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**Reference:**

Sauer Tom, Pretorius Joelen.- Nuclear weapons and the humanitarian approach  
Global change, peace & security - ISSN 1478-1166 - 26:3(2014), p. 233-250  
Full text (Publishers DOI): <http://dx.doi.org/doi:10.1080/14781158.2014.959753>  
To cite this reference: <http://hdl.handle.net/10067/1195220151162165141>

## **Nuclear Weapons and the Humanitarian Approach (by Tom Sauer and Joeliën Pretorius)**

The concept of nuclear weapons elimination evolved from what seemed like a utopian idea during the Cold War to a goal that is regarded by more and more experts and political decision-makers, and parts of the foreign policy establishment, as desirable and not unfeasible.<sup>1</sup> But while during the Cold War nuclear weapons freezes were considered and in the closing years of the 1980s the Intermediate Nuclear Forces (INF) Treaty even resulted in the elimination of intermediate range nuclear weapons and missiles, nuclear abolition remained unthinkable.<sup>2</sup>

The implosion of the USSR and the end of the Warsaw Pact led to substantial nuclear arms control agreements in the beginning of the 1990s, both formal (START I and II) and informal (Presidential Nuclear Initiatives). However, from the mid-1990s the nuclear disarmament process stalled. Together with the further spread of nuclear weapons to states like India, Pakistan and North Korea, officially testing nuclear weapons after 1990<sup>3</sup>, and the fear of proliferation to Iran and non-state actors after 9/11, this inertia necessitated new thinking on nuclear disarmament, which is manifesting as the so-called humanitarian approach. This approach looks at nuclear disarmament through the prism of the humanitarian consequences of the use of nuclear weapons for individual human beings. The humanitarian approach assumes that any use of nuclear weapons is likely to be in breach of international humanitarian law, that on this basis states should logically agree that the use of these weapons is illegal, and that this approach can and should lead to international agreements banning, and then possibly abolishing, nuclear weapons.<sup>4</sup> Those who advocate this approach feel encouraged by the success of banning landmines and cluster munitions.<sup>5</sup>

This article provides an overview of the core ideas of the humanitarian approach. This approach is not new; the article therefore traces the origins of the humanitarian approach with respect to nuclear weapons in 1945, its decline in the 1950s, as well as the renewed interest in the idea from 2007 onwards. We will also discuss the limitations of the traditional approach of negotiations between nuclear powers, and propose an alternative approach

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<sup>1</sup> George Schultz, William Perry, Henry Kissinger, and Sam Nunn, 'Toward a Nuclear Weapon Free World', *The Wall Street Journal*, January 4, 2007.

<sup>2</sup> Avis T. Bohlen, 'Arms control in the Cold War', Foreign Policy Research Institute, May 2009. <http://www.fpri.org/articles/2009/05/arms-control-cold-war>

<sup>3</sup> India carried out a so-called civilian explosion already in 1974.

<sup>4</sup> Neil Cooper, 'Humanitarian Arms Control and Processes of Securitization', *Contemporary Security Policy*, vol.32, no.1 (April 2011), 134-58; Rebecca Johnson, 'Nuclear Weapons and International Humanitarian Law: Pursuing Disarmament as Humanitarian Action', presentation at ISODARCO Conference, January 2011; Rebecca Johnson, 'Changing the Game to Achieve Nuclear Disarmament', *IPS*, December 12, 2012; Rebecca Johnson, 'Banning Nuclear Weapons: This Time Lip Service Will Not Be Enough', *OpenDemocracy*, February 26, 2013.

<sup>5</sup> John Borrie (and others), 'Learn, Adapt, Succeed: Potential Lessons from the Ottawa and Oslo Processes for Other Disarmament and Arms Control Challenges', in: Ray Acheson, ed., *Beyond Arms Control* (New York: Reaching Critical Will, 2010), , , 197-209.

that would involve non-nuclear powers achieving a ban on nuclear weapons based on humanitarian reasons. The article ends by proposing a roadmap towards a ban on nuclear weapons which in turn may lead to a Nuclear Weapons Convention with the potential to achieve the difficult goal of abolishing nuclear weapons. The significance of this roadmap is that it starts by harnessing the agency of non-nuclear weapon states and subsequently persuading nuclear weapons states to join, starting with those most likely to join.

In line with the call to self-reflexive scholarship of Critical Security Studies' scholars most eloquently stated by Ken Booth<sup>6</sup> in the early 1990s, we do not pretend to be objective in this debate. We acknowledge an active discursive role, which we believe all scholars play, in constructing a narrative within which policies are deemed rational. The authors are unashamedly in favour of nuclear disarmament and therefore this article's tone may ring too "activist" for those who pursue value-free scholarship. We firmly believe that the end of the Cold War has politically flung open the window for nuclear disarmament. The only sensible issue for policy-makers since then, however long they may ignore or resist taking on this task, is "how to organize not an arms race, but graceful disarmament".<sup>7</sup> This article advocates the humanitarian approach as a framework that could achieve a treaty banning nuclear weapons. In turn, by deligitimizing nuclear weapons through a ban, the approach can bring about complete nuclear disarmament and prevention of future nuclear armament, i.e. nuclear abolition.

### **Destruction contrary to international humanitarian law**

Destruction in warfare is expected, but international humanitarian law has established the parameters beyond which destruction is unacceptable (or not deemed rational anymore). Although conventional weapons are largely responsible for the massive global death toll due to armed conflicts like in Afghanistan, Iraq, and Syria, there is a decisive difference between the destructive *capacity* of the most powerful conventional weapons on the one hand and atomic weapons on the other. The largest conventional weapons, like the bunker busters used by the US to hunt Osama Bin Laden in the Tora Bora mountains on the border of Afghanistan and Pakistan, have a destructive capacity of 14 ton TNT. The Hiroshima bomb, which was a rudimentary first-generation atomic bomb, had a destructive capacity of 14 000 ton TNT. Most nuclear weapons in today's arsenals are more destructive: hundreds of thousands of ton TNT up to 5 million ton TNT. The former USSR once exploded "tsar Bomba",

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<sup>6</sup> Ken Booth, 'Security and self: Reflections of a fallen realist', *YCISS Occasional Paper* 26 (October 1994), <http://yorkspace.library.yorku.ca/xmlui/bitstream/handle/10315/1414/YCI0073.pdf?sequence=1> (Retrieved 22 January 2013)

<sup>7</sup> Jutta Weldes et al, eds., *Cultures of Insecurity: States Communities and the Production of Danger* (Regents: University of Minnesota, 1999), 3.

a 50 million ton TNT device.<sup>8</sup> Although chemical and biological weapons can be more destructive than conventional weapons, they are wrongly lumped together with nuclear weapons under the label “weapons of mass destruction”. In contrast to nuclear weapons does the effect of the use of some chemical and biological weapons depend on the weather. People can also be protected against chemical weapons on the battlefield and at home; this is not feasible for nuclear weapons. The chemical weapons expert, Gert Harigel, thus argues that nuclear weapons are really the only weapons that warrants the descriptor “mass destruction”.<sup>9</sup> No other weapon system has the capacity to create harm on the scale of a full-scale nuclear war between major powers, i.e. the destruction of the earth for the purpose of human habitability.

It is not by chance that these weapons have not been used since 1945. Because of their demonstrated destructive capacity, threatening to use nuclear weapons has eclipsed rationality in warfare. Each day that nuclear weapons are not used, the norm that indicates that these weapons are too destructive to be used - the so-called nuclear taboo - becomes stronger and the risk of accidental/inadvertent use becomes unacceptably high.<sup>10</sup> As a result, threatening to use nuclear weapons becomes more and more of a hollow threat. Already during the Cold War, the norm of non-use of nuclear weapons undermined the concept of nuclear deterrence, the major paradigmatic competitor of the nuclear taboo.

Robert McNamara, US Secretary of Defense under President Kennedy and Johnson, admitted in the 1980s that he had always advised the president never to use nuclear weapons, and he believed that they had followed his advice.<sup>11</sup> If decision-makers make such declarations, it undermines the credibility of their nuclear deterrent. Similarly, Dan Quayle, US Vice-President under President H W Bush stated at a press conference during the Gulf War in February 1991 that he could not imagine President Bush ordering the use of chemical or nuclear weapons.<sup>12</sup> This statement is in particular remarkable as a couple of weeks earlier President Bush had threatened - in the form of a letter to Saddam Hussein - to use nuclear weapons in case Iraq would use chemical or biological weapons or set fire to the oil

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<sup>8</sup> It should, however, be noted that the destructive effects of nuclear weapons are not linearly proportional to yield.

<sup>9</sup> Gert G. Harigel, ‘Chemical and Biological Weapons: Use in Warfare, Impact on Society and Environment’, *Nuclear Age Peace Foundation* (November 2001),

[http://www.wagingpeace.org/articles/2001/11/00\\_harigel\\_cbw.htm](http://www.wagingpeace.org/articles/2001/11/00_harigel_cbw.htm); See also: W.K.H. Panofsky, “Dismantling the Concept of ‘Weapons of Mass Destruction’”, *Arms Control Today* (April 1998), 3-8.

<sup>10</sup> On the taboo, see: Nina Tannenwald, *The Nuclear Taboo* (Cambridge: Cambridge University Press, , 2007); Robert Lifton and Richard Falk, *Indefensible weapons* (New York: Basic Books, 1982) . On accidents, see: Eric Schlosser, *Command and control* (London: Penguin, 2013).

<sup>11</sup> Robert McNamara, ‘The Military Role of Nuclear Weapons’, *Foreign Affairs*, vol.62 (Fall 1983), 79.

<sup>12</sup> William Arkin, ‘Calculated Ambiguity: Nuclear Weapons in the Gulf War’, *The Washington Quarterly*, vol.19, no.4 (Autumn 1996), 6.

installations in Kuwait.<sup>13</sup> By making that statement, Vice-President Quayle diluted the remaining effect of the nuclear threat. The belief that nuclear weapons will be used again by states, even in last resort, is therefore questionable.

Although there is much debate about the enforceability and hence, effectiveness, of international law in general, arguably the reason why the threshold for nuclear weapons use has become unimaginably high relates to the growing respect for the laws that govern how warfare is conducted (*jus in bello* – law governing wartime conduct, or international humanitarian law).<sup>14</sup> Nuclear weapons are so destructive that their use contradicts major principles of international humanitarian law: the principle of discrimination; the principle of proportionality; the principle of doing no damage to the environment; and the principle of unnecessary suffering.

First, Protocol I of the Geneva Conventions points out that military attacks must never be directed against civilians, i.e. it demands discrimination between civilians and combatants. Nuclear weapons when used do not make this distinction – whole cities are targets.<sup>15</sup> The principle of discrimination further entails that the use of weapons should be limited to military objectives and that precautions should be taken to protect civilians from the effects of the use of weapons.<sup>16</sup> However, the long-lived radiation released by a nuclear explosion cannot be controlled in time and space and therefore cannot be limited to a military objective. As was noted by Harigel, protection against the effects of nuclear weapons is not feasible.<sup>17</sup> The International Court of Justice, in its advisory opinion on the legality of the use or threat of use of nuclear weapons in 1996, found that "in view of the unique characteristics of nuclear weapons," their use "seems scarcely reconcilable with respect" to the prohibitions of methods and means of warfare "which would preclude any distinction between civilian and military targets".<sup>18</sup>

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<sup>13</sup> Scott Sagan, 'The Commitment Trap. Why the United States Should not Use Threats to Deter Biological and Chemical Weapon Attacks', *International Security*, vol.24 (4)(Spring 2000), 91-96.

<sup>14</sup> Jozef Goldlat, 'Legal or Illegal ? The Perennial Controversy over Nuclear Weapons', *Security Dialogue*, vol.25, no.4 (1994), 397-403; Dean Granoff and Jonathan Granoff, 'International Humanitarian Law and Nuclear Weapons: Irreconcilable Differences', *The Bulletin of the Atomic Scientists*, vol.67, no.6 (2011), 53-62; Nicholas Grief, 'Nuclear Weapons: the Legal Status of Use, Threat and Possession', in: *Nuclear Abolition Forum, International Humanitarian Law and Nuclear Weapons*, no.1 (2011), 7-13. For a military point of view, see: Charles Dunlap, 'Taming Shiva: Applying International law to Nuclear Operations', *The Air Force Law Review* (1997), 157-71.

<sup>15</sup> Article 48, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

<sup>16</sup> Article 58, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

<sup>17</sup> Harigel, op cit

<sup>18</sup> Beatrice Fihn (ed), *Unspeakable Suffering - The Humanitarian Impact of Nuclear Weapons* (Geneva: Reaching Critical Will and ICAN, 2013), 71.

Second, the principle of proportionality advances the notion that an attack that would cause collateral destruction (civilian casualties and injuries and damage to civilian objects) disproportionate to the anticipated military advantage is prohibited.<sup>19</sup> Of the four International Humanitarian Law principles discussed here as the core of the humanitarian approach to nuclear disarmament, proportionality is the most difficult to establish out of context. As such, the International Court of Justice in 1996 was rather vague in its verdict on whether nuclear weapons use contradicts this principle, noting: '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'. However, 'in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitely 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>20</sup> But even under these circumstances, the Court added, nuclear weapons should be used within what is allowed by international law. The Court, on the basis of the knowledge that it had gathered, could not imagine a scenario in which the use of nuclear weapons would not violate international law.

Third, the use of methods or means of warfare that is intended, or may be expected, to cause widespread, long-term and severe damage to the natural environment is prohibited under international humanitarian law.<sup>21</sup> Already in the 1970s and 1980s, Arthur Westing provided detailed technical descriptions of the environmental damage of nuclear weapons use, and concluded that 'nuclear war must be avoided, not only as the ultimate insult to human civilization, but also as the ultimate insult to nature'.<sup>22</sup> The International Court of Justice clarified: '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

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<sup>19</sup> Jean-Marie Henckaerts and Louise Doswald-Beck, *Customary International Humanitarian Law*, Volume I: Rules (Cambridge: Cambridge University Press, 2006), 46.

<sup>20</sup> International Court of Justice 1996, in: *International Legal Materials*, vol. XXXV, no.4. The Court had no independent technical capacity to evaluate the veracity of claims by some nuclear weapon states that nuclear weapons could be used in ways which would avoid indiscriminate persistent consequences. One year later, the US National Academy of Sciences in a Congressionally mandated investigation of the planned US Robust Nuclear Earth-Penetrator concluded that reliable containment of radioactivity from earth-penetrating nuclear warheads was not technically feasible. See, US National Academy of Sciences, *The Future of U.S. Nuclear Weapons Policy*, Washington DC, 1997, p.87.

<sup>21</sup> Article 55, Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), 8 June 1977.

<sup>22</sup> Arthur Westing, *Arthur H. Westing: Pioneer on the Environmental Impact of War* (London: Springer, , 2013), 91.

potential to damage the future environment, food and marine ecosystem, and to cause generic defects and illness in future generations' ... 'Nuclear weapons are incompatible with elementary considerations of humanity', the Court concluded.<sup>23</sup> More recently scientists warn that even small nuclear detonations and regional exchanges may have "significant climatic anomalies on global scales" and result in "substantial perturbations of global ozone".<sup>24</sup>

Fourth, the use of weapons that cause "superfluous injury and unnecessary suffering" is prohibited under international humanitarian law. In fact, along with proportionality, the ICJ considers this a 'cardinal principle(s) ... constituting the fabric of humanitarian law.'<sup>25</sup> The explosion, fire and radiation effects of nuclear weapons use, however, yield exactly such injuries and suffering. The health effects<sup>26</sup> on victims of the Hiroshima and Nagasaki bombs, children born to the survivors, as well as victims of the fall-out as a result of nuclear tests, are well documented and provide ample testimony of the unique characteristics of nuclear weapons and as the ICJ found 'their capacity to cause untold human suffering, and their ability to cause damage to generations to come.'<sup>27</sup>

To conclude, the use of nuclear weapons goes against international humanitarian law. As John Burroughs argues: 'From a legal standpoint, it remains the case that even if a proportionality calculus is believed to justify use of nuclear weapons, it is unlawful under the prohibition of indiscriminate attacks'.<sup>28</sup> Professor Luigi Condorelli points out that: 'Jus in bello must be respected in all circumstances, whatever the *casus belli* [cause of war]'.<sup>29</sup> Also the Council of Delegates of the International Committee of the Red Cross and Red Crescent (ICRC) stated in a November 2011 resolution that it 'finds it difficult to envisage how any use of nuclear weapons could be compatible with the rules of international humanitarian law, in particular the rules of distinction, precaution and *proportionality*'.<sup>30</sup> The humanitarian

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<sup>23</sup> ICJ, *ibid.* See also: Mike Moore, 'World Court Says Mostly No To Nuclear Weapons', *The Bulletin of the Atomic Scientists* (September/October 1996), 39-42; Andrew Mack, 'Delegitimising Nuclear Weapons: the World Court decision', *Pacific Research* (August 1996), 3-5.

<sup>24</sup> Owen B. Toon et al., 'Atmospheric Effects and Societal Consequences of Regional Scale Nuclear Conflicts and Acts of Individual Nuclear Terrorism', *Atmospheric Chemistry and Physics*, vol 7 (2007), 1973–2002. See also Michael J. Mills et al., 'Multidecadal Global Cooling and Unprecedented Ozone Loss Following a Regional Nuclear Conflict' *Earth's Future*, [vol. 2, no. 4](#) (2014), 161–76.

<sup>25</sup> ICJ, Legality of threat or use of nuclear weapons, Advisory opinion, July 8, 1996, par 78.

<sup>26</sup> Kenjiro Yokoro and Nanao Kamada, 'The Public Health Effects of the Use of Nuclear Weapons', in Barry S. Levy, Victor W. Sidel, eds., *War and public health* (Washington, DC: American Public Health Association, , 2000), 65-83.

<sup>27</sup> ICJ, Legality of threat or use of nuclear weapons, Advisory opinion, July 8, 1996, par. 35 and 36.

<sup>28</sup> Beatrice Fihn, *ibid.*, p.71.

<sup>29</sup> Daniel Warner, 'The Nuclear Weapons Decision by the International Court of Justice', *Millennium*, vol.27, no.2 (1998), 299-324.

<sup>30</sup> ICRC, *Nuclear Weapons*, Document 4067/002 08.2011 3000, Geneva, 2011, <http://www.icrc.org/eng/resources/documents/resolution/council-delegates-resolution-1-2011.htm>. Our emphasis.

approach to nuclear disarmament highlights the inhumane consequences of nuclear weapons use, and its consequent breach of international humanitarian law, as the basic premise for nuclear abolition.

### **A humanitarian approach in the past**

The humanitarian turn with respect to nuclear weapons is not new. More surprising is the fact that it is only now gaining momentum. The reason why it took so long has to do with the Cold War. The discourse of deterrence - the major competitor for the humanitarian paradigm - prevailed due to the bipolar system and the ensuing (perceived) balance of nuclear terror.

A humanitarian paradigm was not completely absent though, even during the Cold War. Although the consequences of the use of nuclear weapons in Hiroshima and Nagasaki were not immediately understood, certainly not by the US military who regarded the nuclear attacks as another example of the ongoing strategic bombing campaign<sup>31</sup>, many observers noticed right from the beginning the revolutionary impact of this new weapon system. Even before Hiroshima, atomic weapons were regarded as too destructive to be used. The Franck Report, written by scientists involved in the Manhattan Project, warned already in June 1945 that nuclear weapons should not be used against cities.<sup>32</sup> In July 1945 86 of these scientists under the initiative of Leo Szilard also petitioned President Truman to exercise restraint on moral grounds, noting: 'The nation which sets the precedent of using these newly liberated forces of nature for purposes of destruction may have to bear the responsibility of opening the door to an era of devastation on an unimaginable scale.'<sup>33</sup> The Report and Petition were ignored by the Truman administration.

A couple of weeks after the nuclear bombings, Dr Marcel Junod, a delegate of the ICRC, testified from Hiroshima: 'We (...) witnessed a sight totally unlike anything we had seen before. The centre of the city was sort of a white patch, flattened and smooth like the palm of a hand. Nothing remained (...) every living thing was petrified in an attitude of acute pain... There are no doctors, no doctors (...) consequently there is no treatment'.<sup>34</sup> Similarly, strategists concluded that the only purpose of the military from that point on would be to avert wars.<sup>35</sup> In 1948 UN General Assembly passed a Resolution on the Prohibition of the Atomic Weapon and in October 1949, the General Advisory Committee to the US Atomic

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<sup>31</sup> Lawrence Freedman, *The Evolution of Nuclear Strategy* (London: Macmillan, 1989), 22-30.

<sup>32</sup> Report of the Committee on Political and Social Problems (The Franck Report) (Chicago: University of Chicago Manhattan Project "Metallurgical Laboratory", June 11, 1945)

<sup>33</sup> The National Security Archive. Leo Szilard's Petition to the President of the United States, July 17, 1945.

<sup>34</sup> ICRC, 'Banning the Bomb', in: *The Magazine of the ICRC*, 2011, [http://www.redcross.int/EN/mag/magazine2011\\_3/16-21.html](http://www.redcross.int/EN/mag/magazine2011_3/16-21.html).

<sup>35</sup> Bernard Brodie, *The Absolute Weapon* (New York: Harcourt Place, 1946), 389.

Energy Commission that was chaired by Robert Oppenheimer - chief scientist at the Manhattan Project - recommended *not* producing the hydrogen (H-)bomb calling it a "weapon of genocide" and "beyond any military objectives".<sup>36</sup> This report was also ignored. One year later, the International Committee of the Red Cross and Red Crescent pointed out to the states parties of the Geneva Convention: 'With atomic bombs (...) discrimination became impossible (...) Their inevitable consequence is extermination pure and simple (...) their effects, immediate and lasting, prevent access to the wounded and their treatment (...) the mere assumption that atomic weapons may be used, for whatever reason, is enough to make illusory any attempt to protect non-combatants by legal texts'.<sup>37</sup> The Acheson-Lilienthal Plan and the Baruch Plan, initiatives to abolish nuclear weapons right after the Second World War, however, failed.

The start of the Cold War marked the rise of the nuclear deterrence paradigm, theoretically constructed and refined by the so-called Whiz Kids (most notably Bernard Brodie<sup>38</sup> and Albert Wohlstetter<sup>39</sup>) in places like the RAND Corporation.<sup>40</sup> More fundamentally, nuclear deterrence also seemed to work in practice. Nuclear weapons apparently induced a gulf of caution in the minds of political decision-makers, restraining them from starting major wars. The superpowers did indeed not start a new war (let alone a world war) against each other, at least not directly. Nuclear deterrence seemed to lead to strategic stability and therefore security. In short, nuclear weapons were more and more regarded as a kind of super-technology, that was able to ban major interstate wars. In hindsight, these propositions however can be questioned as there are other factors that explain the absence of another world war.<sup>41</sup>

A major consequence of the (perceived) success of nuclear deterrence was the suffocation of the humanitarian approach. The notion that nuclear weapons were too destructive to exist (let alone to be used) and therefore had to be abolished, became marginalized in the 1950s in favour of the notion that nuclear deterrence can prevent a Third World War.

Even close calls like the Cuban missile crisis did not fundamentally alter the positive attitude vis-à-vis nuclear weapons.<sup>42</sup> Indicative is the absence of the ICRC in the nuclear weapons debate for the remainder of the Cold War. The topic was apparently politically too sensitive,

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<sup>36</sup> Lawrence Freedman, *The Evolution of Nuclear Strategy* (London: Macmillan, , 1989), 66.

<sup>37</sup> ICRC, *Nuclear Weapons*, Document 4067/002 08.2011 3000, Geneva, 2011.

<sup>38</sup> Bernard Brodie, 'The Atom Bomb as Policy Maker', *Foreign Affairs*, Vol 27, No 1 (1948), 17-33.

<sup>39</sup> Albert Wohlstetter, 'The Delicate Balance of Terror', *Foreign Affairs*, Vol 37, No 2 (1959), 211-234.

<sup>40</sup> Fred Kaplan, *The Wizzards of Armageddon* (New York: Simon & Schuster, , 1983).

<sup>41</sup> John Mueller, 'The Essential Irrelevance Of Nuclear Weapons', *International Security*, vol.13, no.2 (Fall 1988).

<sup>42</sup> The Cuban Missile crisis did result in some arms control initiatives like the Partial Test Ban Treaty, and the Tlatelolco Treaty that made Latin-America nuclear weapon free.

even for a humanitarian organization like the ICRC.<sup>43</sup> The call for abolition was left to peace movements, and even their focus shifted more to specific topics than on the overall goal of nuclear abolition. More in particular, two waves of protests should be highlighted: Bertrand Russell's Committee of 100 in the late fifties and early sixties, and the protests against the Euromissiles in the beginning of the eighties.<sup>44</sup>

The main worry of the US was not nuclear disarmament, but the further spread of nuclear weapons to more and more countries.<sup>45</sup> After China acquired nuclear weapons in 1964, it was the US that took the initiative to pursue negotiations on an international non-proliferation agreement, that was first proposed by Ireland in 1958.<sup>46</sup> The major goal of the Nuclear Non-Proliferation Treaty (NPT), that entered into force in 1970 and that is still the cornerstone of the current non-proliferation regime, was to limit the further spread of nuclear weapons to more and more countries, or at least to contain the pace of proliferation. The disarmament obligation in the treaty - article 6 - in contrast was vaguely formulated and did not contain a deadline.

Arguably, a regional approach towards nuclear disarmament – establishing nuclear weapon free zones (NWFZ) – may be an alternative to traditional arms control. However, as long as there are nuclear weapon states, states belonging to NWFZ cannot be sure that nuclear weapons will never be used against them. The best assurance for nuclear non-use remains a world without nuclear weapons.

The humanitarian side of the nuclear issue was marginalised to the realm of non-binding expressions of international public opinion. For instance, UN GA resolution 1653 in 1961 stated that any use of nuclear weapons would be 'contrary to the spirit, letter and aims of the UN, and, as such, a direct violation of the Charter', while also being 'contrary to the rules of international law and to the laws of humanity'...'a crime against humanity'.<sup>47</sup> Similarly, the UN First Special Session on Disarmament in 1978 warned: 'Mankind today is confronted with an unprecedented threat of self-extinction arising from the massive and competitive accumulation of the most destructive weapons ever produced. Existing arsenals of nuclear

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<sup>43</sup> The ICRC's policy of neutrality has received much scholarly attention, see e.g. Barbara Ann Rieffer-Flanagan, 'Is Neutral Humanitarianism Dead? Red Cross Neutrality Walking the Tightrope of Neutral Humanitarianism', *Human Rights Quarterly*, Vol 31, No 4 (November 2009), 888-915.

<sup>44</sup> Phillip Gassert, 'Peace Movements', in James R. Arnold and Roberta Wiener, eds., *Cold War: The Essential Reference Guide* (Washington, DC: ABC-CLIO, , 2012), 174-78; Lawrence Wittner, *Confronting the Bomb* (Stanford: Stanford University Press, 2009).

<sup>45</sup> Joellen Pretorius and Tom Sauer, "'Proliferation Concerns" and other Post-Cold War Distractions from Nuclear Disarmament', paper presented at the Bi-Annual Pugwash Conference in November 2013 in Istanbul.

<sup>46</sup> Savita Pande, *The Future of the NPT* (New Delhi: Lancer, 1995), 4.

<sup>47</sup> United Nations General Assembly Resolution 1653 (XVI) (1961): Declaration on the Prohibition of Use of Nuclear And Thermonuclear Weapons. Article 1

weapons alone are more than sufficient to destroy all life on earth'.<sup>48</sup> The adoption of these texts, however, had no impact on the practice of nuclear deterrence, at least not directly.

### **Renewed interest in a humanitarian approach**

Skeptics of deterrence had more room to contest the deterrence paradigm after the end of the Cold War. As advocates of nuclear deterrence cried wolf about the so-called growing proliferation threat after the Cold War, while still hanging on to nuclear deterrence themselves, critics had a relatively easy job in pointing out the discrepancy between the belief in nuclear deterrence on the one hand and the fear for new nuclear weapon states on the other.<sup>49</sup> If deterrence works, why worry about more nuclear weapon states? Only a small minority of proponents of deterrence defend the concept of nuclear deterrence regardless of the political regime that hosts nuclear weapons.<sup>50</sup> Most experts, politicians, and public opinion are concerned about states like North Korea and Iran ending up with possessing nuclear weapons. Many also recognize a link between nuclear proliferation and (the lack of) nuclear disarmament<sup>51</sup>: the more states with nuclear weapons, the bigger the chance that nuclear weapons may be used again, either in an authorized, unauthorized or accidental way.<sup>52</sup> Similarly, only a world without nuclear weapons can fundamentally halt the threat of proliferation or the risk of use by intent or otherwise. That was the leading thought behind the call for nuclear elimination in international reports like that of the Canberra Commission (1996)<sup>53</sup> and the Blix Commission (2006).<sup>54</sup>

The latest wave of successful proliferation – India, Pakistan and North Korea – and the truncated nuclear weapons programmes in Libya and Syria explain why hawks like Henry Kissinger and George Schultz are not only in favor of, but urgently plea for, a nuclear weapons free world.<sup>55</sup> The initiative of "four horsemen" to write a bipartisan opinion article

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<sup>48</sup> Resolution Adopted on the Report of the ad hoc committee of the tenth special session, par 11, Un General Assembly, Official Records: Tenth Special Session Supplement No.4 (A/S-10/4), P. 4

<sup>49</sup> Tom Sauer, *Nuclear Arms Control. Nuclear Deterrence in the Post-Cold War Period* (London: Macmillan, , 1998).

<sup>50</sup> Kenneth Waltz, 'More May Be Better', in: Scott Sagan and Kenneth Waltz, *The Spread of Nuclear Weapons* (New York: W.W.Norton, 1995), 1-46; Kenneth Waltz, 'Why Iran Should Get the Bomb', in: *Foreign Affairs* ( July/August 2012).

<sup>51</sup> Tom Sauer, 'Nuclear Proliferation and Nuclear Disarmament: a Complicated Relationship', in Harsh Pant, ed., *Handbook of Nuclear Proliferation* (London: Routledge, , 2012), 317-26; Jeffrey Knopf, 'Nuclear Disarmament and Nuclear Proliferation. Examining the Linkage Argument', *International Security*, vol.37, no.3 (Winter 2012), 92-132.

<sup>52</sup> Eric Schlosser, *Command and Control* (London: Penguin, , 2013).

<sup>53</sup> Report of the Canberra Commission on the Elimination of Nuclear Weapons, Department of Foreign Affairs and Trade, 1996.

<sup>54</sup> *Weapons of Terror - Freeing the World of Nuclear, Biological and Chemical Arms, Weapons of Mass Destruction Commission (WMDC)* (Stockholm, 2006).

<sup>55</sup> George Schultz, William Perry, Henry Kissinger, and Sam Nunn, 'Toward a Nuclear Weapon Free World', *The Wall Street Journal*, January 4, 2007.

urging nuclear abolition was copied around the world by (former) prime ministers and ministers of foreign affairs in countries like Poland, France, Russia, the UK, Italy, Germany, the Netherlands, and Belgium. These calls from statesmen was upgraded in a speech by President Obama in Prague in April 2009, calling with conviction for a world without nuclear weapons, and calling those who do not believe in such a world "fatalists".<sup>56</sup>

This new moral-political climate in favor of nuclear elimination, made possible by the fall of the Berlin Wall, but especially since the Kissinger-Schultz op-ed and Obama's speech, gave a boost to the humanitarian approach. While the authors of the op-ed and President Obama did not directly argue on the lines of the humanitarians, non-governmental organizations and experts that had always kept an interest in a humanitarian approach, but had felt restrained by the dominant deterrence paradigm and an overall lack of interest by the general public in the topic after the end of the Cold War, felt now empowered. Thinking about how to realize the goal of nuclear elimination, a growing group of non-governmental observers became convinced that the instrument of traditional arms control had to be replaced, or at least be complemented, by an alternative approach: the humanitarian approach.

While critics may call this new humanitarian turn rather thin, the following four events, or trends, point to a substantial shift that is likely to swell in the foreseeable future: first, new global NGOs are established, campaigning for the explicit goal to ban nuclear weapons because of the humanitarian consequences of the use of such weapons.<sup>57</sup> More in particular, the International Campaign to Abolish Nuclear Weapons (ICAN) since 2007, made up of partner organisations, and Global Zero draw from the experience and staff of similar NGOs that in the past successfully banned landmines and cluster munitions. New studies about humanitarian consequences of the use of nuclear weapons have also been published, producing the epistemic momentum for a global push for nuclear weapons elimination.<sup>58</sup>

Secondly, the ICRC that had played a crucial role in banning antipersonnel mines and cluster munitions stepped up its humanitarian advocacy efforts around nuclear weapons in 2010.<sup>59</sup>

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<sup>56</sup> President Obama, Speech about Nuclear Elimination, Prague, April 5, 2009.

<sup>57</sup> NGOs that had pushed the nuclear agenda (including the humanitarian aspects) earlier on are: the Lawyers Committee on Nuclear Policy, the International Association of Lawyers against Nuclear Arms (IALANA), the International Physicians for the Prevention of Nuclear War (IPPNW), the International Network of Engineers and Scientists Against Proliferation (INESAP), Abolition 2000, Mayors for Peace, and the Middle Powers Initiative.

<sup>58</sup> Alan Robock, *Climate Effects of Nuclear War* (2008); Brian Toon, *Self-assured Destruction: The Climate Impacts of Nuclear War* (2012); Ira Helfand, 'Nuclear Famine: A Billion People at Risk', in: Beatrice Fihn, ed., *Unspeakable Suffering - The Humanitarian Impact of Nuclear Weapons* (Geneva: Reaching Critical Will and ICAN, , 2013); Beatrice Fihn, *ibid.*, 2013.

<sup>59</sup> Ritu Mathur, 'Practices of Legalization in Arms Control and Disarmament: the ICRC, CCW and Landmines', *Contemporary Security Policy*, vol.33, no.3 (December 2012), 413-436.

ICRC President Jacob Kellenberger spoke out, right before the 2010 NPT Review Conference: 'The position of the ICRC, as a humanitarian organization, goes – and must go – beyond a purely legal analysis. Nuclear weapons are unique in their destructive power, in the unspeakable human suffering they cause, in the impossibility of controlling their effects in space and time, in the risks of escalation they create, and in the threat they pose to the environment, to future generations, and indeed to the survival of humanity'... 'the ICRC finds it difficult to envisage how any use of nuclear weapons could be compatible with the rules of international humanitarian law'.<sup>60</sup> In November 2011, the Council of Delegates of the International Red Cross and Red Crescent adopted a similar resolution.<sup>61</sup>

Thirdly, the final document of the NPT Review Conference in May 2010, also agreed to by the nuclear weapon states, mentioned for the first time the humanitarian aspect and the link to humanitarian law in its conclusions: '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>62</sup> States like Switzerland, supported by the ICRC announcement, played an important role in getting this clause adopted. According to Moxley: 'With the Review Conference statement, the world is moving closer to the day when it can be said that the practice of non-use has become a custom of non-use recognized by law'.<sup>63</sup> At the UN Conference on Disarmament, the representative of Norway, despite the fact that the country belongs to a nuclear alliance, went even further: 'Nuclear weapons are the most indiscriminate, disproportionate, and inhumane weapons ever created'.<sup>64</sup>

At the NPT Prepcom in May 2012, Benno Laggner, the Ambassador of Switzerland, together with 15 other states (including NATO states Norway and Denmark, EU member states Austria and Ireland, together with Chile, Costa Rica, the Holy See, Egypt, Indonesia, Malaysia, Mexico, New Zealand, Nigeria, Philippines, and South Africa), handed in a Joint Statement on the Humanitarian Dimension of Nuclear Disarmament.<sup>65</sup> In October 2012, 33 states signed a similar statement, again introduced by Swiss Ambassador Benno Laggner at the UN GA First

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<sup>60</sup> Jacob Kellenberger, 'Bringing the Era of Nuclear Weapons To An End', April 20, 2010, <http://www.icrc.org/web/eng/siteeng0.nsf/html/nuclear-weapons-statement-200410>.

<sup>61</sup> ICRC, *Nuclear Weapons*, Document 4067/002 08.2011 3000 (Geneva: 2011).

<sup>62</sup> NPT Review Conference 2010, Final Document.

<sup>63</sup> Charles Moxley, John Burroughs, and Jonathan Granoff, 'Nuclear Weapons and Compliance with International Humanitarian Law and the Nuclear Non-Proliferation Treaty', *Fordham International Law Journal* (Winter 2011), draft version, 77.

<sup>64</sup> Statement to the Conference on Disarmament, Ambassador Bente Angell-Hansen, Permanent Representative of Norway, March 17, 2011.

<sup>65</sup> 'Joint Statement on the humanitarian dimension of nuclear disarmament', NPT Preparatory Committee, General Debate, Vienna, May 2, 2012.

Committee.<sup>66</sup> At the NPT Prepcom in April 2013, 78 states (out of 96 present) signed up.<sup>67</sup> Apparently more and more countries support the idea that nuclear weapons are too destructive to be used, and most of them believe that nuclear weapons therefore should be banned.

Fourthly, Norway took this idea further by organizing a conference on the humanitarian impact of nuclear weapons on 4-5 March 2013.<sup>68</sup> The aim of the conference was 'to provide an arena of fact-based discussion of the humanitarian and developmental consequences associated with a nuclear weapon detonation. All interested states, as well as UN organizations, representatives of civil society and other relevant stakeholders' were invited to the conference.<sup>69</sup> It can be seen as a general information campaign, waking up the general public, which has very much forgotten about nuclear weapons since the end of the Cold War. Similar conferences had jump-started the process to delegitimize landmines and cluster munitions a decade earlier.

More than 130 governments attended the conference. Unfortunately, the nuclear weapon states - apart from India and Pakistan - chose to remain absent. They called the conference and the humanitarian approach more in general a "distraction" from more "realistic efforts" to disarm nuclear weapons.<sup>70</sup> Many NATO allies - except Germany, the Netherlands, and Turkey - only sent their local ambassador in Norway instead of the official who is responsible for nuclear disarmament at their respective Ministries of Foreign Affairs.

The major conclusion of the Conference was, as Kennette Benedict explains, that 'the only way the international community could exercise its responsibility to protect civilians [from nuclear war] would be to prevent these catastrophic humanitarian disasters. And the only way to prevent them would be to eliminate nuclear weapons'.<sup>71</sup>

The initiative of the Norwegian government triggered new enthusiasm within peace and human rights movements around the world. Right before the governmental conference in Oslo, a non-governmental conference with 500 participants was held.

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<sup>66</sup> 'Joint Statement on the humanitarian dimension of nuclear disarmament', 67th session of the United Nations General Assembly First Committee, New York, October 22, 2012.

<sup>67</sup> 'Joint Statement on the humanitarian impact of nuclear weapons', Delivered by Ambassador Abdul Samad Minty, Permanent Representative of South Africa to the United Nations, Geneva, April 24, 2013

<sup>68</sup> Rebecca Johnson, 'NPT and Risks to Human Survival: The Inside Story', *OpenDemocracy*, April 29, 2013.

<sup>69</sup> [http://www.regjeringen.no/en/dep/ud/selected-topics/humanitarian-efforts/humimpact\\_2013.html?id=708603](http://www.regjeringen.no/en/dep/ud/selected-topics/humanitarian-efforts/humimpact_2013.html?id=708603)

<sup>70</sup> Jeffrey Eberhardt, Speech held by the US delegation at the UN General Assembly First Committee, New York, October 18, 2013.

<sup>71</sup> Kennette Benedict, 'Does the "Responsibility to Protect" include nuclear disarmament?', *The Bulletin of the Atomic Scientists*, October 22, 2013.

A follow-up conference on the same topic was organized on 13-14 February 2014 in Nayarit (Mexico). This time, 146 states attended, again all non-nuclear weapon states (as well as Pakistan and India). During the conference, the Austrian foreign minister announced a third intergovernmental conference later in 2014,.

### **Explaining the revival of the humanitarian approach**

Apart from the end of the Cold War, two factors in particular explain this renewed interest in the humanitarian approach: one is the perceived failure of the traditional arms control approach, especially since the mid-1990s; the second is the experience of a humanitarian approach in related fields of landmines and cluster munitions.

#### *Traditional arms control: slow and cumbersome*

Arms races can increase crisis instability, are expensive, and lead to wars.<sup>72</sup> The more weapons, the more other states feel insecure (which may lead to preemptive wars); the more weapons, the more destructive wars can be, too. Arms control tries to un-do arms races. Arms control contains all negotiated agreements - formal and informal, bilateral and multilateral - that aim to regulate military capabilities. It is supposed to lead to (more) equality among states (a principle that Mutimer adduced from Cold War arms control practice), less incentives for preventive wars, and therefore more stability.<sup>73</sup> In short, arms control is supposed to lead to more security.

Two types of arms control can be distinguished: the traditional arms control approach and the humanitarian approach. The main actors that are involved in *traditional* arms control are states. US Under Secretary for Arms Control and Nonproliferation, Rose Gottemoeller, defends the traditional arms control approach in justifying the absence of the US at the Oslo conference in 2013: 'We were concerned that the Oslo Conference would divert discussion away from practical steps to create conditions for further nuclear weapons reductions. The practical, step-by-step approach that we are taking has proven to be the most effective means to increase stability and reduce nuclear dangers. This is the kind of approach we will continue to take'.<sup>74</sup>

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<sup>72</sup> The build-up of arms can sometimes also be stabilizing, or be perceived as such. States like North Korea and Iran, for instance, may believe that the acquisition of nuclear weapons will prevent a conventional attack by the US, for instance. However, the idea behind arms control is that in the long-term that kind of stability can also be realized with less arms, and therefore without the negative consequences of an arms build-up.

<sup>73</sup> David Mutimer, 'From Arms Control to Denuclearization', *Contemporary Security Policy*, vol.32, no.1 (April 2011), 57, 58.

<sup>74</sup> Rose Gottemoeller, 'The Obama's Administration's Second Term Priorities for Arms Control and Nonproliferation', speech given at the GCSP, Geneva (Switzerland), March 20, 2013. There was however a debate inside the US and UK governments whether to attend the Mexico conference, see: William Potter and Benjamin Pack, 'Advancing Nuclear Disarmament: The US Role', *APLN-CNND Policy Brief* no.10 (March 2014), 6.

Arms control does not happen between friends, but between enemies, or at least between states that do not trust each other. Overcoming distrust takes time. Traditional arms control, therefore, is generally a slow and cumbersome process. Traditional arms control is therefore most of the time not about drastic disarmament cuts. It occurs incrementally: step-by-step. Mistrust also explains why verification procedures are part of traditional arms control. Verification is more or less a guarantee that actors will implement what they have agreed, and that violations can easily be detected. Being caught doing something illegal is disliked by states because of reputational concerns. Negotiating verification procedures however is highly technical, and again takes time.

Colin Gray once famously argued: 'Arms control does not control arms'.<sup>75</sup> By that he meant that states would have gotten rid of weapons even without arms control because states only do so when it is in their national interest. Arms control therefore is redundant, according to critics like Gray. Advocates of arms control reply that states most of the time do not immediately get rid of redundant weapons, and that arms control is indeed still needed to attain that objective. Arms control, according to them, is a win-win game. Skeptics in contrast continue to regard arms control through the eyes of a zero-sum game: the best negotiator wins more.

If we look to traditional nuclear arms control in practice, it has indeed been a slow and cumbersome process. While the NPT already in 1968 stipulated the goal of complete disarmament and required that the nuclear weapon states had to get rid of nuclear weapons (without setting a deadline), there are still 16,400 nuclear weapons around in 2014.<sup>76</sup> Many non-nuclear weapon states therefore accuse the nuclear weapon states of not taking their nuclear disarmament obligations seriously. The rate of disarmament is better if only the deployed nuclear weapons are taken into account. The deployed strategic nuclear weapons of the two former superpowers are on average reduced by 50% every 10 years: from 13,000 (pre-START I numbers) to 6,000 (target under START I, 1991), to 3,000-3,500 (target under START II, 1993), to 1,700-2,200 (target under SORT, 2002), to 1,550 (target under New START, 2010), and possibly to 1,000-1,100 under the next treaty, as promised by President Obama in his speech in Berlin in June 2013. Even if this pace is continued, the US and Russia would still have more than 100 nuclear weapons deployed in 2050. Technologically speaking, the nuclear arsenals can be dismantled much faster. In addition, the rate of disarmament per treaty is slowing down over time, especially since the mid-1990s. Furthermore, non-strategic nuclear weapons have never been included in a formal arms control agreement, meaning that the statistics above based on START accounting underestimate the total numbers of remaining nuclear weapons.

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<sup>75</sup> Colin Gray, 'Arms Control Does not Control Arms', *Orbis*, vol.37, no.3 (Summer 1993), 333-48.

<sup>76</sup> Hans Kristensen and Robert Norris, 'Slowing Nuclear Weapon Reductions and Endless Nuclear Weapons Modernizations: a Challenge to the NPT', *The Bulletin of the Atomic Scientists*, vol.70 (4)(2014), 95.

Other indications of the tardiness of traditional arms control are the fact that there are still US tactical nuclear weapons in Western Europe more than twenty years after the end of the Cold War; that the CTBT has still not entered into force eighteen years after its conclusion; that multilateral negotiations for a fissile material treaty have not yet started, let alone multilateral negotiations for a Nuclear Weapons Convention; and that the Conference on Disarmament was not able to agree on an agenda over the last 15 years. Further, the nuclear weapon states have failed to implement the 13 practical disarmament steps of the 2000 NPT Review Conference and the 23 disarmament actions of the 64 point Action Plan agreed upon at the 2010 Review Conference.<sup>77</sup>

Many non-nuclear weapon states have become impatient. They feel that they are fulfilling their NPT obligations, while the nuclear weapon states renege on their obligations. An indication of this growing frustration is the Egyptian walk-out at the 2013 NPT PrepCom. Another indication is the creation of the so-called Open-Ended Working Group in 2013 to discuss nuclear disarmament outside the existing arms control bodies.

The criticism vis-à-vis traditional arms control goes further. Traditional arms controller Jeffrey Larsen states: 'If arms control succeeded in providing some degree of security at lower levels of weapons than would otherwise be the case, it could lead to fielding of fewer weapons and thus lower overall defense spending'...'The savings thereby realized could be diverted to' [and]'promote overall prosperity'.<sup>78</sup> The fact that budgetary savings are positive side-effects of traditional arms control may be true in theory, but in practice traditional arms control most of the time does not lead to savings. More or less every nuclear arms control treaty in the US – and the same applies probably to other nuclear weapon states - was paralleled with a weapons modernization program. Paul Stockton explains the mechanism: 'That leverage over ratification [of an arms control agreement] gives the [military] services a powerful voice in the drafting of US treaty proposals, which the services - and their civilian allies in the executive branch - use to ensure that prospective treaties will accommodate the new weapons they deem necessary'...'arms development and arms control go forward in tandem, through an intra-governmental logrolling mechanism in which support for one is traded for the other'.<sup>79</sup> The Partial Test Ban Treaty (PTBT), for instance, led to an expanded underground testing program. In the beginning of the 1970s, SALT I led to accelerated defense spending for Trident, the UK's nuclear weapons system, and the B-1 (a long-range bomber used as a nuclear delivery system), and SALT II led to the development of the MX,

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<sup>77</sup> Critical Will, 'NPT Action Plan Monitoring Reports', <http://www.reachingcriticalwill.org/resources/publications-and-research/publications/5456-npt-action-plan-monitoring-reports>

<sup>78</sup> Rita Mathur, 'Humanitarian Practices of Arms Control and Disarmament', *Contemporary Security Policy*, vol.32, no.1 (April 2011), 186.

<sup>79</sup> Paul Stockton, 'The New Game on the Hill', *International Security*, vol.16, no.2 (Fall 1991), 153.

the US intercontinental missile. There is also a link between START I and the development of the B-2 (a US stealth bomber used as a nuclear bomb delivery system).<sup>80</sup> Similarly, the signing of the CTBT by the Clinton administration led to more money for the nuclear labs than during the Cold War.<sup>81</sup> President Obama in turn could only convince Republicans to endorse New START on the condition of a substantial modernization program of the nuclear weapon arsenal. These examples indicate that economic factors are influential in shaping the political will necessary for states to adopt nuclear arms control policies.

Traditional arms control does not, or hardly, control arms, let alone abolish them. In fact, the so-called step-by-step approach often seems more like a “one step forward, two steps back” approach. Traditional arms control is by some even regarded as an obstacle to nuclear elimination. David Mutimer points out: ‘Arms control, understood as a social practice, is ill-suited to the pursuit of nuclear disarmament: that while arms control can produce limits and even reductions in nuclear weapons, it works against the overall elimination of arms’... ‘Cold War arms control is a practice designed to make the world soft for mutual nuclear deterrence: a means of seeking security in a world *with* nuclear weapons’.<sup>82</sup>

Advocates of traditional nuclear arms control will argue that the number of nuclear weapons is going down. While this is true, it goes very slowly. Further, apart from the force structure many Cold War policies, like declaratory and alert-level policies, still remain in place.<sup>83</sup> At the same time new nuclear weapon states are born, which will make it more difficult to reach a world without nuclear weapons.

The humanitarian approach is an answer to the slow speed of the traditional arms control approach. It opens up the idea of achieving nuclear elimination in a single step. The Austrian delegation warned at the NPT Review Conference in 2010: ‘If there is no clear progress towards “global zero”, we will discuss with parties the feasibility of a global instrument to *ban* these weapons. The NPT remains the cornerstone of the international nuclear nonproliferation regime. But a static regime that has lost its vision may benefit from fresh ideas’.<sup>84</sup>

*Positive examples of a humanitarian approach: antipersonnel mines and cluster munitions*

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<sup>80</sup> Ibid., p.146-147, 154.

<sup>81</sup> Tom Sauer, *Nuclear Inertia. US Nuclear Weapons Policy after the Cold War* (London: I.B.Tauris, , 2005), esp. 149-152.

<sup>82</sup> David Mutimer, ‘From Arms Control to Denuclearization’, *Contemporary Security Policy*, vol.32, no.1 ( April 2011), 57, 63.

<sup>83</sup> Tom Sauer, *Nuclear Inertia. US Nuclear Weapons Policy after the Cold War* (London: I.B.Tauris, 2005).

<sup>84</sup> Michael Spindelegger, statement at the 2010 NPT Review Conference, May 3, 2010, <http://www.bmeia.gv.at/aussenministerium/presenews/reden-und-interviews/2010/statement-by-he-mr-michael-spindelegger-at-the-2010-review-conference-of-the-parties-to-the-treaty-on-the-non-proliferation-of-nuclear-weapons.html>

The humanitarian approach is a successful alternative to traditional arms control. That is the second reason why the humanitarian turn has gained renewed interest. Antipersonnel mines and cluster munitions have been banned respectively in 1997 and 2008. The negotiations did not take very long. Instead of a step-by-step approach, a principle-based approach was followed. In one move, a complete weapon system was declared illegal. The underlying assumption is the recognition by most stakeholders, except some state users, that these weapons are inhumane. As Cottrell argues: 'The creation of an alternative mechanism outside of normal diplomatic channels was a tricky enterprise, but the success of the Ottawa process depended on the belief that the process that created it was "right", despite lacking some typical democratic features, because it was the only one capable of achieving a ban'.<sup>85</sup>

Another difference with the traditional arms control approach has to do with the nature of the actors involved. The initiative for the landmine and cluster munitions treaty did not come from states, but from *non-governmental organizations* like Asian Watch, Physicians for Human Rights, and Handicap International.<sup>86</sup> They were confronted on a daily basis with the consequences of the use of landmines in places like Cambodia and Angola. For landmines, Human Rights Watch and the ICRC bundled their powers in the International Campaign to Ban Landmines (ICBL), which later on obtained the support of states like Canada, Belgium, Sweden, Austria, Norway and Mexico. They reframed the issue of landmines from a security to a human rights issue. Many states that possessed or used landmines and cluster munitions did initially not participate, something which is unthinkable from a traditional arms control perspective. It corresponds indeed to a non-inclusive process, at least in the beginning. The humanitarian approach starts from the assumption that a treaty that is supported by a very large group of states in the world sets a new standard, also for those states that do not (yet) sign up. The treaty would also give a boost to the norm of non-use of these weapons.

Crucially, advocates of the humanitarian approach believe that the number of states that do not adhere to the treaty will diminish over time, as a ban will stimulate societal and political debate in states that are hesitant to sign up. Some of them, and hopefully all of them, will finally accede or become bound by customary international law. As Berry argues: 'This had led to an approach whereby the treaties are negotiated with fewer players and a higher common factor rather than the lowest common denominator approach to arms control'...'The approach to treaty-making is that the treaty can wait for others to join later -

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<sup>85</sup> Patrick Cottrell, 'Legitimacy and Institutional Replacement: The Convention on Certain Conventional Weapons and the Emergence of the Mine Ban Treaty', *International Organization*, vol.63 (Spring 2009), 241.

<sup>86</sup> Tom Farer, 'New Players in the Old Game', *American Behavioral Scientist*, vol.38, no.6 (1995); Ann Florini, *The Third Force* (Washington DC: Carnegie Endowment, 2000); Margaret Keck and Kathryn Sikkink, *Activists Beyond Borders* (Ithaca: Cornell University Press, , 1998); Charli Carpenter, 'Vetting the Advocacy Agenda: Network Centrality and the Paradox of Weapons Norms', *International Organization*, vol.65 (Winter 2011), 69-102.

better than water it down to a point where all can join from the beginning but it will have little real impact in a humanitarian sense'.<sup>87</sup>

	<b>Traditional arms control approach</b>	<b>Humanitarian approach</b>
<b>Goal</b>	Containing the threat of weapons by limiting the quantity and quality of weapons	Eliminating the threat by banning the entire weapon system
<b>Pace</b>	Gradual, step-by-step, because of compromises and consensus between two or more state actors that do not trust each other; process-based	Fast-track approach; a complete ban; principle-based
<b>Actors</b>	States	NGO's/civil society, and later on like-minded states
<b>Underlying assumption</b>	Goal = order and stability (for states)	Goal = justice and human rights for all human beings
<b>Advantages</b>	Inclusive	Fast
<b>Disadvantages</b>	Slow, cumbersome	Not inclusive, at least not in the beginning
<b>Examples</b>	PTBT, SALT, INF; START, SORT, ABM, CWC, BWC	Landmines Treaty, Cluster munitions Treaty

*Table 1: Basic characteristics of traditional arms control and the humanitarian approach*

**A Nuclear Weapons Ban**

According to the humanitarian approach, the first step towards a nuclear weapons free world is a ban on nuclear weapons: declaring the use, possession, stockpiling and transport

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<sup>87</sup> Ken Berry, *Ibid.*, p.37.

of nuclear weapons illegal.<sup>88</sup> If biological and chemical weapons are illegal, it is logical to declare nuclear weapons - that are more destructive - also illegal. If genocides are illegal, the use of nuclear weapons should also be declared illegal. If landmines and cluster munitions are illegal, it defies logic that nuclear weapons are still regarded as legal weapons systems. Swiss diplomat Nicolas Brühl declared in April 2011: 'Nuclear weapons are illegal by their very nature with regard to international humanitarian law'.<sup>89</sup> While the International Court of Justice refrained from declaring nuclear weapons illegal, its President Bedjaoui declared already in 1996: 'I cannot sufficiently emphasize that the Court's inability to go beyond this statement of the situation in no way can be interpreted to mean that it is leaving the door ajar to recognition of the legality of the threat or use of nuclear weapons'.<sup>90</sup>

Former Under Secretary-General of the UN for Disarmament, Jayantha Dhanapala, compared nuclear elimination with the abolition of slavery: 'Disarmament is pre-eminently a humanitarian endeavor for the protection of the human rights of people and their survival. We have to see the campaign for nuclear disarmament as analogous to the campaigns such as those against slavery, for gender equality and for the abolition of child labor. It will be a hard, uphill struggle but, eventually, we shall overcome'.<sup>91</sup> Equally, the Blix Commission dispels the perception that outlawing nuclear weapons is a utopian goal.<sup>92</sup>

Declaring nuclear weapons illegal should take the format of an internationally legally binding treaty. In 2010, ICRC President Jacob Kellenberger called for such an instrument: 'The ICRC today appeals to all States and to all those in a position to influence them, to seize with determination and urgency the unique opportunities now at hand to bring the era of nuclear weapons to an end'...'In the view of the ICRC, preventing the use of nuclear weapons requires fulfillment of existing obligations to pursue negotiations aimed at prohibiting and completely eliminating such weapons through a legally binding international treaty'.<sup>93</sup>

The idea of a ban on nuclear weapons was already part of the NPT, the major existing international legally binding treaty with respect to nuclear weapons. The problem with article 6 and the Preamble of the NPT is that the Treaty does not contain a deadline, but this

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<sup>88</sup> Jozef Goldblat, 'Making Nuclear Weapons Illegal', in Joseph Rotblat (and others), eds., *A Nuclear Weapon Free World* (Boulder: Westview Press, 1993), 153-68; Pan Zhenqiang, 'Abolishing Nuclear Weapons: Why Not Outlaw Them First?', in George Perkovich and James Acton, eds., *Abolishing Nuclear Weapons* (Washington DC: Carnegie Endowment for International Peace, 2009), 249-64.

<sup>89</sup> Expert Seminar "Toward a Nuclear Weapons Convention: A Role for Canada", Ottawa, Canada, April 11, 12, 2011. Jointly hosted by the Canadian Network to Abolish Nuclear Weapons, Canadian Pugwash, Physicians for Global Survival, Project Ploughshares, and World Federalist Movement

<sup>90</sup> Mohammed Bedjaoui, Declaration appended to the Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons by the International Court of Justice, July 8, 1996, <http://icnp.org/wcourt/bedjaoui.htm>.

<sup>91</sup> Randy Rydell, 'The UN and a Humanitarian Approach to Nuclear Disarmament', in: *Nuclear Abolition Forum, International Humanitarian Law and Nuclear Weapons*, no.1 (2011), 34.

<sup>92</sup> Blix Commission, *Weapons of Terror* (Stockholm, 2006).

<sup>93</sup> Jacob Kellenberger, *ibid.*

does not justify disingenuous attempts to refute a legal obligation to nuclear disarmament. Eamon Gilmore, the Irish Minister of Foreign Affairs, stated at the UN High-Level Meeting on Nuclear Disarmament on 26 September 2013: 'We believe that the humanitarian imperative for nuclear weapons disarmament is written into the DNA of the Nuclear Non-Proliferation Treaty. It is why we have the Treaty'...'Today, the re-emergence of the humanitarian consequence narrative offers each of us an opportunity to return to first principles'.<sup>94</sup>

### **Stigmatizing nuclear weapons**

The major weakness of the idea of a ban on nuclear weapons is that the major stakeholders - i.e. the existing nuclear weapon states and their allies - will not be part of the regime, at least not from the beginning. Skeptics therefore believe that such a ban will not make any difference. While that may probably be the case in the short and medium term, the odds are that moral pressure by a large number of states and NGOs in the world will have an impact on the thinking of the nuclear weapon states, especially if allies of the nuclear weapon states are amongst them (like Norway). If 150 states in the world are willing to declare nuclear weapons illegal and are in favor of starting up negotiations for a Nuclear Weapons Convention, as currently is the case according to ICAN and judged by the attendance of the Oslo and Nayarit conferences, then the pressure on the nuclear weapon states to disarm will mount substantially. According to Pax Christi International: 'Even when countries do not subscribe directly to the related international instruments, the stigma against their use (and even their deployment) is so strong that behavior is changed'...'A treaty banning nuclear weapons – even if the nuclear armed states are not contributing to the ban itself – would redefine the global landscape in such a way that, at least, deployment practices (for example in Europe by the US) would necessarily change'...' it could also include measures to be implemented by all states parties to it, such as divestment from nuclear weapons producers, or some other effective incentive to bring nuclear armed countries on board'.<sup>95</sup> Other NGOs refer to the success of the landmine ban: 'Like the Ottawa process, such an ongoing conference would generate considerable media coverage and political pressure on nuclear weapon states and non-NPT states to abandon nuclear deterrence and war-fighting and embrace abolition'.<sup>96</sup> Similarly, Rebecca Johnson argues: 'By changing the legal context [by adopting a Nuclear Weapons Ban Treaty], such a treaty would be a game changer, draining power and status from the nuclear-armed governments and hastening their understanding of their own security interests, increasing the imperative for concerted nuclear disarmament

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<sup>94</sup> Ray Acheson and Beatrice Fihn, *Preventing Collapse: The NPT and a Ban on Nuclear Weapons*, Reaching Critical Will (October 2013).

<sup>95</sup> Pax Christi International, *The Humanitarian Consequences of Nuclear Weapons* (Brussels:Pax Christi International January 22, 2013), .9-10.

<sup>96</sup> *Securing our Survival: The Case for a NWC* (IALANA/INESAP/IPPNW, 2007), 33.

rather than perpetual proliferation'.<sup>97</sup> Acheson and Fihn agree: 'It will also support a new discourse about nuclear weapons that understands them as weapons of terror, instability and insecurity rather than as "deterrents" or instruments of stability'.<sup>98</sup>

The likelihood that public opinion becomes more interested in the topic, which may be crucial for reaching the end goal, is much greater under the humanitarian approach than under the traditional arms control approach. The latter is highly technical and slow. Outlawing nuclear weapons is the framework that can draw most public attention and mobilize people's passion.<sup>99</sup> The advantage of a ban is that it places pressure on nuclear armed states to eliminate their nuclear weapons, but that it is *not dependent* on their participation or political will to negotiating such a treaty, that it cannot be blocked by nuclear armed states, and importantly that it gives agency to states that will be affected by nuclear weapons use.

Because of different security and domestic political environments, some of the nuclear weapon states will be more easily convinced than others. The first and foremost step would be to convince a nuclear weapon state that initially did not sign up to the Nuclear Weapons Ban Treaty. The most likely candidate is the UK. If the UK gives in, other nuclear weapon states will feel less constrained to do so as well, especially those nuclear weapon states that possess nuclear weapons for reasons of prestige, e.g. France.<sup>100</sup> The idea is that one by one the nuclear weapon states will become non-nuclear weapon states, a kind of domino-effect in reverse. In fact, the examples of Ukraine, Kazakhstan, Belarus and South Africa giving up their nuclear weapons may arguably have started this reversal already. In the end, the odds are that the remaining nuclear weapon states will be regarded as pariah states.

### **A Nuclear Weapons Convention**

Admittedly, universality is a primary condition for reaching a nuclear weapons free world. That means that all 9 nuclear weapon states, including North Korea, have to sign and ratify the Ban Treaty and later on the Convention. Convincing North Korea to give up its nuclear weapons will in turn require the abolition of the idea that large states are allowed to militarily intervene whenever and wherever it suits them. Once all nuclear weapon states have signed up for a Nuclear Weapons Ban Treaty, the following step consists of negotiating a timetable and other practicalities (like verification mechanisms). These negotiations should end in a Nuclear Weapons Convention (NWC), similar to the Chemical Weapons Convention

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<sup>97</sup> Rebecca Johnson, 'Changing the Game to Achieve Nuclear Disarmament', *IPS*, December 12, 2012.

<sup>98</sup> Ray Acheson and Beatrice Fihn, *ibid.*

<sup>99</sup> Ken Berry (and others), *ibid.*

<sup>100</sup> Barry O'Neill, 'Nuclear Weapons and National Prestige', *Cowles Foundation Discussion Paper*, No. 1560 (February 2006), 4.

(1993) and the Biological Weapons Convention (1972).<sup>101</sup> That is also what the Canberra Commission advised: 'The maintenance of a nuclear weapons free world will require an enduring legal framework, linked to the Charter of the UN, possibly in the form of a convention on nuclear weapons'.<sup>102</sup> Ten years later, the Blix Commission repeated the same idea: 'A nuclear disarmament treaty is achievable and can be reached through careful, sensible and practicable measures. Benchmarks should be set; definitions agreed; timetables drawn upon and agreed upon; and transparency requirements agreed'.<sup>103</sup> The idea of a Nuclear Weapons Convention was also part of the so-called five-point plan of UN Secretary-General Ban Ki Moon.<sup>104</sup> The conclusions of the 2010 NPT Review Conference, agreed by all members (including the nuclear weapon states), referred to this plan: '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>105</sup>

Negotiating a Nuclear Weapons Convention implies that the traditional arms control and the humanitarian approach are not opposites. Once nuclear weapons have been banned the mechanisms that traditional arms control developed and employed for limited arms reductions will be employed to ensure complete elimination. Similar to the processes of eliminating other banned weapons systems, the humanitarian approach will be complemented by well-established practises of arms control, such as monitoring, verification and confidence building regimes. In this sense a Ban and a Nuclear Weapons Convention are not approaches that exclude each other, or that necessitate a choice of one over the other. Furthermore, both treaties in this way come to build on the NPT.

## Conclusion

The traditional arms control approach is very slow in dismantling nuclear arsenals. It is also a state-centered approach. It does not enthuse public opinion as it is rather technical and complex. The recent interest in the humanitarian approach of nuclear disarmament can be explained by a growing frustration with traditional arms control and a lull after initial expectations that the end of the Cold War would result in complete nuclear disarmament. The humanitarian approach points to the consequences of the use of nuclear weapons for individual human beings, and recommends forbidding this category of weapons, that are

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<sup>101</sup> Maxwell Bruce, Horst Fischer, and Thomas Mensah, 'A NFWF Regime: Treaty for the Abolition of Nuclear Weapons', in Joseph Rotblat (and others), eds., *A Nuclear Weapon Free World* (Boulder: Westview Press, 1993), 119-31.

<sup>102</sup> Canberra Commission on the Elimination of Nuclear Weapons Report (Canberra: 1996).

<sup>103</sup> Blix Commission, *ibid.*

<sup>104</sup> Ban Ki-Moon, 'The UN and Security in a NFWF', speech at the East-West Institute, October 24, 2008.

<sup>105</sup> NPT Review Conference, Final Document, 2010.

undeniably weapons of mass destruction and that are unequivocally by far the most destructive of indiscriminate and inhumane weapons. The step-by-step approach is replaced by a principled approach, which holds that nuclear weapons are too destructive to be used, just like chemical and biological weapons. A ban on nuclear weapons will turn the tables. The burden of proof will shift from the non-nuclear weapon states to the nuclear weapon states. Those nuclear weapon states that are not eager to eliminate their nuclear weapons will come under growing pressure from worldwide public opinion as well as their own public opinion to follow the logical extension from the accepted norm that nuclear weapons are too destructive to be used and therefore should be banned. It is this stigmatizing effect of nuclear weapons as inhumane and therefore unusable that may bring all states to pursue "Global Zero". Once all nuclear weapons states have agreed with the ban, a Nuclear Weapons Convention will stipulate how the nuclear weapon states will go to Zero: in which timeframe, and under what kind of confidence building, verification and sanctions regime.