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From the Humanitarian Impact Initiative to the Treaty on the Prohibition of Nuclear Weapons: A Novel Approach to Nuclear Disarmament

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From the Humanitarian Impact Initiative to the Treaty on the Prohibition of Nuclear Weapons: A Novel Approach to Nuclear Disarmament

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COLIN POWELL SCHOOL FOR CIVIC AND GLOBAL LEADERSHIP

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# Table of Contents

Acknowledgements .................................................................................................................. 3

Abstract ................................................................................................................................. 4

Chapter 1: Introduction .......................................................................................................... 5

Chapter 2: Literature review ................................................................................................. 10

Chapter 3: The status quo of nuclear disarmament regimes in 2010 .................................. 20

Chapter 4: The evolution of the humanitarian initiative and the related multilateral process ........................................................................................................................................ 26

Chapter 5: Reframing the nuclear disarmament discourse .................................................. 39

Chapter 6: Principal actors and their collaboration ............................................................. 52

Chapter 7: The negotiating conferences and the Treaty text .............................................. 66

Chapter 8: Reception and impact of the Treaty ................................................................... 85

Chapter 9: Conclusion .......................................................................................................... 98

Bibliography .......................................................................................................................... 101

Annex .................................................................................................................................... 115
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Second, my deep gratitude goes to my advisor, Prof. Jean Krasno, whose guidance and support have been invaluable and whose knowledge and expertise never cease to amaze me. She has shown great interest in my project and was always available to give feedback and advice.

Last but not least, I would like to thank my proof-readers as well as the numerous other friends who have supported me during the challenging process of writing a thesis while working full-time.
Abstract

The present thesis analyzes current developments in nuclear disarmament, specifically the humanitarian impact initiative that culminated in the adoption of the Treaty on the Prohibition of Nuclear Weapons (TPNW, the Treaty) by 122 members of the United Nations (UN) General Assembly in July 2017. Through academic research and six interviews with people directly involved in the process, I traced the humanitarian initiative from its first conference in Oslo in 2013 all the way to the Treaty negotiations in 2017. My argument is that the humanitarian initiative constitutes a novel approach to nuclear disarmament, spearheaded by small and medium-sized states, with overwhelming support from the Global South and in defiance of nuclear-armed states and major powers. Its advocates bypassed the standstill in existing disarmament frameworks such as the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) and the Conference on Disarmament (CD) and succeeded in changing the discourse around nuclear weapons, pointing out flaws in nuclear deterrence theory and raising awareness of the unacceptable suffering caused by any use of these weapons. The humanitarian initiative owes a large part of its success to the close collaboration and exchange between like-minded states and civil society actors such as the International Campaign to Abolish Nuclear Weapons (ICAN) and the International Committee of the Red Cross (ICRC). In my assessment of the prospects of the TPNW, I take into consideration that the Treaty’s immediate aim is not to eliminate nuclear weapons, but rather to stigmatize and delegitimize them in order to raise the political and reputational costs of retaining them. The examples of the Ottawa Convention (on anti-personnel landmines) and the Convention on Cluster Munitions have demonstrated that perceptions and norms change over time as more states ratify the relevant treaties.
Chapter 1

Introduction

Two reasons have prompted me to examine the humanitarian impact initiative and the Treaty on the Prohibition of Nuclear Weapons. First and foremost, the timeliness and urgency of the issue, and second, my fascination with the inner workings of negotiation processes and the road to outcomes in multilateral fora. My access to people directly involved in the negotiation process has provided me with the opportunity to gain first-hand insights into these processes. Rather than nuclear security in the technical sense, for which I might lack the science background, I envision negotiation and advocacy strategies as my future area of expertise, which could be applied to the disarmament context as well as to a range of other contexts.

With the threat posed by nuclear weapons at its most acute since the end of the Cold War, the need to effectively address nuclear disarmament is greater than ever. The humanitarian impact initiative, which culminated in the adoption of the TPNW, is one of several options for addressing the danger and the humanitarian consequences of any nuclear weapons detonation. The Norwegian Nobel Committee confirmed the timeliness and significance of the issue and endorsed ICAN’s approach to it by awarding ICAN the Nobel Peace Prize in 2017.

From the point of view of International Relations (IR) research, the TPNW is of great interest because of its novel approach to a longstanding issue. Previously, the international community relied on the initiative and cooperation of the nuclear-armed states to tackle nuclear non-proliferation and disarmament. The new Treaty, however, was brought about by civil society in collaboration with non-nuclear-armed small and medium-
sized states, without the support of the five permanent members of the Security Council (P5) recognized as nuclear-weapon states (NWS) in the NPT. Moreover, the TPNW prohibits any possession and use of nuclear weapons for all its signatories and bases this prohibition on humanitarian grounds. On the premise that the devastating consequences of nuclear weapons affect all of humanity, the humanitarian initiative reframed the nuclear weapons discourse by steering it away from military security and towards ethics and human security. This novel approach to nuclear disarmament, by defying great power politics and following an independent process outside existing disarmament structures, marks a precedent in nuclear security.

The present thesis argues that the humanitarian initiative and the Treaty negotiations were successful because of their open, inclusive and egalitarian nature and because of the close and effective collaboration between state actors and civil society. Success, in this case, is measured by the Treaty’s ability to deliver on the declared aim of its facilitators – to stigmatize and delegitimize nuclear weapons as an instrument of national security by declaring them incompatible with the principles of international humanitarian law and by demonstrating that the majority of states consider them illegal. An egalitarian process was achieved by overcoming the double standards of the NPT regime (that allow five powerful nations to possess nuclear weapons while requiring everyone else to renounce them) and giving non-nuclear-weapon states (NNWS) the capacity to act through the majority-based voting system of the General Assembly. The openness of the process enabled close collaboration and coordination between civil society and like-minded states. Their initiatives complemented each other and reinforced their joint potential. The Treaty’s impact on the nuclear regime will convey important lessons about bottom-up initiatives in
international security and about the continuing significance of great-power politics in a multipolar world.

The present thesis is structured as follows: The first chapter provides an introduction to the topic and the author’s argument. The second chapter is dedicated to a review of existing academic literature on the humanitarian impact of nuclear weapons, the campaigns for the prohibition of landmines and cluster munitions as models for the humanitarian initiative, the role of small states and non-governmental organizations (NGOs) in international security as well as the TPNW itself. The third chapter analyzes the status quo of nuclear weapons control frameworks in 2010, in order to provide a better understanding of the discontent that fueled the humanitarian initiative. The fourth chapter is dedicated to the multilateral process that began with the conferences in Norway, Mexico and Austria and continued in the Open-Ended Working Group (OEWG) in 2016. Chapter Five analyzes the discourse strategies employed by advocates of the humanitarian initiative for the purpose of stigmatizing and delegitimizing nuclear weapons and countering the nuclear deterrence theory. These strategies draw heavily on international humanitarian law and on the lessons learned from previous humanitarian disarmament initiatives. Chapter Six examines the roles played by the different state, civil society and UN actors as well as the crucial collaboration among these actors. The seventh chapter attempts to reconstruct the dynamics of the 2017 negotiating conferences, the contributions of the different actors and the evolution of the Treaty text. The principal provisions of the Treaty and their significance are discussed as well. The eighth chapter examines how the Treaty was received by various nuclear-armed and non-nuclear-armed states, by their respective civil societies and by the North Atlantic Treaty Organization (NATO). It further discusses the
ratification process, the implementation of the Treaty, and its impact on the international nuclear regime. The conclusion recapitulates the author’s findings, provides recommendations on their practical application and points out avenues for further research.

For this thesis, the author conducted a qualitative analysis of three main sources: existing academic literature, primary sources and documents, as well as interviews with six people directly involved in the humanitarian initiative, the Treaty negotiations and/or the preparatory process. Written sources include conference papers, statements and records from the three conferences on the humanitarian impact of nuclear weapons; the report of the OEWG; the final documents of the NPT Review Conferences; position papers by select member states; UN General Assembly drafts, resolutions and voting records; drafts, working papers and other documents emanating from the negotiating conferences; as well as publications by ICAN, the ICRC and other civil society organizations. The author conducted open-ended interviews with Allison Pytlak of the Women’s International League for Peace and Freedom (WILPF), one of ICAN’s main NGO partners; Ambassador Alexander Kmentt, one of the major architects of the humanitarian impact initiative at the inter-state level; George-Wilhelm Gallhofer, Counsellor at the Austrian Mission to the UN, who attended the negotiating conferences and worked on the TPNW in the First Committee of the General Assembly; Tsutomu Kono, Senior Political Affairs Officer in the Weapons of Mass Destruction Branch of the UN Office for Disarmament Affairs (UNODA); Michael Spies, a UNODA expert who supported the OEWG and the negotiating conferences and assisted the President of the conference in drafting the Treaty text; and Veronique Chistory, weapons expert at the ICRC Delegation to the UN, who has been part of the humanitarian impact campaign since the beginning and also attended the Treaty
negotiations. Due to the considerable political delicacy of the issue at hand and the professional obligations of my interviewees, the notes taken during the conversations are incorporated into the thesis without attributing them to a specific interviewee.
Chapter 2

Literature review

This chapter provides an overview of the existing academic literature on the humanitarian impact of nuclear weapons, the role of small states and NGOs in international security as well as the Treaty on the Prohibition of Nuclear Weapons itself and the process that led to its adoption.

The humanitarian argument in favor of the prohibition of a certain class of weapons is not new and has previously been employed in the campaigns to eliminate anti-personnel landmines and cluster munitions, respectively. Price describes how in the 1990s, a vigorous campaign was launched by around 1,000 NGOs to draw attention to the disproportionate civilian suffering and death caused by landmines,\(^1\) culminating in their prohibition in 1997 by way of a comprehensive ban treaty, the Ottawa Convention,\(^2\) which will be further discussed in Chapter Five. Meanwhile, Anderson calls the role of international civil society into question, claiming that there is no evidence of “real democratization of international law”\(^3\) and that the treaty was instead elaborated by newly emerging global transnational elites. Another point made in connection with the Ottawa Convention puts the present contemplation of the TPNW into perspective. Thakur and Maley argue that:

[T]he fundamental purpose of international humanitarian law is not the exacting one of securing the absolute disappearance of particular forms of

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conduct, but rather the more realistic one of producing some amelioration of the circumstances that combatants and noncombatants will confront should war break out.  

A similar approach was adopted in relation to cluster munitions a decade later. Docherty describes how humanitarian concerns were not only used in the campaign against cluster munitions, but embedded in the convention itself. The 2008 Convention on Cluster Munitions (CCM) contains humanitarian obligations regarding victim assistance and makes several references to international humanitarian law, as examined in detail by Docherty, Hulme and Corsi. Hulme states that cluster munitions “can have indiscriminate effects and risks causing an unbearable humanitarian toll.” She therefore considers the CCM to be both a humanitarian instrument and an arms control treaty. Another parallel to the TPNW can be found in Corsi’s article, which details how Norway worked closely with interested states, UN agencies, the ICRC and other humanitarian organizations during the campaign against cluster munitions.  

Borrie also points out the similarities in the structure of the policy discourse around nuclear weapons, anti-personnel mines and cluster munitions. While some of the people involved in the earlier campaigns also took an active part in the anti-nuclear weapons discourse, Borrie acknowledges that the set of states in possession of these weapons is

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vastly different. He further believes that the frameworks in which we conceive of an issue are socially constructed, and describes how the nuclear weapons discourse was built around the humanitarian consequences of these weapons with a view to presenting them as impractical and counterproductive for states claiming to uphold human rights principles.

The discontent that many non-nuclear-armed states as well as civil society actors harbor regarding the lack of disarmament progress within the NPT framework, contributing to the slow erosion of the NPT regime, is described by Kmentt, Thakur and Acheson. Williams et al. make a similar observation and elaborate on other less than successful disarmament initiatives and frameworks, such as the Conference on Disarmament and the Fissile Material Cut-off Treaty. Helfand, in his article about nuclear famine, delves deeper into the scientific foundations of the humanitarian initiative. He describes the catastrophic effects even a limited nuclear exchange between India and Pakistan would have on global climate and consequently on food security. Maresca and Mitchell take a closer look at the rules of international humanitarian law applicable to nuclear weapons and describe the catastrophic consequences of any nuclear weapon detonation as well as

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10 Ibid., p. 636f.
the inability to respond effectively to such a disaster. Contemplating these severe consequences in the light of international humanitarian law lays the ideational foundation for the humanitarian impact initiative. Slade et al. provide further detail on the reframing of the nuclear weapons discourse “away from the traditional realm of State security […] and towards the grim reality of the humanitarian impacts.” Kmentt was actively involved in the humanitarian reframing of the nuclear disarmament discourse. In his article, he describes how the humanitarian initiative was conceived as an alternative to the Cold War security concept of nuclear deterrence based on the threat of “mutually assured destruction.” He details the evolution of the humanitarian initiative, from the 2010 NPT Review Conference and the three conferences on the humanitarian impact of nuclear weapons to the 2015 NPT Review Conference. Considine offers a critical view of the humanitarian initiative, claiming that it is in no way historical or transformational, but rather a repetition of a call that has been made since the end of World War II.

The humanitarian impact initiative was, as already mentioned, driven by a coalition of smaller, less influential states with the support of civil society. Long examines the options and resources available to small states in international relations. He challenges the

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20 Ibid. p. 889ff.
conventional belief that small states cannot achieve results in the face of great power opposition and separates the power available to small states into three categories: derivative (through a relationship to a great power), collective (through coalitions or institutions) and particular-intrinsic (through special assets).\textsuperscript{22} Panke examines the circumstances under which these states stand a chance to “punch above their weight.”\textsuperscript{23} Those circumstances include an institutionalized setting for negotiations, collaboration with NGOs and specialized agencies, as well as coalition-building.

As early as 2001, Cullen and Morrow wrote about the formation of an international civil society\textsuperscript{24} and underscored the role of the ICRC in the implementation of international humanitarian law.\textsuperscript{25} Atwood describes the struggle NGOs have faced while trying to establish themselves in multilateral disarmament fora.\textsuperscript{26} According to his observations, the more arms control is framed as a national security issue, the harder it is for NGOs to access negotiations.\textsuperscript{27} He subsequently proposes ways in which NGOs can facilitate progress in multilateral forums and also raises the issue of human security and humanitarian approaches to arms control.\textsuperscript{28} Minor emphasizes the key role that ICAN and other NGOs played before and during the conferences on the humanitarian impact of nuclear weapons, gathering key evidence on humanitarian consequences and adding legitimacy to the state-

\begin{thebibliography}{9}
\bibitem{25} Ibid., p. 15f.
\bibitem{27} Ibid., p. 38.
\bibitem{28} Ibid., p. 41ff.
\end{thebibliography}

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led initiative by building momentum in global civil society.\#29\# Borrie et al. examine the interplay of different actors according to the transnational advocacy networks (TAN) theory.\#30\# This theory, which focuses on civil society actors lobbying states, does not tell the full story regarding the humanitarian initiative, however. Borrie et al. point out the importance of networks of trust between activists, diplomats and other officials, and highlight the contributions of actors out of the public eye, such as researchers and employees of international organizations.\#31\# 

The conferences on the humanitarian impact of nuclear weapons, the process leading up to them, and the activities of the OEWG are described in detail by Potter\#32\# and Kmentt.\#33\# Their writings on the 2010 and 2015 NPT Review Conferences, the respective Preparatory Committee meetings, the conferences in Oslo, Nayarit and Vienna, and the meetings of the OEWG in Geneva will be discussed more comprehensively in Chapter Four of this thesis. Thakur describes the TPNW negotiations in New York in March, June and July 2017 as well as the related draft resolutions introduced in the First Committee of the UN General Assembly.\#34\# From his vantage point as a participant in all stages of the process, Potter provides detailed information on the negotiations and the positions of key

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\#31\# Ibid., p. 22.


member states. Dunworth gives an overview of the key provisions of the Treaty text, taking particular note of the victim assistance provisions and the obligation of states parties to remedy environmental damage caused by nuclear weapons detonations.  

Jenkins highlights the final paragraphs of the Treaty’s preamble, which recognize the important roles of women, NGOs and education in nuclear disarmament and non-proliferation.  

Borrie et al. also offer a first-hand account of the negotiation process, with a particular focus on the modalities of the negotiations and assessments of the influence of state and civil society actors on the Treaty text.

A number of articles have been published in reaction to the Treaty’s adoption, commenting on the merits of the Treaty itself and on the stances of particular member states. Kibaroglu and Sauer, writing from a Turkish perspective, take the adoption of the TPNW as an occasion to advocate for the removal of US nuclear weapons from Europe, calling them “obsolete.”

Thakur sharply criticizes the Japanese government’s opposition to the TPNW and points out several flaws in the reasoning behind nuclear deterrence. Based on an observation of the voting behavior of NATO member states on UN General Assembly resolutions related to the TPNW, Sauer divides non-nuclear-armed NATO states

into three main groups. Those who have shown little to no support for the process include the Baltic states, Hungary, Poland, the Czech Republic, Turkey, Romania, and, to a lesser degree, Italy and Spain. Belgium, Bulgaria, Croatia, Slovenia, Albania, Canada, Germany and Slovakia have demonstrated more moderate voting patterns. The third group is made up of countries who regularly abstained on votes related to the humanitarian consequences of nuclear weapons and includes the Netherlands, Portugal, Greece, Luxembourg, and even more so Denmark, Iceland and Norway. Rühle endeavors to justify NATO opposition to the Treaty by pointing out that the delegitimization of nuclear weapons as pursued by the Treaty’s proponents can only work in countries with a vibrant civil society. He claims that the delegitimization will therefore put democratic countries at a disadvantage compared to China, Russia and other illiberal nuclear-armed states, negatively impacting Western nuclear deterrence capabilities. If this makes major war more likely, he concludes, delegitimizing nuclear weapons can actually be considered immoral. He believes that disarmament can only be realized after the political conflicts that lead to nuclear weapons possession have been resolved. This reaction stands in sharp contrast to Kurosawa’s, who maintains that the stigmatization of nuclear weapons will increase as more states join the Treaty as well as over time, until their possession and use eventually become incompatible “with the identity that [a] state wishes to have in the world.” Egeland goes one step further by affirming that the Treaty is highly significant even beyond the realm of disarmament,

as its adoption indicates that “most of the world’s states are no longer prepared to accord certain states special entitlements under international law.”

Concerning the implementation of the Treaty and the advancement of nuclear disarmament in general, Rydell points to the need of a strategic plan and proposes 10 initiatives in this regard, including the refusal to invest in companies associated with nuclear weapons, the sensitization of the business community more generally, the mobilization of foundations and private donors, and outreach to professional associations. Kurosawa elaborates on the difference between delegitimization and stigmatization and calls for both approaches to be pursued simultaneously in an effort to promote Treaty implementation. Thakur argues that due to its normative nature, the Treaty will eventually create a compliance pull, and that it has the potential of closing several legal gaps, including in relation to the threat of use of nuclear weapons and the nuclear-armed states outside the NPT. Nonetheless, he also sees several challenges ahead, including competition with the NPT and an enforcement dilemma, since the five permanent members of the UN Security Council oppose the TPNW.

The subsequent chapters of this thesis will add to the existing academic literature by making a more inclusive argument for the uniqueness and significance of the TPNW, based on an analysis of a large number of primary and secondary written sources as well

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48 Ibid., p. 88f.
as on the interviews I conducted. While the beginnings of the humanitarian initiative have already been documented to some extent, the first-hand accounts add new insights into the cooperation between states and NGOs and into the causalities and deliberations that drove the initiative in the direction of a treaty. Moreover, this thesis is one of the first academic works to document the later stages of the process, notably the Treaty negotiations themselves, and to discuss the way forward as envisioned by the Treaty’s architects. The sources I examined are by no means exhaustive and this thesis gives only a sectional view of the process surrounding the humanitarian initiative and the TPNW. As Borrie et al. rightly affirm, extensive further research is required in order to paint a complete picture, since many important developments originated in closed and informal meetings and are therefore not reflected in official records. To develop a full understanding of the roles of the various actors and of the dynamics of the process, the oral accounts and personal notes of those involved will have to be comprehensively chronicled and examined. The present thesis, with its analysis of the currently available sources as well as the interviews conducted, is a first step in this direction.

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The status quo of nuclear disarmament regimes in 2010

This chapter gives an overview of the situation of multilateral nuclear disarmament frameworks at the time the humanitarian impact initiative emerged. An examination of the situation at this point in time will allow for a more in-depth understanding of the motivations and interests behind the initiative.

The first step towards understanding these motivations is to look at the sheer numbers of nuclear arms still in existence a quarter-century after the end of the Cold War. Nine states are presently in possession of nuclear weapons (the US, the Russian Federation, China, France, the UK, India, Pakistan, Israel and North Korea), and each of them is making significant investments into the modernization of their nuclear arsenals.  

The number of nuclear warheads has been reduced significantly since its peak in 1986, but from a technological perspective, they could be dismantled much faster. There are still around 14,200 nuclear warheads in existence worldwide, of which approximately 9,300 are stockpiled for potential use and 3,600 are deployed (on or nearby operational delivery systems). Past efforts towards nuclear stockpile reduction, mainly in the form of bilateral agreements between the US and Russia, never extended to tactical nuclear weapons. Therefore, the numbers of strategic nuclear warheads mentioned above do not accurately

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52 Kristensen, Hans M. & Norris, Robert S. (2018) “Status of World Nuclear Forces” *Federation of American Scientists*: http://fas.org/issues/nuclear-weapons/status-world-nuclear-forces (last updated in March 2018); in relation to the numbers, the authors remark the following: “Numbers may not add up due to rounding and uncertainty about the operational status of the four lesser nuclear weapons states and the uncertainty about the size of the total inventories of three of the five initial nuclear powers.”
reflect the total number of nuclear weapons in existence.\textsuperscript{53} The US also deploys its nuclear weapons on foreign soil, with “approximately 200 nuclear bombs at six air bases in five NATO countries – Belgium, Germany, Italy, the Netherlands, and Turkey,”\textsuperscript{54} and extends its nuclear weapons as protection to other allies such as Australia, Japan and South Korea. These extended security guarantees, also known as the “nuclear umbrella,”\textsuperscript{55} significantly increase the actual area of proliferation of nuclear weapons beyond the possessor states themselves. The concrete danger posed by the presence of these stockpiles across Europe, North America and Asia will be discussed in the following chapter.

Since the end of World War II, there have been numerous attempts to tackle the proliferation of nuclear weapons at the regional and international level, both bilaterally and multilaterally. Existing nuclear disarmament and control frameworks include the NPT, the Comprehensive Test Ban Treaty (CTBT), which has not entered into force,\textsuperscript{56} the Cooperative Threat Reduction Program and other bilateral agreements between the US, the Russian Federation and other former Soviet states,\textsuperscript{57} as well as regional nuclear-weapon-free zones (NWFZ). One hundred states and over 50 per cent of the globe are covered by NWFZ, including all of Africa, Latin America and the Caribbean, Central Asia and the South Pacific.\textsuperscript{58} The fact that NWFZ encompass the entire southern hemisphere makes the strong support of the Global South for the humanitarian initiative easier to understand.

\begin{footnotes}
\item Ibid., p. 133f.
\item Ibid., p. 113f.
\end{footnotes}
The NPT has been the main instrument of the international nuclear regime since its entry into force in 1970. Under the NPT, a clear distinction is made between non-nuclear-weapon states (NNWS) and nuclear-weapon states (NWS). The former pledge to renounce nuclear weapons and subject their civilian nuclear programs to International Atomic Energy Agency (IAEA) inspections to verify compliance. The five recognized NWS, coinciding with the five permanent members of the Security Council (P5), are allowed to maintain their arsenals and are not subject to inspections.\(^{59}\) Initially, the NWS, notably the US and the USSR, had no intention of halting their ongoing nuclear arms race. Only as a result of substantial pressure from non-aligned states did they finally agree to Article VI of the NPT,\(^{60}\) in which NWS pledge 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.”\(^{61}\) Article VI does not specify concrete steps or timelines for disarmament. Nuclear-armed states are simply required to demonstrate that they are pursuing disarmament negotiations “in good faith.” Even at the time, NNWS were aware of the vagueness of this commitment, and their doubts were proven correct over subsequent decades. Despite the NPT’s impressive record concerning non-proliferation,\(^{62}\) not a single nuclear warhead has ever been eliminated under the NPT regime.\(^{63}\) (Any nuclear

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60 Ibid., p. 50.
disarmament at the end of the Cold War was the result of bilateral efforts between Russia and the US.)

In return for the international community’s consent to the indefinite extension of the NPT in 1995, three additional disarmament provisions were included in the relevant decision of the Conference of the Parties, entitled “Principles and objectives for nuclear non-proliferation and disarmament.” 64 Firstly, the conclusion of a Comprehensive Nuclear-Test-Ban Treaty (CTBT) and a Fissile Materials Cut-off Treaty; secondly, the review of the implementation of the states parties’ commitments by the Preparatory Committee; and thirdly, efforts to create a zone free of weapons of mass destruction in the Middle East. 65 Similar assurances were given at the 2000 Review Conference in the form of 13 “practical steps for the systematic and progressive efforts to implement article VI” as well as the 1995 principles and objectives. 66 Whereas the 2005 NPT Review Conference failed to produce any results, the 2010 NPT Review Conference took place in a generally positive international climate. President Obama’s 2009 Prague Agenda speech calling for a world free of nuclear weapons, along with the conclusion of the New START Treaty between the US and Russia, had reinvigorated the disarmament community. 67 The Arab Spring and the annexation of Crimea had not yet soured relations between East and West, and after the failure of the 2005 conference, the international community had high hopes for reaching a substantial agreement on disarmament this time around. Indeed, the 2010

conference was widely hailed as a success since it produced a concrete Action Plan designed to make disarmament efforts more measurable and thus increasing accountability.\textsuperscript{68} Acheson, however, argues that the final document hid the continued resistance of the nuclear-armed states parties to any concrete disarmament commitments.\textsuperscript{69} For instance, France, Russia and the US would not commit to cease the development of advanced new types of nuclear weapons.\textsuperscript{70}

The failure of the NWS to uphold their end of the bargain led to growing frustration among the NNWS and made them reluctant to agree to any concrete non-proliferation measures. This dynamic virtually halted progress in both areas and was beginning to undermine the decades-old NPT regime. A debate emerged around the double standards set by the treaty, which allowed the nuclear-armed states to control the NPT regime and use it to maintain their strategic military advantage over other states.\textsuperscript{71} Another factor contributing to the gradual erosion of the NPT regime is the fact that three NWS—India, Israel and Pakistan—are not parties to the treaty and therefore not bound by its provisions.\textsuperscript{72} North Korea could arguably be added to that list, rendering the NPT ineffective in combating the most immediate current nuclear threat.

The Conference on Disarmament, a UN body that brings together 60 member states at yearly meetings in Geneva, has been paralyzed ever since the conclusion of the negotiations for the CTBT in 1996.\textsuperscript{73} Since all its decisions must be taken by consensus, the Conference has not even succeeded in adopting a program of work in several years. Much the same can be said for the New York-based UN Disarmament Commission. In those two forums as well as the NPT conferences, the NWS effectively control the institutional procedures and have the power to impede any disarmament initiatives that do not suit their military interests.\textsuperscript{74} For Acheson, this standstill of the nuclear disarmament process is partly owed to the fact that the negotiations in these forums are conducted by elites and that civil society has been excluded from the process almost entirely, denying ordinary citizens who would suffer the most severe consequences of a nuclear war a voice in the matter.\textsuperscript{75} The unfavorable circumstances and entrenched positions within existing nuclear disarmament and control frameworks were undoubtedly an important impetus for civil society, states of the Global South and other like-minded states to embrace the conferences on the humanitarian impact of nuclear weapons, which were significantly more inclusive, dynamic and open-minded.\textsuperscript{76}

Chapter 4

The evolution of the humanitarian initiative and the related multilateral process

Although nuclear disarmament efforts are almost as old as the weapons themselves, the new approach to nuclear disarmament known as the humanitarian impact initiative only surfaced over the last decade. In this chapter, I will draw a timeline of the humanitarian initiative from its beginnings all the way to the achievement of a mandate to negotiate a nuclear weapon ban treaty, with the aim of building a comprehensive understanding of the process before the ideological background, the strategies and the actors involved in the humanitarian initiative are discussed in more detail in the following chapters.

The idea for the humanitarian initiative can be traced back to a speech by Jakob Kellenberger, former president of the ICRC, on April 20, 2010. Addressing the diplomatic corps in Geneva, he recited the testimony of an ICRC delegate who was the first foreign doctor present in the immediate aftermath of the 1945 bombing in Hiroshima. Kellenberger pointed out that even today, the international community does not have the capacities to adequately address a humanitarian emergency of such magnitude. He went on to state that the ICRC found it difficult to envision a scenario where the use of nuclear weapons might be compatible with international humanitarian law.77 Coming from the organization that considers itself the guardian of international humanitarian law, this statement became an important input for the NPT Review Conference in May 2010 and was taken up by the Austrian and Swiss delegations at the meetings.78 Thus, the humanitarian dimension of

nuclear war was addressed in an NPT consensus document for the first time, with a passage in the 2010 Action Plan that read:

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.\(^{79}\)

In combination with Action I of the Action Plan, in which states committed to policies compatible with the objective of achieving a world without nuclear weapons, the above statement can be interpreted as a mandate for states to pursue the humanitarian initiative in their implementation of the NPT. This interpretation became an important argument to counter one of the main critiques that the NWS aimed at the humanitarian initiative, namely that it distracted from the implementation of the NPT.\(^{80}\)

In the timeline of the humanitarian initiative, the next step within the NPT framework was the first Preparatory Committee meeting (in 2012) for the 2015 Review Conference in Vienna. During this meeting, Switzerland presented the first cross-regional statement on the humanitarian initiative on behalf of 16 states, who became known as the “Group of 16,”\(^{81}\) and Norway announced that it would host a conference on the humanitarian impact of nuclear weapons in 2013. In the same year, the first OEWG was established through a General Assembly resolution entitled “Taking forward multilateral disarmament negotiations,”\(^{82}\) sponsored by Austria, Mexico and Norway, among others. The OEWG met in Geneva for 15 working days. Although it produced no ground-breaking

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\(^{81}\) Ibid., p. 685.

\(^{82}\) UN document symbol: A/RES/67/56.
final report, the OEWG ushered in a new kind of meeting that was previously unheard of in nuclear arms control: a meeting not dominated by the P5, where civil society was invited to actively participate, and where speakers brought forward constructive ideas instead of lamenting the status quo and the inaction of other parties. These OEWG meetings can therefore be considered the first official meetings that carried the spirit of the humanitarian initiative.

By 2012, the NWS, who had likely attributed little importance to the mention of the humanitarian consequences of nuclear weapons when they first subscribed to the 2010 Action Plan, began to realize that the humanitarian initiative was gaining traction. According to Kmentt, this development took them by surprise. Although the US considered disarmament a bilateral affair, the Obama administration was, at least in the beginning, open to dialogue with the humanitarian initiative. Without decisive US leadership, other NATO members and allies were unable to slow the momentum of the humanitarian initiative effectively.

The conferences in Norway, Mexico and Austria

The first of the three conferences on the humanitarian impact of nuclear weapons took place in Oslo in March 2013. It consisted mainly of expert presentations on the humanitarian and socioeconomic consequences of any detonation of nuclear weapons and

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on preparedness and response to nuclear emergencies. The Norwegian hosts kept the focus on facts and evidence, purposefully avoiding a more political discussion or the premature adoption of conclusions. Before the conference, ICAN hosted a civil society forum that brought together hundreds of activists and contributed to the dynamic atmosphere of the subsequent conference. Among the participants of the conference itself were delegations from 127 countries, several UN organizations such as UNHCR, OCHA, UNDP and WFP, as well as a variety of civil society representatives. The ICRC and the International Federation of Red Cross and Red Crescent Societies (IFRC) both sent large delegations, and ICAN was represented with numerous partner organizations from different countries. The NWS collectively boycotted the conference in a rare demonstration of P5 solidarity. According to Kmentt, their assumption was that without their participation, any discussion about nuclear weapons would be an exercise in futility. To the supporters of the humanitarian initiative, this dismissive attitude only served as further proof that the NWS had no interest in changing the status quo and no serious intentions to pursue complete nuclear disarmament as envisioned in the NPT. Perhaps on account of Norway being a member of NATO, or on account of the humanitarian initiative being in its early stages, the Chair’s summary issued by the Norwegian Foreign Ministry was succinct and limited to facts about nuclear weapons, while avoiding any political statements. Its three main points were that the international community cannot adequately address the humanitarian

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87 For a full list of participants see: https://www.regjeringen.no/globalassets/upload/ud/vedlegg/hum/hum_participants.pdf.
emergency caused by a nuclear weapon detonation; that the immediate and long-term effects of such a detonation are well-known; and that these effects will transcend national borders.\textsuperscript{89} At the closing meeting, Mexico announced its intention to host a follow-up conference,\textsuperscript{90} thus guaranteeing the continuity of the humanitarian initiative.

The second conference took place in Nayarit, Mexico in February 2014 and brought together 146 states. One of its most salient features was the testimony of the \textit{hibakusha}, the survivors of the atomic bomb detonations in Hiroshima and Nagasaki. Their stories helped to shift the focus of the disarmament discourse away from technicalities and towards the lives of real human beings. Moreover, the Nayarit conference addressed the element of risk associated with the existence of nuclear arsenals and the deployment of nuclear weapons. It exposed the vulnerabilities of the nuclear command and control infrastructure by citing 16 historical cases of so-called near misses – nuclear accidents that almost happened due to human or technical error. Naturally, the security of nuclear arsenals is not only threatened by accidents, but also by cyber-attacks and terrorist activities. The Nayarit conference had a more political dimension than the one in Oslo and featured a general debate with contributions by almost 80 state delegations.\textsuperscript{91} This time, the Chair’s summary did not avoid politically charged statements. It declared the mere existence of nuclear weapons to be absurd on account of the cost, both material and human, associated with them, and openly called for a legally binding instrument to outlaw nuclear weapons.\textsuperscript{92} This

\begin{footnotesize}
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\item \textsuperscript{91} Ibid., p. 691f.
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direct language gave rise to significant controversy. Several participating states, including Australia, Canada, Germany, the Netherlands and Turkey, did not feel that the summary adequately reflected their views and criticized it as going too far.93

This controversy significantly complicated the work of the organizers of the next conference on the humanitarian impact of nuclear weapons, to be held in Vienna in December of the same year. They were faced not only with the delicate task of appeasing European NATO states in order to assure their participation, but also with the ambitious expectations of NGOs and other proponents of the legal instrument that Mexico had put on the agenda. In the lead-up to the conference, NWS as well as nuclear umbrella states launched numerous diplomatic appeals to the Austrian hosts, seeking reassurance that the conference would not produce a political outcome contrary to their interests. This was a clear sign that the NWS and their allies were growing increasingly concerned that the humanitarian impact conferences would indeed turn into a slippery slope towards a treaty banning nuclear weapons.94

In an effort to reconcile these expectations, Austrian diplomats immediately began outreach efforts and sought to avert confrontation by reaffirming that the humanitarian initiative was in line with the objectives of the NPT and that the views of all participants would be reflected in the Chair’s summary. Most importantly, they reached out to US State Department officials, who seemed to be looking for a way to insert themselves into the


humanitarian initiative. Having encountered substantial difficulties in the realization of President Obama’s Prague Agenda, they sought to retain their credibility on nuclear disarmament and preferred to leave the obstructionist role to France and Russia. This gave rise to a solid working relationship with the State Department and with several US-based think tanks. Since the Ukraine crisis had driven a wedge between Russia and the remaining P5 members, the conference organizers saw an opportunity to soften the nuclear-weapon states’ united front of categorical opposition. In the end, the US did indeed join the conference and the UK quickly followed suit, generating a significant surge in international news coverage and heightened interest among US think tanks such as the Arms Control Association.95 Although the number of participating states increased to 158,96 France, Russia and China continued to boycott the humanitarian initiative entirely.97

Among the salient elements of the Vienna conference were the health, environmental and social impacts of nuclear weapons testing, illustrated with testimonies by victims from Utah, Australia and the Marshall Islands, as well as the gender dimension of radiation exposure, which affects women more severely than men. Moral aspects and the legality of nuclear weapons under international law were also discussed. The last day of the conference featured a general debate,98 during which an increasing number of

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98 For the conference program see: https://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Abruestung/HINW14vienna-Program.pdf
delegations were explicitly calling for a prohibition of nuclear weapons. In the Chair’s Summary, the hosts fulfilled their promise that the views of both sides would be reflected.\textsuperscript{99} Since the Austrian delegation did not consider the resulting document assertive enough, they simultaneously issued their own national statement, the Austrian Pledge.\textsuperscript{100} The Austrian government pledged, among other things, to take the findings of the humanitarian conferences to the next NPT Review Conference and to cooperate with all relevant stakeholders “in efforts to stigmatize, prohibit and eliminate nuclear weapons.”\textsuperscript{101} The document called for the legal gap regarding nuclear weapons to be filled, but did not yet specifically mention a ban treaty. After the conference, Austria invited other states to endorse the pledge and ICAN actively promoted it at the 2015 NPT Review Conference. The pledge gained significant momentum and by the end of the conference, 114 states had subscribed to it.\textsuperscript{102} In the light of widespread and growing support, it was renamed the Humanitarian Pledge.

The 2015 NPT Review Conference

The 2015 NPT Review Conference is mostly remembered for its failure to produce a consensus final document, due to the breakdown of negotiations in a closed group addressing the Middle East. Nonetheless, the conference resulted in some noteworthy developments. Building on the above-mentioned Humanitarian Pledge, Austria issued a


\textsuperscript{100} UN document symbol: NPT/CONF.2015/WP.29, Annex.

\textsuperscript{101} Ibid.

statement on the humanitarian initiative on behalf of 159 states. Australia presented another, less ambitious statement on the same issue on behalf of 26 states. The New Agenda Coalition (NAC), consisting of Brazil, Egypt, Ireland, Mexico, New Zealand and South Africa, submitted a working paper expressing support of the humanitarian initiative and “[rejecting] attempts to assert a right to indefinite possession of nuclear weapons by the nuclear-weapon states or to justify the continued retention of nuclear weapons on security grounds.” In an attempt to reach consensus on nuclear disarmament, the President of the conference convened a Focus Group of 19 states, consisting of the P5, the 6 members of the NAC as well as Austria, Australia, Cuba, Indonesia, Iran, Japan, the Netherlands and Sweden. It was in this group that the idea of creating a new OEWG was first brought forward. It is interesting to note that in Kmentt’s opinion, the humanitarian initiative gained traction not despite but because of the above-mentioned lack of consensus at the NPT Review Conference.

The 2016 OEWG

When it came to creating another OEWG, there was a fundamental disagreement on whether it was necessary and/or desirable for NWS to participate and whether decisions within the OEWG should be made by consensus. The struggle to obtain a mandate for

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an OEWG based on General Assembly (GA) rules of procedure (which do not require consensus) has been described as the most difficult phase of the entire multilateral process.\textsuperscript{108} The proponents of this type of OEWG had the advantage of building on the existing resolution entitled “Taking forward multilateral disarmament negotiations”, which already had a solid base of supporters in the GA. Austria and Mexico, among other sponsors, introduced this amended resolution in the First Committee of the GA, arguing that under GA rules of procedure, the OEWG could not be held hostage by individual states. Meanwhile, Iran drafted a competing resolution for a consensus-based OEWG. The First Committee discussions of these two draft resolutions were described to me as a wild battle that created absurd situations, like the P5 (including the US) lauding Iran for its resolution while disparaging Austria and Mexico.\textsuperscript{109} Under consensus-based rules, the NWS and their allies would have been able to effectively prevent any progress that went against their interests. In the end, Iran (the Chair of the Non-Aligned Movement, NAM) withdrew its draft resolution because it could not harness the full support of the NAM or the US. Consequently, the Austrian/Mexican draft was adopted and an OEWG based on GA rules of procedure was created. Potter’s impression as a participant in the OEWG sessions was that the most ardent supporters of the humanitarian initiative actually preferred to move forward without the NWS.\textsuperscript{110} This observation is in line with the assertions of several of my interviewees, who agreed that the negotiations became noticeably smoother from the 2016 OEWG onwards due to a basic consensus among the participants about the way forward. Along the same lines, Berry et al. argue that

\textsuperscript{108} Interview conducted by the author on February 28, 2018.
\textsuperscript{109} Ibid.
negotiations with fewer players who share a higher common interest produce more concrete agreements – a departure from traditional arms control frameworks, where the lowest common denominator is the order of the day because decisions must be made unanimously.111

The primary mandate of the OEWG, established pursuant to GA resolution 70/33, was to “address concrete effective legal measures, legal provisions and norms that will need to be concluded to attain and maintain a world without nuclear weapons.”112 During the OEWG meetings, representatives from Latin America and the Caribbean were particularly active, and civil society organizations participated in all meetings except the last. Several NATO states along with Australia, South Korea and Japan formed their own group of so-called “progressive states,” promoting a pragmatic step-by-step approach to nuclear disarmament. The majority of the 103 participating states, however, supported the launch of negotiations on a legally binding instrument for the prohibition of nuclear weapons, which was reflected in the OEWG report.113 Due to opposition by the “progressive states,” the report was not adopted by consensus, but rather by a vote,114 which can usually be interpreted as a sign of considerable controversy, given that the text of such a report is negotiated and already contains compromise language.

During the OEWG meetings, different options were put forward for the concrete nature of the proposed legal instrument and included a nuclear weapons convention and a

112 UN document symbol: A/RES/70/33, para. 2.
nuclear weapons prohibition treaty. The idea of a nuclear weapons convention has existed at least since 1997, when a group of lawyers, scientists, disarmament experts and activists elaborated a model nuclear weapons convention, containing provisions to:

… outlaw the use, possession, development, testing, deployment, and transfer of nuclear weapons, as well as mandate internationally verifiable dismantlement of nuclear arsenals.\textsuperscript{115}

The model convention was updated in 2007, following the examples of the conventions against chemical and biological weapons as well as anti-personnel landmines. Costa Rica and Malaysia submitted the updated model convention as a working paper to the 2007 NPT Preparatory Committee meeting in Vienna.\textsuperscript{116} Similar to the Chemical Weapons Convention or the Ottawa Convention, a nuclear weapons convention would regulate the technical aspects of the elimination of nuclear weapons in detail and contain concrete provisions for compliance verification. A prohibition treaty would outlaw the use and threat of use of nuclear weapons, as well as other related activities such as nuclear testing and the development, acquisition and possession of nuclear weapons, but refrain from going into technical detail. Therefore, a ban treaty and a convention are not necessarily mutually exclusive. Rather, a ban could be a first step on the way to a more comprehensive legal instrument dealing with the actual elimination and verification processes.\textsuperscript{117} The report of the OEWG also reflected this view and recommended negotiating, in 2017, a legally binding instrument containing “general prohibitions and


obligations as well as a political commitment to achieve and maintain a nuclear-weapon-free world.”¹¹⁸ A simple ban treaty was considered the most viable option for the immediate future because it could be achieved relatively quickly and would not require the support of all states. Since a significant number of states nonetheless supported the idea of a nuclear weapons convention, the report recommended that this idea be reconsidered at a high-level conference in 2018.¹¹⁹

Upon recommendation of the OEWG, provisions to convene a negotiating conference for a nuclear weapons prohibition treaty were included in the 2016 draft of the resolution entitled “Taking forward multilateral nuclear disarmament negotiations.”¹²⁰ The resolution was adopted with 123 votes in favor, 38 against and 16 abstentions.¹²¹ The mandated negotiations were to take place in New York from 27 to 31 March and from 15 June to 7 July, 2017 under the rules of procedure of the GA. The negotiating mandate explicitly encouraged the participation and contribution of international organizations and civil society representatives.

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¹¹⁸ UN document symbol: A/71/371, para. 34.
¹¹⁹ Ibid., paras. 36 and 37.
Chapter 5

Reframing the nuclear disarmament discourse

After the previous chapter’s overview of the events and developments that marked the humanitarian initiative, this chapter takes a closer look at the ideological background, the arguments and the discourse strategies its proponents employed and continue to employ.

International humanitarian law

The humanitarian approach to disarmament considers weapons from an apolitical perspective, focusing not on their real or perceived military utility, but on their effects on human beings. The legitimacy of a weapon is determined according to whether or not it causes unacceptable harm. Following this line of argument, the humanitarian approach assumes:

… that any use of nuclear weapons is likely to be in breach of international humanitarian law, that on this basis states should logically agree that the use of these weapons is illegal, and that this approach can and should lead to international agreements banning, and then possibly abolishing, nuclear weapons.

This assumption is based on the principles of humanitarian law that govern warfare, including the principle of discrimination, the principle of proportionality, the principle of not damaging the environment and the principle of avoiding unnecessary suffering.

Discrimination refers to the obligation to distinguish between combatants and civilians as

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124 Ibid., p. 236.
well as military and civilian targets. The principle of proportionality prohibits an attack that causes loss of life and property disproportionate to the anticipated military advantage. The relationship between nuclear weapons and international humanitarian law was addressed in the Advisory Opinion on the legality of the threat or use of nuclear weapons rendered by the International Court of Justice (ICJ) in 1996 at the request of the UN Secretary-General. Although the ICJ “could not conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense,” it did find that such an act would generally be contrary to international humanitarian law.

Addressing both the principle of not damaging the environment and the principle of avoiding unnecessary suffering, International Physicians for the Prevention of Nuclear War released a climate impact study in 2012. This study paints a dramatic picture, describing the humanitarian and environmental consequences of a concrete scenario of limited, regional nuclear war, namely between India and Pakistan. Together, the two countries account for around one per cent of the world’s nuclear arsenals. If each of them used only half of their nuclear weapons, or around 50 Hiroshima-sized bombs, against the other, 20 million people would die within a week from the blasts, the resulting fires and the acute radiation exposure. The effects would not end there, however. The black soot from the fires would rise into the Earth’s atmosphere and block sunlight, causing global temperatures to drop by 1.3 degrees centigrade for about a decade. This dramatic disruption

126 Ibid., p. 67.
of the global climate would shorten the crop growing season and lessen rainfalls, leading to a 12 to 30 per cent decline in agricultural production. The subsequent food shortages and price increases would first claim the lives of 870 million already malnourished people, but a further 300 million people living in countries that rely heavily on food imports would also be severely affected.\textsuperscript{128} This study clearly demonstrates that the consequences of a nuclear weapons detonation go far beyond the borders of individual countries and cannot be contained in space or time.\textsuperscript{129}

In its 1996 advisory opinion, the ICJ also referenced environmental damage and went even further by stating that nuclear weapons “have the potential to destroy all civilization and the entire ecosystem of the planet” and that ionizing radiation is a “serious danger to future generations.”\textsuperscript{130} While the most powerful conventional weapons have a yield of 14 tons of TNT, today’s strategic nuclear weapons have a yield of several kilotons and up to 5 megatons of TNT.\textsuperscript{131} These scientific facts demonstrate that the use of nuclear weapons violates each of the principles of international humanitarian law cited above. Firstly, the sheer destructive capacity of a nuclear weapon makes it practically impossible to avoid extensive civilian harm and unnecessary suffering; secondly, the far-reaching and long-term consequences for the environment and the socio-economic development of the entire planet far outweigh any real or perceived military advantage of nuclear weapons use. These observations and the recent scientific evidence suggest a conclusion even exceeding

that of the ICJ two decades ago, namely that nuclear weapons use is contrary to international humanitarian law under any circumstances.

**Countering nuclear deterrence theory**

For proponents of the humanitarian initiative, the above-mentioned dramatic consequences of a nuclear weapons detonation illustrate the deep flaws of nuclear deterrence theory. A relic from the Cold War, the theory is based on the assumption that any nuclear attack would cause such devastation that an adversary with second-strike capability would certainly strike back, leading to “mutually assured destruction.” Since this is not a desirable outcome for either side, the theory concludes, the fact that some states possess nuclear weapons introduces higher levels of caution into international relations and makes conflict less likely. Even after the adoption of the TPNW, France, the US and the UK have stated clearly that nuclear deterrence remains the cornerstone of their security policy. The humanitarian initiative challenges this security concept based on mass destruction with the following arguments: For deterrence to work, NWS must be credibly committed to a suicidal course of action. This stands in direct contradiction to the claim that deterrence and the balance of power cause states to behave more rationally. A rational actor would be aware that a nuclear war cannot be won. Not only is deterrence theory

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134 For the French official statement following the adoption of the NWPT on June 7th, 2017 see: https://onu.delegfrance.org/Adoption-of-a-treaty-banning-nuclear-weapons; for the joint press statement by the US, the UK and France see: https://usun.state.gov/remarks/7892.
based on a circular argument, its credibility is further weakened by the nuclear taboo – the
norm of non-use of nuclear weapons that has been observed by all states since 1945. Coupled with the growing respect for the laws of warfare in general, this norm turns nuclear
deterrence into an increasingly hollow policy.\textsuperscript{136}

The frequent claim by the US, the UK and France that an adverse international
security environment requires them to retain their nuclear weapons is equally inconsistent
– if an adverse security environment justified the possession of nuclear weapons, then
surely a beleaguered state like North Korea would also be entitled to them.\textsuperscript{137} This
observation goes hand in hand with another argument employed by NNWS: that nuclear
deterrence only serves to reinforce the myth of nuclear weapons as instruments of power
and makes them more desirable to other states, heightening the risk of proliferation.\textsuperscript{138}
Therefore, the humanitarian initiative needs to address the prestige and authority associated
with nuclear weapons, examining the commonly held beliefs about nuclear weapons in
order to deconstruct them, if possible. One such belief is that the use of atomic bombs in
Hiroshima and Nagasaki effectively ended World War II in the Pacific and therefore saved
the US a costly ground operation on Japanese soil. Recent historical research shows,
however, that it was not the atomic bombs, but rather the declaration of war by the USSR
on August 8, 1945 that drove the Japanese General Staff to capitulation.\textsuperscript{139}

\textsuperscript{136} Sauer, Tom & Pretorius, Joelien (2014) “Nuclear weapons and the humanitarian approach” Global
\textsuperscript{139} Berry, Ken et al. (2010) “Delegitimizing Nuclear Weapons. Examining the Validity of Nuclear
Deterrence” Monterey Institute of International Studies:
https://www.fdfa.admin.ch/dam/eda/de/documents/aussenpolitik/sicherheitspolitik/Delegitimizing_Nuclear
_Weapons_May_2010.pdf, p. 15.
argument employed to counter deterrence theory is the increased likelihood of human or technical errors if nuclear weapons are kept in a constant state of readiness for deterrence purposes.\textsuperscript{140} Advocates of the humanitarian initiative used these arguments to demonstrate that the existence of nuclear weapons makes the world not more, but less secure, and to shift the debate from the legality of nuclear weapons towards their legitimacy.

The landmines and cluster munition campaigns as models

This section examines how the humanitarian argument came to be used by advocates of nuclear disarmament. As mentioned in Chapter Three, the frustration of many NNWS and civil society groups with the nuclear regime centered around the NPT and the CD strongly motivated them to seek new paths towards nuclear disarmament. To understand why the humanitarian initiative became their chosen path, we must look towards the campaigns for the 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, typically referred to as the Ottawa Convention, and the 2008 Convention on Cluster Munitions (CCM).

In 2010, the Norwegian foreign minister explicitly stated in a speech before the Norwegian Atlantic Committee that the experience gained in humanitarian disarmament initiatives on anti-personnel landmines and cluster munitions could be applied to nuclear weapons.\textsuperscript{141} This statement by a representative of the state that would organize the first humanitarian impact conference three years later, demonstrates that the similarities


\textsuperscript{141} Gahr Støre, Jonas (2010) “Disarmament – Reframing the Challenge” Norwegian Foreign Ministry, speech before the 45th annual conference of the Norwegian Atlantic Committee on February 1, 2010: www.regjeringen.no/en/aktuelt/disarmament/id592550/.
between the campaigns are by no means a coincidence, but a deliberate strategy. Each campaign applied the same basic approach: changing the way we think about an issue and reframing it to overcome an unproductive policy environment. In each case, the new discursive framework was centered around international humanitarian law. Moreover, ICAN’s organizational structure is a replica of the International Campaign to Ban Landmines (ICBL), established in 1992. Like ICAN (which will be discussed in detail in the following chapter), ICBL was led by a steering committee of six organizations and worked with hundreds of partner organizations in different countries.

The lines of argument used in these campaigns are also worth comparing. In the 1990s, anti-personnel landmines had become a widespread hazard and were causing large numbers of civilian and combatant casualties in various countries worldwide. It was therefore easy for the proponents of the Ottawa Convention to argue that these weapons violate international humanitarian law because they cause unnecessary suffering. The threat of cluster munitions, however, never became as pervasive. Therefore, the advocates of the CCM had to adapt their argument to focus on precaution and prevention. This successful refocusing of the humanitarian argument is highly significant for the initiative to ban nuclear weapons, since the record of nuclear detonations is also very limited. Nuclear ban advocates therefore had to focus their argument on the prevention of future suffering as well.

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Another parallel between present and past humanitarian initiatives is that many states in possession of landmines and cluster munitions did not initially participate in the respective processes – a previously unthinkable approach in the realm of arms control.\textsuperscript{145} Despite initial difficulties in creating a process outside traditional diplomatic channels, there was a shared belief among the proponents of the Ottawa Convention that pursuing an alternative process was the right thing to do because it was the only way a ban could be achieved.\textsuperscript{146} At the same time, it must be acknowledged that the set of states still possessing anti-personnel mines\textsuperscript{147} and/or cluster munitions\textsuperscript{148} differs from the nuclear weapons possessor states, and even more importantly, the degree to which those states rely on nuclear weapons for their national security is significantly higher. While several NWS also possess anti-personnel landmines and/or cluster munitions, these weapons do not play any major part in their defense policy, and the bulk of landmine and cluster munition possessors is made up of developing countries and other minor players on the international stage.

Last but not least, the previous humanitarian disarmament campaigns built networks of trust between representatives of governments, international organizations and

\textsuperscript{147} The following states stockpile antipersonnel mines and are not party to the Ottawa convention: Armenia, Azerbaijan, Bahrain, China, Cuba, Egypt, Georgia, India, Iran, Israel, Kazakhstan, North Korea, South Korea, Kyrgyzstan, Lao PDR, Libya, Mongolia, Morocco, Myanmar, Nepal, Pakistan, Russia, Saudi Arabia, Singapore, Sri Lanka, Syria, UAE, US, Uzbekistan, Vietnam (see “Landmine Monitor 2017”: http://www.the-monitor.org/media/2615219/Landmine-Monitor-2017_final.pdf, p. 18).
\textsuperscript{148} The list of states not party to the CCM stockpiling cluster munitions is similarly composed, although their possession is generally more widespread even among states parties to the convention. (see “Cluster Munition Monitor 2017”: http://www.the-monitor.org/media/2582190/Cluster-Munition-Monitor-2017_web4.pdf, p. 26)
NGOs. Many of these professionals, who had ample experience collaborating on disarmament, came together again in Oslo in 2013 for the first conference on the humanitarian impact of nuclear weapons, bringing their prior expertise, strategies and connections to the table. Despite the dominance of ICAN, these networks of veteran disarmament experts played a decisive role in the nuclear ban initiative, and the concept pioneered by the landmines and cluster munition campaigns provided fertile ground around which ICAN could rally support. In terms of state support for the TPNW process, however, Sweden, Canada and other Western democracies who had led the previous humanitarian campaigns were conspicuously absent.

Discourse strategies: stigmatization and delegitimization

Like the campaigns to prohibit landmines and cluster munitions, the humanitarian initiative to ban nuclear weapons applies the strategy of stigmatization. By effecting a normative shift, advocates of the humanitarian initiative seek to accelerate the elimination of nuclear weapons. To this end, they support measures towards disarmament on two parallel tracks that reinforce and complement each other. The first track includes concrete measures such as the reduction of nuclear stockpiles, de-alerting nuclear weapons, no first use-policies, and lessening the role of nuclear weapons in national defense strategies. These measures closely resemble the step-by-step approach advocated by some NWS. The second

153 Ibid., p. 15f.
track is a more abstract, long-term campaign to stigmatize nuclear weapons by presenting them as a threat to human security and human survival. The stigmatization and delegitimization of nuclear weapons is meant to incentivize and facilitate the implementation of the above-mentioned concrete disarmament measures.\textsuperscript{154} The TPNW forms part of the second track and is declaratory rather than operational, stating that nuclear weapons are illegal without defining a concrete roadmap for their elimination. The assumption behind this approach is that even in the absence of enforcement mechanisms, states are reluctant to violate taboos. As perceptions change, the burden of proof would shift to the NWS and they would have to justify why they insist on maintaining their nuclear weapons.\textsuperscript{155} Once the use and even the possession of nuclear weapons have become morally unacceptable on an international level, the assumption goes, the NWS will fall in line.\textsuperscript{156}

Another prominent concept in humanitarian discourse is that of “civilized nations.”\textsuperscript{157} Traditionally, this denomination was most commonly used to differentiate the liberal democracies of the West from countries of the Second and Third World. In humanitarian discourse, civilized nations are defined as nations who respect international humanitarian law. Through this reframing, states of the Global South have turned an established concept onto its creators and, in connection with nuclear weapons, claimed the

\textsuperscript{157} As referenced in Article 38 of the Statute of the ICJ: http://www.icj-cij.org/en/statute.
role of civilized nations for themselves. The reframing also provides incentives for NWS and their allies to join the Treaty by offering moral and political benefits to states who choose to align their military strategies with contemporary humanitarian standards. Therefore, the more the NWS dismiss humanitarian concerns, the more they reinforce the argument that the NPT regime does not effectively address the risk posed by nuclear weapons.

While the leftist and pacifist discourse of previous generations of anti-nuclear activists was considered too radical to gain traction, the humanitarian approach has proven considerably more relatable. The “affective strategy” employed by ICAN and other proponents of the nuclear ban is subtle rather than confrontational and seeks to point out the inconsistencies between policy makers’ moral beliefs and their political actions, by confronting them with hard facts on the one hand and personal victims’ testimonies on the other. The purpose of these testimonies is to make the discourse on nuclear weapons less technocratic and more emotional. While ICAN activists promoted ideas that were more than a little revolutionary and continue to be so, they have always taken great care to deliver their statements in the measured language of the diplomatic arena.

Moreover, some senior members of the coalition are well-versed in critical and discursive IR theories, and these theories are reflected strongly in their campaign. Since the younger generation of political actors has been educated by post-positivist and critical

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160 Ibid., p. 643.
IR scholars as well, they might be more receptive to these theories and, for instance, more inclined to turn to experts and use their knowledge to solve policy problems.\textsuperscript{162} This inclination was confirmed during the humanitarian initiative, where an active exchange of opinions and expertise took place between state delegations and experts throughout the campaign and especially in the negotiating phase. ICAN followed a highly data-driven approach and meticulously documented the medical, economic, political and environmental impact of nuclear weapons detonations. In order to ensure coherence, ICAN distributed campaigners’ kits to its activists and developed detailed guidelines for interactions with the media, parliamentarians and other key constituencies. ICAN activists delivered statements at international fora and parliamentary hearings, lobbied diplomats and reached out to civil society via social media.\textsuperscript{163}

Another important component of the humanitarian initiative were the efforts to “democratize” the disarmament discourse by giving a voice to people and actors who had previously been silenced or simply uninvolved. Countries of the Global South as well as civil society organizations in Europe and North America figure prominently among these actors.\textsuperscript{164} Not only the actors, but also the target groups had to be diversified in order to truly democratize nuclear disarmament. The general public is a key constituency for the humanitarian initiative because it makes up the taxpayers who finance nuclear programs, the voters who influence policy decisions in NWS, and the potential victims of a nuclear weapons detonation. Supporters of the nuclear ban therefore need to connect with advocacy


\textsuperscript{163} For a collection of ICAN’s campaigning resources see: http://www.icanw.org/resources/publications/.

groups unrelated to nuclear disarmament, such as unions, environmentalists or human rights activists, and convince them that they have a stake in the matter. Effectively framing nuclear disarmament as a global public good will allow them to build alliances across all sectors of society, including the business community. While human security and stability are clearly in the best interest of the business community in general, the industries involved in the financing, development, and manufacture of nuclear weapons must also be taken into account. Only if all these constituencies are effectively mobilized will nuclear disarmament ultimately be achieved.165

Despite proactive campaigning on the part of ICAN, the ICRC and others, media coverage remained weak for the humanitarian initiative. Back in 2015, Minor already remarked that news stories on nuclear weapons almost exclusively focused on North Korea and used national security as a frame of analysis.166 Even the day after the adoption of the TPNW by the UN General Assembly, the topic was absent from the front pages of major news outlets such as the Washington Post in the US or Le Monde in France. The New York Times did cover the story in detail, but almost exclusively from a US/UK perspective. They focused on the rejection of the Treaty by NATO members and neglected to mention the amount of support it received from states of the Global South, among others.167 One of my interviewees heartily agreed with this perception and lamented the lack of coverage of the humanitarian campaign in the French media, labelling it “deliberate disinformation.”168

168 Interview conducted by the author on March 22, 2018.
Chapter 6

**Principal actors and their collaboration**

This chapter takes a closer look at the main actors – states, international organizations, experts, NGOs and other civil society groups – and how they collaborated to create and advance the humanitarian impact initiative. At the same time, I elaborate on my argument that the initiative owes a large part of its success to the close and constructive collaboration between state actors and civil society and that it set a precedent in terms of smaller states and states of the Global South assuming active roles in nuclear disarmament.

Potter highlights the two tracks of the humanitarian impact initiative, which was spearheaded by NGOs on the one hand, and a number of interested states, notably Norway, Switzerland and Austria, on the other. These states contributed funding to the movement and advocated for it in various diplomatic fora such as the NPT conferences and meetings and the First Committee of the UN General Assembly. The participating NGOs complemented these efforts with their own civil society and outreach activities. Representatives of both tracks remained in contact throughout, and although their interests did not always coincide perfectly, their initiatives were sufficiently aligned to be mutually reinforcing. 169

**Key civil society actors**

Borrie et al. point out the difficulty of assessing the concrete influence of civil society actors on the Treaty negotiations. Comparing the initial draft to the final text or

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comparing delegations’ positions at different stages of the process does not prove causality, nor does it account for the possible influence of other actors, such as international organizations.\textsuperscript{170} Therefore, this chapter discusses the involvement, the initiatives and the engagement of various civil society actors without attempting to assess their concrete impact.

The civil society group most commonly associated with the TPNW is ICAN, due in no small part to the fact that ICAN was awarded the 2017 Nobel Peace Prize “for its work to draw attention to the catastrophic humanitarian consequences of any use of nuclear weapons and for its ground-breaking efforts to achieve a treaty-based prohibition of such weapons.”\textsuperscript{171} ICAN is a global coalition of 468 NGOs from over 100 different countries, who work together for a strong and effective treaty banning nuclear weapons.\textsuperscript{172} ICAN was launched at the 2007 NPT Preparatory Committee meeting in Vienna, upon an initiative by the NGO International Physicians against Nuclear War.\textsuperscript{173} ICAN is headquartered in Geneva and is organized around a team of currently six international staff (including Executive Director Beatrice Fihn), as well as partner organizations and an international steering group, in which ten organizations are represented (Acronym Institute for Disarmament Diplomacy, African Council of Religious Leaders – Religions for Peace, Article 36, International Physicians for the Prevention of Nuclear War, Latin America

\textsuperscript{171} See the official website of the Nobel Prize: https://www.nobelprize.org/nobel_prizes/peace/laureates/2017/.

ICAN served as civil society coordinator for each of the three conferences on the humanitarian impact of nuclear weapons and lobbied for the establishment of the OEWG in Geneva as well as for the adoption of the negotiating mandate for the TPNW. Through its partners, ICAN contributed essential expertise by organizing several informal workshops for diplomats, activists, staff of international organizations and researchers. The workshops fostered exchange and dialogue between these actors.

The International Committee of the Red Cross (ICRC) played a less public, but no less important role in the humanitarian initiative, and has been invested in nuclear disarmament from the advent of the nuclear age. The ICRC is part of the International Red Cross and Red Crescent Movement, along with the International Federation of Red Cross and Red Crescent Societies and the 191 National Red Cross and Red Crescent Societies. The ICRC is neither an NGO nor an international organization, but a private association under the Swiss Civil Code. Its functions and activities (centered around assistance to victims of conflict) are founded in international law (the Geneva Conventions) and mandated by the international community.

In 2009, shortly before the humanitarian initiative began to take shape, the ICRC published extensive research on the humanitarian consequences of nuclear weapons and

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on countries’ nuclear disaster preparedness.\textsuperscript{179} As described in Chapter Four, it was a speech by a former ICRC president in Geneva in 2010 that brought the humanitarian consequences of nuclear weapons to the attention of the diplomatic community. The ICRC was present at each of the conferences on the humanitarian impact of nuclear weapons. During the Treaty negotiations, the ICRC particularly advocated for the mention of international humanitarian law and the inclusion of victim assistance provisions.\textsuperscript{180} Due to its observer status at the UN General Assembly, the ICRC delegation had access to all meetings and documents, enabling it to play the role of both expert and convener. Members of the ICRC delegation organized meetings with like-minded states and provided input for the Treaty text. Although they collaborated with ICAN and occasionally related information on meetings to which NGOs did not have access, the ICRC did not engage in any joint action with ICAN and endeavored to occupy the middle ground between states and NGOs and act as a mediator between them.\textsuperscript{181} During its most recent Council of Delegates in November 2017, the International Red Cross and Red Crescent Movement adopted a four-year action plan to promote adherence to the TPNW.\textsuperscript{182} One hundred National Societies were mobilized to support Treaty ratification in their respective countries, including National Societies in nuclear-dependent states like Japan.\textsuperscript{183}


\textsuperscript{181} Interview conducted by the author on March 22, 2018.


\textsuperscript{183} Interview conducted by the author on March 22, 2018.
Principal state actors

As mentioned before, the humanitarian initiative and the TPNW draw the majority of their support from small states and states of the Global South. At the same time, they lack the support of the great powers. One author goes so far as to call the adoption of the TPNW:

… the first time an instrument of international humanitarian law has been forced into existence against the fierce opposition of the major powers and the majority of European states.¹⁸⁴

India and Pakistan attended all the humanitarian conferences, perhaps in an attempt to be seen as responsible nuclear powers committed to disarmament.¹⁸⁵ Needless to say, neither of them attended the negotiating conference or showed any inclination to join the TPNW so far. With the P5 as well as Germany and Japan in firm opposition, the closest the TPNW has come to a major power supporter is Brazil.¹⁸⁶ Brazil was also among the six states whose delegations were honored with the 2018 Arms Control Person of the Year Award for their extraordinary engagement in bringing about the TPNW. The other award recipients were Austria, Ireland, Mexico, New Zealand, South Africa and Ambassador Elayne Whyte Gómez of Costa Rica, the President of the 2017 negotiating conference.¹⁸⁷ This distinction by the Arms Control Association can be considered the insider’s point of view of who played the most important roles in the process.

¹⁸⁷ For a transcript and video of the awards ceremony, see: https://www.armscontrol.org/ArmsControl2018.
The following section will discuss briefly how smaller states operate in multilateral negotiations. They find themselves at a disadvantage in several aspects: Apart from their modest political and economic weight, they have fewer resources at their disposal on the diplomatic stage as well. Their delegations tend to be smaller and their governmental institutions employ fewer experts in a given field. Their success therefore depends strongly on the individual negotiators, who have to shoulder a greater workload. This assessment was corroborated during the interviews I conducted. In the case of Austria, only five officials shared the task of supporting the humanitarian initiative and negotiating the TPNW: three in the disarmament department of the Foreign Ministry in Vienna, one at the Permanent Mission in New York, and two at the Permanent Mission in Geneva. This exemplifies how much a small group of people with few resources can achieve in a multilateral forum if they are competent, motivated and well-coordinated.

Also due to their limited resources, smaller states are forced to prioritize and to focus their diplomatic efforts on a select few issues. Austria, and to a degree Norway and Switzerland, are examples of small states who chose to focus their energy on the issue of nuclear disarmament. And yet, Norway is also the best example for Borrie et al.’s assertion that “[in] politics, nothing happens in a vacuum” and that the influence of external circumstances on the humanitarian initiative must be taken into account. Norway’s left-wing government, which was in office until 2013, generously supported nuclear

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189 Interview conducted by the author on February 20, 2018.
190 Ibid., p. 389.
192 Ibid., p. 24.
disarmament research and activism with an annual budget of around 175 million Norwegian Crowns (around 22.5 million USD) and was the main donor for ICAN and International Physicians for the Prevention of Nuclear War. When a conservative government came into power, however, the country began to withdraw its support for the humanitarian initiative, both politically through abstentions on relevant votes in the UN General Assembly, and financially through the suspension of funding for the above-mentioned NGOs from 2015 onwards. As this example shows, the future of the TPNW depends as much on domestic political developments in different countries as it does on the engagement of its advocates. Austria has a long-standing history of supporting nuclear disarmament and non-proliferation, and despite the recent change of government, it continues to be one of the main supporters of the humanitarian initiative on the diplomatic stage and also contributes funding to NGOs and research centers, such as ICAN Austria and the Vienna Center for Disarmament and Non-Proliferation. The Holy See played an important role in the humanitarian initiative as well, both through the active participation

196 Interview conducted by the author on March 22, 2018.
of its Observer Mission and through the video messages Pope Francis sent to the Vienna Conference and to the first round of Treaty negotiations in March 2017.

The strategies available to these small states in the international arena include collaboration with specialized agencies and NGOs as well as coalition-building. The states spearheading the humanitarian initiative began to build their base of support in the First Committee of the UN General Assembly as early as 2012, when the draft resolution entitled “Taking forward multilateral nuclear disarmament negotiations” was first introduced. Nevertheless, the coalition was not as clearly defined as it had been for the Ottawa Convention. Even for those working directly on the issue, it was at times difficult to determine which states actually formed part of the core group. A closer look at the states who sponsored the above-mentioned draft resolution from the 67th through the 72nd session of the General Assembly reveals the shifting composition of the coalition supporting the humanitarian initiative and the TPNW. The number of sponsors increased from 13 in 2012 (mandating the first OEWG) to 23 in 2015 (mandating the second OEWG), to 34 in 2016 (mandating the Treaty negotiations) and 40 in 2017. Eight states sponsored the draft resolution at every session: Austria, Chile, Costa Rica, Ireland, Liechtenstein, Mexico, Nigeria, and the Philippines. New Zealand and Peru sponsored all drafts but one.


Interview conducted by the author on February 28, 2018.
It is also worth noting that several European states involved in previous humanitarian disarmament initiatives sponsored the resolution initially, but withdrew their support when the idea of a treaty began to take shape. These states include Iceland, Denmark, Norway and Switzerland. Several African and Latin American states took over instead and joined the list of sponsors from the 70th session onwards. Among them were Brazil, the Democratic Republic of the Congo, Ecuador, Guatemala, Kenya, Namibia, Panama, South Africa, Venezuela and Uruguay. In light of the existing NWFZ in Africa and Latin America, the support of states from these regions is hardly surprising. Yet, smaller states, particularly in the Global South, have been facing considerable pressure from their nuclear-armed allies, such as France, not to support the TPNW.

The role of the UN

Although the conferences in Norway, Mexico and Austria were held as stand-alone events on the initiative of the respective governments and outside of a larger institutional framework, the UN came to play an important part in the latter stages of the humanitarian initiative. The process was advanced by several General Assembly resolutions and the debates in the First Committee that preceded them, as described in Chapter Four.

The rules of procedure of the General Assembly, where consensus is not required and each state has one vote regardless of its political power, worked to the advantage of the humanitarian initiative. The institutional framework of the General Assembly was chosen for this very reason, according to Dunworth and several of my interviewees. This

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202 See Annex, Tables 1 and 2.
203 Interview conducted by the author on November 12, 2017.
practical choice goes hand in hand with the theory that multilateralism and the framework of international institutions with majority-based decision-making rules empower small states and give them an opportunity to further their agenda by building coalitions.\textsuperscript{205} In defiance of the common perception that institutions like the UN were created by and for the major powers,\textsuperscript{206} small and medium-sized states effectively instrumentalized the institutional framework of the UN to further the humanitarian initiative.

Furthermore, institutional expertise can serve to compensate for small states’ lack of resources or technical competency.\textsuperscript{207} In the case of the TPNW negotiations, the United Nations Office for Disarmament Affairs (UNODA) provided essential technical support, and the United Nations Institute for Disarmament Research (UNIDIR) has done considerable policy research related to the Treaty.\textsuperscript{208} Nonetheless, UNODA staff members need to tread carefully, since they are also mandated to uphold the NPT. If UNODA is seen to be invested in the humanitarian initiative beyond its concrete General Assembly mandate, the department and/or its staff members may face a backlash from NWS.\textsuperscript{209}

In IR theory, international organizations are often described as actors, fora and/or resources.\textsuperscript{210} In the case of the TPNW, the UN served both as a resource, as detailed above, and as a forum. Like-minded states have been using the General Assembly as a forum for the humanitarian initiative since the resolution entitled “Taking forward multilateral

\textsuperscript{208} For a list of recent UNIDIR publications see: http://www.unidir.org/Publications/listerPublications.
\textsuperscript{209} Interview conducted by the author on February 7, 2018 in New York.
disarmament negotiations” was first introduced in the First Committee at the 67th session of the GA. Later, the mandates for the OEWG and for the Treaty negotiations themselves were obtained through the GA. The OEWG in turn served as a forum for further discussion and the concretization of ideas for a legal instrument banning nuclear weapons. Finally, the UN served as a forum for the actual Treaty negotiations, contributing both the physical infrastructure and the resources of its experts in UNODA, the Office for Legal Affairs and other departments. UN officials generally avoid creating the impression that they are active agents in intergovernmental processes.\textsuperscript{211} Therefore, the substantial work they contribute behind the scenes as organizers, experts, assistants and advisers tends to remain unrecognized, especially compared to the public and widely communicated efforts of NGOs.

The collaboration between state and civil society actors

At the 2015 NPT Review Conference, Costa Rica declared in reference to the humanitarian initiative that “democracy has come to nuclear disarmament.”\textsuperscript{212} This statement rings true in several ways: Firstly, the TPNW was elaborated under majority-based rules of procedure, giving every state the same voice and successfully avoiding the hijacking of the agenda by a few powerful actors. Secondly, NGOs played a decisive role throughout the humanitarian initiative and, compared to other disarmament fora such as the CD, NGOs were granted better access even during the intergovernmental stage.


Thirdly, the Treaty text itself sets a precedent by expressly recognizing the role of NGOs and the role of women in disarmament.\textsuperscript{213}

The individual actions of the above-mentioned stakeholders are only part of the story, however. Ultimately it was their collaboration that made the humanitarian initiative successful, along with the networks of trust between diplomats, scholars, experts, activists and international civil servants that previously existed in the disarmament community and were strengthened throughout the humanitarian impact movement. The present chapter has introduced several examples of this collaboration, interaction and exchange between state and civil society actors. ICAN itself was founded at the margins of an NPT conference and for many years drew the majority of its funding from the Norwegian government. While the ICRC and NGOs were the first to bring attention to the humanitarian impact of nuclear weapons, the simultaneously growing frustration with the NPT regime among NNWS provided fertile ground for this novel approach to nuclear disarmament. States took the initiative to organize the humanitarian conferences, but invited civil society actors to contribute actively and substantively to the discussion. It was not only ideas that flowed between states and NGOs, but also human capital. For instance, most of ICAN’s staff in Vienna previously worked as interns at the Austrian Foreign Ministry during the organization of the Vienna conference.\textsuperscript{214} During the intergovernmental process, NGOs offered their expertise to diplomats and generated media attention. At the same time, bilateral contacts with delegations allowed NGOs to stay informed on the goings-on in closed meetings and consultations.\textsuperscript{215} Information thus flowed in both directions in a kind

\textsuperscript{213} UN document symbol A/CONF.229/2017/8, Preamble.
\textsuperscript{214} Interview conducted by the author on February 28, 2018
\textsuperscript{215} Ibid.
of symbiotic relationship. In the ongoing implementation phase of the Treaty, interested states can reach out diplomatically to other states, while NGOs are more effective in leading media campaigns and fostering grass-roots movements in support of the TPNW. The close working relationship between like-minded states and NGOs also became evident at the Nobel Peace Prize awards ceremony, where ICAN passed on some of its 50 tickets to state representatives who had played a major role in the humanitarian initiative.216 Where Potter observes a two-track approach,217 I see only one path taken by a multitude of actors, intermingling and forming groups, first with one group leading the way, then another. Some joined along the way while others broke off, and actors collaborated to find the best route.

The humanitarian initiative does bear some characteristics of a transnational advocacy network, as evoked by Borrie et al.218 The range of actors involved (NGOs, government officials, the UN) is reminiscent of a network, and so are the exchange between the actors, the common goal, the reframing of the issue of nuclear disarmament, the use of information policies and the normative approach.219 Other aspects, however, are less typical of an advocacy network. My observations have shown that the distinction between the members of the network and their target group (the states they seek to influence) is blurred and has changed over time. Some states (like Norway) started out as network advocates, but have now become the object of lobbying from the same network. More

216 Interview conducted by the author on November 12, 2017.
generally, states are found on both sides of the line: some are advocates for the humanitarian initiative, others are targets for network advocacy. This further demonstrates that the humanitarian initiative defies existing theoretical frameworks, differs from previous initiatives in the same field, and does indeed constitute a novel approach.
Chapter 7

The negotiating conferences and the Treaty text

As discussed in Chapter Four, the negotiating mandate for the TPNW was officially granted by the UN General Assembly in December 2016 with the adoption of its resolution 71/258, in which it decided to “convene in 2017 a United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination,”\(^{220}\) and encouraged “all member states to participate in the conference.”\(^{221}\) Unsurprisingly, there was immediate pushback from the NWS. A Russian diplomat in the First Committee bluntly stated that under the NPT, Russia was entitled to possess nuclear weapons, and called the mandated negotiations destructive and catastrophic, while at the same time ridiculing any attempt to tackle disarmament in the absence of the P5.\(^{222}\) The same sense of entitlement to nuclear weapons was professed by the UK\(^{223}\) and France,\(^{224}\) who closely associate their status as permanent members of the Security Council with their possession of nuclear weapons. A document circulated by the US among NATO members discouraged any participation in the Treaty negotiations. The same document also listed the potential negative political and military consequences of a nuclear weapons ban for the alliance. These concerns included “delegitimizing the concept of nuclear deterrence, undermining the longstanding strategic stability” and the prospect that it may become

\(^{220}\) UN document symbol: A/RES/71/258, para. 8.

\(^{221}\) Ibid., para. 9.


“impossible to undertake nuclear planning or training […] or nuclear-related transit through territorial airspace or seas.” These reactions reflect the growing concern among NWS that the humanitarian initiative, which they had previously chosen to ignore or dismiss, might have an impact on them after all if it produced a concrete legal instrument. The reactions also expose one of the inherent contradictions in public statements made by NWS both before and after the negotiations: The Treaty can hardly be both irrelevant and dangerous at the same time.

There were 135 states, including two thirds of all NPT states parties, officially represented at the negotiating conferences. The size of their respective delegations gave an indication of their level of dedication to the Treaty process, with Austria, Brazil, Costa Rica, Ghana, the Holy See, Indonesia, the Philippines, South Africa and Thailand sending especially large delegations. The NWS and most of their allies were conspicuously absent. The only NATO member to break rank was the Netherlands, where the NGO PAX had launched a petition effecting a debate in Parliament. The Dutch Parliament then obliged the government to participate in the negotiations despite enormous pressure from the US, the UK and France. The boycott by the NWS and their allies was quite unprecedented – never before had a group of states downright refused to attend treaty negotiations mandated by the UN General Assembly. Thakur even went so far as to claim that the boycott placed the NWS and their allies in non-compliance with Article VI

226 Sweden and the Netherlands also accredited sizable delegations, although they were not among the advocates of the humanitarian initiative. For a full list of participants see: https://www.un.org/disarmament/tpnw/participants.html.
228 Ibid., p. 61.
of the NPT. Others observed that having fewer parties and especially fewer contradicting interests at the table would raise the common denominator and lead to a more substantial agreement.

Ambassador Elayne Whyte Gómez, Permanent Representative of Costa Rica to the United Nations Office in Geneva, was chosen as President of the conference, with the representatives of Austria, Chile, Indonesia, Iran, Morocco, New Zealand and South Africa serving as vice-presidents. The main facilitators of the Treaty process wanted a Geneva-based ambassador, who would be well-versed in disarmament issues, as President of the Conference. Costa Rica had a credible track record of supporting not only the humanitarian initiative, but also previous nuclear disarmament initiatives like the 1997 model nuclear weapons convention (discussed in Chapter Four). Other core advocates such as Mexico and Austria chose not to chair the conference because they believed they could better serve the humanitarian agenda by investing their full diplomatic capacities into negotiating as states parties.

During the conferences, NGOs were allowed to submit statements, display their material at a designated table, set up exhibits and organize side events in a separate conference room. NGOs also used their access to the conference to directly lobby government representatives, and they published articles expressing their views as well as reports on the progress of the negotiations on their own platforms.

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231 Interview conducted by the author on February 28, 2018.
232 Ibid.
The March negotiations

The United Nations Conference to Negotiate a Legally Binding Instrument to Prohibit Nuclear Weapons, Leading Towards their Total Elimination held its first substantive session at UN headquarters in New York from March 27 to March 31, 2017. The high-level segment with a general debate took up the first two days of the conference. The subsequent discussions were structured around three topics (principles and objectives, core prohibitions, and institutional arrangements). Delegations were invited to comment on each of the topics, and before moving on to the next topic, a number of civil society representatives were accorded speaking-time.235

In the absence of a formal preparatory process for the negotiations, many governments had not yet fully formed their positions. This left accredited NGOs with more room to promote their ideas and gave the President greater independence in the formulation of the first draft.236 On the other hand, the important question of the scope of the proposed legal instrument was reopened and took up a substantial amount of time during the March negotiations. Some of the main advocates of the humanitarian initiative, including Mexico, Austria and Brazil, favored a narrow treaty – a political statement that could be negotiated rapidly rather than a fundamental altering of international legal norms. Iran and Egypt were among those who called for a comprehensive and ambitious legal instrument, even if or perhaps because such an endeavor would require lengthy and complex negotiations.237

235 For a list of all statements see: http://www.reachingcriticalwill.org/disarmament-fora/nuclear-weapon-ban/statements.
The general discussions were exhausted after three days due to the above-mentioned lack of clear negotiating positions among the delegations. Therefore, the two informal question-and-answer sessions led by civil society and ICRC experts on the fourth day were perhaps the most defining elements of the March session. They helped governments clarify a number of complex technical and legal issues and shape their national positions.\textsuperscript{238} Ambassador Whyte prepared a first draft of the TPNW based on the views and preferences expressed by member states at the first round of negotiations, with substantive support from UNODA. She did not circulate the text until after the conclusion of the NPT Preparatory Committee meeting in Vienna in May 2017 in order to avoid any interference between the two processes.\textsuperscript{239} The first draft was finally issued in Geneva on May 22, 2017.\textsuperscript{240}

**The June/July negotiations**

The second session of the negotiating conference took place in New York from June 15 to July 7, 2017. An open reading of the draft took up the first five days, allowing delegations to express their views on the text and propose revisions. Delegations had the opportunity to comment on each paragraph and many took the floor repeatedly. When the reading of the preamble was concluded, civil society representatives were invited to speak, and representatives of ICAN and International Physicians for the Prevention of Nuclear War as well as seven other speakers took the floor. At the end of the intergovernmental discussions on the crucial first paragraph (containing the prohibitions), there were six more


\textsuperscript{240} UN document symbol: A/CONF.229/2017/CRP.1.
interventions by civil society representatives (ICAN, WILPF, International Association of Lawyers Against Nuclear Arms, PAX, Unfold Zero, and Japan Federation of Bar Associations).

This alternation between state and civil society speakers was an attempt by the President of the conference, Ambassador Whyte, to strike a balance between the open and unconventional nature of the process so far (i.e. the high level of civil society participation and leadership in the humanitarian initiative) and the expectations of state representatives accustomed to more private settings for intergovernmental negotiations.

The same pattern continued for each paragraph or set of paragraphs. The delegations most active during the plenary discussions (at both sessions) included Brazil (23 interventions), Cuba (22), Austria (20), Ireland (20), Nigeria (19), Ecuador (19), Iran (18), Egypt (18), Mexico (17), Indonesia (17), Sweden (17) and New Zealand (16).

Both supporters and sceptics of the Treaty process can be found among the frequent speakers, and even the advocates of the Treaty occasionally expressed divergent views on certain provisions. Among the more contentious points were the possible prohibition on transit, the scope of the prohibition on nuclear testing, and how the responsibilities for victim assistance would be shared. Nonetheless, several of my interviewees noted that, due to a basic consensus among the participating states on the desired outcome, the negotiations for the

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241 For a list of all statements see: http://www.reachingcriticalwill.org/disarmament-fora/nuclear-weapon-ban/statements.
243 For a list of all statements see: http://www.reachingcriticalwill.org/disarmament-fora/nuclear-weapon-ban/statements.
TPNW were uncharacteristically harmonious in comparison to other disarmament negotiations they had attended.\textsuperscript{247} Even civil society representatives in attendance found the atmosphere “constructive and dynamic.”\textsuperscript{248}

On June 22, the first reading was complete. The President then produced a revised preamble and on June 27, the first revision of entire draft.\textsuperscript{249} The most significant changes from the original draft to the first revision concerned Article 4 on the accession of NWS to the Treaty.\textsuperscript{250} (The Treaty text will be discussed in detail in the following section.) The conference then entered into full negotiating mode with numerous informal discussions and closed meetings. No verbatim records were kept of those meetings, making it harder to reconstruct the negotiating history from here on out.\textsuperscript{251} Among the informal meetings were two panel discussions spontaneously arranged by the President. They allowed delegates to seek the advice of independent experts on verifying the elimination of nuclear weapons and on transit through national territory.\textsuperscript{252} In order to expedite the negotiations and bring them to a successful conclusion by July 7, the President divided the text into four clusters and appointed facilitators to lead parallel consultations on each cluster. The President herself led the consultations on Article 1 (General obligations), Ireland led Articles 2 to 5 (Declarations; Safeguards; Elimination; Additional measures), Chile

\textsuperscript{247} Interviews conducted by the author on November 12, 2017 and February 28, 2018.
\textsuperscript{251} Interview conducted by the author on February 28, 2018.
Articles 6 to 8 (National implementation; Victim assistance and environmental remediation; International cooperation) and Indonesia (later replaced by Thailand) Articles 9 to 21 (Meeting of states parties; Costs; Amendments; Settlement of disputes; Universality; Signature; Ratification; Entry into force, Reservations; Duration and withdrawal; Relations with other agreements; Depositary; Authentic texts). All of these meetings were closed, and NGOs were not invited to attend. The parallel meetings posed a challenge for some of the smaller delegations, who did not have enough diplomats in their ranks to be represented at each of the clusters, especially since it was these smaller-scale, informal meetings where the actual deals were cut. Based on these consultations, the facilitators each submitted a revised draft of their respective clusters to the President, who then incorporated them into the second revision of the draft, circulated on July 3.

At this point, the conference was already operating on a tight schedule, since the delegations required time to obtain feedback from their capitals, and the translators required time to produce true copies in the six official languages. A final review of the text was held on July 5, allowing all delegations to state their official positions regarding the latest draft. The text remained almost unchanged; the only contentious points being the right to withdraw from the Treaty and the provision of victim’s assistance and environmental remediation by states who had used or tested nuclear weapons. On July 7,

255 Interview conducted by the author on February 28, 2018.
2017, the conference adopted the Treaty on the Prohibition of Nuclear Weapons with a vote of 122 in favor, one against (the Netherlands) and one abstention (Singapore).\textsuperscript{258} There had been hope of adopting the Treaty by acclamation until the Netherlands presented an objection and a formal vote had to be called. It is worth noting, however, that other delegations who had been critical during the negotiations, such as Iran and Egypt, ultimately did vote in favor of the final draft. In their official statement following the vote, the Netherlands explained that the Treaty was incompatible with their commitments under NATO and further lamented the absence of concrete verification mechanisms. Singapore declared having abstained on account of legal uncertainty in relation to existing nuclear disarmament instruments. A large number of states pronounced congratulatory statements, some in their national capacity, others on behalf of regional groups. The meeting ended with interventions by the ICRC, ICAN and a survivor of the Hiroshima bombing.\textsuperscript{259}

**The Treaty text**

This section will document the evolution of the Treaty text from the first draft to the final adopted text. It will also highlight some of the key provisions of the Treaty and discuss their possible significance for the impact of the Treaty on the multilateral nuclear disarmament and non-proliferation regime.

When Ambassador Whyte drafted the Treaty text with the assistance of UNODA experts, she borrowed the wording of many technical aspects from NWFZ treaties, the

NPT, the CTBT or the Ottawa Convention.\textsuperscript{260} As mentioned above, the tenor of the text
and the selection of included provisions were based on the President’s notes, the statements
made by delegations at the first negotiating session, and the working papers submitted by
states, the ICRC and OPANAL.\textsuperscript{261} The result was a relatively concise draft text of eight
pages, comprising a 15-paragraph preamble, 21 articles and an annex concerning
safeguards.\textsuperscript{262} (Safeguards provisions were later included in Article 3.) The President
intended this first draft as a basis for consensus that the June/July negotiations could build
on and that deliberately left open more contentious issues that required further
discussion.\textsuperscript{263} The extensive changes made to the first draft are a testament to the amount
of substantive and technical work that took place during the June/July negotiations. The
largest number of changes is apparent between the first draft and the first revision circulated
on June 20 (preamble) and June 27 (operative paragraphs).

The following analysis of the provisions of the adopted Treaty text and, to the extent
possible, the evolution of the text during the June/July conference takes into account the
amendments submitted in writing by member states until June 20\textsuperscript{264} as well as the

\textsuperscript{261} OPANAL is the Spanish acronym for the Agency for the Prohibition of Nuclear Weapons in Latin
America and the Caribbean, which verifies compliance with the Treaty of Tlatelolco (see:
http://www.opanal.org/en/about-us/); for the working papers see:
\textsuperscript{262} For the first draft see UN document symbol: A/CONF.229/2017/CRP.1.
\textsuperscript{263} Borrie, John et al. (2018) “Obstacles to understanding the emergence and significance of the Treaty on
\textsuperscript{264} For a compilation of these amendments, see:
ban/documents/compilation_20June.pdf.
comments submitted by the ICRC\textsuperscript{265} and the response published online by Reaching Critical Will.\textsuperscript{266}

The function of a preamble is to state the purpose of the Treaty and states’ motivation for adopting it, and to provide context for the interpretation of the Treaty provisions.\textsuperscript{267} As expected, the preamble of the TPNW starts with an expression of concern about the catastrophic humanitarian consequences of nuclear weapons use and later recalls the unacceptable suffering caused to victims. In reference to the beginnings of the humanitarian initiative, the preamble laments the “slow pace of nuclear disarmament” and declares that “any use of nuclear weapons would be contrary to […] international humanitarian law” and “abhorrent to the principles of humanity.” This last passage reflects the intention of the Treaty’s architects to stigmatize and delegitimize nuclear weapons.

The preamble was considerably expanded during the drafting phase to include several additional references, e.g. to human rights law, to the danger posed by “detonation by accident, miscalculation or design”, as well as the fact that “the consequences of nuclear weapons cannot be adequately addressed, transcend borders [and] pose grave implications for human survival.” The principles of international humanitarian law were spelled out in detail and several other paragraphs were reformulated to avoid ambiguity. An additional paragraph recalling the prohibition of the threat or use of force under the UN Charter was

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\textsuperscript{265} UN document symbol: A/CONF.229/2017/CRP.2.
\textsuperscript{266} Reaching Critical Will is a program run by Women’s International League for Peace and Freedom (WILPF), one of the major ICAN partners. Among several NGO responses, I chose theirs due to its comprehensive nature and the active participation of WILPF activists in the conference. It largely coincides with the comments published by the ICAN office in Geneva and other principal ICAN members on the same occasion. For the WILPF response see: http://www.reachingcriticalwill.org/images/documents/Publications/response-to-22-May-draft-text.pdf.
\end{flushright}
added, and upon the request of several states, the “inalienable right” to the “use of nuclear energy for peaceful purposes” is explicitly mentioned in the final text. One of my interviewees noted the absence of any mention of delivery mechanisms in the Treaty.268 Means of delivery were referenced in preambular paragraph 8 of the first draft, but deleted from later versions. Reaching Critical Will, the Swedish delegation and others sought to strengthen the mention of women. The disproportionate impact of radiation on women and girls as well as women’s important role in achieving nuclear disarmament both made it into the final text, setting the TPNW apart for its inclusiveness.

Article 1 of the Treaty was originally titled “General obligations,” but changed to “Prohibitions” in the July 3 version (second revised draft). It contains the core provision of the Treaty, namely that states parties shall never “[d]evelop, test, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices.” The first article also prohibits the transfer and the stationing of nuclear weapons, a provision particularly relevant to NATO members who currently host US nuclear bases on their territory (Belgium, Germany, Italy, the Netherlands and Turkey). Although the use of nuclear weapons is of course prohibited under Article 1, the threat of use was not included in the first draft and only added later on the behest of several delegations. The question of transit of nuclear weapons through national territory or territorial waters was discussed at length during the conference, but no agreement was reached.269 Many called for a mention of transit in Article 1, but others doubted the practicability of such a provision, arguing that states cannot reasonably account for all items shipped through their

268 Interview conducted by the author on February 28, 2018.
territory. Although this argument appears to contradict existing mechanisms to control fissile materials, such as the Nuclear Suppliers Group, the prevailing view was that transit could be considered a part of assistance, which is prohibited pursuant to paragraph 1 (e). The same argument was used to dismiss calls for a prohibition on financing, designing and researching nuclear weapons. Concerning nuclear testing, the TPNW reflects the prohibitions contained in the CTBT. This was agreed upon in order to avoid creating parallel regimes, despite some states parties (notably Mexico) calling for more comprehensive prohibitions including computer-simulated tests and subcritical tests.

The discussions on Articles 2 to 4 all revolved around one issue: how to deal with NWS in the context of the Treaty. The initial draft would have required NWS to completely eliminate their nuclear arsenals before joining the Treaty. It soon became clear, however, that a more flexible and nuanced approach was needed to create a treaty open to all states not only in theory, but also in practice. In this respect, South Africa played a key role. Due to its experience as a former NWS, South Africa was able to compensate, at least partially, for the fact that these provisions had to be drafted without any input from the current NWS. For Article 2 (Declarations), South Africa proposed language requiring that each state party declare its status in relation to nuclear weapons. This language effectively divides states into four categories: (1) those who have not owned or housed nuclear weapons or explosive devices since the Treaty’s adoption on July 7, 2017; (2) those who possessed nuclear weapons as of July 7, 2017 and eliminated them prior to joining the Treaty; (3) those who continue to own nuclear weapons even as they join the Treaty; and

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270 For more information on the Nuclear Suppliers Group, see: http://www.nuclearsuppliersgroup.org/en/about-us.
271 Interview conducted by the author on February 7, 2018.
272 Interview conducted by the author on November 12, 2017.
those who have foreign-owned nuclear weapons stationed on their territory even as they join the Treaty. It is worth noting that according to Article 4, states like South Africa, who eliminated their nuclear arsenals and nuclear programs prior to the adoption of the Treaty, fall under the first category and are not distinguished from states who never owned or developed nuclear weapons at all. Similarly, the new Treaty eliminates any distinction between the five NPT-sanctioned NWS and the four NWS outside the NPT. For each category of states, Article 4 sets out adequate procedures for joining the Treaty as well as corresponding obligations. According to this article, entitled “Towards the total elimination of nuclear weapons,” states in category (2) must conclude a special safeguards agreement with the IAEA and submit to verification by a “competent international authority” (Art. 4, para. 1). This authority was not further specified during the Treaty negotiations and its nature is left to be determined at future meetings of the states parties. States in category (3) must “immediately remove [their nuclear weapons] from operational status” and submit a legally binding, time-bound plan for the “verified and irreversible elimination” of their nuclear weapons program within 150 days after ratifying the Treaty (Art. 4, para. 2). Once the elimination is complete, the states in question must negotiate a special safeguards agreement with the IAEA. States in category (4) are required to “ensure the prompt removal” of all nuclear weapons from their territory (Art. 4, para. 4).

These provisions undoubtedly make the Treaty more inclusive and more open to future ratification by NWS or their allies, one of the declared aims of ICAN and other Treaty advocates. However, I also see potential challenges related to the implementation of Article 4. First and foremost, the Treaty does not specify fixed timelines for the

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elimination of the nuclear arsenals of states joining under paragraph 2. Nor is there a
specified deadline for the removal of nuclear weapons or any mention of a dedicated
safeguards agreement for states joining under paragraph 4. One could argue that NNWS
hold the majority of votes at the meetings of states parties, where further details will be
determined, and that this will ensure that the purpose of the Treaty is upheld and the
weapons in question are rapidly eliminated. At the same time, it is worth remembering that
NNWS also hold the majority of votes at the NPT Review Conferences, and yet progress
under Article VI of the NPT has been negligible. Consequently, I see a potential danger of
NWS joining the TPNW with the aim of deliberately holding its agenda hostage by
delaying the implementation of Art. 4, para. 2. Small states and states of the Global South,
who make up the majority of current TPNW signatories, could be susceptible to diplomatic
and political pressure by NWS, and the TPNW could eventually suffer the same fate as the
NPT. Such a scenario appears unlikely at the moment due to the categorical opposition of
the NWS to the TPNW, but as the new Treaty gains traction, the NWS may yet change
their tactics.

Another potential challenge related to Article 4 lies in the verification of Treaty
obligations and the fact that the “competent international authority” needs to be defined,
agreed on, founded, staffed and financed before it can begin its work. This could be a
further cause for delays in Treaty implementation and the elimination of nuclear weapons.
Alternatively, IAEA could assume the role of competent international authority. However,
there has not been any official cooperation or exchange between the TPNW negotiating
conference and IAEA. Ambassador Whyte sent a letter to the Director-General of the IAEA
requesting the Agency’s participation in the negotiating conferences, and the matter was
discussed at a meeting of the IAEA Board of Governors, but in the end, the agency did not send any representatives or experts.\textsuperscript{274} This development is a reminder that the IAEA is closely connected to the NPT regime and the NWS, which could lead to potential difficulties if additional safeguards are required under Article 4, paras. 1 or 3 of the TPNW. Article 3 requires that states in category (1) either maintain their existing IAEA safeguards obligations or conclude a comprehensive safeguards agreement with IAEA if they have not already done so. Perhaps surprisingly, states in category (4) need not negotiate any additional safeguards agreements. The TPNW thus effectively maintains the standard of safeguards established by the NPT in 1972 and makes no attempt to strengthen it.\textsuperscript{275}

Among the most progressive aspects of the TPNW are the victim assistance and environmental remediation provisions in Article 6. They oblige states parties to provide assistance to any individuals under their jurisdiction who have been affected by the use or testing of nuclear weapons. Similar obligations can also be found in the Convention on Cluster Munitions (Article 5) and, to a lesser degree, in the Ottawa Convention (with the qualifier “states in a position to do so”). A new addition is the obligation for states who have used or tested nuclear weapons to provide assistance to affected states parties under Article 7 of the TPNW. This provision was not included in early drafts and is likely a result of determined advocacy by the ICRC, other civil society organizations and several states, including Brazil, in favor of strengthening the victim assistance provisions. Although it only seems fair to expect states who used or tested nuclear weapons to take responsibility

\begin{footnotes}
\item[274] Interview conducted by the author on February 28, 2018.
\end{footnotes}
for the human and environmental consequences, such a potentially costly obligation might also deter NWS from joining the Treaty.

Pursuant to Article 8, a meeting of the states parties will be convened by the UN Secretary-General within one year of the entry into force of the Treaty, and on a biennial basis thereafter. The rules of procedure for these meetings are not determined by the Treaty, but will be adopted at the first session. The first review conference is scheduled to take place five years after the entry into force, and further review conferences every six years thereafter, perhaps to avoid coinciding with NPT review conferences on a regular basis. The ICRC, the International Federation of Red Cross and Red Crescent Societies, NGOs, relevant entities of the UN system, other international organizations, regional organizations as well as states not party to the Treaty are expressly invited to attend the meetings and conferences as observers, continuing the tradition of inclusiveness and openness that characterized the humanitarian initiative. The costs for these meetings and conferences, as well as the related costs incurred by the UN Secretariat, are to be covered by the states parties and any participating observer states. In the case of the TPNW, this common practice could imply budget issues and place financial constraints on a future Treaty body, since neither the traditional major donors nor the states paying high assessed contributions are among the current signatories.\(^{276}\) Provisions for the costs of verification and disarmament (to be borne by the states parties to which they apply) were only included in the draft on July 3; an indication that agreement on this issue was not reached until the very end of the negotiations. This arrangement means that states in categories (1) and (4) will

\(^{276}\) Interview conducted by the author on November 12, 2107.
not incur any additional costs for verification, provided they already have a comprehensive safeguards agreement with the IAEA.

The Treaty is of unlimited duration. States parties have the right to withdraw from the Treaty in the event that “extraordinary events related to the subject matter of the Treaty have jeopardized the supreme interests” of the state in question (Art. 17, para. 2). The timelines and modalities for withdrawal were subject to intense discussions during the negotiations and were updated in the July 3 draft, in which the period required for a withdrawal to take effect was changed from 3 to 12 months. Upon initiative of the ICRC, among others, the additional condition, whereby a withdrawal can only take effect if the state in question is not party to an armed conflict, was strengthened to apply to intra-state as well as inter-state conflicts.

The TPNW was completed in less than seven months from the adoption of its negotiating mandate and with less than four weeks of actual negotiations, a remarkably short period of time for a multilateral treaty and especially for a disarmament instrument. According to Ambassador Whyte, the negotiators were able to keep the timeframe due to a shared sense of purpose that allowed them to quickly resolve procedural questions that had paralyzed past disarmament negotiations and move on to the substance of the Treaty almost immediately. The engagement of civil society organizations and academia helped create a sense of ownership and confidence in the outcome of the negotiations.

The present analysis of the negotiating conferences and the Treaty text has reinforced the impression of an open, participatory drafting process that welcomed input

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278 Contribution by Ambassador Whyte during the Arms Control Association Annual Meeting on April 19, 2018. For the full transcript and video see: https://www.armscontrol.org/ArmsControl2018.
by civil society and by a wide range of national delegations. To the extent documented, particular engagement was demonstrated by the Treaty’s main facilitators (including Austria, Brazil, Ireland, New Zealand and South Africa) as well as by several states of the Global South (including Cuba, Argentina and Ecuador, who submitted detailed amendments).
Chapter 8

Reception and impact of the Treaty

State positions and the ratification process

The Treaty on the Prohibition of Nuclear Weapons was opened for signature during the high-level segment of the 72nd session of the UN General Assembly on September 20, 2017, following an Opening Ceremony presided by Secretary-General António Guterres, the depositary of the Treaty. Pursuant to its Article 15, the Treaty will enter into force 90 days after the 50th instrument of ratification has been deposited. Fifty states signed the Treaty immediately on September 20, 2017. As of April 2018, the Treaty counts a total of 58 signatories and seven states parties. It has now entered the ratification phase, during which signatory states set in motion the required domestic procedures for ratification according to their constitution, such as parliamentary approval or an executive order. Depending on the system in place and the political dynamics, this process can take several months or years to complete. Meyer and Sauer estimate that the Treaty will enter

into force in late 2018 or mid-2019. A comparison with other disarmament treaties shows that this timeframe is quite optimistic: The Biological Weapons Convention, the Chemical Weapons Convention and the Convention on Cluster Munitions each took about three years to reach fifty ratifications. Only the Ottawa Convention started out with 57 ratifications in its first year and achieved over 100 by its third. Some consider 100 ratifications a psychological threshold that, once overcome, lends additional authority to a treaty, perhaps because 100 parties constitute a clear majority of the 192 UN member states. The experience of the Chemical Weapons Convention further demonstrates that it can take two decades or more to actually eliminate an entire category of weapons. Long-term thinking is therefore required when judging the impact of the TPNW.

The following maps give a clearer idea of the regional distribution of support for the Treaty. The first map highlights the states (in blue) who voted for the Treaty’s adoption on July 7, 2017. (The states marked in gray did not participate in the negotiations.)

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285 Ibid., p. 83.
The second map highlights the signatories (in yellow) and states parties (in green) of the Treaty as of April 2018.
The two maps illustrate the concentration of support in the Global South, primarily Latin America, Africa and South-East Asia, and reinforce the image of a treaty carried by smaller, less influential states against the traditional centers of power. The map does not reflect the recent ratifications by Cuba and Venezuela, soon to be followed by Brazil and Costa Rica. Most of Europe, North America and the Middle East remain outside of the Treaty, with the notable exceptions of Austria and Ireland. Both of them have already moved far along in their parliamentary ratification processes and are expected to present their instruments of ratification before the summer. In Norway, Sweden and Iceland, parliamentary reviews are currently looking into the possibility of joining the Treaty despite continued government opposition. Moreover, the Norwegian and the Dutch Red Cross Societies participated in the negotiating conferences, a sign of strong civil society support for the Treaty. These two National Societies also co-sponsored a conference on the prohibition and elimination of nuclear weapons in Nagasaki in April 2017, together with the Red Cross Societies of Japan, Australia and Austria. Japan is an intriguing case because of the apparent contradiction between the government’s rejection of the Treaty and the high level of support for the elimination of nuclear weapons among the Japanese population. While hibakusha, the Japanese survivors of the atomic bombings, publicly and actively supported the Treaty, the Japanese government did not send a delegation to the negotiating conferences and even voted against the draft resolution that established the

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287 Ibid.


negotiating mandate,\textsuperscript{290} supposedly in response to diplomatic pressure from the US (Japan remains under the US nuclear umbrella).\textsuperscript{291} Switzerland, Norway, Denmark, Iceland, Belgium, Germany and the Netherlands have already shown some degree of engagement with the humanitarian initiative.\textsuperscript{292} In Germany, the Social Democratic Party (SPD) endorsed the removal of US nuclear weapons from German territory in its 2017 election program.\textsuperscript{293} Although the conservatives won the election and lead the coalition government, the SPD’s position signals latent approval of nuclear disarmament among the German population. Meanwhile, support for nuclear deterrence remains strong in Eastern Europe. NATO members in close proximity to Russia are unlikely to endorse the new Treaty unless their allies offer them a credible alternative security guarantee.\textsuperscript{294}

Chief among the Treaty’s critics are of course the NWS themselves. In a joint press statement after the adoption of the Treaty, the P3 (US, UK, France) declared that they did “not intend to sign, ratify or ever become party to it” and did not accept the notion that it contributed in any way to the development of customary international law, on the grounds that an accession to the Treaty would be “incompatible with the policy of nuclear deterrence.”\textsuperscript{295} Even within this firm front of opposition, however, there are nuances to be considered. Out of the P3, the UK has been identified as the most amenable to the TPNW

\textsuperscript{290} For the voting records on A/C.1/71/L.41 see https://digitallibrary.un.org/record/855229.
for two reasons. Firstly, civil society flourishes in the UK and popular opposition to nuclear weapons has already formed around the costly renewal of the Trident nuclear deterrent. Anti-nuclear sentiments are particularly strong in Scotland, where the UK’s nuclear forces are stationed. Secondly, Jeremy Corbyn, the leader of the Labour Party, is a longstanding supporter of nuclear disarmament. The official party line is still in favor of the Trident, but may well be challenged by Corbyn’s supporters before the next elections. As in Norway and the Netherlands, much depends on domestic political developments. In France, disarmament activism is much less prominent than in the UK, and nuclear weapons are perceived more in terms of national prestige than military deterrence. According to one of my interviewees, these circumstances will make it considerably more difficult for humanitarian arguments to gain a foothold in France.

Nevertheless, the TPNW holds a certain appeal for all states wishing to publicly reaffirm their commitment to humanitarian principles and their reputation as civilized and responsible members of the international community, even if it does not reflect their current nuclear policy. This appeal is particularly strong in democratic states, where civil society holds considerable sway, in emerging states (not to be confused with emerging economies) wishing to raise their profile on the international stage, and in states with a strong tradition of supporting humanitarian causes and initiatives. In illiberal states like Russia and China, the lack of political accountability and the weakness of civil society

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297 Interviews conducted by the author on February 28.
make generating support for nuclear disarmament incomparably more difficult.\textsuperscript{299} The Russian government considers nuclear weapons crucial for its security and its standing in the international system, and countervailing opinions are almost completely absent at all levels of Russian society.\textsuperscript{300} China is the only NWS with a firm no-first-use policy in place and has been considerably less vocal in its opposition to the Treaty. Despite having no intention of giving up its nuclear weapons, the Chinese government considers that the Treaty may serve the country’s interests in some respects, for example by strengthening the nuclear taboo.\textsuperscript{301}

**Treaty implementation and related challenges**

Aside from the above-mentioned hurdles regarding signature and ratification, one of the greatest challenges the TPNW will face in the future is enforcement. Rühle, writing for NATO, stresses the crucial role of enforcement, pointing out that ultimately, there will always be states that are indifferent to “naming and shaming” strategies, and that only the threat of “serious military reprisals”\textsuperscript{302} will keep such states from breaking their obligations. Although this statement tends towards the extreme, the Treaty text does evidence a lack of provisions dealing with violations. Generally, norms related to international peace and security are enforced by the UN Security Council, as illustrated by

the Council’s recent actions in response to the use of chemical weapons in Syria. Regarding
the TPNW, however, the P5 as opponents of the Treaty can hardly be relied on to enforce
its provisions in the event that a rogue state should decide to ratify the Treaty and then
violate its terms.\textsuperscript{303} Even less can the P5 be expected to enforce the elimination of nuclear
weapons should one of their own ranks ever join the Treaty. Therefore, enforcement is
definitely an issue the states parties to the Treaty will have to address in the future, with a
view to finding viable alternatives to the Security Council.

Also with regards to Treaty implementation, UNODA experts underscore the
importance of the 2020 NPT Review Conference and warn that opponents of the new
Treaty will attempt to frame it as the cause for any dissent or lack of progress within the
NPT.\textsuperscript{304} It is therefore vital that the Treaty’s advocates find a constructive way of engaging
with the NPT regime, in order to strengthen the disarmament pledge of the NPT while
preventing forum-shopping by potential proliferators. The TPNW also puts pressure on the
NWS to deliver results through their preferred method of disarmament, the step-by-step
approach, in order to prevent any further erosion of the authority of the NPT.\textsuperscript{305} Looking
back to the beginning of the humanitarian initiative, the original intention of its advocates
was to engender progress in nuclear disarmament within the NPT. Only when the 2015
NPT Review Conference failed to produce any results did they contemplate creating a new
legal instrument. As Dunworth pointed out back in 2014, the NPT does not require the

\begin{footnotesize}
\begin{itemize}
\item Aflina, Yasmin et al. (2017) “Negotiation of a Nuclear Weapons Prohibition Treaty: Nuts and Bolts of
the Ban. The New Treaty: Taking Stock” \textit{UNIDIR resources:}
\end{itemize}
\end{footnotesize}
“effective measures” related to its Article VI to be carried out under its own regime. Consequently, an overlap between the NPT and other instruments prohibiting nuclear weapons does not undermine, but strengthen states’ legal obligations.\textsuperscript{306} In fact, this has long been the case for regional NWFZ, whose members are also parties to the NPT and thus under a double obligation to forego nuclear weapons. Advocates of the TPNW will need to emphasize this point during upcoming NPT conferences to ensure that the two treaties reinforce each other and create a joint momentum for nuclear disarmament.

Another decisive factor for the future of the Treaty is how NATO and its members choose to engage with it. On the one hand, the prohibition against threatening the use of nuclear weapons could be interpreted as incompatible with extended nuclear deterrence and prevent European non-nuclear-armed NATO members from joining the TPNW. On the other hand, NATO members have always had different national views and practices in relation to nuclear weapons. In the past, the organization has accommodated these differences and adapted its operations accordingly. Since there is no mention of nuclear weapons in the North Atlantic Treaty itself, the organization could accommodate members wishing to join the TPNW if the new Treaty is interpreted as compatible with NATO membership.\textsuperscript{307} So far, however, the alliance has been firm in its opposition to the Treaty, accusing its facilitators of undermining the NPT and even suggesting that nuclear abolition may be immoral if it makes major war more likely. Disarmament demands directed at the P3 have been deflected by claims that the real danger does not come from their extensive


Last but not least, the private sector must be taken into account when discussing the implementation of the Treaty. At a time when business ethics are gaining in importance and banks and investors are increasingly concerned about their reputations, they might be deterred from investing in the nuclear weapons industry as the stigma attached to nuclear weapons grows.\footnote{Meyer, Paul & Sauer, Tom (2018) “The Nuclear Ban Treaty: A Sign of Global Impatience” Survival – Global Politics and Strategy Vol. 60 (2): p. 67.} Even though a clear prohibition on financing nuclear weapons was not achieved, the Treaty’s advocates should engage the private sector and especially the financial sector with regards to the ongoing nuclear weapons modernization programs.

Impact and achievements

With the humanitarian initiative and the TPNW, NNWS found a way to reclaim agency in nuclear disarmament. After decades of inertia and empty promises under the NPT, NNWS chose an alternative approach and did what lay within their power – they initiated a normative shift in order to gradually diminish the political utility of nuclear weapons and raise the reputational cost of their possession and use. Although the Treaty does not prohibit non-states parties from possessing and using nuclear weapons, its normative nature and deliberate humanitarian underpinning will eventually affect the
behavior of those states by creating a compliance pull.\textsuperscript{311} According to Realist IR theory, states will always act in their own self-interest. Indeed, the Treaty’s advocates do not expect NWS to renounce their nuclear weapons for idealistic or ethical reasons. The compliance pull is intended to work in a more roundabout way, changing the incentive structures to the point where nuclear weapons carry such a strong stigma that it will be in states’ self-interest to give them up. While the NWS hold a great deal of power within the international system, Hedley Bull’s much-cited definition of great powers demonstrates that power does not exist in a vacuum and is a psychological as well as a physical construct: “[G]reat powers are powers recognised by others to have […] certain special rights and duties.”\textsuperscript{312} The P5 choose to interpret the NPT as supposedly recognizing their special right to possess nuclear weapons. Once the TPNW enters into force, however, this right will be officially called into question. Therefore, the TPNW can be credited for creating new incentives for nuclear disarmament and reenergizing a process that had previously reached an impasse.

Another major achievement of the humanitarian initiative is that it has democratized nuclear disarmament by bringing previously disenfranchised groups into the process. This democratization took place on several levels. At the inter-state level, NNWS assumed agency and refused to play by the unequal rules of the NPT any longer. At the level of disarmament fora, NGOs were invited to participate and indeed played a leading role in the humanitarian initiative. At the national level, activists mobilized civil society and prompted citizens to take an interest in their countries’ nuclear policy. Previously,

NWS effectively shielded nuclear decision-making from public oversight by labelling it a national security issue. With the reframing of nuclear weapons as an issue of human security and human survival, this taboo was broken and citizens are increasingly aware that nuclear disarmament is a global public good.\(^{313}\) The TPNW has further democratized nuclear disarmament by placing all states on an equal footing. Majority-based voting systems were applied throughout the Treaty process, giving each participating state the same voting power, and the same conditions were set for all states – no nuclear weapons, no privileges, no exceptions. These principles of inclusiveness and sovereign equality pose a special incentive for smaller and less influential states to join. Where the P5 and other powerful states are concerned, the Treaty must rely solely on its humanitarian appeal to bring them to the table.

In the near future, one of the most important tasks for disarmament activists will be keeping the debate alive and maintaining the attention of the international community that the signing of the Treaty and the Nobel Peace Prize ceremony have generated. Now that the Treaty is a fait accompli and resistance against its creation is no longer an issue, Treaty advocates have the opportunity to refocus the discussion on the humanitarian consequences of nuclear weapons.\(^{314}\) Unfortunately, the United Nations high-level international conference on nuclear disarmament scheduled for the spring of 2018 as a follow-up to the 2013 high-level meeting on nuclear disarmament hosted by the NAM has been postponed.


\(^{314}\) Interview conducted by the author on February 28, 2018.
indefinitely due to conflicting interests among the organizers.\textsuperscript{315} Against this backdrop, civil society action is more important than ever for Treaty implementation. ICAN has been actively engaged in analyses similar to the one conducted in this chapter, with the aim of understanding state positions and levels of support. The next step in ICAN’s strategic planning is to identify those states most likely to be won over and the pressure points that could tip the scale. Funds from the Nobel Peace Prize award are put towards grants to partner organizations in key countries. In signatory states, ICAN partners assist national lawmakers with the drafting of legislation in order to speed up the ratification process.\textsuperscript{316}

Prior to the NPT Preparatory Committee session in Geneva from April 23 to May 4, 2018, ICAN held a two-day campaigners’ meeting, consulting with NGO partners on the best ways to engage member state delegations, parliamentarians and civil society in each target state.\textsuperscript{317} The International Red Cross and Red Crescent Movement is similarly engaged through its National Societies. If like-minded states and civil society groups continue to harness the advocacy networks they built during the humanitarian initiative and maintain their level of engagement and cooperation, the Treaty is well on its way towards entering into force within the coming year.


\textsuperscript{316} Interview conducted by the author on November 12, 2017.

Chapter 9

Conclusion

The present thesis has examined the humanitarian impact initiative in nuclear disarmament, relying on a combination of official documents and records, academic literature, civil society publications and interviews conducted by the author, and going beyond a simple recounting of events to take a closer look at the strategies that made the initiative successful and the actors who drove it forward. The humanitarian initiative and the resulting Treaty on the Prohibition of Nuclear Weapons broke new ground in several areas: Its architects created renewed momentum in nuclear disarmament by moving the discussion into fora more conducive to dialogue and progress – independent international conferences and the UN General Assembly. This opened up the field of nuclear disarmament to the participation of a wider range of actors, notably NGOs and other civil society organizations. Another important component was the reframing of nuclear disarmament as a humanitarian concern, based on well-designed discourse and advocacy strategies. The analysis in Chapters Four to Six found that the active and constructive collaboration and exchange between state and civil society actors was a crucial factor for the success of the humanitarian initiative. The resulting network of small states, states of the Global South and civil society organizations achieved what would have been unthinkable a decade ago – a multilateral treaty prohibiting nuclear weapons. A closer look at the negotiating conferences revealed an open and participatory drafting process and an unusually swift conclusion of the negotiations. Although the Treaty, which is currently in its ratification phase, faces a number of challenges, notably the continuing opposition of the nuclear powers and their allies, its achievements cannot be overlooked and will shape
the future debate on nuclear disarmament as well as the cost-and benefit calculations of the NWS.

The Treaty and the humanitarian initiative can also be viewed in a larger context of power and accountability. Recent years have seen increasingly successful efforts to hold the powerful accountable, be it for government corruption, sexual misconduct or, in the case of the nuclear-armed states, the continued non-fulfilment of disarmament obligations. States and citizens who had previously been excluded from the nuclear weapons debate became crucial actors and called entrenched great-power privileges into question. By basing their arguments on the principles of international humanitarian law, the Treaty’s advocates made it difficult for countries wishing to be perceived as civilized and responsible members of the international community to dismiss them. In the past, it was the US and Western European states who frequently instrumentalized their moral authority for political ends. With the humanitarian initiative, states of the Global South effectively claimed the moral high ground for themselves and called out the NWS on their unfulfilled NPT obligations.

The findings of the present thesis are relevant for both scholars and practitioners of international relations. From an academic perspective, the analysis in Chapter Six adds nuance to the discussion on the TAN (transnational advocacy network) theory. More generally, the thesis contributes to the documentation and academic review of the Treaty negotiations and the multilateral process that preceded them. For diplomats and activists, there are lessons to be learned about the successful reshaping of the political and institutional environment around an issue, the importance of coordination and exchange
between like-minded actors, and the crucial role of perceptions and ethics in international relations.

Since the TPNW was concluded very recently, research on the subject is only now being published and there are numerous aspects left to be explored. Gathering a greater number of oral accounts and personal notes could shed more light on the negotiations that took place behind closed doors, and a more detailed examination of the concrete contributions of each state and civil society organization could reveal more about negotiation dynamics and levels of influence. Furthermore, the Treaty will have to be reexamined in the light of changing political circumstances and crucial events that might reshape its future, such as the 2020 NPT Review Conference.
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A/CONF.229/2017/INF/2/Add.1.

Interviews conducted by the author:

November 7, 2017
November 12, 2017
February 7, 2018
February 28, 2018 (two interviews)
March 22, 2018
## Annex

Table 1: Sponsors of the draft resolutions entitled “Taking forward multilateral nuclear disarmament negotiations” (list)

<table>
<thead>
<tr>
<th>Resolution</th>
<th>Draft (First Committee)</th>
<th>Sponsors</th>
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<tr>
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<td>A/C.1/67/L.46</td>
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Mexico, Namibia, New Zealand, Nicaragua, Nigeria, Panama, Peru, Philippines, Samoa, South Africa, Swaziland, Thailand, Togo, Trinidad and Tobago, Uruguay, Vanuatu, Venezuela (Bolivarian Republic of), Viet Nam and Zimbabwe

Source: Text of each respective draft resolution, accessible via its document symbols at documents.un.org.

Table 2: Sponsors of the draft resolutions entitled “Taking forward multilateral nuclear disarmament negotiations” (graphic representation)*

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**Total sponsors** 13 18 14 23 34 40

*States who sponsored all drafts are marked in a darker shade. This table only includes states who sponsored the resolution “Taking forward multilateral nuclear disarmament negotiations” at least once. It is not a comprehensive list of UN member states nor a list of states who voted to adopt the relevant resolutions.*