observations on the impact of the changing debate	142
Chapter 8: Humanitarian perspectives and the campaign for an international ban on nuclear weapons	
Magnus Løvold, Beatrice Fihn, and Thomas Nash	145
Introduction	145
Humanitarian campaign rationale	146
Advocacy: producing political results	148
ICAN and the humanitarian approach	152
Conclusion	155
Abbreviations	157

FOREWORD

Although the number of nuclear weapons in the world has fallen dramatically since the Cold War, more than two decades after it ended there are still approximately 17,000 of these arms in the arsenals of states. The detonation of even a single nuclear weapon, whether intentional or accidental, could cause catastrophic short- and longer-term consequences for human beings, their societies, and the environment. Such a detonation would probably have lasting, global implications.

Recently, the notion of examining the humanitarian consequences of nuclear weapons use has begun to gain renewed attention, along with the higher political profile given to the continued dangers nuclear weapons pose. Statements of concern about these human consequences range from United States President Barack Obama's speech in Prague on 5 April 2009 to the outcome document of the Nuclear Non-Proliferation Treaty's Review Conference in 2010. In November 2011, the International Red Cross and Red Crescent Movement sounded the alarm about the immense suffering that would result from the detonation of nuclear weapons. The Movement noted with concern the worrying lack of any adequate international response capacity to assist the victims. In addition, there is accumulating scientific work indicating that the consequences of even small-scale detonation of nuclear weapons would be more serious than previously widely thought.

The consequences of a nuclear detonation are relevant to practitioners in such diverse fields as health services, development, environment, finance, and emergency preparedness. That is why Norway held a Conference on the Humanitarian Impact of Nuclear Weapons in Oslo in March 2013, and invited a wide range of stakeholders including states, international humanitarian actors, such as the Red Cross Movement and United Nations agencies, civil society organizations, and other experts.

The Oslo Conference was a success. I believe that we succeeded in putting the humanitarian impacts and concerns about them at the very centre of the discourse. Taking that approach, it becomes clear that this is everybody's concern and that it is equally legitimate for nuclear and non-nuclear states alike to care about this issue. The Oslo Conference reminded us in very sharp terms that these weapons exist. We cannot approach them

through a strategy of denial—they exist, hence they can be used. We have to think about the unthinkable and raise awareness of this danger.

The 128 states represented in Oslo expressed their shared desire to see a world free from nuclear weapons. That is not a new goal, and there are different possible paths to reaching it. Some believe in mutual negotiations in good faith, some in regional agreements. Some believe in new legal instruments, like a convention, to ban nuclear weapons. This was not the subject of the Oslo Conference, but I do believe that the meeting introduced new knowledge, prompted some fresh thinking, and injected a renewed sense of urgency into the international nuclear weapons discourse. That is why I was happy that Mexico said it would host a conference in early 2014 to build upon what occurred in Oslo.

Overall, I feel there is a clear need to look at the issues around nuclear weapons from different angles, including for policymakers to be continually reminded of the human impacts the use of these arms have. Together, these perspectives could provide glimpses vital to finding a way through current impasses. The Oslo Conference and this publication—*Viewing Nuclear Weapons through a Humanitarian Lens*—both contribute to this purpose. The chapters in this book provide information and analysis from diverse perspectives that complement and indeed extend aspects of the Oslo Conference discourse.

It is in that spirit of further developing the discourse around the humanitarian impact of nuclear weapons that I am pleased to contribute this foreword. It also marks a fruitful decade of partnership between the Government of Norway and UNIDIR on research and improved policy thinking related to disarmament as humanitarian action.

Espen Barth Eide
Minister of Foreign Affairs of Norway
Oslo
5 July 2013

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INTRODUCTION

Imagine it is ten thousand years in the future. Historians and archaeologists—whether human or extraterrestrial—are excavating remnants of our current era. They would note our technology and unprecedented social and economic interconnectedness, our science and cultures, and the operation of sophisticated markets bringing material prosperity and improved living standards to many people (although passing over others). Archaeological evidence of the impact of human society on the environment, including the effects of climate change, would also be easy to find. Preserved electronic data, perhaps radio or television broadcast signals intercepted many light years away or files preserved on hard drives or memory sticks buried on Earth, would show our policymakers were well aware of various challenges to human survival. The record might even show evidence of improving surveillance and response systems for infectious diseases, and even for potentially species-ending threats such as asteroids on Earth-bound trajectories.

Seen in the light of this growing collective situational awareness about the risks to human civilization, the continued existence of nuclear weapons would be a particular puzzle. Despite awesome demonstrations of the destructive capability of “the Bomb” in Japan in 1945, later nuclear weapon testing, the dread of global thermonuclear war during the so-called Cold War, and fears of nuclear terrorism, these potentially civilization-ending weapons were still not put beyond reach even well into the twenty-first century. Future scholars might even conclude that some kind of popular amnesia occurred in our time about the effects of nuclear weapons, apart from those usually represented fancifully in novels or Hollywood films. Having created this mortal threat to itself, had twenty-first century humanity somehow forgotten about the gravity of a situation in which nuclear weapons remained at the service of fallible leaders and systems?

Of course, those investigators in the future might be able to answer pertinent questions that we presently cannot. Will humanity eventually free itself of the Damocles’ sword of nuclear war by eliminating these weapons? Or will mishap, miscalculation, or malice lead to the detonation of nuclear weapons, with their attendant—and long lasting—global consequences? Another related question is this: if looking back in time from the future one could see humanity’s current collective preoccupations in the broader scheme of things, would one have the same political

priorities our leaders have today? We are inclined to doubt it. In hindsight it may appear mystifying as to why more was not achieved by now to move towards elimination of nuclear weapons, whatever the rationales for inaction currently offered.

If achieving nuclear disarmament is a very difficult problem—and it is—it is at least a challenge that human wit and wisdom have the power to solve. It does not involve turning back the sea, bringing vanished rainforests back or dead oceans to life, or deflecting celestial objects from colliding with the Earth. Rather, it involves changing policymakers' minds, and altering their sense of what is a priority, and what is in their overwhelming, if long-term, interest. It is within the power of rational human beings to change their views in the face of new evidence and argument. So it is possible that nuclear weapons will come to be seen as risky liabilities, rather than as prized strategic or political assets, by those states possessing (or seeking) them today. This, after all, is already the view of the great majority of the international community.

To understand why nuclear weapons have not yet been eliminated, it is possible of course to point to the many problems facing the nuclear weapons control regime—including with its constituent “disarmament machinery”. The Conference on Disarmament, for instance, has been deadlocked over a programme of work for a decade-and-a-half now. It has produced nothing since the Comprehensive Nuclear-Test-Ban Treaty in 1996, which has yet to enter into force internationally almost two decades later. The “cornerstone” of the nuclear weapons control regime, the Nuclear Non-Proliferation Treaty (NPT), is ailing. Among the NPT's problems, resentment grows among non-nuclear-weapon states at the perceived reluctance of the five states permitted under the treaty to possess (for a time) nuclear weapons to progress towards total elimination of these arms. Moreover, issues around certain states' non-compliance with the NPT's non-proliferation obligations test collective resolve.

These problems are real, if also manifestations of deeper issues. It can be argued that such problems stem from how nuclear weapons are thought of in international relations, including the meanings and value ascribed to these weapons. Those meanings are not immutable. There is plenty of evidence to show that the roles and importance of nuclear weapons are concepts that have changed over time—from highly political demonstrations of military might at the inception of the nuclear age, to nuclear deterrence and so-called nuclear war-fighting. Nuclear weapons are treated variously as “birthrights”, “tools”, “insurance”, and “family

heirlooms”. Such meanings and values ascribed to nuclear weapons are embedded within power structures of various kinds, from military alliances such as NATO, and Russian–Atlantic diplomatic meetings,¹ to the spurious impression created by the five NPT nuclear-weapon states that there is a link between permanent seats on the United Nations Security Council and possession of nuclear weapons by describing themselves as the “P5”.² The continued necessity and utility of nuclear weapons is often presented as a matter of fact. But this is simply a belief system—one that is arguably out of touch with twenty-first century security realities.

This publication presents a range of perspectives that, broadly speaking, take a humanitarian approach or perspective as a means of critical inquiry into the continued value and acceptability of nuclear weapons. State thinking in the context of multilateral work on curbing means of armed violence has often—though not always—taken the state as the sole reference point for achieving and reaping security benefits. This means that certain kinds of questions tend to be asked, and others not asked, about weapons or practices around those weapons. In the nuclear weapons control discourse, in particular, a number of assumptions exist that, if not inherently contradictory, represent aspirations that are in tension with each other or with humanitarian law rules (sometimes known as the “law of armed conflict”) to protect civilians from the effects of hostilities.

It is thus worth asking critical questions about assumptions and practices—many of these inherited from the previous strategic era—concerning nuclear weapons. With significant understatement, one scholar recently wrote of continued reliance on nuclear weapons and nuclear deterrence:

An international security system based on the willingness of nations to commit mutual suicide to protect themselves has always been recognized as a sub-optimum solution to the security dilemma. It is fraught with great risk to the world’s nations and peoples and we should be ceaselessly striving for more rational and humane ways to achieve security. Nuclear disarmament has been pursued for more than 60 years and enshrined as a law-backed international goal not because it is the moralistic pipe-dream of the uninformed citizenry, but

1 For instance, see V. Pouliot, “The materials of practice: nuclear warheads, rhetorical commonplaces and committee meetings in Russian–Atlantic relations”, *Cooperation and Conflict*, vol. 45, no. 3, 2010.

2 See chapter 5.

because many serious practitioners of international statecraft see it as an essential goal of a sustainable international order.³

This volume stems from a research project to explore issues around the humanitarian impacts of nuclear weapons, which began early in 2013 at UNIDIR. The project, supported financially by the Ministry of Foreign Affairs of Norway, has pursued three aims. The first of these aims is to promote greater understanding among officials of governments and United Nations agencies, as well as the wider public, of the humanitarian consequences of the detonation of nuclear weapons. Second, the project has sought to develop effects-based lines of critical examination concerning the perceived value and acceptability of nuclear weapons. The third aim of the project has been to help draw attention to humanitarian and developmental considerations involved, some of which were discussed at an international conference in March 2013, hosted by the Government of Norway. This publication reflects the project's work towards these aims.

The project, in turn, builds upon the Institute's work since 2004 on the theme of disarmament as humanitarian action (DHA). That project examined various difficulties for the international community in tackling disarmament and arms control challenges. Recognizing that a greater humanitarian focus is relevant to the work of multilateral practitioners, such as diplomats, staff of international organizations, and civil society advocates, the DHA project sought to develop practical proposals to help them use this humanitarian focus in practical terms. In addition to four volumes of work on disarmament as humanitarian action,⁴ the DHA project cofounded the Disarmament Insight initiative, which sought to stimulate creative thinking among disarmament practitioners. As one element of this, the project established a blog on disarmament and humanitarian topics that continues today.⁵

There is evidence that this research on disarmament as humanitarian action has influenced multilateral disarmament practice. One prominent example was that of international efforts to address the humanitarian impacts of cluster munitions, culminating in the so-called "Oslo process" that delivered the Convention on Cluster Munitions in May 2008. As

3 J.E. Doyle, "Why eliminate nuclear weapons?", *Survival*, vol. 55 no. 1, 2013, p. 26.

4 These publications can be found at www.unidir.org/en/programmes/process-and-practice/disarmament-as-humanitarian-action-making-multilateral-negotiations-work.

5 See www.disarmamentinsight.blogspot.com.

a further element of its work on humanitarian perspectives, UNIDIR documented this process in a negotiating history entitled *Unacceptable Harm*,⁶ and further developed new and creative policy approaches—from thinking about specific explosive weapons such as cluster munitions to ways to enhance civilian protection from the use of explosive weapons in populated areas more broadly.⁷

In this respect although there is much focus on the radiation and radioactive fallout from nuclear weapon detonations, it is worth considering that nuclear weapons are primarily explosive weapons: 50 per cent of the energy released is typically blast, and 35 per cent heat.⁸ And all explosive weapons, whether small or large, are indiscriminate within their zone of effect. Because the destructive radius of nuclear detonations is vast compared to most conventional explosive weapons, it raises questions as to how basic humanitarian rules such as the requirement to discriminate between military targets and civilians can be observed across a realistic range of scenarios since most nuclear weapons are targeted at populated areas or would profoundly affect people in them. If a weapon cannot be used because its consequences are unacceptable in humanitarian terms, it strongly suggests such a weapon does not much possess much utility in political or military terms.

This is deeply relevant in considering the evolving policies of nuclear-weapon-possessor states. By way of example, the recent *Report on Nuclear Employment Strategy of the United States* produced by the US Department of Defense states that:

The new guidance makes clear that all plans must also be consistent with the fundamental principles of the Law of Armed Conflict. Accordingly, plans will, for example, apply

6 J. Borrie, *Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions Was Won*, UNIDIR, 2009.

7 See J. Borrie and M. Brehm, “Enhancing civilian protection from use of explosive weapons in populated areas: building a policy and research agenda”, *International Review of the Red Cross*, vol. 93, no. 883, 2011. See also R. Moyes, *Explosive Violence: The Problem of Explosive Weapons*, 2009.

8 Radiation constitutes about 15 per cent of the energy released in a nuclear weapon detonation—5 per cent as initial ionizing radiation, and approximately 10 per cent as residual radiation in fallout. See P. Lewis, “Nuclear weapons: how they work and what they do to you”, presentation to the Oslo Conference on the Humanitarian Impacts of Nuclear Weapons, 4 March 2013, www.regjeringen.no/upload/UD/Vedlegg/Hum/hum_lewis.pdf.

the principles of distinction and proportionality and seek to minimize collateral damage to civilian populations and civilian objects. The United States will not intentionally target civilian populations or civilian objects.⁹

This statement, though welcome, is only superficially reassuring. The strategy offers no specific information as to how detonating such massively destructive explosive munitions as nuclear weapons would be reconciled with fundamental humanitarian law principles. For instance, alongside those legal principles the US document mentions there are others including the obligation for commanders to take feasible precautions to protect civilians, which may be difficult to do when some nuclear weapons are on hair-trigger alert for launch at a moment's notice. Thus interrogation of these statements and policies is required. Humanitarian approaches offer useful starting points for pressing policymakers to explain how such contradictions are reconcilable, and to adjust their actions accordingly with a view to civilian protection.

Meanwhile, the notion of examining the humanitarian consequences of nuclear weapons use is not new. But, it has gained renewed attention lately. In its agreed outcome document, for instance, the 2010 NPT Review Conference expressed “deep concern at the continued risk for humanity represented by the possibility that these weapons could be used and the catastrophic humanitarian consequences that would result from the use of nuclear weapons”.¹⁰ This notion was welcomed by civil society and many governments frustrated by the absence of any progress on nuclear disarmament in multilateral forums. At the same time, however, there appears—among disarmament practitioners, at least—to be some confusion about what a humanitarian approach to these weapons entails, or even whether it can be characterized as just one approach.

Often this debate over humanitarian approaches or lenses has become one simply in which one side points to the anti-personnel mine and cluster munition ban campaigns and treaties as models, while the other side rejects the notion. Nuclear weapons are, of course, very different. This notwithstanding, we have argued that effects-based approaches such as

9 US Department of Defense, *Report on Nuclear Employment Strategy of the United States*, 2013, pp. 4–5.

10 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document*, document NPT/CONF.2010/50 (Vol. I)*, 2010, part I, para. 80.

those to ban anti-personnel mines and cluster munitions—approaches that shared some key similarities—could help to reframe the discourse on contemporary nuclear arms control, which still predominantly hinges on the purported military utility of nuclear arms, including deterrence.¹¹ Critical questioning of these weapons’ acceptability in view of their effects on human beings is not merely rhetorical. Particularly in the context of cluster munitions, the notion of unacceptable harm was used to place the burden on possessors and producers to prove the legitimacy of these weapons, and to increase leverage towards a categorical ban. Leading up to the ban, unacceptable harm was an idea that resonated with publics in many countries, and contributed to stigmatizing cluster munitions.

One of the most important things, we think, about recent humanitarian approaches to weapons such as anti-personnel mines or cluster munitions is that they showed how it is possible to create more propitious conditions for disarmament by reframing existing problems to make them more tractable and politically attractive. Such reframing has to be relevant in the contemporary international environment in view of the difficulties in achieving nuclear disarmament. Getting policymakers and the public to see weapons in terms of their actual humanitarian effects may be the key to unlocking this door, and giving possessor states a gentle shove through it. The point is not that the anti-personnel mine or cluster munition ban processes should—or even could—be models to be duplicated, although that appears to be the point upon which some multilateral practitioners have become fixated.

We are not alone in our attempts to consider what it may mean to view nuclear weapons through humanitarian lenses. Notably, as mentioned, the Government of Norway hosted an international conference in Oslo in March 2013 attended by 128 states, United Nations field agencies, the Red Cross and Red Crescent Movement, invited experts, and civil society representatives, to begin to examine the humanitarian impacts of nuclear weapon detonations. A common theme of the contributions in this volume, to which we turn now, is that all of them regard the Oslo Conference as significant.

11 J. Borrie and T. Caughley, “How are humanitarian approaches relevant to achieving progress on nuclear disarmament?”, in R. Johnson (ed.), *Decline or Transform: Nuclear Disarmament and Security Beyond the NPT Review Process*, Acronym Institute, 2012.

THE CONTRIBUTIONS IN THIS VOLUME

This volume contains a number of different perspectives on overlapping questions related to humanitarian approaches to nuclear weapons. It follows that the authors of the various contributions do not necessarily agree in all respects. This disagreement is healthy, we think. Moreover, it reflects the fact that the chapters present the views of the authors and should not be taken as the positions of the organizations they represent. An additional point is that we nevertheless note considerable commonality about the value and ongoing potential in viewing nuclear weapons through humanitarian lenses in order to help to overcome the current impasse on nuclear disarmament.

The first two chapters were initially released prior to the Oslo Conference. Chapter one, by Tim Caughley, traces notions about catastrophic humanitarian consequences and the origins of similar expressions as orienting concepts in the context of use of weapons of mass destruction (WMD) in particular. It notes considerable frustration at the conspicuous absence of progress towards nuclear disarmament in multilateral forums. The chapter concludes that the growth of discourse on humanitarian consequences coincides with increased scepticism—even among militaries—about the utility of nuclear weapons in the face of today's security challenges.

Chapter two, by John Borrie, considers the relevance of viewing nuclear weapons through a humanitarian lens—along with some criticisms of it—with a view to informing contemporary policy debate. Viewing any weapon through a humanitarian lens is not a value-neutral exercise. Examining data and critically investigating claims about aspects of the weapon in question may alter policymakers' beliefs about the utility and acceptability of a given weapon. And that is the point. Despite marked differences between nuclear weapons and cluster munitions or landmines, it is noted that the so-called Ottawa and Oslo processes succeeded in reframing international discourses from those in which arguments over these weapons' intended uses were paramount, to those in which their actual effects received focus. There is something to learn from the dynamics of these initiatives and to adapt to nuclear disarmament efforts. This is because (as in the Ottawa and Oslo processes) real movement towards abolition will likely only occur when enough policymakers and publics are persuaded that a situation in which the weapons continue to exist indefinitely is not acceptable, their purported legitimacy can no longer be tolerated, and that a ban process

must be pursued without further delay irrespective of what existing possessors would prefer.

It is also observed in chapter two that efforts to eliminate nuclear weapons remain out of reach because the international community is stymied in its ability to delegitimize these weapons. Chapter three examines what delegitimization is precisely, and what it means in the context of nuclear weapons. This chapter, by Nick Ritchie of York University, discusses delegitimization with reference to two other key concepts—that of surface devaluation of nuclear weapons, and deep devaluation. Ritchie notes that nuclear-weapon-possessor states have, in certain cases, shown evidence on the surface of devaluing the roles and value they accord to their nuclear arsenals. There is much less evidence, he observes, that this process of devaluation has really taken deeper hold. Ritchie concludes by arguing that although nuclear weapons are already partly delegitimized, full or “radical” delegitimization requires a new international legal instrument since the NPT is not sufficient for that purpose.

Chapter four focuses on the Oslo Conference on the humanitarian impacts of nuclear weapon detonations. The Conference was significant for the wide interest and participation in it by states, international organizations, and civil society. However, it was shunned by the five NPT nuclear-weapon states. This chapter, by Patricia Lewis and Heather Williams of the Royal Institute of International Affairs (Chatham House), offers the authors’ analysis of what the Oslo Conference represented, and what its significance is in broader terms for the nuclear weapons control discourse and humanitarian approaches to these arms. They argue that the Oslo Conference was significant in consolidating a shift in discourse among many non-nuclear-weapon states about these weapons towards a humanitarian framing, a development with various follow-on effects for international institutions such as the NPT, and even for nuclear-weapon-possessor states.

Chapter five is a reissue of the third paper in a series produced by UNIDIR’s project on the humanitarian impact of nuclear weapons. Co-authored by John Borrie and Tim Caughley, it examines recent international policy discourse concerning new initiatives that draw primarily from, or are influenced by, humanitarian concerns about the consequences of nuclear weapon use. In particular, it analyses recent criticism from the five NPT nuclear-weapon states that these initiatives constitute a distraction from a “practical step-by-step approach” towards nuclear weapon reductions. Overall, what is striking about the post-Oslo nuclear weapons control

discourse is that, for the first time in many years, discussions about the need to eliminate nuclear weapons seem to have taken on a greater note of urgency. Some states have moved from lamenting their disempowerment and the state of the nuclear weapons control regime to actively considering how they can best strengthen momentum towards elimination based on fresh assessments. While this change in discourse cannot be attributed to humanitarian approaches alone, humanitarian concerns—for instance, as expressed in the 2010 NPT Action Plan—have helped to catalyse it.

Chapter six, by Simon Bagshaw, looks at the challenges that detonation of a nuclear weapon would pose for United Nations-coordinated humanitarian response. Thankfully, since it came into being, the United Nations has not been called upon to respond to the aftermath of a nuclear weapon detonation. It is clear, though, that there has not been much recent analysis by United Nations humanitarian agencies of the extent to which they could respond, as opposed to a radiological emergency or civil nuclear accident. (The next phase of our UNIDIR project will be centrally concerned with exploring this question.) Part one of this chapter considers the humanitarian impact of a nuclear weapon detonation, the scope of assistance and protection needs that this would likely give rise to, and the implications for United Nations field agencies. Part two briefly examines the United Nations' approach to emergencies resulting from the civilian use of nuclear power and insights that can be drawn from it. The third part examines United Nations humanitarian response in the event of a nuclear weapon detonation by elaborating some key considerations that would be taken into account because of their implications for the ability (or inability) of United Nations humanitarian agencies to respond in any meaningful way.

Alongside the United Nations, the Red Cross and Red Crescent Movement would likely be called upon as first responders in the case of a nuclear weapon detonation. As it does for the United Nations, such scenarios pose difficult questions for the Movement in terms of its responsibilities to assist the victims, at the same time as it must protect its humanitarian workers. In chapter seven, Lou Maresca of the International Committee of the Red Cross (ICRC) traces the Red Cross and Red Crescent Movement's concerns about the catastrophic humanitarian consequences nuclear weapons could cause. He focuses on the ICRC's perspective in view of its special role to assist the victims in the context of armed conflict.

In the final chapter, three representatives of civil society discuss how viewing nuclear weapons through a humanitarian lens shapes the work of the International Campaign to Abolish Nuclear Weapons (ICAN). Magnus Løvold, Beatrice Fihn, and Thomas Nash note that the recent reorientation of the nuclear weapons debate towards a focus on humanitarian consequences signifies a return to the origins of public opposition to these weapons. In ICAN's view there is a clear and simple—though not simplistic—argument to be made on the basis of humanitarian discourse that nuclear weapons have unacceptable effects, and so must be prevented from ever being used again. Prevention requires nuclear weapons be prohibited because, so long as they exist, there is always the risk that nuclear weapons will be detonated. This chapter sets out the logic behind ICAN's call for a treaty to prohibit nuclear weapons in the same way that other WMD have been. And it discusses some of the challenges for campaigners to make such an argument irresistible to political decision makers, including in states under the so-called “nuclear umbrella” of extended deterrence assurances by certain nuclear-weapon-possessor states.

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John Borrie and Tim Caughley
July 2013

TRACING NOTIONS ABOUT HUMANITARIAN CONSEQUENCES

Tim Caughley

Humanitarian Impact of Nuclear Weapons project paper no. 1

SUMMARY

The unanimous expression by the 2010 Review Conference of the Nuclear Non-Proliferation Treaty (NPT) of deep concern at the “catastrophic humanitarian consequences” of any use of nuclear weapons has given new impetus to the cause of nuclear disarmament. This paper examines the notion of catastrophic humanitarian consequences and the origins of similar expressions as orienting concepts in the context of use of weapons of mass destruction (WMD) in particular.

Background

On 28 May 2010, on the final day of the NPT’s Eighth Review Conference, NPT states parties adopted “Conclusions and recommendations for follow-on actions”¹² including elements on nuclear disarmament, and the “catastrophic humanitarian consequences of any use of nuclear weapons” (see box 1).

BOX 1

I. Nuclear disarmament

In pursuit of the full, effective and urgent implementation of article VI of the Treaty on the Non-Proliferation of Nuclear Weapons and paragraphs 3 and 4(c) of the 1995 decision entitled “Principles and objectives for nuclear non-proliferation and disarmament”, and building upon the practical steps agreed to in the Final Document of the 2000 Review Conference of the Parties to the Treaty on the NonProliferation of Nuclear Weapons, the Conference agrees on the following action plan

12 Extracted from 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document*, document NPT/CONF.2010/50 (Vol. I)*, 2010.

on nuclear disarmament which includes concrete steps for the total elimination of nuclear weapons:

A. Principles and objectives

[i to iv]

v. 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.

Following long-standing NPT practice, the decision to adopt these “conclusions”, “recommendations”, “principles and objectives”, and “follow-on actions” was taken by consensus; that is, without the expressed, formal objection of any of the treaty’s 189 states parties.

SIGNIFICANCE OF THE EXPRESSION OF CONCERN

The Review Conference’s adoption of this expression of deep concern of all of the NPT’s state parties contains a number of implications, which this paper explores. Its analysis is structured into three sections:

- evolution of the notion of humanitarian consequences in law;
- humanitarian consequences: current context; and
- factors contributing to recent changes in disarmament discourse and strategy.

Evolution of the notion of humanitarian consequences in law

The concern about humanitarian consequences expressed by the NPT parties in 2010 has several dimensions. In historical terms within the NPT, “catastrophic humanitarian consequences” is in part a restatement of the opening paragraph of the preamble to the treaty that speaks of the “devastation that would be visited upon all mankind by a nuclear war”.

More broadly, history reflects in various ways the horrors of the use of nuclear, biological, and chemical weapons. (These are often described as WMD, though it is important to recognize that no authoritative definition

of this term exists.) The 1925 Geneva Protocol,¹³ which prohibits the use of chemical and biological weapons in war, approached the humanitarian considerations at stake in a manner that relied on then-vivid memories of gas warfare in the trenches of the First World War. The preamble to the protocol reflects simply but profoundly that, “the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids, materials or devices, *has been justly condemned by the general opinion of the civilized world*” (emphasis added).

The preambles to both the Bacteriological (Biological) and Toxin Weapons Convention (BTWC)¹⁴ and the Chemical Weapons Convention¹⁵ recognize the significance of the 1925 Geneva Protocol. The preamble to the BTWC, in particular, recorded that its state parties were conscious also of the contribution that that protocol had made, and by inference would continue to make, in mitigating the horrors of war. Expressing their determination, for the sake of all mankind, to exclude completely the possibility of bacteriological (biological) agents and toxins being used as weapons, the parties declared that they are “*Convinced that such use would be repugnant to the conscience of mankind and that no effort should be spared to minimise this risk*” (emphasis added).

These expressions reflect a humanitarian thread that extends back to the Declaration Renouncing the Use, in Time of War, of Explosive Projectiles Under 400 Grammes Weight. The St. Petersburg Declaration of 1868 was the first formal agreement prohibiting the use of a specific weapon in war. It banned use of a newly developed “exploding” bullet designed to destroy ammunition wagons, but which also exploded upon contact with the human body causing terrible wounds. It set out the principle that the use of arms, projectiles, and material of a nature to cause unnecessary suffering is prohibited.¹⁶ Its humanitarian considerations are stated very clearly (see box 2).¹⁷ In the view of the International Committee of the Red Cross (ICRC), the St. Petersburg Declaration continues to have the force of law.

13 See www.un.org/disarmament/WMD/Bio/1925GenevaProtocol.shtml.

14 See <http://disarmament.un.org/treaties/t/bwc/text>.

15 See www.opcw.org/chemical-weapons-convention.

16 See www.icrc.org/ihl.nsf/INTRO/130?OpenDocument.

17 See www.icrc.org/ihl.nsf/FULL/130?OpenDocument.

BOX 2

an International Military Commission ... having by common agreement fixed the technical limits at which the necessities of war ought to yield to the requirements of humanity, [declared as follows]:

Considering: That the progress of civilization should have the effect of alleviating as much as possible the calamities of war;

That the only legitimate object which States should endeavour to accomplish during war is to weaken the military forces of the enemy;

That for this purpose it is sufficient to disable the greatest possible number of men;

That this object would be exceeded by the employment of arms which uselessly aggravate the sufferings of disabled men, or render their death inevitable;

That the employment of such arms would, therefore, be contrary to the laws of humanity. (emphasis added)

Humanitarian considerations also underlie treaties prohibiting the use of gases including the Hague Convention (II) with Respect to the Laws and Customs of War on Land of 29 July 1899¹⁸ and the Treaty of Versailles of 28 June 1919. Humanitarian principles have of course also been enshrined in the Geneva Conventions of 1949 on the law of armed conflict (see article 3 common to all four conventions). Additional Protocol I to those treaties makes it clear that the right of parties to a conflict to choose methods or means of warfare is not unlimited.¹⁹ The protocol also stipulates that it is

18 See especially these words in the preamble to Section II Laws and Customs of War on Land: "Until a more complete code of the laws of war is issued, the High Contracting Parties think it right to declare that in cases not included in the Regulations adopted by them, populations and belligerents remain under the protection and empire of the principles of international law, as they result from the usages established between civilized nations, from the laws of humanity, and the requirements of the public conscience", www.icrc.org/applic/ihl/ihl.nsf/Article.xsp?action=openDocument&documentId=9FE084CDAC63D10FC12563CD00515C4D.

19 Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 1977,

prohibited to employ weapons of a nature to cause superfluous injury or unnecessary suffering or which may be expected to cause wide-spread, long-term, and severe damage to the natural environment.

Attention should also be drawn to the opening words of the Preamble to the Charter of the United Nations.²⁰ The Charter expresses the determination “to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small”.

Two other examples of treatment of humanitarian considerations in the United Nations context warrant mention. The General Assembly annually expresses the continuing and overwhelming support of the international community for measures to uphold the authority of the 1925 Geneva Protocol. Moreover, these resolutions are generally (though not always) adopted by consensus; that is, with the support even of states not party to the protocol.²¹ Finally, General Assembly resolution 1653 should be recalled. That measure—passed in 1961 by a vote of 55 to 20 with 26 abstentions—declared that the “use of nuclear ... weapons would exceed even the scope of war and cause indiscriminate suffering and destruction to mankind”.

Humanitarian consequences: current context

Turning from this brief historical exploration to the current context, why is it that the humanitarian perspective on the use of nuclear weapons has returned to prominence? Since the atomic bombing of Hiroshima and Nagasaki in 1945, nuclear weapons have not been detonated in active conflict. Yet awareness about the loss of life and devastation caused has not faded away in the collective memory. The nuclear accidents at Chernobyl and Fukushima have served as reminders of the hazards to people and their environment of radioactive release. But the relevance of these civil nuclear disasters to the nuclear weapons discourse is not necessarily accepted by all states. Even some nuclear disarmament

art. 35; see also arts. 48, 51.

20 See www.un.org/en/documents/charter/preamble.shtml.

21 See General Assembly, *Measures to Uphold the Authority of the 1925 Geneva Protocol*, UN document A/C.1/67/L.15, 18 October 2012.

advocates seem reluctant to expound on perceived linkages for fear this will confuse the debate.

Heightened attention to the notion of humanitarian consequences of the use of a nuclear weapon stems to some extent from the high political profile given to nuclear weapons in recent years. An obvious example is the speech by United States President Obama in Prague on 5 April 2009 in which he said:

I state clearly and with conviction America's commitment to seek the peace and security of a world without nuclear weapons. ... One nuclear weapon exploded in one city—be it New York or Moscow, Islamabad or Mumbai, Tokyo or Tel Aviv, Paris or Prague—could kill hundreds of thousands of people. And no matter where it happens, there is no end to what the consequences might be—for our global safety, our security, our society, our economy, to our ultimate survival.

The negotiation by the Russian Federation and the United States of the New Strategic Arms Reduction Treaty (New START), and issues with the arsenal of the Democratic People's Republic of Korea and the Islamic Republic of Iran's possible development of nuclear weapons have all served to keep nuclear arms control, nuclear non-proliferation, and nuclear disarmament in the headlines. Indeed, concerns about proliferation have helped bring the debate on the elimination of nuclear arsenals more to the fore than at any time since the vast majority of states signed the NPT in 1968 in recognition that the world would be a safer place without nuclear weapons. But advocates for the abolition of nuclear weapons are still striving for the means to make this point more compelling to a public distracted by a range of other challenges to security.

This situation may be changing. The growth in the public consciousness of humanitarian perspectives on nuclear weapons was given a significant boost by the resolution of the ICRC Council of Delegates of 26 November 2011.²² The Council placed emphasis not only on the “incalculable human suffering that can be expected to result from any use of nuclear weapons” but also on “the lack of any adequate humanitarian response capacity” to respond to the casualties of such use. The Council, noting “the absolute imperative” to prevent the use of nuclear weapons, stated that it found it

22 See www.icrc.org/eng/resources/documents/resolution/council-delegates-resolution-1-2011.htm.

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

Mention should also be made of efforts of states to build on the 2010 expression of concern by the NPT’s state parties, notably the sixteen-state²³ statement delivered in Vienna by Switzerland in May 2012 at the first preparatory committee meeting in the current review cycle of the NPT. A similar statement²⁴ was delivered on behalf of 34 United Nations Member States and the Holy See during the sixty-seventh session of the General Assembly in October 2012. And in a joint public statement in September 2010, the foreign ministers of the NPT lobby group of 10 states known as the Non-Proliferation and Disarmament Initiative²⁵ publicly echoed the Review Conference’s concern about humanitarian consequences.

These initiatives have emerged against a difficult multilateral backdrop. There remains chronic deadlock in the multilateral disarmament “machinery” and an absence of recent steps to negotiate an agreement or agreements leading to the elimination of nuclear weapons. The Conference on Disarmament (CD), a standing body in which all states possessing nuclear weapons are members, is widely seen as the logical venue for undertaking such negotiations. Deep divisions in the CD over the terms of mandates for dealing with its four “core issues”²⁶ have prevented it from undertaking any substantive work of any kind since the negotiation in the Conference of the Comprehensive Nuclear-Test-Ban Treaty (CTBT) from 1994 to 1996. This has given rise to initiatives to set in train processes on nuclear disarmament and fissile materials outside the CD, such as the resolutions tabled during the sixty-seventh session of the General

23 Austria, Chile, Costa Rica, Denmark, Egypt, the Holy See, Indonesia, Ireland, Malaysia, Mexico, New Zealand, Nigeria, Norway, the Philippines, South Africa, and Switzerland.

24 See www.acronym.org.uk/official-and-govt-documents/joint-statement-humanitarian-dimension-nuclear-disarmament-un-first-committee-2012.

25 Statement of 22 September 2010 made in New York by the Foreign Ministers of Australia, Canada, Chile, Germany, Japan, Mexico, the Netherlands, Poland, Turkey, and the United Arab Emirates. NB: Several of these states are among the group of 16 referred to above.

26 These are nuclear disarmament, fissile materials, prevention of an arms race in outer space, and negative security assurances.

Assembly by Canada, the Non-Aligned Movement, and a cross-regional group supporting an initiative by Austria, Mexico, and Norway.²⁷

Canada's (annual) proposal on fissile material took a different tack from previous years and included a request for the United Nations Secretary-General to establish a group of government experts drawn from 25 states to meet in Geneva for 2 weeks in 2014 and 2015 to make recommendations (but "not negotiate") on possible aspects for a treaty banning the production of such material. The other two proposals from the sixty-seventh session both dealt with nuclear disarmament. Under the Non-Aligned Movement resolution (adopted without opposing votes and with only five abstentions), this topic will be the subject of a high-level meeting of the General Assembly on 26 September 2013 "to contribute to the goal of nuclear disarmament".

The measure tabled by Austria, Mexico, and Norway sought the establishment of an open-ended working group (OEWG) to meet for up to 15 working days in Geneva in 2013 "to take forward multilateral nuclear disarmament negotiations for the achievement and maintenance of a world without nuclear weapons". The OEWG will report primarily to the General Assembly, although its report is to be copied to the CD as well as to the United Nations Disarmament Commission. The OEWG will not proceed under the CD's sole decision-making rule—consensus—but under those of the General Assembly, which, as laid down in Article 18 of the Charter of the United Nations, contemplate voting. As for the vote on the proposal itself, the measure easily carried in the First Committee with the support of 133 members. There were 4 against (France, the Russia Federation, the United Kingdom, and the United States) and 20 abstaining (including China, Pakistan, India, and Israel).

For those states that are ready to engage directly in the issues rather than merely debate how best to deal with them, new avenues have clearly opened up. For instance, in 2013 on nuclear disarmament, there will be an OEWG, a high-level meeting of the General Assembly, and a conference

27 See respectively General Assembly, *High-Level Meeting of the General Assembly on Nuclear Disarmament*, UN document A/C.1/67/L.19, 18 October 2012; General Assembly, *Treaty Banning the Production of Fissile Material for Nuclear Weapons or Other Nuclear Explosive Devices*, UN document A/C.1/67/L.41, 19 October 2012; and General Assembly, *Taking Forward Multilateral Nuclear Disarmament Negotiations*, UN document A/C.1/67/L.46, 19 October 2012.

scheduled for March in Oslo on the humanitarian impact of a nuclear weapon detonation (mentioned below).

Factors contributing to recent changes in disarmament discourse and strategy

Approaches to multilateral arms control and disarmament have long been dominated by security concepts focusing on external threats to states and, in particular, threats posed by other states. Traditional multilateral approaches to security, especially in arms control, were generally geared to addressing state concerns on weapons, weapons systems, and delivery mechanisms rather than on preventing or ameliorating their potential impact on individuals or communities.²⁸ Nowadays, traditional forms of interstate military conflict are in some part being supplanted by insecurity and conflict associated with terrorism, trafficking in people and illicit goods, ethnic and communal conflict, to the total breakdown of order in failed states.

The United Nations Development Programme (UNDP) in its *Human Development Report 1994*, published shortly after the end of the Cold War, argued that the concept of security had “for too long been interpreted narrowly: as security of territory from external aggression, or as protection of national interests in foreign policy or as global security from the threat of a nuclear holocaust. It has been related more to nation-states than to people”.²⁹ The report also noted that the “superpowers were locked in an ideological struggle—fighting a cold war all over the world. The developing nations, having won their independence only recently, were sensitive to any real or perceived threats to their fragile national identities. Forgotten were the legitimate concerns of ordinary people who sought security in their daily lives”. (An extract from that report directly apposite to this paper appears in box 3.)

28 J. Borrie, “Rethinking multilateral negotiations: disarmament as humanitarian action”, in J. Borrie and V. Martin Randin (eds.), *Alternative Approaches in Multilateral Decision Making: Disarmament as Humanitarian Action*, UNIDIR, 2005.

29 United Nations Development Programme, *Human Development Report 1994*, 1994, p. 24.

BOX 3

Fifty years ago, Albert Einstein summed up the discovery of atomic energy with characteristic simplicity: ‘Everything changed.’ He went on to predict: ‘We shall require a substantially new manner of thinking if mankind is to survive.’ Although nuclear explosions devastated Nagasaki and Hiroshima, humankind has survived its first critical test of preventing worldwide nuclear devastation. But five decades later, we need another profound transition in thinking—from nuclear security to human security.

Taking the perspective that disarmament and arms control norms are integral to promoting human security and to protecting the individual from violence and insecurity, since 2000 UNIDIR has contributed to the international policy debate on weapons curbs by carrying out research concerning the notion of “disarmament as humanitarian action”. “Humanitarian action” countenanced activities that stemmed not only from rules and principles of international humanitarian law but also from broader humanitarian considerations. Thinking at the human scale—in terms of human security and humanitarian approaches—and not just at the scale of states was seen to be a promising new dynamic for multilateral approaches, offering a test of acceptability through the notion of unacceptable harm resulting from the use of a particular weapon system.³⁰

UNIDIR’s central thesis was that humanitarian perspectives could add value to multilateral negotiation processes on international security. This was seen to be the case in the 1997 Anti-Personnel Mine Ban Convention and to some extent in the Protocol on Explosive Remnants of War in 2003 and in the context of combating illicit trade in small arms and light weapons.³¹ The humanitarian perspective was a significant factor in the negotiation

30 See the four volumes of published work of UNIDIR’s project Disarmament as Humanitarian Action: Making Multilateral Negotiations Work, available at www.unidir.org/bdd/fiche-activite.php?ref_activite=275.

31 See the preamble to the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, 2001.

of an Arms Trade Treaty.³² Humanitarian concerns strikingly underpinned efforts resulting in the Cluster Munitions Convention in 2008.³³

The notion of humanitarian consequences of the use of nuclear weapons has been seized upon by civil society as well as by some governments. Already active in promoting the devaluation³⁴ of nuclear weapons as a pivotal element of military doctrines in nuclear-weapon-possessor states, non-governmental organization (NGO) campaigners active in nuclear disarmament appear to welcome any new leverage for their cause. In a recent publication, the Acronym Institute for Disarmament Diplomacy commented that a “different, humanitarian-centred approach has begun to reframe nuclear debates, and looks likely to transform the non-proliferation and disarmament landscape in the next decade”.³⁵ This development is attributed to factors such as increased attention to international humanitarian law in relations among states, and a growing public awareness driven by scientists and physicians of the impact of any use of nuclear weapons on the global environment, climate, and agricultural resources.

Both factors featured in an influential statement by then-President of the ICRC Jakob Kellenberger, delivered just before the 2010 NPT Review Conference. He drew attention to the threats nuclear weapons “pose to the environment, to future generations, and indeed to the survival of humanity”.³⁶ He added that the ICRC therefore appealed to all states to ensure that such weapons are never used again, “regardless of their views on the legality of such use”.³⁷

The ICRC is making the point that a humanitarian approach is related to, but not necessarily reliant on international humanitarian law. That

32 M. Bromley, N. Cooper, and P. Holtom, “The UN Arms Trade Treaty: arms export controls, the human security agenda and the lessons of history”, *International Affairs*, vol. 88, no. 5, 2012.

33 J. Borrie, *Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions Was Won*, UNIDIR, 2009.

34 See K. Berry et al., *Delegitimizing Nuclear Weapons*, James Martin Center for Nonproliferation Studies, 2010.

35 R. Johnson, T. Caughley, and J. Borrie, *Decline or Transform: Nuclear Disarmament and Security Beyond the NPT Review Process*, Acronym Institute for Disarmament Diplomacy, 2012, p. 27.

36 See www.icrc.org/web/eng/siteeng0.nsf/html/nuclear-weapons-statement-200410.htm.

37 Ibid.

is, a humanitarian basis for curbing weapons goes beyond the legal to encompass moral and political imperatives as well, and is founded upon concern about the effects of the weapons (for instance, on civilians, or superfluous and unnecessary suffering of combatants). Together, these are what constitute the humanitarian imperative.³⁸

While the NPT Review Conference's expression of concern on humanitarian consequences falls short of stating that nuclear weapons violate international humanitarian law, it squarely questions the legality of the use of nuclear weapons because international humanitarian law is "specifically intended to prevent catastrophic humanitarian consequences from warfare".³⁹ It is not the intention of this paper to examine the rules of international humanitarian law beyond underlining the points drawn from the earlier historical analysis that:

- the choice of means and methods of warfare is not unlimited; and
- the consideration most relevant to any weapon's use is a humanitarian one—where use would be "justly condemned by the general opinion of the civilized world" or "repugnant to the conscience of mankind", to quote the 1925 Geneva Protocol and the BTWC.

Reference must also be made to the 1996 Advisory Opinion of the International Court of Justice on the Legality of the Use by a State of Nuclear Weapons in Armed Conflict. The Court's opinion acknowledged that there was no definitive legal consensus declaring nuclear weapons contrary to international humanitarian law in *all* circumstances. The Court explained that the principles of international humanitarian law protecting civilians and combatants are "fundamental" and "intransgressible", and that "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".⁴⁰

38 For further discussion see J. Borrie and T. Caughley, "How are humanitarian approaches relevant to achieving progress on nuclear disarmament?", in R. Johnson, T. Caughley, and J. Borrie, *Decline or Transform: Nuclear Disarmament and Security Beyond the NPT Review Process*, Acronym Institute for Disarmament Diplomacy, 2012, p. 37.

39 See www.icrc.org/eng/resources/documents/interview/2011/nuclear-interview-2011-12-21.htm.

40 International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, advisory opinion, 8 July 1996, paras. 79 and 95.

Noting the unique characteristics of nuclear weapons, the Court found that “the use of such weapons in fact seems scarcely reconcilable with respect for such requirements”. But the Court went no further than to state that threat or use of nuclear weapons would be “generally contrary” to international law. The Court was uncertain as to whether using nuclear weapons in extreme cases of self-defence would be unlawful. Nonetheless, the 2010 Review Conference’s statement on humanitarian consequences and international humanitarian law reinforces the moral unacceptability and presumptive unlawfulness of any use of nuclear weapons.⁴¹

Mention was made earlier in this paper of the humanitarian considerations that were central to the bans on anti-personnel landmines and cluster munitions. In the Ottawa and Oslo processes, the acceptability of each of these weapons was questioned in view of their documented effects on civilians across a range of operational contexts, and the case successfully made for new law.⁴² In the context of anti-personnel mines, these weapons became widely seen as unacceptable due to effects that are inherently indiscriminate (they are victim activated) and of a nature to cause superfluous injury and unnecessary suffering to combatants. It is interesting in the context of cluster munitions that this claim was not made. Rather it was argued that the pattern of civilian harm caused by the use of cluster munitions showed these area weapons are highly prone to be indiscriminate in effect because of difficulty in targeting them so as to avoid civilians, and because of the hazards to civilians of large numbers of failed explosive submunitions.

Humanitarian considerations of acceptability thus came to diminish the utility of anti-personnel mines and cluster munitions in the eyes of many states and others. In 2008, for instance, a letter published in *The Times* on cluster munitions contained the following statement: “If we are to be accepted as legitimate users of force then we must demonstrate our determination to employ that force only in the most responsible

41 See J. Burroughs, “Humanitarian consequences, humanitarian law: an advance in banning use of nuclear weapons”, *NPT News in Review*, no. 21, 1 June 2010, www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/NIR2010/No21.pdf.

42 See G. Nystuen, “A new treaty banning cluster munitions: the interplay between disarmament diplomacy and humanitarian requirements”, in C.M. Bailliet (ed.), *Security: A Multidisciplinary Normative Approach*, 2009, pp. 138–142.

and accountable way”.⁴³ The authors, former British and NATO military commanders, were making the point that the achievement of any political purpose by the use of force might be compromised where the loss of civilian lives provoked strong national and international reaction and opposition. It strongly implies that a weapon seen as unacceptable in its effects is not a legitimate or a useful one. This point is highly relevant to the contemporary nuclear weapons discourse.

CONCLUSION

The growth of discourse on humanitarian consequences coincides with increased scepticism—even among militaries—about the utility of nuclear weapons in the face of today’s security challenges. In August 2012, the United Nations Secretary-General observed:

Many defence establishments now recognize that security means far more than protecting borders. Grave security concerns can arise as a result of demographic trends, chronic poverty, economic inequality, environmental degradation, pandemic diseases, organized crime, repressive governance and other developments no state can control alone. Arms can’t address such concerns. Yet there has been a troubling lag between recognizing these new security challenges, and launching new policies to address them. National budget priorities still tend to reflect the old paradigms. Massive military spending and new investments in modernizing nuclear weapons have left the world over-armed—and peace under-funded.⁴⁴

Meanwhile, there is considerable frustration at the conspicuous absence of progress towards nuclear disarmament in multilateral forums, and at the difficulties they face in influencing the nuclear-weapon-possessor states. This helps to explain the emergence of new government-sponsored initiatives by small and middle-sized states like those mentioned earlier. Some social movement organizations have mobilized themselves round the simplicity of the message about the humanitarian impact of nuclear weapons, and hope this will find greater resonance with the public as well as governments directly.

43 H. Beach et al., “Cluster bombs don’t work and must be banned”, *The Times*, 19 May 2008.

44 See www.un.org/disarmament/update/20120830.

Concerns about the humanitarian consequences of a nuclear weapon detonation will be explored in March 2013 at a two-day international conference to be hosted in Oslo by the Government of Norway. Announcing this initiative in the Norwegian Parliament on 17 April 2012, then-Foreign Minister Jonas Gahr Støre framed this in the context of Norway's efforts along several tracks to contribute to reaching the goal of a world free of nuclear weapons—an approach his successor, Espen Barth Eide, has reaffirmed.⁴⁵ Mr. Støre emphasized the need to create a political basis to make it possible ultimately to achieve a nuclear-weapons-free world, including by engaging international public opinion in order to mobilize governments.⁴⁶ The time, he believed, had come for a broad discussion and assessment of the humanitarian consequences of using nuclear weapons. The March 2013 conference will be a prime opportunity to explore such consequences in greater depth.

45 Other Norwegian-sponsored efforts include investigating the practical tasks involved in verifying reductions in nuclear warheads, and support for OEWG talks on nuclear disarmament in Geneva in 2013 mandated by the General Assembly.

46 See www.regjeringen.no/nn/dep/ud/Aktuelt/Taler-og-artiklar/jgs_taler_artikler/2012/svar_atomvapen.html?id=678795 (in Norwegian).

VIEWING NUCLEAR WEAPONS THROUGH A HUMANITARIAN LENS: CONTEXT AND IMPLICATIONS

John Borrie

Humanitarian Impact of Nuclear Weapons project paper no. 2

SUMMARY

This paper considers the relevance of viewing nuclear weapons through a humanitarian lens—along with some criticisms of it—with a view to informing contemporary policy debate.⁴⁷

CONTEXT

The notion of examining the humanitarian consequences of nuclear weapons use is gaining renewed attention. For instance:

- In its agreed outcome document, the 2010 Nuclear Non-Proliferation Treaty (NPT) Review Conference expressed “deep concern at the continued risk for humanity represented by the possibility that these weapons could be used and the catastrophic humanitarian consequences that would result from the use of nuclear weapons”.⁴⁸
- The International Red Cross and Red Crescent Movement recently emphasized the immense suffering that would result from any detonation of nuclear weapons, as well as the lack of any adequate international response capacity to assist the victims. It recalled the 1996 advisory opinion of the International Court of Justice, which expressed the Court’s view that the threat or use of nuclear weapons would generally be contrary to the principles and rules of international

47 For an earlier, expanded version of this paper see J. Borrie and T. Caughley, “How are humanitarian approaches relevant to achieving progress on nuclear disarmament?”, in R. Johnson (ed.), *Decline or Transform: Nuclear Disarmament and Security Beyond the NPT Review Process*, Acronym Institute, 2012.

48 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document*, document NPT/CONF.2010/50 (Vol. I)*, 2010, part I, p. 19.

humanitarian law.⁴⁹ The Movement also called on all states to ensure that nuclear weapons are never again used and to pursue treaty negotiations to prohibit and eliminate them.⁵⁰

- At the United Nations General Assembly's 2012 First Committee session, Switzerland delivered a statement on behalf of 34 states expressing their concern about the humanitarian consequences of nuclear weapons. It noted with approval "that consideration of this issue has garnered greater prominence in a number of General Assembly resolutions and in other fora since 2010".⁵¹

At the same First Committee session, Norway announced its intention to host an international conference in Oslo "on the impact of nuclear detonations, whatever their cause".⁵² Norway's subsequent invitation letter indicated that the conference's focus will be on "the humanitarian consequences of a nuclear weapons detonation", and will involve "all interested states, as well as UN organisations, representatives of civil society and other relevant stakeholders".⁵³

There is considerable frustration among non-nuclear-weapon states at the conspicuous absence of progress towards nuclear disarmament in multilateral forums, and at the difficulties they face in influencing the nuclear-weapon states to reduce reliance on these arms.⁵⁴ This helps to explain the emergence of new government-sponsored initiatives by small and middle-sized states. Some social movement organizations have also

49 International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, advisory opinion, 1996.

50 Statement of the International Committee of the Red Cross at First Committee of the sixty-seventh session of the United Nations General Assembly, 16 October 2012, www.un.org/disarmament/special/meetings/firstcommittee/67/pdfs/16%20Oct%20GD%20ICRC.pdf.

51 See www.acronym.org.uk/official-and-govt-documents/joint-statement-humanitarian-dimension-nuclear-disarmament-un-first-committee-2012. This followed an earlier 16-state statement, delivered by Switzerland, at the first preparatory meeting of the current NPT cycle in Vienna in May 2012.

52 See www.un.org/disarmament/special/meetings/firstcommittee/67/pdfs/12%20Oct%20GD%20Norway.pdf.

53 *Letter of Invitation to an International Conference on the Humanitarian Impact of Nuclear Weapons*, from Espen Barth Eide, Norwegian Minister of Foreign Affairs, 22 November 2012.

54 T. Caughley, *Humanitarian Impacts of Nuclear Weapons: Tracing Notions about Catastrophic Humanitarian Consequences*, Humanitarian Impact of Nuclear Weapons project paper no. 1, UNIDIR, 2013.

mobilized themselves on the basis of the humanitarian impact of nuclear weapons.⁵⁵

The influence of humanitarian principles on the regulation of weapons is not an aberrant or even new development although it is often subordinated in arms control negotiations to narrower concerns of state security.⁵⁶ Interstate treatment of nuclear weapons has predominantly focused on themes such as deterrence, strategic stability between the major military powers, the dangers of these arms proliferating further, and challenges to compliance with and enforcement of the current nuclear order.⁵⁷ Greater humanitarian focus now on nuclear weapons is significant because broader renewed awareness of their consequences could alter the discourse concerning the utility and acceptability of such arms, from a normative context in which the threat to use them and planning for doing so are considered legitimate actions by nuclear-weapon-possessor states, to one in which they are not. This devaluation of nuclear weapons is probably essential to their elimination.

FOR AND AGAINST A HUMANITARIAN LENS

What does it mean to view nuclear weapons through a humanitarian lens? Broadly speaking, it means looking at the use of these weapons from the point of view of human impact. It is guided by notions of protecting civilians from particular and persistent harm, or combatants from superfluous injury and unnecessary suffering due to such weapons' characteristics. The association here with both disarmament and international humanitarian law (IHL) is clear—although a humanitarian lens extends beyond the legal to encompass moral and political imperatives as well. It entails an emphasis on actual consequences and not only on the effect intended or claimed by users of the weapon. Thus, evidence and critical investigation are important elements of any humanitarian lens.⁵⁸ As noted in the first

55 R. Johnson, "Nuclear disarmament: then and now", *SGR Newsletter*, no. 41, Scientists for Global Responsibility, 2012. See also the website of the International Campaign to Abolish Nuclear Weapons at www.icanw.org.

56 See N. Cooper, "Putting disarmament back in the frame", *Review of International Studies*, vol. 32, no. 2, 2006.

57 W. Walker, "Nuclear enlightenment and counter-enlightenment", *International Affairs*, vol. 83, no. 3, 2007.

58 For further discussion see J. Borrie and T. Caughley, "How are humanitarian approaches relevant to achieving progress on nuclear disarmament?", in

paper in this UNIDIR series (see chapter 1), considering individuals and their communities as reference points for security contrasts with orthodox security discourse and statecraft.⁵⁹ But it has much to offer in altering the circular, and often unproductive, exclusively state-centric discourse on curbing the risks of use of these weapons.

Calls to consider the consequences of nuclear weapons invite comparisons to other recent humanitarian initiatives, such as those to ban anti-personnel mines and cluster munitions. Such comparisons are somewhat controversial.⁶⁰ But examining the humanitarian consequences of detonation of nuclear weapons is not contingent on these experiences. For reasons discussed below, though, these successes are relevant and it makes little sense to exclude them.

Of course, there are obvious differences between nuclear weapons and other kinds of arms, such as anti-personnel mines and cluster munitions. For instance:

- Nuclear weapons play a different role in the military doctrines of possessor states. In particular, they are widely seen as much more important than anti-personnel mines and cluster munitions.
- Nuclear weapons have a more potent set of meanings and beliefs attached to them than these banned weapons.⁶¹ In particular, a deeply embedded belief exists among some nuclear strategists in the infallibility of nuclear deterrence.

R. Johnson (ed.), *Decline or Transform: Nuclear Disarmament and Security Beyond the NPT Review Process*, Acronym Institute, 2012, pp. 35–37.

59 T. Caughley, *Humanitarian Impacts of Nuclear Weapons: Tracing Notions about Catastrophic Humanitarian Consequences*, Humanitarian Impact of Nuclear Weapons project papers, no. 1, UNIDIR, 2013, p. 7.

60 According to one senior diplomat of a nuclear-weapon-possessor state, “the purpose of nuclear deterrence is to ensure that the weapons are never used. There is no read across from the bans on landmines or cluster munitions”. See J. Duncan, “A nuclear weapons convention: legislating for security”, 2010, <http://webarchive.nationalarchives.gov.uk/20120406003443/http://blogs.fco.gov.uk/johnduncan/2010/04/01/a-nuclear-weapons-convention-legislating-for-security/>.

61 For instance, see V. Pouliot, “The materials of practice: nuclear warheads, rhetorical commonplaces and committee meetings in Russian–Atlantic relations”, *Cooperation and Conflict*, vol. 45, no. 3, 2010.

- Nuclear weapons have technical characteristics that differ from conventional explosive weapons. For example, nuclear munitions contain fissile material.
- Unlike conventional explosive weapons, nuclear weapon detonations produce nuclear radiation.
- The set of states possessing nuclear weapons differs from those sets of states that held (or, in certain cases, still hold) stocks of anti-personnel mines and cluster munitions.

Largely on the basis of these differences, critics appear to assume that the features of processes to successfully curb nuclear weapons must necessarily be so dissimilar to prior humanitarian initiatives as to make the latter irrelevant. The perceived strategic importance of nuclear weapons, in particular, is alleged to make the political contexts for curbing them so unlike other weapons that, in effect, the same rules do not apply.

It does pay to be circumspect when considering whether efforts to curb one type of weapon carry over to another. But this assumption that characteristics or “special” dimensions of nuclear weapons make other efforts to delegitimize weapons irrelevant to them does not hold. Because objects of humanitarian concern possess differing characteristics does not mean that international responses cannot have common features, or that there are not insights to be carried over from other issue areas or contexts. After all, the international community carries over many of the same techniques, structures, and practices from different contexts in other areas of international policy,⁶² including prohibitions on the other so-called weapons of mass destruction, namely biological and chemical weapons.⁶³ Common to the rise of norms outlawing these disparate weapons technologies was that prevailing views about their acceptability changed, something also true of later processes banning anti-personnel mines and cluster munitions.

That some see nuclear weapons as of more importance than other weapons indicates perhaps a greater level of difficulty in the magnitude of

62 See J. Borrie, “Rethinking multilateral negotiations: disarmament as humanitarian action”, in J. Borrie and V. Martin Randin (eds.), *Alternative Approaches in Multilateral Decision Making: Disarmament as Humanitarian Action*, UNIDIR, 2005.

63 See R. Price and N. Tannenwald, “Norms and deterrence: the nuclear and chemical weapons taboos”, in P.J. Katzenstein (ed.), *The Culture of National Security: Norms and Identity in World Politics*, 1996.

the policy challenge rather than necessarily a major distinction in kind. It actually strengthens the view that humanitarian approaches are worthy of examination because initiatives to address the impacts of anti-personnel mines and cluster munitions transformed unpropitious environments for disarmament into productive ones. And, they did so across differing contexts: for all of the similarities between the international initiatives to ban landmines and cluster munitions, there were also significant differences. These differences include the technical characteristics of the weapons dealt with, their roles, and the international contexts in which they were prohibited.⁶⁴

The detonation of a nuclear weapon in a populated area is vastly destructive, and the accompanying release of radiation is a distinctive feature that strikes many people as especially horrifying. However, the idea that nuclear weapons are inherently “special” in view of their perceived strategic importance, roles, effects, or in any other way deserves thorough critical scrutiny. Claims that nuclear weapons are “special” has, in effect, allowed nuclear-armed states to take positions claiming that normal humanitarian rules do not apply, for instance in their reservations to 1977 Additional Protocol I to the Geneva Conventions.⁶⁵ Yet it is not clear why the importance attached to a weapon by its possessor should exclude that weapon from standards of acceptability that apply in principle to all means and methods of warfare.

Even if the relevance of processes like those on landmines and cluster munitions is disputed, comparison and contrast with the nuclear weapons context could still be of use in helping to filter international policy approaches concerning two important, related questions:

- How were unpropitious environments for dealing with the effects of these weapons transformed?
- Do these humanitarian approaches suggest common features (or “building blocks”) that could be relevant in considering the humanitarian consequences of nuclear weapons?

64 See J. Borrie and T. Caughley, “How are humanitarian approaches relevant to achieving progress on nuclear disarmament?”, in R. Johnson (ed.), *Decline or Transform: Nuclear Disarmament and Security Beyond the NPT Review Process*, Acronym Institute, 2012, p. 37.

65 B. Tertrais, “In defense of deterrence: the relevance, morality and cost-effectiveness of nuclear weapons”, *Proliferation Papers*, no. 39, IFRI Security Studies Center, 2011, p. 22.

TRANSFORMING UNPROFITIOUS ENVIRONMENTS

Once they were underway, the Ottawa and Oslo processes proceeded rapidly by multilateral standards. The Oslo process resulted in adoption of the 2008 Convention on Cluster Munitions in just 15 months. In October 1996, Canada hosted an international conference in Ottawa entitled “Towards a Global Ban on AP Mines”, and such a treaty was achieved less than a year later in Oslo in September 1997.⁶⁶

It might be tempting to conclude that the rapidity of these ban processes must have been because anti-personnel mines and cluster munitions were “ripe” to be banned. This was not really the case for either weapon. One reason for the rapidity was because those states centrally involved in these initiatives believed that they had to move decisively and quickly towards a clear humanitarian objective. In the Oslo process, the core group of states steering it felt that a long process would be difficult to sustain in terms of mobilizing the necessary resources and political focus.

A second point is that the Ottawa and Oslo processes actually represented later phases of reframing the acceptability of these weapons. Each initiative stemmed from a legacy of failed or only partially successful efforts to restrict anti-personnel mines and cluster munitions, among other anti-personnel weapons, dating back to the South-East Asia conflict in the 1960s.⁶⁷ For example, proposals were made to ban cluster munitions and air-delivered mines in 1974. Protocol II of the 1980 Convention on Certain Conventional Weapons (CCW) was widely regarded as weak, and efforts to strengthen its rules on anti-personnel mines in the mid-1990s fell short of a ban. And despite concerns expressed by humanitarian organizations about ongoing use of cluster munitions, the 1990s saw no international progress towards systematically addressing the hazards of these weapons.

EVIDENCE OF HUMANITARIAN CONSEQUENCES

What changed? It is difficult to simply credit contextual factors such as the end of the Cold War, since many post-Cold War efforts failed to gain traction. What can be asserted with confidence is that the nature of the

66 For accounts of both of these processes see J. Borrie, *Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions Was Won*, UNIDIR, 2009.

67 E. Prokosch, *The Technology of Killing: A Military and Political History of Antipersonnel Weapons*, 1995.

evidence being collected about the effects of these weapons altered. It helped to generate new critical questions and arguments made about their effects. (This, in turn, generated further demand for research and evidence, creating a feedback loop with policy analysis and proposals.) It is significant here that observing and documenting the real effects of such weapons in the field often fell to non-state actors, such as health professionals, researchers, or sometimes those dealing with weapon contamination, such as humanitarian deminers.⁶⁸ States by themselves often lacked the expertise or even incentive to initiate the process of reframing views of the weapons.

This feedback loop of evidence and argument about human impact was crucial. For example, in the 1970s, proposals to ban cluster munitions were founded upon concerns about the effects of “cluster warheads” on combatants in conflict at time of weapon use. However, such proposals were thwarted because of an absence of supporting information at the time—the feedback loop was not established. In contrast, a range of evidence concerning the post-conflict hazards of these weapons to civilians substantiated humanitarian concerns about cluster munitions in the twenty-first century. This belied the circular discourse states were accustomed to in multilateral forums such as the CCW in which they could claim no specific rules on cluster munitions were necessary as, in effect, they would never use weapons that would systematically or foreseeably violate humanitarian law. Harm to civilians was isolated and manageable within current rules, many states assumed.

REFRAMING

The origins of changes in state policymakers’ perceptions about the value of the weapons in question occurred after new, critical questions were asked based on consideration of the humanitarian consequences of use, which successfully challenged existing beliefs and assumptions. Focusing on the humanitarian consequences of the weapons enabled users/possessors’ privileged claims about the legitimacy of their arms to be challenged. Information about such effects could be collected without dependence on the claims or cooperation of users. Analysis of this

68 For discussion about the implications of this, see R.M. Coupland, “The effects of weapons and the Solferino cycle”, *British Medical Journal*, vol. 319, 1999, pp. 864–865.

information showed some claims to fall short, for instance concerning the purported reliability of explosive submunitions,⁶⁹ or the military necessity of anti-personnel mines.⁷⁰ It was shown that the humanitarian hazards caused by these weapons were not isolated incidents, but reflected a pattern of harm foreseeable across a range of practical contexts.⁷¹

The introduction of such evidence and critical argumentation was not universally welcomed by states in either the anti-personnel mine or cluster munition discourses. It created tensions for states to manage in terms of their conflicting interests. And it posed internal challenges for those states acknowledging the humanitarian evidence of impact of these weapons. This acknowledgement implied possession or use of the weapons to be at odds with their national identities as “responsible states”, or as “humanitarian powers” as established in their own rhetoric. (This included two nuclear-armed states, France and the United Kingdom, as well as many states living under extended nuclear deterrence, for instance in NATO.)

RESTRUCTURING DISCOURSE

Some states were loath to reform or bypass the structures contributing to blockage. The prime multilateral structure in the cases of anti-personnel mines and cluster munitions was the CCW, which imposed constraints on how evidence could be discussed and evaluated, how non-state actors with information to contribute were treated, and how decisions could be made. Taken together, these factors reinforced rather than interrogated the humanitarian acceptability of the weapons in question, and tended to lead to low-common-denominator outcomes.

This is compounded in multilateral disarmament and arms control by the consensus rule or practice, which usually holds sway. By exploiting procedural tactics, an obstructive few are able to—and often do—prevent the emergence of cooperation through formal channels that could yield general benefit. The general problem is that if there is evident need to negotiate a robust new legal norm (say, a treaty to ban cluster munitions

69 C. King, O. Dullum, and G. Østern, *M85: An Analysis of Reliability*, Norwegian People's Aid, 2007.

70 International Committee of the Red Cross, *Anti-Personnel Mines: Friend or Foe? A Study of the Military Use and Effectiveness of Anti-Personnel Mines*, 1996.

71 For instance, see R. Moyes and B. Rappert, *Failure to Protect: A Case for the Prohibition of Cluster Munitions*, Landmine Action, 2006.

on humanitarian grounds), in many cases the humanitarian problem is the consequence of the self-interested behaviour of certain parties, in this case users of cluster munitions. Logically, these users, who perceive benefit from that behaviour, would then object to such a norm and prevent the consensus to act from emerging. It is relevant in this respect that the consensus decision-making rule is not the norm in multilateral domains beyond disarmament and arms control, for instance in international humanitarian law.⁷²

It is also pertinent that the treaties to ban anti-personnel mines and cluster munitions were achieved outside established multilateral structures for discourse on weapons. The Ottawa process emerged after CCW negotiations had run their course and fallen short of an anti-personnel mine ban. The Oslo process emerged after negotiations on an instrument to address the humanitarian impacts of cluster munitions did not come to pass after years of discussion in the CCW. The Oslo process's emergence in turn galvanized those states opposed to its goal of banning those cluster munitions causing "unacceptable harm" to civilians to start much less ambitious CCW negotiations (which ultimately failed). For a time, the Oslo process and the CCW thus operated in parallel. While the CCW process was concerned with balancing military and humanitarian considerations, the Oslo process adopted as its basis for discourse the need to ban those cluster munitions causing unacceptable harm to civilians. The process of investigating this permitted the claims of users of cluster munitions on matters like submunition reliability to be compared with real-world evidence.

CONSTRUCTIVELY UPSETTING THE STATUS QUO THROUGH SUCCESSIVE PHASES OF COOPERATIVE EFFORT

As discussed above, non-state actors of various kinds had useful things to contribute, and indeed they laid the groundwork for state reframing and state-led processes towards humanitarian treaty objectives. An improved picture of the actual consequences of use challenged claims about weapon acceptability. In turn, for states with humanitarian identities, reframing in effect circumscribed the situations in which that weapon's use could

72 J. Borrie and A. Thornton, *The Value of Diversity in Multilateral Disarmament Work*, UNIDIR, 2008, pp. 62–63.

legitimately be envisaged, thus diminishing the utility of the weapon for them.

Once this reframing began to occur beyond a few states, overcoming the status quo discourse on anti-personnel mines and cluster munitions became a prospect. It did not require a large number of states to call these weapons into question. Nor was destabilization of an unproductive status quo contingent on the behaviour of all of the users or stockpilers of the weapons in question.

The humanitarian processes to ban anti-personnel mines and cluster munitions involved successive phases of effort. Concerned individuals, non-state entities and then representatives of a few interested states dominated the early phases of effort. These overlapping phases were concerned with understanding and building the case for the humanitarian problem, then developing critical argumentation to challenge or “reframe” prevailing policies on the weapons. This early effort paid off in that it influenced diverse states’ positions. It also prepared the campaigns to address the impacts of these weapons to take full advantage of events (such as the large-scale use of cluster munitions in Southern Lebanon in 2006), and to adjust to opportunities for rapid transitions, for instance from existing multilateral machinery to new, free-standing processes focused on humanitarian goals.

These early phases gathered what one senior diplomat involved in both the Ottawa and Oslo processes termed “the right people, enough resources, and political backing toward a clear objective”.⁷³ This included a core group of states willing to commit to leadership towards such a goal working in partnership with international organizations, social movements, knowledgeable practitioners, and sympathetic states, all of which enable the respective Ottawa and Oslo processes.

The adoption of new international legal standards such as the Mine Ban Treaty and the Convention on Cluster Munitions is often regarded as representing the birth of new norms delegitimizing “unacceptable weapons”. And so it is, provided it is also kept in mind that these births resulted from the development and spread well before then of the idea that these weapons are not acceptable. Such was the accumulating

73 J. Borrie, *Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions Was Won*, UNIDIR, 2009, p. 320.

strength of the respective campaigns against anti-personnel mines and cluster munitions that these weapons were becoming stigmatized to the point that governments gathered the courage to ban them—an action that continues to strengthen the stigma. As well as binding those formally adhering to the ban regimes from possessing or using these weapons, these regimes also appear to be constraining the behaviour of those states outside them.

BUILDING BLOCKS

Figure 1 summarizes some of the distinctive factors common to the international campaigns leading to the treaties prohibiting anti-personnel mines and cluster munitions discussed above. There is not space in this paper to offer a detailed analysis justifying these factors as potential “building blocks” in considering the humanitarian consequences of nuclear weapons. However, as noted above, it would appear likely that these are of likely relevance in view of the success of those processes in achieving their humanitarian objectives. This included altering commonly held beliefs about the weapons in question—something crucial in the context of the perceived value of nuclear arms if these are ever to be eliminated.

Figure 1. Some distinctive factors common to international humanitarian processes on anti-personnel mines and cluster munitions



IMPLICATIONS

It is clear from the discussion above that viewing any weapon through a humanitarian lens is not a value-neutral exercise. Examining data and critically investigating claims about aspects of the weapon in question may alter state policymakers' beliefs about the utility and acceptability of a given weapon. And that is the point.

Clearly, there are marked differences between the use of nuclear weapons on the one hand, and anti-personnel mines and cluster munitions on the other. These distinctions do not stem merely from their comparative levels of destructiveness, but extend to the purposes for which these weapons are or might be deployed, the sets of their possessors, and the contexts in which the discourses about their utility, legitimacy, and continued existence have occurred. Nonetheless, the Ottawa and Oslo processes succeeded in reframing international discourses from those in which arguments over these weapons' intended uses were paramount, to those in which their actual effects received focus.

It is not simplistic to conclude that there is something to learn from the dynamics of these initiatives and to adapt to nuclear disarmament efforts. This is because (as in the Ottawa and Oslo processes) real movement towards abolition will likely only occur when enough policymakers and publics are persuaded that a situation in which the weapons continue to exist indefinitely is not acceptable, their purported legitimacy can no longer be tolerated, and that a ban process must be pursued without further delay irrespective of what existing possessors would prefer.⁷⁴

Analysts have observed that despite the importance of components of the current nuclear-weapons-control regime, such as the NPT, it represents a status quo that suits nuclear-armed states and infantilizes the NPT non-nuclear-weapon states.⁷⁵ The latter periodically voice their grievances about the continued existence of nuclear weapons legitimized by the

74 See also P. Lewis, "A new approach to nuclear disarmament: learning from international humanitarian law success", *ICNND Papers*, no. 13, International Commission on Nuclear Non-proliferation and Disarmament 2009, p. 20.

75 For instance, see N. Ritchie, "Valuing and devaluing nuclear weapons", *Contemporary Security Policy*, 2013 (forthcoming); and R. Johnson, "The NPT in 2010–2012: a control regime trapped in time", in R. Johnson (ed.), *Decline or Transform: Nuclear Disarmament and Security Beyond the NPT Review Process*, Acronym Institute, 2012.

regime, while non-proliferation and enforcement crises involving political outliers such as the Democratic People's Republic of Korea and the Islamic Republic of Iran dominate. This dynamic of blockage and a circular discourse dominated by possessor states is a familiar one. Efforts to eliminate nuclear weapons remain out of reach because the international community is stymied in its ability to delegitimize them. This is likely to lead to erosion of the norm against nuclear weapons.

Viewing nuclear weapons through a humanitarian lens suggests that a route to reverse this trend and further delegitimize them is in examining the real consequences of weapon detonation and, by extension, the acceptability of nuclear weapons. This may cast purported nuclear deterrence and associated assurances of possessors that nuclear weapons could never be used in a rather less flattering light. Regardless of how low the probability of a nuclear weapons detonation might be, it could be very high consequence in humanitarian terms. As one recent study observed, "so long as large ready-to-launch nuclear arsenals exist (and especially if more states acquire nuclear weapons), the risk that these weapons will one day be detonated is not negligible".⁷⁶ Considering this soberly may compel states to summon the courage to redouble their efforts to eliminate these weapons before the allegedly unthinkable occurs.

Seeing nuclear weapons use through a humanitarian lens may also help governments to set aside accumulated ideological differences or restrictive geographical caucuses that serve to obstruct meaningful collective progress, as occurred with landmines and cluster munitions. And, this lens could help to counter the view widespread among nuclear strategists of nuclear weapons as "peace enforcers", a (mistaken) view that has also trickled into the public consciousness in many countries despite nuclear deterrence's many internal logical contradictions, and the paucity of solid evidence to support it.⁷⁷

In sum, recent humanitarian processes on anti-personnel mines and cluster munitions highlighted concerns about these weapons and assumptions underpinning their legitimacy. Crucially, this was duly linked to credible and practical ways of pursuing those concerns in the form of a humanitarian objective and process. The movements to ban anti-

76 G. Perkovich and J.M. Acton, "Abolishing nuclear weapons", *Adelphi Papers*, no. 396, International Institute for Strategic Studies, 2008, p. 10.

77 K. Berry et al., *Delegitimizing Nuclear Weapons: Examining the Validity of Nuclear Deterrence*, James Martin Center for Nonproliferation Studies, 2010, p. 71.

personnel mines and cluster munitions may not have ranked high in terms of global causes, but they had demonstrable and palpable purposes, and were considered achievable by those involved in pursuing them. Such humanitarian perspectives are surely relevant as policymakers seek ways to strengthen the norm against nuclear weapons, and move towards a situation in which possession and use are universally considered unacceptable.

LEGITIMIZING AND DELEGITIMIZING NUCLEAR WEAPONS

Nick Ritchie

It cannot be right to acquiesce uncritically, for the rest of human history, in a system that maintains peace between potential adversaries partly by the threat of colossal disaster.

Sir Michael Quinlan, 2009⁷⁸

Over the past few years a network of states and civil society organizations has endeavoured to shift global nuclear disarmament discourse away from a familiar agenda dominated by the five Nuclear Non-Proliferation Treaty (NPT) nuclear-weapon states (China, France, the Russian Federation, the United Kingdom, and the United States) and a glacial step-by-step nuclear force reductions process to one that puts the unacceptable humanitarian impact of the use of nuclear weapons at centre stage. The purpose is to strip any use of nuclear weapons of any political legitimacy and, in doing so, radically undermine the legitimacy of possessing nuclear weapons at all. In short, the objective is to delegitimize nuclear weapons in order to provoke their elimination. This chapter aims to deepen our understanding of what delegitimizing nuclear weapons means and the challenges involved.⁷⁹ It does so by exploring three sources of nuclear legitimacy and three sources of nuclear illegitimacy, and draws on British social theorist David Beetham's prominent text on *The Legitimation of Power*.⁸⁰ It concludes by locating the challenges of delegitimizing nuclear weapons within a broader debate about sovereignty and global society as ordering principles of international politics. In doing so I argue that nuclear weapons are already partially delegitimized, but that radical delegitimation requires a new legal instrument since the NPT is not fit for that purpose.⁸¹

78 M. Quinlan, *Thinking about Nuclear Weapons: Principles, Problems, Prospects*, 2009, p. 54.

79 For a related analysis see K. Berry at al., "Delegitimizing Nuclear Weapons: Examining the Validity of Nuclear Deterrence", James Martin Center for Nonproliferation Studies, 2010.

80 D. Beetham, *The Legitimation of Power*, 1991.

81 This chapter is part of a wider project looking at the challenges of devaluing nuclear weapons—diminishing the values assigned to nuclear weapons to the point where it becomes politically, strategically, and socially acceptable to permanently relinquish a nuclear capability. A separate paper has examined the

THE IMPORTANCE OF LEGITIMACY

Legitimacy is an important concept for understanding the global nuclear order for two basic reasons:

- the extreme destructive capacity of nuclear weapons and the exceptionalism of their possession and possible use after Hiroshima and Nagasaki require justification and that justification rests on legitimacy; and
- nuclear weapons are embedded in a global nuclear order centred on the NPT in which some states have nuclear weapons and some do not.

It is an order that is valued despite its defects but one whose rules, norms, and outcomes need to be accepted as legitimate if they are to be sustained.

Being “legitimate” and acting “legitimately” is a social condition—a quality that society collectively “ascribes to an actor’s identity, interests, or practices, or to an institution’s norms, rules, and principles”.⁸² Legitimacy is generally ascribed on the basis of the justifiability of the rules governing relationships of power. Legitimacy therefore defines relations of power, in this case the power to deploy and use nuclear weapons. Those with power tend to seek legitimacy from the social realm because without it obedience to preferred norms and rules requires either coercion or provision of sufficient levels of incentives to induce continuous self-interested compliance by others, both of which can be costly and difficult.⁸³ Coercive compliance can entail constant surveillance, supervision, and sanction, as seen with the extent and costs of the coercive compliance of Iraq with its weapons of mass destruction (WMD) disarmament obligations in the 1990s. Compliance based on legitimacy does not rest on coercive fear of punishment or calculated self-interest. Instead, it rests on “an internal sense of moral obligation: control is legitimate to the extent that it is

valuing and devaluing of nuclear weapons using the United Kingdom as a case study; see N. Ritchie, “Valuing and devaluing nuclear weapons”, *Contemporary Security Policy*, vol. 34, no. 1, 2013.

82 C. Reus-Smit, “International crises of legitimacy”, *International Politics*, vol. 44, no. 1, 2007, p. 159.

83 Norms, here, refer to “standards of behavior defined in terms of rights and obligations”. S. Krasner, “Structural causes and regime consequences: regimes as intervening variables”, in S. Krasner, (ed.), *International Regimes*, 1983, p. 2.

approved or regarded as ‘right’⁸⁴. Compliance is consensual because it is morally justifiable.

Rules governing relationships of power are often codified in law, but there is an important distinction between legitimacy and legality. David Beetham differentiates between legal and moral legitimacy. Legal legitimacy refers to the acquisition and exercise of power in conformity with established law. If actions do not comply with legal rules they are illegitimate. Moral legitimacy refers to the rationally defensible moral or political principles that justify the law itself in terms of the underlying social purposes of the rules and the relationship between legal rules, and social institutions and norms. This distinction sharpens our understanding of what the humanitarian discourse on nuclear weapons is seeking to change, explored further below.

So legitimacy is more than just a useful accomplice to power: it is a social condition that is actively sought and one that is fluid and contingent rather than innate and fixed (the legitimacy of “legitimate” power is rarely absolute but often conditional). It is about the perceived legitimacy of actions within authority structures and the legitimacy of the authority structures themselves in terms of who is entitled to make the rules and why. In this context equality is a defining feature of legitimacy insofar as legitimate rules, norms, and regimes tend to be universal, non-discriminatory, and share burdens and benefits proportionally.⁸⁵ Legitimate power, then, rests on three factors: the legal validity of the acquisition and exercise of power, the justifiability of the rules governing a power relationship in terms of the beliefs and values current in the given society, and evidence of popular consent.⁸⁶

LEGITIMIZING NUCLEAR WEAPONS

State elites of nuclear-weapon-possessor states seek legitimacy for their nuclear weapons both from and for domestic and international/transnational audiences. This section identifies three primary sources of legitimacy, drawing in particular on the United Kingdom’s nuclear

84 I. Hurd, “Legitimacy and authority in international politics”, *International Organization*, vol. 53, no. 2, 1999, p. 381.

85 N. Rathbun, “The role of legitimacy in strengthening the nuclear non-proliferation regime”, *The Nonproliferation Review*, vol. 13, no. 2, 2006, p. 228.

86 D. Beetham, *The Legitimation of Power*, 1991, p. 13.

weapons policy.⁸⁷ They are the NPT, the state system, and what can be described as “hegemonic moral certitude”. These three sources are framed as “justifiable rules” that legitimate social relations of power in terms of the possession and use of nuclear weapons. The extent of the legitimacy ascribed by and sought from these sources is contested. Legitimacy is partial at best, not absolute or enduring.

NPT

International institutions are a vital means of regulating and moderating the exercise of power in the international system. Legitimacy is part of the glue that holds multilateral institutions together. If an institution’s rules and norms lack legitimacy then compliance will depend on sustained coercion and naked self-interest. An institution will crumble and cease to have any meaningful effect if too many of its members stop complying with its rules and norms because they no longer believe in the justifiability and authority of the rules. Legitimacy, on the other hand, embeds compliance as a normal and natural action—a default position. The 1968 NPT is a source of nuclear legitimacy and illegitimacy. The treaty formally recognizes five states—China, France, the Russian Federation, the United Kingdom, and the United States—as nuclear-weapon states. The NPT is a legally binding treaty subject to national ratification. Acknowledgement of the fact of nuclear acquisition by these five states has been routinely interpreted as recognition in international law that they, and only they, are permitted to possess and deploy nuclear weapons. Nuclear discourse moves easily from this position to the language of entitlement, legal rights, and legitimacy, where legitimacy is conflated with legality.

The United Kingdom and other NPT nuclear-weapon states argue that the distinction drawn in the NPT between nuclear- and non-nuclear-weapon states represents a legal and therefore legitimate entitlement to possess and use nuclear weapons. The British Labour government, for example, legitimized its decision in 2006 to begin the long process of replacing the United Kingdom’s current Trident nuclear weapon system based on this legal definition of legitimacy.⁸⁸ Prime Minister Tony Blair

87 Based on the author’s study in *A Nuclear Weapons-Free World? Britain, Trident, and the Challenges Ahead*, 2012.

88 UK Ministry of Defence and Foreign and Commonwealth Office, *The Future of the United Kingdom’s Nuclear Deterrent*, 2006, p. 14.

insisted that the NPT “makes it absolutely clear that Britain has the right to possess nuclear weapons”⁸⁹ and that “it is clear that those who are the major nuclear powers can remain nuclear powers, fully consistent with the non-proliferation treaty ... it is recognised, and it is at the heart of the non-proliferation treaty, that Britain, along with those other countries [the other four recognized nuclear-weapon states], should be able to be a nuclear power.”⁹⁰

The long-term possession of nuclear weapons is justified in the United Kingdom as legitimate because it was legally recognized in 1968 as a nuclear-weapon state under the NPT. This is particularly important for a state such as the United Kingdom—a self-appointed internationalist steward of the post-Second World War liberal international order that is committed to the multilateral rules-based system of which the NPT is a part. The possession of nuclear weapons can only be reconciled with championing a rules-based system grounded in international law as the legitimate form of international order if possession is framed as wholly legitimate under the NPT. The NPT, then, is interpreted as providing a justifiable set of rules that restrict nuclear possession to a handful of states based on the legal codification of historical circumstance while denying the right of nuclear possession to all other states. The NPT therefore constitutes a vital source of legitimacy for the NPT nuclear-weapon states to justify their continued possession of nuclear weapons to domestic, international, and transnational audiences. This was compounded by the consensus decision reached by states parties at the 1995 NPT Review and Extension Conference to extend the duration of the treaty indefinitely beyond its initial 25-year timeframe. This refreshed the legitimacy of nuclear weapon possession for the NPT nuclear-weapon states with a post-Cold War permanence. In sum, the NPT is a source of legal recognition that becomes entitlement that legitimates enduring nuclear possession for the five NPT nuclear-weapon states. It is further compounded by the near-universal ratification of the treaty that signals popular sovereign consent for its terms.⁹¹

89 UK House of Commons, *Official Report*, 21 February 2007, column 260.

90 UK House of Commons, *Official Report*, 4 December 2006, column 34.

91 Currently, four states are not members of the NPT: India, Israel, Pakistan, and the Democratic People’s Republic of Korea (which can claims to have withdrawn). All are known to possess—or are strongly suspected of possessing—nuclear weapons.

This interpretation of the NPT as a vehicle for ascribing legitimacy to nuclear weapons is deeply contested (and discussed further below). As then director of the International Atomic Energy Agency, Mohamed ElBaradei, noted in 2006:

under the NPT, there is no such thing as a “legitimate” or “illegitimate” nuclear weapons state. The fact that five states are recognised in the treaty as holders of nuclear weapons was regarded as a matter of transition; the treaty does not in any sense confer permanent status on those states as weapons holders.⁹²

Under the NPT the possession of nuclear weapons by those recognized as nuclear-weapon states is but a temporary phenomenon pending nuclear disarmament. But we are far from that end state and permanence has seeped into the collective nuclear mindset. The NPT has come to embody a justifiable and begrudgingly consensual social nuclear hierarchy that mirrors the permanent membership of the United Nations Security Council, reifies nuclear weapons as a currency of power for a privileged few, and contributes to a naturalized conflation of power, influence, and nuclear possession.⁹³ It has legitimized the continued (indefinite?) possession of nuclear weapons, in the NPT nuclear-weapon states’ eyes at least.

THE STATE SYSTEM

The state system constitutes a second source of legitimacy for the possession of nuclear weapons. More specifically, it is the institution of sovereignty whereby the state remains the fundamental political unit in international politics and the highest form of political authority. Legitimacy, here, rests on the necessity of military power to ensure national survival, influence, autonomy, and prosperity in an anarchic international system characterized by dangerous and irresolvable uncertainty and security competition among states. It is the necessity of military power that justifies and legitimizes its acquisition in the name of the irreducible interest of the sovereign state in its own continuation.

92 M. ElBaradei, “Rethinking nuclear safeguards”, *The Washington Post*, 14 June 2006.

93 A. Harrington de Santana, “Nuclear weapons as the currency of power: deconstructing the fetishism of force”, *The Nonproliferation Review*, vol. 16, no. 3, 2009, p. 331.

The legal legitimacy of accumulating military power in the post-1945 order stems from the sovereign right to self-defence enshrined in Article 51 of the Charter of the United Nations and the Charter's fundamental principle of the sovereign equality of all states. The logic here is that it is legitimate to acquire nuclear weapons in response to the imperatives of the international system by virtue of being a state. Nuclear weapons ensure the survival of the state and stabilize inescapable major power competition via the fear-inducing logic and practice of nuclear deterrence and the caution it induces.⁹⁴ Nuclear weapons are a necessary and therefore legitimate sovereign response to acute military insecurity generated by actual or potential belligerent states.

The “justifiable rules” of this state-centric “realist” logic stands outside the NPT's normative framework that seeks to restrict the acquisition of nuclear weapons as a legitimate response to state insecurity under anarchy. It is a quite different paradigm of legitimacy to the one centred on the NPT and rooted in equitable norms of international society. It is a paradigm that argues arms control and disarmament measures such as the NPT cannot and should not be relied upon to provide enduring state security under anarchy—for that we must trust in military power above all else.⁹⁵

Official nuclear weapons discourse in the United Kingdom, for example, regularly invokes the national security risks, or strategic uncertainty, inherent in the state system to justify an enduring need to retain a strategic nuclear capability. This is the essence of a realist justification. From this perspective the international system is by definition beset with uncertainty, fluidity, and possibilities of behaviour on the part of states that could harm vital British interests through nuclear or major conventional military aggression. To protect the United Kingdom's interests, in particular the ultimate interest of national survival, the United Kingdom must retain a nuclear capability as an “insurance” against strategic risk. Tony Blair was quite clear in 2006 when he stated “We believe that an independent British nuclear deterrent is an essential part of our insurance against the uncertainties and risks of the future” and that “An independent deterrent ensures our vital interests will be safeguarded”.⁹⁶ This mantra was adopted

94 S. Sagan and K. Waltz, *The Spread of Nuclear Weapons: A Debate Renewed*, 2003, p. 154.

95 C. Gray, *House of Cards: Why Arms Control Must Fail*, 1992.

96 UK Ministry of Defence and Foreign and Commonwealth Office, *The Future of the United Kingdom's Nuclear Deterrent*, 2006, p. 5.

by Prime Minister David Cameron, who has repeatedly asserted that the United Kingdom's nuclear weapons are "the ultimate insurance policy against blackmail or attack by other countries. That is why I believe it is right to maintain and replace it [Trident]".⁹⁷

The logic of nuclear deterrence is presented as the solution to strategic uncertainty in the affairs of states. The United Kingdom (and other NPT nuclear-weapon states) tacitly acknowledge that the logic of nuclear deterrence as an abstract process of strategic reasoning can be objectively applied to and appropriated by any state that feels sufficiently threatened irrespective of legal obligations and legal designation as a nuclear- or non-nuclear-weapon state under the NPT. This is where the NPT nuclear-weapon states use the NPT to justify appropriation of the logic of nuclear deterrence for just themselves and no others. The conflation of legality with the legitimacy of their nuclear weapons under the NPT has led the United Kingdom and other nuclear-weapon states to proceed as if the logic of nuclear deterrence is not applicable to non-nuclear-weapon states because they have accepted the legal designation of "non-nuclear-weapon states". The danger is that the nuclear-weapon states feel free to extol the virtues of the logic of nuclear deterrence as the solution to strategic uncertainty secure in the knowledge that such activity has no adverse persuasive effect on the non-nuclear community of NPT states because the logic of nuclear deterrence cannot legally be appropriated by them (in some cases this is ameliorated through extended deterrence commitments). It is this legal definition of legitimacy under the NPT that is used to justify the nuclear-weapon states' "do as I say, not as I do" approach to their continued possession of nuclear weapons. The United Kingdom has adopted just such an approach with its repeated insistence that nuclear deterrence remains an indispensable component of British national security for the foreseeable future, at least as long as nuclear weapons exist.⁹⁸

Sovereignty is not unrestricted and states are embedded in overlapping normative institutional frameworks that generate mutual rights and obligations. Nevertheless, the realist reading of the state system is invoked as an ultimate set of justifiable rules that legitimize the possession of

97 UK House of Commons, *Official Report*, 18 May 2011, column 338.

98 See UK Ministry of Defence and Foreign and Commonwealth Office, *The Future of the United Kingdom's Nuclear Deterrent*, 2006; and UK Secretary of State for Defence Des Browne, "The United Kingdom's nuclear deterrent in the 21st century", speech at King's College London, 25 January 2007.

nuclear weapons based on the strategic logic of nuclear deterrence. This set of rules overrides the NPT's prescriptions of who can and cannot legitimately acquire a nuclear capability. Yet the acquisition of nuclear weapons by just any state is manifestly not acceptable in contemporary global politics. The normative content of the NPT and state concerns about the effects of nuclear proliferation on global and regional balances of power can provide a partial explanation for this unacceptability, but for a fuller account we need to explore a third source of legitimacy—hegemonic moral certitude.

HEGEMONIC MORAL CERTITUDE

Moral certitude refers to an innate confidence in the rightness of nuclear possession based on the moral values of the possessor. These values are universal, irreducible, just, profound, and therefore authoritative. Actions based on the authority of these moral values are legitimate, including the possession of nuclear weapons. This third source of legitimacy, then, is the liberal exceptionalism that underpins the post-Cold War international order based on the United States' preponderance of power following the collapse of the Soviet Union.⁹⁹ It is defined by the emergence of the United States as a military, economic, and cultural superpower after the Second World War that promoted a liberal, institutional international order to protect its interests as well as to benefit other, less powerful states.¹⁰⁰

The legitimacy of nuclear weapons from this perspective reflects a broadly Western nuclear exceptionalism in which the liberal values underpinning Western polities and state actions justify selective possession of nuclear weapons. This view insists that nuclear weapons are not all morally equivalent. Those in the hands of the Western states and their allies are inherently legitimate because actions that reinforce the security of the West by extension reinforce the security of the "international community": Western nuclear weapons are good for international peace and security; those in the hands of authoritarian states or states beyond the West's sphere of influence are illegitimate and undermine the Western understanding of international order.¹⁰¹ Nuclear protection of the liberal

99 J. Nye, *The Paradox of American Power*, 2002, p. 16.

100 J. Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars*, 2001, chp. 2.

101 N. Cooper, "Putting disarmament back in the frame", *Review of International Studies*, vol. 32, no. 2, 2006, pp. 370–374.

international order is a global public good and therefore legitimate. Continued Western possession of nuclear weapons is therefore legitimized as an essential bulwark against non-liberal, non-democratic nuclear-armed states that might use their nuclear might to challenge and perhaps overturn the Western international order.

Adherents to this view implicitly, and sometimes explicitly, argue that the discrimination at the heart of the NPT between nuclear- and non-nuclear-weapon states can (and indeed must) continue indefinitely, particularly for the Western nuclear powers. This perspective legitimizes the general existence of nuclear weapons and their possession by certain states and delegitimizes the possession of nuclear weapons by those hostile to the West based on exceptionalist claims about the fundamental moral legitimacy of Western policies and actions. It dismisses concerns about the sovereign equality of states in the global nuclear order and runs counter to the NPT's basic principle that nuclear weapons are generally illegitimate and have only transitory legitimacy (at best) for the five nuclear powers recognized in the NPT.

Here we encounter a different conception of the legitimate and illegitimate possession of nuclear weapons. It has been shaped by the United States' globalized national security doctrine and its role as the keystone "indispensable nation" of our times. This doctrine has been dominated by a nexus of "rogue" states, WMD, and state-sponsored terrorism since the end of the Cold War and in particular after the attacks of 11 September 2001. It is a doctrine that has legitimized the military power and nuclear preponderance of the United States and its allies while delegitimizing the development and deployment of nuclear weapons by "rogue" states.¹⁰²

Anthropologist Hugh Gusterson labels this "nuclear Orientalism"—a racialized discourse "dividing the world into nations that can be trusted with nuclear weapons and those that cannot", particularly Muslim states amid fears of an "Islamic bomb".¹⁰³ Gusterson argues that the production and perpetuation of this divide is an ideology ("a way of constructing political ideas, institutions, and behaviour") that legitimizes the nuclear monopoly of the NPT nuclear-weapon states in general and the Western nuclear powers in particular through a process of "othering" Third World

102 See M. Klare, *Rogue States and Nuclear Outlaws*, 1995.

103 H. Gusterson, "Nuclear weapons and the other in the western imagination", *Cultural Anthropology*, vol. 14, no. 1, 1999, pp. 113 and 125.

regimes.¹⁰⁴ In doing so it obscures the complex and multiple dangers of nuclear weapons in all countries and the ways in which Western nuclear weapons are implicated in the production of nuclear dangers in a global nuclear social system. It is a doctrine, or ideology, that legitimizes a system of nuclear domination that seeks to keep nuclear weapons in the hands of the powerful and out of the hands of the powerless.¹⁰⁵ It has led to an asymmetric global nuclear order that accepts some nuclear weapons and fiercely rejects others based on the power and interests of the global hegemon.

Moreover, Neil Cooper suggests three classes of nuclear-armed states under a United States hegemonic nuclear order: legitimate “nuclear-weapon states” formally permitted to hold nuclear weapons under the NPT; legitimate “rogue” states that are informally permitted to hold nuclear weapons (this includes Pakistan and Israel) subject to criticism but little coercive counterproliferation action; and illegitimate “rogue” states subject to severe disciplinary mechanisms of formal opprobrium, isolation, sanctions, shadow war, and forcible disarmament (including the Democratic People’s Republic of Korea, Iraq and the Islamic Republic of Iran). I would add a two more classes: a fourth class of “illegitimate nuclear-weapon state” for India* as a “responsible” nuclear-armed major power, and a fifth class of “formal nuclear beneficiaries” that are subject to formal and informal nuclear security guarantees and might have nuclear weapons forward-deployed on their territory. These categories are not objective, but are rather contingent upon the construction of threats, interests, and identities within the United States and wider Western nuclear weapons discourse.

This typology legitimizes and delegitimizes nuclear weapons according to a global nuclear order underpinned by hegemonic moral exceptionalism. Returning again to the NPT, we can see that it has been used as an instrument to legitimize disciplinary measures in the name of constitutional compliance with universal precepts, but also in the name of Western values, interests, and order. The George W. Bush administration’s apparent disdain for multilateral instruments of global security governance led many to view its invocation of the NPT to justify disciplinary measures against “rogue” states such as Iraq as a convenient multilateral gloss for

* Editors’ note—illegitimate vis-à-vis the NPT.

104 Ibid., p. 115.

105 Ibid., p. 133.

the unilateral exercise of hegemonic power in the name of a discriminatory nuclear order. But for others, notably in the West, nuclear protection of the current liberal international order is deemed a universal and therefore legitimate public good. Nuclear armed or aspirant states are positioned within that order according to the NPT's legal distinction between nuclear and non-nuclear-weapon states and external political orientation. This has at once facilitated the NPT as a positive symptom of a liberal international order while simultaneously undermining it through an uneasy tension that legitimizes the permanent if selective existence of nuclear weapons.

DELEGITIMIZING NUCLEAR WEAPONS

So far we have explored three sources of nuclear legitimacy: the NPT, which provides selective legitimacy in the form of legal validity and apparent consent; the state system, which provides political legitimacy in the disputed form of universal sovereign necessity; and a hegemonic moral certitude that provides a selective moral legitimacy in the name of a global public good. These three sources are interconnected and all are judged to rest on justifiable rules of global nuclear power relations. Together they present tough challenges for those seeking to challenge and erode the legitimacy of nuclear weapons with a view to delegitimizing them entirely.

What do we mean by delegitimizing nuclear weapons? The first part of the chapter has drawn on the three forms of legitimacy outlined by Beetham. Helpfully, Beetham also set out three forms of illegitimacy. First, he describes actions that breach legal rules as "illegitimate". Second, a "legitimacy deficit" exists when established rules of power can no longer be justified in terms of shared beliefs.¹⁰⁶ Third, a process of "delegitimation" or "negative legitimacy" in which consent by the public has been withdrawn.¹⁰⁷ We can think of these as three processes of delegitimizing nuclear weapons based on withdrawal of popular consent, changing the basis of the legal validity of the possession and use of nuclear weapons, and demonstrating that current nuclear practices and power relations do not reflect justifiable rules based on shared beliefs prevalent in society—in our case global society. The latter is particularly important and sits at the centre of a resurgent humanitarian discourse on the unacceptable effects of any use of nuclear weapons. A process of change in this sense

106 D. Beetham, *The Legitimation of Power*, 1991, pp. 17–18.

107 *Ibid.*, p. 19.

rests on leveraging the disparity between current nuclear practices and justifiable rules through networks and structures of normative, institutional, and social power, such as legal processes, mobilizing public opinion, civil society activism, and dialogue, to effect a change in collective understandings of the legitimacy of nuclear weapons. A shift in shared understandings of acceptable nuclear behaviour will, it is posited, diminish the degree of legitimacy socially ascribed to nuclear weapons. This, in turn, will affect the preferences of nuclear-armed states with respect to their continued possession of weapons that are increasingly framed as beyond the pale of responsible and civilized statecraft.

Delegitimizing nuclear weapons can therefore be defined as a process of identifying and diminishing the authority and validity of sources of nuclear legitimacy by exposing the divergence of nuclear weapon practices and values from justifiable rules, consent, legal precedent, and the principle of equality.¹⁰⁸ This goes beyond delegitimizing knowledge claims about the beneficial effects perceived to accrue from nuclear weapons, for example arguments that undermine the validity of nuclear deterrence and its empirical basis.¹⁰⁹ It is about processes that undermine the legitimacy of valuing those purportedly beneficial effects in the first place—that is, challenging the social acceptability of valuing the effects of possessing nuclear weapon even if those effects are framed as beneficial.

Beetham's three delegitimizing processes are reflected in three specific sources of nuclear illegitimacy: the NPT, popular consent, and the resurgent humanitarian discourse on the effects of the use of nuclear weapons that rests on a cosmopolitan narrative of global order. This section spends more time on the last of these three processes, but first I want to touch upon the NPT and consent.

THE NPT'S LEGITIMACY DEFICIT

The legitimacy of NPT nuclear-weapon states' arsenals is challenged by the treaty's rules that say nuclear weapons will at some point have to be relinquished. In other words, at some point nuclear weapons will cease to have any legitimacy for any state. This makes any legitimacy currently

108 A. Gill, *Taking the Path of Delegitimization to Nuclear Disarmament*, Center for a New American Security, 2009.

109 For example W. Wilson, "The myth of nuclear deterrence", *Nonproliferation Review*, vol. 15, no. 3, 2008.

assigned to nuclear weapons via the treaty transient and conditional. It suggests that nuclear weapons are intrinsically illegitimate while accepting the temporary reality of five nuclear-weapon states at the time of negotiation. But the legitimacy of nuclear weapons is also undermined by illegitimacy of the NPT's rules themselves in that the discriminatory nature of the treaty undermines the principles of equality and universal rights and obligations on which enduring legitimacy and authority ultimately rest. The NPT does not discriminate when it comes to preventing the proliferation of nuclear weapons or benefiting from the peaceful uses of nuclear energy, but it does discriminate between nuclear- and non-nuclear-weapon states. Nina Rathbun argues that this "is the major factor reducing the legitimacy of the treaty". It is here that progress towards nuclear disarmament is so vital because it "strengthens the legitimacy of the regime by creating the expectation that the special rights of the nuclear weapon states will end at some point in the future".¹¹⁰ As a result, the legitimacy of the NPT is based on "a fine balance of interests and principles that work together to circumscribe and limit the fundamental discrimination inherent in the treaty".¹¹¹

The NPT nuclear-weapon states recognize this "legitimacy deficit" and feel periodically compelled to demonstrate sufficient compliance with disarmament commitments to buttress the principle of mutual obligation and with it the legitimacy of the NPT's "grand bargain". This is evident in the consensus outcomes of the 1995, 2000, and 2010 NPT Review Conferences. In that context, non-nuclear-weapon states have successfully leveraged the NPT's legal requirement for the nuclear-weapon states to work towards nuclear disarmament "in good faith" to limit the scope of "legitimate" nuclear policy practice. This has included specific measures to reduce nuclear holdings, rethink declaratory policies, terminate explosive nuclear testing, accede to nuclear-weapon-free zone treaties, end production of fissile material for use in nuclear weapons, engage in transparency initiatives, and so on.

The extent to which the NPT constitutes a source of illegitimacy for nuclear weapons is limited, however. We must distinguish here between the capacity of the NPT to challenge and shape the legitimacy of nuclear policy practice and the legitimacy of nuclear weapons possession. The

110 N. Rathbun, "The role of legitimacy in strengthening the nuclear non-proliferation regime", *The Nonproliferation Review*, vol. 13, no. 2, 2006, p. 233.

111 *Ibid*, p. 237.

NPT has clearly been used to shape the former, but cannot address the latter with respect to the NPT nuclear-weapon states. While some nuclear practices have been delegitimized, the legitimacy of nuclear possession under the NPT and the logic of nuclear deterrence from which much of the value assigned to nuclear weapons originates have remained relatively undisturbed. The treaty delegitimizes possession of nuclear weapons for all but the five ordained nuclear-weapon states; here the NPT is permissive. This distinction highlights the limits of the NPT as a vehicle for delegitimizing nuclear weapons through its interpretation by the NPT nuclear-weapon states as a source of nuclear legitimacy.

The NPT also remains highly valued as a global institution that has steadily embedded norms against routine acquisition of nuclear weapons, of progress towards nuclear disarmament, and support for the exploitation of nuclear energy for civilian purposes.¹¹² The normative power of the NPT has shaped collective understandings of legitimate nuclear behaviour: non-acquisition as responsible international action by the many, cumulative and significant steps towards nuclear disarmament by its five recognized nuclear-weapon states, and a general collective refusal to ordain as legitimate the nuclear actions and interests of states that have acquired nuclear weapons outside of the NPT.¹¹³ Without the NPT regime the norm against nuclear proliferation would lack a legal, justifiable, consensual, and therefore legitimate foundation. There is a powerful consensus that the NPT and its norms be reproduced over time but that requires, at a minimum, passive acceptance of its defects by non-nuclear-weapon states to ensure its continuity. That acceptance, in turn, requires the current nuclear order to enjoy a sufficient level of legitimacy such that compliance with its norms and rules remains largely habitual and universal. For many non-nuclear-weapon states this requires delivery on promises of substantial progress towards nuclear disarmament. For now the NPT remains widely regarded as a fundamental pillar of global nuclear order, one that is not sufficiently unsatisfactory so as to cultivate an

112 General Assembly, *Prevention of the Wider Dissemination of Nuclear Weapons*, resolution 1665, 4 December 1961.

113 The Democratic People's Republic of Korea, India, and Pakistan have to varying degrees sought the legitimacy of nuclear possession enjoyed by the NPT nuclear-weapon states, and indeed the formal label of "nuclear-weapon state", but have largely failed, the United States–India civil nuclear agreement notwithstanding. Israel's deliberate ambiguity over its possession of nuclear weapons excludes it from such legitimacy-seeking.

irredeemable erosion of its underlying legitimacy and political authority. There is risk for both nuclear- and non-nuclear-weapon states if that legitimacy erodes significantly. Notably, the possibility that the legitimacy of the NPT nuclear-weapon states' nuclear weapons will be generalized and the non-proliferation norm delegitimized—facilitating the emergence of new nuclear-armed states with all of the attendant security risks and challenges.

The current situation is one in which the NPT is seen to ascribe legal and consensual legitimacy to the nuclear-weapon states' nuclear weapons that is at the same time being undermined by the discriminatory nature of the treaty. This is mitigated by promises of temporary possession pending disarmament that are tempered by an underlying consensus in support of the regime's continuation. The problem is that reproducing the NPT over time reproduces the legitimacy of nuclear possession for its five nuclear-weapon states.

Two conclusions are apparent. First, we can say the NPT as an institution of global nuclear order and the possession of nuclear weapons by the NPT nuclear-weapon states suffers from a clear legitimacy deficit. The “rules of power” codified by the NPT's discriminatory nuclear-weapon state–non-nuclear-weapon state distinction are outdated, and the majority of states parties favour the elimination of nuclear weapons. Nevertheless, the major powers, in particular the United States under George W. Bush's presidency, have routinely denied the existence or the importance of the NPT's legitimacy deficit and concentrated instead on threat, coercion, and incentives to secure compliance with non-proliferation commitments.¹¹⁴ Second, and more significantly, the NPT is structurally unable to irrefutably delegitimize nuclear weapons and the practice of nuclear deterrence given the discrimination between nuclear and non-nuclear states parties and the political space that discrimination provides for ascribing legitimacy to the possession of nuclear weapons for a select few. The legitimacy of nuclear weapons is contested under the NPT (and the NPT nuclear-weapon states are content with that contestation) but the treaty does not and cannot categorically delegitimize nuclear weapons (and the nuclear-weapon states would not allow it). This situation of contested legitimacy is endemic to the NPT as the premier institution of global nuclear governance. Delegitimizing

114 R. Price, “Nuclear weapons don't kill, rogues do”, *International Politics*, vol. 44, no. 2/3, 2007, pp. 236 and 245.

nuclear weapons as an essential component of a nuclear disarmament process sits in tension with the NPT.

NEGATIVE LEGITIMACY AND CONSENT

Nuclear weapons and their possible use have been “delegitimated” by the absence of clear popular consent for their possession and deployment. This is evidenced in global surveys of public opinion that show a majority of people in favour of nuclear disarmament. A 2008 poll by World Public Opinion on “World Publics on Eliminating All Nuclear Weapons”, for example, gave overwhelming majorities strongly in favour or somewhat in favour of the total elimination of nuclear weapons across 21 states, including all five nuclear-weapon states.¹¹⁵ In a global survey of attitudes towards nuclear weapons by The Simons Foundation in 2007, overwhelming majorities in the countries surveyed (France, Germany, Israel, Italy, the United Kingdom, and the United States) strongly supported or moderately supported “eliminating all nuclear weapons in the world through an enforceable agreement”.¹¹⁶ This indicates a general withdrawal of popular consent within global civil society for indefinite continuation of the current nuclear order. Nevertheless, public opinion in nuclear-armed states remains mixed and not sufficiently in favour of nuclear disarmament as to constitute an unequivocal withdrawal of popular consent for nuclear weapons requiring radical policy change.

We also see this “negative legitimacy”, as Beetham puts it, in support by the majority of states for United Nations General Assembly resolutions to further constrain nuclear policies and practices and hasten the elimination of nuclear weapons. The draft Nuclear Weapons Convention (NWC) modelled on the Chemical Weapons Convention and championed by Costa Rica and Malaysia was an important development, and has received widespread support. These two states have submitted a draft NWC to the General Assembly First Committee every year since 1997, with an updated version submitted in 2007.¹¹⁷ Secretary-General Ban Ki-moon’s

115 World Public Opinion is available at <http://icanw.wikispaces.com/file/view/Poll-WPO-2008.pdf/283580850/Poll-WPO-2008.pdf>.

116 *Global Public Opinion on Nuclear Weapons*, The Simons Foundation in partnership with Angus Reid Strategies, 2007, p. 15.

117 For the first iteration see General Assembly, *Letter Dated 31 October 1997 from the Charge d’Affaires of the Permanent Mission of Costa Rica to the United Nations Addressed to the Secretary-General*, UN document A/C.1/52/7, 17 January 1997.

October 2008 “five point proposal” for global nuclear security urged “all NPT parties, in particular the nuclear-weapon-states, to ... consider negotiating a nuclear-weapons convention, backed by a strong system of verification, as has long been proposed at the United Nations”, drawing on the Costa Rican–Malaysian draft.¹¹⁸ The General Assembly has adopted annual resolutions submitted by these two states and a host of others on “Follow-up to the advisory opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons”.¹¹⁹ The resolution calls on all states to commence multilateral negotiations leading to the early conclusion of an NWC and has also enjoyed widespread support in the NPT and General Assembly.¹²⁰ Another coalition of states has pursued the more limited interim goal of a legal instrument banning the use of nuclear weapons through a draft “Convention on the Prohibition of the Use of Nuclear Weapons” to the General Assembly First Committee that has also gathered majority support.¹²¹ Evidence therefore suggests that there is no popular support for nuclear weapons on a global scale in terms of people or states, though there remains strong public support for continued possession of nuclear weapons in most possessor states. The legitimacy of current relations of global nuclear power in terms of popular global consent can therefore be described as “negative”.

If delegitimizing is a process, then how might consent for nuclear weapons be demonstrably withdrawn? One way would be to make dissatisfaction with current nuclear weapons policies a significant political issue, for instance through protest, campaigning, advocacy of progressive change,

For the second iteration see General Assembly, *Letter Dated 17 December 2007 from the Permanent Representatives of Costa Rica and Malaysia to the United Nations Addressed to the Secretary-General*, UN document A/62/650, 18 January 2008.

- 118 “The United Nations and security in a nuclear-weapon-free world”, United Nations Secretary-General’s address to the East-West Institute, New York, 24 October 2008.
- 119 General Assembly, *Follow-up to the Advisory Opinion of the International Court of Justice on the Legality of the Threat or Use of Nuclear Weapons*, UN document A/RES/66/46, 12 January 2012.
- 120 130 states supported the resolution in 2011, 26 voted against, and 23 abstained. See also T. Wright, “Towards a treaty banning nuclear weapons”, International Campaign Against Nuclear Weapons, 2012.
- 121 In 2011 the resolution was adopted by 117 votes to 48, with 12 abstentions. For details of the resolution see General Assembly, *Convention on the Prohibition of the Use of Nuclear Weapons*, UN document A/C.1/65/L.26, 15 October 2010.

and mobilization of public opinion. Another would be for non-nuclear-weapon states to assert their agency and register withdrawal of consent for the status quo by disengaging from the NPT or exploring alternative means to reach desired ends deemed no longer attainable through established processes. We witnessed a glimmer of the former in relation to the process to negotiate a nuclear-weapon- and other WMD-free zone in the Middle East. In February 2013 it was reported that the Arab League might boycott the 2013 NPT Preparatory Meeting in protest at the lack of progress towards the Middle East zone agreed at the 2010 NPT Review Conference, in particular the cancellation of a planned conference in Helsinki to initiate the process.¹²² This did not occur, but the Egyptian delegation did walk out from the Preparatory Meeting midway through in protest over the failure to convene that conference.¹²³ This could be a one-time act of disengagement, or it could be the start of a deeper resistance to the NPT status quo. Of course, this approach carries serious political risk, as noted above.

ILLEGITIMACY AND HUMANITARIANISM

Turning now to the central issue: the legitimacy deficit of the current global nuclear order that has been thrown into sharp relief by a project to formally render the possession or use of nuclear weapons illegal under international humanitarian law (IHL). This is the point at which this volume's focus on the humanitarian effects of the use nuclear weapons enters our discussion. The purpose of developing a discourse on the unacceptable humanitarian effects of any use of nuclear weapons is to delegitimize those weapons in order to hasten their elimination.¹²⁴ For many proponents this entails formally delegitimizing the use of nuclear weapons and therefore delegitimizing their possession (more on the link between use and

122 E. Grossman, "Arab League threatens nonproliferation event boycott", Global Security Newswire, 21 February 2013. See also D. Joyner, "League of Arab States Council statement on postponement of the ME WMD FZ conference", Arms Control Law, 5 March 2013, <http://armscontrolaw.com/2013/03/05/league-of-arab-states-council-statement-on-postponement-of-the-me-wmd-fz-conference/>.

123 E. Grossman, "Arab League threatens nonproliferation event boycott", Global Security Newswire, 21 February 2013.

124 See K. Berry et al., *Delegitimizing Nuclear Weapons*, James Martin Center for Nonproliferation Studies, 2010; M. Brehm, R. Moyes, and T. Nash, *Banning Nuclear Weapons*, Article 36, 2013; B. Fihn (ed.), *Unspeakable Suffering: The Humanitarian Impact of Nuclear Weapons*, Reaching Critical Will, 2013.

possession later). The discourse builds on the informal stigmatization of the use of nuclear weapons captured in the notion of a “nuclear taboo” or a “norm of non-use”.¹²⁵ In fact, it can be viewed as a process of codifying the normative illegitimacy of use in a legal instrument culminating, eventually, in an unequivocal delegitimation that categorically outlaws nuclear possession and use.

International politics has a long history of legal instruments to ban the acquisition, development, deployment, and use of specific weapons. Proscribed weapons have been delegitimized—rendered illegitimate as tools of war-fighting for responsible and civilized states—through legal sanction because of their unacceptable humanitarian effects than run counter to IHL in practically all conceivable circumstances.¹²⁶ The 1997 Ottawa Treaty (the Anti-Personnel Mine Ban Convention or Mine Ban Treaty), the 2008 Oslo Treaty (the Convention on Cluster Munitions), and the 2013 Arms Trade Treaty (ATT) are the key registers in a post-Cold War “humanitarian disarmament” discourse (though the ATT does not proscribe weapons only weapon transfers under specific conditions).¹²⁷ The successes of the Ottawa and Oslo treaties have “inspired consideration of the relevance and application of efforts to eliminate other armaments, including nuclear weapons, based on addressing these weapons *effects*”.¹²⁸ A number of states are now seeking to delegitimize nuclear weapons by rendering their use or possession illegal under international law based on the indiscriminate effects of any use. They draw on the 1996 advisory opinion of the International Court of Justice (ICJ) on the legality of the threat or use of nuclear weapon that stated “the threat or use of nuclear weapons would generally be contrary to the rules of international law, and

125 N. Tannenwald, “The nuclear taboo: the United States and the normative basis of nuclear non-use”, *International Organization*, vol. 53, no. 3, 1999, p. 463.

126 See P. Lewis, *A New Approach to Nuclear Disarmament: Learning from International Humanitarian Law Success*, International Commission on Nuclear Nonproliferation and Disarmament, paper no. 13, 2009; J. Borrie and V. Randin (eds.), *Alternative Approaches in Multilateral Decision Making: Disarmament as Humanitarian Action*, UNIDIR, 2005.

127 N. Cooper, “Humanitarian arms control and processes of securitization: moving weapons along the security continuum”, *Contemporary Security Policy*, vol. 32, no. 1, 2011.

128 J. Borrie and T. Caughley, “How are humanitarian approaches relevant to achieving progress on nuclear disarmament?”, in R. Johnson (ed.), *Decline or Transform: Nuclear Disarmament and Security Beyond the NPT Review Process*, Acronym Institute, 2012, p. 35.

in particular the principles and rules of humanitarian law”. The advisory opinion lent additional credibility to advocates of banning nuclear weapons based on the universal validity of IHL applicable in armed conflict. Advocates also draw on international human rights law and argue that it is applicable to the potential use of nuclear weapons in armed conflict since such use would likely infringe a range of human rights, in particular the non-derogable right to life.¹²⁹ In fact, in 1983 the General Assembly adopted a resolution declaring nuclear war “a violation of the foremost human right—the right to life”.¹³⁰

This approach gathered new momentum with the formation of a coalition of states, concerned about lack of progress on nuclear disarmament, ahead of the 2010 NPT Review Conference supported by a number of non-governmental organizations (NGOs). A number of these states and NGOs had played important roles in the international processes leading to the treaties prohibiting anti-personnel mines and cluster munitions.¹³¹ Significantly, wording in the Conference’s Final Document noted for the first time “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”.¹³² It was followed by further statements at the 2012 and 2013 NPT Preparatory Meetings that have gained greater support. The “Joint statement on the humanitarian dimension of nuclear disarmament” delivered at the 2012 NPT Preparatory Meeting by Swiss Ambassador

129 T. Wright, “Do nuclear weapons violate the right to life under international law?”, *Australian Journal of Peace Studies*, vol. 3, 2008.

130 General Assembly, *Condemnation of Nuclear War*, UN document A/RES/38/75, 15 December 1983. Randy Rydell highlights a long history of General Assembly resolutions declaring the use of nuclear weapons contrary to IHL, citing at least four that have declared any use of nuclear weapons as a crime against humanity. R. Rydell, “The United Nations and a humanitarian approach to nuclear disarmament”, *Nuclear Abolition Forum*, no. 1, 2011, p. 29. The resolutions are 1653 of 1961, 33/71B of 1978, 35/152D of 1980, and 36/92I of 1981.

131 See statement by Amb. Jurg Lauber, 2010 Review Conference, Main Committee I, 7 May 2010; and statement by Amb. Steffen Kongstad, 2010 Review Conference, Main Committee I, 11 May 2010.

132 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document*, document NPT/CONF.2010/50 (Vol. I)*, 2010, part I, p. 19.

Benno Laggner had 16 signatories.¹³³ This expanded to 34 at the General Assembly First Committee in October 2012 when Laggner delivered a similar statement.¹³⁴ Support for the statement delivered by South African Ambassador Abdul Minty at the April 2013 NPT Preparatory Meeting more than doubled to 78 states.¹³⁵ These statements were supported by the adoption in November 2011 of a resolution by the Council of Delegates of the International Red Cross and Red Crescent Movement. The resolution emphasized the incalculable human suffering resulting from any use of nuclear weapons and stressed that it is difficult to envisage how any use of nuclear weapons could be compatible with IHL rules.¹³⁶

These statements of humanitarian concern were bolstered by research on the effects of even a very limited nuclear conflict on human life and welfare, including effects on global food systems, cancer rates, global climate change, as well as the very large number of direct casualties.¹³⁷ The research was showcased at a ground-breaking conference on the humanitarian impact of nuclear weapons in Oslo in March 2013 hosted by Norwegian government. The conference attracted 128 states as well as United Nations humanitarian and development agencies, and the International Red Cross Movement. The Mexican government offered to host a follow-up conference that is due to take place in February 2014.

133 “Joint statement on the humanitarian dimension of nuclear disarmament”, NPT Preparatory Committee, general debate, Vienna, 2 May 2012.

134 “Joint statement on the humanitarian dimension of nuclear disarmament” by Algeria, Argentina, Austria, Bangladesh, Belarus, Brazil, Chile, Colombia, Costa Rica, Denmark, Ecuador, Egypt, Iceland, Indonesia, Ireland, Kazakhstan, Liechtenstein, Malaysia, Malta, Marshall Islands, Mexico, New Zealand, Nigeria, Norway, Peru, the Philippines, Samoa, Sierra Leone, South Africa, Swaziland, Thailand, Uruguay, Zambia, and Switzerland, as well as the Holy See, General Assembly, 67th session, First Committee, 22 October 2012.

135 “Joint Statement on the humanitarian impact of nuclear weapons”, NPT Preparatory Committee, general debate, Geneva, 24 April 2013.

136 “Working towards the elimination of nuclear weapons”, draft resolution and background document, adopted by Council of Delegates of the International Red Cross and Red Crescent Movement, Geneva, 26 November 2011.

137 See, for example, International Physicians for the Prevention of Nuclear War, *Zero is the Only Option: Four Medical and Environmental Cases for Eradicating Nuclear Weapons*, 2011; and I. Helfand, *Nuclear Famine: A Billion People at Risk*, International Physicians for the Prevention of Nuclear War and Physicians for Social Responsibility, 2012.

What is the purpose of this discourse emphasizing (or re-emphasizing) the humanitarian consequences of the use of nuclear weapons? At one level it is conventional and discursive. It is about reframing, or perhaps rebalancing, global nuclear disarmament discourse away from an agenda that privileges a slow nuclear force reductions agenda dominated by NPT nuclear-weapon state interaction to one that includes serious consideration of the unacceptable humanitarian impact of using nuclear weapons in order to facilitate deeper engagement by the nuclear-weapon states with their disarmament commitments under the NPT. As Norwegian Minister of Foreign Affairs Espen Barth Eide stated in his opening address to the Oslo Conference:

This conference is not intended as a substitute for any of the established arenas, be they bilateral or multilateral. The Non-Proliferation Treaty (NPT) is utterly important, but is also under serious pressure ... This conference takes a different starting point. It puts the humanitarian consequences of actual use of nuclear weapons at the centre ... It is a way of framing the discourse on nuclear weapons in a manner that properly reflects the danger that these weapons represent—to us all. The insights we gain can strengthen and inform our future debates about nuclear weapons.¹³⁸

The first step, then, is to generate an evidence-based consensus that any use of nuclear weapons would cause unacceptable humanitarian consequences and thereby strip the use of nuclear weapons under any circumstances of any legitimacy. The second step is to leverage the potency of that illegitimacy to secure concrete disarmament commitments and actions from the nuclear-weapon states through established processes, primarily the NPT.

At another level this humanitarian-focused approach is radical and action-oriented. The purpose for a number of civil society campaign organizations, such as the International Campaign to Abolish Nuclear Weapons (ICAN), is to develop a new legal instrument to explicitly ban any use of nuclear weapons and their possession. This, they argue, would correct an incoherent body of international law that universally prohibits chemical and biological weapons as exceptional and illegitimate “WMD”

138 Norwegian Minister of Foreign Affairs Espen Barth Eide, opening address, Conference on the Humanitarian Impact of Nuclear Weapons, Oslo, 4–5 March 2013.

but only selectively proscribes the most destructive and indiscriminate WMD of all. States involved in the humanitarian approach have yet to openly support that objective, but the extent to which it is now being seriously contemplated represents a significant change in only a few years. As Laggner stated at the General Assembly in October 2012:

We are encouraged by the increasing attention given to the humanitarian dimension of nuclear disarmament by States as well as international and non-governmental organizations. Switzerland is convinced that a better understanding of the humanitarian impact of nuclear explosions will pave the way to a multilateral process to prohibit nuclear weapons based on their destructive, indiscriminate and inhumane nature.¹³⁹

The focus here is on banning nuclear weapons via a new instrument developed outside of but complementary to the NPT as a logical extension of the unacceptable humanitarian consequences of any use of nuclear weapons. It is driven by frustration at the leisurely—even glacial—pace of multilateral nuclear disarmament and a desire to rectify this state of affairs.¹⁴⁰

A strong case can indeed be made that a new legal instrument is required based on the argument outlined above that the NPT is structurally unable to categorically delegitimize nuclear weapons and the practice of nuclear deterrence. Such an instrument would delegitimize the possession and use of nuclear weapons for all states irrespective of NPT categorization. It would build on the precedents set by the NPT, the ICJ advisory opinion, multiple and repeated General Assembly resolutions, and the five nuclear-weapon-free zones (Latin America and the Caribbean, South-East Asia, Africa, Central Asia, South Pacific) negotiated outside of but complementary to the NPT that outlaw the manufacture, acquisition, testing, and possession of nuclear weapons. It would also serve to counter interpretations of the NPT as a source of selective legal legitimacy for continued possession of nuclear weapons.

139 Statement by Swiss Ambassador for Nuclear Disarmament and Non-Proliferation Benno Laggner, General Assembly, 67th session, First Committee, thematic debate on nuclear weapons, 17 October 2012.

140 J. Borrie, “Viewing nuclear weapons through a humanitarian lens: context and implications”, in this volume, p. 30.

Moreover, a new legal instrument would present an opportunity to establish justifiable, equitable, and legally valid rules for a sustainable global nuclear order, and to dilute the selective hegemonic nuclear exceptionalism through recourse to a founding principle of liberal international order—the universal rule of law. On this last point it is worth recalling Philip Sands’ comment during the ICJ hearings on the threat or use of nuclear weapons:

The efforts of certain nuclear-weapon States to limit attention to the narrower confines of humanitarian norms alone should be resisted. Their first round written statements are silent on human rights, they are silent on the environment and yet are the same States [France, the Russian Federation, the United Kingdom, and the United States] which pride themselves—with some justification—on their role in promulgating the rule of law, promoting human rights, and preserving the environment. Yet when it comes to those very weapons of mass destruction which pose a greater threat to human rights and the environment than anything else imaginable, these States ask you to set aside that body of principles and rules so carefully put in place over the past 50 years. They ask you, in effect, to re-situate yourself in 1945, to ignore all subsequent developments and to follow Balzac’s dubious proposition, ‘that laws are spider webs through which the big flies pass and the little ones get caught’.¹⁴¹

I will close this part of the chapter by returning to the link between the use and possession of nuclear weapons. We often hear nuclear weapons described as “political” rather than “military” weapons because it is now widely accepted that they have no battlefield utility. Value is assigned to nuclear weapons because of the political effect of the destructive capacity of thermonuclear technology. The political effect is deterrence—a process whereby the very presence of nuclear weapons induces caution in adversarial relations in times of comparative peace as well as crisis. The effect rests on the implicit potential for the devastating use of nuclear weapons by virtue of their existence as well as more or less explicit threats to belligerent states to desist from specific actions in a crisis. It is an effect seen to reside within the technology itself—something intrinsic to the very materiality of the weapon rather than something particular to a social and

141 Verbatim record, hearing before the ICJ, 14 November 1995, 10h00, p. 54.

historical context.¹⁴² This is a key difference between efforts to ban nuclear weapons by reorienting a delegitimizing discourse to the unacceptable effects of use and the processes that resulted in the bans on anti-personnel mines and cluster munitions.

What is at stake here is the concept of “use”. Advocates of nuclear weapons argue that they are “used” everyday: their very presence continuously deters serious conflict between the major powers.¹⁴³ This is a positive and benign feature of international politics even if it rests on the threat of appalling and indiscriminate destruction. This is quite different to a notion of use based on destructive employment of a weapon—the actual detonation of a nuclear weapon (or an anti-personnel mine, or a cluster munition). It can be framed as legitimate to practice nuclear deterrence through what we might call the “existential use” of nuclear weapons but illegitimate to practice the “explosive use” of nuclear weapons even if the former rests on the threat of the latter. Nuclear weapon states can therefore readily accept that nuclear weapons should never be used explosively while legitimizing their continued possession for the reasons outlined above, however paradoxical that might appear.¹⁴⁴

Advocates of a process of delegitimizing nuclear weapons through reference to the unacceptable humanitarian consequences of their use reject the validity of this distinction between existential and explosive use. They insist that if a weapon can cause unacceptable human suffering then it should be banned: not just its use, but its very existence. The expectation is that delegitimizing any use of nuclear weapons will inescapably undermine the validity of the logic of nuclear deterrence that rests on the credibility of threats to use nuclear weapons in extreme circumstances. If it is no longer legitimate to use nuclear weapons then it is no longer legitimate to plan to use nuclear weapons. If it is no longer legitimate to plan to use nuclear weapons then it is no longer legitimate to try to deter actual or potential adversaries through the threat of reciprocal and indiscriminate nuclear violence. The 1996 ICJ advisory opinion supports

142 I unpack some of this in N. Ritchie, “Valuing and devaluing nuclear weapons”, *Contemporary Security Policy*, vol. 34, no. 1, 2013.

143 For example, former US Defense Secretary James Schlesinger in an interview with Melanie Kirkpatrick, “Why we don’t want a nuclear-free world”, *The Wall Street Journal*, 13 July 2009.

144 Here we enter the world of nuclear ethics and moral paradoxes of threat, use, and intention. See, for example, J. McMahan, “Is nuclear deterrence paradoxical?”, *Ethics*, vol. 99, no. 2, 1989.

this position. It stated “if the use of force itself in a given case is illegal—for whatever reason—the threat to use such force will likewise be illegal”. Moreover, “No State—whether or not it defended the policy of deterrence—suggested to the Court that it would be lawful to threaten to use force if the use of force contemplated would be illegal”.¹⁴⁵

LEGITIMACY, VALIDITY, AND GLOBAL ORDER

The humanitarian discourse challenges the legal validity of the use and therefore the possession of nuclear weapons in any circumstances but it also goes beyond that. It challenges the justifiability of the rules and norms used to legitimize the continued possession and use of nuclear weapons by invoking a different narrative of global order. It draws on the part of Beetham’s typology that defines legitimacy as the justifiability of the rules governing a power relationship in terms of the beliefs and values current in the given society as well as the importance of the principle of equality to our understanding of legitimacy.

In short, the political authority of the humanitarian approach rests on a cosmopolitan conception of global politics. What I am referring to here is a narrative of global order focused on the individual and our common humanity rather than the state, territory, and geoeconomic and geopolitical conceptions of the national interest. Central to the cosmopolitan view are the principles that:

all people have equal moral standing ... that the claims that are advanced in the interests of humanity may have greater ethical force than appeals that are designed to promote the welfare of any particular nation-state; and the idea that such moral commitments should not just influence the conduct of state, international governmental and non-governmental organisation, and ‘world citizens’ but be embodied in global institutions.¹⁴⁶

This is not a utopian ideal but “at the centre of significant post-Second World War legal and political developments”.¹⁴⁷ It reflects what American

145 ICJ, *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion*, 1996.

146 A. Linklater, “The global civilising role of cosmopolitanism”, in G. Delanty (ed.), *Routledge Handbook of Cosmopolitanism Studies*, 2012, p. 60.

147 D. Held, “Restructuring global governance: cosmopolitanism, democracy and the global order”, *Millennium*, vol. 37, no. 3, 2009, p. 537.

political scientist John Ikenberry called a constitutional international order. By this he means the web of post-Second World War interlocking, international institutions and all of their political, legal, and economic commitments that have collectively come to exhibit constitutional characteristics—accepted rules and norms that limit the indiscriminate and arbitrary use of power for advantage and that define what constitutes acceptable and unacceptable behaviour.¹⁴⁸ These developments provide the foundations of a cosmopolitan order based on the rule of law, human rights, and multilateralism. Pivotal developments have been the foundation of the United Nations and later the European Union and the progressive criminalization of excessive political violence through the International Criminal Court, ICJ, International Criminal Tribunal for the Former Yugoslavia, and International Criminal Tribunal for Rwanda. The development and embedding of laws, regimes, rights, and responsibilities governing the conduct of war, human rights, and the global environment have cemented this process in our age of globalization characterized by “overlapping communities of fate”.¹⁴⁹

At the heart of a cosmopolitan narrative of global order is an insistence that there are basic standards of humanitarian behaviour that no agent, state or otherwise, should be allowed to violate, that legitimate regulatory norms and laws can and must constrain state behaviour, and that sovereignty is not “an indivisible, illimitable, exclusive and perpetual form of public power” but is instead embedded in transnational layers of governance and accountability.¹⁵⁰ This now extends to the doctrine of a “responsibility to protect” based on legally codified universal rights and protections for individuals based on an ethics of common humanity.¹⁵¹ David Held called the codification of these principles in regulatory law “a public law of humanity” or “cosmopolitan democratic law”.¹⁵²

148 J. Ikenberry, *After Victory: Institutions, Strategic Restraint, and the Rebuilding of Order after Major Wars*, 2001, chp. 2. The moral/institutional distinction comes from C. Beitz, “International liberalism and distributive justice: a survey of recent thought”, *World Politics*, vol. 51, no. 2, 1999, p. 287.

149 D. Held, “Restructuring global governance: cosmopolitanism, democracy and the global order”, *Millennium*, vol. 37, no. 3, 2009, p. 542.

150 *Ibid.*, p. 538.

151 M. Kaldor, *New and Old Wars: Organized Violence in a Global Era*, 1999, pp. 115–116.

152 D. Held, “Restructuring global governance: cosmopolitanism, democracy and the global order”, *Millennium*, vol. 37, no. 3, 2009, p. 539.

Recalling what Beetham said about legitimate power resting on justifiable rules governing power relationships in terms of the beliefs and values in a given society, this cosmopolitan narrative asks us to consider the legitimacy of current relations of nuclear power in terms of the beliefs and values in global civil society. This relates to wider questions about the legitimacy of the authority structures and who is entitled to make the rules and why—in this context the NPT but also the correlation between permanent membership of the Security Council and the five NPT nuclear-weapon states. From this perspective, nuclear power relations cannot be justified in terms of the cosmopolitan beliefs and values associated with a global civil society, notably the principle of equality that applies to all people as well as states in terms of their moral standing and rights, including a common right not be subjected to indiscriminate nuclear violence. The case for deepening a cosmopolitan global order that rests on justifiable and equitable rules is supported by the need for collective action to address common global security challenges and the emergence of a multi- or non-polar world through the dissemination of economic, political, military, and cultural power through the international system. From this perspective the NPT nuclear-weapon states do not have the right to set the terms of the global nuclear order, an order that is seen as illegitimate, suffering a clear legitimacy deficit, and that has been delegitimized through this cosmopolitan lens. When global civil society and the rights of individuals and humanity are placed centre stage then nuclear weapons no longer constitute a legitimate response to an abstracted “realist” world of seemingly relentless security competition or a world of hegemonic moral exceptionalism. This is at the heart of the “delegitimizing” reframing exercise.

The juxtaposition of the principles of a cosmopolitan global order with the effects of the use of nuclear weapons highlights the radical inconsistencies between the possession of nuclear weapons and contemporary notions of responsible statehood. It is scarcely conceivable to reconcile national commitments to universal human rights, a doctrine of responsibility to protect, combating preventable disease, mitigating the impending effects of climate change, Millennium Development Goals, and poverty reduction with the likely destruction that would accompany even a modest nuclear conflict. It is this tension that advocates of delegitimizing nuclear weapons seek to exploit and it is surely this to which Quinlan was alluding in the quote at the start of this chapter. Leaders of NPT nuclear-weapon states may insist that the first responsibility of government is protection of the state and this requires nuclear weapons, but the humanitarian approach

rejects this logic.¹⁵³ It questions whether one can or should unhesitatingly “set the survival of a State above all other considerations, in particular above the survival of mankind itself”, as Algerian diplomat and jurist Mohammed Bedjaoui, ICJ President at the time of the 1996 advisory opinion, noted in his statement appended to the final opinion.¹⁵⁴

A legal–humanitarian path to delegitimizing nuclear weapons therefore sits in tension with the power relationships embodied by the NPT, itself symbolic of the hierarchy of Cold War military power relations of the 1960s. It also sits in tension with the “realist” imperatives of the state system and with the moral certitude of a liberal United States-led hegemonic order. It rejects the logic of a realist world in which sovereign equality extends to equal enjoyment of the purported benefits of nuclear weapons as one that would be fraught with danger.¹⁵⁵ On the latter, hegemonic moral certitude—as a set of rules by the powerful to justify selective nuclear possession for the powerful—increasingly lacks legitimacy the more time goes by. Both of these narratives of nuclear order still rest on what Michael Quinlan, the late guru of British nuclear deterrence thought, called “the threat of colossal disaster”.¹⁵⁶

Nevertheless, a frequent refrain from advocates of nuclear weapons is that a cosmopolitan order and the hegemonic moral certitude that legitimizes possession of nuclear weapons are not incongruent. Instead, the network of universal legal rights and constraints on the use of force threatens to interfere with its legitimate role as a benign custodian of the international system willing and able to bring pariah states and mass human rights abusers to account through military force. The post-Second World War hegemonic order has, it is argued, been the key to enhancing the costs of acquiring nuclear weapons for certain categories of “anti-cosmopolitan” states while assuring those of a cosmopolitan bent of their ultimate

153 For example Peter Luff MP, UK Minister for Defence Equipment, Support and Technology in the Ministry of Defence declared in 2011 “the primary responsibility for our nation is the security of the country, [and] the nuclear deterrent is the ultimate guarantee of the country’s security”. UK House of Commons, *Official Report*, 19 December 2011, column 1044.

154 Available at <http://lcnp.org/wcourt/bedjaoui.htm>.

155 Kenneth Waltz is best-known advocate of this logic. See K. Waltz, *The Spread of Nuclear Weapons: More May Better*, Adelphi Paper 171, International Institute for Strategic Studies, 1981; and more recently K. Waltz, “Why Iran Should get the bomb”, *Foreign Affairs*, vol. 9, no. 4, 2012, pp. 2–5.

156 See the opening quote to the chapter.

security against unfettered nuclear adventurism of revisionist powers. This reflects Roberts Kagan's view that "the modern liberal vision of progress in international affairs has always been bifocal"—on the one hand a vision of peace and stability based on an expanding and inclusive international legal system and universal rule of law, and on the other the use of military power to compel anti-liberal states to adhere to this system's basic humanitarian precepts.¹⁵⁷ From this perspective international law must, at some point, be enforced, and the enforcers require a nuclear back-up for the global public good. The constitutional, cosmopolitan narrative that those seeking to delegitimize nuclear weapons are drawing on to validate their approach is built upon a hegemonic order that requires the partial and selective legitimization of nuclear weapons—the two conceptions of order are not mutually exclusive, but interdependent according to the narrative of hegemonic moral exceptionalism.

This point raises significant normative challenges for those seeking to delegitimize nuclear weapons through recourse to IHL embedded in a cosmopolitan, constitutional international order. Advocates of banning nuclear weapons will need to argue that expanding legal and normative constraints on state violence to include a prohibition of nuclear weapons is essential to the broader project of cosmopolitan global order, that eliminating nuclear weapons will not undermine that project by removing a vital tool from the hands of its self-appointed defenders (quite the opposite: nuclear weapons are the antithesis of that project), and that such an order is demonstrably in the long-term collective and common security interests of all states. The United Kingdom and other NPT nuclear-weapon states insist "Achieving a world in which there is no requirement for nuclear weapons is a long journey"¹⁵⁸ based on the current "necessity" of nuclear weapons pending a transformation of global security relations. In contrast, a cosmopolitan view drawing on IHL seeks to achieve a world in which the possession and operation of nuclear weapons have zero legal validity based on the transformations that have already occurred and of which a legal ban on nuclear weapons would be another important part.

157 R. Kagan, "America's crisis of legitimacy", *Foreign Affairs*, vol. 83, no. 2, 2004, p. 78.

158 UK Cabinet Office, *The Road to 2010: Addressing the Nuclear Question in the Twenty First Century*, 2009, p. 30.

CONCLUSION

This chapter rests on the premise that the purpose of “viewing nuclear weapons through a humanitarian lens” is to delegitimize these weapons as acceptable tools of statecraft in terms of their use and possession. It has tried to dig a little deeper into what “delegitimizing” nuclear weapons means by first asking where the legitimacy of nuclear weapons comes from and, from there, how we can think about delegitimizing them. It has drawn on Beetham’s analysis of legitimacy and power to help it along the way. It has argued that nuclear-armed states seek legitimacy for their nuclear weapons to justify possession of such an immensely destructive capability and to ensure the continuation of the NPT-based global nuclear order. Without that legitimacy the nuclear order becomes harder to sustain and selective possession of nuclear weapons becomes very difficult to justify to domestic, international, and transnational audiences. It has also argued that legitimacy is a social condition. It is not a quality nuclear-armed states can unilaterally claim in any meaningful way. As a social condition it is fluid, contingent, and subject to change. The degree of legitimacy ascribed to an actor, institution, action, or object can change if they no longer enjoy popular consent, if they no longer comply with legal rules, or if they rest on established rules of power that can no longer be justified in terms of society’s shared beliefs and values.

This chapter has also demonstrated that the legitimacy of nuclear weapons is deeply contested and that what Beetham has called illegitimacy, negative legitimacy, and a legitimacy deficit clearly pertain to the contemporary nuclear order. Within that contestation lays the possibility of radical delegitimation. To that end the chapter has argued that delegitimizing nuclear weapons is a process of identifying and diminishing the authority and validity of sources of nuclear legitimacy by exposing the divergence of nuclear weapon practices and values from justifiable rules, consent, legal precedent, and the principle of equality.

The chapter has outlined three important sources of legitimacy for nuclear weapons for the NPT nuclear weapon states, in particular Western NPT nuclear-weapon states: the NPT, a realist reading of the state system, and what I have called hegemonic moral certitude. All three are based on an interconnected set of “justifiable rules”, varying degrees of consent, and legal argument. If nuclear weapons are to be delegitimized then these current sources of legitimacy will have to be challenged. The chapter has explored some of the ways in which this is being done: first,

by demonstrating a lack of popular consent for the continued existence of nuclear weapons within the society of states and global population; second, by exposing the NPT's legitimacy deficit and its structural inability to delegitimize nuclear weapons as a necessary part of the path to nuclear disarmament; and third, by challenging the justifiability of the rules that legitimize nuclear weapons through recourse to a cosmopolitan conception of global order in which nuclear weapons have no place by virtue of the appalling and unacceptable humanitarian consequences of any use under any circumstances.

A key conclusion, then, is that when it comes to stripping nuclear weapons of legitimacy we need to look beyond the NPT to alternative processes and legal instruments. The NPT permissively legitimizes nuclear weapons by conflating a legal recognition of nuclear acquisition pre-1968 with the legitimate appropriation of the universally applicable logic of nuclear deterrence for the NPT nuclear-weapon states and no one else. It is a vehicle for selectively legitimizing some nuclear weapons and delegitimizing others in the service of hegemonic moral certitude. A new instrument banning nuclear weapons on the basis of the unacceptable humanitarian consequences of use would strip all nuclear weapons of legitimacy and establish an unequivocal principle of non-possession. It would represent a collective withdrawal of the tacit consent to possession of nuclear weapons by the NPT nuclear-weapon states currently given through the NPT. Of course, non-nuclear-weapon states and global civil society remain cautious about openly advocating disengagement from the NPT because its norms and procedures of non-proliferation, progress towards nuclear disarmament (however sluggish), and support for civilian nuclear programmes embodied by the treaty remain highly valued.

Lastly, the humanitarian-based discourse that represents a different set of "justifiable rules" for global nuclear order is evidently gathering momentum. Its authors should now begin to acknowledge and challenge the sources of nuclear legitimacy identified here and locate the humanitarian-based approach with a broader process of delegitimizing nuclear weapons. The challenge for the non-nuclear-weapon states and global civil society organizations involved in the humanitarian-based approach is to leverage the partial if widespread illegitimacy of nuclear weapons—to make it have consequences—by exacerbating the disparity between nuclear-armed states' commitments to the rule of law, human rights, and cosmopolitan order through fresh political and legal initiatives on the one hand and nuclear possession with the potential for use on

the other. This will require the skilful marshalling of institutional and normative power.¹⁵⁹ This approach can work to the extent that nuclear-armed states are susceptible to normative changes that destabilize the legitimacy of nuclear weapons. This could generate a “crisis of legitimacy” leading to behavioural adjustment:

An actor or institution experiences a crisis of legitimacy, it is argued, when the level of social recognition that its identity, interests, practices, norms, or procedures are rightful declines to the point where it must either adapt (by reconstituting or recalibrating the social bases of its legitimacy, or by investing more heavily in material practices of coercion or bribery) or face disempowerment.¹⁶⁰

Non-nuclear-weapon states and NGOs are looking for radical adaptation by the NPT nuclear-weapon states to a new reality in which the legitimacy of these arms has been extinguished, or at least greatly diminished—one in which the costs and challenges of sustaining a “legitimate” nuclear order based on their indefinite possession of nuclear weapons becomes too difficult.

159 Barnett and Duvall refer to this as productive power—the power to shape discursive processes and practices that produce social identities and capacities that “produce” (and reproduce) social subjects. M. Barnett and R. Duvall, “Power in international politics”, *International Organization*, vol. 59, no. 1, 2005, p. 55.

160 C. Reus-Smit, “International crises of legitimacy”, *International Politics*, vol. 44, no. 1, 2007, p. 157.

THE MEANING OF THE OSLO CONFERENCE ON THE HUMANITARIAN IMPACTS OF NUCLEAR WEAPONS

Patricia Lewis and Heather Williams

INTRODUCTION

The Oslo Conference on the humanitarian impacts of nuclear weapons represented a shift away from Cold War-based concepts, such as nuclear deterrence, and towards a fresh discussion on what exactly nuclear weapons are and what they do. According to the Conference's media brief, its aim was "to provide an arena for the international community to have a facts-based discussion on the humanitarian and developmental consequences that would result from a nuclear weapon detonation. The Conference will be focusing on what happens on the ground".¹⁶¹ Based on our analysis, the aims of the Oslo Conference spanned a broad spectrum, but in summary can be defined by three objectives: to advance the nuclear discourse, to include a diverse range of participants, and to do so without challenging the Nuclear Non-Proliferation Treaty (NPT). The Conference included 128 participants, including states, the Red Cross and Red Crescent Movement, and members of civil society.

The primary outcomes of the Conference were that it did, indeed, advance discourse on nuclear weapons issues beyond Cold War concepts, namely by focusing on the facts about nuclear detonations, including their characteristics and effects on people and the environment. The initiative has its roots in various international undertakings, including the 2010 NPT Action Plan, yet the five NPT nuclear-weapon states ("P5") chose not to attend the Oslo Conference. Ultimately, the primary meaning of the Conference was its impact on nuclear discourse, regardless of this boycott. It is significant in this regard in that the humanitarian initiative looks set to continue, particularly in view of Mexico's offer to host a follow-on meeting in mid-February 2014.

161 Norwegian Ministry of Foreign Affairs, "About the Conference—media brief", www.regjeringen.no/en/dep/ud/selected-topics/humanitarian-efforts/cluster_munitions/media_brief.html?id=714276.

This chapter explores to what extent the Oslo Conference achieved its objectives, as embodied in differing forms by its various stakeholders. Alongside this, there is the question of what impact—if any—the discussions in Oslo have had on the NPT regime, and among the P5. Moreover, what did the Oslo Conference and its immediate repercussions reveal about the challenges in moving ahead with initiatives on the humanitarian impacts of nuclear weapons?

THE OSLO CONFERENCE: BACKGROUND TO THE INITIATIVE

The rationale for the Oslo Conference was rooted in various recent initiatives that to a greater or lesser degree have viewed nuclear issues through a humanitarian lens. These included the 1996 advisory opinion by the International Court of Justice on the “Legality of the Threat of Nuclear Weapons”¹⁶² and a 2011 statement by the International Committee of the Red Cross (ICRC).¹⁶³ In addition, the 2010 NPT Review Conference document noted the Conference’s “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 statement is of special significance because it was language agreed to by the NPT nuclear-weapon states. Just as significantly, as captured by an ICRC press release about the Oslo Conference: “Although the possible use of nuclear weapons has been debated in military, technical and geopolitical terms for decades, States have never before come together to address the consequences in humanitarian terms”.¹⁶⁴

162 The advisory opinion stated, “the 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”. International Court of Justice, *Legality of the Threat or Use of Nuclear Weapons*, *Advisory Opinion*, 1996.

163 One excerpt from the ICRC statement reads, “Far more needs to be done to inform policy makers, the media and public of the catastrophic human costs of these weapons, of the imperative that they are never again used and of the urgent need for a legally binding international instrument that will prohibit their use and lead to their elimination”. “ICRC Statement to the United Nations”, General Assembly, 66th session, First Committee, 11 October 2011.

164 ICRC, “Use of nuclear weapons: no effective relief would be possible”, 28 February 2013, www.icrc.org/eng/resources/documents/news-release/2013/02-28-nuclear-weapons-oslo.htm.

THE OSLO CONFERENCE: OBJECTIVES

At first glance, the Oslo Conference appears to have had three key objectives. The first was to alter the nuclear weapons discourse, or as Norwegian Foreign Minister Espen Barth Eide put it in his opening statement, “framing the discourse on nuclear weapons in a manner that properly reflects the danger that these weapons represent”.¹⁶⁵ Related to this was a second key objective also reflected in Eide’s remarks: to reshape the discourse without challenging the NPT’s credibility. He noted in this respect that “This conference is not intended as a substitute for any of the established arenas, be they bilateral or multilateral. The Non-Proliferation Treaty ... is utterly important, but is also under serious pressure. But even for those of us who believe this is true, our understanding of the nuclear threat is neither very deep nor very detailed”.

A third key objective of the Oslo Conference was to bring a diverse mix of participants into the discussions. The Conference was attended by delegations from 128 states, numerous civil society groups, United Nations humanitarian and development organizations, and parts of the Red Cross and Red Crescent Movement, including the ICRC and the Red Cross Federation. This followed a separate civil society forum of some 500 participants the weekend prior, hosted by a consortium of non-governmental organizations (NGOs) called the International Campaign to Abolish Nuclear Weapons (ICAN). Such a wide variety of participants inevitably had differing objectives, some of which were more successfully pursued than others, and not all of which necessarily aligned with the ostensible objectives of the Conference’s organizers. Participants included states without nuclear weapons, states under the North Atlantic Treaty Organization (NATO) nuclear umbrella, states with nuclear weapons (India and Pakistan), along with civil society groups incorporated under ICAN. Their objectives ranged from relatively modest goals, such as solidarity through mere attendance (indeed, some states did not speak in the formal discussion), to more ambitious agendas as set forth by civil society groups for a process to legislate new nuclear-weapons-related international agreements. This breadth of objectives reflects the broader discourse that for too long has gone ignored.

165 Espen Barth Eide, “Norwegian Minister of Foreign Affairs: opening statement at humanitarian impact of nuclear weapons conference, Oslo, 4–5 March 2013”, www.regjeringen.no/en/dep/ud/whats-new/Speeches-and-articles/e_speeches/2013/opening_humimpact.html?id=715948.

The facts-based discussion at the Oslo Conference produced concrete information about the effects of the weapons and the consequences of nuclear weapons' detonations for human beings and the environment. The first part of the Conference, in effect, focused on demystifying nuclear weapons, how they work, and their effects.¹⁶⁶ For example, it was explained that the vast majority of the enormous energy of a nuclear detonation is in the form of light, heat, and blast, whereas radiation is a relatively small though highly significant part of the effects produced. The Oslo Conference also constituted a forum for certain states to present their individual findings on the impacts of a nuclear detonation and absorb information from others. Switzerland, for example, reported on a recent study on the effects of a hypothetical nuclear blast in Bern and "concluded Switzerland might be better prepared than many other countries to deal with some [chemical, biological, radiological or nuclear] events, but we are under no illusion that we would be overwhelmed by the response required in the event of a nuclear explosion".¹⁶⁷

Other states, such as Kazakhstan, recounted the experience of living with nuclear testing and included powerful testimony from the people of the region of Semipalatinsk, the Soviet testing ground. Japanese scientists and survivors recounted the short- and long-term effects of the Hiroshima and Nagasaki bombings in 1945. Over the course of the Oslo Conference, including during the presentations from disaster-response, medical, humanitarian, and development organizations, it became clear that compounding this humanitarian catastrophe, medical services, personnel, and equipment would also be destroyed in a nuclear attack on a populated area. Emergency response teams would probably not be allowed into the area due to radiation and other hazards. Indeed, in applying duty of care to their workers, international organizations would likely withdraw from the entire surrounding regions. Beyond these immediate challenges, the long-term effects of nuclear weapons detonation were highlighted, ranging from those caused by a single detonation in a populated area to

166 P. Lewis, "Nuclear weapons: how they work and what they do to you", presentation to the Oslo Conference on the Humanitarian Impacts of Nuclear Weapons, 4 March 2013, www.regjeringen.no/upload/UD/Vedlegg/Hum/hum_lewis.pdf; and A. Haines, "Nuclear weapons: catastrophic impacts on health", presentation to the Oslo Conference on the Humanitarian Impacts of Nuclear Weapons, 4 March 2013.

167 Statement by Ambassador Benno Laggner of Switzerland to the Oslo Conference on the Humanitarian Impacts of Nuclear Weapons, session 3, 5 March 2013.

dozens or even a hundred nuclear weapons explosions. Some of the noted effects included impacts on world markets, global and regional economies, communications, travel, displacement of people (including potential for permanent diaspora to other parts of the world), agriculture, and food and water supplies.

For some participants, the Oslo Conference discussion represented a completely new conversation. Others, who for years had been debating nuclear weapons, non-proliferation, and disarmament, were for the first time talking about nuclear weapons in terms of their effects rather than as arms in warfighting or deterrence. This discourse clearly aligned with the desire of many governmental and non-governmental experts to put the focus on the effects of the weapons. For experts from outside the multilateral arms control domain the Oslo Conference is likely to have raised awareness as to why debates about nuclear disarmament are so important.

As mentioned above, prior to the Oslo Conference ICAN hosted a civil society forum, which was attended by representatives from states and intergovernmental organizations. The stated objective of the forum was “to side with the people who have experienced the all too real humanitarian effects of nuclear weapons, and show, to the media and to governments, that we are a coordinated, focused and energised movement, and that we will not stop until we have a global ban treaty in place”.¹⁶⁸ This call for a nuclear weapon ban treaty was much more ambitious than the parameters of the Oslo Conference. Nevertheless, ICAN’s interest in focusing attention on the Oslo Conference—through the prism of its civil society forum—reflected the strengthening realization in the nuclear disarmament movement that humanitarian approaches could help pressure states to take concrete steps towards nuclear disarmament. Some nuclear disarmament campaigners still prioritize a formal global nuclear weapons convention that would provide for complete verified elimination of nuclear weapons through obligatory, phased implementation by the nuclear-weapon-possessor states.¹⁶⁹ Increasingly, though, the interest of some of those seeking nuclear disarmament appears to be turning to what

168 See <http://goodbyenukes.wordpress.com>.

169 See, for instance, the Model Nuclear Weapons Convention: General Assembly, *Letter Dated 17 December 2007 from the Permanent Representatives of Costa Rica and Malaysia to the United Nations Addressed to the Secretary-General*, UN document A/62/650, 18 January 2008.

is, they would argue, the more pragmatic, realizable goal of a treaty that would stigmatize and prohibit nuclear weapons in a manner similar to the prohibitions on anti-personnel landmines and cluster munitions. Recent experiences with landmines and cluster munitions suggest that such a treaty is possible.

OSLO ATTENDANCE

As noted by the Oslo Conference's media brief, United States President Obama himself raised the issue of the humanitarian impacts of nuclear weapons in his April 2009 Prague speech:

One nuclear weapon exploded in one city—be it New York or Moscow, Islamabad or Mumbai, Tokyo or Tel Aviv, Paris or Prague—could kill hundreds of thousands of people. And no matter where it happens, there is no end to what the consequences might be—for our global safety, our security, our society, our economy, to our ultimate survival.¹⁷⁰

In view of this, it might be thought that participation by the United States in the Oslo Conference would be assured. Yet, the United States, like the other P5 states, decided not to attend.

Along with its emphasis on humanitarian impacts, the 2010 NPT Action Plan also called for increased dialogue among the nuclear-weapon states in implementing the Action Plan and upholding the three key pillars of the NPT: non-proliferation, disarmament, and peaceful uses. Since then, the NPT nuclear-weapon states have held three meetings building on an original initiative by the United Kingdom in September 2009. Since the 2010 Review Conference, meetings have been hosted by France (June 2011), the United States (June 2012), and the Russian Federation (April 2013). Reported progress to date includes a discussion on common terminology, developing common approaches to reporting, relatively consistent messaging, and response to nuclear challenges such as the Democratic People's Republic of Korea's latest missile and nuclear tests, and the Islamic Republic of Iran's continued non-compliance with its NPT obligations. The group's most recent report reiterates its commitment to

170 Norwegian Ministry of Foreign Affairs, "About the Conference—media brief", www.regjeringen.no/en/dep/ud/selected-topics/humanitarian-efforts/cluster_munitions/media_brief.html?id=714276.

the principles of the NPT, pursuing cooperation through the Conference on Disarmament (CD), and entry-into-force of the Comprehensive Nuclear-Test-Ban Treaty (CTBT). The statement made no mention of the Oslo Conference or the humanitarian impacts initiative.¹⁷¹

The non-attendance of the NPT nuclear-weapon states at the Oslo Conference highlighted a growing divide between the P5 as a group and the rest of the world. The pretext for their absence was that the Conference challenged the “practical step-by-step approach” to disarmament rooted in the NPT. But, it is unclear whether or not their unity on this decision was genuine or rather the result of political manoeuvring. Recently released documents suggest this decision was heavily influenced by internal P5 dynamics, rather than purely independent decision-making. According to these documents, the United Kingdom appears to have refrained from attending Oslo in order to maintain the appearance of P5 unity and because it might be perceived to be at odds with the United Kingdom’s desired image as a leader in disarmament.¹⁷² Publicly, the United Kingdom explained its decision not to attend with the following statement:

We are concerned that the Oslo event will divert attention and discussion away from what has been proven to be the most effective means of reducing nuclear dangers—a practical, step by step approach that includes all those who hold nuclear weapons. Only in this way could we realistically achieve a world without nuclear weapons. We also believe that all NPT Members have a duty to focus on the implementation of the actions from the NPT Action Plan in 2010, on disarmament, on non proliferation and on peaceful uses. We are half way through the NPT’s five year cycle but some appear already to have abandoned the Action Plan, convening alternative processes which will divide the international community. The most

171 United Kingdom Foreign and Commonwealth Office, “P5 conference on nuclear disarmament and non-proliferation”, written ministerial statement, 21 May 2013, www.parliament.uk/documents/commons-vote-office/May-2013/21-05-13/8-FCO-P5Conference.pdf.

172 See www.whatdotheyknow.com/request/153876/response/395615/attach/html/4/Email%20Re%20FW%20Submission%20Oslo%20Conference%20on%20nuclear%20weapons.pdf.html.

effective way to implement that NPT Action Plan would be to break the stalemate in the Conference on Disarmament.¹⁷³

To those outside the P5, the group's dynamics are relatively opaque in an attempt to portray and sustain unity. Nevertheless, continuing to remain removed from the discourse could carry increasing risks to the NPT nuclear-weapon states and, by inference, to the NPT and the CD.¹⁷⁴

At this stage in the humanitarian initiative, P5 involvement is not a necessary condition for success. Indeed, it is possible that their participation in Oslo might have served as a distraction from a facts-based discussion—perhaps as targets of blame, or perhaps even as a group to try to impress and seduce. Prior to the Oslo Conference, the costs and risks of not attending this event may have seemed relatively low to the NPT nuclear-weapon states. The cost–benefit equation will not be the same for the Mexico meeting, however. By not engaging in the humanitarian impacts discourse, the P5 face at least three key risks. First, they are voluntarily excluding themselves from a debate and discussions that directly relate to their interests. Second, they stand to lose authority on the global stage and in the eyes of the general public. And finally, they risk further weakening their credibility as players within the NPT, committed to fulfilling their disarmament obligations under article VI of the treaty.

Much of the reluctance of the NPT nuclear-weapon states about attending the Oslo Conference had little to do with any ignorance of humanitarian impacts, but rather was more a reflection of the anxiety over a potential distraction from NPT-based initiatives. Assuredly, the P5 are well aware of the humanitarian impacts of nuclear weapons as the horror of these impacts drove the conceptual development of nuclear strategy since 1945. Given this awareness and as the five states are permitted—for a time—to possess nuclear weapons, one would assume they would be the most likely to participate in such a discourse.

The United States and France, in particular, may foresee risks in seemingly supporting a discourse that could involve devaluing or delegitimizing nuclear weapons and their deterrent value. Deterrence remains the

173 Statement by UK Ambassador Joanne Adamson to the Conference on Disarmament, 5 March 2013, [www.unog.ch/80256EDD006B8954/\(httpAssets\)/CO41F14078BA5FFDC1257B2500541281/\\$file/1281UK.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/CO41F14078BA5FFDC1257B2500541281/$file/1281UK.pdf).

174 See also J. Borrie and T. Caughley, "After Oslo: humanitarian perspectives and the changing nuclear weapons discourse", in this volume, p. 117.

foundation of the United States' nuclear policy and extended deterrence is a major plank of its foreign policy. Indeed, the 2010 Nuclear Posture Review, which outlines the role of nuclear weapons in US strategy, lists five main objectives, two of which explicitly include deterrence, namely: maintaining strategic deterrence and stability at reduced nuclear force levels, and strengthening regional deterrence and reassuring allies and partners.¹⁷⁵ For France, the issue of deterrence extends beyond deterring nuclear attack. The 2013 Livre Blanc describes French nuclear forces as “the ultimate guarantee of sovereignty”, and “dissuasion” as one of the three priorities of French defence strategy to prevent all types of aggression and protect French vital interests.¹⁷⁶

Regarding the United States' extended deterrence, there is a paradox in calls by some states for the United States to abandon its deterrence-based thinking. Indeed, some of those currently supporting the humanitarian impacts initiative in effect endorse a continuing role for nuclear weapons in calling for the United States' declaratory policy to be one of “sole purpose”, whereby nuclear weapons would only be used as a deterrent and not as warfighting weapons. Meanwhile, given the diversity of participants at the Oslo Conference, the NPT nuclear-weapon states rightly interpreted the implicit or explicit objective of certain participants of delegitimizing nuclear weapons and moving towards an international ban.

Resisting participation in the Mexico conference or further related international meetings will be increasingly hard to justify, particularly given United States President Obama's speech made in Berlin on 19 June 2013. To attend a meeting does not equate to supporting the views of all those present. Indeed, the United States has attended certain meetings of the treaty banning anti-personnel mines,¹⁷⁷ and contributes significant resources to mine action although it is not a party to the treaty. Similarly the United States and other states participate in international forums even when they have previously voted against them, rather than be out of the decision-making process.

175 US Department of Defense, *Nuclear Posture Review*, 2010, p. iii.

176 French Ministry of Defence, *Livre Blanc*, 2013.

177 According to the 2012 Landmine Monitor report, for instance, the United States attended the Eleventh Meeting of States Parties to the Mine Ban Treaty in 2011 as an observer; see www.the-monitor.org/index.php/cp/display/region_profiles/theme/2291.

Continuing refusal to participate by the P5 in a humanitarian impacts initiative on nuclear weapons may not have a negative effect. For as long as the initiative remains in a concept- and content- development phase, their absence may well continue to foster a sense of freedom within the initiative to explore the issue from new perspectives, coupled with a growing sense of common purpose and ownership. Engagement from creative civil society organizations will undoubtedly push momentum forward. Bonding among those that choose to participate—some perhaps feeling “on the inside” for the first time in a long while—may well generate roots and relationships in the face of opposition. Indeed, as some negotiators will testify, there is nothing quite as useful in bonding diverse actors in their views as resolute opposition by others.

A NEW DISCOURSE, A NEW FORUM

In his closing remarks at the Oslo Conference, Eide concluded that “We have succeeded in reframing the issue of nuclear weapons by introducing the humanitarian impacts and humanitarian concerns at the very centre of the discourse”¹⁷⁸ Since the end of the Cold War, the nuclear weapons discourse has continued to focus on politically charged issues such as disarmament and deterrence, and has been dominated by a small group, primarily among the five members of the NPT possessing nuclear weapons. The Oslo Conference served to challenge this trajectory, albeit in an initially modest way. It is important to emphasize that the Oslo Conference was not explicitly about abolishing or delegitimizing nuclear weapons. Indeed, the event was designed to be an all-inclusive forum in order to foster a facts-based discussion; however, it did highlight the potential political repercussions of these discussions, which will continue to be a focus in the lead-up to a follow-on meeting in Mexico.

Nuclear discourses have historically been steeped in mystique and impenetrable jargon.¹⁷⁹ Throughout the Cold War—and indeed ever since—the global dialogue on nuclear weapons has been dominated and monopolized by an elite of politicians, military leaders, and academics.¹⁸⁰ This trend has lent a mythical quality to nuclear weapons by separating

178 Espen Barth Eide, final remarks to the Oslo Conference on the Humanitarian Impacts of Nuclear Weapons, 5 March 2013.

179 C. Cohn, “Sex and death in the rational world of defense intellectuals”, *Signs*, vol. 12, no. 4, 1987.

180 *Ibid.*

the discourse from the public and civil society.¹⁸¹ Through the devastating effects of these weapons, states that possessed nuclear weapons were thought to deter each other. Mystique however requires that the detailed discussion of such items be only accessible to the elite and beyond the reach of the masses. The regime surrounding nuclear weapons, with the NPT as its cornerstone, regulates nuclear materials and only acknowledges the five possessor states' right to such weapons.

Nuclear weapons discourse has remained relatively unchanged not only since the end of the Cold War, but also since the inception of the nuclear age in 1945 and the emergence of strategic thinkers such as Bernard Brodie and Albert Wohlstetter. These discourses indirectly touched on the humanitarian impacts by discussing massive loss of life, dangers to humanity, and the political—namely strategic—value of such impacts. Evidence from Hiroshima was used during the Cold War by governments and militaries to legitimize nuclear debates such as countervalue versus counterforce targeting. These policies, however, only skimmed the medical, environmental, economic, and cultural effects of a nuclear detonation. It fell to civil society groups such as International Physicians for the Prevention of Nuclear War (IPPNW), which was awarded the Nobel Peace Prize in 1985, to highlight such topics. The humanitarian and medical discourse on nuclear weapons gained strength in the 1960s, and contributed to pressure for the ban on atmospheric nuclear tests due to its concentration on the long-term health impacts of nuclear testing. Similarly the fear of an all-out nuclear exchange in the 1980s and civil society's role in bringing that discussion to the fore played a significant part in the negotiation of the 1987 Intermediate-Range Nuclear Forces Treaty. However, the increasing disassociation of experts from grass-roots activists continued. The end of the Cold War did little to challenge this intellectual stratification.

New nuclear realities include new nuclear-armed states, new threats, and new questions about the role of nuclear weapons in deterrence strategies. Nuclear discourse, however, has been slow to shift in relation to these political and strategic realities. Since the end of the Cold War this inertia in discourse has increasingly been called into question by the academic and policy communities alike. Cold War power bipolarity and nuclear doctrines,

181 A. Harrington de Santana, "Nuclear weapons as the currency of power: deconstructing the fetishism of force", *Nonproliferation Review*, vol. 16, no. 3, 2009.

such as massive retaliation, are outdated and do not reflect the new spread in nuclear dangers to smaller nuclear states, many of which are outside of the NPT, namely the Democratic People's Republic of Korea, Israel, India, and Pakistan.

Given these precedents and ongoing debate, why is the Oslo Conference portrayed here as a significant shift? It was significant in its size, the scope of participation, its tone, and in the event's emphasis on separating humanitarian impacts from orthodox arms control politics. Because of the latter—a key component seemingly ignored in the P5 decision not to attend—the discourse at the Oslo Conference demonstrated that nuclear weapons debates can focus on objective facts buttressed by scientific evidence rather than mythical and reified concepts. Such facts-based discourses do not have to become trapped in the usual political debates. Rather, humanitarian impacts provide a common basis for discussion that brings together diverse stakeholders with a common basis for engagement unlike other forums such as the NPT or the CD. In addition, reframing a debate and opening it up to new views, evidence, and approaches can cast light on old assumptions and enable new ideas and understandings to surface. Given the CD's paralysis, any approach that could help move the discussion forward is to be welcomed.

Oslo reflected a growing appetite and widening impetus for change, which has traditionally been slow to come to nuclear weapons policy. Indeed, there are deeply entrenched practices, dynamics, and institutions, such as the NPT and the CD, that states are reluctant or unable to change. Whether intentionally or not, the Oslo Conference and the subsequent shift in discourse has raised important questions about these practices and institutions. Eide's comments about the NPT noted earlier capture the treaty's credibility dilemma by highlighting that while it remains an important forum, it also faces challenges. How will this new discourse and the Oslo Conference impact the traditional nuclear structures, namely the NPT? Do parallel initiatives ultimately challenge the credibility of the NPT?

As already mentioned, the humanitarian initiative represented by the Oslo Conference has roots in the NPT, namely the 2010 Action Plan. Humanitarian impacts are discussed in "Principles and Objectives" of the Action Plan and it could be argued the initiative is one of the few examples of implementation success for the Action Plan in the 2010–2013. Most NPT states would assert that the Oslo Conference strengthened the NPT. Many states recognized the potential for tension between the humanitarian impacts initiative and the NPT, but saw them as parallel, rather than

conflicting, tracks. New Zealand asked, “Why should nuclear disarmament any more than nuclear non-proliferation be promoted only in one forum? We see no contradiction in promoting nuclear disarmament inside the NPT and outside it here in Oslo.”¹⁸² Indeed, nuclear disarmament is discussed in many forums, as is nuclear non-proliferation: the United Nations Security Council for example, which passed resolution 1540 on weapons of mass destruction, the Proliferation Security Initiative, and the Nuclear Security Summit initiative, which has been welcomed by many states inside and outside the NPT.

The NPT is seemingly in jeopardy because of lack of progress in five key areas: the nuclear-weapon states’ promise to disarm under article VI of the treaty;¹⁸³ non-compliance with the treaty by a number of states over many years, such as Iraq (up to 1991) and the Democratic People’s Republic of Korea, and non-compliance with safeguards arrangements by several states, including the Islamic Republic of Iran; arguments over access to peaceful uses, and their limited scope; application; and universality. Dealing solely with the last challenge, the NPT was negotiated at the height of the Cold War when only five states had nuclear weapons (and indeed neither France nor China joined the NPT until after the end of the Cold War). As noted earlier, four additional states have since joined the nuclear weapon possessor “club” and are not parties to the NPT and therefore do not have a voice in NPT debates. India did, however, participate in Oslo and explained its own nuclear weapons policies and motives for attending, in that:

While India subscribes to a policy of credible minimum deterrent, we have espoused the policy of no first-use and non-use against non-nuclear weapon states, and are prepared to convert these undertakings into multilateral legal arrangements There is need for a meaningful dialogue among all states in order to build mutual trust and confidence as

182 Statement by New Zealand delegation to the Conference on the Humanitarian Impacts of Nuclear Weapons, session 3, 5 March 2013.

183 Article VI of the NPT states: “Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a Treaty on general and complete disarmament under strict and effective international control”. In 1995 as part of the legal decision to extend the NPT indefinitely, states parties adopted the ultimate goal of the elimination nuclear weapons.

well as reduce the salience of nuclear weapons in international affairs and security doctrines.¹⁸⁴

The delicate relationship of the humanitarian impacts initiative with the NPT was manifested in the Conference's immediate aftermath at the 2013 NPT Preparatory Committee meeting. Eighty states signed a statement, which said:

The March 2013 Conference on the Humanitarian Impact of Nuclear Weapons held in Oslo presented a platform to engage in a fact-based discussion on the impact of a nuclear weapon detonation. The broad participation at the Conference reflects the recognition that the catastrophic effects of a detonation are of concern and relevance to all. ... As an element that underpins the NPT, it is essential that the humanitarian consequences inform our work and actions during the current Review Cycle and beyond.

This statement, read by South Africa, demonstrated not only the shift in discourse, but that the practicality and compatibility of the initiative in parallel with the NPT is a widely held view among NPT non-nuclear-weapon states.

While Norway, New Zealand, and other states were quick to emphasize the important role and credibility of the NPT, others noted that its influence was waning and its structure antiquated because of its inability to include all states and the natural imbalance between the five possessor states and the remaining parties, all of which have eschewed these weapons. Meanwhile, the CD has not been able to fulfil its mandate to negotiate treaties since the adoption of the CTBT in 1996. This view echoes the findings of the Weapons of Mass Destruction Commission and Hans Blix, who wrote:

Some of the current stagnation in global arms control and disarmament forums is the result of a paralyzing requirement of consensus combined with an outdated system of bloc politics. However, a more important reason is that the nuclear-weapon

184 Statement by Ambassador R.K. Tyagi of India to the Conference on the Humanitarian Impacts of Nuclear Weapons, session 3, 5 March 2013.

states no longer seem to take their commitment to nuclear disarmament seriously.¹⁸⁵

If the humanitarian impacts initiative goes forward to address the issues of nuclear weapons prohibition—as opposed to disarmament—the non-participation of the NPT nuclear-weapon states may not matter much. Establishing a norm against nuclear weapons would be important in its own right. Establishing the norm within a world-wide grouping of states, some of which are allies of the NPT nuclear-weapon states, some of which have accepted nuclear weapons as an aspect of their security and defence equations, and many of which rejected the existence of nuclear weapons from their first appearance, would be an extraordinarily important achievement. Extended deterrence backed by nuclear weapons binds a constellation of allies that includes all NATO states, Australia, Japan, and the Republic of Korea. However, most NATO states, Japan, and the Republic of Korea have strong cross-party policies and public support in favour of nuclear disarmament. The inherent tension between nuclear deterrence and nuclear disarmament cause enormous domestic headaches for several US allies under the so-called “nuclear umbrella”.

In addition, there is creeping suspicion in many of these states that if a major crisis ever occurred, the commitment of the United States to deter common adversaries with the threat of nuclear use could evaporate, and should not therefore be relied upon. Equally, in most of these states, large segments of the populations either do not trust such a strategy or do not want the threat of nuclear weapons as part of their security equation. The humanitarian impacts initiative resonates with some of these concerns and contradictions.

If, however, the humanitarian impacts initiative follows the more traditional step-by-step nuclear arms control and reductions pathway, then the role of the NPT nuclear-weapon states would become more significant.¹⁸⁶ Negotiating a full-blown multilateral nuclear weapons convention (to eliminate these arms) would probably take years or even decades, and would require not only the full participation of the P5 but also their sustained enthusiasm and drive. The signals coming from the

185 Weapons of Mass Destruction Commission, *Report: Weapons of Terror: Freeing the World from Nuclear, Biological, and Chemical Arms*, 2006, p. 14.

186 J. Borrie and T. Caughley, “After Oslo: humanitarian perspectives and the changing nuclear weapons discourse”, in this volume, chp. 5.

excruciatingly slow step-by-step process suggest that such enthusiasm may be hard to create—let alone sustain.

CONCLUSION

The Oslo Conference represented a shift in discourse, and it also provided an opportunity to gain insight into perspectives that have previously been relegated to the fringes, and others that prefer to remain opaque. Looking ahead, the humanitarian impacts initiative begun by the Oslo Conference faces at least seven major challenges. Briefly, these are:

- shaping a new discourse and envisioning a clear objective;
- maintaining momentum;
- managing a diversity of stakeholders;
- managing expectations;
- dealing either with the absence or participation of the NPT nuclear-weapon states;
- the relationship to the NPT and the CD; and
- delivering a satisfactory outcome.

These will likely be priorities and concerns in the lead-up to the conference in Mexico and in preparing for the 2014 NPT Preparatory Committee meeting.

A clear sense of purpose and direction is vital. For example, the objective can be narrowed to any point along the spectrum outlined here, from an international ban in order to delegitimize nuclear weapons, to simply continuing a facts-based discussion focusing on response options in the event of a nuclear weapon detonation. It is clear that the basis of a commitment for states should be formulated so that from the Mexico conference participants leave with a clear idea of, and agreement on, the direction and ambition of the humanitarian impacts initiative. Coupled with this—perhaps especially in regards to civil society organizations—expectations need to be kept realistic, while still ambitious.

Regarding momentum, as the humanitarian initiative develops it may take on characteristics that become difficult for some participating states, particularly after changes in domestic politics due to elections and external events. (Conversely, changes in domestic politics due to humanitarian concerns, especially pressure from civil society, might motivate certain states to join in.) Again, developing a clear commitment that has a strong

chance of success and is resilient to external shocks is fundamentally important to sustaining momentum. As discussed above, the importance of P5 participation will depend on the evolution of objectives and direction of the initiative. To some extent this will also depend on the course of events in the NPT and CD. If the step-by-step process does not produce tangible results and if the NPT 2014 Preparatory Committee meeting or 2015 Review Conference stall, then a parallel track initiative that is energetic and ambitious could provide a safety net for attempts at progress.

Finally, opening up a new discourse on the acceptability of nuclear weapons may take some unexpected directions. For example, the initiative may be incorporated into hawkish arguments in states with nuclear weapons that the most humanitarian approach to nuclear weapons is to develop smaller, more accurate and modern variants with better targeting, for example. In a similar vein, it could be used as justification to increase and modernize conventional forces. Managing the discourse itself, along with the challenges discussed above, will require openness, honesty, and willingness to engage. Indeed, such challenges offer opportunities for discussions and innovative thinking by raising crucial questions not only for the initiative's advocates and civil society, but also for states that have not yet engaged on the initiative and question the credibility of the NPT or the stagnant state of nuclear discourse. For this reason alone, taking a different tack is certainly worth a try.

AFTER OSLO: HUMANITARIAN PERSPECTIVES AND THE CHANGING NUCLEAR WEAPONS DISCOURSE

John Borrie and Tim Caughley

Humanitarian Impact of Nuclear Weapons project paper no. 3

SUMMARY

This paper examines recent international policy discourse concerning new initiatives on nuclear disarmament that draw primarily from, or are influenced by, humanitarian concerns about the consequences of the use of nuclear weapons. In particular, it analyses recent criticism from the Nuclear Non-Proliferation Treaty (NPT)'s five nuclear-weapon states that these initiatives constitute distractions from a "practical step-by-step approach" towards nuclear weapons reductions.

INTRODUCTION

Recently, the humanitarian consequences of the detonation of nuclear weapons have become the renewed focus of widespread international attention. One concrete manifestation of this was Norway's hosting of an international conference in Oslo from 4 to 5 March 2013 to explore those impacts. Almost 130 states, United Nations humanitarian and development agencies, the Red Cross and Red Crescent Movement, and civil society organizations (coordinated by the International Campaign to Abolish Nuclear Weapons (ICAN)) attended this event.¹⁸⁷

The Oslo Conference was centred on expert presentations about the various humanitarian impacts stemming from detonation of nuclear weapons and not on disarmament themes. Many participating states and other actors nevertheless expressed hopes that more international emphasis on the effects of nuclear weapons would contribute to greater momentum for reductions and eventually total elimination of these arms.

187 Norwegian Ministry of Foreign Affairs, "Conference: humanitarian impact of nuclear weapons", www.regjeringen.no/en/dep/ud/selected-topics/humanitarian-efforts/humimpact_2013.html?id=708603.

However, the Oslo Conference was also subject to criticism of various kinds from five governments declining to attend: the NPT nuclear-weapon states—China, France, the Russian Federation, the United Kingdom, and the United States. Their key criticism was that initiatives such as the Oslo Conference divert discussion away from practical steps to create conditions for further nuclear weapons reductions.

The claim that the Oslo Conference—and, by extension, other recent international initiatives—was a diversion or distraction merits investigation. This paper seeks to evaluate the significance of these recent developments in the multilateral discourse on nuclear weapons, and explores some possible implications for the near term.

CONTEXT

Norway's announcement at the sixty-seventh session of the United Nations General Assembly in late 2012 that it would host the Oslo Conference in March 2013 occurred against a background of other developments. Some of these are outlined in previous papers of this project.¹⁸⁸ Two expressions of international concern about the humanitarian consequences of nuclear weapons were especially significant. The first was as an element of the 2010 NPT Review Conference agreed outcome document.¹⁸⁹ The second was a resolution passed in November 2011 in the Red Cross and Red Crescent Movement Council of Delegates emphasizing the immense suffering that would result from any detonation of nuclear weapons. The Movement also noted with concern the lack of any adequate response capacity to assist victims.¹⁹⁰

Meanwhile, frustrated by continued deadlock on nuclear disarmament and related issues in multilateral forums such as the Conference on Disarmament (CD), new initiatives emerged to try to create more propitious conditions for breaking the impasse. Members of the Non-Aligned Movement introduced a resolution at the sixty-seventh session of the

188 See chapter 1 and 2.

189 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document*, document NPT/CONF.2010/50 (Vol. I)*, 2010, part I, p. 19.

190 Council of Delegates of the International Red Cross and Red Crescent Movement, *Working Towards the Elimination of Nuclear Weapons*, Council of Delegates 2011, resolution 1, 26 November 2011.

General Assembly proposing a high-level political meeting to be held “to contribute to the goal of nuclear disarmament”.¹⁹¹ This meeting will take place on 26 September 2013. Another resolution introduced at that session by Austria, Mexico, and Norway and supported by a number of like-minded non-nuclear-weapon states called for the establishment of an Open-Ended Working Group (OEWG) to meet for up to 15 working days in Geneva in 2013 to “take forward multilateral nuclear disarmament negotiations for the achievement and maintenance of a world without nuclear weapons”.¹⁹²

REACTIONS OF THE NPT NUCLEAR-WEAPON STATES

Although the high-level meeting and OEWG initiatives differ in many respects, each reflects widespread concern about lack of progress on nuclear disarmament. Both drew disapproving responses from the NPT nuclear-weapon states in their statements and explanations of vote at the sixty-seventh session of the General Assembly, and subsequently in other contexts such as the CD and the second NPT preparatory meeting for its next five-yearly review conference, which was held in April–May 2013 in Geneva. While there is not space to recount this criticism in detail, common themes emerged—all intended to prop up the central assertion that the high-level meeting and OEWG initiatives constitute distractions from a “practical step-by-step approach” towards nuclear weapons reductions. Subsidiary claims can be categorized as follows:

- these initiatives fail to relate to NPT goals—specifically, the 2010 Action Plan items;
- these initiatives could undermine faithful implementation of the 2010 Action Plan (an undertaking applicable, of course, only to the NPT state parties and not to the four states outside the NPT, all of them nuclear-weapon possessors¹⁹³); and
- nuclear disarmament should only be dealt with through orthodox (that is, established) channels.

These themes were also all reflected in the criticism that the NPT nuclear-weapon states levelled at the Oslo Conference initiative. Notably, they put

191 General Assembly, *High-level Meeting of the General Assembly on Nuclear Disarmament*, UN document A/67/39, 4 January 2013.

192 General Assembly, *Taking Forward Multilateral Disarmament Negotiations*, UN document A/RES/67/56, 4 January 2013.

193 The Democratic People's Republic of Korea, India, Israel, and Pakistan.

their views on the CD's formal record on 5 March 2013. As the principal refinement of arguments that these states initially advanced at the sixty-seventh session of the General Assembly, these CD statements share some common language, as do subsequent nuclear-weapon state statements in the NPT context. This is perhaps unsurprising since the states had jointly demarched certain non-nuclear-weapon states on the eve of the Oslo Conference based on a coordinated text:¹⁹⁴

After careful consideration, China, France, the Russian Federation, the United Kingdom, and the United States have decided not to attend the Conference on the “Humanitarian Impact of Nuclear Weapons” scheduled to take place from 4–5 March in Oslo, Norway.

Each of our countries understands the serious consequences of nuclear weapons use and will continue to give the highest priority to avoiding such contingencies.

It is in the interest of all nations to assure that nuclear war should never be fought, for there can be no winners in such a conflict.

We remain concerned that the Oslo Conference will divert discussion away from practical steps to create conditions for further nuclear weapons reductions.

The practical step-by-step approach that we are taking has proven to be the most effective means to increase stability and reduce nuclear dangers.

In that regard, we strong reaffirm our commitment to the shared goal of nuclear disarmament and emphasize the importance of working together with all States Party to the Nuclear Non-Proliferation Treaty (NPT) to implement the 2010 Review Conference Action Plan across all three pillars of the NPT—disarmament, non-proliferation, and the peaceful uses of nuclear energy.

As nuclear-weapon States, we will continue to work together toward strengthening the foundation for mutual confidence and further disarmament efforts.

194 Available at www.reachingcriticalwill.org/images/documents/Disarmament-fora/oslo-2013/P5_Oslo.pdf.

These efforts will continue at the P5 conference hosted by the Russian Federation.¹⁹⁵

Examining the NPT nuclear-weapon states' subsequent statements reveals differences in how each has sustained their common criticism about the new high-level meeting, OEWG, and Oslo Conference initiatives. To varying degrees, the NPT nuclear-weapon states tempered critical references to these initiatives in their national statements after 5 March 2013. A joint statement by them at the April NPT preparatory meeting, for instance, made no reference at all to the high-level meeting, OEWG, or Oslo initiatives, nor to the latter's follow-on conference to be held in Mexico.¹⁹⁶ Whether this silence reflects a concern of these states to downplay those initiatives or a belated realization that their statements and boycotts were proving counterproductive is not clear.

Many other governments viewed these initiatives as opportunities for discussion on nuclear weapons, underlining their commitment to their NPT obligations or to the objective of nuclear disarmament more generally. Dissatisfaction with the nuclear-weapon states' perceived lack of engagement by boycotting or opposing these initiatives almost certainly contributed to momentum for an 80-state joint statement delivered by South Africa at the NPT preparatory meeting on 24 April 2013.¹⁹⁷ This sizeable group, or "humanitarian initiative" (as described by the Chairman of the NPT preparatory meeting), focused on the catastrophic humanitarian consequences of nuclear weapons—an issue the joint statement's co-sponsors felt "has consistently been ignored in the discourse on nuclear weapons".¹⁹⁸ The NPT preparatory meeting also saw an increasingly large proportion of the NPT's non-nuclear-weapon states situate their national

195 The five NPT nuclear-weapon states self-identify as the "P5". This can be taken to mean nuclear-weapon "possessor five". However, it is not a term used in this paper as it is easily confused with the "Permanent Five" of the United Nations Security Council. Although the same five states, there is no official link between the possession of nuclear weapons by China, France, the Russian Federation, the United Kingdom, and the United States and the right to permanent seats on the Security Council.

196 See US Department of State, "Fourth P5 conference: on the way to the 2015 NPT Review Conference", 19 April 2013.

197 Personal communication from Michiel Combrink, Permanent Mission of South Africa to the United Nations at Geneva, 28 May 2013.

198 See "NPT conference: joint statement on the humanitarian impact of nuclear weapons", *Pressenza*, 24 April 2013.

statements and interventions in humanitarian perspectives on nuclear weapons.¹⁹⁹

WHAT “STEPS”?

We now turn to examining the criticism that the Oslo Conference, the OEWG, and the high-level meeting initiatives constitute distractions from practical steps towards nuclear weapons reductions. There is, of course, a long history of the “step-by-step” approach—with an unfortunate record of lack of achievement since the Comprehensive Nuclear-Test-Ban Treaty’s (CTBT) completion in 1996.²⁰⁰ However, the criticism by the nuclear-weapon states of new initiatives seems to orient itself in the steps outlined in the 2010 NPT Action Plan. These steps are worth a closer look, as is the claim of the nuclear-weapon states that the “practical step-by-step approach” they are taking has proven to be the “most effective” means to increase stability and reduce nuclear dangers. All of the five NPT nuclear-weapon states echoed this language in their CD statements on 5 March 2013 in offering their explanations for why they had chosen not to attend the Oslo Conference and, in some cases, why they opposed the OEWG. France and China also talked of the 2010 NPT Action Plan as a road map, with China equating this directly with the “step-by-step” approach.²⁰¹

199 The other main development at the Preparatory Meeting was Egypt’s walk-out—“a signal of the frustration widely shared and expressed by a majority of states attending over the cancellation of the Helsinki Conference on a WMD-free zone in the Middle East, in what currently looks like a completely stalled process”; see P. Ingram, “Split: a tale of two alliances”, British American Security Information Council, 7 May 2013.

200 For an account see R. Johnson, “The NPT in 2010–2012: a control regime trapped in time”, in R. Johnson, T. Caughley, and J. Borrie, *Decline or Transform: Nuclear Disarmament and Security Beyond the NPT Review Process*, Acronym Institute, 2012.

201 See “Intervention en séance plénière de M. Jean-Hugues Simon-Michel Ambassadeur, Représentant permanent de la France auprès de la Conférence du Désarmement (Désarmement nucléaire)”, 5 March 2013, [www.unog.ch/80256EDD006B8954/\(httpAssets\)/F266E5DF825B75D5C1257B250053F606/\\$file/1281France.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/F266E5DF825B75D5C1257B250053F606/$file/1281France.pdf); and “Statement by H.E. Ambassador Wu Haitao of the Chinese Delegation at the Plenary of the Conference on Disarmament on Nuclear Disarmament”, 5 March 2013, [www.unog.ch/80256EDD006B8954/\(httpAssets\)/7976588264944229C1257B2600355116/\\$file/1281China.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/7976588264944229C1257B2600355116/$file/1281China.pdf). The United States,

It is worth noting that the notion of there being a generally understood definition of the step-by-step approach was belied by India's statement to the same CD session.²⁰² India said that it favoured a step-by-step process—although as India is not party to the NPT it did not equate the steps towards nuclear disarmament with implementation of the 2010 Action Plan. For India, the goal of “global, non-discriminatory and verifiable elimination of all nuclear weapons” should be pursued through “concrete negotiating proposals in the CD as the single multilateral disarmament negotiating forum”.²⁰³ India later expanded upon this, stating at the OEWG on 15 May 2013 that “the goal of nuclear disarmament can be achieved by a step-by-step process underwritten by a universal commitment and an agreed multilateral framework that is global and non-discriminatory”.²⁰⁴

Nevertheless, there is currently no agreed step-by-step process in the CD, as shown by the fact it has remained deadlocked since the 1990s because of divergent priorities among the nuclear-weapon possessor states. (There is widespread support for negotiations to commence as a matter of priority on a fissile material treaty, but—crucially—there is not consensus.) Deep divisions in the CD over the terms of mandates for dealing with its four “core issues” (nuclear disarmament, fissile material, prevention of an arms race in outer space, and negative security assurances) have prevented the body from undertaking substantive work of any kind since the CTBT negotiation from 1994 to 1996.²⁰⁵ It was not envisaged in the 1990s in the CD that its deadlock would persist so long, or that negotiations on one subject or “step” would exclude developing work on other issues on the CD's agenda. Disagreement among the nuclear-weapon possessor states over the relative priority to be attached to these issues has thwarted any practical steps at all.

in contrast, at the same CD session described President Obama's 2009 Prague speech on achieving a world without nuclear weapons as a road map.

202 India attended the Oslo conference, as did Pakistan.

203 “Statement by India on Nuclear Disarmament at CD Plenary on March 5, 2013”, 5 March 2013, [www.unog.ch/80256EDD006B8954/\(httpAssets\)/3D0E65DFB9F6111CC1257B2500540869/\\$file/1281India.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/3D0E65DFB9F6111CC1257B2500540869/$file/1281India.pdf).

204 “Statement by Ambassador Sujata Mehta, Permanent Representative of India to the CD, at the OEWG on ‘Taking Forward Multilateral Nuclear Disarmament Negotiations’, Geneva, May 15, 2013”, 15 May 2013, [www.unog.ch/80256EDD006B8954/\(httpAssets\)/4A1F291691706CBFC1257B75003FF09A/\\$file/India.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/4A1F291691706CBFC1257B75003FF09A/$file/India.pdf).

205 T. Caughley, “Tracing notions about humanitarian consequences”, in this volume, chp. 1.

Meanwhile, the text of the NPT itself does not specify a step-by-step approach. According to article 6:

Each of the Parties to the Treaty undertakes to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control.²⁰⁶

In 2000, NPT states parties agreed “practical steps”—often referred to as the 13 Steps—in the Final Document of its five-yearly Review Conference.²⁰⁷ These measures include the “unequivocal undertaking by the nuclear weapon States to accomplish the total elimination of their nuclear arsenals leading to nuclear disarmament”. While the 13 Steps were numbered, this did not denote consecutive sequencing. Rather, the 13 Steps are a range of actions to be undertaken with a view to translating the NPT’s 1995 principles and objectives on disarmament into an action agenda for systematic and progressive efforts to implement article 6 of the NPT. These principles and objectives list completion of the CTBT and fissile material treaty negotiations as well as “systematic and progressive efforts to reduce nuclear weapons globally, with the ultimate goals of eliminating those weapons, and by all States of general and complete disarmament under strict and effective international control”.²⁰⁸ However, as the principles and objectives make clear, full realization and effective implementation of NPT article 6 includes this programme of action—it was not an exhaustive or necessarily sequential list.

It was soon noted after 2000 that “a number of measures identified in the list of 13 practical steps were not pursued, and in some cases there was regression”.²⁰⁹ As well as the blocking of fissile material negotiations in the CD mentioned above, such developments have included China’s nuclear weapons modernization, the Russian Federation’s reversal of its no-first-

206 NPT, article 6.

207 2000 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document*, document NPT/CONF.2000/28 (Parts I and II), 2000, step 6, p. 14.

208 1995 Review and Extension Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document*, document NPT/CONF.1995/32 (Part I), 1995, annex, decision 2.

209 L. Scheinman, “Disarmament: have the five nuclear powers done enough?”, *Arms Control Today*, January/February 2005.

use doctrine, and the United States' abrogation of the 1972 Anti-Ballistic Missile Treaty. The Bush administration also backed away from the 13 Steps in its positions on the CTBT and the verifiability of a fissile material ban. From this it is clear that the five nuclear-weapon states have, among themselves, differed in matters of fundamental interest and adherence to these NPT-derived practical steps. The NPT's agreed 2010 Review Conference Action Plan is therefore significant as it saw the nuclear-weapon states reaffirm the surviving aspects of the 13 Steps, including some elements that certain nuclear-weapon states had earlier retreated from.

The 2010 NPT Action Plan is significant also because it represented a restructuring of the 13 Steps into 22 nuclear disarmament-related actions within the 64-point agreed document. Notably, Action 1 commits all NPT states parties to "pursue policies that are fully compatible with the Treaty and the objective of achieving a world without nuclear weapons". And, in Action 5, the nuclear-weapon states "commit to accelerate concrete progress on the steps leading to nuclear disarmament, contained in the Final Document of the 2000 Review Conference, in a way that promotes international stability, peace and undiminished and increased security".²¹⁰ Some of these steps are listed under Action 5, although other relevant elements appear throughout the Action Plan. In this way, the 2010 Action Plan steps are no more exclusive or prescriptively sequential in nature than the 13 Steps of 2000. It represents a framework for action to progress towards nuclear disarmament containing some minimum baselines rather than bounding the elements exclusively. In other words, it differs from the concept of a "step-by-step" approach that implies each step is contingent on a prior, designated step.

That leaves the other part of the new language in Action 5's chapeau—"in a way that promotes international stability, peace and undiminished and increased security". Unfortunately, this phrase's meaning is open to interpretation. It is really only this part of Action 5 that could form the basis for the NPT nuclear-weapon states to claim that others' actions detract from the steps they refer to in their statements. In effect, they assert the authority of the 2010 Action Plan as a basis for them to point to diversions or distractions from it that the Action Plan itself did not define—although

210 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document*, document NPT/CONF.2010/50 (Vol. I)*, 2010, action 5, p. 21.

singly or collectively, the NPT nuclear-weapon states have no greater claim to authoritative interpretation of the 2010 Action Plan than any other state party to it.

There is also a problem of temporal sequencing. The 2010 Action Plan “steps” and the 13 Steps exist because of the continued need for the NPT nuclear-weapon states to implement them. These steps would have no reason to exist if these states had implemented those commitments. Blaming—or preparing to blame—a new cause (initiatives such as the high-level meeting, OEWG, or Oslo Conference) for the continued lack of progress on implementing nuclear disarmament “steps” does not alter the original cause. The nuclear-weapon states could argue these new initiatives make it more difficult to overcome previous failures, but so far they have not offered evidence for this. Their strongest argument seems to be that it might make nuclear disarmament difficult if it leads to a change in the current—and unproductive—status quo in the nuclear weapons control regime. After a decade-and-a-half of CD deadlock, though, this point looks weak. Overall, it is hard for the nuclear-weapon states to argue convincingly that discussing nuclear disarmament in new settings and in creative ways is not consistent with “international stability, peace and undiminished and increased security” when it is consistent with other parts of the NPT Action Plan (such as Action 1) and the Action Plan as a whole.

In sum, there appears to be no universal or even general understanding of what the practical step-by-step approach is, let alone the claim that it is proven and effective. Nor does it appear to be exactly derived from the NPT, the 13 Steps, or the 2010 Action Plan if it is intended to be strictly sequential or exclusive in scope as the nuclear-weapon states have strongly implied. Historically, they appear to differ both with each other and, over time, even with their own statements—for instance on precisely which steps they are committed to on nuclear disarmament. Moreover, as mentioned earlier, states not party to the NPT but possessing nuclear weapons (such as India) have their own understandings. Finally, the continued restatement and reaffirmation of the need for the steps to be implemented raises doubts about how proven and effective implementation of them has really been so far.

DO NEW INITIATIVES ON CURBING NUCLEAR WEAPONS FAIL TO RELATE TO NPT GOALS?

As stated earlier, Action 1 of the consensus-based 2010 NPT Action Plan reflects the commitment of all parties to “pursue policies that are fully compatible with the Treaty and the objective of achieving a world without nuclear weapons”.²¹¹ The sizeable attendance of NPT states parties at the Oslo Conference (more than two thirds of the NPT’s membership) suggests there was nothing in the nature of the Conference that participating states feared was incompatible either with the NPT or the goal of a nuclear-weapon-free world. Moreover, the focus of the Oslo Conference was consistent with the NPT’s opening preambular paragraph in reflecting awareness of the “devastation that would be visited upon all mankind” by nuclear war.²¹² This sentiment is comparable to the concern registered in the 2010 NPT Review Conference’s Action Plan over the risk for humanity of the possible use of nuclear weapons and the resulting catastrophic humanitarian consequences.²¹³

It is conceivable that the Oslo Conference’s purpose and intended outcome may not have been clear to the NPT nuclear-weapon states prior to its convening, and thus how it would relate to the NPT or the CD. However, on closer examination, it is difficult to see how this could have been so. In addition to Norway’s statement to the sixty-seventh session of the United Nations General Assembly explaining the rationale for the Conference,²¹⁴ the Norwegian Foreign Minister sent an invitation letter with a description to all states in late 2012.²¹⁵ The following February, the Norwegian government published a briefing online about the Conference, including a section on how it related to treaties and other regimes on nuclear weapons at the international level. The Oslo Conference, Norway said, would be:

211 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document*, document NPT/CONF.2010/50 (Vol. I)*, 2010, action 1, p. 20.

212 NPT, preamble.

213 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document*, document NPT/CONF.2010/50 (Vol. I)*, 2010, principles and objectives, para. v, p. 19.

214 Statement by Geir O. Pedersen, General Assembly, 67th session, First Committee, 12 October 2012, www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com12/statements/12Oct_Norway.pdf.

215 Letter from Norwegian Foreign Minister Espen Barth Eide, 22 November 2012. Copy on file.

a freestanding event, although of course it does complement Norway's international commitments to contain the spread of these arms and eventually eliminate them. Norway is a State Party to the NPT, for instance ... Nevertheless, Norway is also conscious that not all states belong to the NPT. Addressing the humanitarian consequences of use of nuclear weapons detonation concerns all of the international community, and a freestanding event such as the Conference reinforces the notion that none are excluded from such dialogue.²¹⁶

The briefing added, "An agreement or negotiated document is not the objective of the Conference".²¹⁷ Instead, the Oslo Conference's output was a summary by Norway in its capacity as Conference chair, which stated:

This conference aimed at presenting key aspects of the humanitarian consequences of a nuclear weapon detonation. During the discussions a number of states expressed an interest in further exploring this important issue in ways that ensure global participation. States expressed their interest in continuing the discussions, and to broaden the discourse on the humanitarian impact of nuclear weapons. The chair welcomes the offer from Mexico to host a follow-up meeting to this conference. The chair also welcomes the intention expressed by other states to organise events on this subject.²¹⁸

Moreover, in both his opening and closing remarks to that event, Norway's Foreign Minister appeared to engage with concerns that the Oslo Conference's discussions could conceivably detract from the NPT or other processes concerned with nuclear disarmament. He stressed that the purpose of the Conference was not to replace existing "traditional and institutionalised arenas" but to "supplement" them.²¹⁹

Other Oslo Conference participants offered similar views. For instance, alluding to positions taken by NPT nuclear-weapon states in the CD

216 Norwegian Ministry of Foreign Affairs, "About the Conference—media brief", www.regjeringen.no/en/dep/ud/selected-topics/humanitarian-efforts/cluster_munitions/media_brief.html?id=714276.

217 Ibid.

218 Norwegian Ministry of Foreign Affairs, "Chair's summary humanitarian impact of nuclear weapons", 5 March 2013, www.regjeringen.no/en/dep/ud/whats-new/Speeches-and-articles/e_speeches/2013/nuclear_summary.html?id=716343.

219 Ibid.

earlier the same day (5 March), New Zealand said that it had no intention of undermining the NPT and saw no contradiction in promoting nuclear disarmament inside the NPT and outside it as at the Oslo Conference: “Indeed we see our efforts here as very possibly helping us to implement the requirement—as the International Court of Justice told us in 1996—to conduct in good faith ‘negotiations leading to nuclear disarmament in all its aspects’”.²²⁰

Similarly, Ireland emphasized that taking a humanitarian approach to nuclear weapons was “fully compatible with and supportive of the Nuclear Non-Proliferation Treaty”. Ireland added that it saw value in continuing to clarify—scientifically—the “full range of consequences [of nuclear weapon use] that would engulf our global family and the limited means that we could muster to respond to them”.²²¹ For Ireland, the only rational response to these challenges to humanity is prevention through the elimination of all nuclear weapons, elimination being one of the explicit objectives of the NPT as set out in its preamble.²²²

The Oslo Conference initiative’s emergence at around the same time as the OEWG initiative may have created confusion about whether an explicit linkage existed between these exercises.²²³ After Oslo, it became clearer that although the initiatives shared some supporters, they were nevertheless separate exercises. Still, with the CD deadlocked, these have offered new ways in which to keep the political and diplomatic spotlight focused on existing nuclear disarmament objectives, from which the NPT

220 New Zealand statement at the Conference on the Humanitarian Impact of Nuclear Weapons, Oslo, 5 March 2013, www.regjeringen.no/upload/UD/Vedlegg/Hum/hum_newzealand.pdf. New Zealand also observed: “we have sought for a long time now to promote concrete, practical steps to achieve nuclear disarmament such as through our efforts to encourage the nuclear powers to lower the readiness status of their nuclear weapons or to promote greater transparency of their nuclear holdings. But even an optimist could be forgiven for saying that, in terms of reaching our ultimate goal of nuclear disarmament, we have not made huge headway”.

221 Ireland statement in the Conference on the Humanitarian Impact of Nuclear Weapons, Oslo, 5 March 2013, www.regjeringen.no/upload/UD/Vedlegg/Hum/hum_irland.pdf.

222 NPT, preamble.

223 Resolution A/RES/67/56, which resulted in the OEWG, expressed deep concern “about the catastrophic humanitarian consequences of any use of nuclear weapons”; General Assembly, *Taking Forward Multilateral Disarmament Negotiations*, UN document A/RES/67/56, 4 January 2013.

as a regime could benefit across all three pillars of its work. In sum, it would seem difficult to sustain criticism that these new venues for discussion on the impacts of nuclear weapons are at cross purposes with the goals of the NPT (or the CD) or, indeed, do anything other than complement them.

DO THE HIGH-LEVEL MEETING, OEWG, AND OSLO CONFERENCE INITIATIVES UNDERMINE FAITHFUL IMPLEMENTATION OF THE 2010 NPT ACTION PLAN?

The NPT nuclear-weapon states have each argued in almost identical terms that the “practical, step-by-step approach that we are taking has proven to be the most effective means to increase stability and reduce nuclear dangers”,²²⁴ and that only this route can lead toward nuclear disarmament.²²⁵ As discussed above, there are basic problems with these assertions. There is also the poor record of this step-by-step approach, considering the approximately 17,000 nuclear weapons remaining in the world more than two decades after the Cold War ended.²²⁶ The nuclear-weapon states also sought to contrast the step-by-step approach they tend to associate with the 2010 NPT Action Plan with complementary initiatives on the grounds that initiatives not identified with the step-by-step approach must detract from its implementation. Such an assertion seems difficult to justify, especially since, to date, the high-level meeting, OEWG, and Oslo and Mexico Conference initiatives have sought to draw attention

224 US Department of State, “The Obama Administration’s second term priorities for arms control and nonproliferation”, 20 March 2013, www.state.gov/t/us/206454.htm.

225 For instance, on 5 March in the CD, China said, “the existing multilateral disarmament machinery should be safeguarded. Such existing institutions as the Conference on Disarmament, the UN Disarmament Commission and the NPT Review mechanism have provided appropriate venues for the deliberation and negotiation of nuclear disarmament issues. Establishing new mechanisms to address nuclear disarmament will only undermine the authority of existing ones, divert limited resources and create disorder in international nuclear disarmament process, which will not be conducive to efficient advancement of nuclear disarmament”; *Statement by H.E. Ambassador Wu Haitao of the Chinese Delegation at the Plenary of the Conference on Disarmament on Nuclear Disarmament*, 5 March 2013, [www.unog.ch/80256EDD006B8954/\(httpAssets\)/7976588264944229C1257B2600355116/\\$file/1281China.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/7976588264944229C1257B2600355116/$file/1281China.pdf).

226 Federation of American Scientists, “Status of world nuclear forces”, www.fas.org/programs/ssp/nukes/nuclearweapons/nukestatus.html

to the need for nuclear disarmament rather than trying to erect alternative forums in which to pursue it. There is also the point to consider that the nuclear-weapon states have themselves pursued some freestanding initiatives. These include the Proliferation Security Initiative,²²⁷ United Nations Security Council resolution 1540,²²⁸ and the Nuclear Security Summit initiative—a parallel process with the intention of creating a positive impact on NPT pillars such as non-proliferation, but which does not mention the NPT or engage with non-NPT member states possessing nuclear weapons.²²⁹

Moreover, given the complexity of the task of eliminating nuclear weapons (including verification of destruction of stockpiles), it is difficult to imagine how any step-by-step approach could proceed in the absence of formal understandings as to all of the various stages and aspects to be covered, including some sequencing. Despite statements by the nuclear-weapon states alluding to the 2010 NPT Action Plan as a “road map”, the Action Plan does not take such a form. Even if it did, it would leave four nuclear-weapon possessor states (the Democratic People’s Republic of Korea, India, Israel, and Pakistan) outside its ambit.

Brazil’s ambassador at the 2013 NPT Preparatory Meeting sought to address the issue of what he described as a “false choice” between step-by-step incrementalism and a comprehensive approach in nuclear disarmament efforts. He argued that “even if nuclear weapon states agreed today to negotiate a nuclear weapons convention, those negotiations would develop a road map to get to zero. He also argued that any assurances against proliferation must be part of those negotiations,

227 See US Department of State, “Proliferation Security Initiative”, www.state.gov/t/isn/c10390.htm

228 Security Council, UN document S/RES/1540, 28 April 2004. According to the United Nations webpage devoted to it, “Resolution 1540 (2004) complements relevant multilateral treaties and arrangements by requiring all States to comply with the obligations outlined in the resolution, irrespective of their status regarding such treaties and arrangements. Through its integrated approach, resolution 1540 aims at preventing proliferation of weapons of mass destruction and their means of delivery as well as illicit trafficking in WMD-related materials, particularly with respect to the activities of non-State actors”; www.un.org/en/sc/1540/faq/facts.shtml.

229 See Arms Control Association, “Nuclear Security Summit at a glance”, April 2012, www.armscontrol.org/factsheets/NuclearSecuritySummit.

not preconditions for them”²³⁰—alluding to the tendency at times of the nuclear- and non-nuclear-weapon states to compartmentalize the issues in the three NPT pillars and at other times to create a tangled web of linkages, for instance for the need for perfect non-proliferation conditions and general and complete disarmament before nuclear weapons elimination can be considered.

Separately, the United Nations’ High Representative for Disarmament Affairs, Angela Kane, made complementary points. She noted the “rich history of step-by-step proposals for nuclear disarmament” and its mixed record of success.²³¹ These included “partial measures” contributing to this goal (such as the NPT, the biological and chemical weapons ban treaties, and CTBT) as well as nuclear-weapon-free zone treaties, and other treaties limiting the deployment of these arms. Yet nuclear arms control discussions have often had little connection to serious disarmament steps. More holistic approaches not dependent on specific sequencing could play helpful roles in overcoming deadlocks and other difficulties, in her view. There is:

no need to choose between a step-by-step process and a more comprehensive approach. Concrete progress in one domain can “spill over” into the other. ... I have come to the conclusion that there is a place for both comprehensive and step-by-step approaches, provided that the latter are backed by accountability measures.²³²

Kane cited the United Nations Secretary-General’s “five point” nuclear disarmament proposal of 24 October 2008 as one example.²³³

230 R. Acheson, “NWS labelled ‘persistent underachievers’ in the NPT yearbook”, *NPT News in Review*, vol. 11, no. 5, 2013, www.reachingcriticalwill.org/disarmament-fora/npt/2013/nir/7741-26-april-2013-vol-11-no-5.

231 United Nations Office for Disarmament Affairs, “The ‘step-by-step’ process of nuclear disarmament: quo vadis?”, www.un.org/disarmament/update/20130424/.

232 Ibid.

233 See United Nations Department of Public Information, “‘Contagious’ doctrine of deterrence has made non-proliferation more difficult, raised new risks, Secretary-General says in address to East-West Institute”, document SG/SM/11881, 24 October 2008, www.un.org/News/Press/docs/2008/sgsm11881.doc.htm.

It follows that other new initiatives or settings such as the Oslo or Mexico conferences or the OEWG could generate new ideas on nuclear disarmament that create positive “spill over” for NPT implementation or the CD—or at least enhance states’ receptivity to such approaches. In other words, such focus on nuclear disarmament would aid implementation of the NPT 2010 Action Plan and not detract from it. Arguably then, the nuclear-weapon states should welcome opportunities for creative discussion that might lead to the changing of minds in states with policy difficulties in the CD and elsewhere, and thus create more propitious conditions for NPT implementation instead of rejecting it as counterproductive.²³⁴ Instead, whether deliberately or inadvertently, the nuclear-weapon states risk conveying the impression they are more comfortable with a deadlocked or deteriorating status quo than efforts to achieve a nuclear-weapon-free world.

Moreover, why have the nuclear-weapon states spurned the opportunity to participate in the OEWG on nuclear disarmament, yet shown active interest in being members of the Group of Governmental Experts on fissile material established by the General Assembly?²³⁵ This is surprising since their boycott of the OEWG to date has denied them the opportunity to have their views (for example, on the “step-by-step” process) incorporated in the OEWG’s report to the General Assembly on “discussions held and all proposals made”.²³⁶ This selectivity in their willingness to engage serves to obscure the concrete nuclear disarmament-related actions they have each undertaken so far, and fuels suspicion about their motives and promises to the non-nuclear-weapon states.

234 The United Kingdom stated: “We are half way through the NPT’s five-year cycle but some appear already to have abandoned the Action Plan, convening alternative processes which will divide the international community”; *Statement on Nuclear Disarmament by Ambassador Joanne Adamson, United Kingdom Permanent Representative to the Conference on Disarmament*, 5 March 2013, [www.unog.ch/80256EDD006B8954/\(httpAssets\)/C041F14078BA5FFDC1257B2500541281/\\$file/1281UK.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/C041F14078BA5FFDC1257B2500541281/$file/1281UK.pdf).

235 See General Assembly, *Treaty Banning the Production of Fissile Material for Nuclear Weapons or Other Nuclear Explosive Devices*, document A/RES/67/53, 4 January 2013.

236 General Assembly, *Taking Forward Multilateral Disarmament Negotiations*, UN document A/RES/67/56, 4 January 2013, para. 3.

SHOULD NUCLEAR DISARMAMENT ONLY BE DEALT WITH THROUGH ESTABLISHED CHANNELS?

One possible interpretation of the 2010 Action Plan—and a bleak one—is that the nuclear-weapon states see the agreement not as an inventory of steps to take, but rather as a political document to be selectively interpreted as to how and when implementation will (ever) take place. These states are unconcerned if their interpretations are perceived to be weak or illogical. Their position is reinforced by the fact that the “step-by-step” process is primarily the domain of those that will ultimately have to undertake it; that is, those states that have not already foresworn nuclear weapons. To this way of thinking, the nuclear-weapon states have to date exploited this dichotomy of nuclear weapons “haves” and “have-nots” to keep control over nuclear disarmament discourse. And it has contributed to keeping the nuclear-weapon states together as a group with a common interest in maximizing their own power (through the possession of nuclear weapons) for as long as possible.

One could extrapolate an even bleaker outlook for efforts to curb nuclear weapons. In a previous paper, we noted the observation of various analysts that despite the importance of components of the current nuclear weapons control regime such as the NPT, it represents a status quo that suits nuclear-armed states and disempowers the non-nuclear-weapon states.²³⁷ The latter periodically voice their grievances about the continued existence of nuclear weapons in effect legitimized by the structure of the regime, while non-proliferation and enforcement crises involving political outliers such as the Islamic Republic of Iran or the Democratic People’s Republic of Korea shape the discourse into one of nuclear weapons “haves”, “have-nots”, and “wannabes”. This dynamic of blockage and a circular discourse dominated by possessor states is a familiar one in arms control. Success in eliminating nuclear weapons remains out of reach because the international community is stymied in its ability to devalue or delegitimize these arms.²³⁸ While the CD remains deadlocked and thus unable to contribute to nuclear disarmament steps because of

237 J. Borrie, *Viewing Nuclear Weapons through a Humanitarian Lens: Context and Implications*, UNIDIR, 2013, p. 10.

238 See N. Ritchie, “Legitimizing and delegitimizing nuclear weapons”, in this volume, p. 41; and K. Berry et al., *Delegitimizing Nuclear Weapons: Examining the Validity of Nuclear Deterrence*, James Martin Center for Nonproliferation Studies, 2010.

blunt use by a few of the consensus rule to prevent any substantive work, it reinforces this unproductive dynamic. Yet it is plain that the status quo cannot be sustained, once the non-nuclear-weapon states conclude that their engagement on nuclear disarmament and commitment to adhering to the nuclear weapons control regime is unlikely ever to be meaningfully reciprocated. Among other profoundly negative outcomes, this would have disastrous implications for the non-proliferation goals the nuclear-weapon states prioritize.

It is also notable that efforts emerging outside the established nuclear weapons discourse may challenge it even while the intent and effect may be to strengthen aspects of the disarmament and non-proliferation regime. It is for that reason that those most comfortable with the status quo—the nuclear-weapon possessors, and the states living under their so-called nuclear “umbrellas”—should be expected to oppose new initiatives just because of the uncertainty it introduces for them.

That is indeed what can be seen with respect to the NPT nuclear-weapon state boycott of new initiatives. Their opposition is not really to a two-day symposium in Oslo or Mexico City per se, a photo opportunity for world leaders in New York, or to some weeks of discussions among Geneva’s disarmament community about nuclear disarmament under the auspices of the United Nations General Assembly. Rather, the concerns or fears of these—and other—nuclear-weapon possessors more importantly relate to where those initiatives could conceivably lead—to a situation beyond their procedural control. Indeed, it is striking in the context of recent discourse how—despite radically different (and sometimes mutually opposed) interests and agendas—the NPT nuclear-weapon states have rallied together in common opposition to new initiatives on nuclear disarmament. Other nuclear-weapon possessor states, notably India, which have participated in these new initiatives, have hedged their positions.²³⁹

239 India stated to the OEWG on 15 May 2013 that it had abstained on the resolution establishing the body because “we did not want to prejudge the utility or otherwise of this Group. We had also done so in view of the assurances of the co-sponsors of the resolution that this effort was not intended to supplant or damage the UN disarmament machinery including the CD”; see *Statement by India on Nuclear Disarmament at CD Plenary on March 5, 2013*, 5 March 2013, [www.unog.ch/80256EDD006B8954/\(httpAssets\)/3D0E65DFB9F6111CC1257B2500540869/\\$file/1281India.pdf](http://www.unog.ch/80256EDD006B8954/(httpAssets)/3D0E65DFB9F6111CC1257B2500540869/$file/1281India.pdf).

Humanitarian approaches to nuclear weapons are problematic from the perspective of preserving the status quo. As discourse in other arms-related contexts has indicated, once evidence of impact is gathered and critical questions are asked about certain prevailing practices that would appear to be incompatible with humanitarian standards it can raise doubts in the minds of policymakers and publics about the acceptability and utility of particular weapons or practices. Despite being modest in scope, the Oslo Conference began to do that—in a manner uncontested by the nuclear-weapon states at that time due to their boycott—in a process of reframing likely to be extended by the Mexico Conference in early 2014. And, as an exercise relevant to nuclear disarmament and non-proliferation, the Oslo Conference’s discussions are certain to feature in the OEWG’s deliberations, just as its concerns featured in many statements at the NPT Preparatory Meeting in Geneva in April–May 2013, of which the South Africa-led joint statement on humanitarian consequences of nuclear weapons was one.

Notably, campaigners and advocates of nuclear disarmament have begun to recognize the potential of humanitarian consequences-based framings of nuclear weapons issues in order to demystify the technocratic, arms control-centred discourse and to try to push nuclear weapons elimination higher up the international agenda. The International Campaign to Abolish Nuclear Weapons (ICAN) global consortium of non-governmental organizations stated this explicitly:

discussions about nuclear weapons must focus not on narrow concepts of national security, but on the effects of these weapons on human beings—our health, our societies, and the environment on which we all depend. The processes that led to treaties banning landmines in 1997 and cluster munitions in 2008 demonstrated the importance of adopting a humanitarian-based discourse: new political coalitions were formed, longstanding deadlocks were broken, and two whole classes of weapons were outlawed. Today we must adopt a similar approach for nuclear weapons.²⁴⁰

ICAN’s goal is to “mobilize people in all countries to inspire, persuade and pressure their governments to initiate and support negotiations for a treaty

240 ICAN, *Catastrophic Humanitarian Harm*, 2012, www.icanw.org/campaign-news/global/catastrophic-humanitarian-harm/#.UZOh17-UF0c.

banning nuclear weapons”.²⁴¹ It is significant in this context that ICAN’s call for nuclear disarmament is not specific about the channels or institutions through which this should be achieved.

At the same time, there is a widespread sense that such a goal is unlikely to be achievable within the contexts of the CD or the NPT. Procedural blockage and the perceived tyranny of consensus (in the CD) would probably necessitate a free-standing process of some kind to achieve any outcome with the potential to generate significant political and normative pressure on states to negotiate nuclear disarmament measures that bite into stocks and capabilities. It has led some to argue that “it is only by committed governments taking responsibility to agree a treaty banning nuclear weapons even without the participation of the nuclear-armed states that a clear legal rejection of nuclear weapons will be put in place”.²⁴² The rationale behind a ban treaty is that it would undercut the acceptability of nuclear weapons over the long run by normative means, and thus place added pressure on possessor states to devalue, reduce, and eliminate these arms. It would have a non-proliferation benefit in building a taboo against possession of nuclear weapons, and a disarmament benefit in putting pressure on all existing possessors in a non-discriminatory way. For these reasons, the non-nuclear weapon states should not count on the support or cooperation of nuclear-weapon possessor states—nor, following this logic, should they necessarily seek it.

CONCLUSION

Judging by the state of the current discourse on nuclear weapons in contexts such as the CD and NPT, and in new settings such as the Oslo Conference and the OEWG, the international community is still some way away from commencement of nuclear weapon disarmament processes of any kind. Nevertheless, the impact of humanitarian perspectives since the 2010 NPT Review Conference outcome are already discernible both in terms of statements and shifts in the terms of debates about renewing momentum in nuclear disarmament—”essentially to point out the incompatibility of nuclear use, or the threat of that use, with international

241 ICAN, *Advocacy Guide: Second Preparatory Committee of the Nuclear Non-Proliferation Treaty*, 22 April–3 May 2013, 2013, p. 11, www.icanw.org/wp-content/uploads/2013/04/Advocacy-Guide4.pdf.

242 Article 36, *Banning Nuclear Weapons*, 2013, p. 20, www.article36.org/wp-content/uploads/2013/02/Report_web_23.02.13.pdf.

humanitarian law, while reminding states of their obligation to comply with this law”.²⁴³ And, humanitarian perspectives have provided a unifying focus to dissatisfaction among non-nuclear-weapon states with the pace of nuclear disarmament in view of the continuing possibility that these massively destructive weapons could be used.

This is not to say that real challenges do not exist for humanitarian approaches to become a means by which more propitious conditions for nuclear disarmament are achieved. For all of the success of the Oslo Conference, it was not even concerned directly with matters of nuclear disarmament. As of writing, the agenda for the follow-up Mexico Conference is not clear. The South Africa-led joint statement at the NPT stemming in part from the Oslo Conference’s discussions kept concerns about the catastrophic humanitarian consequences of nuclear weapons detonation in the public eye despite the boycotts of Oslo and the OEWG by the nuclear-weapon states. But such political declarations will be of diminishing value if the humanitarian concerns they express do not catalyse the further delegitimization of nuclear weapons or concerted action toward nuclear disarmament.

Inevitably, the South Africa-led joint statement put some states living under the nuclear “umbrellas” of the nuclear-weapon states in awkward positions: despite their nuclear disarmament rhetoric, states such as Australia, Canada, Germany, and Japan did not join it perhaps for fear of contradicting their military alliance commitments. However, it points to the need for advocates of proposals such as a nuclear-weapon-ban treaty to persuade such states as to the value of such an outcome. And, means need to be devised by which rejecting the legitimacy of nuclear weapons can be squared with military alliances that none of the nuclear umbrella states would be willing to walk away from. This is likely to entail achieving changes in the self-perceived identities of these military alliances among their constituent states: what these alliances are for, and what animates them apart from dependence on nuclear weapons.

Moreover, proposals from civil society for a ban treaty are just one of many different ideas for renewing nuclear disarmament momentum. These range from the more exotic, such as a nuclear weapons convention, a no-first-

243 P. Meyer, “Canada’s contradictory military and humanitarian stances”, *Embassy*, 1 May 2013, www.thesimonsfoundation.ca/sites/all/files/Canadas%20contradictory%20military%20and%20humanitarian%20stances%20-%20from%20EmbassyNews.ca%2C%20May%201%2C%202013.pdf.

use treaty, or a global nuclear-weapon-free zone, to agreements between nuclear-weapon states to de-alert nuclear weapons, take steps to decrease the role of nuclear arms in security policies, or develop verification capacities. Overall, however, what is striking is that for the first time in many years, discussions about the need to eliminate nuclear weapons have taken on a note of urgency, and some states have moved from lamenting their disempowerment and the state of the nuclear weapons control regime to actively considering how they can best strengthen momentum towards elimination based on fresh assessments.

While this change in discourse cannot be attributed to humanitarian approaches alone, humanitarian concerns—for instance, as expressed in the 2010 NPT Action Plan—have helped to catalyse it. Humanitarian concerns have also demonstrated potential as means by which to continue the reframing process about the acceptability of nuclear weapons among policymakers and the public. In view of our analysis, seeking to undercut and then topple the perception of nuclear weapons as connoting power or prestige because of their lack of acceptability must be an essential element. The reluctance of the NPT nuclear-weapon states to engage with concerns about nuclear weapons outside of their comfort zones in the CD and NPT have, if anything, placed these concerns even more centrally in the spotlight: to many non-nuclear-weapon states and civil society onlookers, it seems to expose a disturbing gap between the rhetoric of these states and their actions. Proponents of nuclear disarmament can be expected to further exploit this gap with a view to building pressure on nuclear-weapon possessor states in coming months and years. This process may be made more straightforward for them the less these states are seen to engage with the substance of their concerns. But such lack of engagement by the nuclear-weapon states would be very unfortunate as it could ultimately carry great risks for the “international stability, peace and undiminished and increased security” referred to in the 2010 NPT Action Plan.

RESPONDING TO THE DETONATION OF NUCLEAR WEAPONS: A UNITED NATIONS HUMANITARIAN PERSPECTIVE

Simon Bagshaw

United Nations humanitarian agencies²⁴⁴ have in recent years become increasingly concerned at the humanitarian impact of different types of weapons on civilians. To date, the focus has been mostly on anti-personnel landmines and cluster munitions. Their use has been shown to pose a particular threat to civilians, as well as to the delivery of life-saving humanitarian assistance and the safety of humanitarian workers.²⁴⁵

More recently, the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) has focused particular attention on the humanitarian impact of explosive weapons, especially when used in populated areas.²⁴⁶ Such weapons include artillery shells, missiles, mortars,

244 For the purposes of this chapter, the term “United Nations humanitarian agencies” is used to refer to those agencies that are members of the Inter-Agency Standing Committee (IASC). The IASC is the United Nations’ primary mechanism for inter-agency coordination of humanitarian assistance. Its United Nations members include the Food and Agriculture Organization of the United Nations, Office for the Coordination of Humanitarian Affairs, Office of the High Commissioner for Human Rights, United Nations Children’s Fund, United Nations High Commissioner for Refugees, United Nations Development Programme, United Nations Human Settlements Programme, United Nations Population Fund, World Food Programme, and World Health Organization.

245 See, for example, “A call for a freeze on the use of cluster munitions”, statement by the IASC to the Meeting of States Parties to the Convention on Certain Conventional Weapons, 27 November 2003, www.humanitarianinfo.org/iasc/pageloader.aspx?page=content-products&productcatid=16; and “UN humanitarian, development and human rights chiefs call on states not to undermine the international ban on cluster bombs”, 23 November 2011, <http://reliefweb.int/report/world/un-humanitarian-development-and-human-rights-chiefs-call-states-not-undermine>.

246 See, for example, statement by the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Valerie Amos, to the United Nations Security Council open debate on the protection of civilians in armed conflict, in Security Council, document S/PV.6531, 10 May 2011. See, more generally, the regular reports of the Secretary-General on the protection of civilians in armed

aircraft bombs, and improvised explosive devices. The feature common to these weapons is that they are indiscriminate within their zones of blast and fragmentation. This makes their use highly problematic in populated areas, both in the short and long term.

Nuclear weapons are a type of explosive weapon that United Nations humanitarian agencies have not sufficiently considered in terms of humanitarian impact. Yet these weapons are also indiscriminate within their zone of blast, and will almost always have a catastrophic and devastating humanitarian impact because of their destructive power.²⁴⁷

Thankfully, since the United Nations came into being it has not had to respond to the aftermath of a nuclear weapon detonation. Nor, rather surprisingly, has there been much analysis by United Nations humanitarian agencies of the extent to which they could respond.²⁴⁸ The reasons for this

conflict. These reports are drafted by OCHA and have been used as a vehicle for raising awareness of the humanitarian impact of explosive weapons and articulating possible responses to the problem.

247 See M. Brehm and J. Borrie, *Use of Explosive Weapons in Populated Areas: Some Questions and Answers*, Discourse on Explosive Weapons project, background paper no. 2, UNIDIR, 2010, endnote 8.

248 The only sort of assessment of “international” response capacity appears to have been that conducted by Robin Coupland and Dominique Loye in two articles: D. Loye and R. Coupland, “Who will assist the victims of use of nuclear, radiological, biological and chemical weapons—and how?,” *International Review of the Red Cross*, vol. 89, no. 866, 2007; and R. Coupland and D. Loye, “International assistance for victims of use of nuclear, radiological, biological and chemical weapons: time for a reality check?,” *International Review of the Red Cross*, vol. 91, no. 874, 2009. Interestingly, Pillar II of the Global Counter-Terrorism Strategy, adopted by the General Assembly in 2006 (A/RES/60/288), includes a provision which invites the United Nations “to improve coordination in planning a response to a terrorist attack using nuclear, chemical, biological or radiological weapons or materials, in particular by reviewing and improving the effectiveness of the existing inter-agency coordination mechanisms for assistance delivery, relief operations and victim support, so that all States can receive adequate assistance” (para. 17). Work in this area has been undertaken by the United Nations Counter-Terrorism Implementation Task Force’s Working Group on Preventing and Responding to Weapons of Mass Destruction Attacks. In August 2010, the Working Group issued a report on inter-agency coordination in the event of a nuclear or radiological terrorist attack. The report focuses on such existing coordination mechanisms as the Joint Radiation Emergency Management Plan of the International Organizations and the Inter-Agency Committee on Radiological and Nuclear Emergencies. It is, however, silent

situation are unclear. It may stem from a tacitly-held assumption that such weapons will never be used; that the threat posed by nuclear weapons subsided if not disappeared altogether with the end of the Cold War. It may be that the possibility of an accidental detonation is considered so remote as to not warrant particular concern. Or, it may be a general sense that a nuclear weapon explosion would be so overwhelming as to render any response impossible or meaningless. Whatever the reason, the fact remains that nuclear weapons continue to exist, therefore so does the threat of their detonation, be it deliberate or accidental. As such, it remains incumbent on United Nations and other humanitarian organizations to consider the extent to which they could respond to a nuclear weapon detonation. After all, it will always be possible to mount some form of humanitarian response. The important question is how effective and meaningful that response will be in terms of saving life and alleviating human suffering.

The purpose of this chapter is to begin to examine the extent to which United Nations humanitarian agencies can respond to a nuclear weapon detonation. Part one will consider the humanitarian impact of a nuclear weapon detonation, the scope of assistance and protection needs that this is likely to give rise to, and the implications of this for United Nations humanitarian agencies. Part two will briefly examine the United Nations' approach to emergencies resulting from the civilian use of nuclear power and insights that can be drawn from this. Part three will examine United Nations humanitarian response in the event of a nuclear weapon detonation by elaborating some key considerations that would be taken into account because of their implications for the ability of United Nations humanitarian agencies to respond in any meaningful way.

on the possible humanitarian dimensions of such an attack and how those existing coordination mechanisms would relate to the IASC or United Nations humanitarian agencies in responding to such an event. See Counter-Terrorism Implementation Task Force, *Interagency Coordination in the Event of a Nuclear or Radiological Terrorist Attack: Current Status, Future Prospects*, 2010, www.un.org/en/terrorism/ctitf/pdfs/ctitf_wmd_working_group_report_interagency_2010.pdf.

THE HUMANITARIAN IMPACT OF A NUCLEAR WEAPON DETONATION

Depending on its size, the detonation of a single nuclear weapon in an urban area could cause hundreds of thousands of casualties, massive physical destruction, and have far reaching social and economic consequences. According to a recent report by the United Kingdom-based non-governmental organization (NGO) Article 36, the detonation of a 100kt warhead over the city of Manchester would create blast and thermal effects killing more than 81,000 people directly, leaving more than 212,000 people injured, devastating housing and commercial buildings, destroying vital infrastructure, causing massive population displacement, and leaving the local emergency service capacity seriously degraded. Ongoing radiation would have further health effects and hamper any efforts at remedial action. Even outside the zones of direct damage, the effects of the detonation would render communications systems inoperable and the local population overwhelmed by those fleeing the crisis. The capacity of emergency and health services to provide a meaningful response would be minimal.²⁴⁹

The detonation of several such weapons could have severe environmental consequences as well. A study by International Physicians for the Prevention of Nuclear War drawing from recent scientific literature argued that a nuclear war anywhere in the world, using as few as 100 weapons, would disrupt the global climate and agricultural production so severely that the lives of more than a billion people would be at risk.²⁵⁰

Evidently, such scenarios would generate considerable humanitarian need. This would almost certainly require the services and expertise of all United Nations humanitarian agencies and beyond, including such organizations as the International Committee of the Red Cross (ICRC) as well as a range of humanitarian non-governmental organizations as implementing partners, on which United Nations agencies depend. It would also almost certainly have implications for each of the main sectors of humanitarian response: health, emergency shelter, camp coordination and management, water

249 Article 36, *Humanitarian Consequences: Short Case Study of the Direct Humanitarian Impacts from a Single Nuclear Weapon Detonation on Manchester, UK*, 2013.

250 See I. Helfand, *Nuclear Famine: A Billion People at Risk*, International Physicians for the Prevention of Nuclear War and Physicians for Social Responsibility, 2012.

and sanitation, food security, nutrition, protection, telecommunications, and logistics.²⁵¹

Leaving aside the practical challenges to responding to a nuclear weapon explosion, which will be discussed in part three below, generally speaking there would be an urgent need to provide specialized medical assistance in view of the large number of severe burns cases and exposure to radiation, as well as more basic medical services to respond to injuries resulting from blast and fragmentation. In addition, a high degree of psychological trauma would be expected in such circumstances, also requiring specialist support.

The provision of emergency shelter would be a priority given the widespread displacement that would likely occur and the massive destruction of existing housing and other building stock. It is also very possible that the displacement will not be contained within the borders of the state concerned and that there would be refugee movements into neighbouring states. The latter may in turn require and request international assistance to respond to the shelter and other emergency needs of those crossing their borders. Survivors would need immediate access to uncontaminated food, potable water, and adequate sanitation facilities in order to prevent the outbreak of disease. Meeting these and other needs would require effective coordination services, considerable logistical support, and the provision of emergency telecommunications. Protection services would also be required, for example to ensure the safety of unaccompanied or orphaned children and other vulnerable groups such as older persons and persons with disabilities. There would likely be a need to address issues relating to sexual and gender-based violence, which often occur in humanitarian emergencies, particularly but not only in camp settings, and which can affect women, girls, boys, and men.

The question this poses is: under the circumstances of a nuclear weapon detonation, to what extent could United Nations humanitarian agencies and their partners carry out these and other activities?

251 See further at www.unocha.org/what-we-do/coordination-tools/cluster-coordination.

UNITED NATIONS HUMANITARIAN RESPONSE IN THE CASE OF NUCLEAR ACCIDENTS

As noted above, the United Nations has not (yet) had to respond to the aftermath of a nuclear weapon detonation. The United Nations has some experience in helping to respond to humanitarian emergencies in the aftermath of nuclear accidents at civilian facilities, such as Chernobyl in 1986, work that continues today involving the United Nations Development Programme (UNDP).²⁵² More recently, United Nations agencies assisted with the response to the accident at the Fukushima power plant, following the earthquake and tsunami in March 2011—although it should be noted that this assistance was limited in scope and not necessarily specific to the nuclear accident but in response to the broader crisis.²⁵³

The Fukushima accident led to internal reflection on the United Nations' collective capacity to respond to a nuclear accident with the Secretary-General requesting a system-wide study on the impact of the accident. The study examined the international emergency response framework in case of nuclear accidents. It found the need for “an inclusive and consolidated response system” and that “The different response mechanisms should be linked and mainstreamed, and an appropriate governance framework

252 See *United Nations Action Plan on Chernobyl to 2016*, http://chernobyl.undp.org/russian/docs/UNActionPlan_revised.pdf.

253 The United Nations deployed a United Nations Disaster Assessment and Coordination (UNDAC) team in the immediate aftermath of the earthquake and tsunami, whose activities were subsequently assumed by the Office for the Coordination of Humanitarian Affairs (OCHA). UNDAC teams are designed to help governments of disaster-affected countries during the first phase of a sudden-onset emergency. UNDAC also assists in the coordination of incoming international relief at national level or at the site of the emergency. Other United Nations support included the provision of logistical support and mobile warehouses by the World Food Programme (WFP) and support from the United Nations Children's Fund (UNICEF) to relief activities carried out by the national UNICEF Committee. The Food and Agriculture Organization of the United Nations (FAO) provided technical support and policy advice on the dissemination of information on food monitoring and food restrictions, the consideration of agricultural countermeasures, and remediation strategies. The World Health Organization (WHO) was involved in risk communication and the provision of technical information to the media and states.

for coordination should be developed”.²⁵⁴ The Secretary-General reiterated this finding at a high-level meeting on “Nuclear Safety and Security” on 22 September 2011 in New York. He acknowledged the need to establish a closer link between the nuclear response system and the humanitarian coordination system in case of nuclear accidents and asked the Emergency Relief Coordinator,²⁵⁵ as Chair of the Inter-Agency Standing Committee (IASC), to study ways to enhance the capacity of IASC organizations in this regard. The resulting study, undertaken by the Office for the Coordination of Humanitarian Affairs (OCHA), was released in March 2013.²⁵⁶

Although the OCHA study was limited in scope to emergencies involving civilian uses of nuclear power, it nonetheless considered the fact that nuclear accidents can result from “security-related threats” and not only from problems with the functioning of nuclear reactors. In this regard, the study noted two possible scenarios.²⁵⁷ The first scenario is the deliberate “preventive” bombing of nuclear facilities that are suspected of being used for the production, assembly, or testing of nuclear weapons.²⁵⁸ The study described the second scenario as “simply the ‘unthinkable’—a nuclear detonation”. The study considered that:

Rather than from an act of war, this would more likely result from the loss of control of a warhead on the part of a country with military nuclear capability, or from a terrorist act. The consequences of such event would be of such magnitude (and its likelihood so limited) that it is considered outside the scope of this study.²⁵⁹

What the study did not explore—or really acknowledge—was a third possible scenario: that of a nuclear weapon detonation for other reasons, including because of mishap, miscalculation, or as a result of deliberate, hostile intent on the part of a state or states. It is worth observing in this

254 *United Nations System-Wide Study on the Implications of the Accident at the Fukushima Daiichi Nuclear Power Plant. Report of the Secretary-General*, UN document SG/HLM/2011/1, 16 August 2011, para. 127.

255 The Emergency Relief Coordinator is also the Under-Secretary-General for Humanitarian Affairs and head of OCHA.

256 OCHA, *Linking Humanitarian and Nuclear Response Systems—a Study by the Office for the Coordination of Humanitarian Affairs*, 2013.

257 *Ibid.*, pp. 11ff.

258 *Ibid.*

259 *Ibid.*

respect that just such possibilities were considered to be very real during the Cold War, and of great concern. Despite considerable reductions in the overall number of nuclear weapons since then, tens of thousands of these arms remain in stockpiles, and the number of states possessing them has widened to nine. Research since the Cold War's end into nuclear weapons accidents and "near misses" is constrained by highly restrictive disclosure practices of nuclear-weapon-possessor states, but the research that has been conducted and released publicly does nothing to justify complacency.²⁶⁰ That these concerns have faded from memory and have receded in the policy discourse probably speaks more to more immediate-seeming preoccupations than because the risk of nuclear weapons detonations has become negligible.

UNITED NATIONS HUMANITARIAN RESPONSE IN THE CASE OF A NUCLEAR WEAPON DETONATION

The detonation of a nuclear weapon would present severe and possibly insurmountable challenges to the ability of United Nations humanitarian agencies to respond in any meaningful way, relative to the magnitude of the event.

First, it should be acknowledged that the international humanitarian system is geared towards responding to humanitarian crises resulting from sudden- or slow-onset disasters (such as earthquakes, floods, famine, and nuclear accidents) and conventional armed conflict. It is not geared towards responding to the unprecedented destructive force and radiological impact of a nuclear detonation. Moreover, United Nations humanitarian agencies have no prior experience of such an event on which to draw. Nor, it should be noted, do other major humanitarian actors, as the International Committee of the Red Cross recently pointed out.²⁶¹

The role of United Nations humanitarian agencies is also predicated on supporting the response efforts of national and local authorities, based on a request for assistance from the state concerned. If such a request is forthcoming, which cannot necessarily be presumed, there are important questions in terms of the extent to which national authorities are able to

260 See, for instance, S.D. Sagan, *The Limits of Safety: Organizations, Accidents, and Nuclear Weapons*, 1993.

261 Statement of the International Committee of the Red Cross, General Assembly, 67th session, First Committee, 16 October 2012.

respond to a nuclear detonation. There is also the question of what level of national and local capacity would remain, post-detonation, and with which international humanitarian agencies can work. For example, will key line ministries (foreign affairs, interior, defence, finance, etc.) and local authority actors (disaster management teams, civil protection, emergency services, etc.) continue to function and be in a position to guide and facilitate the humanitarian response as would normally be the case? The Norwegian Radiation Protection Authority provided a bleak assessment of Norway's capacity to respond to a nuclear weapon detonation in Oslo, concluding that "In the event of a nuclear detonation adequate response countermeasures are non-existent".²⁶² It is noteworthy that Norway is a high-income state with considerable resources at its disposal.²⁶³ The implication is that in most other countries, the outlook would be at least as grim.

Second, the extent of any international humanitarian response would be heavily influenced by the unique circumstances of the detonation—whether it is an accidental detonation in peacetime for example, or takes

262 Presentation by M. Ole Harbitz, Director-General, Norwegian Radiation Protection Authority, "Emergency preparedness and response in the event of a nuclear detonation—the case of Norway", presentation at the Conference on the Humanitarian Impact of Nuclear Weapons, Oslo, 4–5 March 2013, www.regjeringen.no/upload/UD/Vedlegg/Hum/hum_harbitz.pdf.

263 Norway is almost certainly not alone. Concerns have been raised even over the ability of national authorities to properly deal with accidents involving nuclear weapons that do not detonate. An emergency exercise in 2011 exposed serious weaknesses in the United Kingdom's ability to cope with a catastrophic motorway pileup in which a nuclear bomb convoy burns and spreads a cloud of radioactive contamination over nearby communities. An internal report released by the Ministry of Defence revealed that the emergency services faced major difficulties in responding to the mocked-up accident near Glasgow because they had no help from Ministry of Defence weapons experts for more than five hours. At times the response, which involved 21 agencies, was disorganized, the report said, according to news reports. Heated disputes with ambulance staff over how to handle casualties contaminated with radioactivity at the crash site caused "considerable delay", resulting in one victim being declared dead. Other problems included outdated, paper-based communications systems, poor mobile phone signals, conflicting scientific advice on health hazards, and confusion over radiation monitoring; "Nuclear convoy disaster exercise reveals weaknesses in emergency response", *The Guardian*, 12 June 2013. The article noted that in the United Kingdom, nuclear weapons are transported in heavily guarded road convoys up to six times per year.

place in the context of armed conflict; whether the initial detonation provokes retaliatory action, what form that action takes, including the possibility of further nuclear strikes, and what humanitarian consequences would result from those actions and where. It is extremely difficult to plan for such scenarios in advance and United Nations country-based teams do not undertake contingency planning and preparedness for events of this sort. Indeed, it is telling that one of the recommendations from the above-mentioned OCHA study on linking the humanitarian and nuclear response systems was that in countries with civilian nuclear capability, United Nations country teams' preparedness and contingency plans should specifically include nuclear hazards.²⁶⁴

Third, there is the very practical question of how United Nations humanitarian agencies would ensure their presence on the ground to coordinate and implement humanitarian operations without putting their staff at unacceptable risk. To begin with, United Nations security regulations do not permit the deployment of United Nations humanitarian staff in a "nuclear, chemical or biological warfare environment"—meaning also that any staff already in-country are likely to be evacuated.²⁶⁵ One might imagine a future scenario where deployment is permitted in the event that United Nations personnel are appropriately trained to work in such environments and have access to the necessary equipment. However, United Nations humanitarian agencies are not there yet, or even close. There is little—if any—understanding among United Nations humanitarian agencies about what sort of training and equipment would be required, where it could be obtained and what level of investment this would require, and who would cover those costs. Related to this, as indicated above, United Nations humanitarian agencies rely heavily on international (and national) non-governmental organizations (NGOs) to carry out activities. These NGOs would face the same challenges. In short, there would be very limited operational capacity on the ground, if any at all, in the event of a nuclear weapon detonation.

Fourth, consideration must be given to how humanitarian agencies could respond to such an overwhelming and devastating crisis while continuing

264 OCHA, *Linking Humanitarian and Nuclear Response Systems—a Study by the Office for the Coordination of Humanitarian Affairs*, 2013, p. 4.

265 United Nations, "Annex T—policy with regard to operations in a nuclear, biological or chemical warfare environment", *United Nations Field Security Handbook—System-Wide Arrangements for the Protection of United Nations Personnel and Property in the Field*, 2006.

to meet humanitarian needs in existing crises. Moreover, some of these existing crises may further deteriorate depending on their proximity to the weapon detonation. An important dimension to this is the willingness and ability of so-called donor states to meet the costs associated with a humanitarian response to a weapon detonation while also maintaining financial support for ongoing humanitarian challenges. At the end of 2012, United Nations humanitarian agencies appealed for US\$8.5 billion to support life-saving and other humanitarian assistance operations in 2013 for more than 51 million people.²⁶⁶

CONCLUSION

These are just some of the challenges that United Nations humanitarian agencies would face and that spring easily to mind, even if they are inevitably represented here in the abstract. There would, of course, be other emergent challenges created by a nuclear weapon detonation that are at least as formidable, and possibly cannot be surmounted. Clearly, there is a need to examine these issues in greater detail and begin to take stock more thoroughly of the extent to which United Nations humanitarian agencies can respond effectively to save and rebuild the lives of those who survive a nuclear weapon detonation, be it deliberate or accidental.

Some United Nations humanitarian agencies have begun to reflect on this, prompted by the increasing focus on the humanitarian impact of nuclear weapons in the context of the Non-Proliferation Treaty,²⁶⁷ the adoption in 2011 by Council of Delegates of the International Red Cross

266 OCHA, “UN and humanitarian partners launch US\$8.5 billion appeal to help 51 million people in need in 2013”, press release, 12 December 2012.

267 The 2010 Review Conference of the Non-Proliferation Treaty expressed “deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons”; 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document*, document NPT/CONF.2010/50 (Vol. I)*, 2010, part I. Inclusion of this provision in the outcome of the 2010 Review Conference has provided the basis for joint statements on the issue at the first and second sessions of the Preparatory Committee for the 2015 Review Conference. The joint statement at the first session had the support of 16 states. At the second session in April 2013, 79 states supported the joint statement on the humanitarian impact of nuclear weapons. See further, Article 36, “79 states issue humanitarian statement at Non-Proliferation Treaty PrepCom”, 3 May 2013, www.article36.org/cat2-nuclear-weapons/79-states-issue-humanitarian-statement-at-non-proliferation-treaty-prepcom/.

and Red Crescent Movement of a resolution on the elimination of nuclear weapons,²⁶⁸ and discussions last year in the First Committee of the United Nations General Assembly.²⁶⁹ The Norwegian Conference on the Humanitarian Impact of Nuclear Weapons²⁷⁰ in March 2013 was particularly influential in engaging senior-level participation from a number of United Nations humanitarian agencies, including OCHA, UNDP, the Office of the United Nations High Commissioner for Refugees, and WFP. But as United Nations humanitarian agencies further consider issues of response they must be realistic in their assessment of what they can and cannot achieve. These actors must also be scrupulous in explaining to states what could and—could not—be realistically expected of the United Nations in such situations.

If it is not possible to respond effectively—and the assessment to date suggests that it is not—then it underlines the importance of preventing the use of nuclear weapons in the first place, as the World Health Organization concluded in 1987.²⁷¹ Of course, it is up to states to decide how to make that happen. But that does not mean that United Nations humanitarian agencies, and the humanitarian community more broadly, should not sound the alarm based on their perspectives. They have done so before,

268 Council of Delegates of the International Red Cross and Red Crescent Movement, *Resolution 1—Working towards the Elimination of Nuclear Weapons*, 26 November 2011. The resolution emphasized “the incalculable human suffering that can be expected to result from any use of nuclear weapons, the lack of any adequate humanitarian response capacity and the absolute imperative to prevent such use”.

269 See the Joint Statement on the humanitarian dimension of nuclear disarmament (New York, 22 October 2012), sponsored by 34 states which expressed deep concern about the “immense” and “unavoidable” humanitarian consequences that any use of nuclear weapons would have; www.acronym.org.uk/official-and-govt-documents/joint-statement-humanitarian-dimension-nuclear-disarmament-un-first-committee-2012.

The General Assembly subsequently adopted resolution 67/56 on 3 December 2012 which establishes an open-ended working group (OEWG) to develop proposals to take forward multilateral nuclear disarmament negotiations for the achievement and maintenance of a world without nuclear weapons. The humanitarian impact of nuclear weapons was a significant theme of the OEWG’s discussions at its first session in May 2013.

270 See www.regjeringen.no/en/dep/ud/selected-topics/humanitarian-efforts/humimpact_2013.html?id=708603.

271 WHO, *Effects of Nuclear War on Health and Health Services (Report of the WHO Management Group on Follow-Up of Resolution WHA36.28)*, 1987, p. 5.

for instance on cluster munitions, where there emerged widespread support from field-based humanitarian practitioners for a legally-binding prohibition as the only realistic means of addressing the human impacts of these weapons. The reasoning that led the United Nations and other humanitarian organizations to support the ban on cluster munitions would also seem to apply to nuclear weapons, if only because the capacity to respond—to alleviate the pain and suffering of those affected in any meaningful way—simply not does not exist, and probably never will.

THE CATASTROPHIC HUMANITARIAN CONSEQUENCES OF NUCLEAR WEAPONS: THE KEY ISSUES AND PERSPECTIVE OF THE INTERNATIONAL COMMITTEE OF THE RED CROSS

Lou Maresca

The International Committee of the Red Cross (ICRC), and the International Red Cross and Red Crescent Movement more generally, have had long standing concerns about nuclear weapons. These concerns derive from the experience of the ICRC and the Japanese Red Cross Society in providing humanitarian aid to Hiroshima and Nagasaki in the wake of the 1945 atomic bombings. They also stem from the ICRC's ongoing mandate to protect and assist the victims of armed conflict and its role in the development and implementation of international humanitarian law. In April 2010, the ICRC President at that time, Jakob Kellenberger, addressed the Geneva diplomatic corps and appealed "to all States, and to all in a position to influence them, to seize with determination and urgency the unique opportunities now at hand to bring the era of nuclear weapons to an end". This statement was notable as it was the first time in its history that an ICRC president had asked to meet with states and collectively address them solely on the issue of nuclear weapons. It was also an indication that, at least from the perspective of the ICRC, the discussions about nuclear weapons at the international level might be changing.

This article will highlight the main issues and concerns of the ICRC in relation to nuclear weapons, and provide a summary of the efforts of the International Red Cross and Red Crescent Movement in this area since 1945. It will also offer several observations on what the changing dynamic on nuclear weapons may mean for the ongoing work on this issue.

THE REVELATIONS OF HIROSHIMA

Visited Hiroshima thirtieth, conditions appalling. City wiped out, eighty percent of all hospitals destroyed or seriously damaged. Inspected two emergency hospitals, conditions beyond description. Effect of bomb mysteriously serious. Many victims apparently recovering suddenly suffer fatal relapse due to decomposition of white blood cells and other internal injuries

now dying in great numbers. Estimated still over one hundred thousand wounded in emergency hospitals ... sadly lacking bandaging materials, medicines. ... Required: substantial quantities bandages, surgical pads, ointments for burns, sulfamides, also blood plasma and transfusion equipment.²⁷²

These excerpts are quoted from a telegram by the first ICRC delegate to reach Hiroshima following the detonation of the atomic bomb in August 1945. Fritz Bilfinger arrived in Hiroshima on 29 August and sent the report back in a cable to the ICRC delegation in Tokyo the following day. The cable is a brief but powerful description of the situation facing the citizens of Hiroshima and the humanitarian aid workers seeking to aid them. An enormous but untold number of people were dead or dying and more than 100,000 were wounded and in need of treatment. In addition to the destruction of hospitals and medical centres, medical supplies and equipment were also destroyed or contaminated. Subsequent studies by local officials and organizations would reveal that that approximately 90 per cent of the doctors and nurses in Hiroshima had been killed or injured by the explosion, as had 80 per cent of the city's pharmacists.²⁷³ Thus, in addition to the enormous numbers of casualties and the destruction of homes, buildings, and communication networks, the entire medical infrastructure of Hiroshima had also been decimated.

In many respects Bilfinger's cable summarizes the main effects of nuclear weapons, in humanitarian terms. The thermal radiation (heat) and blast waves released by these weapons can have devastating consequences for civilians at the time of the detonation, with casualties most likely occurring over very large areas.²⁷⁴ In addition, the release of ionizing radiation and radioactive fallout can cause radiation sickness with most people not aware that they have received a potentially lethal radiation dose until days

272 F. Bugnion, "The International Committee of the Red Cross and nuclear weapons: From Hiroshima to the dawn of the 21st century", *International Review of the Red Cross*, vol. 87, no. 859, 2005, p. 513.

273 The Committee for the Compilation of Materials on Damage Caused by the Atomic Bombs in Hiroshima and Nagasaki, *Hiroshima and Nagasaki: the Physical, Medical, and Social Effects of the Atomic Bombings*, 1981, p. 379.

274 The casualties seen in Hiroshima included severe burns, flash blindness, ruptured organs, compound fractures, fractured skulls, and penetrating and other blunt force wounds and the casualties and destruction caused by the heat, blast, and fire were spread over 13 square kilometres.

or weeks after the explosion.²⁷⁵ Those who survive the immediate dangers resulting from the explosion may nevertheless face an increased risk of developing certain cancers, such as leukaemia and thyroid cancer. Over time, many more lives would be lost. In Hiroshima the fatalities attributed to the bombings had, by 1950, risen to 200,000.²⁷⁶ Even today, radiation-related illness are seen among the now elderly survivors.

In the view of the ICRC, weapons with such devastating effects raise some fundamental questions about the level of suffering that is acceptable in the context of armed conflict, the most likely scenario where nuclear weapons would be used. Such effects also underline concerns about the compatibility of nuclear weapons with international humanitarian law. In light of such consequences, a further question of particular concern to the ICRC and other humanitarian organizations is whether adequate assistance could ever be provided to the survivors of a nuclear detonation. For as long as such weapons exist and proliferate, humanitarian organizations will need to consider the possibility of responding to their use.

IS THERE A CAPACITY TO ASSIST THE SURVIVORS OF A NUCLEAR DETONATION?

The ICRC has been concerned for many years about the effects of chemical, biological, radiological, and nuclear (CBRN) weapons and the challenges and dangers of operating in areas where such weapons may have been used. It is pertinent that the ICRC has some experience of being called upon to respond to events where the use of these weapons was confirmed or alleged. These instances have already served to highlight some of the

275 However, the extent of radiation injuries from fallout will depend on a variety of factors, such as where the nuclear explosion takes place (an air explosion above a city will create less radioactive debris and fallout than an explosion at ground level), the local wind patterns and weather conditions, and whether individuals in the area of fallout are able to remain sheltered, especially during the initial days following the explosion when radioactivity would be most intense.

276 The Committee for the Compilation of Materials on Damage Caused by the Atomic Bombs in Hiroshima and Nagasaki, *Hiroshima and Nagasaki: the Physical, Medical, and Social Effects of the Atomic Bombings*, 1981, p. 369. For an overview of the relief operations in Nagasaki see, N.M Kosuge, "Prompt and utter destruction: the Nagasaki disaster and the initial medical relief", *International Review of the Red Cross*, vol. 89, no. 866, 2007.

complexities of assisting victims in such situations.²⁷⁷ The issue has re-emerged in recent years due to concern in the international community about the possibility of CBRN weapons being used by states or non-state entities. With a mandate to assist and protect victims of armed conflict and other situations of violence, the ICRC is well aware that it may be called upon to assist the victims of a nuclear detonation or that it might already be present in a conflict zone when such weapons are used.

In an internal study conducted between 2006 and 2009, the ICRC assessed the implications of the use of a CBRN weapon in terms of the provision of humanitarian assistance.²⁷⁸ The main topics that the ICRC sought to address were to identify the main challenges to assisting survivors in such situations, and to get a better idea if states or organizations are in a position to provide assistance if an international response was required. The study, which involved consultations with a range of international players, led the ICRC to conclude that, with regard to the detonation of a nuclear weapon, there is little capacity available at the national or international levels to provide assistance that would benefit a substantial portion of survivors.

Although this conclusion is now several years old, the ICRC reiterated in 2013 that there has since been no significant progress internationally to change its view.²⁷⁹

The ICRC believes that the loss of life and medical needs of the wounded and sick in the aftermath of a nuclear bomb explosion in a populated area are likely to be enormous. An overwhelming number of people would need immediate treatment for severe and life-threatening wounds. Yet, such treatment or assistance is unlikely to be available in the short term as most of the local medical personnel would be dead or wounded and most medical facilities would be destroyed or unable to function in the area

277 Most notably in Abyssinia (1935–1936), Hiroshima (1945), and Yemen (1967).

278 See R. Coupland and D. Loye, “Who will assist the victims of use of nuclear, radiological, biological or chemical weapons—and how?”, *International Review of the Red Cross*, vol. 89, no. 866, 2007; R. Coupland and D. Loye, “International assistance for victims of use of nuclear, radiological, biological or chemical weapons: time for a reality check?”, *International Review of the Red Cross*, vol. 91, no. 874, 2009. The study recognized that the level of risk and impact will vary among CBRN weapons.

279 Statement of Gregor Malich, Head of ICRC’s NRBC Project, to the Oslo Conference on the Humanitarian Impact of Nuclear Weapons, 4 March 2013.

affected by the explosion.²⁸⁰ Any medical supplies that were not destroyed or contaminated by the blast (for example fluids, bandages, antibiotics, and pain medicines) would quickly be used up.

In addition, the level of casualties and destruction would have severe implications for the delivery of humanitarian assistance. It is realistic to assume that sizeable areas will be inaccessible for personnel and supplies due to debris and damage to infrastructure. There will also be challenges in the efforts to prioritize needs and allocate resources. For instance, operations providing medical assistance will need to plan for the triage and treatment of large numbers of severely injured victims, their decontamination, if needed, and their transfer out of affected areas, while bearing in mind how medical assistance, decontamination, and transfer interact. The human resources required to manage the patient flow would be considerable and likely exceed available response capacities.

A further concern is for the safety of assistance providers, especially the risk associated with exposure to ionizing radiation. Depending on the levels of radiation, protective measures will have to be implemented which may simply mean that humanitarian assistance will not be provided. Such measures would include maintaining safe distance from contaminated areas, limiting the number of aid workers and time spent in such areas, avoiding direct contact with contaminated matter, and using radiation detection and monitoring devices. In case of exposure, procedures for decontamination and post-exposure health monitoring and treatment would need to be in place. Working under such conditions and among such devastation can also be expected to take a heavy toll on the psychological well-being of responders.

Given the scale of destruction, the local and, in most instances, the national emergency response capacities—if they exist at all—are likely to be overwhelmed. It means that support from other states or from humanitarian assistance organizations would be necessary. In addition to the concerns and difficulties mentioned above, there are also challenges to effective collaboration among international assistance providers. Factors such as differences in mandates and staff security policies, resource interoperability, transport capacities, local logistical arrangements, and

280 See G. Malich et al., “A proposal for field-level medical assistance in an international humanitarian response to chemical, biological, radiological or nuclear events”, *Emergency Medical Journal*, online, 2012.

customs procedures can be expected to affect the coordination and overall effectiveness of operations.

To the ICRC, these are significant challenges. Moreover, based on what it understands from its ongoing analysis, most national and international entities have little capacity to deliver the breadth and type of aid that would be required. In fact, a recent study commissioned by the United Nations Office for the Coordination of Humanitarian Affairs (OCHA) on response systems with regard to radiological and nuclear emergencies concluded with a number of recommendations to enhance capacity for humanitarian actors and possible collaboration with nuclear emergency response organizations. However, the study excluded the scenarios of nuclear weapon use—at least in part because of the sheer magnitude of consequences that are to be expected in such a situation.²⁸¹

Nevertheless, as long as nuclear weapons exist and continue to proliferate, the risk of a nuclear explosion and the need to assist survivors has to be taken into account. This is the case even if the international humanitarian response capacity is likely to remain inadequate for most scenarios involving the use of nuclear weapons. In this regard, the ICRC has begun to develop some limited capacities to respond to small-scale events involving the use of nuclear, chemical, biological, or radiological weapons. These capacities, however, are far from having the capability to provide an effective response in case of a nuclear explosion.²⁸²

NUCLEAR WEAPONS AND INTERNATIONAL HUMANITARIAN LAW

The Final Document of the 2010 Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) helped to firmly place the “catastrophic humanitarian consequences” of nuclear weapons on the international agenda. The declaration has also helped to re-establish international humanitarian law (IHL) as an important element of the debate.²⁸³ Although IHL was a central component of the International

281 OCHA, “Linking humanitarian and nuclear response systems,” 2012, <https://docs.unocha.org/sites/dms/Documents/Linking%20Humanitarian%20and%20Nuclear%20Response%20Systems.pdf>.

282 Statement of Gregor Malich, Head of ICRC’s NRBC Project, to the Oslo Conference on the Humanitarian Impact of Nuclear Weapons, 4 March 2013.

283 “The Conference expresses its deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons and reaffirms the need for all

Court of Justice's 1996 advisory opinion on nuclear weapons, there had been little substantive discussion among governments of the IHL aspects of nuclear weapons. This may have begun to change. The May 2013 session of the United Nations General Assembly First Committee's Open-Ended Working Group on Nuclear Disarmament included a segment on nuclear weapons and IHL. As discussions advance on the humanitarian consequences of nuclear weapons, the IHL aspects of these weapons may also get increasing attention in multilateral circles.

The catastrophic effects of nuclear weapons raise important questions about the weapon's compatibility with IHL. These questions arise due to the severe immediate and long-term consequences that the detonation of a nuclear weapon can have on civilians, civilian areas, combatants, and the environment.

Although IHL does not contain any rule that expressly and comprehensively prohibits nuclear weapons, their use in armed conflict is nevertheless regulated by the general rules of IHL governing the conduct of hostilities. The most relevant rules include:²⁸⁴

- the rule prohibiting attacks directed at civilians or civilian objects;²⁸⁵
- the rule prohibiting indiscriminate attacks;²⁸⁶
- the rule of proportionality in attack;²⁸⁷
- the rule on the protection of the natural environment;²⁸⁸

States at all times to comply with applicable international law, including international humanitarian law", 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, *Final Document*, document NPT/CONF.2010/50 (Vol. I)*, 2010, part I, p. 19.

284 Protocol I (1977) additional to the Geneva Conventions (hereinafter Additional Protocol I) contains the most recent treaty formulation of these rules. In the view of the ICRC, the rules identified here reflect customary IHL and are applicable in all armed conflicts.

285 Articles 51(2) and 51(1), Additional Protocol I.

286 Article 51 (4), Additional Protocol I.

287 Article 51(5), Additional Protocol I.

288 Article 35(3), Additional Protocol I prohibits the use of methods and means of warfare which are intended, or may be expected, to cause widespread, long-term, and severe damage to the natural environment. This rule, however, has not become part of customary law with regard to nuclear weapons as several states have consistently objected to its application to nuclear weapons.

- the obligation to take feasible precautions in attack;²⁸⁹ and
- the rule prohibiting the use of weapons of a nature to cause superfluous injury or unnecessary suffering.²⁹⁰

In summary, the thermal, blast, and radiation effects of nuclear weapons and the wide areas over which they occur raise serious questions as to whether such weapons can be directed at a specific military objective and whether their consequences can be controlled or limited as required by the rules prohibiting attacks directed at civilians and indiscriminate attacks. In addition, implementing the rule of proportionality and the rule on feasible precautions would, in the view of the ICRC, require that the immediate and long-term incidental civilian casualties and damage expected to result from the explosion be taken into account in the planning and execution of an attack using nuclear weapons.²⁹¹ There are also questions as to whether the effects of thermal and ionizing radiation released from the explosion would constitute unnecessary suffering or superfluous injury to combatants, and if they would cause widespread, severe, and long-lasting damage to the environment.

These concerns led the International Red Cross and Red Crescent Movement to conclude in 2011 that it “finds 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”.²⁹²

THE EFFORTS OF THE INTERNATIONAL RED CROSS AND RED CRESCENT MOVEMENT ON NUCLEAR DISARMAMENT

In November 2011, the International Red Cross and Red Crescent Movement, of which the ICRC is a part, adopted a resolution updating its position on nuclear weapons.²⁹³ In this resolution the Movement

289 Article 57, Additional Protocol I.

290 Article 35(2), Additional Protocol I.

291 For a more detailed analysis see ICRC, “Nuclear weapons and international humanitarian law”, Information Note, no. 4, 2013.

292 Resolution 1, *Working Towards the Elimination of Nuclear Weapons*, Council of Delegates of the International Red Cross and Red Crescent Movement, 26 November 2011.

293 *Ibid.* The International Red Cross and Red Crescent Movement is comprised of the ICRC, the International Federation of Red Cross and Red Crescent Societies, and 188 individual national societies.

conveyed its concern about the destructive power of nuclear weapons and emphasized the absolute imperative to prevent their use. As mentioned above, it also expressed a view on the seeming impossibility of using these weapons in accordance with IHL. In a firm call for action, the resolution appealed to all states to ensure that nuclear weapons are never again used, regardless of their views on the legality of such weapons, and to pursue and conclude negotiations to prohibit the use of and completely eliminate nuclear weapons through a legally binding international agreement.

The concerns of the Red Cross and Red Crescent Movement on nuclear weapons, however, are not new. On a number of occasions since 1948, the Movement has urged states to pursue the prohibition and elimination of all weapons of mass destruction, including resolutions specifically seeking action on nuclear weapons.²⁹⁴ For example, in 1948 the Movement requested that states undertake to prohibit absolutely all recourse to atomic weapons and to the use of atomic energy or any similar force

294 See Resolution XVIII of the 19th International Conference of the Red Cross (New Delhi, 1957) on “Protection of populations”: “appeals once again to all countries of the world ... to intensify their efforts to bring about general disarmament, particularly to adopt measures which will at all times effectively protect humanity from the terrible consequences of the use of ... radioactive or other such agents”; resolution XXVIII of the 20th International Conference of the Red Cross (Vienna, 1965) on “Protection of civilian populations against the dangers of indiscriminate warfare”: “solemnly declares that all Governments and other authorities responsible for action in armed conflicts should confirm at least to the following principles: (4) that the general principles of the law of war apply to nuclear and similar weapons”; resolution XIV of the 21st International Conference of the Red Cross (Istanbul, 1969) on “Weapons of mass destruction”: “a special agreement on the prohibition of weapons of mass destruction would be an important contribution to the development of international humanitarian law”; resolution XII of the 23rd International Conference of the Red Cross (Bucharest, 1977) on “Weapons of mass destruction”: “invites all governments to take urgent measures to reach agreement on the prohibition of weapons of mass destruction”; and resolution XIII of the 24th International Conference of the Red Cross (Manila, 1981) on “Disarmament, weapons of mass destruction and respect for non-combatants”: “fully endorses the appeal launched by the ICRC to Governments participating in the First Special Session of the United Nations General Assembly on Disarmament, requesting them in particular to do their utmost to establish the atmosphere of confidence and security that would allow the deadlock, in which mankind is, to be broken and an agreement on disarmament to be reached above particular interests”.

for purposes of warfare.²⁹⁵ An appeal in 1952 urged “governments to agree, within the framework of general disarmament, to a plan for the international control of atomic energy which would ensure the prohibition of atomic weapons and the use of atomic energy solely for peaceful purposes”.²⁹⁶ As with the 2011 resolution, these calls were inspired by a preoccupation with the dangers that nuclear weapons pose to civilians and the questions that such nuclear weapons raise under international humanitarian law.

The ICRC has also made numerous appeals in its own name for action on nuclear weapons. For example, in a call to the signatories of the recently adopted Geneva Conventions of 1949, the ICRC noted in referring to nuclear weapons that “the use of this arm is less a development of methods of warfare than the institution of an entirely new conception of war” which makes discrimination between combatants and non-combatants impossible, causes disproportionate suffering, and prevents access to the sick and wounded. The ICRC requested the governments “to take, as a logical complement to the said Conventions—and to the Geneva Protocol of 1925—all steps to reach an agreement on the prohibition of atomic weapons, and in a general way, of all non-directed missiles”.²⁹⁷

In a document prepared and submitted by the ICRC for the 19th International Conference of the Red Cross and Red Crescent Movement (1957), titled the “Draft rules for the limitation of the dangers incurred by the civilian population in time of war,” the ICRC proposed the prohibition of the use of weapons disseminating incendiary, chemical, bacteriological, radioactive, or other agents and whose harmful effects could spread or escape from the control of those employing them.²⁹⁸ The document was meant to be the basis for the negotiation of new rules to better protect civilians from the effects of hostilities. Yet, while many governments welcomed the document, there was no follow-up or subsequent action by states.

295 See resolution XXIV of the 17th International Conference of the Red Cross on “Non-directed weapons” (Stockholm, 1948).

296 Resolution XVIII of the 18th International Conference of the Red Cross (Toronto, 1952).

297 ICRC, “Atomic weapons and non-directed missiles”, *International Review of the Red Cross*, English supplement, vol. 3, no. 4, 1950.

298 ICRC, *Draft Rules for the Limitation of Dangers Incurred by the Civilian Population in Time of War*, 1958.

On the occasion of the fiftieth anniversary of the bombing of Hiroshima and Nagasaki, the ICRC's President at that time, Cornelio Sommaruga, published a newspaper article in the French newspaper *Le Monde* in which he argued that the political constellation had changed with the end of the Cold War and now presented a historic opportunity for renewed nuclear disarmament negotiations.²⁹⁹ In closing Sommaruga posed the question "can the world be satisfied with a peace founded on a balance of terror? Is it acceptable that a minority of States base their security on the implicit threat represented by the possession of weapons a hundred or thousand times more powerful and murderous than those that caused the incineration of Hiroshima and Nagasaki?" His response was "For the International Movement of the Red Cross and Red Crescent the answer can only be a clear 'no'".

The ICRC spoke again about nuclear weapons at the United Nations General Assembly's First Committee following the publication of the 1996 advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons. The statement welcomed the Court's affirmation that all fundamental rules of IHL apply to nuclear weapons and its finding that "the destructive power of nuclear weapons cannot be contained in either space or time ... the radiation released by a nuclear explosion would affect health, agriculture, natural resources and demography over a very wide area [and] the use of nuclear weapons would be a serious danger for future generations". "In the light of this", the ICRC concluded, "it is difficult to envisage how a use of nuclear weapons could be compatible with the rules of international humanitarian law".

In 2002, the ICRC reviewed its position on nuclear weapons and made a distinction between what the ICRC considered to be the current state of international law and its view as a humanitarian organization. With regard to the law, the ICRC followed in part the conclusions of the 1996 ICJ opinion.³⁰⁰ Yet, as a humanitarian organization, the ICRC took into account broader ethical and humanitarian considerations and indicated that it "finds it difficult to envisage how the use of nuclear weapons could

299 C. Sommaruga, "Pour un esprit de sagesse humanitaire", *Le Monde*, 28 July 1995.

300 The ICRC legal position can be summarized as follows: the principles and rules of international humanitarian law, and in particular the principles and rules of distinction and proportionality and the prohibition on causing superfluous injury or unnecessary suffering, apply to the use of nuclear weapons and the use of such weapons, as stated by the International Court of Justice, would generally be contrary to the principles and rules of international humanitarian law.

be compatible with the principles and rules of international humanitarian law” and that, “in view of the unique characteristics of nuclear weapons”; it “calls on States to ensure that these weapons are not used, irrespective of whether they consider them to be lawful or not”. The position goes on to call on states “to take every appropriate measure to limit the risk of the proliferation of nuclear weapons and to effectively combat any trade in substances or components liable to promote such proliferation” and “to pursue negotiations with a view to achieving a complete prohibition of nuclear weapons as well as their elimination as they have undertaken to do”.³⁰¹

These perspectives, in many respects, influenced and underlie the position adopted by the International Red Cross and Red Crescent Movement in 2011.

OBSERVATIONS ON THE IMPACT OF THE CHANGING DEBATE

The increased focus on the humanitarian consequences of nuclear weapons is a welcome development. For far too long the debate about nuclear weapons has centred on their role in national military doctrine and concerns about proliferation and its corresponding consequences for regional and international security. Yet a full and informed debate about nuclear weapons must include a serious consideration of their potential impact on people, societies, and the environment. Much has been learned from the experiences of Hiroshima and Nagasaki and areas where nuclear weapons were tested during the Cold War. Yet, there are new and important elements to add to the discussion. Developments in technology and computer modelling have increased the ability to project the course and impact of soot and radioactive fallout.³⁰² The challenges to the large-scale delivery of international humanitarian assistance are also now better understood.

A number of states and organizations see the discussion on the humanitarian consequences of nuclear weapons as a potential “game changer” in that it may be a way to jump start nuclear disarmament

301 ICRC, “Use of nuclear, biological or chemical weapons: current international law and policy statements”, 4 March 2003, www.icrc.org/eng/resources/documents/misc/5ksk7q.htm.

302 For instance, see A. Robock and O.B. Toon, “Self-assured destruction: the climate impacts of nuclear war”, *Bulletin of the Atomic Scientists*, vol. 68, no. 5, 2012.

negotiations which international law requires states to pursue in good faith.³⁰³ This remains to be seen. Nevertheless, the development of the debate has had some extremely important and immediate consequences.

Firstly, as mentioned above a discussion on the humanitarian consequences has helped to broaden the debate about nuclear weapons and give a greater focus to the weapon's impact on people, societies, and the environment. This discussion is bringing in new fact-based assessments of the humanitarian harm and greater scrutiny of the claims and assumptions about the weapon's military utility.

In addition, a number of states are becoming more active in the debate, in particular, those which do not have nuclear weapons and do not rely on them to guarantee their security. These states may have not been perceived as central to past discussions on the military and security aspects of nuclear weapons. But the focus on humanitarian consequences has given them a legitimate voice in the debate as these states may someday come to feel the impact of nuclear weapons if they are ever used.

The shift is also helping to remind us that, in the final analysis, this is a discussion about a weapon system—like other weapons, including those perceived to have a strategic military value, there are legal, moral, and ethical considerations that help determine its status as an acceptable means of warfare. The discussion on humanitarian consequences is perhaps the most important element in helping to set what those limits are with regard to nuclear weapons.

Finally, a greater emphasis on the humanitarian consequences of nuclear weapons is the basis for broader engagement on the part of the Red Cross and Red Crescent Movement. In most countries, national Red Cross and Red Crescent societies have a regular and ongoing dialogue with their governments on humanitarian issues, policy, and assistance. This provides an existing avenue for national societies to discuss nuclear weapons. The 2011 resolution has helped to highlight the importance of this issue for the Movement. Today, national societies in Australia, New Zealand, and Norway have ongoing campaigns to raise awareness of the issue among their general public. Many other national societies have already shared the 2011 Movement position with their governments and are engaging with domestic civil society organizations. The ICRC also continues its

303 ICJ, *Legality of the Threat or Use of Nuclear Weapons*, advisory opinion, 1996, p. 226.

engagement with governments, the United Nations, and civil society. Such activities will continue and hopefully expand as the debate on nuclear weapons moves forward.

HUMANITARIAN PERSPECTIVES AND THE CAMPAIGN FOR AN INTERNATIONAL BAN ON NUCLEAR WEAPONS

Magnus Løvold, Beatrice Fihn, and Thomas Nash

INTRODUCTION

The recent reorientation of the nuclear weapons debate towards a focus on their humanitarian consequences signifies a return to the origins of public opposition to these armaments. Nuclear weapons originally affronted the public conscience because their effects on people and the environment were seen as horrific and unacceptable. One of the key documents in the history of the movement to eliminate nuclear weapons, the 1955 Russell–Einstein Manifesto, made these concerns clear: “It is feared that if many H-bombs are used there will be universal death, sudden only for a minority, but for the majority a slow torture of disease and disintegration”.³⁰⁴

Over the past few decades, however, the debate has moved away from the effects of these weapons, becoming preoccupied with political and national security considerations instead. This is not to say that nuclear-armed states are unwilling to acknowledge the horrific effects that would result from a nuclear detonation. For example, the British Minister for Counter-Proliferation told the House of Commons on 20 June 2013 that “any use of nuclear weapons would have grave humanitarian consequences—it is unthinkable”.³⁰⁵ Yet, contrary to their disarmament obligations, nuclear-armed states still cling to their arsenals, professing a need to deter attacks from perceived adversaries in a complex, unsettled global security environment and treating them as symbols of power and prestige.

Seen from the perspective of three members of the International Campaign to Abolish Nuclear Weapons (ICAN),³⁰⁶ these kinds of rationalization have complicated and, to an extent, disempowered civil society efforts

304 Available at www.pugwash.org/about/manifesto.htm.

305 Alistair Burt, United Kingdom Minister for Counter-Proliferation, House of Commons, 20 June 2013, Hansard column 335WH.

306 ICAN is a global civil society coalition with partner organizations in 81 countries working for an international treaty to prohibit nuclear weapons; see www.icanw.org for more information.

to achieve the abolition of nuclear weapons. We argue that the current refocusing of the nuclear weapons debate on humanitarian consequences offers a much stronger footing for the international campaign to prohibit and abolish nuclear weapons. In light of that, we explore the following questions:

- What does a humanitarian approach mean to constituents within ICAN?
- How does a humanitarian approach translate into advocacy and campaigning efforts?
- Why has the humanitarian approach achieved prominence in the current ICAN approach?

In essence, for ICAN a humanitarian approach to nuclear weapons represents the basis for its campaigning rationale towards the goal of a treaty banning nuclear weapons. By moving the focus away from security policy and back to the origins of public opposition to nuclear weapons, ICAN seeks new and wider access to policy and opinion makers. Communicating an intuitive, straightforward message about the impacts a nuclear weapons detonation would have on people and their communities helps at the same time to promote a clear sense of purpose and achievability among campaigners. This in turn strengthens and empowers collective civil society advocacy for nuclear disarmament. Finally, we trace the evolution of the humanitarian approach within ICAN over the past few years, an approach which served to underpin and enliven our advocacy efforts.

HUMANITARIAN CAMPAIGN RATIONALE

In recent years, campaigning for the elimination of nuclear armaments has constituted a particular challenge. Nuclear weapons have not been used in war since the devastation of Hiroshima and Nagasaki in 1945. The voices of those affected by nuclear weapon testing in places like Kazakhstan and the Pacific islands have tended to be marginalized. When the Cold War ended, the profile of nuclear weapons in the public eye declined. Progress on nuclear disarmament was slow, and civil society struggled to be seen as a key stakeholder in an area increasingly dominated by security policy discussions.

The revival of the humanitarian framing offers a new way forward. It has re-energized a nuclear disarmament movement that has struggled since

the end of the Cold War, notwithstanding its successful efforts towards securing the Comprehensive Nuclear-Test-Ban Treaty (CTBT) in 1996.³⁰⁷ The ICAN Civil Society Forum, a major two-day meeting of some 500 participants from around 130 different non-governmental organizations (NGOs) that took place in the days immediately preceding the Oslo Conference,³⁰⁸ demonstrated that this latest turn—or return—in the nuclear weapons debate has brought a new sense of hope among activists and campaigners.

It is our belief that only two reasonable conclusions can be drawn about nuclear weapons from a humanitarian perspective. First, the dire consequences of their use are impossible to reconcile with fundamental humanitarian principles. Second, such is the immensity of those consequences that they will be beyond the scope of international humanitarian assistance operations to adequately address.³⁰⁹ Bringing these realities home to a broader public is at the centre of ICAN's current campaign.

To view nuclear weapons through a humanitarian lens is not merely about raising awareness of the human suffering caused by use of these weapons and the intense difficulties in mitigating their effects. The characterization of nuclear disarmament as a humanitarian issue reframes the discussion in a way that should be more conducive to progress towards their abolition. It challenges the very utility of nuclear arms and points more purposefully towards the negotiation of an international treaty prohibiting them. As explored further below, a humanitarian approach to nuclear weapons also allows civil society campaigns such as ICAN to tap new constituencies and broaden the movement working against nuclear weapons.

To begin raising awareness among the public with a clear message about the impact that a nuclear detonation would have on them and their

307 For an account of civil society's role in these negotiations, see R. Johnson, *Unfinished Business: The Negotiation of the CTBT and the End of Nuclear Testing*, UNIDIR, 2009.

308 See <http://goodbyenukes.wordpress.com/participation/> for a full list of participants to ICAN Civil Society Forum.

309 ICAN is by no means alone in this view. For instance, see the Chair's summary from the Oslo Conference on the Humanitarian Impact of Nuclear Weapons, www.regjeringen.no/en/dep/ud/whats-new/Speeches-and-articles/e_speeches/2013/nuclear_summary.html?id=716343; see also resolution 1, *Working Towards the Elimination of Nuclear Weapons*, Council of Delegates of the International Red Cross and Red Crescent Movement, 26 November 2011.

communities, ICAN partner organizations have published a wide range of facts-based materials and initiated several campaigns and outreach efforts grounded on that evidence.³¹⁰ ICAN's concern extends not only to matters of impact but also to alleviation of the suffering of the survivors of a nuclear detonation. We have in mind, for example, the point made by one expert at the Oslo Conference about the limited availability of specialist beds for patients suffering from severe burns. Speaking about the impact of a 100kt nuclear weapon detonation over Oslo, a city of around 600,000 people, he noted that the impact of the explosion "would overwhelm the burn facilities of just one country. In a country like the UK for example, we might have 600 beds, something of that order for burns victims; obviously a country like Norway, many less. So these facilities would be immediately overwhelmed, even if they weren't damaged initially".³¹¹

ADVOCACY: PRODUCING POLITICAL RESULTS

To achieve the objective of a new international legal instrument that explicitly prohibits nuclear weapons—a treaty comparable to those that outlawed biological and chemical weapons—ICAN is engaging actively with its target audiences to persuade them of the achievability of this goal. Convincing policy and opinion makers entails campaigners in ICAN's network introducing evidence-based arguments that cannot be dismissed by tired references to security doctrines. The greater the credibility of such evidence, the more empowering it will prove to be in increasing political pressure on states to back such a treaty.

Because the humanitarian consequences of any nuclear weapon detonation in a populated area would be catastrophic, ending the possession of nuclear weapons should be a high priority both for the

310 For instance, see ICAN, *Catastrophic Humanitarian Harm*, 2012, www.icanw.org/wp-content/uploads/2012/08/catastrophicharm2012.pdf; Reaching Critical Will, *Unspeakable Suffering*, 2013, www.icanw.org/wp-content/uploads/2012/08/Unspeakable.pdf; I. Helfand, *Nuclear Famine: A Billion People at Risk*, International Physicians for the Prevention of Nuclear War and Physicians for Social Responsibility, 2012; and Norwegian People's Aid Solidarity Youth, *Face the Facts*, 2013, <http://folkehjelp.no/Vaart-arbeid/Miner-og-vaapen/Truslene/Kjernevaapen/Face-the-Facts> (in Norwegian).

311 A. Haines, "Nuclear weapons: catastrophic impacts on health", Oslo Conference on the Humanitarian Impact of Nuclear Weapons, 5 March 2013, www.ippnw.org/pdf/2013-oslo-transcript-haines.pdf

nine nuclear-armed states³¹² and for non-nuclear-weapon states. Indeed, the broad participation of non-nuclear-weapon states at the Oslo Conference bears testimony to a readiness on the part of the group to seize new opportunities for reminding the possessing states that a nuclear detonation would have many negative impacts on the international community at large. The reality that the potential effects of nuclear weapons are a matter of global concern calls into question any assumption that leadership in driving nuclear weapons disarmament is either the preserve or the prerogative of the nuclear-weapon states.

From a campaigning and advocacy perspective, this entails targeting policymakers in non-nuclear-weapon states, especially those that persist with outdated Cold War-era “extended deterrence” nuclear security guarantees. ICAN prioritized securing well-informed and active participation of non-nuclear-weapon states above trying to secure the attendance of the nuclear-weapon-possessor states in the campaign’s global advocacy and outreach efforts in the run-up to and during the Oslo Conference. In so doing, it was possible for ICAN to highlight the wide participation at this conference as a significant “win”—an important step towards consolidating the new humanitarian framing of the nuclear weapons discourse and indeed, in the view of ICAN, towards a treaty banning nuclear weapons.

Defined within a humanitarian framing, the detonation of a nuclear weapon logically becomes a concern also for government institutions and organizations that have hitherto paid little or no attention to the consequences of nuclear arms. A focus on health consequences, environmental impacts, civil protection, and preparedness opens up the potential for ICAN engagement with new government ministries, parliamentarians’ groups, as well as relevant national, regional, and international agencies and organizations of other kinds. It expands the number of policymakers we can influence at various levels in support of ICAN’s goals. This inclusion of a wider range of stakeholders is an important ingredient in the achievement of political results.³¹³ The more diverse the coalition of interests opposed to nuclear weapons is in terms of fields

312 Only two of the 128 states participating in the Oslo conference were nuclear-weapon-possessors. See the full list of participants at www.regjeringen.no/upload/UD/Vedlegg/Hum/hum_participants.pdf.

313 For more on this theme, see J. Borrie and A. Thornton, *The Value of Diversity in Multilateral Disarmament Work*, UNIDIR, 2008.

of work, languages, cultures, and disciplines, the more representative it is, and more effective it has the potential to be. At the same time, this diversity brings with it challenges of cooperation and coordination both within the civil society-based nuclear disarmament movement and more broadly with other kinds of stakeholders, an issue with which ICAN will have to deal carefully.³¹⁴

Traditionally, only arenas such as the Preparatory Committees and Review Conferences of the Nuclear Non-Proliferation Treaty (NPT), the United Nations General Assembly First Committee, the United Nations Disarmament Commission, and the Conference on Disarmament (CD) have provided platforms for intergovernmental discussions about nuclear weapons. The scope for civil society engagement in these forums has been limited. Recently, however, new international arenas better suited for civil society advocacy have emerged, such as the United Nations General Assembly's Open-Ended Working Group on nuclear disarmament, convened for the first time in May 2013.³¹⁵ ICAN will also be advocating that government representatives attending the United Nations General Assembly's High-Level Meeting on nuclear disarmament on 26 September 2013 speak up for the humanitarian approach.

And of course there was the Oslo Conference already mentioned, which was specifically intended to create a constructive discussion among states, international organizations, and civil society actors.³¹⁶ From a campaigning perspective, the opportunity to participate in international discussions with states and other international organizations enhances the perceived weight and importance of the campaign, greatly facilitating access to important policy and opinion makers.

Even within traditional forums such as meetings of the NPT, new opportunities for civil society engagement have arisen. During the NPT's Preparatory Committee in May 2013, for example, South Africa delivered a joint statement on the humanitarian impact of nuclear weapons on

314 For more discussion on this, see "Global coalitions: an introduction to working in international civil society partnerships", www.globalcoalitions.org/document/chapter-6.

315 See the online resources of the Reaching Critical Will project of the Women's International League for Peace and Freedom, www.reachingcriticalwill.org/disarmament-fora/others/oewg.

316 See www.regjeringen.no/en/dep/ud/selected-topics/humanitarian-efforts/humimpact_2013.html?id=708603.

behalf of 80 states.³¹⁷ In the days immediately before that statement was delivered, ICAN campaigners from more than 40 different countries reached out to governments in capitals, encouraging them to sign on to this statement. In addition, the ICAN delegation to the Preparatory Meeting lobbied diplomatic representatives directly to ensure that as many government delegations as possible took the opportunity to become associated with this statement.

At the national level, ICAN's advocacy has capitalized on the reality that humanitarian standards and humanitarian practices are relatively non-controversial in most political and cultural contexts. Few actors, be they state leaders, parliamentarians, civil society organizations, or members of the general public, wish to be perceived as acting in opposition or indifference to these principles. Indeed, the almost universally held view that nuclear weapons are undesirable armaments that should never be used stems from an explicit or implicit realization of their disastrous humanitarian effects. This enables campaigners to argue, backed by evidence, that nuclear weapons raise concerns relevant to everyone, including political parties at most points on the political spectrum. In Norway, for example, nuclear weapons and nuclear disarmament were for a long time seen as issues for the left-leaning parties. The humanitarian framing of the nuclear weapons issue has enabled campaigners to get political parties on the right interested in this issue. Significantly, a humanitarian framing of nuclear weapons recently enabled ICAN campaigners to make a breakthrough in Israel—a state that possesses a nuclear arsenal, but does not acknowledge it publicly—in that they were able to present their case to a group of Israeli parliamentarians.³¹⁸

Widespread recognition of the catastrophic humanitarian effects of nuclear weapons does not automatically translate into support for ICAN's call for

317 The *Joint Statement on the Humanitarian Impact of Nuclear Weapons* delivered during the Second Session of the Preparatory Committee for the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons is available at www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom13/statements/24April_SouthAfrica.pdf.

318 A meeting between Dr. Ira Helfand from Physicians for Global Survival, the Israeli Disarmament Movement (according to foreign sources), and a group of Israeli parliamentarians took place on June 2013 in Tel Aviv, and although a report from the meeting has yet to be produced an extract from the exchange between Dr. Helfand and MP Moshe Feiglin (Likud party) is available at www.youtube.com/watch?v=1SfLFRxAYOw.

a treaty banning nuclear weapons. To help make the link between the humanitarian consequences of nuclear weapons and the imperative to prohibit them, ICAN is highlighting experiences from previous processes, including the relatively recent negotiations that produced treaties banning anti-personnel mines and cluster munitions as well as those that led to the biological and chemical weapons conventions, the Partial Nuclear-Test-Ban Treaty and the CTBT. These processes have shown that a focus on the humanitarian impact of nuclear weapons provides scope for challenging the status quo and breaking out from traditional lines of debate, and has the potential to produce widely agreed outcomes.

ICAN AND THE HUMANITARIAN APPROACH

As already indicated, the humanitarian approach has achieved a prominent place within ICAN's anti-nuclear weapons strategy because it provides a clear-cut rationale for beginning a process for a treaty banning nuclear armaments. Following the profile given to humanitarian consequences in the outcome document of the 2010 NPT Review Conference, uptake of the humanitarian approach to nuclear weapons has accelerated. It has become a palpable rallying point for civil society. Ever since the announcement in April 2012 by the Norwegian Foreign Minister that his government would hold a conference on humanitarian impacts, ICAN has sought to optimize this focus for its advocacy work on making this issue a priority for governments.

Adopting the humanitarian approach has already delivered tangible results. ICAN has expanded its membership of organizations to a broad network of active campaigners in over 80 countries. A growing number of states are now arguing for greater urgency in addressing the issue of nuclear weapons and reconsidering their policies towards the optimal way of achieving nuclear disarmament. In the 2012 Preparatory Committee of the NPT, 16 states delivered a statement raising concerns about the catastrophic humanitarian consequences that any use of nuclear weapons would have. As stated above, one year later 80 states signed on to a similar statement, and many more mentioned concerns about the humanitarian impact of nuclear weapons in national statements. International organizations—especially those oriented towards humanitarian, development, and relief activities—are also becoming increasingly involved in this issue (as other contributions to this volume attest). And at the Oslo Conference, the Mexican government announced that it would

host a follow-up event to continue discussions on the humanitarian impact of nuclear weapons, scheduled for February 2014. ICAN sees this as a vindication of its efforts to promote a humanitarian approach to nuclear weapons.

The viewing of nuclear weapons through a humanitarian lens has thus begun to resonate with a growing group of states and actors and has as a consequence served to encourage a sense of confidence among campaigners themselves that it can be sustained as a framing for nuclear disarmament. For civil society, though, a focus on the humanitarian impact of nuclear weapons will only be successful if it facilitates political solutions to preventing a humanitarian catastrophe due to their use. Civil society actors, including ICAN, need to ensure that the humanitarian discourse on nuclear weapons feeds the political imperative to build pressure for nuclear disarmament, galvanizing leaders among the non-nuclear-weapon states to take the lead in outlawing these arms.

It is time to make the link inescapable between acknowledging that the humanitarian impact of nuclear weapons is unacceptable and commitment to achieving practical solutions via a new treaty banning nuclear weapons. After all, such a treaty is an important and probably necessary part in eliminating those armaments. Existing multilateral treaties such as the NPT provide some building blocks towards a ban, for instance the NPT's article 6 obligation. Currently, however, there is much rhetoric but little real progress towards any meaningful negotiations in multilateral forums. The default option in traditional bodies dominated by nuclear-weapon states and taking decisions only by consensus has long been synonymous, in practice, with preserving the status quo. ICAN holds that a treaty banning nuclear weapons is necessary in order to challenge the aura of legitimacy in which the possessing states have shrouded their nuclear arsenals, and for the world to move down the path towards elimination of these weapons. Committed, "like-minded" states can contribute meaningfully to elimination by concluding an international legal instrument that makes the illegality of nuclear weapons explicit. This will stigmatize the continued possession of nuclear weapons even if the nuclear-armed states will not participate.

This strategy is based on the conviction that changing the legal framework governing nuclear weapons will have an impact beyond those states that

may formally adopt it in the first instance.³¹⁹ The process of establishing a treaty banning nuclear weapons, as well as such a treaty itself, would deepen the taboo already attached to using nuclear weapons,³²⁰ contributing to the progressive erosion of the legitimacy that nuclear armed and reliant states claim, in effect, nuclear weapons have.

Critics might argue that progress on the humanitarian approach to nuclear disarmament lacks “real impact” unless it actively engages the nuclear-weapons-possessor states. Sceptics and traditionalists will say that a “like-minded approach” will not change the situation in those states; that a humanitarian perspective cannot provide answers to complex state security issues such as nuclear deterrence. For example, at a meeting of the CD in Geneva, the United Kingdom explained its refusal to participate in the Oslo Conference:

We are concerned that the Oslo event will divert attention and discussion away from what has been proven to be the most effective means of reducing nuclear dangers—a practical, step-by-step approach that includes all those who hold nuclear weapons. Only in this way could we realistically achieve a world without nuclear weapons.³²¹

Moreover, an internal document on the United Kingdom’s decision not to attend, which was obtained by ICAN member Article 36, stated that “we feel that the focus and the format of the conference will not lend itself to the UK setting out our narrative and key messages around our forward leaning approach to multilateral disarmament”.³²² This suggests that a primary concern of British diplomats was about whether initiatives such as the Oslo Conference will make the United Kingdom look good or not rather than achieving real progress. In the face of arguments of that kind, which seek to divert attention back to political considerations—related,

319 For more on the stigmatization of weapons through international treaties, see B. Rappert, *A Convention beyond the Convention: Stigma, Humanitarian Standards and the Oslo Process*, Landmine Action, 2008.

320 N. Tannenwald, “Stigmatizing the bomb—origins of the nuclear taboo”, *International Security*, vol. 29, no. 4, 2005.

321 Statement by the United Kingdom to the Conference on Disarmament, 5 March 2013.

322 Article 36 press release of 4 June 2013, www.article36.org/nuclear-weapons/documents-suggest-uk-boycott-of-key-nuclear-weapons-meeting-was-driven-by-p5-partners/.

in this case, to the choice of negotiating processes—the challenge for ICAN is not to lose focus but to continue to build up and draw attention to evidence showing the unacceptable humanitarian effects of nuclear weapons. In order to achieve real movement towards nuclear abolition, it is clear that civil society actors such as ICAN must seize and keep the initiative by first securing strong support for the notion that these weapons have unacceptable humanitarian consequences, based on demonstrable evidence. The next conference on the humanitarian impacts of nuclear weapons in Mexico in February 2014 should usefully help serve that end as a sequel to the Oslo Conference.

CONCLUSION

The (re)establishment of the current humanitarian discourse on nuclear weapons has been impressive. It is founded on the actual impacts of these arms on human beings. Whether survivors of the devastation of Hiroshima and Nagasaki, or people from communities affected by nuclear weapons testing, the voices of those affected need to be properly heard.³²³ There is no doubt that this reframing has given a boost to ICAN's work. It has done so both in terms of opening up broader public and civil society engagement on nuclear disarmament and in terms of empowering the network's advocacy with states to advance and consolidate the humanitarian imperative for banning nuclear weapons. The reframing has also coincided with the strong and unprecedented engagement on nuclear disarmament by the Red Cross and Red Crescent Movement. ICAN will continue to encourage this trend as the campaign builds on the success of the Oslo Conference and prepares for the next humanitarian conference in Mexico.

There is a clear and simple argument that can be set out from the humanitarian discourse on nuclear weapons: nuclear weapons have unacceptable effects, and so we must prevent them from ever being used. Prevention requires that they be prohibited in the same way as other unacceptable weapons have been. For as long as they exist there is always the risk these weapons will be detonated. Prohibition will help stigmatize nuclear weapons and facilitate their elimination. The challenge for campaigners is to make this argument irresistible to political decision makers in a critical mass of states committed to taking action to outlaw

323 See R. Johnson, "NPT and risks to human survival", www.opendemocracy.net/5050/rebecca-johnson/npt-and-risks-to-human-survival-inside-story.

and eliminate nuclear weapons. With new wind in its sails, ICAN is proceeding accordingly.

ABBREVIATIONS

BTWC	Bacteriological and Toxin (Biological) Weapons Convention
CBRN	chemical, biological, radiological, nuclear
CD	Conference on Disarmament
CCW	Convention on Certain Conventional Weapons
CTBT	Comprehensive Nuclear-Test-Ban Treaty
DHA	Disarmament as Humanitarian Action
IASC	Inter-Agency Standing Committee
ICAN	International Campaign for the Abolition of Nuclear Weapons
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
IHL	International humanitarian law
NATO	North Atlantic Treaty Organization
NGO	non-governmental organization
NPT	Nuclear Non-Proliferation Treaty
NWC	Nuclear Weapons Convention
OEWG	Open-Ended Working Group
UNDP	United Nations Development Programme
OCHA	United Nations Office for the Coordination of Humanitarian Affairs
WMD	weapons of mass destruction
WHO	World Health Organization
WFP	World Food Programme