

# The development of the international initiative on the humanitarian impact of nuclear weapons and its effect on the nuclear weapons debate

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## **Abstract**

*This article describes the genesis of the humanitarian initiative and the political context in which it has developed in the course of the joint cross-regional statements and the three international conferences on this issue in Norway, Mexico*

\* The views expressed in this article are those of the author and do not necessarily reflect the positions of the Austrian Foreign Ministry.

*and Austria. It examines the key substantive conclusions that have emerged as a result of this debate and assesses their relevance for the global nuclear disarmament and non-proliferation regime. It concludes that these facts and findings warrant an urgent reassessment of the so-called security value of nuclear weapons and a nuclear deterrence-based notion of stability and security.*

**Keywords:** nuclear weapons, humanitarian initiative, humanitarian impact, risk of nuclear weapons, nuclear deterrence, international humanitarian law.



That nuclear weapons detonations result in massive destruction and cause terrible humanitarian consequences is almost a moot point. It has been well known since the first use of these weapons seventy years ago in Hiroshima and Nagasaki.

It is precisely the destructive force of nuclear weapons that led to the establishment of nuclear deterrence theory during the Cold War. The knowledge that any attack would be met with devastation and death on a scale unacceptable to the adversary was the basis for “mutually assured destruction”, or MAD, as it was aptly called. For nuclear weapons possessor States as well as their allies, this notion still forms the backbone of a security policy that is based on nuclear deterrence as the “ultimate security guarantee” and as a means to maintaining a strategic – albeit precarious – stability between them. All international efforts to curb the proliferation of nuclear weapons and move towards nuclear disarmament have taken place within the parameters of maintaining nuclear deterrence and the notion that the nuclear weapons-based strategic stability should be retained.

The past few years, however, have seen an increased focus on and political interest in addressing the humanitarian impact of and the risks associated with nuclear weapons as a complement to the traditional military security-centred discourse. Since 2010, a series of international conferences dedicated to this issue have taken place. An ever-increasing number of States have signed up to cross-regional declarations expressing concern about the humanitarian consequences of nuclear weapons. Civil society, which had struggled to generate support for nuclear disarmament campaigns, has re-emerged, more energized, in the nuclear weapons debate, and academia and experts from different fields have shown an increased focus on this dimension of the issue.

The so-called humanitarian initiative has emerged as perhaps the most serious challenge to the nuclear deterrence orthodoxy. It has provided an outlet for the frustration of many States about the very limited progress on global nuclear disarmament and the lacklustre political will among nuclear possessor States to move in earnest towards a world without nuclear weaponry. Most importantly, however, it has challenged the acceptability and legitimacy of nuclear weapons and nuclear deterrence as well as a security concept that is ultimately based on mass destruction. It has done so by looking closely at the effects of nuclear weapons, the risks that come with possessing them, and the ways in which the international community would be challenged to cope with the

consequences of a nuclear detonation. In short, the concept of nuclear deterrence for the purpose of maintaining military security is juxtaposed in the context of the humanitarian discourse with up-to-date research on the scope and scale of the consequences of nuclear weapons detonation, either in cases where nuclear deterrence fails or through accidents involving nuclear weapons. This article aims to provide an overview of the development of the humanitarian initiative from the 2010 Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons (Non-Proliferation Treaty, NPT) until the 2015 NPT Review Conference, in particular the cross-regional statements on the humanitarian consequences of nuclear weapons and the three international conferences dedicated to this issue held in Norway (March 2013), Mexico (February 2014) and Vienna (December 2014). Finally, the article will present five key and possible lasting implications of the humanitarian initiative on the nuclear weapons discourse.

## Origins of the humanitarian initiative

The humanitarian consequences of nuclear weapons have arguably been a key driving force behind all efforts to address and control such weaponry, and scientists have given countless dire warnings on the matter.<sup>1</sup> Preambular paragraph 1 of the NPT encapsulates these consequences as the key motivation for agreeing to the treaty:

Considering the devastation that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard the security of peoples.<sup>2</sup>

Nevertheless, the security dimension of nuclear weapons, rather than humanitarian considerations, has dominated most of the debate in international fora until recently. The recent specific focus on the humanitarian dimension of nuclear weapons may be traced back to a speech on 20 April 2010<sup>3</sup> in which Jakob Kellenberger, the former president of the International Committee of the Red Cross (ICRC), addressed the diplomatic corps in Geneva, Switzerland. He recalled the ICRC experience as the first international humanitarian organization present in the immediate aftermath of the 1945 bombing of Hiroshima. He highlighted the inadequate capacities to address the humanitarian emergencies that would result from any use of nuclear weapons and the human and societal destruction that would ensue. In light of the humanitarian consequences, Kellenberger also

1 See, e.g., the Russell–Einstein Manifesto, 9 July 1955, available at: <http://pugwash.org/1955/07/> (all internet references were accessed in November 2015).

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

3 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](http://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*.

stressed that “the ICRC finds it difficult to envisage how any use of nuclear weapons could be compatible with the rules of international humanitarian law”.<sup>4</sup>

This speech by the president of the organization that acts as the “guardian of international humanitarian law” (IHL) was intended as, and proved to be, important input into the NPT Review Conference in May 2010. The Final Document of the Conference included “Conclusions and Recommendations for Follow-on Actions” (Action Plan) that were adopted by consensus.<sup>5</sup> The Action Plan is preceded by a set of principles and objectives to guide its implementation which includes the following statement:

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.<sup>6</sup>

This reference to the humanitarian consequences of nuclear weapons was actually the first time that the humanitarian dimension had been explicitly addressed in an NPT consensus document since the adoption of the NPT and its preambular paragraph 1 in 1968.

Moreover, the Review Conference also resolved in Action 1 of the 2010 Action Plan that “all States parties commit to pursue policies that are fully compatible with the Treaty and the objective of achieving a world without nuclear weapons”.<sup>7</sup> The expression of “concern at the catastrophic humanitarian consequences of any use of nuclear weapons”, in conjunction with Action 1, became seen as a *de facto* mandate for States to pursue the humanitarian initiative as a means to implement the NPT itself.

This last point is important in light of the divergence of views that has subsequently emerged with respect to the humanitarian initiative. The 2010 NPT Review Conference took place in an unusually dynamic atmosphere where all major stakeholders were eager to achieve a consensus result. President Obama’s speech in Prague<sup>8</sup> the year before, with its clearly articulated vision of a world without nuclear weapons, had done much to re-energize the multilateral “disarmament community”. The Russian Federation and the United States had just concluded the New START<sup>9</sup> Treaty, and international attention was very much focused on achieving concrete progress on nuclear disarmament. Consequently, the disarmament part of the Action Plan received particular attention during the 2010 NPT Review Conference. It was structured in such a

4 *Ibid.*

5 Final Document of the 2010 NPT Review Conference, NPT/CONF.2010/50, Vol. 1, 2010, p. 19, available at: [www.un.org/ga/search/view\\_doc.asp?symbol=NPT/CONF.2010/50%20%28VOL.1%29](http://www.un.org/ga/search/view_doc.asp?symbol=NPT/CONF.2010/50%20%28VOL.1%29).

6 *Ibid.*, p. 19.

7 *Ibid.*, p. 20.

8 Barack Obama, “Remarks by President Barack Obama in Prague as Delivered”, 5 April 2009, available at: [www.whitehouse.gov/the\\_press\\_office/Remarks-By-President-Barack-Obama-In-Prague-As-Delivered](http://www.whitehouse.gov/the_press_office/Remarks-By-President-Barack-Obama-In-Prague-As-Delivered).

9 Treaty between the United States of America and the Russian Federation on Measures for the Further Reduction and Limitation of Strategic Arms (New START), 8 April 2010 (entered into force 5 February 2011), available at: [www.state.gov/t/avc/newstart/c44126.htm](http://www.state.gov/t/avc/newstart/c44126.htm).

way that progress on its twenty-three action items would become more measurable, thus increasing accountability for its implementation.

Moreover, responsibility for implementing the Action Plan became more widely shared between NPT nuclear weapon States and non-nuclear weapon States. There are those action items on nuclear disarmament that only the former can do. These include reductions, changes in nuclear doctrines, risk reduction and transparency measures. However, other actions are directed to all States. Focusing on the humanitarian consequences of nuclear weapons as a means to generate momentum for nuclear disarmament and a world without nuclear weapons was one of those concrete elements that non-nuclear weapon States could, and wanted to, pursue. The States most invested in the humanitarian approach thus saw it as firmly grounded within the NPT and fully consistent with their own objective of trying to promote a strong and credible NPT.<sup>10</sup> When the humanitarian initiative was later accused by nuclear weapon States and some of their allies of being a distraction from or even undermining the NPT, the proponents of the humanitarian initiative perceived this as a particularly confrontational and unjustified characterization, especially in light of the very limited progress that had been made on the action items that were the responsibility of nuclear weapon States.

## Two tracks emerge

Building on the consensus result achieved in 2010, the humanitarian initiative was taken forward towards concrete action in April and May 2012 at the two-week-long First Preparatory Committee for the 2015 NPT Review Conference in Vienna, Austria, where two parallel tracks emerged. Firstly, Switzerland presented the first cross-regional statement by a group of sixteen States (the Group of 16) on the humanitarian dimension of nuclear disarmament.<sup>11</sup> It cited the agreement of the 2010 NPT Review Conference and built upon the arguments developed by ICRC president Kellenberger two years earlier. Secondly, Norway announced its intention to host a conference in spring 2013 to highlight the humanitarian consequences of nuclear weapons, including the incompatibility of their use under IHL.<sup>12</sup>

10 See, e.g. Joint Statement delivered by South Africa on behalf of eighty States, 24 April 2013, available at: [www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom13/statements/24April\\_SouthAfrica.pdf](http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom13/statements/24April_SouthAfrica.pdf), which reads: "Addressing the humanitarian impact of nuclear weapons is an absolute necessity. As an element that underpins the NPT, it is essential that the humanitarian consequences inform our work and actions during the current Review Cycle and beyond."

11 First Preparatory Committee for the 2015 NPT Review Conference, Joint Statement by Austria, Chile, Costa Rica, Denmark, the Holy See, Egypt, Indonesia, Ireland, Malaysia, Mexico, New Zealand, Nigeria, Norway, the Philippines, South Africa and Switzerland, 2 May 2012, available at: [www.un.org/disarmament/WMD/Nuclear/NPT2015/PrepCom2012/statements/20120502/SwitzerlandOnBehalfOf.pdf](http://www.un.org/disarmament/WMD/Nuclear/NPT2015/PrepCom2012/statements/20120502/SwitzerlandOnBehalfOf.pdf).

12 First Preparatory Committee for the 2015 NPT Review Conference, Statement by Norway, 30 April 2012, available at: [www.un.org/disarmament/WMD/Nuclear/NPT2015/PrepCom2012/statements/20120430/PM/Norway.pdf](http://www.un.org/disarmament/WMD/Nuclear/NPT2015/PrepCom2012/statements/20120430/PM/Norway.pdf).

These two diplomatic developments at the 2012 NPT meeting also coincided with the release of a study by International Physicians for the Prevention of Nuclear War (IPPNW) on the global impact of a limited nuclear war.<sup>13</sup> This report built on recent research into the climate effects of the use of nuclear weapons and demonstrated that previous studies had significantly underestimated global declines in food production and the number of people at risk of mass starvation. The study was presented at the Vienna NPT meeting and widely discussed among States and civil society representatives. It underpinned the generic concerns about the humanitarian consequences of nuclear weapons in diplomatic documents and statements with up-to-date scientific research about these consequences. The announcement of the international conference in Norway and the subsequent conferences in Mexico and Austria then provided designated fora for the development, presentation and discussion of more specific research and findings on different aspects of the humanitarian impact of nuclear weapons.

The five NPT nuclear weapon States reacted negatively to these developments. Through the strong content of the Joint Statement and the composition of the Group of 16 – States that were among the most active non-nuclear weapon States in the NPT context – it became clear that this was intended to be a serious initiative that was to be followed up in operational terms. In hindsight, it seems that this was a surprise to the NPT nuclear weapon States. They may have agreed to the humanitarian reference in the 2010 NPT Review Conference as one of the usual textual negotiating concessions on nuclear disarmament, but they apparently did not foresee that this reference would be operationalized by non-nuclear weapon States into strong cross-regional statements, followed up by international conferences and based on focused scientific research specifically dedicated to this issue.

The NPT nuclear weapon States voiced concern, *inter alia*, about the strong IHL focus of the statement, highlighting issues regarding the legality of use and the humanitarian effects of nuclear weapons. To them, it was reminiscent of the beginnings of the two past diplomatic processes that had led to legally binding comprehensive ban treaties on anti-personnel landmines<sup>14</sup> as well as cluster munitions<sup>15</sup> based on considerations of the humanitarian effects of these weapon systems.

## The cross-regional humanitarian statements

In the years between 2012 and 2015, the Group of 16 focused on outreach and increasing the number of States willing to sign up to subsequent versions of the

13 Ira Helfand, “Nuclear Famine: Two Billion People at Risk? Global Impacts of Limited Nuclear War on Agriculture, Food Supplies, and Human Nutrition”, 2nd ed., briefing paper, IPPNW and Physicians for Social Responsibility, November 2013, available at: [www.ippnw.org/nuclear-famine.html](http://www.ippnw.org/nuclear-famine.html).

14 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, 2056 UNTS 211, 18 September 1997 (entered into force 1 March 1999), available at: [www.apminebanconvention.org](http://www.apminebanconvention.org).

15 Convention on Cluster Munitions, 2688 UNTS 39, 30 May 2008 (entered into force 1 August 2010), available at: [www.clusterconvention.org](http://www.clusterconvention.org).

statement on the humanitarian consequences of nuclear weapons. Civil society undertook its own outreach activities to raise this with States. As such, key events in the multilateral nuclear disarmament calendar, such as subsequent Preparatory Meetings for the NPT as well as the annual meetings of the First Committee of the United Nations (UN) General Assembly, were used to issue similar statements with an ever-increasing number of co-signatories. At the First Committee meetings in 2012, 2013 and 2014, the Second Preparatory Committee for the NPT in 2013 and the 2015 NPT Review Conference, the number co-signing the Joint Statements had increased to thirty-four,<sup>16</sup> eighty,<sup>17</sup> 125,<sup>18</sup> 155<sup>19</sup> and 159<sup>20</sup> States respectively. This very significant increase over a relatively short period of time was testimony to the interest generated by the humanitarian approach. It thus increasingly became a politically attractive proposition – similar to a snowball effect – for States to be associated with this statement.

Content-wise, the statement did not change very much. Some changes were made in order to make it easier also for States under the so-called US “nuclear umbrella”<sup>21</sup> to support the statement. Japan, which had not signed up to the first two statements, expressed strong interest in associating itself with the 2013 statement based on a quite intensive domestic public discussion on why Japan was not among the group most proactively advocating the humanitarian concerns.<sup>22</sup> By that time, the Oslo Conference on the Humanitarian Impact of Nuclear Weapons had already taken place. The negotiations with Japan about the statement centred, in the end, around the assertion that “it is in the interest of the very survival of humanity that nuclear weapons are never used again, under any circumstances”.<sup>23</sup> Japan suggested deletion of the phrase “under any circumstances”, which it interpreted as being too far-reaching from a legalistic perspective. South Africa, which coordinated the Group of 16, argued that this reference should not be interpreted in a legalistic way, but that non-use of nuclear weapons would arguably be in the interest of humanity irrespective of varying interpretations on the legality of nuclear weapons and nuclear weapons

16 Joint Statement delivered by Switzerland on behalf of thirty-four States, 22 October 2012, available at: [www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com12/statements/22Oct\\_Switzerland.pdf](http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com12/statements/22Oct_Switzerland.pdf).

17 Joint Statement delivered by South Africa on behalf of eighty States, above note 10.

18 Joint Statement delivered by New Zealand on behalf of 125 States, 21 October 2013, available at: [www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com13/statements/21Oct\\_Joint.pdf](http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com13/statements/21Oct_Joint.pdf).

19 Joint Statement delivered by New Zealand on behalf of 155 States, 20 October 2014, available at: [http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com14/statements/20Oct\\_NewZealand.pdf](http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com14/statements/20Oct_NewZealand.pdf).

20 Joint Statement delivered by Austria on behalf of 159 States, 28 April 2015, available at: [http://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/revcon2015/statements/28April\\_Austria\\_Humanitarian.pdf](http://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/revcon2015/statements/28April_Austria_Humanitarian.pdf).

21 This refers to a guarantee by the United States to defend a non-nuclear allied state, e.g. Japan, South Korea, the North Atlantic Treaty Organization (much of Europe, Turkey, Canada), and Australia.

22 See, e.g., “Japan Finally Backs U.N. Statement against Use of Nuclear Weapons”, *Asahi Shimbun*, 22 October 2013.

23 Joint Statement delivered by Switzerland on behalf of thirty-four States, above note 16.

use. Japan, following further intense domestic debate, decided to associate itself as one of then-125 States that had co-signed the Joint Statement for the October 2013 session of the UN First Committee, which was coordinated by that time by New Zealand and also included the “under any circumstances” reference.<sup>24</sup>

A few days after Japan’s announcement, Australia came forward with the plan of an “alternative” humanitarian statement. This was presented as not being in competition with the “original” humanitarian statement but as giving a voice primarily to those US allies who wanted to express themselves on the humanitarian dimension but for whom the “New Zealand statement” was too strong. The “Australian statement” argued, as was to be expected, for the so-called “step-by-step” approach of “practical, sustained efforts towards effective disarmament”.<sup>25</sup> It also stated that “banning nuclear weapons by itself will not guarantee their elimination without engaging substantively and constructively those states with nuclear weapons, and recognising both the security and humanitarian dimensions of the nuclear weapons debate”.<sup>26</sup> This phrasing is interesting, as the notion of a “ban” without “engaging nuclear weapon States” was never part of the original humanitarian statement. It demonstrates the concern of many States under the US nuclear umbrella, as well as nuclear weapon States, that the humanitarian initiative could develop into a diplomatic process towards a prohibition of nuclear weapons possibly without the participation of nuclear weapon States.

In the end, Australia’s statement was supported by seventeen States comprising US allies as well as Sweden and Finland. Through the outreach efforts of New Zealand and others, the “original” statement’s support reached 125 States.<sup>27</sup> Even though both sides argued that the statements were not in competition, it was clear that the statement delivered by New Zealand was considered as more dynamic and promising and consequently enjoyed broader and growing support. Japan, which apparently had been surprised by Australia’s plan, in the end supported both humanitarian statements.

At the UN First Committee in autumn 2014, the next round of humanitarian statements saw the level of support for the “New Zealand statement” reach an impressive 155 supporting States. The “Australian statement” was supported by 20 States, still primarily US allies. Sweden had in the meantime switched sides to the group of 155, and Finland, like Japan, decided to support both humanitarian texts. At the 2015 NPT Review Conference, the last version of the Joint Statement to date was delivered by Austria’s foreign minister, Sebastian Kurz, on behalf of 159 States.<sup>28</sup> The Australian-led version was

24 Joint Statement delivered by New Zealand on behalf of 125 States, above note 18.

25 Joint Statement delivered by Australia on behalf of seventeen States, 21 October 2013, available at: [http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com13/statements/21Oct\\_Australia2.pdf](http://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com13/statements/21Oct_Australia2.pdf).

26 *Ibid.*

27 For a full list of all 125 States, see the Joint Statement delivered by New Zealand, above note 18.

28 Joint Statement delivered by Austria on behalf of 159 States, above note 20.



supported by twenty-four States.<sup>29</sup> Whether or not the two different versions are in competition or are complementary with each other, it is remarkable that within three years well over 180 States have felt compelled by the momentum created by the humanitarian initiative to highlight the humanitarian consequences of nuclear weapons and the need to prevent such consequences through urgent progress on nuclear disarmament. This must be considered as a significant shift in the discourse on nuclear weapons and nuclear disarmament.

## The humanitarian conferences

### *Oslo, 4–5 March 2013*

The first conference on the humanitarian impact of nuclear weapons that had been announced by Norway in spring 2012 took place in Oslo on 4 and 5 March 2013.<sup>30</sup> It was organized in a panel-style manner, with expert presentations. Delegates from 127 countries participated, along with several humanitarian UN organizations, such as the UN High Commissioner for Refugees, the UN Office for the Coordination of Humanitarian Affairs, the UN Development Programme and the World Food Programme, as well as the International Red Cross and Red Crescent Movement and civil society. The meeting had a relatively narrow focus on the immediate and wider humanitarian and developmental consequences of a nuclear weapons detonation as well as humanitarian preparedness and response. The Norwegian minister of foreign affairs, Mr Espen Barth Eide, summarized three key points that were discerned from the presentations and the discussions:

It is unlikely that any State or international body could address the immediate humanitarian emergency caused by a nuclear weapon detonation in an adequate manner and provide sufficient assistance to those affected. Moreover, it might not be possible to establish such capacities, even if it were attempted.

The historical experience from the use and testing of nuclear weapons has demonstrated their devastating immediate and long-term effects. While political circumstances have changed, the destructive potential of nuclear weapons remains.

The effects of a nuclear weapon detonation, irrespective of cause, will not be constrained by national borders, and will affect States and people in significant ways, regionally as well as globally.<sup>31</sup>

29 Joint Statement delivered by Australia on behalf of twenty-four States, 30 April 2015, available at: [http://reachingcriticalwill.org/images/documents/Disarmament-foa/npt/revcon2015/statements/30April\\_Australia.pdf](http://reachingcriticalwill.org/images/documents/Disarmament-foa/npt/revcon2015/statements/30April_Australia.pdf).

30 Oslo Conference, Chair's Summary, available at: [www.regjeringen.no/en/topics/foreign-affairs/humanitarian-efforts/humimpact\\_2013/id708603/](http://www.regjeringen.no/en/topics/foreign-affairs/humanitarian-efforts/humimpact_2013/id708603/).

31 *Ibid.*

The Norwegian hosts had been very careful to ensure that the Oslo Conference remained a facts-based discussion without conclusions of a more political character, such as how concrete progress on nuclear disarmament should be achieved. States that participated also clearly appreciated the opportunity to see the nuclear weapons issue addressed from an angle that represented their own priorities rather than the discourse that takes place in the traditional disarmament fora, such as the NPT and the Conference on Disarmament (CD). The evidence presented by the experts brought to the fore the scale of the destruction and the challenges that would have to be faced in the event of a nuclear explosion. The facts and findings presented clearly left an impression even on delegates with long experience of working on nuclear weapons. The Oslo Conference underscored that it is one thing to talk about nuclear weapons in the context of abstract security policy concepts and quite another to look in concrete terms at the evidence of what would actually happen to people and human society in the event of a nuclear detonation. Moreover, the conference also gave a forum around which civil society groups could crystallize their activities. The International Campaign to Abolish Nuclear Weapons (ICAN) had organized a civil society forum before the conference which brought together hundreds of activists.<sup>32</sup> For many participants, the Oslo Conference created a dynamic atmosphere and a sense that something of relevance was happening.

The NPT nuclear weapon States inadvertently did their part to contribute to this atmosphere through their collective boycott of the conference.<sup>33</sup> In an ill-advised display of so-called “P5 solidarity”, they communicated their concern to the Norwegian hosts that the Oslo Conference would “divert discussion away from the practical steps to create the conditions for further nuclear weapons reductions”.<sup>34</sup> Rather than constructively engaging on this issue of legitimate concern to the international community, the NPT nuclear weapon States sent a very dismissive signal by their absence and the reasons they gave for it. The absence in particular of the United States, the United Kingdom and France from a conference organized by a fellow NATO member State astonished quite a number of delegates. Views among the NPT nuclear weapon States were said to have been quite divided on the issue of attendance, with Russia and France strongly opposed and the United States and United Kingdom more in favour of participating. It appeared that the United States decided to side with Russia and France in order to maintain “solidarity” in view of the “P5 process”, a regular consultative exchange among the NPT nuclear weapon States that had been established at the 2010 Review Conference.

32 ICAN Civil Society Forum, “Farewell Oslo ¡Hasta Mexico!”, report, 14 March 2013, available at: <https://goodbyenukes.wordpress.com/>.

33 India and Pakistan, States that possess nuclear weapons but are not parties to the NPT, participated in the Oslo Conference.

34 Joint explanatory note by China, France, Russia, the United Kingdom and the United States on non-attendance at the Oslo Conference, 2013, available at: [www.reachingcriticalwill.org/images/documents/Disarmament-fora/oslo-2013/P5\\_Oslo.pdf](http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/oslo-2013/P5_Oslo.pdf).

The issue of attendance also highlighted the considerable conceptual gap between NPT nuclear weapon States and non-nuclear weapon States. The former seemed to assume that a nuclear weapons discussion without their participation would, almost by necessity, be considered a futile exercise. A boycott would thus be the obvious way to ensure that such an initiative would disappear. For many non-nuclear weapon States, however, the “P5 boycott” proved almost to a greater degree that the humanitarian approach was valid and provided a possibility to have the kind of nuclear disarmament debate that is usually stifled in other fora. Rather than weakening the humanitarian approach, the nuclear weapon States’ dismissive attitude actually provided further impetus to this non-nuclear weapon State-driven initiative. This momentum was strengthened by Mexico’s announcement in the closing session of the Oslo Conference that it would host and issue invitations to a follow-up conference.

### *Nayarit, 14–15 February 2014*

The second conference on the humanitarian impact of nuclear weapons organized by Mexico built on the format of its predecessor but expanded the scope of the discussion.<sup>35</sup> It put a strong emphasis on the experience of the *Hibakusha*, the survivors of the atomic bombs in Hiroshima and Nagasaki, dedicating an entire session to their powerful and harrowing testimonies. Nayarit also recapitulated and reinforced some of the key findings and presentations of the Oslo Conference, further highlighting the devastating short- and long-term consequences on human health, the climate, food security and social order, as well as the inadequacy of response capabilities. The United Nations Institute for Disarmament Research (UNIDIR) presented the findings of a study on the challenges for the international humanitarian system’s response to the emergencies caused by a nuclear detonation.<sup>36</sup> As an important addition, Mexico introduced the element of “risk” associated with nuclear weapons, such as through accidents or human or technical error, into the conference programme and the humanitarian discourse.

While the devastating impact of nuclear explosions is in general known – albeit neither in detail nor in its scope and gravity – the wider public and also many experts would consider the likelihood of intentional or unintentional use of nuclear weapons to be rather remote. It was therefore somewhat of an eye-opener for many participants to hear expert presentations on some of the vulnerabilities of nuclear command and control infrastructures and well as risky practices surrounding nuclear weapons and the history of near-accidents. Chatham House, the UK-based Royal Institute of International Affairs, presented a new study

35 See Second Conference on the Humanitarian Impact of Nuclear Weapons (Nayarit Conference), Chair’s Summary, presentations and selected statements, available at: <http://en.sre.gob.mx/index.php/humanimpact-nayarit-2014>.

36 See John Borrie and Tim Caughley, *An Illusion of Safety: Challenges of Nuclear Weapon Detonations for United Nations Humanitarian Coordination and Response*, UNIDIR, New York and Geneva, 2014, available at: [www.unidir.org/illusionofsafety](http://www.unidir.org/illusionofsafety).

examining sixteen historical cases of “near nuclear misses”.<sup>37</sup> US investigative journalist Eric Schlosser, who had recently published his acclaimed book *Command and Control*,<sup>38</sup> about a near-catastrophic accident at a nuclear silo in rural Arkansas, spoke to the conference via video message. Bruce Blair, a former US nuclear launch officer, explained in detail the possible risks involved in the practices and protocols of nuclear weapons decision-making, such as with respect to targeting and alert status of nuclear weapons.<sup>39</sup> Many participants appreciated for the first time the extent to which mere luck rather than planning had saved the day on several occasions in the past. Creating greater awareness about the different elements of risk was thus a key substantive contribution of the Nayarit Conference to the humanitarian impact discourse. The Mexican chair summarized these elements as follows:

Today the risk of nuclear weapons use is growing globally as a consequence of proliferation, the vulnerability of nuclear command and control networks to cyber-attacks and to human error, and potential access to nuclear weapons by non-State actors, in particular terrorist groups.

As more countries deploy more nuclear weapons on higher levels of combat readiness, the risks of accidental, mistaken, unauthorized or intentional use of these weapons grow significantly.<sup>40</sup>

Nayarit was also different to the Oslo Conference in two other important aspects. Firstly, Austria announced at the beginning of the Nayarit Conference that it would host a follow-up conference towards the end of 2014.<sup>41</sup> It was thus clear at the start of the Nayarit meeting that the humanitarian initiative was being taken forward in a sustained and accelerated manner. This announcement was widely welcomed and provided additional impetus to the discussions at the Nayarit Conference. Secondly, participation in Nayarit had increased further compared to Oslo, with the presence of 146 States and, again, many international organizations and NGOs. While very few delegations had expressed the wish to make statements in Oslo, many States now wanted an opportunity to share their views on the humanitarian impact of nuclear weapons. Most of the second day of

37 Patricia Lewis, Heather Williams, Benoit Pelopidas and Sasan Aghlani, *Too Close for Comfort: Cases of Near Nuclear Use and Options for Policy*, Royal Institute of International Affairs, April 2014, available at: [www.chathamhouse.org/sites/default/files/2014\\_0428TooCloseforComfortNuclearUseLewisWilliamsPelopidasAghlani.pdf](http://www.chathamhouse.org/sites/default/files/2014_0428TooCloseforComfortNuclearUseLewisWilliamsPelopidasAghlani.pdf).

38 Eric Schlosser, *Command and Control: Nuclear Weapons, the Damascus Accident, and the Illusion of Safety*, Penguin Press, New York, 2013.

39 See also Global Zero Commission on Nuclear Risk Reduction, *De-Alerting and Stabilizing the World's Nuclear Force Postures*, April 2015, available at: [www.globalzero.org/files/global\\_zero\\_commission\\_on\\_nuclear\\_risk\\_reduction\\_report.pdf](http://www.globalzero.org/files/global_zero_commission_on_nuclear_risk_reduction_report.pdf).

40 Nayarit Conference, Chair's Summary, above note 35.

41 Austrian Foreign Ministry, “Kurz: ‘Paradigm Shift in Nuclear Disarmament is Overdue’”, press release, 13 February 2014, available at: [www.bmeia.gv.at/en/the-ministry/press/announcements/2014/kurz-paradigm-shift-in-nuclear-disarmament-is-overdue/](http://www.bmeia.gv.at/en/the-ministry/press/announcements/2014/kurz-paradigm-shift-in-nuclear-disarmament-is-overdue/).

the conference was thus set aside for a general debate where nearly eighty delegations took the floor.<sup>42</sup>

The large number of statements gave the Nayarit Conference a more political dimension compared to its predecessor. Most statements highlighted the relevance of the humanitarian initiative, stressed that this should give further political momentum to multilateral nuclear disarmament efforts and called on the NPT nuclear weapon States to engage in the discourse. Many States also focused their speeches on the disappointing progress on nuclear disarmament and on the steps that should be taken to overcome the inertia of the multilateral disarmament fora. In this context, a large number of delegations called for new impetus and new initiatives to push for concrete progress on nuclear disarmament and achieving a world without nuclear weapons, and to put the humanitarian arguments at the centre of all such efforts.

While the NPT nuclear weapon States had continued their boycott of the humanitarian conferences,<sup>43</sup> most States allied with the United States participated again, partly in view of an increasing attention by civil society in their respective countries. These States also expressed support for the humanitarian focus but were, at the same time, at pains to reconcile this support with their role as “umbrella” States. Several of their statements highlighted the “security dimension” of nuclear weapons and the need to proceed with “realistic steps” and in an “inclusive manner”, meaning with the NPT nuclear weapon States.<sup>44</sup> These points were code for supporting the humanitarian discourse up to a point, but not if it should develop into a diplomatic process aimed at the prohibition of nuclear weapons. In this vein and coinciding with the Nayarit Conference, the Australian foreign minister, Julie Bishop, had published an op-ed entitled “We Must Engage not Enrage Nuclear Countries”.<sup>45</sup> Given that NPT nuclear weapon States had been invited and chose to boycott the conference, however, this caused significant irritation among many participants.

After a dynamic general debate, Mexico concluded the conference with a Chair’s Summary, a non-negotiated document under Mexico’s own responsibility. In addition to the substantive points that had been raised in the panel presentations, Mexico summarized the points made in statements by the delegations and added some political conclusions:

We need to take into account that, in the past, weapons have been eliminated after they have been outlawed. We believe this is the path to achieve a world without nuclear weapons.

42 Video recordings of the statements delivered at the Nayarit Conference are available at: <http://en.sre.gov.mx/index.php/humanimpact-nayarit-2014>.

43 The United States and United Kingdom were said to have seriously considered attendance and decided against it at the last minute.

44 Video recordings of the statements delivered at the Nayarit Conference available at: <http://en.sre.gov.mx/index.php/humanimpact-nayarit-2014>.

45 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](http://www.smh.com.au/comment/we-must-engage-not-enrage-nuclear-countries-20140213-32n1s.html).

In our view, this is consistent with our obligations under international law, including those derived from the NPT as well as from Common Article 1 to the Geneva Conventions. The broad-based and comprehensive discussions on the humanitarian impact of nuclear weapons should lead to the commitment of States and civil society to reach new international standards and norms, through a legally binding instrument.

It is the view of the Chair that the Nayarit Conference has shown that time has come to initiate a diplomatic process conducive to this goal. Our belief is that this process should comprise a specific timeframe, the definition of the most appropriate fora, and a clear and substantive framework, making the humanitarian impact of nuclear weapons the essence of disarmament efforts. It is time to take action. The 70th anniversary of the Hiroshima and Nagasaki attacks is the appropriate milestone to achieve our goal. Nayarit is a point of no return.<sup>46</sup>

While it was clear that these aspects of the Chair's Summary reflected the Mexican perspective on the prevailing views expressed by the delegations and did not represent a full consensus of the conference, the so-called umbrella States subsequently expressed strong criticism that their positions had not been adequately reflected. Civil society organizations, on the other hand, were delighted that the Nayarit Conference had added a political dimension to the facts-based discussions on the consequences and risks of nuclear weapons.<sup>47</sup>

### *Vienna, 8–9 December 2014*

The Nayarit Chair's Summary added some political challenges for the Austrian organizers of the subsequent conference. Those opposed to the humanitarian initiative – NPT nuclear weapon States as well as umbrella States – were openly critical of this more political turn. Their concern that the humanitarian conferences were a “slippery slope” towards initiating a diplomatic process to negotiate a nuclear weapons convention or a treaty banning nuclear weapons had increased. Umbrella States undertook frequent diplomatic démarches to Vienna to seek clarity on what exactly the Vienna Conference was going to be and whether a diplomatic/political outcome was the goal for the conference, underlining that they would not support such an approach. These States asked for reassurance that “their views” would be adequately reflected in any outcome or summary document and, at the same time, strongly encouraged Austria to reach out to the NPT nuclear weapon States.

On the other hand, many States strongly supporting the humanitarian initiative, as well as civil society, expressed the view that the usefulness of the

46 Nayarit Conference, Chair's Summary, above note 35.

47 See, e.g., ICAN, *Nayarit – A Point of No Return: Mexico Conference 2014*, report, April 2014, p. 5, available at: [www.icanw.org/wp-content/uploads/2014/04/NayaritReport-email.pdf](http://www.icanw.org/wp-content/uploads/2014/04/NayaritReport-email.pdf).

“facts-based” type of conference was probably exhausted and that the facts and findings about the impact of and risks associated with nuclear weapons required urgent action on nuclear disarmament. The next conference should thus look more closely at the question of where the humanitarian discourse was heading and which political and legal conclusions should be drawn from it. Civil society organizations, especially ICAN, were adamant that the Vienna Conference should make significant progress towards initiating a diplomatic process to negotiate a nuclear weapons ban.<sup>48</sup> Many States, on the other hand, remained non-prescriptive about what exactly the conclusions should be.

The Austrian hosts decided to deal with the broad and divergent range of expectations for the Vienna Conference in several ways. To counter the scepticism of the umbrella States, assurances were given that the Vienna Conference was not intended to initiate a diplomatic process and that the chair would attempt to reflect all views appropriately. In addition, and even though this had already been abundantly evident before, the humanitarian initiative and the Vienna Conference were put clearly in the context of the NPT. Austria, together with other stakeholders, underscored that the initiative had originated in the 2010 Action Plan and that substantive input of high relevance for the NPT was discussed at these conferences. A key objective of the Vienna Conference would thus be to consolidate the substantive elements that had been developed in the course of the different conferences as input for the 2015 NPT Review Conference, scheduled a few months after Vienna.<sup>49</sup> The clear substantive link to the NPT and the assurance about the objectives and foreseen conclusions of the Vienna Conference made it difficult for the umbrella States to distance themselves from the humanitarian initiative or even not to attend the Austrian event.

At the same time, Austria undertook focused outreach to the NPT nuclear weapon States regarding participation at the Vienna Conference, in particular to the United States. This was based on the calculation that the United States had realized that the “boycott policy” was politically harmful and seen as antagonistic by an ever-growing number of States. Given the objectives that President Obama had laid out in the Prague speech,<sup>50</sup> the argument that a focus on the humanitarian consequences of nuclear weapons was a “distraction” from the NPT had clearly begun to backfire. Moreover, the Ukraine crisis, the rejection of President Obama’s nuclear reductions proposal<sup>51</sup> by Russia and the overall deterioration of Russian–American relations meant that one of the key reasons for the United States to stay away from

48 *Ibid.*, p. 9. See also ICAN, “Nayarit Point of No Return: Mexico Conference Marks Turning Point Towards Nuclear Weapon Ban”, press release, 14 February 2014, available at: [www.icanw.org/campaign-news/nayarit-point-of-no-return-mexico-conference-marks-turning-point-towards-nuclear-weapon-ban-2/](http://www.icanw.org/campaign-news/nayarit-point-of-no-return-mexico-conference-marks-turning-point-towards-nuclear-weapon-ban-2/).

49 See, e.g., the Conference Report containing all presentations and key findings of the Vienna Conference that was prepared in time for the NPT Review Conference and which was distributed there, “Vienna Conference on the Humanitarian Impact of Nuclear Weapons, 8–9 Dec. 2014”, available at: [www.hinw14vienna.at](http://www.hinw14vienna.at).

50 B. Obama, above note 8.

51 See Barack Obama, “Remarks by President Obama at the Brandenburg Gate – Berlin, Germany”, 19 June 2013, available at: [www.whitehouse.gov/the-press-office/2013/06/19/remarks-president-obama-brandenburg-gate-berlin-germany](http://www.whitehouse.gov/the-press-office/2013/06/19/remarks-president-obama-brandenburg-gate-berlin-germany).

previous conferences – “P5 solidarity” – had weakened. As a result, the United States changed its rhetoric about the humanitarian consequences initiative somewhat after the Nayarit Conference, highlighting the awareness-raising value of this discourse. In addition, the US Department of State’s domestic efforts to generate discussion about the virtues of the Comprehensive Nuclear Test-Ban Treaty were put into the context of the health consequences of past nuclear testing, thereby opening some additional substantive entry points into the humanitarian initiative. The United States – or at least some of the advocates of the more proactive US disarmament approach – thus seemed to look for a way back into the humanitarian discourse. Moreover, the Washington-based US think tank community also started to pay more attention to the humanitarian initiative, having largely ignored it before due to the lack of US and other NPT nuclear weapon State engagement.<sup>52</sup> Regular Austrian contacts with US State Department officials in the run-up to the Vienna Conference, in conjunction with the above-mentioned developments, led to the announcement by the United States that it would attend the Vienna Conference.<sup>53</sup> With the ill-advised NPT nuclear weapon State boycott broken, the United Kingdom decided, as expected, to follow suit and participate as well.<sup>54</sup> This left the two NPT nuclear weapon States most vocally opposed to the humanitarian initiative, France and Russia, exposed as having put themselves clearly outside the new mainstream of the international nuclear weapons debate, of which the humanitarian dimension was now widely considered to be an integral part. The participation of some of the NPT nuclear weapon States, in addition to India and Pakistan, was seen as a welcome development and a further validation of the importance of the humanitarian initiative.

Overall, participation increased further at the Vienna Conference, with a total of 158 States, several international organizations, a large number of National Red Cross and Red Crescent Societies and several hundred civil society representatives, bringing attendance at the event to almost 900 persons.<sup>55</sup> Over the two days prior to the governmental conference, ICAN had hosted a civil society forum which also brought together several hundred additional disarmament activists from a broad range of organizations. Media interest also increased, partly as a function of more concerted efforts from Austria and other stakeholder wanting to promote the humanitarian initiative and partly because

52 See, e.g., Arms Control Association, “Leading Nuclear Policy Experts and Organizations Call on the United States to Participate in International Conference on Humanitarian Impacts of Nuclear Weapons”, 29 October 2014, available at: [www.armscontrol.org/pressroom/press-release/Groups-Urge-United-States-to-participate-in-Vienna-humanitarian-impacts-conference](http://www.armscontrol.org/pressroom/press-release/Groups-Urge-United-States-to-participate-in-Vienna-humanitarian-impacts-conference).

53 US Department of State, “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](http://www.state.gov/r/pa/prs/ps/2014/11/233868.htm).

54 China subsequently informed Austria officially that it would attend the conference with a former diplomat who, however, registered as an academic. China was therefore not an officially registered participant.

55 List of participants available at: [www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/HINW14\\_participants.pdf](http://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/HINW14_participants.pdf).



participation by the United States and United Kingdom generated more coverage by the major media outlets.

The agenda for the Vienna Conference aimed at recapitulating the key findings of the previous two conferences and adding aspects that had not yet been addressed in the humanitarian initiative.<sup>56</sup> In addition to statements from the *Hibakusha*,<sup>57</sup> the conference highlighted the health, environmental, social and cultural impact of past nuclear weapons testing campaigns with moving testimonies by victims from Australia, the Marshall Islands and the United States (Utah) as well as an overview of research on the different consequences of nuclear tests. Two presentations gave overviews of the current research on the mid- and long-term atmospheric, climate and subsequent food-security consequences of a nuclear war, as well as on the impact of nuclear detonations on human health. The latter also specifically highlighted the gender dimension of radiation exposure, which affects women more seriously than men.<sup>58</sup> The trans-boundary dimension of nuclear weapons detonations was highlighted through a presentation that calculated the impact of a nuclear explosion of 200 kilotons in northern Italy, based on the geographical coordinates of the NATO military base in Aviano where US nuclear weapons are stored.<sup>59</sup>

The key conclusions of these presentations were summarized by the chair as follows:

The impact of a nuclear weapon detonation, irrespective of the cause, would not be constrained by national borders and could have regional and even global consequences, causing destruction, death and displacement as well as profound and long-term damage to the environment, climate, human health and well-being, socioeconomic development, social order and could even threaten the survival of humankind.

The scope, scale and interrelationship of the humanitarian consequences caused by nuclear weapon detonation are catastrophic and more complex than

56 Vienna Conference Programme available at: [www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Aussenpolitik/Abruestung/HINW14vienna-Program.pdf](http://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Abruestung/HINW14vienna-Program.pdf).

57 Statements available at: [www.bmeia.gv.at/en/european-foreign-policy/disarmament/weapons-of-mass-destruction/nuclear-weapons-and-nuclear-terrorism/vienna-conference-on-the-humanitarian-impact-of-nuclear-weapons/statements/](http://www.bmeia.gv.at/en/european-foreign-policy/disarmament/weapons-of-mass-destruction/nuclear-weapons-and-nuclear-terrorism/vienna-conference-on-the-humanitarian-impact-of-nuclear-weapons/statements/). Setsuko Thurlow, Opening Statement, available at: [www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/HINW14\\_Speech\\_Setsuko.pdf](http://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/HINW14_Speech_Setsuko.pdf).

58 All presentations of the Vienna Conference are available at: [www.bmeia.gv.at/en/european-foreign-policy/disarmament/weapons-of-mass-destruction/nuclear-weapons-and-nuclear-terrorism/vienna-conference-on-the-humanitarian-impact-of-nuclear-weapons/presentations/](http://www.bmeia.gv.at/en/european-foreign-policy/disarmament/weapons-of-mass-destruction/nuclear-weapons-and-nuclear-terrorism/vienna-conference-on-the-humanitarian-impact-of-nuclear-weapons/presentations/).

59 Using historical weather patterns, a simulation of the explosion of a single 200-kiloton nuclear weapon was shown to lead to radioactive fallout being dispersed within a few days over large parts of Europe. Matthew McKinzie, "Calculating the Effects of a Nuclear Explosion at a European Military Base", presentation, available at: [www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/Presentations/HINW14\\_S1\\_Presentation\\_NRDC\\_ZAMG.pdf](http://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/Presentations/HINW14_S1_Presentation_NRDC_ZAMG.pdf). For US nuclear weapons in Europe, see Hans Kristensen, "Status of U.S. Nuclear Weapons in Europe 2010", Federation of American Scientists, 2010, available at: <http://fas.org/programs/ssp/nukes/images/euronukes2010.pdf>. This graph and more information is also available in Hans M. Kristensen and Matthew McKinzie, "The State of Nuclear Arsenals Today: Current Developments, Trends and Capabilities of Nuclear Weapons", in this issue of the *Review*.

commonly understood. These consequences can be large scale and potentially irreversible.

The use and testing of nuclear weapons have demonstrated their devastating immediate, mid- and long-term effects. Nuclear testing in several parts of the world has left a legacy of serious health and environmental consequences. Radioactive contamination from these tests disproportionately affects women and children. It contaminated food supplies and continues to be measurable in the atmosphere to this day.<sup>60</sup>

Following up on the discussions in Nayarit on risk, the Vienna Conference added to these aspects with, *inter alia*, presentations on nuclear doctrines, war planning and scenarios of nuclear conflict, cyber-risks, risk calculation of nuclear war and a systems analytical assessment of the risk of nuclear weapons use. Further, the challenges of responding to a nuclear detonation scenario were elaborated from different national perspectives as well as for the UN system. The chair summarized the risk discussions with these conclusions:

As long as nuclear weapons exist, there remains the possibility of a nuclear weapon explosion. Even if the probability is considered low, given the catastrophic consequences of a nuclear weapon detonation, the risk is unacceptable. The risks of accidental, mistaken, unauthorized or intentional use of nuclear weapons are evident due to the vulnerability of nuclear command and control networks to human error and cyber-attacks, the maintaining of nuclear arsenals on high levels of alert, forward deployment and their modernisation. These risks increase over time. The dangers of access to nuclear weapons and related materials by non-State actors, particularly terrorist groups, persist.

There are many circumstances in which nuclear weapons could be used in view of international conflicts and tensions, and against the background of the current security doctrines of States possessing nuclear weapons. As nuclear deterrence entails preparing for nuclear war, the risk of nuclear weapon use is real. Opportunities to reduce risk must be taken now, such as de-alerting and reducing the role of nuclear weapons in security doctrines. Limiting the role of nuclear weapons to deterrence does not remove the possibility of their use. Nor does it address the risks stemming from accidental use. The only assurance against the risk of a nuclear weapon detonation is the total elimination of nuclear weapons.

No State or international body could address in an adequate manner the immediate humanitarian emergency or long-term consequences caused by a nuclear weapon detonation in a populated area, nor provide adequate

60 Vienna Conference, Chair's Summary, available at: [www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/HINW14\\_Chair\\_s\\_Summary.pdf](http://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/HINW14_Chair_s_Summary.pdf).

assistance to those affected. Such capacity is unlikely ever to exist. Coordinated preparedness may nevertheless be useful in mitigating the effects including of a terrorist event involving the explosion of an improvised nuclear device. The imperative of prevention as the only guarantee against the humanitarian consequences of nuclear weapons use was highlighted.<sup>61</sup>

The Vienna Conference also added the international law dimension to the discussion that had been left out by the two previous conferences. Rather than having a repeat of well-rehearsed exchanges of the different opinions on how the 1996 Advisory Opinion of the International Court of Justice (ICJ)<sup>62</sup> is to be interpreted and about the legality of nuclear weapons itself, the angle taken in Vienna was to look at different perspectives on what existing international law has to say about the consequences of nuclear weapon explosions. The respective panel assessed the applicability of international environmental norms, the World Health Organization's International Health Regulations, and the principles of IHL in light of the new humanitarian findings, as well as how humanitarian considerations are addressed in existing international law regulating arms.

Another new aspect added by the Vienna Conference to the humanitarian discourse was looking at the ethical and moral principles on which international law is based and how they pertain to nuclear weapons. In the legal panel, Nobuo Hayashi from the University of Oslo advocated taking a deontological approach towards nuclear weapons effects and drawing on comparisons with the moral assessment of torture, by considering the intrinsic moral status of an act rather than the moral status of its consequences.<sup>63</sup> Moreover, Pope Francis had sent a message to the Vienna Conference that was further elaborated by a Vatican position paper presented in Vienna,<sup>64</sup> which added very significant new analysis to the assessment of the moral justification of nuclear deterrence. In what must be seen as a highly significant development, the Vatican further elaborated its position on nuclear deterrence, arguing *inter alia* that:

In the absence of further progress toward complete disarmament and without concrete steps toward a more secure and a more genuine peace, the nuclear weapon establishment has lost much of its legitimacy. ... Since what is intended is mass destruction – with extensive and lasting collateral damage, inhumane suffering and the risk of escalation – the system of nuclear deterrence can no longer be deemed a policy that stands firmly on moral ground.<sup>65</sup>

61 *Ibid.*

62 ICJ, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 8 July 1996, summary available at: [www.icj-cij.org/docket/index.php?sum=498&code=unan&p1=3&p2=4&case=95&k=e1&p3=5](http://www.icj-cij.org/docket/index.php?sum=498&code=unan&p1=3&p2=4&case=95&k=e1&p3=5).

63 Nobuo Hayashi, "The Fundamental Ethical and Moral Principles on which International Legal Regulations of Nuclear Weapons Are Based", presentation, available at: [www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/Presentations/HINW14\\_S4\\_Presentation\\_Nobuo\\_Hayashi.pdf](http://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/Presentations/HINW14_S4_Presentation_Nobuo_Hayashi.pdf).

64 Holy See, "Nuclear Disarmament: Time for Abolition", position paper, available at: [www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/HINW14\\_Holy\\_See\\_Contribution.pdf](http://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/HINW14_Holy_See_Contribution.pdf).

65 *Ibid.*, p. 4.

The Holy See position paper ended with a strong call for nuclear abolition and the “need to resist succumbing to the limits set by political realism”.<sup>66</sup>

The Austrian Chair’s Summary of the legal and moral discussion at the Vienna Conference concluded:

Looking at nuclear weapons from a number of different legal angles, it is clear that there is no comprehensive legal norm universally prohibiting possession, transfer, production and use. International environmental law remains applicable in armed conflict and can pertain to nuclear weapons, although it does not specifically regulate these arms. Likewise, international health regulations would cover effects of nuclear weapons. The new evidence that has emerged in the last two years about the humanitarian impact of nuclear weapons casts further doubt on whether these weapons could ever be used in conformity with IHL. As was the case with torture, which defeats humanity and is now unacceptable to all, the suffering caused by nuclear weapons use is not only a legal matter, it necessitates moral appraisal.

The catastrophic consequences of a nuclear weapon detonation event and the risks associated with the mere existence of these weapons raise profound ethical and moral questions on a level transcending legal discussions and interpretations.<sup>67</sup>

In the general debate session on the second day, the value of the humanitarian initiative and concern about the consequences and risks of nuclear weapons were underscored in many statements. However, the question of which political conclusions should be drawn from the substantive findings of the humanitarian discourse loomed large in the over 100 statements<sup>68</sup> by States, international organizations and civil society. Most non-nuclear weapon States used the humanitarian conclusions as arguments to reason that the existence of nuclear weapons endangered their security by posing considerable risks of unacceptable and catastrophic consequences, that the complete elimination of nuclear weapons was the only guarantee to safeguard against these consequences, and that the humanitarian focus should generate the required momentum for urgent progress on nuclear disarmament. A growing number of States as compared to Nayarit called explicitly for a prohibition against nuclear weapons. At the same time, many statements continued to leave open the question of exactly which diplomatic and legal processes should be followed to achieve this goal.

As expected, the statements by the umbrella States countered these views with more cautious statements expressing support for the humanitarian discourse but highlighting the role nuclear weapons played in their security concepts as well as the global security environment. Similar to Nayarit, their statements

66 *Ibid.*, p. 11.

67 Vienna Conference, Chair’s Summary, above note 60.

68 All statements are available at: [www.bmeia.gv.at/en/european-foreign-policy/disarmament/weapons-of-mass-destruction/nuclear-weapons-and-nuclear-terrorism/vienna-conference-on-the-humanitarian-impact-of-nuclear-weapons/statements/](http://www.bmeia.gv.at/en/european-foreign-policy/disarmament/weapons-of-mass-destruction/nuclear-weapons-and-nuclear-terrorism/vienna-conference-on-the-humanitarian-impact-of-nuclear-weapons/statements/).

argued essentially for the continuation of the so-called “step-by-step” approach to nuclear disarmament as being the most effective. The United States and United Kingdom argued along the same lines.<sup>69</sup>

In line with the assurances given prior to the Vienna Conference, the Austrian Chair’s Summary reflected both the majority and minority positions on the political perspectives. Consequently, the summary, being a non-negotiated document and containing a broader range of views, did not give a political way forward for the humanitarian initiative. Austria therefore decided to issue a national document, the Austrian Pledge,<sup>70</sup> which went beyond the summary and contained its perspective on the *inescapable conclusions* that needed to be drawn from the humanitarian evidence. The document stated, *inter alia*, that Austria

regards it as her responsibility and consequently pledges to present the facts-based discussions, findings and compelling evidence of the Vienna Conference, which builds upon the previous conferences in Oslo and Nayarit, to all relevant fora, in particular the NPT Review Conference 2015 and in the UN framework, as they should be at the centre of all deliberations, obligations and commitments with regard to nuclear disarmament. ...

Austria calls on all States parties to the NPT to renew their commitment to the urgent and full implementation of existing obligations under Article VI, and to this end, to identify and pursue effective measures to fill the legal gap for the prohibition and elimination of nuclear weapons and Austria pledges to cooperate with all stakeholders to achieve this goal. ...

Austria pledges to cooperate with all relevant stakeholders, States, international organisations, the International Red Cross and Red Crescent Movements [*sic*], parliamentarians and civil society, in efforts to stigmatise, prohibit and eliminate nuclear weapons in light of their unacceptable humanitarian consequences and associated risks.<sup>71</sup>

The document did not specify exactly what kind of diplomatic and legal process should be pursued. However, it identified the need to “fill the legal gap for the prohibition and elimination of nuclear weapons” and contained an invitation “to cooperate in efforts to stigmatise, prohibit and eliminate nuclear weapons”. In the months after the conference, Austria then undertook outreach to States to convince them to consider associating themselves with this document, which over seventy States had formally done in the months running up to the 2015 NPT Review Conference.<sup>72</sup>

69 *Ibid.*

70 Austrian Pledge available at: [www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/HINW14\\_Austrian\\_Pledge.pdf](http://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/HINW14_Austrian_Pledge.pdf).

71 *Ibid.*

72 Due to the large number of States associating themselves with this document, the Austrian Pledge was “internationalized” and renamed the Humanitarian Pledge in May 2015 during the NPT Review Conference. The list of States (120 by mid-2015) endorsing the Humanitarian Pledge is available at: [www.bmeia.gv.at/fileadmin/user\\_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/HINW14vienna\\_update\\_pledge\\_support.pdf](http://www.bmeia.gv.at/fileadmin/user_upload/Zentrale/Aussenpolitik/Abruestung/HINW14/HINW14vienna_update_pledge_support.pdf).

The Vienna Conference had thus made important progress on the humanitarian initiative in two ways. Firstly, it consolidated the substantive discussions that had taken place in the three conferences into a set of substantive and strong conclusions with respect to the humanitarian consequences of nuclear weapons, the risks associated with their existence, and the legal and moral dimensions of such weaponry. Secondly, it presented – through the line of argument contained in the Austrian Pledge – a set of political conclusions that should be drawn as a result of the humanitarian initiative. Even though all of this was done in non-negotiated and therefore non-binding documents, these issues and questions were nevertheless “out in the open” and impacting on the nuclear weapons discourse, not the least in the run-up to and during the 2015 NPT Review Conference that took place in New York from 27 April to 22 May 2015.<sup>73</sup>

### The 2015 NPT Review Conference

Even though the 2015 NPT Review Conference ended without an agreed outcome,<sup>74</sup> it demonstrated clearly the extent to which the humanitarian initiative had generated momentum since the previous Review Conference in 2010.<sup>75</sup> In addition to the two cross-regional statements of 159 and twenty-four States respectively,<sup>76</sup> over eighty delegations emphasized the importance of the humanitarian impact of nuclear weapons in their respective national statements.<sup>77</sup> Moreover, many working papers submitted to the Review Conference proposed concrete recommendations to highlight and follow up on different aspects of the humanitarian initiative.<sup>78</sup> Of particular note in this respect is Working Paper No. 30, which was introduced by a cross-regional group comprising most States of the Group of 16.<sup>79</sup> This contained a number of concrete recommendations for inclusion in a final conference outcome document. These recommendations drew heavily on the facts, findings and conclusions developed at the three conferences

73 See the 2015 NPT Review Conference website, available at: [www.un.org/en/conf/npt/2015/](http://www.un.org/en/conf/npt/2015/).

74 The US, UK and Canadian delegations stated that they were not in a position to accept the draft final document that had been presented by the chair of the conference due to issues related to the Middle East. This document subsequently became Working Paper No. 58, available at: [www.un.org/en/ga/search/view\\_doc.asp?symbol=NPT/CONF.2015/WP.58](http://www.un.org/en/ga/search/view_doc.asp?symbol=NPT/CONF.2015/WP.58). The US closing statement is available at: [www.reachingcriticalwill.org/images/documents/Disarmament-foa/npt/revcon2015/statements/22May\\_US.pdf](http://www.reachingcriticalwill.org/images/documents/Disarmament-foa/npt/revcon2015/statements/22May_US.pdf). The UK closing statement is available at: [www.reachingcriticalwill.org/images/documents/Disarmament-foa/npt/revcon2015/statements/22May\\_UK.pdf](http://www.reachingcriticalwill.org/images/documents/Disarmament-foa/npt/revcon2015/statements/22May_UK.pdf).

75 Final Document of the 2010 NPT Review Conference, above note 5.

76 Joint Statement delivered by Austria on behalf of 159 States, above note 20; Joint Statement delivered by Australia on behalf of twenty-four States, above note 20.

77 See Ray Acheson, “Editorial: We the People”, *NPT News in Review*, Vol. 13, No. 2, 2015, available at: [www.reachingcriticalwill.org/disarmament-foa/npt/2015/nir/9732-4-may-2015-vol-13-no-2](http://www.reachingcriticalwill.org/disarmament-foa/npt/2015/nir/9732-4-may-2015-vol-13-no-2).

78 See, e.g., Working Papers No. 15, 16, 27, 29, 30, 40, 42, 44 and 52, as well as national reports, available at: [www.un.org/en/conf/npt/2015/documents.shtml](http://www.un.org/en/conf/npt/2015/documents.shtml).

79 See Joint Statement by Austria *et al.*, above note 11. Norway and Denmark decided not to co-sponsor this working paper, which was, however, supported by Sweden, which had not been part of the original Group of 16. Working Paper No. 30 was finally introduced by Austria, Chile, Costa Rica, Egypt, the Holy See, Indonesia, Ireland, Malaysia, Mexico, New Zealand, Nigeria, the Philippines, South Africa, Sweden and Switzerland, available at: [www.un.org/en/conf/npt/2015/pdf/NPT%20CONF2015%20WP.30\\_E.pdf](http://www.un.org/en/conf/npt/2015/pdf/NPT%20CONF2015%20WP.30_E.pdf).

in Oslo, Nayarit and Vienna, and aimed to translate them into commitments and a call for urgent action on nuclear disarmament by all NPT States Parties.

The negotiations during the Review Conference on nuclear disarmament, however, proved to be extremely difficult. Despite the overwhelming support for the humanitarian initiative, the nuclear weapon States – albeit to a varying degree – were reluctant to engage on or even dismissive of the substantive humanitarian conclusions, namely that the new facts and findings which had emerged in the context of the three conferences demanded a greater sense of urgency for progress on nuclear disarmament. Nuclear weapon States argued,<sup>80</sup> *inter alia*, that their nuclear deterrence doctrine had been developed in full knowledge of the humanitarian consequences of nuclear weapons and that no new relevant information regarding the impact and the risks of nuclear weapons had been presented, and stressed the – in their view – significant nuclear disarmament steps they had already taken. As a consequence, they rejected the inclusion of recommendations such as those contained in Working Paper No. 30.<sup>81</sup>

Since no agreement was achieved in the subsidiary bodies of the NPT Review Conference, the disarmament negotiations were moved into an informal format during the last week of the event. A small group of the most active delegations were invited by the president of the conference, Ambassador Taous Feroukhi, to the Algerian Mission in New York to try to work out an agreement on the nuclear disarmament aspect of the conference. These negotiations – for which no records are available – failed to foster agreement on any of the nuclear disarmament issues, among which the differences of perspectives between nuclear weapon States and non-nuclear weapon States on the humanitarian initiative and how to reflect its relevance and the substantive conclusions were maybe the most contentious. Faced with a complete lack of agreement, the president stopped the negotiations two days before the end of the conference and announced that she would produce a “last ditch – take it or leave it” Final Document under her own responsibility, which she would put before the States Parties for their consideration and possible adoption.<sup>82</sup> For many States, the text that was finally submitted by the chair fell far short of expectations with regard to nuclear disarmament and the importance of the humanitarian initiative.<sup>83</sup> However, in the final plenary session of the conference, the question of the adoption of this document soon became irrelevant due to the fact that it was rejected by the US, UK and Canadian delegations because of the issue of the Middle East.<sup>84</sup>

Despite this negative outcome, the humanitarian initiative can be said to have gained significant strength and momentum during the 2015 NPT Review

80 A large part of the disarmament negotiations took place in a subsidiary body of the conference without written records. Summaries of the discussions and selected statements are available at: [www.reachingcriticalwill.org/disarmament-fora/npt/2015](http://www.reachingcriticalwill.org/disarmament-fora/npt/2015).

81 See Working Paper No. 30, above note 79.

82 Chair’s Draft Final Document, issued subsequently as Working Paper No. 58, above note 74.

83 See, e.g., the Joint Closing Statement delivered by Austria on behalf of forty-nine States at the 2015 Review Conference, 22 May 2015, available at: [www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/revcon2015/statements/22May\\_Austria.pdf](http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/npt/revcon2015/statements/22May_Austria.pdf).

84 US closing statement, above note 74; UK closing statement, above note 74.

Conference. The humanitarian impact and the risks associated with the existence of nuclear weapons were the central focus and the key innovative element of the entire Review Conference discussion, and this demonstrated clearly that the humanitarian initiative was now firmly established on the international agenda and would thus have to be an integral part of future multilateral work on nuclear weapons. In addition, one could also argue that the humanitarian initiative gained strength *because* of the predominantly negative attitude of nuclear weapon States and the lack of consensus on any of the nuclear disarmament issues. The more contentious the negotiations on nuclear disarmament became and the clearer the picture emerged that nuclear weapon States would not agree to a document with strong nuclear disarmament commitments, the stronger the support for the Humanitarian Pledge became. During the four-week conference alone, support for this document grew from seventy to 109 States – indeed, many civil society organizations referred to the Humanitarian Pledge as the real outcome of the NPT Review Conference.<sup>85</sup>

## Implications for the nuclear disarmament debate

It is remarkable how much support and interest this initiative has generated in a very short period of time. Within two and a half years, the dual track of Joint Statements and international conferences has grown from a reference in an NPT Review Conference outcome document in 2010<sup>86</sup> into a process expressly supported by over three quarters of the international community. This strong response has surprised proponents and sceptics alike. The lasting ability of the humanitarian initiative to lead to tangible progress in the intractable nuclear disarmament debate is as yet difficult to assess. There are, however, several aspects which seem to indicate that a substantial shift has indeed taken place in this debate, and that the humanitarian initiative constitutes a new – widely shared – common ground and is the basis from which the vast majority of States wish to conduct future multilateral work on nuclear weapons.

Firstly, a large part of the appeal of the humanitarian initiative, the Joint Statements and the international conferences lies in the openness of the process. In the humanitarian initiative, all States, including those that normally have a less visible role or voice in multilateral disarmament efforts, can participate and make substantive contributions from a humanitarian perspective rather than the traditional military security or nuclear deterrence-based perspective. This debate is neither substantially nor procedurally controlled, in contrast to the multilateral frameworks and treaty bodies where nuclear weapons are usually discussed.

85 See, e.g., Ray Acheson, “2015 NPT Review Conference Outcome is the Humanitarian Pledge”, *Peace and Health Blog*, IPPNW, 23 May 2015, available at: <http://peaceandhealthblog.com/2015/05/23/npt-outcome-is-pledge/>.

86 Final Document of the 2010 NPT Review Conference, above note 5, p. 19.



The Geneva-based Conference on Disarmament<sup>87</sup> that is mandated to negotiate multilateral disarmament treaties already has limited democratic legitimacy with its membership of only sixty-five States. In addition, it is set up in such a way that all decisions – even minute procedural ones – have to be taken by consensus. In part as a result of this, the CD has been unable to agree even on a programme of work, and no negotiations have taken place in this body for almost twenty years. The New York-based United Nations Disarmament Commission (UNDC)<sup>88</sup> has universal membership and the mandate to make consensus recommendations for negotiations, *inter alia*, to be taken up by the CD on nuclear disarmament. However, the UNDC has also been unable to agree on any substantive recommendations since 1999. There is a growing frustration among non-nuclear weapon States about the dysfunction of this set-up, which ensures full procedural control of the disarmament discourse by the nuclear weapon States, enabling them to deny any development that they do not support. The humanitarian initiative is a framework for non-nuclear weapon States to discuss and set an agenda on nuclear disarmament that can be followed without being procedurally stifled and even without the NPT nuclear weapon States, at least initially, participating.

Moreover, civil society organizations and academia, whose access to these fora is still limited, are not merely allowed to participate in the humanitarian initiative, but their participation and contribution is invited and welcomed as an important and vital element of a broad and societal discourse on nuclear weapons that also involves stakeholders beyond the confines of the diplomatic disarmament and arms control community. This contributes to a dynamic atmosphere in the context of the humanitarian debate against which the proceedings in the more traditional disarmament fora appear anachronistic and undemocratic.

Secondly, the development of the humanitarian initiative and its increasing momentum should also be seen in parallel with two opposing developments of recent years. As stated before, the origins of the humanitarian initiative on nuclear weapons coincided partly with President Obama's Prague speech<sup>89</sup> and the resulting reinvigoration of the multilateral nuclear disarmament debate. The relative success of the 2010 NPT Review Conference was a direct consequence of the more positive momentum and the high expectations that significant progress on nuclear disarmament would be achieved at last.

As high as expectations may have been in 2009 and 2010, however, the developments that followed did not live up to them. In the following years, it became progressively apparent that there was little determination among nuclear weapon States – though to a varying degree – to implement the concrete actions of the 2010 Action Plan with any particular urgency. Quite to the contrary,

87 For more information on the CD, see the United Nations Disarmament Commission website, available at: [www.un.org/disarmament/HomePage/DisarmamentCommission/UNDiscom.shtml](http://www.un.org/disarmament/HomePage/DisarmamentCommission/UNDiscom.shtml).

88 For more information on the UNDC, see *ibid*.

89 B. Obama, above note 8.

significant budget allocations and plans for the long-term modernization of nuclear weapons and nuclear weapons infrastructure were put in place or are being discussed in all of the NPT nuclear weapon States.<sup>90</sup> This indicated a clear intent to continue to hold on to nuclear weapons for the long term rather than to seriously pursue nuclear disarmament. These trends contributed to an increasing credibility and trust deficit among non-nuclear weapon States as to the extent to which nuclear disarmament was actually an urgent objective that was shared by all. It appeared that, similar to the disarmament promises made in the NPT Review Conferences in 1995 and 2000,<sup>91</sup> the 2010 Action Plan would again be left largely unfulfilled. The humanitarian initiative thus gained strength also as a function of the increasing credibility and trust deficit experienced by non-nuclear weapon States and as an outlet for expressing a sense of urgency with regard to nuclear disarmament.

Thirdly and perhaps most importantly, the substantive findings that have emerged in the course of the humanitarian initiative seriously challenge the nuclear deterrence orthodoxy. The case for nuclear deterrence rests on the credible threat of inflicting unacceptable destruction upon a possible adversary, thus enforcing restraint and rational behaviour on the part of all sides. The credibility of this threat is to be maintained with multiple nuclear strike and counter-strike capabilities of nuclear arsenals. All nuclear possessor States, of course, bank on the assumption that the threat alone will succeed and that these capacities will never have to be deployed. However, the credibility of the threat requires readiness to use nuclear weapons. The key findings of the humanitarian initiative highlight the serious flaws in this logic.

As established in the course of the three international conferences on the humanitarian impact of nuclear weapons, the mid- and longer-term atmospheric, climate and food-security consequences of even “limited nuclear war” would be considerably more serious than previously understood and most likely global in their effects, in addition to the immediate humanitarian emergency. The notion of credible nuclear first strike and counter-strike capabilities becomes largely irrelevant in such a context. “Winning” a nuclear conflict in the “classical” understanding of victory in a military conflict is an impossibility. In light of this new evidence, deterrence based on nuclear weapons thus rests not only on the readiness to inflict mass destruction and death on a global scale, but also on the readiness to commit, with full awareness, to an essentially suicidal course of action. This does not square with the underlying foundation of nuclear deterrence that it leads to rational behaviour on the part of all actors involved. The threat is either credible, which requires – in light of the new evidence – readiness to act

90 See, e.g., Hans M. Kristensen, “Nuclear Weapons Modernization: A Threat to the NPT?”, *Arms Control Today*, 1 May 2015, available at: [www.armscontrol.org/act/2014\\_05/Nuclear-Weapons-Modernization-A-Threat-to-the-NPT](http://www.armscontrol.org/act/2014_05/Nuclear-Weapons-Modernization-A-Threat-to-the-NPT). See also H. M. Kristensen and M. McKinzie, above note 59.

91 Final Document of the 1995 NPT Review and Extension Conference, available at: [www.un.org/disarmament/WMD/Nuclear/1995-NPT/1995NPT\\_OfficialDocs.shtml](http://www.un.org/disarmament/WMD/Nuclear/1995-NPT/1995NPT_OfficialDocs.shtml). The Final Document of the 2000 NPT Review Conference is available at: [www.un.org/disarmament/WMD/Nuclear/2000-NPT/pdf/FD-PartIand2.pdf](http://www.un.org/disarmament/WMD/Nuclear/2000-NPT/pdf/FD-PartIand2.pdf).

suicidally and hence entirely irrationally, or incredible, since rational analysis cannot lead to the conclusion of risking the use of nuclear weapons. If the consequences for friend and foe alike are essentially suicidal, the threat itself becomes incredible. What is left is the considerable danger of escalation of crisis situations to such a level of tension and the trust that in the end it will not come to the worst. However, the reasoning that governments are always rational enough to handle nuclear deterrence and that nuclear deterrence works because it makes governments always act rationally is essentially a dangerous circular argument.<sup>92</sup>

Moreover, in order to avoid these suicidal consequences, nuclear deterrence is *required* never to fail. The findings on risk that have been presented in the course of the humanitarian initiative, however, clearly show that such a requirement simply cannot be fulfilled. There is an inherent contradiction between maintaining nuclear weapons in a manner that demonstrates readiness to *always* use them, as required for the credibility of nuclear deterrence, and the need to ensure that they will *never* be used by accident or by human or technical error.<sup>93</sup> The findings on the range of different risk drivers and the examples of “near misses” have demonstrated the worrying degree to which good fortune has in the past prevented nuclear accidents or miscalculation that could have resulted in nuclear war. The measures that would be necessary to reduce the risk associated with nuclear weapons, however, are the ones that would restrict the readiness to – always – use nuclear weapons, thereby undermining the very case for nuclear deterrence.

Proponents of nuclear deterrence are thus stuck in a vicious circle of either maintaining an irresponsible and uncontrollable level of risk of inflicting suicidal global consequences, or reducing this risk, which essentially weakens the arguments in favour of nuclear deterrence itself. Added to this is the clear understanding that no capacity exists, neither among nuclear weapons possessing States or States without nuclear weapons, nor at the international level, to respond in a remotely adequate manner to the consequences of nuclear explosions, should the nuclear deterrence construct ever fail. The conclusions drawn from the humanitarian initiative thus constitute a powerful set of arguments that challenge the equation on the security dimension of nuclear weapons which still prevails in nuclear weapons possessing States. In light of these conclusions, the arguments for the retention of nuclear weapons are considered by an increasing number of States as a high-risk and ultimately irresponsible gamble based on an illusion of security and safety.

One of the concerns that NPT nuclear weapon States have voiced about the humanitarian initiative was that it could aim to make nuclear weapons illegal under IHL or lead to another attempt to invoke the ICJ. In reality, though, it is not the *legality* of nuclear weapons that has emerged as *the* core issue or *the* key result of the humanitarian initiative. Rather, the *legitimacy* of nuclear weapons and a

92 See Alexander Kmentt, “Nuclear Deterrence as a Belief System”, *Security Index (International Edition)*, Vol. 103, No. 2, 2013, available at: [www.pircenter.org/en/security-index/160-security-index](http://www.pircenter.org/en/security-index/160-security-index).

93 See Eric Schlosser, “The Most Dangerous Machines”, presentation given at Vienna Conference, available at: [www.youtube.com/watch?v=MTzblE69Q4U&index=3&list=PLOX6GHcKYM\\_vZ-oSBpe2KTzJrMxl-u6D](https://www.youtube.com/watch?v=MTzblE69Q4U&index=3&list=PLOX6GHcKYM_vZ-oSBpe2KTzJrMxl-u6D).

security approach based on nuclear deterrence has come into clear focus through the humanitarian initiative and is being profoundly challenged. Nuclear weapons have *catastrophic consequences*, their possession carries many *considerable risks*, their use would be *illegal* – except maybe for a small range of largely hypothetical scenarios – and the combination of these factors, together with the underlying readiness to commit mass destruction and mass murder, makes them *immoral*. These conclusions have gained significant ground in the international community as a result of the humanitarian initiative. The initiative thus makes the case that the mere existence of nuclear weapons poses such unacceptable dangers and risks that these weapons as such must be considered irresponsible and illegitimate. This leads to the next question, on what the best way should be to codify this *illegitimacy* into a legal framework for the prohibition and elimination of nuclear weapons. Following on from the humanitarian initiative, there should therefore be a serious, determined and urgent discussion on how this should be achieved and how progress can be made. This demand by non-nuclear weapon States is likely to be made with increasing urgency in the future.

This narrative about nuclear weapons is fundamentally different to the approach that has been advocated by NPT nuclear weapon States and their allies. The fourth significant impact of the humanitarian initiative is therefore the emergence of a clear rift in the international community on the approach towards nuclear weapons and what should be done to address the challenges posed by these weapons. States that continue to rely on nuclear weapons continue to argue for a gradual – albeit hardly credible – approach towards nuclear disarmament that essentially allows for the maintenance of nuclear deterrence.<sup>94</sup> Nevertheless, the argumentative stretch for those States who insist that they need nuclear weapons for their own security but that these weapons should be kept out of the hands of everybody else – while still maintaining that they are in favour of nuclear disarmament – has become significantly more difficult as a result of the humanitarian initiative. The humanitarian initiative has thus not only exposed a significant double standard, but also puts into focus the question of whether reliance on nuclear deterrence and professed support for nuclear disarmament are not essentially mutually exclusive concepts.

This rift between the nuclear weapon States, their allies and the vast majority of other States has crystallized in the discourse on the humanitarian impact of nuclear weapons. It will be problematic for the future of the nuclear disarmament and non-proliferation regime if this rift cannot be overcome, but this will require a clear shift in the policies of nuclear weapon States and their allies. They need to realize that, in the final analysis, one cannot have it both ways. In order to maintain global support for the NPT and the entire nuclear disarmament and non-proliferation regime, much more credibility needs to be

94 NATO, for example, has stated that “[a]s long as nuclear weapons exist, NATO will remain a nuclear alliance”. See NATO, “Active Engagement, Modern Defence: Strategic Concept for the Defence and Security of the Members of the North Atlantic Treaty Organisation adopted by Heads of State and Government in Lisbon”, 23 May 2012, available at: [www.nato.int/cps/en/natolive/official\\_texts\\_68580.htm](http://www.nato.int/cps/en/natolive/official_texts_68580.htm).

added to nuclear disarmament efforts. The alternative would be an irreparable undermining of the NPT, with the potential consequence of more and more actors seeking to develop nuclear weapons.

It is difficult to imagine how support for non-proliferation can be maintained in the long run if the NPT nuclear weapon States who also are the five permanent members of the UN Security Council and their allies continue to advocate a security concept that is increasingly seen as illegitimate by the vast majority of States. The negotiations on the Iranian nuclear programme that were conducted by the P5 plus Germany (E3/EU+3), for example, enjoyed broad support from the international community. Nevertheless, the fact – and the irony – that these are all States who stress the importance of nuclear weapons for their own security, while insisting on their unacceptability for other States, certainly did not go unnoticed. Proliferating the *concept* and the *value* of nuclear weapons through one's own actions and preaching non-proliferation at the same time is profoundly damaging for the entire nuclear disarmament and non-proliferation regime. The credibility of all non-proliferation efforts would be greatly enhanced if it were accompanied with a determined move away from nuclear weapons reliance.

This leads to the fifth and final potentially lasting impact of the humanitarian initiative: it strengthens the taboo against nuclear weapons as such. Building the case for the illegitimacy of nuclear weapons based on their consequences and associated risks works as a powerful set of arguments for disarmament and non-proliferation alike. The humanitarian focus is thus maybe the best hope to shore up support for the NPT, to create and maintain a strong nuclear disarmament and non-proliferation regime, and ultimately to move away from this form of weaponry altogether. It should be seen as a wake-up call and as an issue that unites the international community into urgent and determined action away from a reliance on nuclear weapons.