

The humanitarian initiative and Pledge: an effective route to achieve nuclear disarmament?



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What is the 'humanitarian disarmament initiative' and Pledge?

Humanitarian approaches reframe nuclear risks, weapons and their potential use as a globally relevant humanitarian and security problem that needs to be addressed through stigmatising, prohibiting and eliminating the weapons for everyone. ICAN and a growing number of states argue that a nuclear ban treaty in accordance with International Humanitarian Law (IHL) would be the most viable multilateral step now to create the conditions for nuclear disarmament

The Humanitarian Pledge: “... to fill the legal gap for the prohibition and elimination of nuclear weapons...” (2014-5)

Disarmament, Arms control + Nonproliferation

Nuclear disarmament is both an objective - “a world free of nuclear weapons” - and a process. The process got taken over by nuclear-armed states and diverted into arms control, nonproliferation and ‘nuclear security’

Arms control – tends to perpetuate the weapons not eliminate them (e.g. reductions exchanged for modernisation)

Nonproliferation – NPT created unequal status, rights and obligations for ‘haves’ and ‘have-nots’, and has unintended consequence of driving proliferation incentives and promoting proliferation technologies

International Humanitarian Law

International Humanitarian Law (IHL), also known as the **laws of war and the law of armed conflict**, is the legal framework applicable to situations of armed conflict and occupation.

As a set of rules and principles IHL aims, for humanitarian reasons, to limit the effects of armed conflict.

Fundamental to IHL are the following two principles:

- The **protection of civilians** – people who are not, or are no longer, participating in hostilities; and
- That the right of parties to an armed conflict to choose methods and means of warfare is **not unlimited**

IHL is part of public international law and developed through treaties and agreements.

(definition drawn from International Justice Resource Centre IJRC. See also International Committee of the Red Cross (ICRC))

IHL and customary international law

The core of IHL are the **Geneva Conventions**, particularly the Geneva Conventions of 1949 and their Additional Protocols, and a series of other treaties and protocols covering specific aspects of the law of armed conflict. IHL has contributed to building a substantial body of **customary law that is binding on all States**, even if they have not specifically signed or acceded to specific treaties.

IHL includes (among other agreements)

1972 Biological and Toxin Weapons Convention (BWC)

1980 Convention on Conventional Weapons

1993 Chemical Weapons Convention (CWC)

1997 'Ottawa' Convention on anti-personnel landmines (Mine Ban Treaty)

2008 Cluster Munitions Convention (CWC)

IHL Principles relevant to nuclear weapons

- **distinction** – *(Rule 1: The parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians.)*
- **proportionality** *(Rule 14: Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.)*
- **unnecessary suffering** *(Rule 70: The use of means and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering is prohibited.)*

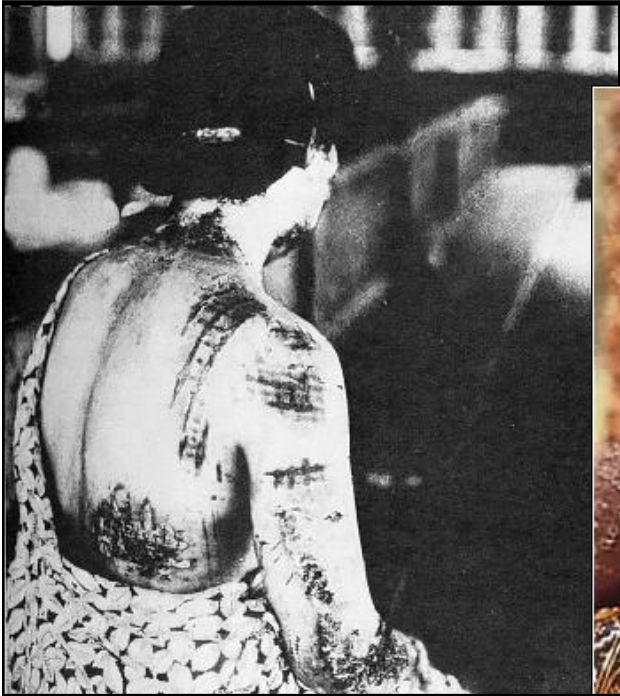
[source ICRC]





**Hiroshima in ruins,
August 1945**

**One small (under 13 kt)
nuclear bomb caused this...**



**Recent studies show that a 'limited' nuclear war
would cause abrupt climate freezing
rainfall disruption
and agricultural collapse**



**Nuclear-induced famine
would kill billions of
innocent civilians globally
1-2 billion dead
from starvation**



*Dr Ira Helfand,
International Physicians
for the Prevention of Nuclear War*



LIMITATIONS OF EXISTING LAW

In 1996 the International Court of Justice recognised:

“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 to future generations.”

Yet the ICJ gave a divided ruling that did not unequivocally conclude that the use and threat of nuclear weapons is illegal.

It did unanimously conclude that there was a legal 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.”

Limitations of the NPT

The NPT (1968) makes research, production and acquisition of nuclear weapons illegal only for states that accede as **NON-NUCLEAR-WEAPON STATES**.

It does not address the **USE OR DEPLOYMENT** of nuclear weapons at all

It connects nonproliferation to an “inalienable right” to technologies for civilian nuclear energy that drive proliferation and impede security

The Article VI nuclear disarmament obligation lacks timelines, mechanisms and oversight, leading some nuclear states to assert that the NPT gives them a right to keep and modernise their nuclear arsenals as long as they wish to do so

9 nuclear-armed countries with poverty, social, military and economic problems, who spend over

\$100 billion per year on nuclear weapons

	2011 in \$ billions
US	61.3
Russia	14.9
UK	5.5
France	6.0
China	7.6
Israel	1.9
India	4.9
Pakistan	2.2
DPRK/ N. Korea	0.7
TOTALS	104.9

source: Global Zero 2012



2015

9 nuclear arsenals

>2,000 Mt

>15,400 weapons

TIME FOR A TREATY THAT APPLIES EQUALLY TO ALL?



So this is the context for applying humanitarian disarmament approaches to nuclear weapons

- **Disadvantages of traditional arms control and nonproliferation – frustration by NNWS, lost opportunities when cold war ended, concerns re terrorists and desire to augment NPT regime with universally applicable treaty**
- **21st century security is collective, beyond “P5” military interests**
- **IHL track record in banning inhumane weapons, changing state behaviour and accelerating progress towards elimination**
- **IHL approach emphasises agency, rights and responsibilities of all.**
- **Nuclear and IAEA practitioners from “Gang of Four” to Hans Blix and Mohammed ElBaradei joined disarmament advocates in questioning deterrence and acknowledging feasibility of nuclear disarmament**
- **Significant states and civil society actors deliberately strategised from 2007 to increase awareness of humanitarian consequences, link to IHL, and promote a multilateral treaty that makes sense to publics, with a process that is open to all states but blockable by none.**

Implications of humanitarian approaches for nuclear disarmament strategies

Accelerate new thinking and shift mind-sets to:

- value the security needs of nuclear free countries and people above the military-industrial interests of nuclear establishments;
- reawaken awareness of the consequences of nuclear weapons and dependence on nuclear deterrence, and the humanitarian imperative for preventing NW use by means of a comprehensive global ban;
- delegitimize NW and doctrines, including deterrence contradictions, creating a space to ban and eliminate NW;
- demonstrate the urgent need for responsible states to take the lead in negotiating a nuclear abolition treaty, whether or not they possess nuclear arms themselves.

Key Developments in humanitarian initiative 2010-2014

- **Mutually reinforcing strategies inserted paragraphs relating to humanitarian consequences and negotiations on further multilateral treaties and instruments into the consensus part of the outcome document from the 2010 NPT Review Conference – emphasising these as intended to reinforce nonproliferation efforts.**
- **2011 and 2013: Red Cross+Red Crescent adopted resolutions + action plan highlighting humanitarian impacts and calling for governments “to pursue in good faith and conclude with urgency and determination negotiations to prohibit the use of and completely eliminate nuclear weapons through a legally binding international agreement...”**
- **NPT PrepCom May 2012: Switzerland led Group of 16 call for nuclear weapons to be outlawed in first humanitarian statement to NPT states parties. Subsequent statements to further PrepComs and the 2015 NPT RevCon grew in support**
- **At UN First Committee meetings in October 2012, 2013 and 2014 humanitarian disarmament statements garnered growing support**
- **OSLO Conference on Humanitarian Impacts of Nuclear Weapons (HINW) March 2013 – 128 states – initial studies and conclusions relate to IHL**
- **NAYARIT (MEXICO) HINW Conf Feb 2014 - 146 states. Chair calls for negotiations**
- **VIENNA HINW Conf Dec 2014 - “Austrian Pledge” to “fill the legal gap”**

First diplomatic step - Humanitarian consequences brought into the NPT in 2010

“The [2010 NPT] 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.”



Framing the Nuclear Disarmament Action Plan, 2010 NPT Review Conference outcome document

B iii. The Conference calls 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.

ICRC initiatives

In Nov 2011 the Council of Delegates of the Red Cross + Red Crescent passed a new resolution on NW – first since 1982:



EN
CD/11/R1
Original: English
adopted

COUNCIL OF DELEGATES
OF THE INTERNATIONAL RED CROSS
AND RED CRESCENT MOVEMENT

Geneva, Switzerland
26 November 2011

Working towards the elimination of nuclear weapons

Resolution

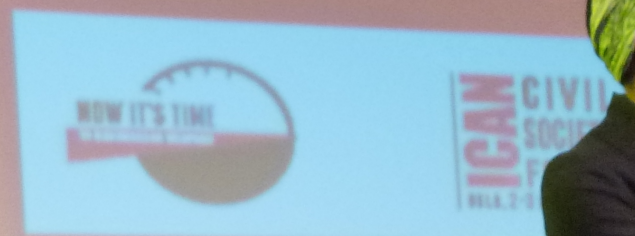
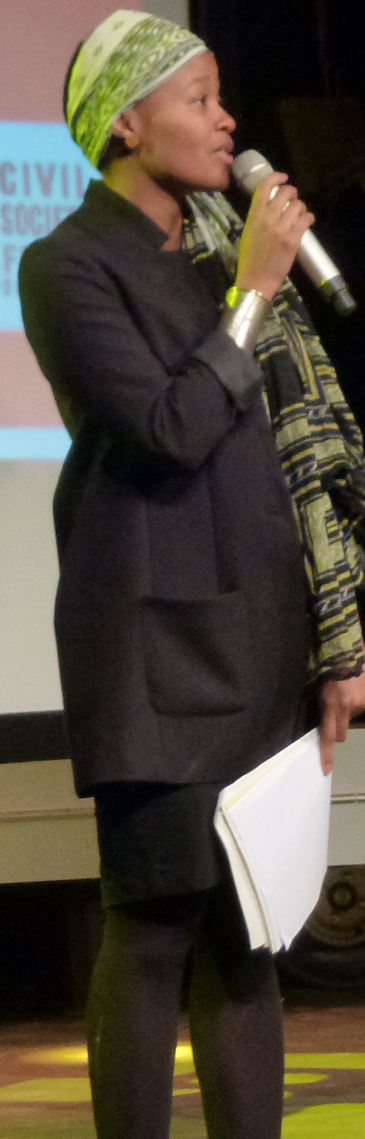
Document prepared by
The International Committee of the Red Cross in consultation
with the International Federation of Red Cross and Red Crescent Societies
and National Societies

“...to ensure that nuclear weapons are never again used...

- to pursue in good faith and conclude with urgency and determination negotiations to prohibit the use of and completely eliminate nuclear weapons through a legally binding international agreement...”

In Nov 2013, the ICRC and Council of Delegates took this further by adopting an action plan and providing discussion fora, expertise and studies to support the HINW conferences, Open-Ended Working Group etc

OSLO Civil Society Forum and First International Conference on Humanitarian Impacts of nuclear weapons March 2013



**Nayarit Conference (Feb 2014):
nuclear threats and disarmament are
“issue of the utmost importance to all
peoples in the world”**



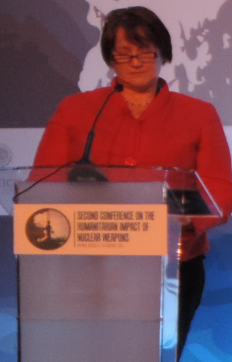
“risks of accidental, mistaken, unauthorized or intentional use of these weapons ...”

Close Calls

Evidence from many declassified documents, testimonies and interviews reveal a series of disturbing close calls in which nuclear weapons were nearly used due to miscalculation or error.



Source: <http://www.shundahai.org/nukeweapfacts.htm>





“initiate a diplomatic process ... reach new international standards and norms, through a legally binding instrument....”

Mexican Chair declared Nayarit Conference a “Point of no return”



Austrian Pledge

Having hosted and chaired the Vienna Conference on the Humanitarian Impact of Nuclear Weapons from 8-9 December 2014 and in light of the important facts and findings that have been presented at the international conferences in Oslo, Nayarit and Vienna, Austria, solely in her national capacity, and without binding any other participant, wants to go beyond the summary just read out. After careful consideration of the evidence, Austria has come to the following inescapable conclusions and makes the subsequent pledge to take them forward with interested parties in available fora, including in the context of the NPT and its upcoming 2015 Review Conference:

Mindful of the unacceptable harm that victims of nuclear weapons explosions and nuclear testing have experienced and recognising that the rights and needs of victims have not yet been adequately addressed,

AUSTRIAN PLEDGE (9 Dec 2014)

calls “to identify and pursue effective measures to fill the legal gap for the prohibition and elimination of nuclear weapons...”

Developments December 2014 – December 2015

- VIENNA HINW Conf Dec 2014 – 158 participating states inc US, UK, India + Pakistan, ends with Chair's summary and "Austrian Pledge"
- Austria turned its Pledge into similarly worded international Humanitarian Pledge to "fill the legal gap for the prohibition and elimination of nuclear weapons", which 107 NPT states signed before the NPT RevCon ended 22 May 2015.
- The 2015 NPT RevCon "failed" -- i.e. could not adopt any outcome document, decisions or agreements for the future. This was due to deterioration of relations between certain key NWS (notably Russia and US) and anger by Arab and some other NAM states at failure to hold a Conference on Middle East WMD/FZ, as mandated by 2010 RevCon.
- In addition to the Humanitarian Pledge, 159 NPT parties signed a general HINW statement led by Austria, and 26 NPT parties signed an Australian-led statement recognising 'humanitarian consequences of nuclear weapons'.
- At UN First Committee meetings in October 2015 there were several resolutions from different groups of states addressing "humanitarian disarmament issues" in different ways.
- On 7 Dec UN GA voted [138 in favour, 12 against, 34 abstentions] to establish an Open-Ended Working Group (OEWG) on "Taking forward multilateral nuclear disarmament negotiations" in 2016.

Where now? – questions on next steps

- **What will the OEWG come up with?**
- **Will the N5 and other nuclear-armed states participate constructively or not?**
- **Will negotiations be initiated through a UN or stand-alone forum or series of meetings, and if so, what timing, rules and scope?**
- **Who will take lead, and will they be able to withstand pressure from their nuclear-armed allies to derail or divert negotiations away from a nuclear ban treaty?**
- **What would be the relevance of a nuclear treaty if some or all the nuclear-armed states refused to negotiate?**
- **How would it relate to the NPT, IAEA, CTBT and possible future measures such as FM[C]T, bilateral and plurilateral nuclear arms control and reduction processes?**

Relation between banning and eliminating nuclear weapons

“Weapons of mass destruction cannot be uninvented. But they can be **outlawed, as biological and chemical weapons have been, and their use made unthinkable. Compliance, verification and enforcement rules can, with the requisite will, be effectively applied. And with that will, even the eventual elimination of nuclear weapons is not beyond the world’s reach.”**

Weapons of Terror, Report of the WMD Commission, chaired by Hans Blix, June 2006

Are arms control and nonproliferation approaches leading to a nuclear free world?

- Nonproliferation is undermined by business-as-usual NWS attitudes, including arms control
- Modernization programmes underpinning reductions, leave thousands of NW deployed and maintained in 9 or more arsenals for all our lifetimes...
- Continuing risks of accidents, miscalculations, failure of deterrence, military use or rogue/terrorist acquisition and intentional use...
- If one NW is used, likely to be more:
 - ⇒retaliation=>nuclear exchange => nuclear war?
 - ⇒Global and catastrophic humanitarian consequences

A nuclear ban treaty can't guarantee non use – nothing can do that as long as NW exist – but it will reduce NW salience, reinforce the NW use taboo, constrain behaviour of non-signatories and reduce proliferation incentives, lower nuclear risks, and accelerate elimination steps and future agreements

- **Accidents and unauthorised uses less likely if NW not deployed on high alert**
- **'Nuclear threat reduction' would require continuing high security re nuclear bombs and materials to prevent any being stolen or bought by terrorists (state or non-state), but incentives, opportunities and risks greatly reduced from what they are now**
 - ⇒ **single use could occur but unlikely to be multiple**
 - ⇒ **reduced likelihood of retaliation or 'exchange': while locally devastating a nuclear detonation would not threaten national survival or become global catastrophe**
 - ⇒ **instead of escalation and nuclear war, concerted international action to help survivors and bring perpetrators to justice for crimes against humanity**

Humanitarian process to ban nuclear weapons – an effective route to disarmament?

- We don't know yet, but the process is changing the discourse and opening up new opportunities for disarmament
- Is that why the NWS are so nervous about it?
- A nuclear ban process is not conceived as the final step in disarmament, but as a game-changing next step
- Have 60+ years of nonproliferation and arms control proved an effective route to disarmament?
- Doing the same thing over and over again and expecting a different result We can't find out unless we try

From Protest to Ban



Greenham Common: nuclear weapons silos in 1983 and now, after the INF Treaty banned them in 1987 (site of rebel camp in STAR WARS!)

CAN THE LEGAL GAP BE FILLED WITH A NUCLEAR BAN TREATY?

- **WE CAN'T FIND OUT UNLESS WE GIVE IT A
GENUINE TRY**
- **WHAT DO YOU THINK?**