

## *Chapter Nine*

# **Dangerous and Inhumane**

## *UK Nuclear Policy and Humanitarian Nuclear Ban Strategies*

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Successive British governments have proclaimed their commitment to multilateral nuclear disarmament while castigating opponents of Trident replacement as irresponsible “unilateralists”. Playing the “multilateral not unilateral” card was easy for nuclear-weapons advocates when there was no real prospect of multilateral disarmament negotiations. This was the case in the 1980s, when nuclear policy became particularly politicised by the deployment of US nuclear-armed cruise missiles and the high cost of replacing Polaris with a new nuclear weapons system based on the American Trident ballistic missile (see chapter 3). This is not the case now. Since 2012, the United Kingdom and other nuclear-armed states have come under increasing pressure from humanitarian disarmament initiatives led by nuclear-free nations and civil society strategies involving NGOs in over one hundred countries.

Over the recent years, multilateral talks on the humanitarian impact of nuclear weapons (HINW) have been taken forward in conferences hosted by Norway, Mexico, and Austria, as well as in a UN “open-ended working group” (OEWG). The United Kingdom boycotted the multilateral talks on nuclear disarmament at the 2013 UN-mandated OEWG as well as the first two HINW conferences. At the last minute it acceded to public and parliamentary pressure and, together with the United States, attended the third humanitarian conference in Vienna in December 2014.

In the 2015 UN General Assembly, following yet another deadlocked review conference of the 1968 Non-Proliferation Treaty (NPT) and two

decades of paralysis in the Geneva-based Conference on Disarmament (CD), there were several well-supported resolutions calling for more progress on nuclear disarmament as a humanitarian imperative. The United Kingdom voted against all of them. Nonetheless, new kinds of multilateral nuclear disarmament initiatives framed in humanitarian terms are gathering momentum internationally. Despite a collective explanation of opposition from the United Kingdom and four other nuclear-armed states, the General Assembly voted overwhelmingly to establish in 2016 another OEWG to “substantively address concrete effective legal measures, legal provisions and norms that will need to be concluded to attain and maintain a world without nuclear weapons”.<sup>1</sup> The UK government’s stated concern is that humanitarian-based talks about nuclear weapons will lead to a process of multilateral negotiations “to prohibit the possession and use of nuclear weapons”.<sup>2</sup> In other words, they oppose international efforts that seek to give practical reality and implementation to the rhetoric on multilateral disarmament that successive British governments have promulgated.

These new multilateral initiatives could have fundamental consequences for British nuclear policy and the replacement of Trident. Yet they are hardly aired, despite the fact that Labour leader Jeremy Corbyn and the SNP’s leader in Westminster (and former Defence spokesperson) Angus Robertson and other parliamentarians, emergency planning officials, diplomats, and civil society leaders attended the Vienna HINW conference. Questions have been asked in the House of Commons about the humanitarian impacts of British nuclear weapons, but at the time of writing there has been little real public debate. Media and politicians on all sides cling to their familiar comfort zones with arguments on jobs, costs, and continuous-at-sea-deterrence.

The most transformative aspect of the humanitarian disarmament strategy is that it is indeed aiming to get a new, universally applicable multilateral treaty that will outlaw the use, deployment, production, and stockpiling of nuclear weapons, requiring their total elimination. By emulating elements of the Ottawa<sup>3</sup> and Oslo processes that successfully banned landmines, proponents of banning nuclear weapons argue that the global humanitarian and security threats they pose are so great that their prohibition becomes an international imperative for all governments and peoples under International Humanitarian Law. By being open to all states and blockable by none, the negotiations can go ahead even if nuclear-armed states try to block. As each of these treaties was achieved, they created important normative and legal frameworks that stigmatized those weapons and practices and changed the behaviours of militaries, defence industries, and governments around the world, including in states that have not yet signed. The United Kingdom has a pattern of joining treaties that it previously opposed.

Because the humanitarian initiatives assert that nuclear disarmament is not just the business of the nuclear-armed states, a growing number of non-

nuclear governments are keen to move forward, with or without the nine nuclear-armed states. A nuclear ban treaty under international humanitarian law would frame the prohibitions and obligations. It would not need to elaborate verification methods or detailed timelines for elimination, as these more technical aspects can be added into protocols or other legal instruments as the nuclear-armed states come on board.

This chapter outlines recent developments in the humanitarian initiatives and argues that whether UK decision makers like it or not, they need to engage. Even if the government rejects the humanitarian and security arguments against Trident replacement, leaders need to think through the likely impacts of a multilateral nuclear prohibition treaty on British nuclear policy. Public opinion is already unenthusiastic about the costs and utility of Trident. Many who have bought into the clichés about not supporting “unilateral disarmament” would welcome a multilateral nuclear prohibition treaty. If negotiations for that are on the table, support for Trident replacement would plummet, as public opinion is highly likely to want Britain to join this rather than waste billions more on a new generation of nuclear weapons. In this context, fiscal prudence as well as legal and security considerations require that all sides insist on delaying the “main gate” decisions and signing of further billion-pound contracts until they have a clearer understanding of the impact of current humanitarian disarmament initiatives on Britain’s security interests and nuclear options.

#### THE RELEVANCE OF INTERNATIONAL HUMANITARIAN LAW TO NUCLEAR WEAPONS

When some NGOs representing war veterans, humanitarian aid organisations, and disarmament and human rights advocates decided to form a broad coalition—the International Campaign to Ban Landmines (ICBL)—and work in partnership with progressive governments, they transformed international thinking about weapons and disarmament. Using and strengthening the principles and understandings of international humanitarian law, they created a humanitarian imperative to ban antipersonnel landmines, achieving the 1997 Mine Ban Treaty through an innovative process of multilateral negotiations that were open to all states and enabled the participation of civil society experts and representatives. What became known as the “Ottawa process” in tribute to Canada’s initiating role was followed by a similar “Oslo process” to ban cluster munitions in 2008.<sup>4</sup> Inevitably these successful humanitarian disarmament strategies provoked debate on whether a similar approach could accelerate progress on abolishing nuclear weapons.

Analyses in the 1990s and early 2000s tended to conclude that though some lessons could be learned, the “strategic nature” of nuclear weapons

meant that progress could not be made unless the “nuclear weapon states” (NWS) in the NPT were on board. As well as undertaking deeper cuts in arsenals when the Cold War ended, the next obvious step was the Comprehensive Test Ban Treaty (CTBT). As negotiations to ban testing got underway in 1994, non-nuclear states and civil society tried to make existing arms control and nonproliferation frameworks work better in the hope of accelerating nuclear disarmament. Some focussed on getting further nuclear-weapon-free zones, while others developed strategies to unpack the NPT’s vague Article VI text into concrete principles, objectives, and steps to provide a practical plan of action for nuclear disarmament, as well as a yardstick for measuring progress. These strategies led to tough negotiations among nuclear and non-nuclear states at NPT review conferences, resulting in NPT states parties agreeing to an indefinite extension in 1995<sup>5</sup> and then adopting “Thirteen Steps” for nuclear disarmament in 2000.<sup>6</sup> In March 1995 the CD adopted a negotiating mandate for a fissile materials treaty, which was for many years treated as the next multilateral step to take after the CTBT was opened for signature in 1996.

Since the existing disarmament machinery is clearly not working, the humanitarian approach is prepared to be innovative. Proposals for prohibiting and eliminating weapons of mass destruction are not new. They’ve been on various tables in various forms since the earliest days of the United Nations.<sup>7</sup> By 1993, multilateral treaties had been negotiated to ban the use, deployment, production, and possession of biological<sup>8</sup> and chemical<sup>9</sup> weapons. But not nuclear weapons. Intended as an interim step to stop the further spread of nuclear weapons, the NPT left nuclear weapons in an ambiguous position. They were prohibited for all the non-nuclear countries that signed, but not for five NWS acknowledged as already possessing nuclear arsenals. Reflecting Cold War politics, the NPT contained no explicit prohibitions or obligations concerning the use, deployment, transporting, stockpiling, research, or production of nuclear weapons. Article VI on nuclear disarmament was little more than a vague aspiration.<sup>10</sup>

The majority of treaties impose the same basic obligations on all. As they enter into force and accessions grow, the prohibitions and obligations come to be applied under customary international law, even to states that have not formally acceded, as occurred in the past regarding French nuclear testing in the Pacific and more recently with the use of chemical weapons in Syria. Because the NPT created two classes of states—nuclear and non-nuclear—and imposed different obligations and requirements, states that develop nuclear arsenals outside the NPT, such as India, Israel, and Pakistan, do not face customary law pressures to give up their arsenals.

The current structure and politics of nuclear nonproliferation and arms control have augmented rather than diminished the value attached to nuclear weapons by those that have or desire them. Even where there is recognition

that such weapons of mass destruction are unusable in any rational military or security scenario, their holders claim that they must be retained because of their necessary political, deterrent, and insurance value. Despite the rhetoric, the main drivers for making and deploying are military-defence lobbies and nationalist politicians seeking status and position vis-à-vis other political parties and regional neighbours. Public acceptance for nuclear weapons hinges on well-managed PR that presents deterrence theories constructed in the 1950s as if they were self-evidently true, regardless of contrary experiences and the fact that deterrence claims have been adjusted and adapted many times to embrace whatever new weapons or arsenal sizes the nuclear establishments in the different nuclear-armed states wish to justify. To question that is portrayed as a mark of stupidity, naïvety, or being weak on defence.

Humanitarian approaches question political-military justifications for deploying weapons that violate the principles of International Humanitarian Law (IHL), also known as the laws of war and the law of armed conflict. By ascertaining what certain weapons actually do, this approach offers a different way to think about security and opens up new opportunities for making progress on disarmament. As demonstrated in the Ottawa and Oslo processes, humanitarian disarmament starts with testimonies and evidence gathered from all relevant aspects so that the human and security risks, impacts, and consequences can be assessed in terms established by international law. Conclusions are drawn about whether that weapon or practice is or should be made unlawful. On that basis, the humanitarian framework not only provides a legal basis for prohibiting such weapons but also mobilises public and political opinion to demand disarmament action as a humanitarian imperative.

This approach rests on the established principles and understandings of IHL, which comprises various rules, principles, and treaties that aim, for humanitarian reasons, to limit the conduct and impacts of armed conflict and occupation.<sup>11</sup> Fundamental to IHL are the following principles: the protection of people who are not, or are no longer, participating in hostilities; and that the parties to an armed conflict do not have an unlimited right to choose their methods and means of warfare. Protocol I of the Geneva Conventions requires discrimination between civilians and combatants.<sup>12</sup> Even when targeted on military installations (“counter force” in military strategies) rather than cities (“counter value”), nuclear weapons are incapable of distinguishing between soldiers and children. Current theories of nuclear deterrence rest on the requirement that leaders believe they will be used to destroy cities full of people, and that this “threat” dissuades them from any action that might cause a nuclear-armed adversary to fire. Over subsequent years, treaties such as the Convention on Certain [Inhumane, Conventional] Weapons (CCW) contributed to the development of further principles for determining the “in-

humaneness" of certain weapons, such as causing "superfluous injury or unnecessary suffering" and "widespread, long-term and severe damage to the natural environment", further reinforcing the legal principle that "the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited".<sup>13</sup>

The uniquely long-enduring and destructive effects of nuclear weapons are germane to the humanitarian case for them to be abolished. This was clearly stated by the International Court of Justice (ICJ) when it considered the question of the legality of the use and threat of use of nuclear weapons, referred by the United Nations General Assembly in resolution 49/75K, adopted in 1994. In its advisory opinion of July 8, 1996, the ICJ described in compelling ways how nuclear weapons use would violate IHL, for example:

The destructive power of nuclear weapons cannot be contained in either space or time. They have the potential to destroy all civilization and the entire ecosystem of the planet. The radiation released by a nuclear explosion would affect health, agriculture, natural resources and demography over a very wide area. Further, the use of nuclear weapons would be a serious danger to future generations. Ionizing radiation has the potential to damage the future environment, food and marine ecosystem, and to cause genetic defects and illness in future generations.<sup>14</sup>

For reasons that are not relevant to this chapter, the ICJ determined that "in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake".<sup>15</sup> Two other unanimous parts of the ICJ's ruling are also relevant here: the first paragraph of ruling E: "the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law"; and ruling F: "There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control".<sup>16</sup>

Though the 1996 nuclear weapon case in the ICJ is relevant in certain aspects, the current humanitarian initiatives do not rely on it. Rethinking nuclear disarmament strategies arose chiefly from frustration with how the disarmament commitments of 1990 to 2000 became sidelined, while modernized nuclear weapons and further nuclear-armed states undermined hopes of a world free of nuclear weapons in anyone's lifetime. The unanimous conclusions of the ICJ were helpful, but they were overshadowed by how nuclear weapons advocates used the caveats to argue that their weapons and deterrence postures were lawful. UK governments, for example, opposed the ICJ case, but after 1997 decided to incorporate the concept of "extreme circum-

stances of self defence” into their justifications for Trident, claiming that it would only be used as a last resort.

The dismal failure of the 2005 NPT Review Conference led to a period of strategic reflection and discussions among a handful of government, civil society, and Red Cross representatives who laid the groundwork for intensifying pressure on the nuclear-armed states by reframing disarmament as a humanitarian necessity. At the 2010 NPT Review Conference, while most eyes were on the Arab League’s initiative for a conference to start work on a zone free of weapons of mass destruction in the Middle East, the nuclear states ensured the deletion of text that made overt commitments to a nuclear weapons convention or timebound framework for nuclear disarmament. They failed, however, to pay attention to two new paragraphs that framed the action plan with humanitarian language on the use of nuclear weapons, international humanitarian law, and the need for further legal instruments.

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>17</sup>

This has formed the basis for a series of widely supported joint statements in NPT meetings and the UN First Committee, as well as the conferences on the “Humanitarian Impacts of Nuclear Weapons” (HINW) held in Oslo, Nay-arit (Mexico), and Vienna in 2013 to 2014.

The 2010 NPT Review Conference conclusions provided a kind of bridge between past commitments such as the “Thirteen Steps”, which were weakened in 2010, and US president Barack Obama’s stated objective of the “peace and security of a world without nuclear weapons”.<sup>18</sup> The two first consensus actions (I and II) enshrined commitments to “pursue policies that are fully compatible with the Treaty and the objective of achieving a world without nuclear weapons” and “to apply the principles of irreversibility, verifiability, and transparency in relation to the implementation of their treaty obligations”. Following these generalities, the Conference called

on all nuclear-weapon States to undertake concrete disarmament efforts and affirms that all States need to make special efforts to establish the necessary framework to achieve and maintain a world without nuclear weapons. The Conference notes the five-point proposal for nuclear disarmament of the Secretary-General of the United Nations, which proposes, *inter alia*, consideration of negotiations on a nuclear weapons convention or agreement on a framework of separate mutually reinforcing instruments, backed by a strong system of verification.<sup>19</sup>

This strong reference introduced and framed NPT Actions 3, 4, 5, and 6, which exhorted the nuclear armed states to pursue further reductions: “and ultimately eliminate all types of nuclear weapons, deployed and non-deployed, including through unilateral, bilateral, regional and multilateral measures”; to implement the New START reductions and undertake follow-on measures and deeper reductions; to “further diminish the role and significance of nuclear weapons in all military and security concepts, doctrines and policies”; to “discuss policies that could prevent the use of nuclear weapons and eventually lead to their elimination, lessen the danger of nuclear war and contribute to the non-proliferation and disarmament of nuclear weapons”; reduce risks of “accidental use” and “further enhance transparency and increase mutual confidence”.<sup>20</sup>

### FROM OSLO TO VIENNA: PRESSURE GROWS ON THE UNITED KINGDOM

The Oslo HINW Conference in March 2013 was “considered historic in that it brought together for the first time, stakeholders from 127 states, UN agencies, international organisations and broader civil society to facilitate an informed discussion on . . . the potential humanitarian impact” of nuclear weapons.<sup>21</sup> In a 2014 Information Paper for MPs, House of Commons Library researchers further noted: “The P5 nations boycotted the meeting, arguing that that conference would ‘divert discussion and focus’ away from other disarmament fora, notably the Conference on Disarmament”.<sup>22</sup> Justifying Britain’s part in this boycott, Foreign Office Minister Alastair Burt asserted that discussing the humanitarian impacts of nuclear weapons would “divert” from the existing “step-by-step” process epitomised by the CD and the NPT, claiming that these have “proven to be the most effective means to increase stability and reduce nuclear dangers”.<sup>23</sup> These statements caused some participants to point out that the CD had only sixty-six members and had been deadlocked for nearly twenty years, that the P5 had not implemented—and in many cases reneged on—the “thirteen steps” they had negotiated and adopted at the 2000 NPT Review Conference, and that over eight thousand nuclear weapons existed forty-five years after the NPT was concluded, while proliferation had added four additional nuclear-armed states to the five that the NPT had defined.<sup>24</sup> Israel and North Korea were also absent, but India and Pakistan participated in all three HINW Conferences, including making interventions on issues such as nuclear weapons safety, security, and emergency planning. The UK boycott was later described by a senior British official as a “strategic error”.<sup>25</sup>

After hearing from humanitarian agencies such as the Red Cross, experts on radiation, medical and large-scale emergency response and management,



the chair of the 2013 Oslo Conference, Norway's Foreign Minister Espen Barth Eide, gave a brief conclusion that ticked several boxes by which nuclear weapons are inhumane under the definitions developed in international law, referring to devastating long-term effects and impacts that would not be confined to national borders and would overwhelm efforts to provide humanitarian assistance.<sup>26</sup>

The second humanitarian conference, hosted by Mexico in Nayarit on the anniversary of the Tlatelolco Treaty<sup>27</sup>, February 13–14, 2014, was attended by 146 states and numerous international agencies and civil society groups. Although there was apparently no official boycott this time, the P5, Israel, and North Korea did not attend. Coming under public and political pressure, the UK government was divided, with Liberal Democrat MPs arguing for Britain to participate and Conservative members of the Cabinet preferring P5 solidarity. France and Russia opposed participating, in the apparent belief that other states would lose interest if the P5 were absent. The British and US diplomats were less sure, since the humanitarian initiatives had been gathering steam irrespective of the P5 boycott of the Oslo Conference. At the eleventh hour they confirmed they would not attend.

A letter sent to Labour back-bencher Jeremy Corbyn on February 12, 2014, by Foreign Office Minister Hugh Robertson was more nuanced than communications before the Oslo conference, and underlined that the government "shares the deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons". Nonetheless, there was to be no participation in the Nayarit Conference because "some efforts under the humanitarian consequences initiative appear increasingly aimed at pursuing a Nuclear Weapons Convention prohibiting nuclear weapons outright".<sup>28</sup> Leaving out the discredited CD this time, Robertson argued that the best way to achieve the goal of a world without nuclear weapons was "through gradual disarmament negotiated using the NPT Step by Step process and Review cycle". Robertson's official reply to a Parliamentary Question from another Labour MP, Roger Godsiff, contained the following assertion:

The United Kingdom believes that the nuclear non-proliferation treaty (NPT) should remain the cornerstone of the international nuclear non-proliferation regime and the essential foundation for the pursuit of nuclear disarmament and for making available the benefits from the peaceful use of nuclear energy. The UK believes that attempts to establish new conferences or bodies to discuss such approaches risk undermining the full implementation of all three pillars of the non-proliferation treaty.<sup>29</sup>

Though not in official attendance, the United States and United Kingdom were well represented by expert speakers, including from the Royal Institute of International Affairs (Chatham House), American climate scientists, former nuclear missileers, doctors, and experts on nuclear accidents, miscalcu-

lation, and risk. Speakers also included “Hibakusha” (survivors) from Hiroshima and Nagasaki, the Red Cross and UN agencies dealing with humanitarian assistance, public health, and food insecurity.

Building on the Oslo conclusions, the chair of the Nayarit Conference, Mexico’s Vice Minister for Multilateral Affairs and Human Rights Juan Manuel Gómez Robledo, went further than Oslo, noting:

- The effects of a nuclear weapon detonation are not constrained by national borders—it is therefore an issue of deep concern shared by all.
- Beyond the immediate death and destruction caused by a detonation, socio-economic development will be hampered and the environment will be damaged.
- Suffering will be widespread, the poor and vulnerable being the most severely affected.
- Reconstruction of infrastructure and regeneration of economic activities, trade, communications, health facilities, and schools would take several decades, causing profound social and political harm.
- Radiation exposure could result in short- and long-term negative effects in every organ of the human body and would increase cancer risks and future hereditary pathologies.
- The risk of nuclear weapons use is growing globally as a consequence of proliferation, the vulnerability of nuclear command and control networks to cyberattacks and to human error, and potential access to nuclear weapons by nonstate actors, in particular terrorist groups.
- As more countries deploy more nuclear weapons on higher levels of combat readiness, the risks of accidental, mistaken, unauthorised, or intentional use of these weapons grow significantly.
- It is a fact that no state or international organisation has the capacity to address or provide the short- and long-term humanitarian assistance and protection needed in case of nuclear weapon explosion [and] it would not be possible to establish such capacities, even if attempted.<sup>30</sup>

Based on these facts, Mexico concluded that nuclear weapons create global insecurity and are “an issue of the utmost importance to all peoples in the world”. Robledo welcomed the Austrian foreign minister’s announcement of a third HINW conference in Vienna, and took his Chair’s prerogative somewhat further than was comfortable for some of the state participants by noting 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”. On this basis, he called for “a diplomatic process . . . [to] reach new international standards and norms, through a legally binding instrument” and indicated that “this process should comprise a specific timeframe, the definition of the most appropriate fora, and a clear and substantive frame-

work, making the humanitarian impact of nuclear weapons the essence of disarmament efforts". He concluded by declaring, "Nayarit is a point of no return".<sup>31</sup>

In the run-up to the Vienna Conference, held on December 8–9, 2014, the British and US governments came under intense pressure to participate, not only from civil society in these countries but also from some of their diplomats, elected representatives, and allies. Once again the Liberal Democrats and Conservatives in the Coalition government appeared divided. The issue was resolved when in early November the Obama administration announced that the United States would attend. On December 2, UK Foreign Secretary Philip Hammond announced that the United Kingdom's ambassador to the International Atomic Energy Agency would attend the Vienna Conference on behalf of the British government.<sup>32</sup>

The Vienna Conference was opened by the foreign minister and attended by at least 158 governments (China sent observers) and a wide range of international organisations and civil society actors. Presentations covered human health, the environment, agriculture and food security, migration and the economy, as well as the risks and likelihood of the authorised or unauthorised use of nuclear weapons and international response capabilities. Indicative of the importance now accorded to the humanitarian conferences, UN Secretary General and Pope Francis sent personal messages, and Peter Maurer, the president of the ICRC, represented it. Following the specialist panels, the closing debate invited interventions from the floor. Over a hundred governments and some representative NGOs from all round the world spoke.

For the United Kingdom, Ambassador Susan le Jeune d'Allegeershecque agreed that "devastating humanitarian consequences could result from the use of nuclear weapons", as recognised in the preamble of the NPT and outcome document of the UN's first special session on disarmament in 1978. The point, she said, was what conclusions to draw from that fact, arguing that nuclear weapons were needed to ensure "stability and security". The United Kingdom believed "that the step-by-step approach through the NPT is the only way to combine the imperatives of disarmament and of maintaining global stability". Saying that the United Kingdom "will work to create the conditions in which nuclear weapons are no longer needed", she related this to the government's commitment to "maintain a minimum credible nuclear deterrent for as long as it is necessary". Her reiteration of the promise to "reduce" UK nuclear warheads to "180 by the mid-2020s" served to illustrate, perhaps unintentionally, the government's understanding that the "step by step" process they advocated would not deliver nuclear disarmament for many decades, if ever.<sup>33</sup>

The US statement made a more conciliatory effort, recognising the "growing political will" to pursue a practical disarmament agenda. Evoking

President Obama's Prague speech, Ambassador Adam Scheinman said the United States "stands with all those here who seek the peace and security of a world without nuclear weapons". Referring to "strategic stability" with Russia, he described the 85 percent reductions in the US nuclear stockpile since "its Cold War high", and underlined the US creation of the International Partnership for Nuclear Disarmament Verification, aimed at better understanding "the technical problems of verifying nuclear disarmament agreements, and to develop solutions".<sup>34</sup> India and Pakistan also said they shared the humanitarian concerns at the conference, and advocated disarmament negotiations in the CD. This protestation of faith in the CD functions like other nuclear-armed states' mantras on "strategic stability" or "creating the conditions" for disarmament—it embeds a lofty-sounding principle in a political obstacle or unattainable condition. India and Pakistan have both blocked CD agendas, negotiations, and outcomes, not least on the CTBT and fissile material treaty.<sup>35</sup>

The way in which nuclear-armed states manipulate institutional deficits in existing disarmament machinery like the CD, NPT, and UN Disarmament Commission is a major reason why humanitarian strategists for disarmament advocate negotiations in fora that are "open to all and blockable by none", a requirement underscored in ICAN's publications and statements. In its statement to the Vienna Conference, ICAN—which now comprises over four hundred committed NGO partners in over one hundred countries—was clear that "[a] new legal instrument prohibiting nuclear weapons" is the "logical outcome of [this] examination of the risks and consequences of nuclear weapons detonation . . . [and] would constitute a long overdue implementation of the Non-Proliferation Treaty" as it would "establish a comprehensive set of prohibitions and provide a framework under which the elimination of nuclear weapons can be pursued".<sup>36</sup>

A growing number of delegations, especially from Africa, Latin America, and Asia-Pacific, agreed, putting their weight behind negotiations to ban nuclear weapons as the next step towards removing the obstacles to disarmament and elimination. In addition to the many national statements, Opanal, the Agency for the 1967 Tlatelolco Treaty and nuclear-free zone that prohibits nuclear weapons throughout Latin American and the Caribbean, summed up the challenge: "We must act to delegitimize nuclear weapons at the political level and to criminalize them as has been done in the case of other weapons of mass destruction".

The Chair's summary, delivered by Alexander Kmentt, reflected some of the disagreements in the Vienna Conference as well as summarising key conclusions in terms that left no one in doubt that nuclear weapons pose profound risks of causing catastrophic humanitarian consequences with superfluous injury, unnecessary suffering, "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". In a much longer summary, Kmentt particularly underlined "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".<sup>37</sup> Furthermore:

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 cyberattacks, the maintaining of nuclear arsenals on high levels of alert, forward deployment and their modernization. These risks increase over time. The dangers of access to nuclear weapons and related materials by non-state actors, particularly terrorist groups, persist.<sup>38</sup>

What happened next took the Vienna Conference by surprise. After Kmentt had delivered the Chair's summary, the secretary-general of Austria's Foreign Ministry, Michael Linhart, said that the facts and findings of the Conference, as well as previous HINW conferences held in Oslo and Nayarit, had convinced Austria to go a step further. Driven by "the imperative of human security for all and to promote the protection of civilians against risks stemming from nuclear weapons", Austria pledged to "cooperate with all relevant stakeholders, states, international organisations, the International Red Cross and Red Crescent Movements, parliamentarians and civil society to stigmatise, prohibit and eliminate nuclear weapons in light of their unacceptable humanitarian consequences and associated risks". To that end, Austria made a pledge to "identify and pursue effective measures to fill the legal gap for the prohibition and elimination of nuclear weapons".

Known initially as the "Austrian Pledge", the commitment to "fill the legal gap" was reissued at the 2015 NPT Review Conference as an international "Humanitarian Pledge". By the time that review conference was pronounced a failure (primarily due to disagreements on the Middle East), 107 NPT states parties had signed.

#### FILLING THE LEGAL GAP: IMPLICATIONS FOR TRIDENT REPLACEMENT

By the time the 2015 UN General Assembly opened in New York, 121 states had signed the Humanitarian Pledge to "fill the legal gap for the prohibition and elimination of nuclear weapons". Many of these were closely involved in the Ottawa and Oslo processes but had done little on nuclear issues except

engage in diplomatic rhetoric. With ICAN energising a growing number of parliamentarians and civil society groups in non-nuclear countries, they were under no illusion that signing the pledge indicated their endorsement of the objective of a nuclear ban treaty. What remained to be decided were what, when, and how.

As noted in the introduction, 138 states voted for a resolution on “taking forward multilateral nuclear disarmament negotiations” that establishes a UN subsidiary body open to all member states to “substantively address concrete effective legal measures, legal provisions and norms that will need to be concluded to attain and maintain a world without nuclear weapons”.<sup>39</sup> The United Kingdom and other nuclear-armed states voted against. In the wake of another failed NPT review conference and two decades of CD paralysis, the P5 unconvincingly told 138 UN members (and NPT states parties) that multilateral efforts to ban nuclear weapons “without the support and participation of the nuclear-weapon States would not eliminate nuclear weapons, but would rather undermine the NPT regime which is indispensable to the maintenance of international peace and security”, and argued that the UN talks would “promote nuclear disarmament whilst ignoring security considerations”.<sup>40</sup> In fact, as pointed out by some delegations, the humanitarian imperative for nuclear disarmament is fundamentally based on security considerations—for the nations without nuclear weapons as well as the few who think weapons of mass destruction are useful.

The UN talks will go ahead, with or without the cooperation and participation of the nuclear-armed states. They have only been allocated a few weeks of Palais des Nations’ time and resources to discuss the best ways forward, however, and heavy political pressure as well as chequebook diplomacy are being used by some of the nuclear-armed states to divert humanitarian initiatives into the strategic backwaters of the CD or NPT, where they can be comfortably contained and blocked. Though such pressure may frighten a few of the horses, it is unlikely to derail the growing demands for multilateral negotiations to prohibit and eliminate nuclear weapons under international humanitarian law.

The humanitarian disarmament initiatives are game-changing because they create processes that bypass the power of the weapons possessors to block legal initiatives and negotiations on disarmament. Though the P5 continually argue that this undermines the NPT, the groundwork has been carefully laid within the NPT to demonstrate that the objective is to accelerate implementation of the nonproliferation treaty’s disarmament obligations, construct a global legal and normative architecture to support, build on, and add to the existing nuclear-weapon free zones, and address concerns about nuclear proliferation, universality, safety, and security, as expressed with increasing urgency at successive NPT conferences. Since the structure and institutional deficits in the NPT and CD have made it politically and legally

unrealistic to engage all relevant states in disarmament negotiations and requirements, the humanitarian process constitutes a more realistic strategy to apply international prohibitions, norms, and requirements to the four nuclear-armed states outside the NPT.

However this turns out, Trident replacement will be affected. In conjunction with ICAN-United Kingdom, prominent British humanitarian and disarmament NGOs have published parliamentary briefings on humanitarian disarmament processes and research papers on the humanitarian impacts of various kinds of nuclear accidents or detonations, including a bomb hitting Manchester and the climate impacts if the Trident nuclear missiles on just one UK submarine in the United Kingdom were fired at six Russian cities.<sup>41</sup>

Instead of burying Britain's head in the sand and committing tens of billions of taxpayers' money to build nuclear submarines, what is needed is a strategic analysis of the world as it really is, including scenarios for how the humanitarian process to ban nuclear weapons may play out and plans for managing Britain's transition from a nuclear-armed state to a nuclear-weapon state in full compliance with our disarmament obligations under the NPT. This would have to include plans for retraining and developing different job opportunities for workforces currently tied into nuclear production and deployment, and restructuring the Atomic Weapons Establishment as a nuclear disarmament and verification laboratory (see chapter 6), as former Foreign Secretary Margaret Beckett advocated in 2007.<sup>42</sup>

Nonproliferation was the best that could be achieved in the Cold War, but the security challenges of the twenty-first century require that the use, deployment, production, stockpiling, and transporting of nuclear weapons (except for the purposes of dismantlement) be prohibited on an equal basis through multilateral negotiations. Prohibition generally precedes, paves the way, and creates the conditions for eliminating weapons. That is the intent of a nuclear ban treaty.<sup>43</sup> No one imagines it can solve every political and security challenge under the sun—any more than the NPT or CTBT. But it would constitute an important step in the right direction, and greatly strengthen the tools for preventing nuclear acquisition, use, accidents, and terrorism. Instead of Trident replacement in a world where nuclear weapons constitute a security problem, not a strategic asset, banning nuclear weapons is a multilateral step that all but the most diehard nuclear proponents should welcome.

## NOTES

1. A/C.1/70/L.13/Rev.1. "Taking Forward Multilateral Nuclear Disarmament Negotiations", The UN General Assembly vote on December 7, 2015, was 138 in favour, 12 against, and 34 abstentions, <http://www.reachingcriticalwill.org/disarmament-fora/unga/2015> [accessed January 20, 2016].

2. Ambassador Matthew Rowland, UK Permanent Representative to the Conference on Disarmament, on behalf of France, the United Kingdom, and the United States, Explanation of

vote before the vote on L.37, "Humanitarian Consequences of Nuclear Weapons", L.38 "Humanitarian Pledge for the Prohibition and Elimination of Nuclear Weapons, L.40 "Ethical imperatives for a nuclear-weapon-free world", 70th session of the United Nations General Assembly First Committee, New York, November 2, 2015), available, with the draft resolution texts and statements, from <http://www.reachingcriticalwill.org/disarmament-fora/unga/2015> [accessed January 20, 2016].

3. Richard Price, "Reversing the Gun Sights: Transnational Civil Society Targets Landmines", *International Organization* 53, no. 3 (1998): 613-44; and Maxwell A. Cameron, Robert J. Lawson, & Brian W. Tomlin (eds.), *To Walk without Fear: The Global Movement to Ban Landmines* (Toronto: Oxford University Press, 1998).

4. John Borrie, *Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions Was Won* (United Nations/UNIDIR, 2009).

5. See Jayantha Dhanapala with Randy Rydell, "Multilateral Diplomacy and the NPT: An Insider's Account", UNIDIR and SIPRI, 2005, <http://www.unidir.org/files/publications/pdfs/multilateral-diplomacy-and-the-npt-an-insider-s-account-323.pdf> [accessed January 19, 2016]; and Rebecca Johnson, *Indefinite Extension of the Non-Proliferation Treaty: Now or Never*, ACRONYM, September 7, 1995, <http://www.acronym.org.uk/acrorep/acro7.htm> [accessed January 19, 2016].

6. Rebecca Johnson, "The 2000 NPT Review Conference: A Delicate Hard-Won Compromise", *Disarmament Diplomacy* 46, London, May 2000, <http://www.acronym.org.uk/46npt.htm> [accessed January 20, 2016].

7. The UN General Assembly, in its first resolution, called for "the elimination from national armaments of atomic weapons and of all other major weapons adaptable to mass destruction."

8. The 1972 Biological and Toxin Weapons Treaty (BWC) was concluded as the Vietnam War ended. The treaty's preamble clearly highlighted its humanitarian driving force: "Convinced that such use would be repugnant to the conscience of mankind and that no effort should be spared to minimise this risk . . ." Fearing that technical and political verification challenges would be difficult to overcome, the United States and Soviet Union decided it would be better to achieve a treaty enshrining a legal and normative prohibition on the use, deployment, production, and possession of biological weapons than to hold out for a verifiable treaty and get nothing. The security, normative, and legal value of the BWC has held, despite the fact that post-Cold War efforts to negotiate a multilateral verification protocol foundered, largely due to US Republican opposition. At time of writing, the BWC has 173 states parties and 9 additional signatory states.

9. The 1993 Chemical Weapons Convention was stuck for many years before the United States and Russia agreed on technical issues relating to verification and destruction of stockpiles. During those years, Saddam Hussein used chemical weapons against Iraqi civilians and Iran. Many of the hard-fought technical and verification details in the CWC are now out of date, with the risk of unnecessary compliance challenges undermining the treaty. Currently the CWC has 192 states parties and one additional signatory state (Israel). Syria was not a CWC signatory when chemical weapons were used there in 2012 to 2013. The Assad regime subsequently agreed to the removal and destruction of its arsenal and acceded to the treaty.

10. China, France, Russia, the United Kingdom, and the United States, who are also the P5 permanent members of the UN Security Council.

11. International Justice Resource Centre, definition available at <http://www.ijrcenter.org/international-humanitarian-law/>. See also ICRC summary, "What Is International Humanitarian Law?"

12. Protocol Additional to the Geneva Conventions of August 12, 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 8, 1977.

13. Preambular paragraph 3, 1980 Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (CCW).

14. *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, 1996 ICJ Rep. 226.



15. Ruling E, second part, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, 1996 ICJ Rep. 226. Interesting discussions on this can be found in Charles J. Moxley, *Nuclear Weapons and International Law in the Post Cold War World* (Austin and Winfield, 2000); and in Rebecca Johnson and Angie Zelter (eds.), *Trident and International Law: Scotland's Obligations* (Luath Press, 2010), especially chapters by Judge Mohammed Bedjaoui, Judge Christopher G. Weeramantry, and John Burroughs.

16. *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion of 8 July 1996, 1996 ICJ Rep. 226.

17. A (principles and objectives) v, Conclusions and Recommendations for Follow-On Actions, 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Part 1, NPT/CONF.2010/50 (Vol. I)

18. President Barack Obama, Prague, April 5, 2009, available at [http://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/) [accessed January 20, 2016].

19. B (Disarmament of Nuclear Weapons) iii, Conclusions and Recommendations for Follow-On Actions, 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Part 1, NPT/CONF.2010/50 (Vol. I) [emphasis added].

20. 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Volume I, Part I, Section I B Actions 3–6.

21. “Conference on the Humanitarian Impact of Nuclear Weapons”, House of Commons Library Information, International Affairs and Defence Section, December 3, 2014, SN/IA/7028, 3. This nine-page Information was circulated to MPs before the Vienna Conference, so I have referenced it in preference to civil society materials that may have been more detailed but were less likely to have been seen by MPs.

22. “Conference on the Humanitarian Impact of Nuclear Weapons”, House of Commons Library Information, International Affairs and Defence Section, December 3, 2014, SN/IA/7028, 3.

23. See Alastair Burt’s reply to a question from Paul Flynn MP, House of Commons Written Answer to Questions, FCO: Nuclear Weapons, March 4, 2013), Column 803W [accessed from Acronym Institute website on January 20, 2016, <http://www.acronym.org.uk/parliamentary-records/201303/alastair-burt-claims-oslo-conference-humanitarian-consequences-nuclear-weapons-diverting-focus>].

24. Rebecca Johnson, “The Fetishists of Nuclear Power Projection Have Had Their Day”, *openDemocracy*, March 8, 2013, <https://www.opendemocracy.net/5050/rebecca-johnson/fetishists-of-nuclear-power-projection-have-had-their-day> [accessed January 20, 2016].

25. This assessment was made by a government minister during a meeting governed by the Chatham House rule.

26. Espen Barth Eide, Concluding Statement from the Chair of the Oslo Conference, 5 March 2013, as quoted in “Conference on the Humanitarian Impact of Nuclear Weapons”, House of Commons Library Information, International Affairs and Defence Section, December 3, 2014, SN/IA/7028, 4.

27. The Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean.

28. Letter dated January 12, 2014, from Hugh Robertson MP to Jeremy Corbyn MP regarding the Second Conference on the Humanitarian Impact of Nuclear Weapons, to be held in Mexico February 13–14, 2014, quoted in “Conference on the Humanitarian Impact of Nuclear Weapons”, House of Commons Library Information, International Affairs and Defence Section, December 3, 2014, SN/IA/7028, 7.

29. HC Deb 24 February 2014 c57W, quoted in “Conference on the Humanitarian Impact of Nuclear Weapons”, House of Commons Library Information, International Affairs and Defence Section, December 3, 2014, SN/IA/7028, 8.

30. Juan Manuel Gómez Robledo, Chair’s Summary, Second Conference on the Humanitarian Impact of Nuclear Weapons, February 14, 2014, full text accessed <http://www.acronym.org.uk/official-and-govt-documents/chairs-summary-humanitarian-impact-nuclear-weapons-conference-nayarit-mexico-february-2014> [accessed January 20, 2016]. This summary was drawn to the attention of MPs through extensive extracts reproduced in “Conference on the

Humanitarian Impact of Nuclear Weapons”, House of Commons Library Information, International Affairs and Defence Section, December 3, 2014, SN/IA/7028, 4–5.

31. *Ibid.*

32. HC Deb 2 December 2014 c156, quoted in “Conference on the Humanitarian Impact of Nuclear Weapons”, House of Commons Library Information, International Affairs and Defence Section, December 3, 2014, SN/IA/7028, 9.

33. UK intervention at Vienna Conference on the Humanitarian Impact of Nuclear Weapons, December 8–9, 2014, [http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/vienna-2014/9Dec\\_UK.pdf](http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/vienna-2014/9Dec_UK.pdf), [accessed on January 20, 2016] <http://www.reachingcriticalwill.org/disarmament-fora/hinw/vienna-2014/statements>.

34. Adam Scheinman, Special Representative of the President for Nuclear Nonproliferation, US Statement during General Debate, Vienna Humanitarian Impact of Nuclear Weapons Conference December 9, 2014, [http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/vienna-2014/9Dec\\_USA.pdf](http://www.reachingcriticalwill.org/images/documents/Disarmament-fora/vienna-2014/9Dec_USA.pdf), [accessed on January 20, 2016] <http://www.reachingcriticalwill.org/disarmament-fora/hinw/vienna-2014/statements>.

35. Rebecca Johnson, *Unfinished Business: the Negotiation of the CTBT and the End of Nuclear Testing* (United Nations, 2009).

36. Statements to the Vienna HINW Conference from India, Pakistan, and the International Campaign to Abolish Nuclear Weapons (ICAN), [accessed on January 20, 2016] <http://www.reachingcriticalwill.org/disarmament-fora/hinw/vienna-2014/statements>.

37. Austrian Federal Ministry of Foreign Affairs, Report and Summary of Findings of the Vienna Conference on the Humanitarian Impact of Nuclear Weapons, December 8–9, 2014.

38. *Ibid.*

39. A/C.1/70/L.13/Rev.1. “Taking Forward Multilateral Nuclear Disarmament Negotiations”, The UN General Assembly vote on December 7, 2015, was 138 in favour, 12 against, and 34 abstentions. <http://www.reachingcriticalwill.org/disarmament-fora/unga/2015> [accessed January 20, 2016].

40. Ambassador Alice Guitton, Ambassador, Permanent Representative of France to the Conference on Disarmament, on behalf of People’s Republic of China, the Russian Federation, the United Kingdom of Great Britain and Northern Ireland, the United States of America and France, Explanation of vote on L.13/Rev.1 “Taking Forward Multilateral Nuclear Disarmament Negotiations”, 70th Session of the United Nations General Assembly First Committee, New York, November 2, 2015, available from <http://www.reachingcriticalwill.org/disarmament-fora/unga/2015> [accessed January 20, 2016].

41. See, for example, Richard Moyes, Philip Webber, & Greg Crowther, *Humanitarian Consequences: Short Case Study of the Direct Humanitarian Impacts from a Single Nuclear Weapon Detonation on Manchester, UK* (London: Article 36, 2013); John Ainslie, *If Britain Fired Trident: The Humanitarian Catastrophe That One Trident-Armed UK Nuclear Submarine Could Cause If Used against Moscow* (Glasgow and Edinburgh: Scottish CND, 2013); Philip Webber, *The Climatic Impacts and Humanitarian Problems from the Use of the UK’s Nuclear Weapons* (Manchester: Scientists for Global Responsibility, 2013, revised ed. from SGR Winter 2008); Rebecca Johnson, *Unacceptable Risks: UK-Relevant Reports on the Humanitarian Consequences of Nuclear Weapons* (London: Acronym Institute, 2013); Frank Boulton, *Blood Transfusion Services in the Wake of the Humanitarian and Health Crisis Following Multiple Detonations of Nuclear Weapons* (London: Medact, 2013); John Large, *The Lay-Person’s Alternative Guide to REPPIR Relating to the Atomic Weapons Establishment (AWE) Aldermaston and Burghfield* (Reading: Nuclear Information Service, 2012). These reports are all available from the ICAN-UK and Acronym Institute websites.

42. Margaret Beckett, “A World Free of Nuclear Weapons?” keynote address, Carnegie Endowment for International Peace, June 25, 2007, <http://carnegieendowment.org/2007/06/25/keynote-address-world-free-of-nuclear-weapons/1o0j>.

43. Maya Brehm, “Banning Nuclear Weapons”, *Article 36* (London 2013), [http://www.article36.org/wp-content/uploads/2013/02/Report\\_web\\_23.02.13.pdf](http://www.article36.org/wp-content/uploads/2013/02/Report_web_23.02.13.pdf).