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Changing the discourse on nuclear weapons: The humanitarian initiative

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Abstract
This article examines the progress of the humanitarian initiative to reframe the nuclear weapons discourse internationally. The initiative seeks to shift debate away from theories of strategic stability and towards a focus on the impact of nuclear weapons themselves. This effort has now gathered significant support at an international level, and its implications are increasingly recognized by both nuclear-armed and non-nuclear-armed States. The initiative has been underpinned by the deliberate logic of humanitarian disarmament. A treaty banning nuclear weapons, around which momentum is gathering, would be an achievable, legally coherent and logical next step developing from the initiative.

Keywords: nuclear weapons, humanitarian initiative, disarmament, prohibition, ban treaty.

Since 2010, the unacceptable humanitarian consequences of nuclear weapons have been the subject of increased attention, analysis and discussion internationally. Looking at nuclear weapons from a humanitarian perspective challenges prevalent framings of the purpose and role of these weapons that have previously been focused on State security and strategic stability. A humanitarian perspective fundamentally questions the acceptability of nuclear weapons. Committed States,

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civil society and international organizations have pursued this change in the discourse as a deliberate strategy to reframe the debate on nuclear weapons and establish foundations for their stigmatization, prohibition and elimination. As an approach, it draws inspiration from previous humanitarian disarmament initiatives to ban anti-personnel landmines and cluster munitions. This paper traces the progress of the State-level humanitarian initiative so far; explores the thinking and strategy behind it; considers its current limitations; and discusses where its growing momentum could take the initiative next, with significant interest now building amongst States in negotiating a new treaty to ban nuclear weapons based on their unacceptable humanitarian consequences.

Opportunities for change, and a growing focus on humanitarian impacts

The global discourse on nuclear weapons has been dominated for a number of decades by arguments that these weapons ensure inter-State security. The doctrine of nuclear deterrence proposes that the possession of nuclear weapons by some States introduces higher levels of caution into relations between States, lowering the likelihood of conflict. These propositions can be challenged both theoretically and empirically.[1] A focus on the humanitarian consequences of any deliberate or accidental nuclear explosion, however, aims to change the terms of the debate completely. It seeks a shift from the debate over security theory to using the demonstrably unacceptable effects on people of the weapons themselves as a starting point. This change of emphasis has implications for nuclear-armed States and their nuclear-dependent allies,[2] whose perceived interests and perspectives provide the basis for State security-focused framings. Examination of the effects of nuclear weapons has suggested that their possession is incompatible with humanitarian considerations.[3] This poses basic questions about the acceptability of any State's retention of them or reliance on them in security doctrines. It shifts the burden of proof onto nuclear-armed and nuclear-dependent States to show the legitimacy of their position, rather than challenging the idea of "deterrence" on its own terms.

A humanitarian reframing of the nuclear weapons discourse aims to bring to the fore the unresolvable tension between retaining nuclear weapons and the

1 See, for example, Nick Ritchie, *Nuclear Risk: The British Case*, Article 36, London, 2014, available at: www.article36.org/wp-content/uploads/2013/06/Nuclear-risk-paper.pdf (all internet references were accessed in March 2015); Rebecca Johnson, "The NPT in 2010–2012: A Control Regime Trapped in Time", in Rebecca Johnson, Tim Caughley and John Borrie, *Decline or Transform: Nuclear Disarmament and Security beyond the NPT Review Process*, Acronym Institute for Disarmament Diplomacy, London, 2012; Ward Wilson, "The Myth of Nuclear Deterrence" *Nonproliferation Review*, Vol. 15, No. 3, 2008.

2 States in security alliances with nuclear-armed States, subscribing to the doctrine of "extended nuclear deterrence" (the guarantee of a nuclear response in the event of a nuclear attack).

3 See Beatrice Fihn (ed.), *Unspeakable Suffering – The Humanitarian Impact of Nuclear Weapons,* Reaching Critical Will, Geneva, January 2013, available at: www.icanw.org/wp-content/uploads/2012/08/Unspeakable.pdf.

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unacceptable impacts of their use – a tension that is already implicit to the idea of deterrence, which relies in part on the assumed inability or unwillingness of any State to manage the catastrophic devastation that would result if nuclear weapons were used against it. Deep acceptance of the validity of deterrence has arguably undermined the influence of other considerations. Since the invention of nuclear weapons, their horrific consequences have been an object of serious concern to the public and scientific community, and the subject of intermittent State-level interest, for example at the United Nations (UN) General Assembly in resolutions and discussion.[4] The preamble of the Treaty on the Non-Proliferation of Nuclear Weapons (Non-Proliferation Treaty, NPT) also mentions humanitarian concerns.[5] However, this concern has not managed to affect the practice of deterrence doctrines over time. Following the collapse of the bi-polar world order of the Cold War, renewed proliferation and more uncertain and dynamic nuclear relations, the conditions for challenging deterrence framings with a humanitarian perspective are now more favourable.[6] The recent re-emergence of humanitarian concerns into international discussion amongst States in particular was linked to two key developments.

Firstly, from 2009 the International Red Cross and Red Crescent Movement (the Movement) re-engaged with the issue of nuclear weapons from a humanitarian perspective. In April 2010, Jakob Kellenberger, then president of the International Committee of the Red Cross (ICRC), made a public statement to diplomats in Geneva. This set out in stark terms the unacceptable humanitarian consequences of nuclear weapons, and demanded urgent action from States to eliminate the threat that these weapons pose.[7] It was followed in November 2011 by a resolution of the Council of Delegates of the International Red Cross and Red Crescent Movement. Emphasizing "the incalculable human suffering that can be expected to result from any use of nuclear weapons [and] the lack of any adequate humanitarian response capacity", it called on the Movement to engage in raising awareness of the "catastrophic humanitarian consequences of any use of nuclear weapons".[8] A four-year action plan was subsequently adopted, in 2013, to implement the resolution.[9]

Secondly, the "catastrophic humanitarian consequences that would result from the use of nuclear weapons" and the continued risk these weapons pose

4 Tom A. Sauer and Joelien Pretorius, "Nuclear Weapons and the Humanitarian Approach", *Global Change, Peace & Security*, Vol. 26, No. 3, 2014, pp. 238–240.

5 Treaty on the Non-Proliferation of Nuclear Weapons (NPT), 729 UNTS 10485, 1 July 1968 (entered into force 5 March 1970).

6 T. A. Sauer and J. Pretorius, above note 4, p. 440.

7 Jakob Kellenberger, "Bringing the Era of Nuclear Weapons to an End", statement, 20 April 2010, available at: www.icrc.org/eng/resources/documents/statement/nuclear-weapons-statement-200410.htm. This document is also available in the "Reports and Documents" section of this issue of the *Review*.

8 Council of Delegates of the International Red Cross and Red Crescent Movement, "Council of Delegates 2011: Resolution 1. Working towards the Elimination of Nuclear Weapons", 26 November 2011, available at: www.icrc.org/eng/resources/documents/resolution/council-delegates-resolution-1-2011.htm.

9 Council of Delegates of the International Red Cross and Red Crescent Movement, "Working towards the Elimination of Nuclear Weapons: Four-Year Action Plan", Sydney, Australia, 17–18 November 2013, available at: www.icrc.org/eng/assets/files/red-cross-crescent-movement/council-delegates-2013/cod13-r1-nuclear-weapons-adopted-eng.pdf.

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were noted as matters of concern in the Final Document of the 2010 Review Conference of the Parties to the NPT.[10] This introduced the issue into the NPT review cycle on the initiative of Switzerland, encouraged by engagement on the issue from the Red Cross. The previous year, President Obama's endorsement of the goal of a world free of nuclear weapons in his Prague speech had helped to create a positive political context for the NPT Review Conference, and to re-energize those working on nuclear disarmament at a diplomatic level.[11]

Increasing State interest in humanitarian consequences

Since 2010, engagement of States on the subject of the humanitarian consequences of nuclear weapons has been building in international fora. Growing political support for this framing and focus on the issue has been more sustained than for any other recent initiative to encourage renewed activity on nuclear disarmament.[12]

Within the NPT framework, statements expressing concern at the catastrophic impact of any use of nuclear weapons and the need for action were given on behalf of sixteen countries by Switzerland at the 2012 Preparatory Committee.[13] That same concern was raised on behalf of eighty countries by South Africa at the 2013 Preparatory Committee.[14] The chair's factual summaries of both Preparatory Committees highlight States' "deep concern" at the catastrophic humanitarian consequences of nuclear weapons, and the expectation that this topic will continue to be discussed in the review cycle.[15] The topic also featured in the report of the final, 2014 Preparatory Committee, which contains recommendations to the 2015 Review Conference. This noted that the catastrophic humanitarian consequences of nuclear weapons were proposed for further consideration at the Review Conference.[16] At the Review Conference itself, 159 countries endorsed a

10 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, UN Doc. NPT/CONF.2010/50, Vol. 1, 2010, available at: www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/revcon2010/FinalDocument.pdf.

11 R. Johnson, above note 1, p. 16.

12 Nuclear Threat Initiative, *Nuclear Disarmament Resource Collection*, available at: www.nti.org/analysis/reports/nuclear-disarmament/.

13 Preparatory Committee for the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, First Session, Joint Statement on the Humanitarian Dimension of Nuclear Disarmament, 2 May 2012, available at: www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom12/statements/2May_IHL.pdf.

14 Preparatory Committee for the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Second Session, Joint Statement on the Humanitarian Impact of Nuclear Weapons, 24 April 2013, available at: www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom13/statements/24April_SouthAfrica.pdf.

15 Chairman's Factual Summary, UN Doc. NPT/CONF.2015/PC.II/CRP.2, 2 May 2013, available at: http://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom13/documents/CRP2.pdf; and Chairman's Factual Summary, UN Doc. NPT/CONF.2015/PC.I/WP.53, 10 May 2013, available at: http://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom12/documents/WP53.pdf.

16 Preparatory Committee for the 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Report of the Preparatory Committee containing Recommendations to the Review Conference, UN Doc. NPT/CONF.2015/PC.III/CRP.7, 7 May 2014, available at: http://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom14/documents/draft-recommendations.pdf.

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Joint Statement delivered by Austria on the humanitarian consequences of nuclear weapons.[17]

Joint Statements to the UN General Assembly First Committee on the humanitarian consequences of nuclear weapons have similarly gathered support. Switzerland delivered such a statement on behalf of thirty-five countries in 2012.[18] Statements endorsed by 125 countries in 2013[19] and 155 countries in 2014[20] were delivered by New Zealand. These Joint Statements have generally expressed deep concern at the evidence on the impacts of nuclear weapons, have stated that they should not be used again under any circumstances, and have highlighted the imperative of taking effective action towards disarmament and elimination based on this. In 2015, these concerns were enshrined in a UN General Assembly resolution, passed by vote at its First Committee.[21]

In 2013, the potential humanitarian impacts of nuclear weapons were also part of States' calls for disarmament during the open-ended working group to develop proposals to take forward multilateral nuclear disarmament negotiations for the achievement and maintenance of a world without nuclear weapons, and the High-Level Meeting on Nuclear Disarmament.[22] Outside of UN fora, the Community of Latin American and Caribbean States (Comunidad de Estados Latinoamericanos y Caribeños, CELAC) has also emphasized its concern for the humanitarian consequences of nuclear weapons in a number of declarations.[23]

The emergence of a specific forum and partners

Most importantly for the growing significance of the humanitarian challenge to the prevailing discourse on nuclear weapons, three stand-alone meetings of the humanitarian initiative on nuclear weapons have been convened since early 2013. The first of these conferences was held in Oslo, Norway, in March 2013. The organizers of this conference, in collaboration with various like-minded

17 2015 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Joint Statement on the Humanitarian Consequences of Nuclear Weapons, 2015, available at: www.bmeia.gv.at/das-ministerium/presse/reden-und-interviews/2015/04/2015-review-conference-of-the-parties-to-the-treaty-on-the-non-proliferation-of-nuclear-weapons/.

18 UN General Assembly First Committee, 67th Session, Joint Statement on the Humanitarian Dimension of Nuclear Disarmament, 22 October 2012, available at: www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com12/statements/22Oct_Switzerland.pdf.

19 UN General Assembly First Committee, 68th Session, Joint Statement on the Humanitarian Consequences of Nuclear Weapons, 21 October 2013, available at: http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com13/statements/21Oct_Joint.pdf.

20 UN General Assembly First Committee, 69th Session, Joint Statement on the Humanitarian Consequences of Nuclear Weapons, 20 October 2014, available at: http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com14/statements/20Oct_NewZealand.pdf.

21 UNGA Res. A/C.1/70/L.37, 21 October 2015.

22 For records of these meetings, see Reaching Critical Will, *Other Disarmament Fora*, available at: http://reachingcriticalwill.org/disarmament-fora/others.

23 The latest of which is Special Declaration 16 of CELAC on the Urgent Need for a Nuclear Weapon Free World, 29 January 2015, available at: www.sela.org/media/1876366/special_declaration_16_of_celac_on_the_urgent_need_for_a_nuclear_weapon_free_world.pdf.

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individuals and organizations, decided that the initiation of specific meetings on humanitarian impacts had become necessary in order to build the momentum of this reframing of the nuclear weapons problem. In 2014, further meetings were hosted in Nayarit, Mexico, in February, and Vienna, Austria, in December.[24] 179 States attended one or more of these meetings.

Each conference has been preceded by a civil society forum held by the International Campaign to Abolish Nuclear Weapons (ICAN).[25] This has considerably increased ICAN's profile as a coalition. ICAN and its partner organizations, along with other civil society organizations, academic and UN researchers, and humanitarian organizations, have gathered key evidence on humanitarian consequences, which has then been presented at the conferences. The sizeable presence and persistent engagement of ICAN in particular (as the largest civil society umbrella grouping focused on advocating for a comprehensive prohibition on nuclear weapons based on their unacceptable humanitarian consequences), along with a number of other actors, has also indicated the weight of civil society concern at the humanitarian impact of nuclear weapons to States attending the conferences. This has been important to the conferences' objective of building support for the humanitarian initiative. The existence of a focused, coherent and global civil society movement has added legitimacy to the State-led initiative, as well as ensuring the encouragement of a principled approach to the topics under discussion.

The presentation of evidence and testimony

The humanitarian impact conferences have allowed a detailed elaboration of existing and new evidence on the catastrophic harm caused by nuclear weapons, by experts from a variety of fields. Presentations made to the conferences have covered the immediate effects of a nuclear explosion; the short- and long-term local and global health impacts of any detonation; impacts on economies, development and global agriculture; the risks of deliberate or accidental nuclear weapon use; and the impossibility of mounting any meaningful humanitarian response.[26] Representatives from UN agencies, the Movement, and academic and non-governmental research institutes and think tanks, as well as civil society organizations, have contributed. This wide participation of a range of actors beyond disarmament and arms control specialists has been important to the effort to take the debate in a new direction and bring different considerations to bear on States.

24 For records of these meetings, see Reaching Critical Will, *Humanitarian Impact of Nuclear Weapons*, available at: http://reachingcriticalwill.org/disarmament-fora/hinw.

25 See the ICAN homepage, available at: www.icanw.org.

26 Presentations available at: http://reachingcriticalwill.org/disarmament-fora/hinw. For studies on many of these points, see B. Fihn (ed.), above note 3; John Borrie and Tim Caughley, *An Illusion of Safety: Challenges of Nuclear Weapon Detonations for United Nations Humanitarian Coordination and Response*, United Nations Institute for Disarmament Research (UNIDIR), New York and Geneva, 2014, available at: www.unidir.org/files/publications/pdfs/an-illusion-of-safety-en-611.pdf.

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Crucially, victims and survivors of nuclear tests around the world and the nuclear bombings of Japan have also given testimonies to the conferences. These voices have often been excluded from inter-State security-based considerations of nuclear weapons.[27] For a full consideration of the effects of weapons on human beings and societies to be undertaken, the viewpoints of those who have experienced these effects are vital. The inclusion of survivors in a way that does not exploit or objectify their experience but gives agency and empowerment has a logical centrality to the development of a humanitarian discourse. The rights and needs of many victims and survivors of nuclear weapons have still not been adequately addressed. From the humanitarian perspective, any action developing out of a changing discourse on nuclear weapons must also include consideration of victims' and survivors' rights.[28]

Resistance to reframing, changing power dynamics

The three humanitarian initiative conferences have provided a venue for developing acknowledgement of and buy-in for a humanitarian framing for debate on nuclear weapons and disarmament. Following the Oslo Conference, the numbers of States endorsing Joint Statements on the humanitarian impact of nuclear weapons at the NPT and First Committee increased considerably. As well as increased recognition by the majority of States who are not nuclear-armed, however, the conferences have also drawn resistance to the attempt at a humanitarian reframing from a number of nuclear-armed States and their allies.

The five nuclear-armed States of the NPT framework (China, France, Russia, the United Kingdom and the United States) initially took a joint position to boycott the humanitarian initiative meetings. Two nuclear-armed States that are not NPT signatories, India and Pakistan, have attended all the meetings. The humanitarian initiative challenges the status that NPT-member nuclear-armed States have assumed for themselves as the legitimate nuclear weapons possessors – in contrast to illegitimate possessors outside the NPT regime – by considering the fundamental illegitimacy of nuclear weapons possession as a whole. For India and Pakistan, participation in the humanitarian initiative conferences has appeared to have the objective, at least in part, of helping these States to promote themselves as responsible nuclear powers committed to disarmament and elimination, as well as being a function of the relations between these two countries.[29]

In a statement prior to the Oslo Conference announcing their non-participation, the nuclear-armed NPT members expressed concern that the

27 John Borrie, "Humanitarian Reframing of Nuclear Weapons and the Logic of a Ban", *International Affairs*, Vol. 90, No. 3, 2014.

28 See Article 36, *"Victim Assistance" in a Treaty Banning Nuclear Weapons,* London, January 2015, available at: www.article36.org/wp-content/uploads/2015/01/victims-nuclear-weapons.pdf.

29 See, for example, Arka Biswas and Faiqa Mahmood, "India, Pakistan, and the Nuclear Humanitarian Initiative: Let's Be Real", *Bulletin of Atomic Scientists*, April 2015, available at: http://thebulletin.org/india-pakistan-and-nuclear-humanitarian-initiative-let%E2%80%99s-be-real8256.

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humanitarian initiative would "divert discussion away from practical steps to create conditions for further nuclear weapons reductions".[30] They have raised this line of argument subsequently, individually or collectively. These five States have variously asserted that the humanitarian initiative would undermine the NPT, discussions at the Conference on Disarmament, or the so-called step-by-step approach to nuclear disarmament as a whole.[31] This counter-narrative has not discouraged the decisive majority of NPT States Parties from attending humanitarian impact conferences. On the contrary, States endorsing Joint Statements on the humanitarian impact of nuclear weapons have highlighted the urgent need to integrate humanitarian perspectives into all nuclear disarmament fora and discussions.[32]

Using language that would later be replicated in other statements made by individual countries of the NPT nuclear-armed States group, the pre-Oslo announcement emphasised that these five States collectively "understand" the "serious consequences" of any nuclear weapons use, and that they gave the "highest priority to avoiding such contingencies".[33] The implication that no further discussion, consideration or presentation of new evidence on the subject is necessary is emphasized with the phrase "fully understand" in subsequent statements.[34] At the 2015 NPT Review Conference, France took this further, asserting that no new evidence on the risks and consequences of nuclear weapons had been presented for "decades" – effectively denying that the humanitarian initiative had taken place at all.[35] Again, this does not appear to have deterred a growing majority of States from acknowledging the importance and utility of engaging with the humanitarian discourse across different fora. Those attending the humanitarian impact conferences have included States in nuclear alliances with members of the NPT nuclear-armed group, including States in NATO's nuclear planning group.[36]

At the Vienna Conference, the United States and United Kingdom broke with the other NPT nuclear-armed States and decided to attend.[37] Though released internal documents have indicated that the UK was amenable to

30 Announcement of non-attendance to the Oslo Conference, March 2013, available at: www.reachingcriticalwill.org/images/documents/Disarmament-fora/oslo-2013/P5_Oslo.pdf.

31 See, for example, John Borrie and Tim Caughley, *After Oslo: Humanitarian Perspectives and the Changing Nuclear Weapons Discourse*, UNDIR, 2013, available at: www.unidir.org/files/publications/pdfs/after-oslo-en-469.pdf; Baroness Miller of Chilthorne Domer, "Nuclear Weapons: House of Lords Written Question", 21 March 2013, available at: www.theyworkforyou.com/wrans/?id=2013-03-21a.182.0.

32 Joint Statement, above note 20.

33 Announcement, above note 30.

34 See, for example, Alistair Burt, Statement on behalf of France, the United Kingdom and the United States, United Nations General Assembly High Level Meeting on Nuclear Disarmament, 26 September 2013, available at: www.reachingcriticalwill.org/images/documents/Disarmament-fora/HLM/26Sep_UKUSFrance.pdf.

35 Matthew Bolton, "No New Information on the Consequences of Nuclear Weapons?", *Political Minefields*, 14 May 2015, available at: http://politicalminefields.com/2015/05/14/no-new-information-on-the-consequences-of-nuclear-weapons/.

36 T. A. Sauer and J. Pretorius, above note 4, pp. 242, 248.

37 An official from China was also present at the Vienna Conference, but was attending in an unofficial capacity as an academic.

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attending previous humanitarian initiative meetings,[38] and the former minister responsible for disarmament has since expressed some regret that the UK did not attend Nayarit,[39] its decision to attend Vienna, following much deliberation, only came after the United States announced its attendance. The United States took the opportunity in this announcement to re-emphasize that it "fully understands the serious consequences of nuclear weapons use".[40] Nevertheless, its decision that it was necessary to engage with the humanitarian impact meetings, and its assessment that specific political advantages could be derived from this, indicate the growing importance of the humanitarian discourse on nuclear weapons.[41]

This progression from a boycott to defensive engagement arguably shows the start of a change in power dynamics. States without nuclear weapons, as well as a broader like-minded coalition of civil society and international organizations, have the initiative as well as the moral authority in a humanitarian reframing. The humanitarian movement has empowered and provided a rallying point for non-nuclear-armed States frustrated with the failure of nuclear-armed States to take effective action on their disarmament commitments.[42] At the 2015 NPT Review Conference, Costa Rica declared that the humanitarian impact conferences showed "democracy has come to nuclear disarmament".[43] The former UN High Representative for Disarmament, Angela Kane, remarked of the humanitarian initiative that "this movement is supported by almost 80 per cent of UN Member States. The numbers cannot be ignored."[44] These dynamics put the nuclear-armed States and their allies on the back foot, and are likely to increasingly oblige them to engage on others' terms if they wish to contribute to this debate at all.

This emerging development appears to have influenced some of the nuclear-dependent States to make efforts to stall the humanitarian discourse and obscure its implications, engaging it on its own terms in doing so. For example, Australia, which asserts the protection of US nuclear weapons despite its being part of a nuclear weapon-free zone, has initiated Joint Statements "on the humanitarian consequences of nuclear weapons" at the UN General Assembly First Committee since 2013. These statements, endorsed almost exclusively by

38 See Article 36, "Documents Suggest UK Boycott of Key Nuclear Weapons Meeting was Driven by P5 Partners", 4 June 2013, available at: www.article36.org/nuclear-weapons/documents-suggest-uk-boycott-of-key-nuclear-weapons-meeting-was-driven-by-p5-partners/.

39 See Alistair Burt, "Backbench Business: Nuclear Non-Proliferation Treaty Review Conference", *Column 100*, 9 March 2015, available at: www.publications.parliament.uk/pa/cm201415/cmhansrd/cm150309/debtext/150309-0003.htm#15030930000002.

40 "United States Will Attend the Vienna Conference on the Humanitarian Impact of Nuclear Weapons", media note, 7 November 2014, available at: www.state.gov/r/pa/prs/ps/2014/11/233868.htm.

41 John Borrie, "Outrunning a Bear Is a Relative Thing: US and UK Participation in the Vienna Conference", International Law and Policy Institute (ILPI), 9 January 2015, available at: http://unidir.ilpi.org/?p=66.

42 J. Borrie and T. Caughley, above note 31.

43 Costa Rica, Statement at the 2015 Review Conference of the Non Proliferation Treaty, 29 April 2015, available at: www.un.org/en/conf/npt/2015/statements/pdf/CR_en.pdf.

44 Angela Kane, High Representative for Disarmament Affairs, UN Disarmament Commission, Opening Remarks, 6 April 2015, available at: https://unoda-web.s3.amazonaws.com/wp-content/uploads/2015/04/hr-undc-2015.pdf.

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States in a nuclear alliance with the United States, have expressed concern about humanitarian consequences, acknowledged the need to spread awareness of these, and welcomed the larger Joint Statements on the humanitarian issue. However, while the Australian-led statements appear to buy into a humanitarian framing in this way, they go on to reject such a framing by emphasizing that the "security … dimensions of nuclear weapons" are a crucial element needed to achieve disarmament going forward, and that these dimensions are missing from the humanitarian consequences discussion, constituting a serious omission.[45]

This appears to be a deliberate attempt to return the discourse to the nuclear-armed and nuclear-dependent conception of a "realistic approach to effective disarmament", which "must involve the nuclear weapons States and take account of the security dimensions of nuclear weapons",[46] and to push back on what the next steps of the humanitarian initiative are likely to entail. However, the Australian-led statements still provide an acknowledgement of the importance of the humanitarian framing, which seeks to displace the primacy of inter-State security theories in the consideration of nuclear weapons. In attempting to push back on its implications, the authors of the statements nevertheless apparently found it necessary to engage and affirm the humanitarian narrative. Similarly, at the Vienna Conference, Australia asserted the importance of nuclear deterrence whilst acknowledging that humanitarian concern "underpins all our efforts to promote effective and practical nuclear disarmament and non-proliferation".[47] Such statements arguably also serve to expose the tension in the position that deterrence is an acceptable and legitimate strategy precisely because of the unacceptable consequences of nuclear weapon use.

Movement towards action

The UK has criticized the humanitarian initiative conferences on the grounds that they have lacked any specific objective.[48] The conferences have not been working meetings requiring agreed outcomes, and have not been framed as venues for any specific resolution to action by States. Their objective has been to support the reframing of the nuclear weapons problem – which the UK understands. Freedom of Information requests revealed that the UK recognized the Oslo Conference as a forum where "the focus and format … will not lend itself to the UK setting out

45 Joint Statement on the Humanitarian Consequences of Nuclear Weapons, UNGA 69 First Committee, 20 October 2014, available at: http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com14/statements/20Oct_Australia.pdf.

46 Freedom of Information (FOI) Ref. No. 14/51652, Australian Department for Foreign Affairs and Trade, available at: http://dfat.gov.au/about-us/corporate/freedom-of-information/pages/foi-disclosure-log.aspx.

47 Australian Statement at the Vienna Conference on the Humanitarian Impact of Nuclear Weapons, 8–9 December 2014, available at: http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/vienna-2014/9Dec_Australia.pdf.

48 See, for example, House of Commons, "Oral Answers to Questions: Nuclear Weapons (Vienna Conference)", Column 153, 28 October 2014, available at: www.publications.parliament.uk/pa/cm201415/cmhansrd/cm141028/debtext/141028-0001.htm.

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our narrative and key messages";[49] it would be a venue for the shifting of the debate away from the UK's preferred framing.

At the Vienna Conference, Austria went beyond giving a Chair's Summary and made a pledge to cooperate with all stakeholders to "identify and pursue effective measures to fill the legal gap for the prohibition and elimination of nuclear weapons" in order to support the implementation of Article VI of the NPT, and to work with others "in efforts to stigmatise, prohibit and eliminate nuclear weapons in light of their unacceptable humanitarian consequences and associated risks".[50] At the previous conference in Nayarit, the Chair's Summary called for the humanitarian initiative's next step to be the commencement of a time-bound diplomatic process to achieve an international legally binding instrument on nuclear weapons.[51] This was reportedly uncomfortable for the nuclear-dependent and nuclear-armed States present, who did not find this concrete proposal acceptable in a Chair's Summary, and whose national security policies sit awkwardly with a humanitarian consequences discourse.[52]

The humanitarian initiative has gathered significant support amongst States and has generated an expectation of action. The Humanitarian Pledge issued by Austria takes a step towards this, with States invited to endorse the Pledge to join the initiative it proposes. Over 120 States have done so at the time of writing, with a resolution on the Pledge passed in the UN General Assembly's First Committee with 128 votes.[53] Another resolution linked to the humanitarian initiative establishes an open-ended working group for 2016 to "substantively address concrete effective legal measures, legal provisions and norms that will need to be concluded to attain and maintain a world without nuclear weapons".[54] Before examining where this momentum could carry the humanitarian initiative next, this paper discusses the strategic thinking behind it, and its links to previous disarmament initiatives.

A deliberate strategy of reframing

In February 2010, the minister of foreign affairs of Norway, Jonas Gahr Støre, made a speech suggesting that the experiences of humanitarian disarmament initiatives on anti-personnel landmines and cluster munitions could be applied to nuclear weapons.[55] Since the conclusion of the Mine Ban Treaty, and particularly since

49 Article 36, above note 38.
50 Austrian Foreign Ministry, "Humanitarian Pledge", December 2014, available at: www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/HINW14_Austrian_Pledge.pdf.
51 Second Conference on the Humanitarian Impact of Nuclear Weapons, Chair's Summary, 14 February 2014, available at: www.reachingcriticalwill.org/images/documents/Disarmament-fora/nayarit-2014/chairs-summary.pdf.
52 J. Borrie, above note 27, p. 644.
53 See ICAN, "Humanitarian Pledge: Stigmatize, Prohibit and Eliminate Nuclear Weapons", 8 December 2015, available at: www.icanw.org/pledge.
54 UNGA Res. A/C.1/70/L.13/Rev.1, 29 October 2015.
55 Jonas Gahr Støre, "Disarmament – Reframing the Challenge", 1 February 2010, available at: www.regjeringen.no/en/aktuelt/disarmament/id592550/.

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the Convention on Cluster Munitions in 2008, the individuals and groups involved in these processes have worked to apply their experiences of success to other challenging disarmament problems.[56] The issues surrounding landmines and cluster munitions were different, and the campaigns and diplomatic processes used to ban each of them were by no means identical. Nuclear weapons pose other challenges in turn.[57] However, the humanitarian initiative rests on the idea that a similar basic approach can be applied: reframing a problem in order to make an unproductive policy environment more promising, through shifting thinking.[58] Some of the organizations and individuals involved in previous humanitarian disarmament initiatives within States, NGOs and international organizations (including the ICRC) either helped to initiate or are now involved in the humanitarian reframing of nuclear weapons.

The humanitarian disarmament approach considers weapons systems from the perspective of whether their use causes unacceptable harm. This includes but goes beyond questions of legality to include moral and political assessments of the effects of certain weapons on both civilians and combatants, and whether the use of such weapons can withstand this scrutiny by responsible States and military commanders. By taking a broader framing than purely legal argumentation and concentrating on the humanitarian question as a whole, the humanitarian disarmament approach seeks to avoid the potential for competing interpretations of the law to become a sticking point and a barrier to progress. Situating nuclear weapons within this conceptual framework denies the special status claimed for them (as weapons of mass destruction whose possession is nevertheless maintained to be legitimate for some States, which ascribe unique properties of deterrence to them). Humanitarian disarmament considers weapons from an apolitical perspective, concentrating on their effects on people and places rather than their military utility and strategic beliefs about them.

However, a humanitarian approach is not value-neutral[59] – through drawing attention to unacceptable harm, it aims to end the use of particular weapons and eliminate them. By seeking to change what the important facts about a weapon are considered to be, this approach aims to introduce doubt for policy-makers and military commanders about their established views of a weapon's usefulness and legitimacy, which now have to be proved on different terms. Doubt about accepted practices is introduced, leading to changes in

56 See, for example, Richard Moyes and Thomas Nash, *Global Coalitions: An Introduction to Working in International Civil Society Partnerships*, Action on Armed Violence, London, 2011; Brian Rappert, *A Convention Beyond the Convention: Stigma, Humanitarian Standards and the Oslo Process*, Landmine Action, London, May 2008; John Borrie, Maya Brehm, Silvia Cattaneo and David Atwood, "Learn, Adapt, Succeed: Potential Lessons from the Ottawa and Oslo Processes for Other Disarmament and Arms Control Challenges", *Ideas for Peace and Security*, Vol. 1, 2009. This paper was based on a 2008 workshop to consider this issue.

57 John Borrie and Tim Caughley, "How are Humanitarian Approaches Relevant to Achieving Progress on Nuclear Disarmament?", in R. Johnson, T. Caughley and J. Borrie, above note 1.

58 *Ibid.*

59 John Borrie, *Viewing Nuclear Weapons through a Humanitarian Lens: Context and Implications*, UNIDIR, 2013, p. 9, available at: www.unidir.org/files/publications/pdfs/viewing-nuclear-weapons-through-a-humanitarian-lens-en-413.pdf.

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opinion and the introduction of new laws and policies in response. In particular for States who value being seen as responsible and humanitarian in their conduct, the reframing of a weapon as taboo can change their policy calculations in relation to it. As the former UN High Representative for Disarmament remarked in relation to the stigma that exists around other weapons of mass destruction, "how many States today boast that they are 'biological-weapon States' … who speaks of a bioweapon umbrella?"[60]

For nuclear weapons, breaking the deadlock and inertia on global nuclear disarmament has been the imperative behind the attempt to change the discourse. Changes in the global context, as well as the increased visibility of international humanitarian law in inter-State relations, facilitate the adoption of a humanitarian approach. This approach focuses on delegitimizing the weapon itself, on a global scale. Because of this, the involvement of nuclear-armed States is not necessary to change the terms of the conversation. Although they have substantial populations, nuclear-armed States constitute a very small proportion of States worldwide. This gives an advantage to other States seeking to establish new ideas of acceptability, through their force of numbers. A humanitarian framing does, however, fundamentally challenge nuclear-armed States and their beliefs about these weapons. It brings pressure by creating a tension between the practice of nuclear deterrence and careful documentation and critical argumentation demonstrating the catastrophic humanitarian impacts of nuclear weapons. Its ultimate aim is to end nuclear weapon possession. A shift in the discourse is the first step towards policy and legal responses that, although they may not involve nuclear-armed States initially, will ultimately impact their behaviour. Such influence will come from the creation of new international standards and changes in the landscape of political and military cooperation that cannot be ignored.

Practitioners and researchers involved in previous humanitarian disarmament campaigns and diplomatic initiatives have looked at the elements that have contributed to past successes, and theorized the discourse changes involved.[61] Campaigners and States currently involved in changing the nuclear weapons discourse have used these lessons. Elements for building a successful process framed around humanitarian impact include: effectively mobilizing networks; using existing experience to advance causes; concentrating on the human impact of nuclear weapons, including through the use of survivor testimony; projecting credibility through quality research and practitioner perspectives; contesting current discourses to shift the burden of proof to weapons users; building diverse partnerships based on trust; and maintaining clear objectives and strategy.[62]

Reframing a disarmament problem along the lines of the acceptability of the weapon involves several aspects, and is a dynamic process, according to John Borrie, a senior researcher at the United Nations Institute for Disarmament

60 High Representative Angela Kane, The New Zealand Lectures on Disarmament, UNODA Occasional Papers, No. 26, June 2014, available at: www.un.org/disarmament/publications/occasionalpapers/en/op26.pdf.
61 See, for example, the works cited above in notes 27 and 56.
62 R. Moyes and T. Nash, above note 56.

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Research (UNIDIR).[63] These aspects include "frame bridging", which entails linking a problem to others that have been resolved in similar ways – for example, as nuclear weapons have been linked to the outlawing of other weapons of mass destruction, as well as landmines and cluster munitions.[64] "Frame amplification" involves drawing attention to the distance between a purported concern for the protection of civilians and humanitarian legal norms, and the possession of weapons of mass destruction. This has featured in statements from States on the consequences of nuclear weapons.[65] In parallel, "frame extension" seeks to match the change in discourse and action sought to the norms that States assert are important to them, aligning this change to States' interests and identities. "Frame transformation" completes the redefining of views and activities towards a convergence on consideration of a weapon's acceptability. At this point, opposition to this framing only serves to show its validity. This can be seen in the shifting nuclear weapons discourse, as dismissal by nuclear-armed States of humanitarian concerns only serves to reinforce civil society's and some governments' interpretations that current nuclear disarmament efforts are insufficiently progressive and effective.[66] Such resistance also builds confidence amongst those involved that the process of reframing is succeeding, given that there is pushback from those whose behaviour it ultimately seeks to change.

On the civil society side, this humanitarian approach has mobilized a wide range of actors to the ICAN coalition in particular, including organizations already engaged on nuclear issues, humanitarian disarmament campaigners and a new generation of nuclear disarmament activists. Having grown steadily with the humanitarian initiative, in particular over the past two years, at the time of writing ICAN comprised over 400 partners in over ninety countries, making it a significant presence in the field.[67] The humanitarian initiative has used and mobilized existing networks of trust among civil society organizations and amenable States, which have been added to and built upon in the effort to reframe the nuclear issue.[68] State and civil society activity to raise the profile of humanitarian consequences has been underpinned strategically by the humanitarian disarmament approach, its lessons and its key actors.

Limitations to discursive change

The humanitarian initiative has now generated considerable interest and buy-in from non-nuclear-armed States – and an unease from nuclear-armed States and their allies that demonstrates its growing importance. It has not, however, led to a comprehensive change in the policy discourse on nuclear weapons or universal

63 J. Borrie, above note 27.
64 *Ibid.*, p 637.
65 *Ibid.*, p 639.
66 *Ibid.*, p 643.
67 See the ICAN homepage, available at: www.icanw.org.
68 J. Borrie, above note 59, p 9.

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reframing of the problem. This is unsurprising given that it is a relatively new initiative, currently without a process such as treaty negotiations around which to rally public attention.

In public discourse, the humanitarian initiative has gained some coverage in the global media. This (as well as the humanitarian reframing's implications) had been enough of a cause for concern for Australia to take steps to try and "reset the international discourse on this issue" with an op-ed ahead of the Nayarit Conference that criticized the approach.[69] Media stories on nuclear weapons issues, however, often focus on subjects such as North Korea's possession of nuclear weapons, potential proliferation to Iran, possibilities for the conflict in Ukraine to renew Cold War-style nuclear relations, and the modernization of nuclear arsenals by the United States and United Kingdom. These are not typically covered from a humanitarian perspective but use State-security based framings and accepted ideas about who constitutes a legitimate nuclear weapons possessor.[70]

At the national level, established debate in NPT nuclear-armed States and their closest nuclear allies does not appear to have shifted far on account of the humanitarian initiative – though Australia and others clearly fear that it will. One exception may be Japan. Debate was sparked about Japan's role in nuclear disarmament when the government did not sign the humanitarian Joint Statement at the NPT in 2012, and because of its justification that the statement was incompatible with Japan's reliance on extended nuclear deterrence. Following criticism from the Mayor of Nagasaki on the anniversary of the atomic bombings of Japan in 2013, media coverage, protests and strong engagement from parliamentarians, survivors and civil society, the government decided to change its stance, signing the Joint Statement delivered at the UN General Assembly First Committee in 2013.[71] Japan's position in the global nuclear debate has become increasingly destabilized by the humanitarian initiative, with the United States, Britain and France abstaining in 2015 from its annual First Committee resolution on the abolition of nuclear weapons due to the inclusion of language on humanitarian consequences.[72]

Elsewhere, however (for example, in the United States), mainstream institutions considering nuclear policy have begun to mention the initiative, but not as the major current opportunity to advance nuclear disarmament.[73] A group

69 FOI Ref. No. 14/51952, above note 46. The op-ed was published as Julie Bishop, "We Must Engage, Not Enrage Nuclear Countries", *Sydney Morning Herald*, 14 February 2014, available at: www.smh.com.au/comment/we-must-engage-not-enrage-nuclear-countries-20140213-32n1s.html.

70 For example, Kate Brannen "How to Dismantle an Atomic Bomb? With a Money Crunch", *Foreign Policy*, 5 March 2015, available at: https://foreignpolicy.com/2015/03/05/nuclear-weapons-pentagon-modernization-money/?utm_source=Sailthru&utm_medium=email&utm_term=*Situation%20Report&utm_campaign=Sit%20Rep%20March%206%202015.

71 ICAN, "Japan to Join Humanitarian Initiative at UN First Committee", 12 October 2013, available at: www.icanw.org/campaign-news/japan-to-join-humanitarian-initiative-at-un-first-committee/.

72 "Japan Loses Support of U.S., Britain, France for U.N. Resolution on Abolishing Nukes", *Asahi Shimbun*, 4 November 2015, available at: https://ajw.asahi.com/article/behind_news/politics/AJ201511040076.

73 See, for example, recent work by the James Martin Center for Non-Proliferation Studies, Middlebury Institute of International Studies at Monterey, available at: www.nonproliferation.org.

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of French parliamentarians at a side event to the Vienna Conference emphasized the ongoing difficulty of challenging nuclear deterrence doctrines in their country.[74] This paper cannot aim to assess all national contexts, but offers some further indications from the example of the UK, where the author's organization is based.

In the UK, the humanitarian initiative has been raised by a small number of parliamentarians.[75] However, as yet it has made little impact on the debate regarding the UK's nuclear weapon modernization programme. A motion in the House of Commons in early 2015 proposing that the UK's nuclear weapons should not be renewed was rejected by 364 to thirty-seven votes following debate, indicating the deep acceptance of the UK's "deterrent" that existed across the political spectrum at that time.[76] This is coming under some challenge with the election of Scottish National Party candidates to almost all Scottish seats in the 2015 election – a party whose rejection of UK nuclear weapons includes concern about the risks and consequences of a nuclear detonation – as well as the election to the leadership of the main opposition Labour Party of a long-time anti-nuclear activist.

Responses to parliamentary questions on the UK's engagement with the humanitarian initiative say little to acknowledge the framing, emphasizing the value of nuclear weapons to the UK's security and the need to continue work within existing fora as the only option.[77] A request to publicly release the UK government's own assessments of the humanitarian impacts of any nuclear detonation has been refused on the grounds of national security and relations with "other States".[78] A cross-party commission convened by the British American Security Information Council (BASIC) – a prominent nuclear disarmament and non-proliferation UK think tank – concluded that the UK should keep its nuclear weapons.[79] Controversy was generated in the UK military establishment by the proposition from the Liberal Democrat Party that the size of the UK's nuclear submarine fleet might be reduced to three,[80] similarly showing the continued dominance of deterrence framings in UK debate.

74 Message from ten French parliamentarians from various political parties to the International Conference on the Humanitarian Impact of Nuclear Weapons, Vienna, 8–9 December 2014, delivered by Jean-Marie Collin, PNND France Coordinator, to the Parliamentary Roundtable side event held in the Austrian Parliament, available at: www.pnnd.org/sites/default/files/i/photos/events/20141209-vienna/french_parliamentarians_message_for_the_vienna_conference_-_english_tra.pdf.

75 ICAN UK, "Humanitarian Initiative Raised by MPs at Trident Debate", 22 January 2015, available at: http://uk.icanw.org/action/humanitarian-concerns-raised-by-mps-at-trident-debate/.

76 House of Commons, Ministerial Statement and Debate Summary, "Trident Renewal", Column 90, 20 January 2015, available at: www.publications.parliament.uk/pa/cm201415/cmhansrd/cm150120/debtext/150120-0001.htm.

77 Parliamentary questions and answers are archived by the Acronym Institute for Disarmament Diplomacy, available at: www.acronym.org.uk/parliamentary-records.

78 House of Commons, Written Answers to Questions, "Nuclear Weapons", Written Question 219273, 6 January 2015, available at: www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2014-12-17/219273/.

79 BASIC, "Trident Commission", available at: www.basicint.org/tridentcommission/.

80 Ewan MacAskill, "Trident Gets Thumbs Up in Report that Will Dismay Anti-Nuclear Campaigners", *The Guardian*, 1 July 2014, available at: www.theguardian.com/uk-news/2014/jul/01/trident-nuclear-missile-renewal-study.

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It seems likely that the international context must change further in order for the humanitarian discourse to seriously affect domestic considerations in the UK and other nuclear-armed States, though its destabilizing potential is more immediate for their nuclear-dependent allies. Movement from framing discussion to new actions to advance nuclear disarmament would attract greater media attention and generate public interest. It would likely impact domestic political calculations and interests more strongly than the humanitarian initiative can do currently. What these actions might be and how they could change the discourse and policy landscape further, domestically and internationally, is discussed in the final section of this paper.

The way forward for the humanitarian initiative

UK officials, in the context of deliberating whether to attend the Oslo Conference on the Humanitarian Impact of Nuclear Weapons, observed the following:

> At the heart of the "humanitarian disarmament movement" is the thread that any weapons which are indiscriminate in their effect should be outlawed. This is how the Cluster Munitions Convention campaign began. The Oslo meeting will seek to establish as gospel that nuclear weapons have such an indiscriminate effect, and must therefore be banned. So we need to establish a strong counter-narrative which reflects our broader disarmament and deterrence strategy.[81]

This is an accurate characterization of how many of those involved in pursuing a change in the nuclear weapons discourse, amongst States, legislators, international organisations and civil society, plan and expect the humanitarian initiative to progress. Argumentation for a stand-alone treaty banning nuclear weapons, with or without the participation of the nuclear-armed States, has developed alongside the humanitarian initiative.[82] For ICAN and many States, commencement of negotiations on a ban treaty is the immediate purpose of pursuing a humanitarian reframing, and ICAN's major role has been to persuade States of this objective.[83]

A treaty banning nuclear weapons would address the legal anomaly that these are the only weapons of mass destruction not specifically outlawed by a

81 Extract from an email sent on 7 January 2013 by a Foreign and Commonwealth Office official when the UK approach to the Oslo Conference was under discussion, released through an FOI request made by Brian Brady of the *Independent on Sunday*. File with author.

82 See, for example, Article 36, *Banning Nuclear Weapons*, 23 February 2013, available at: www.article36.org/wp-content/uploads/2013/02/Report_web_23.02.13.pdf; Article 36 and Reaching Critical Will, *A Treaty Banning Nuclear Weapons*, 27 April 2014, available at: www.article36.org/wp-content/uploads/2014/04/AR06_TREATY_REPORT_27.4.14.pdf.

83 Magnus Løvold, Beatrice Fihn and Thomas Nash, "Humanitarian Perspectives and the Campaign for an International Ban on Nuclear Weapons" in John Borrie and Tim Caughley (eds), *Viewing Nuclear Weapons through a Humanitarian Lens,* UNIDIR, 2013, available at: www.unidir.org/files/publications/pdfs/viewing-nuclear-weapons-through-a-humanitarian-lens-en-601.pdf.

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comprehensive international treaty.[84] It would build on existing agreements such as Nuclear Weapon Free Zone treaties, creating a global instrument that universalises their intentions. It would contribute to the stigmatization of nuclear weapons and produce further change in the global discourse. A ban treaty would also provide an effective point of mobilization in its simplicity, clear intentions and practicability. Other proposed frameworks such as the draft nuclear weapons convention require the participation of nuclear-armed States from the onset in how they are conceived, meaning that these States are able to stall progress.[85] A ban treaty, however, could be negotiated and concluded by those States who are willing to do so, even if nuclear-armed States do not join initially. By not only banning the use of these weapons but also articulating a comprehensive prohibition against them – as other weapons treaties do – it would both establish a framework and create more favourable conditions for elimination. A ban treaty could also include prohibitions on assistance with prohibited acts, such as financing companies producing nuclear weapons, which in turn would move commercial incentives away from these weapons. Furthermore, such a treaty could provide a framework for ensuring the rights of people affected by the use or testing of nuclear weapons, and for the restoration of affected environments.[86] A ban treaty would have normative and practical effects to facilitate nuclear disarmament and would fill many of the gaps in international law relevant to nuclear weapons.[87]

There is considerable support for the pursuit of the prohibition of nuclear weapons. More than seventy States have made individual statements supporting the outlawing of nuclear weapons at the time of writing. Regional groupings and organizations such as the Association of Southeast Asian Nations, the Caribbean Community and Common Market and CELAC have expressed support for prohibition.[88] The first Joint Statements on the humanitarian consequences of nuclear weapons at the NPT and UN General Assembly First Committee also called explicitly for States to work on outlawing nuclear weapons.[89] Subsequent Joint Statements by States on the humanitarian impacts of nuclear weapons have not explicitly stated this position, however, likely in order to facilitate wider support.

84 The International Court of Justice (ICJ) ruled in its 1996 Advisory Opinion on nuclear weapons, by eleven votes to three, that "there is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such". ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, *ICJ Reports 1996*, 8 July 1996, para. 99, available at: www.icj-cij.org/docket/ files/95/7495.pdf. The NPT does not explicitly or universally prohibit use or possession of nuclear weapons. For a summary of the gaps in the legal regime with respect to the prohibition of nuclear weapons, see Article 36 and Reaching Critical Will, *Filling the Legal Gap: The Prohibition of Nuclear Weapons*, London and New York, May 2015, available at: www.article36.org/wp-content/uploads/2015/05/A36-RCW-gaps-table-updated.pdf.

85 Patricia M. Lewis, "A New Approach to Nuclear Disarmament: Learning from International Humanitarian Law Success", International Commission on Nuclear Non-Proliferation and Disarmament, Paper No. 13, January 2009.

86 Article 36 and Reaching Critical Will, above note 82.

87 For a summary of the legal gaps with respect to prohibition, see *ibid.*

88 ICAN, *Support for a Ban*, available at: www.icanw.org/why-a-ban/positions/.

89 Joint Statement, above note 14; Joint Statement, above note 17.

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Not all States endorsing the need for consideration of humanitarian consequences yet support a ban, and not all those supporting the prohibition of nuclear weapons currently have the same solution in mind.[90] The Humanitarian Pledge is a call to fill the "legal gap" on the "prohibition and elimination" of nuclear weapons in the context of NPT obligations.[91] However, given that a ban treaty's negotiation does not depend on the participation of the nuclear-armed States, it presents the clearest course of action for achieving prohibition in the shortest time frame.

Contrary to the messaging of the NPT nuclear-armed States and their allies, the humanitarian initiative and the negotiation of a ban treaty would actually support the stated objectives of existing nuclear disarmament frameworks.[92] Such a treaty is clearly an object of concern to these States, and pushback on the humanitarian initiative from nuclear-armed States and their allies has increasingly included references to it. The UK, for example, did not attend the Nayarit Conference because "many supporters of the conference appear to have … prohibiting nuclear weapons outright as their ultimate goal".[93] UK representatives have also expressed concern that a ban treaty would break down the distinction between the nuclear-armed States within the NPT and the nuclear-armed States outside it, which has been a key feature of the humanitarian initiative.[94] Australia has noted in internal documents that the humanitarian initiative was being "leveraged" by ban advocates, and that "we expect momentum for a near term nuclear weapons ban treaty will grow … as more states are swayed by the simplistic call to ban nuclear weapons"; it more recently expressed concern that after the NPT Review Conference, "the pursuit of a ban treaty becomes the next cab off the rank".[95] The United States has also *démarched* its allies not to endorse the Humanitarian Pledge.[96] The commencement of negotiations itself would generate considerable

90 For example, the working paper submitted by Ireland on behalf of the New Agenda Coalition to the 2015 NPT Review Conference acknowledged a convention on nuclear weapons that delineates verifiable time-bound elimination stages from the onset as an option put forward by some. A ban treaty is also presented as an option for "achieving and maintaining a world free of nuclear weapons" in the context of the knowledge of catastrophic humanitarian consequences and an "incomplete nuclear disarmament framework". Working Paper Submitted by New Zealand on Behalf of the New Agenda Coalition (Brazil, Egypt, Ireland, Mexico, New Zealand and South Africa), UN Doc. NPT/CONF.2015/WP.9, 9 March 2015, available at: http://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/revcon2015/documents/WP9.pdf.

91 Austrian Foreign Ministry, above note 50.

92 Nick Ritchie, *The Story So Far: The Humanitarian Initiative on the Impacts of Nuclear Weapons*, ILPI–UNIDIR Vienna Conference Series, 2014, available at: www.unidir.org/files/publications/pdfs/the-story-so-far-en-616.pdf.

93 House of Commons, Written Answers to Questions, Foreign & Commonwealth Office, "Nuclear Weapons", Column 57W, 24 February 2014, available at: www.publications.parliament.uk/pa/cm201314/cmhansrd/cm140224/text/140224w0002.htm.

94 Comments by a representative of the UK at a UN General Assembly side event, October 2015. Based on notes taken by author.

95 FOI Ref. No. 14/51952, above note.46; FOI Ref. No. 15/2850, Australian Department for Foreign Affairs and Trade, 26 June 2014, available at: https://dfat.gov.au/about-us/corporate/freedom-of-information/Documents/dfat-foi-F1210.pdf.

96 ICAN, "US Attempts to Bully Allies into Inaction", 18 March 2015, available at: www.icanw.org/campaign-news/us-attempts-to-bully-allies-into-inaction/.

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attention and could begin to affect domestic political calculations.[97] In the longer term, a ban treaty would cause nuclear-armed States and their allies to lose greater control of the narrative on nuclear weapons, with unpredictable political and practical consequences for them.

The significant momentum towards a world without nuclear weapons built up by the humanitarian initiative must be channelled into action. As a way of framing the nuclear weapons problem, the humanitarian initiative has gained ground and revitalized debate, but further activity is needed in order for the initiative to generate results in terms of changes in nuclear weapon policies worldwide. Focus on a ban treaty as the most effective next step is gathering support in international fora. It is achievable, legally coherent and a logical development from the humanitarian initiative. Such a treaty could be concluded with or without the participation of the nuclear-armed States and still have highly significant normative and practical impacts. The responsibility for taking this initiative forward is with the non-nuclear-armed States, which must provide leadership, with the principled encouragement of civil society.

97 Rebecca Sharkey and Laura Boillot, "Momentum towards a Nuclear Weapons Ban Treaty: What Does It Mean for the UK?", *Sustainable Security*, 14 March 2015, available at: http://sustainablesecurity.org/2015/03/14/momentum-towards-a-nuclear-weapons-ban-treaty-what-does-it-mean-for-the-uk/.

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