

3. The TPN: product of a subversive struggle of resistance

This chapter shows that the Humanitarian Initiative (HI) and the process to the TPN can be considered as a resistance movement that arose from the profound discontent of the NNWS and other actors with the regime failure of the NPT on disarmament and the resulting frustration with the persistent disparity within the nuclear rule. This study defines resistance to rule as ***“the withdrawal of recognition and thus the questioning and challenging of institutionalized relationships of super- and subordination”***. A thorough analysis of resistance does not content itself with confirming the suitability of the definition for the object of investigation. Rather, it also seeks to extrapolate what conclusions can be drawn about the nuclear rule itself, and to understand how the resistance was able to succeed under the circumstances imposed by it and despite various containments attempts by the NWS. Thus, it elaborates how exactly state and non-state actors who supported the HI and the TPN operated and which strategies, procedures and means they chose.

To this end, we will reconstruct the process of norm genesis of the TPN. The analysis is primarily structured around the criteria that are essential for the definition and typology of resistance and the aspects that are relevant for a critical perspective. First, it looks at the composition and characteristics of the resisting subjects, i.e. the group of state and non-state actors who worked together across continents and policy areas during the period under study – from 2010 to 2017 – and who drove the process of banning nuclear weapons (*who resists?*) (3.1). Secondly, the time, place and setting at which the first “rassemblement” and the first demonstration of strength took place, the NPT RevCon in 2010 and 2015 (*when were forces joined?*), will be examined (3.2). This already provides initial, albeit not yet sufficient information about the object of resistance – the NPT as a *polity* of nuclear rule. The third section deals with the humanitarian framing and the diplomatic tools developed by the HI – the Humanitarian Statements and the three Conferences on the Humanitarian Impact of Nuclear Weapons (CHINW) – with which it disrupted the traditional discourse on nuclear weapons and opened new political scope for action (*what do they say?*) (3.3). This vividly shows how aware the movement was of the importance of the discursive and epistemic dimension for enabling change. The HI’s deliber-

ately instrumental approach suggests that humanitarian concerns were not the sole driver of its activities. The evaluation of the qualitative interviews with individual participants involved in the resistance (*what do they mean?*) (3.4) investigates decisive underlying motives and interests in more detail. It not only demonstrates that resistance to nuclear rule was an important motivating factor. It also reveals how the nuclear order and the nuclear rule enshrined in the NPT were perceived by the resisters and to what extent an anti-colonial impetus also played a role. The analysis then focuses on their further course of action (*how to resist?*) (3.5) to challenge the nuclear rule against the will of the NPT nuclear powers and their allies, by imposing the Open-ended Working Group (OEWG) and the TPN Negotiating Conference. This part clearly shows that the HI and the TPN process always adhered to existing norms, but interpreted and applied them creatively and were thus able to change the rules of the game. They can therefore best be described as a phenomenon of subversive opposition. The final section of this comprehensive analysis of resistance is devoted to the reactions of the nuclear rulers and the examination of the normative substance of the TPN (*what were the reactions and output?*) (3.6.). Here we look at the strategies employed by the NPT NWS and umbrella states, the evolution of their containment attempts and what their failure reveals about the nuclear rule. Regarding the TPN, the focus will be on assessing the reformative or transformative substance of the treaty and what this means for its potential and limits for change.

3.1 Who resists? The “Humanitarian Initiative”

In the analysis of resistance, the first question that arises is: Who is resisting, which actors make up the movement? This section focuses on the actors who united in the Humanitarian Initiative (HI) and drove the process towards the Treaty on the Prohibition of Nuclear Weapons (TPN). Its common denominator was the humanitarian framing of the nuclear weapons discourse. All HI members emphasized the humanitarian implications of nuclear weapons and International Humanitarian Law (IHL). In doing so, they intended to achieve a shift from a focus on state security and nuclear deterrence toward human security and nuclear disarmament. Their engagement in the HI included participation in the three Conferences on the Humanitarian Impact of Nuclear Weapons (CHINW) in Oslo (2013), Nayarit, and Vienna (both 2014), support for various joint statements on the issue, endorsement of the Humanitarian Pledge “to fill the legal gap for the prohibition and elimination of nuclear weapons” (UNGA 2015c) and participation in the TPN negotiations.

A rough look at their composition shows that both state and non-state participants were involved. The movement unfolded its effectiveness precisely through the cooperation between state actors, civil society, the International Committee of the Red Cross (ICRC), and academia. It represents therefore a multi-stakeholder

network with a two-track approach. In the following, we will introduce both the main actors of the first-track (state level) –alliances from the Global South) and the second-track (civil society level). On the state side, these include individual states participating in the core group as well as different state alliances and Global South networks. On the civil society side, we consider the International Campaign to Abolish Nuclear Weapons (ICAN) and its member organizations, who have played a paramount role. We also examine the influence of the ICRC and academia on the movement, even though they do not see themselves as an integral part of it.

Individual states & the core group

Individual states took a special role within the HI and the movement that initiated and realized the TPN. Some of them gave the impetus, invested resources, took political risks. Some have taken a leadership role, acted as coordinators or masterminds of the alliance, set a decisive course at crossroads or proposed concrete solutions in decision-making situations that paved the way ahead. Some acted as networking points, were important forces for winning new circles of supporters, or served as political heavyweights within the movement. It is therefore worth taking a closer look at the role of major state actors and their team building.

In the course of the process, a core group emerged on the state side of the movement. It was not a fixed group that remained the same throughout the period – not all group members were there from the beginning, and not all stayed until the end. We first examine the roles of Switzerland and Norway, which were important in the initial phase, but later became less relevant or even absent within the HI. We then turn to the other core group members – Austria, Brazil, Ireland, Mexico, Nigeria, South Africa – and some other particularly committed states. The latter were intensively involved over a longer period of and will therefore reappear in the further analysis of the resistance.

If there is such a thing as an initial moment of the HI at the state level and on the official diplomatic stage, it was *Switzerland's* intervention at the opening debate of the NPT RevCon 2010, where the Swiss Foreign Minister announced that his country wanted to put the humanitarian dimension of nuclear weapons at the center of the debate on nuclear disarmament (Switzerland 2010). As the hosting country of the UN Headquarters in Geneva, home to the ICRC and cradle of IHL codified in the Geneva Conventions of 1949 and related Additional Protocols of 1977 and 2005 (ICRC 2023), Switzerland has always been an advocate for the observance of humanitarian standards and strengthening of humanitarian disarmament. It is therefore no surprise that it was one of the pioneers when it came to introducing greater consideration of IHL into the NPT discussions. Switzerland took the initiative to include a paragraph in the final document of the RevCon 2010 recognizing the catastrophic humanitarian effects of nuclear weapons (UNODA 2010, part I, p. 19) (see 3.2). The

first cross-regional statement on the humanitarian impact of nuclear weapons at the PrepCom 2012 (Switzerland *et al.* 2012b) was also initiated by Switzerland. It was the first visible appearance of the group of states associated with the HI. Switzerland supported all follow-up Humanitarian Statements up to the Humanitarian Pledge (UNGA 2015c, para. 3) (see 3.3).

Gradually, however, Switzerland has withdrawn from the ranks of the vanguard and joined the rearguard group, following concerns about how a legal prohibition of nuclear weapons without the NWS would affect relations with them and existing international law. While it abstained from the vote on the mandate for ban-treaty negotiations at the end of 2016 (UNGA 2017), it participated in the Negotiating Conference on the TPN in 2017 and voted in favor of its adoption. Swiss negotiators provided numerous inputs during the negotiations. They were always constructive but relatively conservative, focusing on coherence with existing international law in addition to humanitarian aspects (see 3.5). In an explanation of vote, the country underlined that the text should have been more affirmative with regard to the NPT and expressed concerns that the treaty could weaken existing norms and agreements and create parallel processes and structures “which may further contribute to polarization” (Switzerland 2017).

To date, the Alpine state has neither signed nor ratified the TPN but is sympathetic to the treaty and the HI. A majority of the Swiss parliament supports treaty accession (Bundesversammlung 2017) and commissioned a report from the government to examine the legal and political implications. This report concluded in 2018 that “[at] this stage, the reasons against an accession of Switzerland outweigh the potential opportunities accompanying a signature and ratification of this treaty” (Switzerland 2018). Taking into account existing military cooperation and its importance to Switzerland’s own defense capabilities, it recommended against joining the treaty for the time being, even though it would be in line with the country’s disarmament policy and stance on humanitarian issues. Since then, Switzerland has abstained in the UNGA on TPN issues, but participated as an observer in the first TPN Meeting of States Parties (MSP) in June 2022. The MSP’s clear commitment to compatibility with the NPT (UN 2022, para. 12) and the constructive behavior of the TPN States Parties at the NPT RevCon 2022 have refuted the Swiss government’s concerns. However, with the start of the Ukraine war in February of the same year, the pressure for security policy cohesion with its European and transatlantic partners increased to such an extent that Switzerland’s state of limbo with regard to TPN accession continued.

The second pathbreaker of the HI was **Norway**. Its prominent involvement between 2010 and 2013 was carried by the Labour Party government of Stoltenberg’s second cabinet (2005–2013). Negotiations on a new legal instrument outlawing nuclear weapons was a central foreign policy goal for the Norwegian center-left coalition government from 2010 onwards and followed a carefully developed plan (Ege-

land 2019b). Shortly before the 2010 NPT RevCon, Norwegian government officials already related the humanitarian dimension of nuclear weapons to previous initiatives of humanitarian disarmament. The Norwegian foreign minister argued that the positive experience with this approach could also be useful in relation to nuclear weapons and that a ban would have an added value even if not all states agreed: “We cannot leave it to the nuclear weapon states alone to decide when it is time for them to do away with these weapons. Their destructive power would affect us all, if put to use – and their threat continues to affect us all – therefore they are everyone’s business” (Norway 2010). In the context of the ongoing revision of the NATO Strategic Concept, he even went so far as to question the Alliance’s deterrence doctrine: “We cannot credibly expect others to renounce the nuclear option, while we maintain that nuclear deterrence is still vital to our own security, twenty years after the end of the Cold War” (Norway 2010).

The Norwegian government, however, was not merely content with fresh rhetorical intonation in the debates on nuclear disarmament and arms control. It also took important operational steps. These included two main components (Egeland 2019b, Kmentt 2021, p. 20). On the one hand, they involved the establishment of a second-track approach through the support and funding of civil society organizations that were to carry the humanitarian spin into the public debate, generate societal support, and help win over more states to the HI through lobbying. ICAN and the Oslo International Law and Policy Institute (ILPI) received most of their budget from the Norwegian government for this purpose at the time. Leading ICAN member organizations such as Article 36, Norwegian People’s Aid, and WILPF (or its disarmament program Reaching Critical Will (RCW)) also received financial support for their work on the issue (Egeland 2019b, p. 476). On the other hand, it entailed the coordination of a first-track process independent of established bodies and forums (and thus of NWS) that would be followed and led by NNWS.

To initiate the latter, ILPI, following the Norwegian script, organized a first informal meeting in Amersham (UK) in September 2011, attended by a small group of diplomats, representatives of international organizations and relevant NGOs and think tanks who had long-standing expertise and experience in the field of humanitarian disarmament and participated in their individual capacity (Kmentt 2021, pp. 28–31). Many more such meetings, named after their place of origin (“**Amersham Meetings**”), were to follow in various locations. They became the nucleus from which the peer group (or core group) of supporter states of the HI emerged.

In order to widen the space for an independent first track process, the Norwegian delegation, in its opening statement to the NPT PrepCom held in Vienna in 2012, invited to an International Conference on the Humanitarian Impact of Nuclear Weapons (CHINW) in Oslo in spring 2013 (Norway 2012). This was to be the first of a triad of conferences that were significant for the further rally of the movement (see 3.3). Not only did Norway host this conference, but Oslo also became the site of

the first grand gathering of the civil society, academia, and community of states that have sustained the HI. Following the 2013 Oslo conference, the ICAN partner organization Article 36 resumed facilitation to continue the non-public first-track process and organized a series of further informal meetings called “*Berkshire meetings*” (also named after the first location of these gatherings) (Borrie *et al.* 2018), to discuss the further strategy for the HI and the idea of a ban treaty.

Norway, which led the way, withdrew from the HI shortly after the change of government in October 2013 and joined the other US umbrella states, which were skeptical or even hostile toward it. The Norwegian capital did not play a role as an active site for the movement again until 2017, when it served as the stage for the celebrations surrounding the awarding of the Nobel Peace Prize to ICAN. The conservative Prime Minister Erna Solberg (2013–2021), who was responsible for ending Norway’s commitment and supported nuclear deterrence, had to attend the award ceremony in keeping with tradition and silently approve the tribute paid to the foster child of the previous government.

However, the informal first-track process instigated by the Norwegian government continued after 2013. The “Amersham meetings” and “Berkshire meetings” organized by Article 36 and ILPI initially brought together mainly cross-regional groups of specialized diplomats at the working level. Later, more senior representatives and ambassadors joined them (Acheson 2021b, pp. 113–118). Another format of ICAN-ILPI-government encounters around the world were regional roundtables and workshops designed to engage government officials who had not previously worked on the issue. While the latter were aimed at more broadly promoting the idea of humanitarian disarmament in the field of nuclear weapons and gaining new supporters, the “Amersham meetings” and “Berkshire meetings” increasingly became the central nervous system and strategic control centers of the movement.

No detailed records or lists of participants are available for these meetings. Most of the information summarized here is drawn from the chronicle of the Austrian diplomat Alexander Kmentt (Kmentt 2021, pp. 7–110), who became the most important leading figure in the TPN process on the diplomatic side. The informal meetings accompanied the entire process between 2011 and 2017 and helped inform deliberations within the HI in preparation for debates and meetings within the established forums, as well as tactical and strategic decisions on the means and procedures to pave the way for the TPN to reach negotiations. Participants not only discussed the various possibilities as to how a ban treaty could be initiated in concrete terms. During the retreats, some of which lasted several days, they also elaborated and fine-tuned working papers that were later submitted by governments to UN and NPT meetings and marked major milestones in the emergence of the TPN. Last but not least, those meetings served to build trust among government protagonists and between them and civil society leaders (Acheson 2021b, pp. 115–116).

Switzerland and Norway were certainly among the state initiators of the HI. As it progressed, however, they gradually withdrew or dropped out altogether. Yet the states participating in the “Amersham meetings” and “Berkshire meetings” ensured that the movement would continue without them. This cohort of states formed the core group that drove the HI and spearheaded it from then on. It comprised not least those states that were the main sponsors of the UNGA resolution that mandated the TPN Negotiating Conference in December 2016 (UNGA 2017). This group includes Austria, Brazil, Ireland, Mexico, Nigeria, and South Africa. They also formed an informal coordination body during the negotiations (Acheson 2021b, p. 265, Kment 2021, pp. 126–127). Within the core group, Mexico and Austria occupied a special position as hosts of the second and third CHINW in spring and winter 2014 respectively (see 3.3).

Mexico's considerable record in nuclear arms control diplomacy goes far back to the 1960s. The country played a central role in both the NPT negotiations and the creation of the Tlatelolco Treaty (1967), which established a NWFZ in Latin America and the Caribbeans. (Horowitz *et al.* 2017). As described in 2.2, the Mexican government lobbied for the inclusion of Article VI in the NPT and, through insistence, achieved a slight sharpening of the overall soft wording. Mexico remained consistent with its critical if not antagonistic stance toward the NWS within the NPT and repeatedly led the opposition of non-aligned states and states of the Global South, as for example in the blockade of the 1990 NPT RevCon (Simpson and Howlett 1990). Within the bodies and forums of the UN disarmament machinery, Mexico is among the most vocal advocates of nuclear disarmament. But it also addressed the nuclear threat outside the traditional paths. For example, in the negotiations on the International Criminal Court (ICC), it unsuccessfully lobbied for an amendment to the Rome Statute to include the use or threat of use of nuclear weapons as a crime under the jurisdiction of the court (Baldus *et al.* 2021, p. 16). As an experienced and committed actor in other humanitarian disarmament processes on landmines, cluster munitions or arms trafficking, it was a question of maintaining its foreign policy profile for the Mexican government to take a leading role in the HI from the outset. Hosting the 2014 Second CHINW in Nayarit (see 3.3) and being a member of the core group negotiating the 2017 TPN, Mexico repeatedly assumed a coordinating role and was among the first states to sign and ratify the treaty. At the first TPN MSP in 2022, the country assumed the second Chairmanship.

With a long-standing history of supporting nuclear disarmament and non-proliferation (Maitre and Lévy 2019) and its phase-out of civilian use of nuclear technology in 1978, a full anti-nuclear attitude is one of the cornerstones of **Austria's** foreign policy. Home to one of the three UN headquarters and the IAEA, and due to its neutral status, the country developed an independent diplomatic profile in this area despite its small size. As a result, it exerted a relatively large influence on debates in the relevant diplomatic forums and thereby acquired international pres-

tige. Thanks to domestic consensus on this issue, Austria's position has remained stable and benefits from this distinctive continuity even in the face of governmental changes. As early as the NPT RevCon 2010, the Federal President threatened to "discuss with partners the feasibility of a global instrument to ban these weapons" if no progress was made (Austria 2010). While the NPT would remain the cornerstone of the international nuclear non-proliferation regime, "a static regime that has lost its vision may benefit from fresh ideas", he explained.

Since then, Austria has made its commitment to the HI a foreign policy priority and, in the same year, founded the Vienna Center for Disarmament and Non-Proliferation (VCDNP), which became an increasingly important think tank and advisory institution for the UN in this field. Austria took a leading role in the design and implementation of the strategy of the HI and the TPN process. It supported all cross-regional statements on the humanitarian impact of nuclear weapons, hosted the third CHINW in Vienna in 2014 (see 3.3) and initiated the Humanitarian Pledge (UNGA 2015c), which brought further momentum to the movement. Austria was among the most active negotiators on the TPN and one of the first countries to sign and ratify the treaty. It also hosted the first TPN MSP in Vienna in June 2022. The Austrian Foreign Ministry also sponsored ICAN, but with considerably fewer resources than Norway and more focused on the country's own branch. The government's close ties to the civil society arm of the movement were also reflected by the fact that many of the ICAN staff in Vienna had previously worked as interns in the Austrian Foreign Ministry (Krasno and Szeli 2021, p. 86).

Alongside Mexico and Austria, Brazil, Ireland, Nigeria and South Africa were also members of the core group. As mentioned in 2.2, **Ireland** has been committed to progress in nuclear disarmament, arms control and non-proliferation for decades and was a driving force behind the NPT negotiations (Chossudovsky 1990). Its commitment to building, sustaining, and strengthening nuclear regimes also enjoys broad domestic support and, over time, has become part of the Irish state's foreign policy identity (Becker-Jakob 2018) which is reflected in a consolidated disarmament bureaucratic culture and corresponding path dependencies. **South Africa** in turn has been the only state to abandon nuclear weapons (the country possessed six complete warheads) and fully disarm, becoming a party to the NPT after the end of apartheid in 1991 (van Wyk and van Wyk 2015). Its initially moderate stance on nuclear arms control issues shifted more and more toward a critical non-aligned position that denounces the injustices in the nuclear order and calls for profound reform (Leith and Pretorius 2009). In doing so, the country links its struggle for nuclear disarmament to its own colonial past, repeatedly branding the hierarchy in nuclear regimes as "nuclear apartheid" (South Africa 2015). As a regional power on the African continent and because it developed, possessed, and then dismantled nuclear weapons on its own, Pretoria has strong (moral) authority and thus influence over other African states on nuclear issues. With **Brazil**, another

BRICS member is part of the core group. As a regional power with aspirations for a permanent seat on the UNSC, Brazil is a heavyweight and serves as political orientation for many Latin American states. The country had also decided to abandon its (uncompleted) nuclear program and realize its international rise without nuclear weapons. Although the Brazilian government initially expressed doubts about promoting a ban treaty outside the usual consensus-based forums and without the NWS (Acheson 2021b, pp. 126–127), it continuously participated in the regional roundtables and all three CHINW. After the 2015 NPT RevCon, Brazil changed its reluctant stance, participated in working papers, became part of the core group, and one of the most vocal proponents of a ban (Acheson 2021b, 199–200). **Nigeria**, despite having ratified the NPT in 1968, was suspected in the late 1970s and early 1980s of launching a nuclear weapons program to form a West African counterweight to South Africa (Adeniran 1981). However, no evidence of this was ever found (Bleek 2017, p. 47). Research on Nigeria's policy on nuclear arms control is thin, and the country had little visibility on the issue prior to its involvement in the HI. It has concluded both a safeguards agreement and the Additional Protocol with the IAEA. In addition to the NPT, it has endorsed the CTBT and ratified it at an early date in 2001. The country is also a member of an NWFZ under the Pelindaba Treaty, which it also ratified in 2001. During the TPN process, it participated in the Humanitarian Statements and the Humanitarian Pledge, was present in the relevant forums with ever-larger delegations, co-sponsored the negotiating mandate and played a key role in the core group.

All members of the **core group** supported the Humanitarian Statements on the effects of nuclear weapons and the Humanitarian Pledge, submitted the negotiating mandate for the TPN, and assumed a coordinating role during its negotiations. All but Brazil have already signed and ratified the TPN, participated in the first TPN MSP in 2022 (Brazil as an observer), and are committed to universalizing the treaty. Yet other countries also participated in the strategic deliberations of the HI, soliciting support and raising their voices in the UN. They attended some of the informal first track meetings or roundtables for strategic consultation and multiplication between 2011 and 2017, played a decisive role in the negotiations on the TPN and can be seen as a kind of extension of the core group, the so-called “core group plus” (Acheson 2021b, p. 265). This included Thailand and New Zealand in particular. Indonesia, the Philippines, Malaysia, and Costa Rica could also be assigned to this group, especially during the TPN negotiations. Before the diplomatic process for a ban entered the negotiation mode, the number of these promoter states of the HI was even larger. This was mainly due to the even stronger European support at that time. In its broadest form after the NPT RevCon 2015, the extended core group encompassed Austria, Brazil, Chile, Costa Rica, Holy See, Indonesia, Ireland, Malaysia, Mexico, Nigeria, New Zealand, Philippines, Sweden, Liechtenstein and Switzerland.

Important protagonists of the HI had already played a leading role and cooperated in earlier initiatives on humanitarian disarmament, for example in the initiatives against landmines and cluster munitions or in the Arms Trade Treaty (ATT) process (Austria, Ireland, Mexico, Norway, South Africa, Sweden, Switzerland). Among them were, on the one hand, European states that have historically been heavily involved in humanitarian aid and IHL (Switzerland, Austria, Norway) or have been outspoken disarmament advocates in the UN (in addition to the former, Ireland, Liechtenstein, Sweden). These relatively small states must devote considerable resources and their impact depends largely on the individual commitment of their diplomats and negotiators (Panke 2012). On the other hand, the core group of the HI was supported by political strongholds of the Global South, whose fight against nuclear weapons and questioning of the nuclear order have become part of their foreign policy principles and diplomatic profile (notably Mexico, South Africa, Brazil). Some representatives from these states had been active in international (nuclear) arms control for many years and ensured continuity across government changes (author's own observation). Given its regionally mixed composition, the core group was an essential link between Global North and Global South. But other pre-existing groups of states and alliances also played a crucial role in this vital nexus within the TPN movement, as we will see in the next section.

Groups of states & the Global South

NNWS from the Global South took on a special political importance among the state members of the movement. Various alliances of states, including the New Agenda Coalition (NAC), Nuclear Weapon Free Zones (NWFZ), states where nuclear weapons tests were conducted and the Non-aligned Movement (NAM) fulfilled an essential multiplication function. Through them, the HI was able to build on already established reform movements and associations of states within the NPT and beyond, and use them to link the Global North and Global South.

The **New Agenda Coalition (NAC)**, whose (constructive) opposition role in the non-proliferation regime has already been discussed (see 2.3), was one of these groups of states. It played a key role in multiplying, rallying, and channeling political forces for the TPN. Its members (Brazil, Egypt, Ireland, Mexico, New Zealand, and South Africa) acted as a hinge between the two spheres. All but Egypt belonged to the extended core group, and four of them even belonged to the core group. Displeased with the non-implementation of the the 13 steps to nuclear disarmament agreed upon at the NPT RevCon 2000 (UNODA 2000, vol. I, part I, pp.14-15), the alliance followed up at every UNGA First Committee and NPT review meeting, insisting on the fulfillment of the Article VI commitment to eliminate nuclear arsenals. From 2010 onward, NAC states joined the HI, its statements, and its pledge. At a critical juncture in the movement, during the preparation of the 2015 NPT

RevCon, the NAC was instrumental in consolidating and clarifying the political demand for effective legal measures to prohibit and eliminate nuclear weapons, which will be described in more detail later (see 3.2 and 3.5).

In addition to the NAC, numerous alliances of states organized in **Nuclear Weapon Free Zones (NWFZs)** gradually supported and mobilized for the HI. Among them, the Southeast Asian region and Latin America and the Caribbean stood out. The states participating in the Association of Southeast Asian Nations (ASEAN) (Indonesia, Malaysia, the Philippines, Singapore, Thailand, Brunei, Vietnam, Laos, Myanmar, and Cambodia), which was founded in 1967 for the purpose of economic cooperation, came together to form a NWFZ in the Bangkok Treaty (1995). In its statements at the UNGA and NPT RevCon, the group stressed the importance of the humanitarian dimension and welcomed the HI's achievements (ASEAN 2015). They voted in favor of all important resolutions and the TPN negotiating mandate, participated in the Negotiating Conference, and voted for the adoption of the TPN. The same was the case for the 15 member states of the Caribbean Community and Common Market (CARICOM), which are simultaneously parties to the Tlatelolco Treaty (1967). The latter established the first and hence oldest NWFZ and established the "Organismo para la Proscripción de las Armas Nucleares en la América Latina y el Caribe" (OPANAL) to promote the objectives of the treaty. Its 33 members, representing the entire Latin American and Caribbean region, aligned themselves with the HI in the same way. The Community of Latin American and Caribbean States (CELAC) officially endorsed the Humanitarian Pledge at its summit in spring 2015 on the initiative of Mexico and Costa Rica (CELAC 2015a). Shortly before the NPT RevCon 2015, this was an important signal. In the further process, CELAC repeatedly presented joint statements (CELAC 2015b, 2016) and served as an effective network for gaining broad support.

Dedicated supporters of the HI included not least **states whose territory or waters served as nuclear weapons test sites**. Among the most active were Kazakhstan, the Marshall Islands, and Kiribati. They used the HI to make their voices better heard about the devastating humanitarian, health, economic, and environmental impacts to which their populations and habitats were subjected. The humanitarian movement's various statements and resolutions provided numerous linkages to raise their concerns in the established forums of nuclear disarmament, arms control, and non-proliferation. In addition, they were actively incorporated into the campaign and given space to set their own priorities and emphases at the three CHINW. They were also intensively involved in the negotiations and made substantial contributions, particularly on victim's assistance and environmental remediation.

An important multiplication network with many regional interweaving was also the **Non-Aligned Movement (NAM)**, whose self-image as a resistance force in the context of the NPT has already been elaborated (see 2.3). It is of particular interest to

this study because of its fundamental critique of colonialism. Its member states advocated nuclear disarmament since its foundation and combined this with an anti-colonial stance (Potter and Mukhatzhanova 2012). NAM's nuclear resistance record is not insignificant and is not limited exclusively to NPT forums. For example, shortly after the failed 1975 NPT RevCon, then-member Yugoslavia suggested a UN special session on disarmament at the NAM conference in Lima. The submission of a corresponding resolution to the UNGA was decided at the next meeting in Colombo in 1976 (NAM 1976, para 139) and, with NAM's numerous supporters, this proposal easily obtained a majority in the UNGA. In June 1978, the first UN Special Session on Disarmament (UNSSOD I) adopted a momentous final document that set in motion what was probably the most extensive reform of the UN disarmament machinery (UNGA 1978).

The NAM maintained its opposition role during the 2010–2017 study period. In the UNGA, for example, it repeatedly criticized the NWS's modernization plans, the lack of progress on disarmament and the failure to move forward a WMDFZ in the Middle East (NAM 2011). The alliance also opened up an important additional space for the debate on nuclear disarmament outside the NPT, which the HI was able to fill. In 2012, NAM sponsored a UNGA resolution to convene a high-level meeting of the UNGA on nuclear disarmament in 2013 (UNGA 2013a), which was adopted without dissent with 163 votes in favor and five abstentions (France, Israel, Ukraine, UK, and US). For the first time in its history, the UN's top-level plenary (heads of state, government, and foreign ministers) met exclusively on this issue on September 26, 2013. NAM thus created an important public stage for the HI without itself being unitedly involved in it. Most participating states clearly expressed their dissatisfaction with the status quo or even called for a ban on nuclear weapons (Egeland 2017, p. 184, Acheson 2021b, pp. 165–167).

In the years that followed, NAM moved closer to the HI. In the run-up to the 2015 NPT RevCon, its member states welcomed the continued consideration of humanitarian consequences of nuclear weapons in a joint statement to the UN Disarmament Commission (UNDC) in April 2015 (NAM 2015a). On behalf of NAM, the Iranian Foreign Minister stated at the 2015 NPT RevCon that both the UNGA high-level meeting on nuclear disarmament in 2013, and the Vienna CHINW in 2014 “increasingly reflects concern and impatience with the lack of progress toward the total elimination of nuclear weapons” (NAM 2015b, p. 2). For the HI, NAM, though never fully part of the movement, was a reliable partner for contestation and opposition to the NPT NWS within the UN.

The states associated in the NAM are so numerous and heterogeneous that, despite widely shared sympathy for the HI, a supportive position was not taken until very late. Indeed, this did not include a united vote on important resolutions, such as the TPN negotiating mandate in the UNGA. After all, the alliance also includes three NWS (India, Pakistan, North Korea) and other skeptical and even dismissive

governments (e.g., Belarus, Iran). This made it impossible for NAM to reach agreement on the ban treaty. Nevertheless, it was an obvious and fertile recruiting pool for gaining supporters.

Global South states at large pioneered resistance throughout the history of the NPT. Through their sheer numbers and their highly developed networking in various alliances, they also shaped the political muscle of the humanitarian movement.

Civil society & ICAN

The HI did not only consist of individual states and groups of states. Civil society played a central role throughout the TPN process. This has already been touched upon in connection with the facilitation of the first-track process. Civil society actors further ensured the creation of a second-track mechanism that reached beyond the diplomatic arena into the public sphere. The most prominent civil society actor in this context was undoubtedly the ***International Campaign to Abolish Nuclear Weapons (ICAN)***. As a network organization, it brought together the entire spectrum of NGOs and led civil society engagement on the first and second tracks. ICAN's special role was honored in December 2017 with the Nobel Peace Prize. The Norwegian Nobel Committee acknowledged the achievements of the Campaign for "its work to draw attention to the catastrophic humanitarian consequences of any use of nuclear weapons and for its ground-breaking efforts to achieve a treaty-based prohibition of such weapons" (Norwegian Nobel Committee 2017). Comprehensive accounts of ICAN's role in this process have already been published in recent years (Ruff 2018, Acheson 2021b). This section summarizes where ICAN came from, what activities and achievements the campaign can point to, what makes it different, and the strategy behind its success.

ICAN was founded at the end of April 2007 on the sidelines of the NPT PrepCom in Vienna (ICAN 2023e). The organizational structure behind the campaign was provided by the International Physicians for the Prevention of Nuclear War (IPPNW). The first ICAN office was linked to the Australian IPPNW chapter and located in Melbourne. The original goal of the campaign was to support a comprehensive nuclear weapons convention involving all NWS and with an elaborate disarmament and verification plan, as was being discussed in the UN framework at the time. With the support of ICAN and lawyers working with the campaign, Costa Rica and Malaysia submitted an updated draft of such a "Model Nuclear Weapons Convention" (Costa Rica and Malaysia 2008) to the UNGA in December 2007, which reiterated a proposal submitted ten years earlier (Costa Rica and Malaysia 1997).

The peak phase of the campaign's activities between 2010 and 2017 (Acheson 2021b, pp. 149–150) corresponds to our study period. Roughly speaking, the ICAN's range of work can be summarized in four fields of activity that were pursued at both the national and international levels: activist mobilization and demon-

strations, press and public relations work, education and awareness-raising, and political lobbying and networking. ICAN has been able to revitalize civil society opposition to nuclear weapons in all four areas, albeit to varying degrees. But how has it managed to do so and what distinguishes ICAN from the traditional peace movement, which has increasingly led a shadowy existence since the 1990s? Certain characteristics and prerequisites of the campaign played an important role for its effectiveness between 2010 and 2017: first, its endowment with adequate resources and concomitant professionalization. Second, its internationality and diversity (interdisciplinary, intergenerational, and mixed gender). And third, its clear focus on the humanitarian dimension and the emphasis on extensive lobbying and networking activities in this area.

ICAN's success is not least related to a form of re-launch of the campaign in the context and aftermath of the NPT RevCon 2010. This included both a significant expansion of the available (*financial*) resources and a related professionalization. ICAN benefited from the Norwegian government's decision to invest substantial funding in a second-track process and was one of the main recipients (Egeland 2019b, p. 476). This led to a true reconfiguration of the campaign, even though it was established as non-governmental and maintained this status. With improved funding, a full-time staffed office was established in Geneva in June 2011 – a far move from the original coordination center in Melbourne, which was largely volunteer-driven. In the course of this process, organizations already involved in earlier humanitarian disarmament initiatives and co-funded by Norway, such as Article 36 from the UK, Women's League for Peace and Freedom (WILPF) or Norwegian People's Aid, gained influence in the global ICAN network, which was reflected not least in the staff (Egeland 2019b).

With the funds and personnel acquired, the quantity and quality of headquarters' output could be significantly increased. This included a funding scheme to promote actions and events of partner organizations and support for activists' travel (especially from the Global South) to the conference and negotiation venues. The Geneva office has compiled and co-designed studies and reports, provided state-of-the-art information in a modern corporate design and further advanced social media, press and public relations activities. Before the headquarters was sufficiently equipped in terms of material and personnel, the office of the Norwegian ICAN section in Oslo took over a substantial part of these tasks. It also promoted the establishment of ICAN incubators and activities in countries which were seen as key states for political success, such as Germany. Not only the international staff team in Geneva grew and increased its coordination services. The political governance body, the International Steering Group (ISG), also gradually changed its composition and included more and more representatives of fully grown and professionalized organizations from the field of humanitarian disarmament (ICAN 2023d).

The professionalization of ICAN and related efforts to distance itself from the traditional anti-nuclear peace movement also had downsides. Clear tensions emerged between efficiency and participation, between output and input legitimization of the campaign's mode of work. In some cases, protagonists explicitly praised the efficiency of the top-down approach and ridiculed grassroots bottom-up processes that generated little or no output. ICAN sought to democratize the nuclear disarmament process and never tired of criticizing the nuclear hierarchy. But the campaign itself operated strictly hierarchically. The ISG made decisions behind closed doors, disconnected from the base and without consultation mechanisms.

A second distinctive characteristic of the campaign is its *internationality and diversity*. It spans continents and communities, disciplines and different fields, generations, sex and gender identities. As a global coalition, ICAN has 650 partner organizations in 110 countries (ICAN 2023c). It thus reaches into all continents. However, it is somewhat less present in Africa. To anchor itself in civil society around the world and build a broad base of support, ICAN has conducted numerous international gathering forums and campaigners' meetings from the beginning. The involvement of survivors and affected people was also a central concern of the campaign, which it shares with other humanitarian disarmament movements. This included the participation of minority and indigenous populations most impacted by the devastating humanitarian and environmental effects of nuclear weapons use and testing. Testimonies from the survivors of the Hiroshima and Nagasaki (Hibakusha) bombings, as well as those affected by nuclear weapons testing in Australia, Kazakhstan, and the Pacific, have been at the heart to ICAN's education, outreach, and policy work. In this way, the campaign managed to expand the international scope of the anti-nuclear peace movement, which had been concentrated or even limited to the Western Hemisphere since the 1980s.

Despite increased internationality, the campaign was only partially successful in ensuring full racial and regional diversity (Acheson 2021b, pp. 141–142). Attempts were made to increase representation and diversity through the above-mentioned small grants for partner organizations and sponsorship programs to cover the travel costs of activists from the Global South. However, imbalances persisted, and the campaign as a whole remained much Western in character. This was reflected not only in the attendance rate at regional and international campaigner meetings, conferences, and negotiations. The disparity was even greater within the political control centers of the campaign. In the ISG and the international staff team, where decisions about policies, their implementation and funding were made, organizations and staff from the American-Anglo-Saxon and Scandinavian countries dominated until 2017.

ICAN's diversity also stemmed from the interdisciplinary nature of the campaign. The movement sought the greatest possible outreach to a wide variety of issues and fields of action in the NGO scene. It succeeded in involving not only clas-

sic peace and disarmament organizations but also actors concerned with economic and social justice, the environment, health, religion, human rights and, above all, humanitarian organizations. Similar to the state protagonists and members of the core group, the linkage to and recourse to existing humanitarian disarmament networks, such as the landmine campaign, the cluster munitions coalition or the coalition against arms trade, helped in this process.

The campaign also tried to appeal to different generations of activists. With its outreach into other areas of civil society activity and its demarcation from the traditional peace movement in North America and Europe, ICAN succeeded to engage a new, younger group of supporters. Its digital and social media outlets helped significantly in this endeavor. But its lobbying and campaigning work, which was targeted at established political forums, also had a magnetic effect. The proximity to the centers of power of international diplomacy and the opening of opportunities for participation its lobbying and think tank activities with the chance of a real measurable impact was an important motivating and attracting factor for young, predominantly academic campaigners. In Germany, the ICAN Action Academy trained lobbying and campaigning skills, and “Nukipedia” seminars imparted basic knowledge.

Although a new generation of anti-nuclear peace activists grew up as a result, the presence of the old peace-movement guard at the various meetings and conferences was undiminished. The intergenerational composition of the movement brought advantages (experience, greater outreach), but was also associated with conflicts. Especially when it came to steering issues and decision-making processes, the relationship between old and young was challenged. Ultimately, the younger generation prevailed both within the international staff team and the ISG. This was due not least to the apparent success of the new approach and the delight at the noticeable revitalization of civil society commitment for the struggle against nuclear weapons. However, a certain resentment on the part of the older generation about the feeling of being excluded and the assumed betrayal of peace movement principles such as grassroots democracy and radicalism did not disappear until the end.

A final aspect of the campaign's diversity is the strong representation of women and people with different gender identities across ICAN. The goal of gender balance was consistently pursued and implemented. The international staff team and the ISG recorded a balanced representation of women throughout the period. The campaign was led by its long-time executive director Beatrice Fihn. Almost half of the civil society delegates at the TPN Negotiating Conferences were women, and their share of interventions and leadership positions was twice as high as that of their state counterparts (Minor 2020, pp. 235–237). Less formalized was the participation of campaigners who identified as LGBTQ. Some of them were part of the campaign's leadership circles. A group of activists formed a provisional International Queers Against Nukes (IQAN) division (Acheson 2021b, pp. 140–141).

As diverse and heterogeneous as ICAN's composition and activities may be, there was a clear *focus on the humanitarian dimension as well as on the political lobbying and networking* aimed at it. This, again, was closely related to the Norwegian government's intention at the time to establish a first and second track to achieve its own political goals. While from 2007 to about 2010 ICAN still supported a comprehensive nuclear weapons convention with the participation of all states (especially NWS), the thrust of the campaign clearly shifted and narrowed to a nuclear ban treaty not necessarily tied to NWS participation, along the lines of the Mine Ban Treaty (UNODA 1997) and the Convention on Cluster Munitions (CCM) (UNODA 2008), which were also concluded and entered into force without the largest possessor states. The radiance of these two landmark treaties of humanitarian disarmament was particularly strong at that time. The latter had just successfully completed its ratification process and entered into force in August 2010.

Humanitarian framing was in vogue in the NGO scene in the early 2010s. A well-developed and ramified international civil society infrastructure had emerged in this field as a result of earlier campaigns. The focus on IHL as the unifying cobblestone also meant an ideological uncluttering of the agenda, a concentration in a single-issue campaign and the abandonment of a political superstructure. Even if individual members of the campaign held on to their broader political beliefs and programmatic radicalism, there was tacit agreement that pragmatism would be the key to success in cooperation. As a result, the focus on the humanitarian aspect of nuclear weapons became the catalyst for the expansion and cohesion of civil society engagement within the HI.

There was also a strong emphasis on political lobbying and networking. All other activities of the campaign – activist mobilization and demonstrations, press and public relations, and education and awareness-raising – were tailored to the lobbying work and ultimately merged into it. For example, ICAN provided numerous studies and reports on the humanitarian consequences of nuclear weapons and legal analyses and assessments on their prohibition in order to advance the diplomatic process (ICAN 2011, 2013a, 2015). These inputs were fed into the informal first-track meetings as well as to the NPT PrepComs, RevCons, the UNGA First Committee, other UN disarmament forums, or the negotiations.

In addition to providing content, ICAN engaged in classic interpersonal political lobbying and networking through individual talks and meetings with government officials and politicians at the international, national, and local levels. Background discussions with diplomats were as much a part of this as influencing other political decision-makers, including parliamentary work through hearings, or promoting supporting resolutions (European Parliament 2016, para. 6 & 7, Tweede Kamer der Staten-Generaal 2017). Interpersonal relations and contacts between local campaigners and diplomats played a central role in the cooperation with the leading states of the campaign, but also in attracting and engaging new states, especially

from the Global South. ICAN built up relevant contact databases for communication and cooperation with diplomats and political actors and used them intensively during debates and negotiations in the UN.

ICAN's political lobbying ultimately involved organizational and coordination services to ensure that the broad diplomatic support for the HI was reflected in the concrete discussions and decision-making process of the numerous bodies within the UN system. For even when diplomats were on board and their states officially endorsed their participation, there was no guarantee that they would also be present and able to cast their votes at the crucial moments. Smaller states and those with fewer resources in particular are not able to cover the full range of ongoing debates, decision-making processes, and negotiations. For many, nuclear disarmament is an issue that is not a top priority and therefore needs to be dealt with in the most resource-efficient way possible. The active presence of ICAN campaigners and their partner organizations at all events relevant to the HI, and their direct line to diplomats, made it possible to facilitate necessary contributions and majorities.

The ICRC & academia

Part of the HI multi-stakeholder network was also the interaction with and support from the *International Committee of the Red Cross (ICRC)*. The ICRC sees itself neither as a state nor as a civil society actor. In legal terms, it is not an NGO or an international organization, but a private association under the Swiss Civil Code. Thus, it has a special legal status, privileges and immunities to exercise its role and activities around humanitarian aid and conflict, which are also anchored in international law by the Geneva Conventions (Debuf 2015). Its hybrid nature makes the ICRC a special element in multi-stakeholder networking. Its endorsement was an important foundation for the building of the movement and gave it a boost.

As the guardian of IHL (Maresca and Lavoyer 1999) the ICRC is a recognized authority in the diplomatic sphere. Because of its unwavering commitment to humanitarian assistance, and thanks to its neutral status, it is trusted and highly regarded by much of the international community. Because the ICRC has a long tradition both in nuclear weapons and IHL, it is a natural connector for bringing them together in a nuclear humanitarian disarmament agenda. In its very first report and testimonies following the nuclear weapons strikes on Hiroshima and Nagasaki, the ICRC noted on September 5, 1945, that “[i]t is indeed questionable whether the latest developments of the technique of warfare leave any possibility for international law to cover a firm and sound order of society” (ICRC 1945).

With this background, it is not surprising that the initial impetus to include and embed the humanitarian dimension in the intergovernmental debate on nuclear weapons originated from the ICRC. The widely acclaimed speech by its President, Jakob Kellenberger, to the diplomatic corps in Geneva in April 2010 (Kellenberger

2010) in the run-up to the NPT RevCon, elevated the humanitarian debate on nuclear weapons into the official forums of nuclear disarmament and arms control, and, as mentioned above, was subsequently taken up by Switzerland at the conference itself. Through the ICRC's support, its credibility and seriousness radiated to the concerns and actors of the HI and helped bring skeptical states and regional allies on board.

At the same time, the organization has its own multiplication potential, which should not be neglected. The ICRC is part of the International Red Cross and Red Crescent Movement (IRCRCM), to which the International Federation of Red Cross and Red Crescent Societies (IFRC) and the 192 National Societies belong. Through this network, it can activate its national sections worldwide to disseminate publicly and in their contacts with governments and political representatives the positions adopted by its assemblies in Geneva. However, the decentralized structure of the Federation and the autonomy of its National Societies, as well as the usually close collaboration of the latter with national governments, impede this multiplication mechanism. For example, until the TPN came into being in 2017, the German Red Cross was very reluctant in its political and public interventions when it came to linking humanitarian assessments on nuclear weapons with a humanitarian disarmament agenda.

Between 2010 and 2017, the ICRC and numerous sections of the IRCRCM never ceased to highlight the catastrophic humanitarian impact of nuclear weapons use and the associated IHL issues, and to call for action to prohibit these acts and destroy such weapons. In late 2011, the IRCRCM Assembly adopted and issued a mobilization call to all member societies to this effect (IRCRCM 2011). It called upon states "to pursue in good faith and conclude with urgency and determination negotiations to prohibit the use of and completely eliminate nuclear weapons." The ICRC President's speech and the IRCRCM appeal became important reference points for other members of the HI. In addition, the ICRC also provided its technical expertise and assessments throughout the diplomatic process, organizing informal meetings with state representatives and providing input during negotiations on the TPN (ICRC 2017), primarily regarding its anchoring in IHL and victim assistance (Schroeder 2018).

Academia and experts were also pivotal in providing expertise and cannot be subsumed under either the group of states or ICAN and its associated NGOs. In addition to ILPI, the Stockholm International Peace Research Institute (SIPRI), the Vienna Center for Disarmament and Non-Proliferation (VCDNP) and, with some delay, the Arms Control Association (ACA), as well as universities such as Princeton, the Middlebury Institute of International Studies at Monterey or the Harvard Law School were among the valuable commentators, sources of ideas and advice from think tanks and academia. The UN Institute for Disarmament Research (UNIDIR) occupies a special position in this context. As the scientific backbone and expertise pool of the UN and its member states on disarmament issues, UNIDIR had already

provided technical support for the humanitarian reframing of arms control with regard to landmines and cluster munitions. Especially for smaller states with fewer resources and expertise, these knowledge transfer and advisory services were indispensable. At the same time, offering technical support to the HI was a delicate balancing act for UNIDIR. The institute therefore always had to carefully weigh and ensure that its work on the issue was consistent with its impartial mandate and multilateral mission.

Cooperation in a multi-stakeholder network

Looking at the role of individual states and the emergence of the core group in the first-track process, as well as the activities of civil society and ICAN at the first and second track levels, clearly revealed the importance of cooperation among different groups of actors within the HI. The ICRC and academia further enriched this multi-stakeholder network, albeit in a more delimited way. It is fair to say that it was the association of all these groups of actors that rendered the work of the HI possible in the first place. Mutual inspiration and influence characterize their interactions. The movement drew its strength from the division of labor and the pooling of resources available to each of these stakeholders. This involved the constant transfer of information, contacts and networks, not least from earlier humanitarian disarmament initiatives.

The interlocking of the various players took place in a reciprocal direction. Norway's policy objectives had a significant impact on ICAN's work mode and orientation. The ICRC's input, in turn, was a crucial source of inspiration for Switzerland. And all of the movement's supporter states and groups drew on the work of UNIDIR and academia. NGOs and academia acted as organizers and facilitators for encounters and meetings of state actors, provided logistical and coordinating support and delivered expertise. Conversely, they were given exclusive access to political steering processes and diplomatic forums and were kept up to date via bilateral consultations on the status of negotiations, current issues in dispute and agreements behind closed doors (Krasno and Szeli 2021, p. 87).

The mutual influence and interdependence were particularly evident in the interaction between ICAN and states. For example, ICAN and leading campaign NGOs were important pillars of the first track process. State actors, particularly Norway and to a much lesser extent Austria and Switzerland, in turn funded these support services as well as second track activities. From both sides, the objectives and strategies of the HI as a whole were co-determined with different emphases and repeatedly adapted to new circumstances. The idea of the ban treaty, for example, entered the strategic discussions in civil society due to the support of the Norwegian government (Ritchie and Egeland 2019) and became increasingly prevalent among ICAN's leading campaigners (Acheson 2021b, pp. 108–112). From there, the ban idea was

reintroduced into the exchange with diplomats via concept papers and other formats developed together with scientists (Acheson *et al.* 2014). Within this strategic steering cooperation, the various groups of actors played different roles. ICAN and civil society progressively took a pushy stance and turned more firmly toward the goal of a ban treaty, while diplomats tended to be more cautious and shied away from the associated political risk (Borrie *et al.* 2018, Kmentt 2021, p. 30).

However, close state-civil society joint ventures carry the risk of increasing assimilation into the ultimately state-defined institutional structure of international politics. The danger of co-option, i.e. that resistant forces themselves become a complicit part of the ruling order, has already been critically examined in other contexts (Turner *et al.* 2010, Stroup 2019). Within the HI, the close ties between state and civil society actors at the governing level of the movement had problematic disadvantages, particularly in its financial dimension. These naturally affected the recipient side more sensitively. With the help of state funding, ICAN became a well-oiled campaign machine, a norm-entrepreneur in the literal sense of the word. At the same time, the resulting changes in its political objectives and internal power structure raise questions about its autonomy.

Even its very existence was threatened, when Norwegian funding gradually dried up in the wake of the change of government. ILPI was hit even harder. In October 2016, a major Norwegian newspaper revealed large transfers of money from the Ministry of Foreign Affairs to ILPI in the period 2009–2015, a considerable amount of which was allegedly deducted as dividends through the institute's joint stock company. Payments were subsequently stopped, and ILPI was forced to close in June 2017 (Development Today 2017). Although no similar irregularities were discovered in ICAN's budget, the conservative government also cut this funding and stopped it altogether in 2017. Just weeks before the announcement of the award of the Nobel Peace Prize to ICAN, the Norwegian branch, once a funding center and model for numerous other branches worldwide, had to close its office and the international office in Geneva had to dismiss almost all its staff.

Overall, collaboration within the multi-stakeholder network of the HI proved fruitful for all parties and their common political endeavor. The network served at least to empower otherwise often neglected state actors (smaller and less influential NNWS) and non-state actors (hibakusha, test victims, etc.). It was not static, but continuously dynamic both internally and externally, with actors entering and leaving the movement (e.g. Norway, Switzerland, Sweden), switching groups (e.g. from the diplomatic service to civil society), sometimes working together for a common goal (cooperating “against” NWS and their allies), and sometimes pursuing their own goals and influencing each other in the process (lobbying ICAN vis-à-vis TPN-supporting states). Although the composition and cohesion among its members varied, the emergence of the HI was the result of these different groups of actors coming

together. For the birth of a resistance always lies in the moment when its supporters join forces.

3.2 When were forces joined? The NPT as a point of departure & return

For a successful resistance, the interaction and unification of the diverse forces and potentials is crucial. As an almost universal treaty regime and the core of the nuclear order, the NPT and its review process proved to be the framework par excellence for the rally and mobilization of the HI. With its poor performance in disarmament, the non-proliferation regime offered a familiar target for all NNWS, which could be used for the expansion of the movement. Due to its pronounced hierarchy, it represents the natural lynchpin for any conceivable resistance activity against nuclear rule. The founding of ICAN on the fringes of the 2007 NPT RevCon is a further indication of the stimulating effect of the NPT on resistant instincts.

Therefore, it is no surprise that it was in the haze of the 2010 NPT RevCon that humanitarian concerns were first officially raised, sowing the seeds for the process towards the TPN. Within its context, the pioneers of the HI (ICRC, Switzerland, Norway, and others) came together for the first time. Others sharpened their profile and methods in the immediate aftermath (ICAN). As a starting point for the association of governmental, civil society and other actors, the NPT RevCon 2010 will be examined in more detail below. The treaty and its review process remained a constant source of reference and conflict for the HI until 2015. The 2015 NPT RevCon served as a test of the responsiveness of the NPT NWS and umbrella states to accommodate the demands of the non-aligned NNWS. It became an arena of confrontation between the reform-minded HI and supporters of the nuclear *ancien régime*. In the end, however, it did not come to a show-down between the two camps. But the failure of the NPT RevCon 2015 created the political and energetic conditions – the “momentum” (Kmentt 2021, pp. 62–85) that fostered the following unfolding of forces and emancipation of the HI.

Connecting at the Review Conference 2010

The 2010 Review Conference (RevCon) of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) was held at the UN headquarters in New York from 3 to 28 May under the presidency of Ambassador Libran N. Cabactulan of the Philippines. Despite the structural regime failure on disarmament (see 2.4), the mood at this time was one of hope. The chances that progress could be made toward a nuclear-weapon-free world had improved with the change of administration in the US in January 2009. The newly sworn-in US President Barack Obama had already emphasized in his election campaign the need for new arms control initiatives and a shift

in course away from the Bush administration's unilateralism toward a multilateral approach (Obama 2007, p. 9). Obama expressed sympathy for the bi-partisan call for nuclear disarmament by security elder statesmen George Shultz, William Perry, Henry Kissinger and Sam Nunn (Shultz *et al.* 2007) and declared the goal of a world free of nuclear weapons to be a foreign policy priority of his election program.

He reaffirmed how serious this was to him in his Prague speech on April 5, 2009, which received worldwide attention (Obama 2009). In this speech, he underscored the validity of the great bargain of the NPT (NWS disarm, NNWS renounce, peaceful nuclear energy for all) and promised to work for swift ratification of the CTBT. He soon turned his words into action. The US government initiated and facilitated UNSC Resolution 1887 (UNSC 2009), which put nuclear non-proliferation and disarmament back on its agenda. The Obama administration organized several Nuclear Security Summits in the following years to secure fissile material, not least to prevent its use for terrorist attacks with dirty bombs. In addition, in April 2010, just in time for the NPT RevCon, US nuclear doctrine and deterrence policy were formulated in more restrictive terms: NNWS that are members of the NPT and fully respect the nonproliferation regime would not have to fear nuclear threat or attack (US 2010). The greatest success of Obama's Global Zero Agenda, however, was the negotiation of a new disarmament treaty with Russia, the New START (US and Russia 2010), which both states signed, on April 8, 2010, in Prague. Under this treaty, the number of nuclear warheads deployed on intercontinental ballistic missiles (ICBM) of the two nuclear powers was to be reduced to 1550 each.

The US government's new tone and its initial efforts toward nuclear disarmament and multilateral dialogue were generally appreciated in the plenary sessions of the NPT RevCon (UN 2010). Nevertheless, almost all NNWS expressed in their statements their dissatisfaction with the lack of progress on disarmament and lack of implementation of Art. VI in the past (UN 2010). This mixed mood of skepticism and hope formed the context in which ***the humanitarian idea first entered the official debate on nuclear weapons***. Only two weeks had passed since ICRC President Jakob Kellenberger gave his speech in Geneva on the relationship of tension between nuclear weapons and IHL (Kellenberger 2010). As intended, this speech reverberated through the halls of the NPT RevCon 2010. Right from the opening debate, the Swiss Foreign Minister addressed the humanitarian dimension (Switzerland 2010). The Confederate government also sponsored a study on the subject and proposed a passage recognizing the humanitarian impact of nuclear weapons.

Concerns about the impact of nuclear weapons are already expressed in other terms in the text of the NPT. Its preamble refers to their destructive power with the following words: "Considering the devastation that would be visited upon all mankind by a nuclear war and the consequent need to make every effort to avert the danger of such a war and to take measures to safeguard the security of peoples." (UN 1968, Preambular, §1). Yet this formulation remains generic, refers solely to nu-

clear war – neglecting singular nuclear weapons use and detonations such as in Hiroshima and Nagasaki or through nuclear testing – and provides no direct link to IHL.

The Swiss proposal to include a reference to the humanitarian consequences of any nuclear weapons use and the relevance of IHL was supported by Norway, Austria, Mexico, South Africa, and Holy See, among others. From the NPT NWS side, there was restrained opposition, with France firmly opposing raising the issue of humanitarian concerns. The Philippine President of the RevCon hosted several informal meetings, attended by the five NPT NWS and other key states, to reach agreement on wording in the final document (Kmentt 2021, p. 16). Norway chaired these meetings and supported the inclusion of the passage. In the end, other conflict issues prevailed, and the NPT NWS did not want to jeopardize consensus-building because of a single sentence on the humanitarian perspective.

After four weeks of negotiations, the States Parties agreed on a substantive final document with a comprehensive action plan that encompassed 64 action points on nuclear disarmament (UNODA 2010, vol. I, part I, pp.19-29). These included, for instance, the immediate start of negotiations on a FMCT (UNODA 2010, part I, p.23) and the convening of a conference to prepare for the establishment of a WMDfZ in the Middle East (UNODA 2010, part I, pp.29-31), which has been a stagnant long-term project since the beginning of the NPT. The 64 actions (except for the added transparency measures) were basically a detailed reformulation of the 13 disarmament steps from the final document of the NPT RevCon 2000 (UNODA 2000, vol. I, part I, 14–15), which is why the outcome as a whole was seen as a “breathing space”, but not as a breakthrough (Müller 2010b). It would turn out, however, that this assessment was only going to provide a snapshot, as it overlooked an almost invisible but crucial aspect.

For there was definitely something new about the reference to the humanitarian dimension set out in the principles and objectives of the action plan: “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” (UNODA 2010, part I, p. 19). For the NPT NWS, the clause was a cheap concession. They had no idea of the fruits this terminological seed would bear and the further operationalization of this phrase. For the NNWS, the first recognition and problematization of the catastrophic humanitarian consequences of nuclear weapons in the final document, combined with a set of recommendations for action, provided a consensual reference point within the NPT that they could use to justify their subsequent engagement within the HI, which ultimately resulted in the TPN (Kmentt 2021, p. 16). From this they derived their mandate to take measures on the basis of IHL to implement Art. VI.

The “little-noticed phrase” agreed by the NPT RevCon 2010 “laid the foundation for a surprisingly successful effort to achieve a legal prohibition on nuclear weapons” (Potter 2017, p. 75). The first intervention of the HI thus occurred very discreetly. It was compliant with the rules and even consented to by the NPT NWS. From the very outset, the *modus operandi* was not to violate established rules (NPT provisions & rules of procedure), but to additionally embrace other rules (IHL) that had not previously been applied to the subject of dispute (nuclear weapons), although they were generally accepted. This approach was just as creative as it was subversive.

In the following years, the NNWS tried to promote change within the UN disarmament bodies and the NPT review process. However, these efforts did not produce results in terms of nuclear disarmament. They criticized the non-fulfillment of Art. VI of the NPT and thus its regime failure in numerous statements at the UNGA First Committee and plenary session as well as during the NPT PrepComs (Egeland 2017, pp. 171–175). This led to a **deep crisis of legitimacy for the NPT**: what was supposed to be a transformative regime in the eyes of the NNWS (transformation towards a disarmed world) increasingly turned out to be a *status quo* regime in reality (Tannenwald 2013, p. 300). Criticism of and opposition to the regime intensified not only within the institutions. Dissident tendencies also grew during this period. In May 2010, North Korea conducted its second nuclear test (Zhang and Wen 2015). Iran doubled its nuclear enrichment capabilities between 2012 and 2013 (The Economist 2015). New sanctions had to be adopted outside the UN as many states, especially among the NAMs, showed solidarity with Iran (Potter and Mukhatzhanova 2012).

During the review process, it gradually became apparent that the NPT RevCon 2010 measures package, including its ambitious action plan, would not be implemented by the NPT NWS. RCW and the James Martin Center for Nonproliferation Studies published comprehensive monitoring reports on the lack of implementation of the 2010 Action Plan (Mukhatzhanova 2014, Acheson *et al.* 2015, Mukhatzhanova 2015). Not only did they demonstrate the NPT NWS’s failure to achieve nuclear disarmament and disregard for its obligations under Art. VI. In addition, dynamics in the opposite direction became increasingly apparent. All NPT NWS continuously invested in the further development of their arsenals since 2010, including new warheads and delivery systems. No further disarmament negotiations followed the conclusion of New START.

President Obama had to commit to a \$600 billion modernization program of the US nuclear arsenal over the next 10 years to get the US Senate to ratify New START in 2011 (NYT 2011, McKeon 2019). The US still owes the promised ratification of the CTBT to this day. Russia had also started to modernize its strategic nuclear forces and to develop new land- and sea-based ballistic missiles and nuclear submarines (Norris and Kristensen 2010). The UK renewed its nuclear deterrent force through modernized nuclear delivery systems and enhanced the nuclear warheads carried on the Trident submarines (Kristensen and Norris 2011a). The military cooperation

with the US on the maintenance and further development of nuclear arsenals, which has existed since 1958, was supplemented in November 2010 by a bilateral treaty with France, a country that was itself in the midst of a modernization program (comprising submarines, aircraft, missiles, warheads and production facilities) (Pannier 2018). China, in turn, deployed four new nuclear-capable ballistic missiles and even began to increase the number of its nuclear warheads, being the only one of the five NPT NWS to do so (Kristensen and Norris 2011b).

Among the NWS not recognized in the NPT, clear trends toward a nuclear arms buildup could also be observed. Pakistan developed new delivery systems and built two new plutonium production reactors and a new reprocessing facility to fabricate more nuclear weapons fuel (Kristensen and Norris 2011c). Israel's three diesel-powered long range submarines just acquired from Germany displayed off Iran in the Persian Gulf and were widely assumed to have the capability to deploy nuclear-tipped cruise missiles (Haaretz 2010).

Neither the Geneva CD, which remained deadlocked, nor the NPT NWS showed the slightest signs of a turnaround. The so-called P5 process, in which the five permanent UNSC members met several times to discuss transparency and confidence-building measures for the promotion of their NPT nuclear disarmament commitments (Hoell 2019, Hoell and Persbo 2020) produced merely a "Glossary of Key Nuclear Terms" (P5 Working Group 2015). Instead of generating nuclear arms control and disarmament impetus, P5 discussions between 2010 and 2015 mainly revolved around how to position themselves vis-à-vis the HI and its initiatives (Kmentt 2021, p. 58) to take the wind out of the sails of their unsolicited reform proposals. Shortly before the NPT RevCon 2015, the International Partnership for Nuclear Disarmament Verification (IPNDV) was launched by the US and the civil society Nuclear Threat Initiative (NTI). This multilateral forum was intended to develop new verification methods for nuclear disarmament involving NNWS (Song Yue *et al.* 2020), but could not change the general perception of failure among them. Thus, disillusionment over the broken promises of Obama's Global Zero agenda and the unfulfilled Action Plan of the NPT RevCon 2010 shaped the atmosphere and political context of NPT RevCon 2015. The failure of nuclear rule and rulers was unmistakable.

Showdown at the Review Conference 2015

The 2015 Review Conference (RevCon) of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) convened at the UN headquarters in New York from 27 April to 22 May under the presidency of Ambassador Taous Feroukhi from Algeria. Whereas the 2010 NPT RevCon had been the starting point of the HI, the 2015 NPT RevCon represented its return point and the first demonstration of strength of the movement which had grown in the meantime (its evolution in sharpening its arguments and in organizing and coordinating will be examined in more detail in

3.3). The NNWS, which had gradually joined the HI, performed in a finely tuned and prepared manner.

Essentially, their input focused on three topics, including 1.) continued and intensified criticism of the NPT NWS for their lack of nuclear disarmament, their disregard of the 2010 Action Plan, and non-compliance with Art. VI, 2.) an amplified discussion of the humanitarian impact of nuclear weapons and 3.) the need for “effective legal measures” (what exactly was meant by this still remained unclear) for the prohibition and elimination of nuclear weapons. These three preoccupations of the HI, though, were not the only bone of contention at the conference. The non-implementation of another 2010 decision heated tempers. The failed initiation and cancelled conference on a WMDFZ in the Middle East (involving non-NPT member Israel) was a major source of anger, especially for Arab states, led by Egypt (Potter 2016).

In the statements during the four-day *plenary discussions* at the opening of the conference, the tone of protest from the NNWS about the NWS’s violation of its Art. VI obligations and the imbalance in the implementation of the three pillars of the NPT had clearly intensified. Most states criticized the systemic dysfunctionality of the NPT with respect to nuclear disarmament. According to most states (including NAM and NAC), this threatened to undermine the NPT (RCW 2015a, UN 2015b). Time and again, the credibility of the NPT promise of prospective equality among member states through complete elimination of nuclear weapons has been questioned (Costa Rica, New Zealand, Egypt, Tunisia). Some NNWS (Egypt, Indonesia, Ireland, Iran, South Africa) reiterated that the right to possess nuclear weapons granted by the NPT was only transitional and that the treaty’s indefinite extension should not be understood as a permanent affirmation of the NPT NWS status (RCW 2015a, UN 2015b). Referring to the agreements that had been broken (13 steps and 64 actions), the representative of South Africa at the general debate summarized as follows: “Given that 45 years have now passed since the entry-into-force of the Treaty, we can no longer afford to strike hollow agreements every five years which only seem to perpetuate the *status quo*. The time has come to bring a decisive end to what amounts to ‘nuclear apartheid’” (South Africa 2015).

An overwhelming majority of NNWS used the plenary discussion just as passionately to highlight the humanitarian consequences of nuclear weapons (RCW 2015a, UN 2015b). In doing so, they placed the US umbrella states in a dilemma between loyalty to the alliance and their foreign policy principle of respecting IHL. Twenty-six of them had prepared for this debate item at Canberra’s initiative. The Australian representative read out a joint statement calling for consideration of both the humanitarian and security dimensions (Australia *et al.* 2015). A significantly larger number of supporters, in contrast, stood behind the “Joint Statement on the Humanitarian Dimension of Nuclear Disarmament” (Austria *et al.* 2015c) presented by the Austrian Foreign Minister on behalf of 159 states, which focused

solely on the humanitarian concerns. Other group statements in this vein came from ASEAN, CARICOM, CELAC, OPANAL and NPDI (RCW 2015a, UN 2015b).

The need for “effective legal measures” arising from the lack of nuclear disarmament and the discussion of the humanitarian consequences was also placed in the opening debate (RCW 2015a, UN 2015b). CARICOM, CELAC and numerous other states participating in the HI called for such measures to ban and eliminate nuclear weapons. The NAC contributed its first concrete reflections on this issue. The ICRC also called for a ban on nuclear weapons.

The NNWS participating in the HI not only submitted elaborate and coordinated individual and joint statements. They had also prepared numerous *working papers (WP)* on nuclear disarmament with a focus on the humanitarian consequences (UN 2015c), with which they intended to provide input for the final document. WP 30, which was particularly comprehensive, contained 12 recommendations on how the humanitarian focus could be pursued in the NPT review process and was submitted by a cross-regional group of active supporters of the HI, the extended core group of that time (Austria, Chile, Costa Rica, Holy See, Indonesia, Ireland, Malaysia, Mexico, Nigeria, New Zealand, Philippines, Sweden, and Switzerland) (Austria *et al.* 2015a). Numerous additional working papers (WP 8, 9, 15, 16, 21, 22, 27, 29, 30, 39, 40, 42, 44, 52) also emphasized the humanitarian consequences of nuclear weapons and the resulting urgency of progress in nuclear disarmament (UN 2015c).

The question of what should be understood by “effective legal measures” had not yet been answered. However, in the course of the review process for the NPT RevCon 2015, the possible options were gradually clarified. At the PrepCom 2014, an increasing number of states had already called for a treaty banning nuclear weapons, including Palau, Kenya, Thailand (RCW 2014) and most prominently Costa Rica (Costa Rica 2014). Major regional groups, the African Group, CELAC, and OPANAL, also supported a ban treaty (RCW 2014). The NAC presented a working paper, WP 18, in which it outlined four options for “effective legal measures” to address the “legal gap” resulting from non-compliance with Art. V (NAC 2014). These included 1.) a comprehensive nuclear weapons convention with associated verification regime and deadlines, 2.) a nuclear weapons ban treaty, which would establish a prohibition norm and would not need to be directly linked to a verification regime and disarmament plan, 3.) a framework arrangement of various components that would reinforce each other and, taken together, generate core prohibitions and commitments to achieve and maintain a nuclear weapons-free world, and 4.) a hybrid arrangement of the above elements and others as appropriate (NAC 2014, p. 6). By linking the “effective legal measures” demanded by the HI with the fulfillment of Art. VI, and thus with the treaty substance of the NPT, they became agreeable to all NPT NNWS, including the more cautious ones.

For the NPT RevCon 2015, that working paper was updated. In its new version, WP 9, the four options were merged into two strands (NAC 2015). As a result, the

NPT parties would have to choose between two approaches: 1.) the negotiation of a stand-alone agreement, whether a comprehensive convention or a ban treaty, or 2.) a framework agreement that formulates overarching goals and, in a second step, provides for negotiations on mutually supportive instruments to reach these objectives (NAC 2015, p. 3) Thus, three of the original four options were retained. But the ban treaty option stood out given the shared negative experiences of the NNWS regarding the two alternatives: Proposals for a comprehensive convention had been around for a long time but were never realized; a compilation of disarmament agreements to implement Article VI, committed to an overarching set of goals, reminded too much of the ineffectual collection of final documents and action plans of recent RevCons. Other working papers (WP 40, 29) shared the NAC's call for a discussion on "effective legal measures" (UN 2015c).

During the NPT RevCon 2015, the carefully prepared and condensed input of the HI on its three priorities (disarmament, humanitarian concerns, effective legal measures) shaped the discussions and work of *Main Committee I* and its *Subsidiary Body I*, which deal with disarmament and in which concrete recommendations for the final document are developed. In the draft report of its Chair, the urgency of the implementation of Art. VI and the importance of the humanitarian consequences were highlighted. The document also noted that the majority of states saw a need for a legal framework for which all NPT states should engage without delay in an inclusive process within the UN (NPT RevCon 2015). Although this represented no more than a standard description of an opinion shared by the majority, the five NPT NWS strongly opposed the draft and discredited the Chairman (Kmentt 2021, pp. 62–65). Views differed widely on the assessment of previous disarmament efforts, the relevance of the humanitarian perspective, and the sufficiency of the existing legal framework. In the debates, NPT NWS and the HI became increasingly hostile to each other.

As no consensus could be reached by the fourth and final week in Main Committee I and its Subsidiary Body I, the President of the Conference convened a focus group with 19 delegations to explore compromises between the camps. In those informal meetings (Kmentt 2021, pp. 65–68), the NPT NWS, supported by their allies and the umbrella states, and the NNWS, united in the HI, were opposed to each other. According to one participant, the group of the NPT NWS even refused to mention that a majority (i.e., not all) were concerned about the humanitarian impact and risks of nuclear weapons and therefore any use would have to be prevented (Kmentt 2021, p. 67). For the NPT NWS, any insinuation that the legitimacy of nuclear deterrence was questioned by most NPT member states needed to be avoided in the final document. Two days before the end of the RevCon, the focus group ceased its fruitless work.

In a last effort, the President drafted her own non-negotiated text proposal for adoption as a *final document* (UN 2015d). There were strong objections to it, bothe

because of the weak language on disarmament and because of the compromises on the WMDFZ in the Middle East. In the final plenary session, however, it was not the remarks of the HI NNWS, frustrated by the disarmament deficit, that derailed the fragile compromise proposal. It was the statements by the US and its allies Canada and the UK rejecting the draft's handling of the Middle East issue that put an end to agreement on a final document (Potter 2016).

It is impossible to say conclusively whether the conference would have adopted the text otherwise. After all, one vote was sufficient to bring it down. Most members of the HI had, reportedly, ended up agreeing to the document (Kmentt 2021, p. 69). Fifty of them joined a closing statement delivered by Austria (Austria *et al.* 2015b), in which they invoked the successful shift in discussions and the empowerment of the NNWS that came with it. In the statement, they called on all NPT Parties “to identify and pursue effective measures to fill the legal gap for the prohibition and elimination of nuclear weapons” and pledged to cooperate with all relevant stakeholders in their own efforts to “to stigmatise, prohibit and eliminate nuclear weapons in light of their unacceptable humanitarian consequences and associated risks.”

The NPT RevCons 2010 and 2015 were two crucial moments of crystallization for the HI. The NPT RevCon 2010 saw the first signs of networking among various actors. Their earliest collective manifestation succeeded with the enshrinement of the concern about the catastrophic humanitarian consequences of nuclear weapons in the outcome document. From then on, this official endorsement remained the central point of reference for legitimizing the humanitarian debate on nuclear weapons and deepening it. At the same time, the institutional framework of the NPT and its review process provided a pivotal rallying, discussion, and dissemination infrastructure for the continued work of the HI until 2015. The further development and harmonization of its policy conclusions, in particular the specification and reflection of appropriate “effective legal measures” for the prohibition and elimination of nuclear weapons, also took place within this review cycle.

The NPT RevCon 2015 served as the first test of strength for the HI and as an ultimate trial of whether change could be achieved within the regime and together with the NPT NWS. With countless individual and joint statements, working papers and draft reports, the HI flooded the deliberations during this largest get-together in the field of nuclear arms control and disarmament. In the end, however, the NNWS united in the HI did not want to (and did not have to) make use of their grown force. The NPT NWS themselves took care to prove the paralysis of their system of nuclear rule. With the failed RevCon 2015, no one in the movement was in any doubt that the NPT was a tired treaty that would never be able to absorb any new input. Like a perpetual merry-go-round, its debates revolved endlessly and inconclusively upon the same points. Frustration with its lethargy gave the HI and the process leading to the TPN the crucial political “momentum” in 2015 (Kmentt 2021, pp. 62–85).

Active participation within the movement quickly increased. The repeated affirmation and solidification of the regime's failure strengthened the group's resolve to no longer seek the fulfillment of its mounting reform aspirations exclusively within the traditional spheres of action, but rather to create new action spaces that would open up fresh opportunities for NNWS. This did not mean non-compliance or disregard of the existing rules, but rather an increasing awareness and realization of their own agency. The pace of the disarmament machinery should no longer be determined solely by the NPT NWS and their allies. The HI intended to break their monopoly of control on the design and shaping of the nuclear order.

3.3 What do they say? Communicating & opening space with a humanitarian code

A critical perspective considers the importance of the epistemic and discursive dimension for the consolidation and preservation of power and relations of rule. To succeed, resistance must disrupt this epistemic and discursive control of those in power. This section examines how the Humanitarian Initiative (HI) challenges the epidemic and discursive hegemony of the NWS by reframing the debate on nuclear weapons in humanitarian terms. With the humanitarian code, they sought to dismantle the conceptual foundation of nuclear rule by questioning the primacy of state security and nuclear deterrence.

We will examine how the humanitarian reframing, with its specific characteristics (fact-based, proven, transformative), has served as a common language within the HI's widespread multi-stakeholder movement and thus as the glue of resistance. Beyond that, the humanitarian discourse was the main tool of its outward actions by which it tried to shift the discussions about nuclear weapons within the fora of the UN disarmament machinery and the NPT. To trace this, we will explore the numerous joint Humanitarian Statements that served to operationalize the humanitarian framing within the established fora. Finally, we analyze how the humanitarian code was used to open up an independent (from the NPT NWS) political space of action through the three Conferences on the Humanitarian Impact of Nuclear Weapons (CHINW), resulting in an emancipatory manifesto of humanitarian resistance, the "Humanitarian Pledge".

Humanitarian reframing of nuclear weapons discourse

The humanitarian framing of nuclear weapons was the shared language and bonding agent through which the multitude of HI actors could communicate and associate with each other. This section elaborates on three important characteristics of humanitarian discourse that made it particularly suitable as the cement of re-

sistance. First, it relies on a fact-based approach, providing a largely neutral basis for collaboration among diverse actors with different values, interests, and cultural backgrounds. Second, the humanitarian framing has already proven to be an effective tool for making progress on disarmament with regard to other types of weapons. Third, through its linkage with the concept of human security and International Humanitarian Law (IHL) (which also places greater emphasis on people), it harbors a transformative potential by challenging the primacy of state (security) and thus one of the foundations of the nuclear order.

The *fact-based approach* of the humanitarian framing makes it accessible to a wide range of actors and groups of actors. Rather than contentious values and beliefs (norms) about nuclear weapons, uncontroversial facts about their destructiveness and effects (data) facilitated a common view and political association. Of course, this distinction is to some extent constructed and the HI is not a value-free space. After all, it is not least values, and the feelings associated with them that make people worry about the humanitarian impact of nuclear weapons. Moreover, IHL itself constitutes a set of norms that leave considerable room for interpretation and weighing of the underlying principles (proportionality, protection of civilians versus military necessity) even when the facts are very clear. With these limitations, the HI can nevertheless be described as an “epistemic community” (Haas 1992, Keck and Sikkink 1998) that is based on “shared causal ideas” rather than “shared principles or values” (Keck and Sikkink 1998, p. 30).

How ideological decluttering can enable networking and cooperation among diverse actors, facilitate pragmatic action, and promote professionalization and efficiency has already been addressed with regard to the ICAN network (see 3.1). The importance of “epistemic communities” and professional international policy coordination for the success of transnational resistance has also been studied in other contexts (Haas 1992, Keck and Sikkink 1998, 1999). Networks of knowledge-based experts play a prominent role by revealing cause-and-effect relationships of complex problems and thereby helping states to identify their interests, apply appropriate framings for political debate, and thus position themselves successfully in negotiations. The control over knowledge and information thus becomes an important instrument for exercising power, and the dissemination of new ideas and data becomes a catalyst for change (Haas 1992). Through the recourse to credible scientific data and the publication of compelling testimonies, international pressure has been repeatedly mobilized to challenge authoritarian regimes and entrenched social practices. The shorter and more concise the causal chain between grievance and perpetrator, the more compelling the claims (Keck and Sikkink 1999, p. 26). Last but not least, the fact-based approach had enabled close cooperation between state and non-state actors, a key success factor for transnational advocacy networks (TAN) (Keck and Sikkink 1999).

The HI also relied on a comprehensive body of studies and the latest scientific findings. An increasing number of in-depth research and advisory opinions by UNIDIR (Borrie and Caughley 2013b, 2013a, Caughley 2013, Borrie and Caughley 2014, Borrie *et al.* 2016, Borrie and Wan 2017) or the ICRC (Bernard 2015, Maresca and Mitchell 2015) and academia (Berry *et al.* 2010, Granoff and Granoff 2011, Casey-Maslen *et al.* 2014, Lewis *et al.* 2014, Sauer and Pretorius 2014), contributed significantly to increasing and updating the body of expertise on the humanitarian impact of nuclear weapons and their risks, the applicability of the humanitarian approach and legal assessments, and provided useful guidance for further measures and related diplomatic practice. Drawing on this input, HI members developed a common *lingua franca* into which they translated their interests in order to more effectively influence political debates and strengthen their positions in negotiations.

The second asset of the humanitarian framing was that it had already been successfully tested (in terms of achieving a ban) with regard to other types of weapons (Borrie 2014, Minor 2015). It was thus a *proven discursive tool* for disarmament. Perhaps the best-known example of its use is the campaign to ban antipersonnel landmines (Borrie and Martin Randin 2006). The indiscriminate effects of these weapons on civilians, particularly children, which continue to reverberate decades after the end of an armed conflict, were brought to public attention by the International Campaign to Ban Landmines (ICBL), together with the ICRC and numerous local humanitarian organizations. With increasing support, the initiative succeeded in initiating a negotiation process that eventually resulted in the Mine Ban Treaty (UNODA 1997). This so-called Ottawa process (named after the Canadian capital where it began) took place outside the framework of the UN and without the major owner states (US, Russia, China, India and Pakistan), as the Geneva CD had made no progress on this issue. In the case of banning antipersonnel landmines, too, a large alliance of small and medium-sized states, civil society, the ICRC, and academia stood against a smaller group of geopolitically influential military powers.

The campaign to ban cluster munitions was very similar (Borrie 2009). Its starting point was also the focus on the humanitarian impact on civilians. Again, it resulted in a negotiation process outside the UN and without the major possessor states, the Oslo Process, driven by like-minded governments, civil society, the ICRC, and academia and leading to the conclusion of the Convention on Cluster Munitions (CCM) (UNODA 2008). Indeed, the norm dynamics promoted by humanitarian framing could no longer be overlooked. Gradually, an entire field of humanitarian arms control and disarmament emerged, including the Programme of Action on Small Arms and Light Weapons (Wisotzki 2013). The Arms Trade Treaty (ATT) process (UN 2014) was also driven by a humanitarian perspective (Bromley *et al.* 2012, Lustgarten 2015) but realized within the UN framework.

The lesson taught by the two landmark treaties, the Mine Ban Treaty and the CCM, was that by using humanitarian framing, even under unfavorable political

conditions (rejection and boycott by powerful possessor states), concrete progress could be made in advancing international law through legally binding prohibition treaties. These parallels served as an evidence-based argument for a humanitarian reframing of nuclear weapons (Løvold *et al.* 2013, Borrie 2014). Accordingly, the logic of a ban treaty consisted in its “norm-setting value” among states. The experience in the cases of landmines and cluster munitions suggested that such treaties could have a normative effect on the major possessor states even without their participation. In fact, the US has not procured landmines since 1997, cluster munitions since 2008, and has destroyed a significant portion of its weapons stockpile (Cancian 2023). In 2009, President Obama signed legislation that largely restricted the use and export of cluster bombs. The presidential approval of the provision of cluster munitions to Ukraine based on an exemption in the context of Russia’s war of aggression against the country was also preceded by serious debate and scrutiny (Cox 2023). Moreover, the prohibition of assistance combined with successful divestment campaigns also inhibits the activities of producers in states that are not members of the regime (Wareham 2021).

The third promise of humanitarian framing was its supposed *transformative potential*. Transformative means a change that touches the foundations of the *status quo* – in this case the nuclear rule. The idea was as follows: By coupling the nuclear weapons debate to the concept of human security, a decoupling from the primacy of state security, prevalent in orthodox security studies and NPT debates, could be achieved. The concept of human security was first introduced within the UN by the 1994 Human Development Report of the UN Development Programme (UNDP) (UNDP 1994, Tigerstrom 2007). Referring to people rather than territories, human security aims at a paradigm shift of international politics and governance. Increasing human security would entail investment in human development instead of arms. At the end of the 1990s, this concept gained strength and contributed significantly to the success of the above-mentioned humanitarian arms control and disarmament campaigns.

With regard to nuclear weapons, the expectation was that growing international support for the humanitarian argument would shift the debate away from theories of strategic stability toward dealing with the actual impact of nuclear weapons on people and the environment (Minor 2015). The traditionally state-centric understanding of international security that has helped the NPT NWS dominate the various multilateral disarmament and arms control forums would be challenged by the focus on human security. As a result, a main pillar of the nuclear order, nuclear deterrence, would also be questioned.

Relativizing the primacy of state security by juxtaposing or contextualizing it with human security would generally diminish the value of nuclear weapons and thus promote disarmament. The nexus between diminishing the value of nuclear weapons and nuclear disarmament is a central causal mechanism on which the hu-

manitarian framing builds. Compared to earlier and softer concepts and processes of devaluing nuclear weapons in the global nuclear discourse since the mid-1990s (which would have consolidated rather than shaken the overarching framework of nuclear deterrence) the delegitimization of nuclear weapons on a humanitarian basis was intended to achieve a radical normative change through which the collective meanings assigned to nuclear weapons would be transformed (Ritchie 2013b, 2014).

The transformative effect of the humanitarian framing would be further enhanced by the specific legal argumentation of IHL (Granoff and Granoff 2011). While international law in general, being essentially intergovernmental treaty law, revolves around the legal subject of the state and its relations with other states, IHL contains features that diminish this centrism. By giving particular consideration to the proportionality of human suffering caused by acts of war and the protection of civilians, as codified in the Geneva Conventions of 1949 and related Additional Protocols of 1977 and 2005 (ICRC 2023), the military necessity defined from a state perspective is counter-balanced or at least conditioned in IHL. This inherent potential to constrain the primacy of the state and its choice of means is particularly relevant in light of the de-limited destructive power of nuclear weapons.

Yet, the argument of the transformative potential of the humanitarian framing and its usefulness for resistance can be countered by the fact that both the concept of human security and IHL are closely intertwined with the *status quo*. The notion of human security emerged within the framework of the international liberal order. Moreover, it has been increasingly extended and has also been used to legitimize military interventions, such as in Iraq and Afghanistan (Chandler and Hynes 2010). Against this background, the concept and its transformative content is not uncontroversial among HI supporters, as it is also seen as a veiled means of enforcing Western hegemony. Likewise, IHL is an integral part of the established international legal order and therefore pays crucial attention to the superior interests of the state. After all, the Geneva Conventions were developed precisely by European powers on the basis of specific European historical experiences of war and thus also carry conservative characteristics. It is also questionable whether the humanitarian framing, through its reference to human security and IHL, can produce a similar transformative effect on nuclear weapons as it did for antipersonnel landmines and cluster munitions. A ban on nuclear weapons would encounter quite different forces of obstruction. After all, it is not just about the military value of some weapons system, but about the ultimate symbol of power. It would challenge nothing less than the nuclear rule.

Humanitarian Statements

The humanitarian framing offered a shared code by which the HI supporters could unite and challenge nuclear rule. At the same time, the humanitarian language con-

forms to existing rules and is intelligible because it draws from shared values and norms. This is exactly what made it a subversive tool, like a Trojan horse whose discrete figure did not arouse suspicion. This, however, is precisely what also limits its transformative potential. Not knowing how far the latter might unfold, did not prevent HI supporters from gradually infiltrating the nuclear weapons discourse with the humanitarian framing.

The *political operationalization of the humanitarian code* was carried out through joint Humanitarian Statements that were fed into the various fora of nuclear disarmament and arms control. Most notably, the NPT review process and the UNGA First Committee meetings provided opportunities for this purpose. As early as the 2010 NPT RevCon (this has already been discussed) and immediately thereafter, the humanitarian framing helped form a global network for change within the halls of the traditional arms control and disarmament machinery. However, it took time for the HI to grow into a large movement with global reach. The Humanitarian Statements were critical in this process.

At the meeting of the UNGA First Committee in 2011, only a few NNWS made isolated references to the humanitarian consequences of nuclear weapons, including Norway, Austria, New Zealand, Mexico, the Philippines, Switzerland, Malaysia, and the NAC (RCW 2011). At the NPT PrepCom meeting in Vienna in spring 2012, they were addressed in a somewhat stronger and, more importantly, more coordinated manner. The first joint articulation, and thus the first visible appearance, of the group of states associating themselves with the HI was a cross-regional statement initiated by Switzerland (Switzerland et al. 2012b). The “Joint Statement on the humanitarian dimension of nuclear disarmament” of May 2, 2012, was a kind of declaration of commitment by the NNWS opposition associated in the HI. The 16 endorsing countries included Chile, Costa Rica, Denmark, Egypt, the Holy See, Indonesia, Ireland, Malaysia, Mexico, New Zealand, Nigeria, Norway, the Philippines, South Africa and Switzerland.

Referring to the humanitarian wording in the NPT RevCon 2010 outcome document, those countries expressed their “deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons” and reaffirmed “the need for all States at all times to comply with applicable international law, including international humanitarian law” (Switzerland et al. 2012b). As long as they continued to exist, nuclear weapons would pose a threat to the survival of humanity due to their destructive power. Their “utility” had already been highly disputed in relation to traditional security challenges, while they would be “useless” in relation to current challenges such as poverty, health, climate change, etc. The statement further affirms the full applicability of IHL to nuclear weapons, in particular of “the rules of distinction, proportionality and precaution, as well as the prohibition to cause superfluous injury or unnecessary suffering and the prohibition to cause widespread, severe and long-term damage to the environment” and asserts, in the words of the

2011 IRCRCM resolution (IRCRCM 2011), that “it is difficult to envisage how any use of nuclear weapons could be compatible with the rules of international humanitarian law”. It concludes: “It is of utmost importance that these weapons never be used again, under any circumstances. The only way to guarantee this is the total, irreversible and verifiable elimination of nuclear weapons, under effective international control, including through the full implementation of Article VI of the NPT. All States must intensify their efforts to outlaw nuclear weapons and achieve a world free of nuclear weapons.”

This statement became a blueprint that was followed by a series of “Joint Statements on the Humanitarian Consequences of Nuclear Weapons” with similar wording between 2012 and 2015. Initiated by the same group at the annual First Committee meetings of the UNGA, the NPT PrepCom meetings, and the RevCon 2015, they gained ever broader support. Thus, the number of states participating in the joint statements grew over time to 35 (delivered by Switzerland, 22 October 2012 at the UNGA First Committee) (Switzerland *et al.* 2012a), 80 (delivered by South Africa, 14 April 2013 at the second meeting of the NPT PrepCom) (South Africa *et al.* 2013), 125 (delivered by New Zealand, 21 October 2013 at the UNGA First Committee) (New Zealand *et al.* 2013), 155 (delivered by New Zealand, 20 October 2014 at the UNGA First Committee) (New Zealand *et al.* 2014), up to 159 (delivered by Austria, 28 April 2015 at the 2015 NPT RevCon) (Austria *et al.* 2015c). More than three-quarters of all member states of the NPT and the UN rallied behind these statements. Their presentation was repeatedly followed by enthusiastic applause, which is rather unusual in multi-lateral arms control and disarmament forums (Potter 2014, p. 12).

List of states supporting the HI’s “Joint Statement on the Humanitarian Consequences of Nuclear Weapons” issued at the RevCon of the NPT on April 28, 2015 (Austria *et al.* 2015c):

Afghanistan, Algeria, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Austria, Azerbaijan, Bahamas, Bahrain, Bangladesh, Barbados, Belarus, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Brunei Darussalam, Burkina Faso, Burundi, Cabo Verde, Cambodia, Cameroon, Central African Republic, Chad, Chile, Colombia, Comoros, Congo, Cook Islands, Costa Rica, Côte d’Ivoire, Cuba, Cyprus, DR Congo, Denmark, Djibouti, Dominica, Dominican Republic, Ecuador, Egypt, El Salvador, Equatorial Guinea, Eritrea, Ethiopia, Fiji, Finland, Former Yugoslav Republic of Macedonia, Gabon, Gambia, Georgia, Ghana, Grenada, Guatemala, Guinea, Guinea Bissau, Guyana, Haiti, Holy See, Honduras, Iceland, Indonesia, Iran, Iraq, Ireland, Jamaica, Japan, Jordan, Kazakhstan, Kenya, Kiribati, Kuwait, Kyrgyzstan, Lao PDR, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Madagascar, Malawi, Malaysia, Maldives, Mali, Malta, Marshall Islands, Mauritania, Mauritius, Mexico, Federated States of Micronesia, Republic of Moldova, Mongolia, Montenegro, Morocco, Mozambique, Myanmar, Namibia, Nauru, Nepal, New Zealand, Nicaragua, Niger, Nigeria, Niue, Norway, Oman, Palau, State of

Palestine, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Qatar, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Saudi Arabia, Senegal, Serbia, Seychelles, Sierra Leone, Singapore, Solomon Islands, Somalia, South Africa, South Sudan, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Tadjikistan, Tanzania, Thailand, Timor-Leste, Togo, Tonga, Trinidad and Tobago, Tunisia, Tuvalu, Uganda, Ukraine, United Arab Emirates, Uruguay, Vanuatu, Venezuela, Viet Nam, Yemen, Zambia, Zimbabwe

The composition of the supporters of these statements, though, clearly indicates that a ***distinction between framing and the motivation behind*** it is necessary. As previously shown, for many of the leading states of the HI, the commitment to human security, human rights and IHL are fundamental principles of their foreign policy. Humanitarian motives alone, however, do not explain the widespread participation in the Humanitarian Statements. Many of the states that joined the HI statements do not necessarily have an excellent humanitarian or human rights record. Even for key states of the HI or core group members, such as Brazil, Indonesia, Malaysia, Nigeria or the Philippines, human security, human rights and even humanitarian law are not always among the most important priorities of their foreign and security policy.

A closer look at the numerous supporter states of the Humanitarian Statements also shows that among them are many that have not signed and ratified the Mine Ban Treaty or the CCM. Of course, a substantial group within the HI participated in the landmine and cluster munitions campaigns and signed and ratified the resulting treaties. Both treaty regimes provided an important pool for mobilizing civil society and state actors for the nuclear humanitarian cause. However, the HI's supportive membership by no means mirrors that of the other two humanitarian disarmament treaties. On the contrary, two important regions – North America and Europe – are barely represented, although they at least officially advocate humanitarian values and disarmament. Some states that normally ascribe greater importance to these issues and often justify their foreign and security policies on these grounds even rejected the HI statements, e.g. Australia, Belgium, Canada, Germany, the Netherlands, South Korea and, after 2013, Norway.

But what else determines the composition of the HI and (non-)participation in its Humanitarian Statements? If we look at the lists of supporting and opposing states, they tend to follow the “traditional dividing line in nuclear politics” (Egeland 2017, p. 193), between aligned and non-aligned states. All endorsing states are excluded from or reject participation in nuclear deterrence. A large proportion of them regularly denounces the hierarchy and discrimination enshrined in the nuclear order. The reverse observation applies to the opposite side. Almost all of them are NPT NWS and NATO countries or US allies that participate in nuclear deterrence or are under the US nuclear umbrella. It appears that the security and strategic interests

associated with nuclear weapons trump other foreign and security policy principles such as humanitarian concerns and explain the absence of most members of the transatlantic alliance, as well as Pacific states allied with the US.

The Humanitarian Statements thus served above all as a tool for non-aligned NNWS to open up a new political space for action. By reshaping the discourse, they tried to overcome their disadvantaged position within the nuclear rule. The humanitarian framing provided them with a shared code for this discursive empowerment. In line with Gramsci's discourse hegemony (Cox 1983, Gill 1993) they pushed for a humanitarian shift to eventually achieve a paradigm shift. The sheer number of repetitions and the abundance of dissemination of the Humanitarian Statement testify to this. For the HI it was a consciously employed technique to entrench a humanitarian mainstream and thereby become "perhaps the most serious challenge to the nuclear deterrence orthodoxy" (Kmentt 2015, p. 682). The particular appeal of using the humanitarian code to counter the dominant state-centric discourses of the NPT-NWS and their allies resides in the fact that it severely hurts their self-image as civilized nations, which most of them have cultivated themselves in humanitarian terms. For exactly the same reason, however, this code remains ambivalent for some of the HI supporters, as it embeds their nuclear resistance in a very specific and loaded discourse framework of the liberal world order, which quite a few reject.

The Conferences on the Humanitarian Impact of Nuclear Weapons

To consolidate itself as a group, to gain strength and to build its own network base, the HI opposition movement needed a safe space outside the NPT and the UN. The protagonists therefore opened up a self-determined space for action by holding three international conferences. The NPT NWS should not necessarily be excluded from this space, but they should not be able to exercise control over it. These three conferences were not primarily about making decisions. Their primary purpose was to create a free space for discussion devoted entirely to the humanitarian implications of nuclear weapons outside the narrow boundaries of agenda-setting within UN disarmament bodies or the NPT review process. The following section takes a closer look at the three Conferences on the Humanitarian Impact of Nuclear Weapons (CHINW) and their political dynamics. It also examines an essential policy product of these meetings, the Humanitarian Pledge (UNGA 2015c).

To complement the informal first-track process ("Amersham" and "Berkshire meetings") with an equally protected formal first-track strand, Norway announced at the 2012 NPT PrepCom its plans to host the *first Conference on the Humanitarian Impact of Nuclear Weapons (CHINW) in Oslo* (Norway 2012), which took place on March 4–5, 2013. Interest and participation in the conference exceeded expectations. In addition to 127 state delegations, representatives of relevant UN agencies attended, including the UN High Commissioner for Refugees, the UN Office for the

Coordination of Humanitarian Affairs, the UN Development Programme, and the World Food Programme. Among those present were also the ICRC and IRCRCM, academia, as well as numerous civil society organizations (especially from the humanitarian sector) including ICAN. The five NPT NWS and permanent members of the UNSC (P5) boycotted the conference (China *et al.* 2013). This meant a clear rejection of any willingness to talk about the subject, especially on the part of the three Western NWS, since the host was a NATO ally. North Korea and Israel also did not come to Oslo. India and Pakistan, by contrast, did attend. Numerous US allies and NATO member states were also present.

The main objective at this stage was to provide a fact-based inventory of the current state of science in order to create a solid basis for the humanitarian reframing of the debate on nuclear weapons. In his opening speech, the Norwegian Foreign Minister explicitly referred to the relevant wording in the 2010 NPT outcome document as a point of reference (Norway 2013a). Among the topics discussed were the immediate and long-term effects of the use and testing of nuclear weapons, their destructive power, the consequences for health, food security, and the environment, as well as the social and economic impacts, and the inadequate disaster prevention and crisis response capabilities (Norway 2013b).

Participating states in the debates lamented the lack of nuclear disarmament and that the implementation of Article VI in the NPT was long overdue (Egeland 2017, p. 183). ICAN's contributions to the Oslo Conference already drew the political conclusion that nuclear weapons, like biological and chemical weapons, needed to be banned (ICAN 2013b). Although the campaign had a clear idea of how that should be implemented (its strategic goal of a ban treaty even without the NWS had already been consolidated), it remained cautious and open in its formulations. Some governments were also in favor of a ban, but had very different understandings of what it meant (CHINW 2013). At a CSF hosted on the fringes of the conference, the various NGOs met, consulted, and coordinated their efforts. Designated by the Norwegian government as the official civil society partner of the conference, ICAN henceforth assumed a leadership role within civil society.

In the closing session of the Oslo Conference, Mexico announced a follow-up conference for the year to come. The Chairs Summary compiled the key points of the presentations and discussions and welcomed the interest and initiatives of various states to pursue the issue further (Norway 2013c). With Oslo, the humanitarian perspective has taken on a new scope and the urgency of discussing the elimination of nuclear weapons has increased (Borrie and Caughley 2013a). For the first time, NNWS have taken action outside the UN and on their own in an official capacity, rather than simply criticizing NWS for doing nothing. Norway, though, the country that created this space of empowerment, ceased to play a role within the HI henceforth due to a change of course by the newly elected government in October 2013.

The *second CHINW* was held in *Nayarit*, Mexico, on February 13 and 13, 2014. The group of participants corresponded to that in Oslo, but was even larger, with 146 state representatives. Once again, the five NPT NWS (or P5) as well as North Korea and Israel stayed away from the conference. India and Pakistan continued their participation. Most US allies also attended Nayarit, trying to navigate their dilemma between humanitarian concerns and alliance loyalty.

The format and content were essentially the same as at the first conference. This time, more space was given to the survivors of the nuclear weapons attacks on Hiroshima and Nagasaki and their testimonies. The long-term consequences on human health, the climate, food security, the economy and society were also dealt with in more detail. In addition, the risks associated with nuclear weapons, whether due to accident, miscalculation, human error, or technical failure, played a greater role (Schlosser 2013, Lewis *et al.* 2014). A new UNIDIR study on the UN's inability to provide humanitarian aid complemented the Oslo assessment of the lack of response capacity in the event of a nuclear weapon detonation (Borrie and Caughley 2014).

There was an increase in the number of interventions by state representatives on the humanitarian implications and the urgency of greater efforts for nuclear disarmament or even demands to negotiate a ban treaty.

On a factual level, the conclusions of the Nayarit Conference were in line with those of Oslo. The Mexican Chair, however, also formulated a clear political message. According to him, weapons had always been banned before their elimination. The conference discussions should therefore promote efforts "to reach new international standards and norms, through a legally binding instrument" (Mexico 2014). The time would be ripe to initiate a diplomatic process for this purpose. It remained open, however, which time frame should be chosen for this, and which forum and type of legal instrument could be envisaged. Nevertheless the Mexican Chair concluded "Nayarit is a point of no return" (Mexico 2014). The debates and the Chairs summary were perceived to be much more political in Mexico than at the previous conference, to the great chagrin of the participating umbrella states. While this politicization and acceleration was popular among NAM states, the dynamic put increasing pressure on the Austrian government (with which the Mexican closing statement was not coordinated) (Kmentt 2021, pp. 40–42).

Not only the humanitarian debate itself had become politically acute. The competition among the protagonists over who would be entitled to set the decisive milestone for the historic project has also intensified considerably with the Chairs summary in Nayarit. After Norway had dropped out as a competitor in the battle for the diplomatic laurel wreath for a nuclear weapons ban, Mexico, South Africa and Austria remained as strong leaders of the opposition movement. Originally, the last of the three conferences from which a negotiation process could be launched was to take place in South Africa (Kmentt 2021, p. 41). As a former NWS and the only one to have fully disarmed its arsenal, this would have carried great symbolic value. South

Africa however hesitated and wanted to wait until the 2015 NPT RevCon had taken place and the final proof of the failure of the 2010 NPT RevCon Action Plan had been provided. Other core-group members feared that the movement might lose steam by then. And so, Austria invited to the third conference that same year to maintain the virulence of the humanitarian debate and thus moved into pole position.

On December 8 and 9, 2014, the *third CHINW of Nuclear Weapons* took place in *Vienna*. This time, participants included 158 government delegations, and again representatives of relevant UN organizations, the ICRC and IRCRCM, academia as well as ICAN, its member organizations and other (mainly humanitarian) organizations. Not only the number of participating government representatives reached a new record. Just a few weeks before the conference began, the US announced its participation (US 2014a), followed by the UK. For the first time, thus, two NPT NWS were present at the conference. India and Pakistan also participated again. China, Russia, North Korea, and Israel continued to stay away. The bloc of NPT NWS thus appeared to be crumbling.

For the Austrian host, this elevated the span of an already complicated political balancing act. On one side, ICAN and numerous NNWS of the HI urged to kick off the diplomatic process towards a ban treaty. At the other end, the forthcoming presence of befriended NPT NWS required diplomatic finesse. In addition, several umbrella states, which are among Austria's closest partners, had already undertaken diplomatic *démarches* in the run-up, in which they clearly expressed their rejection of any political bias of the conference in favor of a ban treaty and demanded preliminary assurances for a balanced reflection of their contributions in the envisaged summary document as a condition for their participation (Kmentt 2021, p. 42). The Austrian government complied with both demands and asserted that the HI stemmed from the NPT review process and that the conference aimed to consolidate past findings into an input for the NPT RevCon to be held a few months later.

The thematic spectrum was similar to that of the previous conferences (Austria 2014a). New emphases were placed on a review of existing relevant international law, the gender dimension of radiation exposure, new risks posed by emerging technologies and cyber, and state-of-the-art modeling of the consequences of nuclear weapon detonations. In addition, moral and ethical considerations, notably with regard to the practice of nuclear deterrence, constituted a new focus, on which a message was delivered by Pope Francis (Pope Francis 2014). Apart from the items on the program, the political discussion at the conference was characterized by the increasing demands for a ban on nuclear weapons on the one hand and the justification of the continuation of nuclear deterrence on the other.

At the end of the conference, Austria chose a Solomonic solution. It read out a Chairs summary, which (as agreed with the befriended umbrella states) condensed the findings from the discussions on the humanitarian impact of nuclear weapons and reflected all the positions expressed by the participating states in their state-

ments (Austria 2014c). In addition, Austria issued a national declaration, the **Austrian Pledge**, in which it promised and called on other states “to identify and pursue effective measures to fill the legal gap for the prohibition and elimination of nuclear weapons” (Austria 2014b), seeking cooperation with all stakeholders, including the NWS. In this way, Austria ensured a political follow-up process (as hoped by ICAN and most of the supporting states of the HI) so that the humanitarian discussion would not come nothing.

In contrast to the Chairs summary, this document could be endorsed and signed by states in order to rally behind the political commitment “to close the legal gap” (Austria 2014b). As in Nayarit, the question of when, in which framework and with which “legally binding instrument” (Mexico 2014) this gap should be filled has not yet been conclusively answered. However, in the discussions and working papers within the HI on which “effective legal measures” (NAC 2014) would be most suitable, the idea of a ban treaty was already the most popular option. This was an open secret, not only among the resistant NNWS, but also among the reactionary NPT-NWS. The expression “to fill the legal gap” (Austria 2014b) became a cipher for the goal of a ban treaty, despite all of the ambiguity in the Austrian Pledge.

There were probably three reasons why the Pledge was presented at the Vienna Conference as a national commitment of the Austrian government. 1.) A collective outcome document of the conference, which would trigger a diplomatic process towards legal measures, would have been a betrayal and a serious affront to its NATO partners and the US. 2.) Yet, expectations for a political breakthrough within the HI were high. 3.) It can be assumed that Vienna did not want to miss out on taking credit for its longstanding commitment of resources and its conceptual, strategic and coordinative contributions to the entire process. This is supported by the fact that the “national” pledge was conceived from the beginning as a collective document to which all states of the HI should subscribe. Consequently, it was deliberately formulated in such a way that it corresponded in language and format to a co-sponsoring UNGA resolution and could be (and eventually was) introduced as such at a later stage (Kmentt 2021, p. 55). In the following months, Austria encouraged all UN member states to join the Austrian Pledge through its diplomatic missions and liaisons and received support from ICAN in doing so.

However, its designation as “Austrian” was controversial and kept some states, especially from the Global South, from endorsing the pledge. There was too much of an impression that Austria wanted to secure a special place for itself in the history of diplomacy. On ICAN’s recommendation, it was swiftly rebranded as the **Humanitarian Pledge** during the 2015 RevCon, which was announced at the Main Committee I on May 18 (Kmentt 2021, p. 83). As such, it effectively became a catalyst to mobilize for the diplomatic process towards the TPN. With the help of intensive civil society lobbying (Acheson 2021b, pp. 189–190) it succeeded in attracting a total of 107 sup-

porting states by the end of the 2015 RevCon (there were 66 at the beginning of the conference), eventually reaching 127 (Norwegian Nobel Committee 2017).

The three CHINW advanced the group-building process and the coordination of political objectives within the HI. Drawing on the humanitarian code, it established its own space for debate in Oslo, Nayarit and Vienna, where it could mature into a veritable political force. The reluctant or even dismissive attitude of the NPT-NWS and the umbrella states as well as the increasing politicization of the three conferences around the issue of a nuclear weapons ban demonstrated that it was about much more than setting a humanitarian accent in the nuclear weapons debate. Their *de facto* outcome, the Humanitarian Pledge, endowed the HI with a political mission and became a manifesto of the resistance movement.

3.4 What do they mean? Underlying resistant motivations

We will now turn to the motivations behind the official statements, which are not always explicitly articulated, and the underlying perceptions among HI and TPN sympathizers regarding the nuclear order, especially the NPT. The carefully planned and implemented reframing and the expansion of the discourse space already provided indications that the supporters of the HI were not exclusively concerned with humanitarian issues. Yet, the extent to which resistance to the nuclear order or even rule enshrined in the NPT also played a role remains unclear, as this was not always explicitly addressed by all states. The same lack of clarity also prevails with regard to the anti-colonial impetus.

The evaluation of the interviews conducted anonymously with diplomats and some non-state representatives, by contrast, sheds light on the significance of the struggle between rule and resistance and a possible anti-colonial resentment. This section presents the results of the structuring content analysis of the interviewees' responses. It comprises the relevant elements of our definitions of rule and resistance (deductive codes) together with another important aspect that came up during the interviews – the concern to preserve the non-proliferation regime (inductive code). Regarding the anti-colonial impetus of the movement, which was largely supported by the Global South, the interview analysis explored the question of whether a post-colonial continuity in the nuclear order was perceived and was a motive for sympathizing with the movement. The role of the six components of colonial imprints was also investigated.

For the reader's ease of understanding, it is worth noting that the interviews were conducted after the conclusion of the TPN and for the most part after its entry into force, meaning that there is a leap in time and thus the outcome of the process is sometimes already discussed. In the references, state representatives are abbreviated as SR and non-state representatives as NSR. Africa is abbreviated Af,

Asia-Pacific A-P, Latin America and the Caribbean LA & C, Western Europe and others WE & O. A non-governmental interviewee from Asia-Pacific, who was interviewed on March 04, 2024, would therefore receive the following reference: (NSR A-P, 24/03/04). A diplomat from Latin America and the Caribbean, on the other hand, with whom the interview was conducted on October 1, 2019, would be indicated as follows: (SR LA & C, 19/10/01).

Against nuclear rule, for radical but gentle change

The first evaluation section revolves around the answers and statements on the different elements of rule and resistance. It assesses how the interviewees perceive the following defining elements of rule and what role they played in their motivation to participate in the HI and the TPN process: *Hierarchy and discrimination, NWS' steering and NNWS' small influence, institutionalization and performance* of the regime. For each aspect, the spectrum of responses is summarized, weighted and evaluated, taking into account possible regional differences, variations between state and non-state actors as well as members of the core group and other state representatives. Sample quotations are also provided as illustrations.

We then look at the answers and statements on the following defining elements of resistance to assess how respondents rate their relevance for their motivation to participate in the HI and the TPN process: *Establishing equality and diversity, removing NWS' steering and empowering NNWS'*, and the goal of *change and transformation*. In addition, another aspect came up repeatedly when discussing the objectives of the movement and was therefore included in the inductive coding: *the intention to preserve (parts of) the regime*. For each aspect, again the spectrum of responses will be briefly described, weighted and evaluated with exemplary quotations, following the same scheme as described above. Finally, the results of the interview evaluation on the topic of rule and resistance are summarized.

Objecting to hierarchy & discrimination

All 32 interviewees spoke about the hierarchical and discriminatory structure of the NPT, and most of them did so in great detail and critically. There were no differences between regional groups or between state and non-state representatives. The interviewed members of the core group also presented a unified picture. Many saw a problem in the fact that nuclear weapons were associated with a special status or prestige.

The NPT is unbalanced from the first day because they put in different legal standards. It broke the principle that every country is equal. [...] And from there up to now, the relation of power is like this and the North-South-tensions remain. (NSR LA & C, 22/07/05)

When asked about the most important groups within the regime, almost all interlocutors (with the exception of three representatives from Asia-Pacific states) recognize primarily a three-tier hierarchical structure, consisting of NWS, umbrella states and NNWS. This is particularly remarkable as such a three-tier structure is not laid down in the treaty and the umbrella states do not see themselves formally and officially as an independent group (but as NNWS like all others). The various associations and working groups in the review cycle, such as the Non-Aligned Movement (NAM), the New Agenda Coalition (NAC), the Non-Proliferation and Disarmament Initiative (NPDI), various regional groupings or the Stockholm Group, do not apply the category of umbrella states either.

I think the de facto groupings are NWS, then there are those states that fall under the extended nuclear security guarantees, under the nuclear umbrella and I think the defining aspect of this group of countries is that they have bought into the deterrence doctrine [mentions NATO member states and Asian allies of the US as well as the nuclear deterrence arrangement between Russia and Belarus]. And of course, then there are [...] I would call them the non-aligned States Parties to the NPT. (SR Af, 23/04/28)

Before the stationing of Russian nuclear weapons in Belarus (hence during the formation phase of the TPN), only US allies fell into this problematic group with little credibility for most HI supporters.

I am referring basically to the NATO countries, to Japan, to South Korea. I could describe them as covert NWS. [...] And in some cases, this covertness is much stronger, for example regarding countries like Italy and Germany. [...] And, since we are talking in absolute frankness here, facilitated by the confidentiality, this arrangement would never be tolerated with other countries." (SR LA & C, 21/09/15)

Almost all interviewees perceive close political cooperation, almost complicity, between NWS and umbrella states, which would lead to the disarmament goal being undercut. The systemic role of deterrence is repeatedly stressed, saying that it would ultimately impede the non-proliferation pillar just as much as the disarmament pillar.

Buying into the deterrence doctrine is not something that only affects the nuclear disarmament aspect of the NPT, but it also affects the non-proliferation aspect. The more credibility is given to the deterrence doctrine really provides an argument for others to proliferate. (SR Af, 23/04/28)

For most, this even results in a political dichotomy, with NWS and umbrella states on the one side and non-deterrence NNWS on the other.

Talking about three groups is perhaps a way of specifying, but in general, if you look closely, that makes two groups, because the third group [...] which is under the protection of the NWS, is playing the same role [...] They are together, in other words: there are two large groups, but with a sub-group called 'umbrella states'. (SR Af23/03/30)

And in the case of NATO, we can put in the same basket France and the UK, [...] they would not want the US to disarm because their international security concerns depend on the existence of their nuclear weapons. [...] I'm very sorry to say this, but [...] if Germany comes with the best proposal in the world, lot of suspicion. Because everybody knows that even with the best of intentions, they will be stopped or encouraged by the nuclear agreements they have with the US [...]. (SR LA & C, 22/08/30)

Across the board, the perception of and dissatisfaction with the hierarchy and double standards of the NPT prevail. The interviewees do not approve that states are treated differently or are subordinated or superordinated to each other. Almost all of them see a three-tier structure in which the umbrella states occupy a special position among the NNWS, which arises from the deterrence arrangement and binds them politically to the NWS, especially the US. The resulting differences in interests would override the agendas of all other group constellations. This is particularly problematized by state representatives from Latin America and the Caribbean.

Denouncing NWS' steering & NNWS' small influence

The vast majority (75%, 24 out of 32) of interviewees complained that the NPT expands NWS' scope for action and influence on control and diminishes scope for action of the NNWS. There are no regional differences. There are also no significant differences between governmental and non-governmental representatives. The members of the core group articulate this issue particularly clearly.

It is remarkable how diverse and broadly interviewees perceive the steering capacity of the NWS. This begins with the negotiation process of the NPT, in which the NWS allegedly exercised a steering function in order to secure their hierarchically superior position.

The dynamics were much more hierarchical, and all parties behaved accordingly. The more powerful states knew that they would present their proposals and that they would be discussed without complaint. (SR LA & C, 22/07/21)

If you look at how many states negotiated the treaty back then, it was actually a pretty small group. Today, you can clearly see the hegemonic interests behind it and that we didn't have good coverage of regional groups. The lead negotiators were of course the NWS. (NSR WE & O 23/12/20)

The conflation of their nuclear status in the NPT and membership in the UNSC would also give the NWS a high degree of control and reinforce double standards beyond the NPT. The UNSC-NPT entanglement would particularly harm members of the NAM, such as India, Pakistan, DPRK and Iran.

If you make a comparison, similar concept is being applied when it comes to the UNSC. The permanent membership of the Security Council will be given to the countries of certain stature back then. [...] This applies similarly for the NPT. No matter what happens, you are just in that category and that will continue to be the case for indefinitely. (SR A-P, 21/09/03)

NAM members feel that there is a bias and that there are a lot of double standards in international relations today [...]. In case of a crisis, they are sent immediately to the Security Council based on chapter seven of the Charter [...]. And that doesn't happen if the crisis originated from the five [UNSC members] or if the latter don't comply with the NPT. (SR LA & C, 22/08/30)

The correlation between a UNSC seat and the legitimized possession of nuclear weapons would make the implementation of nuclear disarmament more difficult, especially if the overall power of a NWS is dwindling.

A Russian diplomat once told me, there's two ways of exerting influence in the UN: with resources and ideology. He said [...]: 'We don't have resources. We don't have ideology anymore. We only have our veto and our nuclear deterrence.' That's very illustrative for how we can look forward to a world without nuclear weapons when there's a country as Russia, whose last and only resource to keep its position in the world is nuclear weapons. (SR LA & C, 21/10/14)

One of the main reasons why the NWS' greater scope for action is preserved would be the vague wording of the only potentially restrictive and equalizing Art. VI.

Theoretically within the NPT setting all states are equal. [...] But provisions were formulated in a way that nuclear states will always have the upper hand on decision-making. This is due to the ambiguity of Art. VI. Therefore, they are better positioned to influence the course of negotiations. (SR A-P, 21/08/17)

When it comes to avoiding compliance with the disarmament commitment, the otherwise so hostile NWS would also flock together and defend their common cartel. They would be able to do so due to a lack of enforcement mechanisms and their position of power.

You know, these [Art. VI] are like voluntary kind of commitments, even though they are in a binding treaty. Because in essence, who is going to be the one to police that? [...] In other words, even with the political spectrum that exists among the P5, as much as they differ on their political perspectives, they can agree on one thing: I have mine, you have yours, and you do not need to do anything, and I won't do anything. (SR LA & C 22/11/22)

In contrast, the monitoring of NNWS has been greatly expanded in the eyes of the interviewees and their scope for action has been restricted. The distinction between NWS and NNWS would therefore have “very potent real-life consequences” (SR LA & C, 21/09/15).

For the IAEA to be able to monitor non-proliferation, with all the Additional Protocols and regular inspections, a state has to give up a great deal of sovereignty and impose a very large administrative burden on itself. [...] And on the other hand, we don't see anything that even comes close to checking and monitoring the much more important commitments to nuclear disarmament. (SR WE & O, 21/10/01)

It's all these additional things within the context of the IAEA, you know, you must have this protocol, you must have that safeguards, this and this and this, [...]. It's not very helpful when you put additional, additional legal obligations to NNWS who keep the can on their commitment. (SR Af, 22/10/30)

Meanwhile, the NNWS see little opportunity to use the review process, their only control instrument within the NPT, to influence or monitor the NWS. In the view of the interlocutors, they lack the means to do so given the consensus principle and the fact that the NWS do not regard the outcome of the RevCons as binding.

Unfortunately, most of the NWS say that the outcomes of the previous NPT review cycles on nuclear disarmament are not obligatory. They would be political commitments that had been reluctantly accepted by a previous administration. [...] And we need to start from scratch. (SR Af, 23/02/14)

The disdain for the political outcome documents sparked outrage among interviewees especially because, in their eyes, the NWS had far-reaching control over the drafting process due to the consensus principle and their willingness to make use of this veto option (unlike the NNWS).

The feeling we got from the RevCon was that ultimately, if you have the nuclear weapons, you call the shots. Because even if you manage to put in language that they don't like, they get to reject it in the end. We've seen the P5 blocking consensus for the past two times now. [...] A lot of suggestions were left to the last minute, and then it was kind of like a take it

or leave it. [...] To be blunt, I think many NNWS make a lot of noise. [...]. But the practical effect has just not been there. (SR A-P, 22/11/16)

In addition, the nuclear deterrence arrangements would give the NWS political influence over a critical mass of States Parties beyond the procedural possibilities and formal privileges in the treaty. They could play through the umbrella states, which would also weaken NNWS.

If you analyze the positions that are spoused by the nuclear sharing countries, you will see that they differ substantially from those positions expressed by almost the entire remainder of NNWS within the treaty. They are paying lip service to the cause of nuclear disarmament, but when it comes to the substance of their positions, it doesn't differ much from those that are expressed by NWS. (SR LA & C, 21/09/15)

The vast majority of interviewees denounce the steering of NWS in the NPT and the tiny scope for action for NNWS. The opportunities for the NWS to exert influence would be manifold. They would result from the facts that they were the drafters of the NPT, that their nuclear status coincides with their permanent seat on the UNSC, that their obligations are vaguely formulated and not reviewed, and that they could contain debates and group dynamics in the regime via the umbrella states and the consensus principle. On the other hand, the NNWS see themselves crushed by an ever-tightening corset of obligations and experience the review process as a farce.

Questioning institutionalization

Even if less frequently, the vast majority (75%, 24 out of 32) of interviewees addressed the problem of consolidation of hierarchical and discriminatory structures within the NPT. The institutionalization and continuity of superordinate and subordinate relationships is an issue in all regions, but less so in Asia-Pacific than elsewhere. There are no discernible differences between state and non-state representatives. The interviewees from the core group are unanimously very critical about the solidification of structures.

There is a shared perception that the regime is conservative, static and causing stagnation. Some view the continuity and institutionalization of the *status quo* as inherent in the NPT from the outset.

The purpose of that treaty was formulated in the end of the 60s. It was to maintain the status quo at that moment, to keep only 5 legitimate nuclear powers and prevent others from acquiring nuclear military capabilities. The treaty served this purpose with few exceptions [...] and no one of them was recognized. (SR A-P, 21/08/17)

The problem with regimes overall is that it usually takes such a big effort to negotiate it that over the years it is very difficult to discuss or adapt it to new situations. It is the

same with all organizations in the public sphere, both at the national or international level. It is very difficult once you create an organization or regime to keep on updating it. (SR LA & C, 22/07/21)

Most interviewees, especially core group members, simultaneously emphasize the transitional nature of the NWS status in the NPT. Many dispute the interpretation of an intrinsic and legally established continuity.

The NWS try to defend what we consider is a privilege to have these nuclear weapons at this stage. But we believe that this situation must be transitory and not be in perpetuity. They are trying to defend their position referring to the international context not being secure enough to move forward with their obligations on disarmament. All P5 do the same thing. It is like a way to postpone what they are supposed to do right now. (SR LA & C, 22/11/30)

It was supposed to be temporary. Remember that there was a provision in the treaty that said in 1995 we will sit down and consider whether we extend it or not. And by that time there were some hopes. And again, there was a compromise. States Parties accepted an indefinite extension in return of strengthened obligations on nuclear disarmament, the total elimination of nuclear weapons and the establishment of a NWFZ, while keeping the review process for every five years. [...] And for 50 years, the step-by-step approach didn't yield much. (SR Af, 23/02/14)

In the eyes of the NNWS, the vote on the indefinite extension in 1995 and the subsequent review process offered an opportunity to overcome the fossilization of the regime. However, today they consider these political tools to be too soft compared to the hard NPT treaty text. Not only the indefinite extension and the persistent refusal of the NWS to honor their disarmament commitments would contribute to maintaining the *status quo*. The entire apparatus for monitoring nuclear non-proliferation that had grown up around the NPT and the prevailing economic conditions would freeze the state of the nuclear order at the level of 1968.

If any country right now would like to go nuclear, it would be very difficult because of the level of control that exists on the material and trade, the monitoring of the testing and so on. Surveillance, monitoring and control are very strong. (SR LA & C, 22/07/21)

The interviewees' responses regarding the institutionalization and continuity of the hierarchical structure of the non-proliferation regime reveal a mixture of resignation and persistent objection. It is striking that especially representatives of states that have been active in the nuclear field for a long time cultivate an institutional memory and thus systematically try to nip any interpretation of the nuclear status as a *fait accompli* in the bud.

Condemning poor performance, imbalance & injustice

Interviewees very frequently criticized the imbalance, injustice and poor performance of the NPT regime, with the vast majority (78%, 25 out of 32) doing so. The impression that things are not fair can be clearly observed in all regions, somewhat less so in the Asia-Pacific region than elsewhere. State and non-state representatives equally condemn the abuses, as do all core group members. Almost all interviewees believe that there is a grand bargain and that this has been violated by the NWS, resulting in a precarious imbalance. Some even feel cheated by the fact that the NWS are not honoring their part of the grand bargain.

It has become clear over the last few decades that the grand bargain that has been made is actually more of a misleading of the NNWS. They sign and renounce nuclear weapons forever and are then under control with all the protocols and everything else they have to do for the IAEA. (NSR WE & O, 23/12/20)

Many feel that they were fooled in the negotiations [within the NPT] and in the promises made and in this quid pro quo, this transaction that took place. (SR LA & C, 22/07/21)

The impression of fraud (in the grand bargain) creates a feeling of being treated unfairly. The modernization programs would demonstrate that there is no good faith among the NWS regarding the fulfillment of their disarmament obligation. The imbalance is felt particularly strongly when NWS approach NNWS with further demands. The interlocutors pointed to numerous dimensions of injustice. For example, the exclusivity of the possession of nuclear weapons is seen as unfair.

Its not a very fair system. If I were to have nuclear weapons back then it simply means that I will be rewarded with continued license to have them. You, on the other hand, for example, did not have nuclear weapons, you will be punished by not having the license to have or develop them. So, on that basis, you already created a system of segregation. (SR A-P, 21/09/03)

The NWS and umbrella states would pursue an inconsistent policy beyond the NPT, which would undermine its legitimacy.

We are becoming increasingly impatient as well, because we see there are states, even outside the NPT that have exceptional access to nuclear weapons, nuclear energy, nuclear technology. All this inconsistency, exerted by the NWS and the umbrella states has eroded the legitimacy of the treaty. (SR A-P, 21/11/02)

In general, international law would regulate the nuclear weapons issue inadequately compared to other problems and would therefore be unjust. Due to unjust double

standards and tyrannical arbitrariness, the NAM would endeavor to protect their members in the NPT.

They [NAM] are working in a defensive way to protect themselves from the unfairness of the treaty and from the unfairness of the world and the UN. It is because of the tyranny of the five, because the UN is not democratic, it's an oligarchy, okay? And it has five monarchs, absolute monarchs, not even constitutional monarchs. And they are the ones that are deciding, especially on the issue of threats to peace and security. [gives examples regarding Iran and Pakistan]. (SR LA & C, 22/08/30)

Civil society also complains about injustice and the unwillingness of the NWS to remedy this, e.g. with regard to nuclear affected communities.

Not much has been done in terms of listening to the voices of nuclear affected communities and what we've been demanding for decades to ensure that the world eliminates these weapons of mass destruction. And there's also the issue of nuclear justice, something that so many, affected communities have yet to achieve. (NSR, A-P, 23/12/13)

The sense of injustice and the pursuit of fairness would have been key drivers for the HI and the TPN process.

What I recall from the room in the negotiation process of the TPN is this constant dissatisfaction with the asymmetrical structure and obligations of the NPT. I think the motivation of the participating states was to be able and have the power to design a different, a new regime. [...] In this regard it very much resembles what Harald Müller wrote in one of his books about the NPT on the life cycle of regimes: You felt back in the moment of negotiations this sense, this aspiration of justice, of fairness. (SR LA & C, 22/07/21)

All interviewees underscored the poor performance of the NPT with regard to disarmament. In addition, numerous other areas of failure of the NWS were mentioned, e.g. the denial of security assurances for NNWS, the lack of progress in the WMDFZ in the Middle East and others. The only thing the NWS had achieved, one interviewee commented mockingly, was the P5 Glossary of Key Nuclear Terms in 2015.

We have been calling for many review cycles for actual meaningful implementation, not only of Art. VI, but steps that were agreed, including that in the 13 steps from 2000, the CTBT, the FMCT, all of these other measures that should have led step by step towards the elimination of nuclear weapons, in keeping with Art.VI. We have not seen movement in that. (SR LA & C, 23/02/20)

I remember that the P5 once published a glossary at a RevCon, which we found extremely ridiculous. Decades after the treaty came into force, they argued that they first

need to clarify the terminology among themselves to know what disarmament really means. (NSR WE & O, 23/12/20)

The poor record of the NPT in their eyes and the failure of the RevCons encouraged the interviewees to join the TPN process. The vast majority of interview partners referred to the grand bargain and the fact that it was not fulfilled, highlighted the resulting imbalance in the regime, condemned fundamental injustices and criticized the performance of the NPT with regard to the implementation of the disarmament obligation (Art. VI) or other NWS commitments important to NNWS. Not least for this reason, the HI and the TPN are seen as a legitimate cause and an expression of the pursuit of justice.

Pursuing equality and diversity

The vast majority of interviewees (88%, 28 out of 32) very clearly and frequently expressed the desire in the HI or TPN for all states to be treated equally. In addition, the diverse composition of the movement, consisting of NNWS and non-state actors (multistakeholders), was a recurring and highly emphasized motif. The assertion of this drive was strong in all regions. There were also no differences between state and non-state representatives. The members of the core group were also unanimous on this point. For most of the interviewees, the HI and the TPN process aimed to end the hierarchy in the nuclear order and establish an egalitarian (without differentiating between NWS and NNWS) and inclusive (with the participation of civil society and affected communities) regime.

It [the TPN] really does address this issue of equality among nations. The TPN is a true representation of sovereignty, equality of states. And it brings to mind the fact that there can be no imbalances and no special cases in terms of nuclear weapons. (SR Af, 23/04/28)

This is a claim by the majority of UN member states. And I haven't seen any discrimination in the TPN. So, it's sort of a democratization of the international community. (SR A-P, 22/12/14)

The fact that everyone is affected by the nuclear threat would justify the right to equal participation for all. This was particularly important for small states.

The TPN was refreshing because what it did to nuclear disarmament and negotiation and politics was to bring in more diverse actors, more voices. Because the reality is [...] that this [any nuclear detonation] would have disproportionate impact on smaller states and states who had nothing to do with this. (SR LA & C, 23/02/20)

The inclusion of civil society, academia and those affected, the close cooperation between state and non-state actors and the resulting diversity were viewed positively by all interviewees and by most as a progress.

It [referring to the HI & TPN negotiations] was a very inclusive process and people were participating. At some point we just created methodological innovations that did allow for a good interaction and discussion between science and policy. (SR LA & C, 22/07/21)

It [the TPN] is broader in scope. It does cover additional topics [...], which is a lot more attractive to the citizens, the people back home. We hear a lot more about youth engagement, women engaging, parliamentarians, for instance. (SR A-P, 21/12/09)

This was also the view of the civil society representatives interviewed.

Civil society has been quite considered in the entire process. I would go as far as saying that the TPN was born out of civil society. Without civil society, there would be no TPN. (NSR LA & C, 23/05/21).

Cooperation between civil society and state representatives would be crucial for the further outreach and success of the TPN. It would also have helped to offset power imbalances, disparities in resources and scope for action between participating states.

It's a symbiotic, beneficial relationship. And often, it becomes very helpful because when [name of the country] goes into negotiations, the US is there, the UK etc. And they have an army of people who are working on this 20-page document. [...] Meanwhile, you are doing this whole document and several other documents all by yourself. It becomes a very unlevel playing field. The participation and support from civil society helps to bring some evenness to it. (SR LA & C, 22/11/22)

According to people interviewed, the shared goal of eliminating inequality and the opportunity to participate in an environment of relatively flat hierarchies and pronounced diversity motivated both state and non-state actors to join the HI and the TPN process. In the resulting multi-stakeholder “transnational advocacy network” (TAN), a new and broader range of topics could be put on the agenda and resources could be pooled and exchanged for mutual benefit.

Challenging NWS and empowering NNWS

Almost all interviewees (94%, 30 out of 32) very frequently described how the HI and the TPN process had challenged the NWS and empowered the NNWS. The movement would allow to limit the NWS’ scope of action and question their claim for steering, while expanding the sphere of action for NNWS. Again, there were no re-

gional differences. All governmental and non-governmental representatives as well as members of the core group underlined the emancipatory effect of the movement.

Participating in the HI and the TPN is seen by the people interviewed as an act of self-empowerment.

So, these states [NNWS] and civil society came together, came on board to challenge the status quo in nuclear disarmament. (SR LA & C, 23/02/20)

There was this group of states that was concentrated as a block, to defend that things change [...]. It was fought in different ways, even to get the resolution passed. There was a lot of pressure around it. [...] The whole TPN process had its setbacks. But despite this, we can say that the objective was attained. (SR Af, 23/03/30)

Participation would have been preceded by a process of awareness and decision-making, as is characteristic of the present definition of resistance.

When you go to therapy, psychologists say: you cannot change anything that you cannot acknowledge. Our choice was very simple [...]: We have another 77 years of begging the NWS to fulfill their obligations in a demeaning fashion like, oh please, please, please, powerful country, get rid of your very powerful weapons. Please, please and fulfill your obligations. That was our option. Or setting a new agenda and push forward for what we thought was good in the world. (SR LA & C, 22/08/30)

In other words, in the interviewees' view, the TPN raises the question of rule, questioning the sole control by the NWS and their allies. By unmasking the incompatibility of deterrence and disarmament, the umbrella states would also be exposed together with the "emperors".

We have the NPT Forum or you could also put the Security Council on this side, and we have the TPN and other newer treaties on the other side with this basic question: who decides when and how? (NSR WE & O, 23/12/20)

The prohibition of nuclear weapons is like the emperor's new clothes tale, the fairy tale of the Grimm Brothers, in which the emperor was naked and nobody did tell him that. Because countries that say that they are advocating for nuclear disarmament, but don't join the TPN have been questioned a lot because they have to come clean and they have to say, well in the end we prefer deterrence. (SR LA & C, 22/08/30)

The TPN is seen by the vast majority of those interviewed as an instrument of empowerment and functions for many supporters as a kind of protective shield under which they can gather and rebel against the powerful.

The instrument that is the TPN gives us the opportunity to express ourselves as members of the treaty. [...] It is a safety net for NNWS. (SR Af, 23/03/30)

From the perspective of most interlocutors, the diplomatic scope of action has expanded with the HI and the TPN in the nuclear field, affecting the NPT as well. This is particularly true for states from the Global South. Individual, particularly smaller states that were not previously active in this area have also been mobilized. But vanity and self-profiling were also at play, according to some.

We never took part in the [NPT] conversation. Never. But now we are there. [...] And in the TPN we were even asked to take a lead. Of course not alone, but jointly. (SR A- P, 22/11/18)

When you think about the motivations for public civil servants, it seems to me that a lot of smaller Global South states found a new platform for expressing something, their wishes, their historical ideologies, and also to show that they could lead in a particular field. [...] It feels like this is an issue that has opened doors for many diplomats to become experts and become the top of their field and be that face and voice that represents the country in this area. (NSR Af, 22/04/05)

The HI and the TPN had encouraged some states that regional cooperation is paying off. In Africa, there is a growing willingness among participating diplomats to take matters into their own hands in the nuclear sector, especially when it comes to civilian use.

What you're going to see moving forward is more African countries that have spoken out, are saying, yes, we've been speaking individually, but now let's start speaking as a collective, let's start organizing ourselves. (SR Af, 22/10/30)

For many of those interviewed, the increased impetus for co-determination also applies to verification.

We always argue and I think this is shared by many countries: The verification has to be done in a multilateral manner. You cannot let those countries who have weapons verify among themselves and tell us, yeah, we don't have any weapon anymore. (SR A- P, 21/11/02)

The supporters and sympathizers interviewed clearly expressed their motivation to break the steering of the NWS. It is evident from their answers that they made a conscious decision to resist. The elements of rallying and solidarity, which are essential for resistance, are also clearly recognizable. As the various statements show, collective self-empowerment is not intended to be an end in itself. Instead, the movement would aim to permanently expand its own diplomatic sphere of action and construc-

tively influence governance structures and processes in the nuclear field or build new ones, for example in multilateral disarmament verification.

Driving dynamization and change

The desire for change and the intention to get things moving drove all interviewees to join or sympathize with the HI or the TPN process. Very frequently, everyone across all regions and without distinction between state and non-state actors, expressed that it was about contributing to political dynamization and change. Most also reaffirmed their belief in the effectiveness of the HI and the TPN in promoting nuclear disarmament. Numerous statements by the interviewees testify to their desire for progress that they were unable to achieve within the NPT.

[Name of the state] and other countries on the continent have been pushing forward really for the TPN, because we're not getting the result that we need to get within the context of the NPT. (SR Af, 22/10/30)

The motivation, I believe, is clearly driven by the very minimal progress, if at all, in terms of nuclear disarmament in global stage over the last few decades. [...] These developments triggered and motivated countries to move forward and mobilize support, which resulted in the birth of the TPN. (SR A-P, 21/09/03)

To attain substantial or complete disarmament, many believe that something must first be changed at the normative level. To realize abolition, prohibition would be needed beforehand.

Before the abolition, there was prohibition. Slavery was abolished, but it had to be prohibited first. The idea of ensuring a categorical prohibition, [...] using a normative approach, has been very useful in the international system to exert political leverage for action on different issues. And we believe that the nuclear regime is no different [...] You can call it a revolution from below, as some people term it. But the fact is, sitting back and not doing anything on something that impacts all of our lives was no longer acceptable for us. (SR LA & C, 23/02/20)

As far as the chances for change are concerned, many (until the outbreak of the war in Ukraine) were banking on transition via an intensified public debate promoted by civil society in the umbrella states.

It will be interesting to see what will happen in case a NATO state decides to join the TPN. That is a possibility, even if within the security establishment in NATO they try to paint it as an impossibility. [...] NATO states have removed themselves from the nuclear joint command before. (SR LA & C, 21/09/15)

We have already noticed that the TPN has put a certain amount of pressure on the NPT regime, but also on us in [name of state]. We have various parliamentary initiatives on the TPN, broad support from cities and the population, and I think that has already put the issue on the table. (SR WE & O, 22/12/14)

The idea of expanding the existing NWFZs at regional level into a global network, which countries from other regions could join and thereby strengthen outreach, also motivated many member states of such zones (particularly in Latin America and the Caribbean) to take part.

For us, it was very important to make an expression of these legally binding commitments that we have at the regional level for other countries in the world at a global level. And allow other countries, for example, in Europe or the Middle East, that might never or not in the near future have a NWFZ to adhere to a policy of prohibition of nuclear weapons. (SR LA & C, 22/08/30)

Other regions have NWFZs that are recognized and that have a very concrete security benefit for these countries. The TPN, even if it cannot be converted one-to-one, offers us an opportunity in the longer term to join an NWFZ that is not geographically localized, but global, and to enjoy such a security benefit. (SR WE & O, 21/10/01)

With the HI and the TPN, most interviewees hoped that supporters could coordinate on a permanent basis and thus continue to push for progress, including within the NPT.

It's almost inevitable that there will be some sort of cohesive movement within the NPT that emanates from the TPN. [...] We might have a situation where it would have recurring meetings and RevCons that happen shortly prior to the NPT RevCons. (NSR, Af, 22/04/05)

Other long-standing NNWS demands, such as negative security guarantees, are also expected to be better implemented with the TPN.

We want NSA from NWS. We want transparency from the NWS. We want a positive or time bound commitment of disarmament, because this the grand bargain. And maybe negotiations within the TPN can bring us closer. (SR A-P, 23/02/09)

The feeling of being able to make a difference and change something was visibly an important motivating factor for almost all participants to join the HI and the TPN process.

That was a lot of fun. I think I also learned a lot personally from it, how it is possible in such a coalition of the willing to bring about something in a relatively short time that decisively changes the international legal environment in the long term and even now. (SR WE & O, 21/10/01)

I don't think anything can beat New York [the interviewee's place of employment during the TPN process]. It was working on a cause that I really believed in and working on it with very limited resources. But seeing some of the impact was extremely rewarding for me. You may be small, but you can make a contribution. And I felt like for the TPN in particular, I was able to contribute. I'm very grateful and proud of that opportunity. (SR LA & C, 23/02/20)

It was not only frustration at the lack of nuclear disarmament, but also the passion for individual effectiveness and collective force to bring about change that motivated the overwhelming majority of interviewees to become part of the movement.

Preserving (which?) status quo

Almost all interviewees (94%, 30 out of 32) repeatedly and extensively made conservative statements affirming the preservation of the NPT and existing nuclear order. They emphasized the compatibility of the NPT and the TPN or the HI. Both would serve to strengthen existing international law. Almost no interview lacked an appreciation of the NPT and its importance ("cornerstone" etc.). Here, too, there are no differences between regions, state and non-state actors or among members of the core group. In addition, there were several statements that emphasized the dependence on the NWS and linked this fact with the intention to preserve the *status quo*.

But how can this apparent contradiction be explained? The precise answers shed light on this. Most of the interviewees made a sharp distinction between the disarmament and arms control dimension and the power politics dimensions of the NPT. Regarding the non-proliferation substance of the treaty, all supporters of the HI and the TPN see compatibility between the two regimes.

This regime [the NPT] does contribute to a public good. Because the first objective was to avoid proliferation. [...] While at the same time, the way it was structured, it really cemented a hegemonic nuclear order that now benefits the nuclear states in a manner that most of the international community would not like to see. (SR LA & C, 22/07/21)

There is almost a natural affinity between the principles of the NPT, the non-proliferation aspects and the TPN. The TPN is quite compatible with the NPT. In fact, it's a stronger push towards non-proliferation. The NPT to an extent, with the existence of NWS, gives some credence to proliferation. There is no such contradiction within the TPN. (SR Af, 23/04/28)

The TPN would even strengthen the NPT, especially its disarmament component.

The TPN supports the NPT, because the NPT's objective is disarmament. (SR Af, 23/03/30)

The NWS should be extremely grateful for the TPN, because the TPN reinforces all of our obligations under the NPT. (SR LA & C, 22/08/30).

Despite all the criticism, high esteem for the NPT is almost always and demonstratively voiced with the obligatory formula that the treaty would be the “cornerstone” of the international disarmament and non-proliferation regime. At the same time, though, interlocutors also brought the grand bargain to mind.

I think it is rightly the cornerstone of the non-proliferation and disarmament architecture, because with its three pillars [...] it defines the whole area of nuclear energy and nuclear weapons quite well. (SR WE & O, 21/08/31)

The NPT has been tremendously effective. I will never say otherwise. [...] Understanding the grand bargain is the key to understanding the structure of the treaty, what works and what doesn't. [...] It's about the three pillars. It's a tripod and an entity that cannot be dissolved. It's like a holy trinity. You cannot take one of the aspects without inflicting damage into the other. (SR LA & C, 22/08/30)

From this perspective, a ban on the possession of nuclear weapons is interpreted as a reaffirmation of the NPT, as it would highlight the provisional nature of the NWS' nuclear status. The TPN would thus filter out the power-political abuse of the NPT and return the regime to its disarmament and arms control substance.

In an ideal world, the NPT would have meant that nuclear weapons would no longer exist and then a ban would have become an academic exercise. But we don't live in that world and that's why we need the ban [...]. Precisely because we have observed with great concern that NWS misinterpret the NPT and to a certain extent derive from it a right to nuclear weapons, an absolutely inadmissible reading in our view. (SR WE & O, 21/10/01)

However, this does not mean that the interviewees are not aware of the limitations of the TPN. In all regions, there are representatives who stress the continuing dependence on the Global North, the NWS and their allies, especially with regard to the peaceful use of nuclear technology.

The Global South does not have all the resources to do that [achieve a nuclear weapons free world]. We also need the North. We also need the NWS. (SR Af, 22/10/27)

We simply have to work together, because we're talking about the work that the IAEA

does to help states work towards the peaceful use of nuclear energy. And for that, the South needs support. The South needs technology. That's a real need. (SR Af, 23/03/30)

All interviewees expressed their appreciation of the NPT and emphasized the compatibility of the TPN with regard to its non-proliferation and disarmament objectives. At the same time, they oppose the interpretation that the NPT legitimizes the possession of nuclear weapons. In other words, they reject the power-political claims associated with the NPT. Nevertheless, the vast majority take a realistic view of the existing balance of power and are aware of the limits of their actions.

Summary

The qualitative evaluation of the interviews regarding the perception of the nuclear order and the NPT as well as the motivation to participate in the HI and the TPN process confirms that, alongside the formally declared humanitarian aspirations, resistance to the nuclear rule of the NWS played a crucial role. All definitional elements of rule and resistance identified in this study, as well as other characteristic aspects, recurred prominently and in large numbers in the interviews. The interviewees made a very clear distinction between the arms control content of the NPT and its power politics content. In other words, they emphasized the compatibility with all aspects concerning nuclear disarmament and the containment of the proliferation of nuclear weapons or even underlined the intention to strengthen the existing regime. As far as the power-political substance is concerned, however, they reject the special status of NWS and the resulting relations of superiority and subordination and want an egalitarian regime.

In this sense, they see the TPN as a corrective that should recalibrate the three pillars of the NPT and reject any derivation of a right to possess nuclear weapons from the treaty. It is remarkable that almost all interlocutors do not only attribute the different scopes of action in the NPT to the possession of nuclear weapons, but also to the practice of nuclear deterrence. As a logical consequence, they see the NPT as a three-tier system consisting of NWS, umbrella states and other NNWS. The prevailing view is that the former two are de facto one group and that this dichotomy overrides all other group configurations. The nuclear weapons ban (which covers both possession and deterrence) is intended to put an end to the nuclear three-class society. Hopes for the success of such a transformation are grounded on the one hand in the belief in the power of norms and on the other (especially before the start of the Ukraine war) in a seduction strategy geared towards the umbrella states, with the help of their domestic civil society.

According to the interviewees, the pursuit of empowerment and participation as well as the collective experience of initiating tangible change were driving forces behind the movement. It became apparent that the sense of achievement and the experience of solidarity and selfenhancement within the movement encouraged the

great majority to become more engaged in the nuclear field. In addition, a growing willingness to tackle issues themselves, to expand regional cooperation and to consolidate the HI's global network was clearly reflected.

At the same time, numerous answers testify to the awareness of the given power and resource relationships that set limits to this urge. At this point, differences can be identified within the HI and TPN sympathizers, which have not been elaborated on the basis of the quotes in order to preserve anonymity. Medium-sized powers were particularly sensitive and accommodating when it came to maintaining the status quo and respecting prevailing dependency relationships. In contrast, larger regional powers were much more rebellious. Close relations with the US and cooperation with the “nuclear club” and the nuclear suppliers’ group in the area of civilian use also appear to have a dampening effect on the strength of resistance rhetoric. African countries that are more closely involved in development cooperation and interested in supporting their programs on nuclear energy are also more cautious.

Selective anti-colonial impetus

The interview analysis on the topic of rule and resistance produced very clear results which allow us to understand the HI and the TPN process as a resistance movement. This section explores the assumed anti-colonial impetus of this movement by outlining to what extent and with which references the interviewees explicitly addressed the colonial dimension and the phenomenon of post-colonial continuity. In addition, it discusses how they assess the relevance and possible role of the six colonial imprints (*excessive violence, eurocentrism, primacy of the state, racism, economic exploitation, patriarchal domination*) in connection with nuclear weapons and the nuclear order. Again, all elements of the analysis are examined in terms of their frequency and the associated content and illustrated with quotations. The different weighting in the various regions, between state and non-state actors as well as members of the core group and other state representatives is likewise given special attention. At the end, a summary concludes the analysis.

Addressing post-colonial continuity in testing

Statements with explicit reference to colonialism were often, but less frequent than general resistance rhetoric. Around two thirds (21 out of 32) of the interviewees used anti-colonial discourse, recognized colonial continuity in the nuclear order or directly criticized the latter as post-colonial. Interlocutors who were critical on this issue came from all regions, although such statements were somewhat rarer from African and European counterparts (half of whom addressed the topic respectively) than from the other two regions. Among the non-state actors interviewed, all referred to post-colonial continuity, and all but one of the members of the core group did so. Five interviewees, at least one person from each region, (also) took differenti-

ated positions on colonial legacy in the nuclear order. Two interviewees from African countries could not discern a connection or did not want to comment on it.

Several interviewees made general statements about the continuity of colonialism in the nuclear order.

It is as if the security of some is more sacrosanct and important than the security of the vast majority of the world. That type of imbalance has been called, I think from one [NPT] PrepCom Chair 'the nuclear apartheid'. And we can really empathize with that idea that you have some whose security or even status is held above others'. (SR Af, 23/04/28)

The structure that we have is coming from colonialism. A group of countries, the NWS and the umbrella states [sic!], they have the means, the ultimate means of war. And at the same time, they put stringent control on everyone else [...]. That is why many countries aspire to have these weapons, because it is a symbol of power, of prestige. (SR A-P, 21/11/02)

In most cases, the people interviewed referred specifically to nuclear testing when talking about colonial legacy in the nuclear field. Such statements were mainly made by representatives of Pacific states (not only affected states). In contrast, representatives from African states hardly ever referred to testing.

As a matter of fact, almost all nuclear tests were done on colonial territory. Indeed, the development of nuclear weapons was possible because of the colonial relationship between countries and their occupied territories. [...] This is a colonial legacy problem. And we cannot expect a treaty coming out of the colonial interest [referring to the NPT] to address those issues, it's not going to be done that way. (SR A-P, 21/11/02)

One interviewee explained in more detail how, in his view, nuclear colonialism still affects policies between a nuclear affected state or community and the nuclear armed state. When the Marshall Islands declared their independence and adopted their constitution in 1979, the US would not have wanted to recognize their sovereignty until they signed the Compact of Free Association with them in 1986. This agreement regulated the migration of many affected Marshallese to the US (mainly to Arkansas), but also prevented them from suing the US for nuclear damages. At the same time, it allows the US to establish a military base in the Marshall Islands, from which it tests intercontinental ballistic missiles.

Even if the nuclear tests affected individual countries, interviewees referred to the shared colonial experience, which would have enabled solidarity within the HI and the TPN process.

The vast majority of all the states has a colonial history. That just happens to be the reality. And in many cases, the colonial history is linked to the posture on nuclear weapons

use and testing, [...] At the same time, you have a lot of countries with a long history of colonial connection, in Africa, the Caribbean and certainly also in Latin America as well, which don't have that nuclear legacy. But it does always have a strong bearing throughout various elements of your foreign policy towards former colonial powers. (SR LA & C, 22/11/22)

For most of the interviewees, the colonial past and its ongoing effects play a significant role in relation to the nuclear order. It is worth noting that they mainly attribute the influence of post-colonial continuity to the practice of nuclear testing and the lack of attention paid to the issue. Only a few generalize the significance of long-lasting colonial after-effects for the nuclear order. The nuclear dimension of post-colonial continuity appears to be somewhat less strongly anchored in the consciousness of interviewees from the African continent than in other regions. However, the shared colonial experience emerges as a relevant and facilitating factor for the association and mobilization of the Global South.

Rejecting nuclear violence

Given the extensive discussion of the catastrophic human and environmental consequences of nuclear weapons in official and joint statements by HI members and at the three CHINW, no set of questions in the semi-structured interviews dealt specifically with the component of excessive violence. Therefore, this component was only coded using examples. Nevertheless, the rejection of nuclear violence and its excessiveness played a central role for all interviewees when it came to their motivation to participate in the TPN process. Nothing else was to be expected, as this corresponds to the humanitarian discourse with which the HI has promoted the TPN process.

[Name of state] saw that it was perfectly natural for it to support the treaty banning nuclear weapons, because the humanitarian consequences of nuclear weapons are not limited to a well-defined geographical area. (SR Af, 23/03/30)

Maybe one detonation would not destroy the world, but it would create catastrophic consequences for the environment and for the people. When you're talking about using the deterrent, as the North says, what you're saying is: 'Let's incinerate civilians massively and damage the environment for 50 years'. (SR LA & C, 22/08/30)

Throughout the interviews, the extent of violence and the devastating consequences of nuclear weapons were addressed and categorically rejected. In the view of many interviewees, the colonial character of this excessive violence manifests itself in the nuclear weapons tests (see section “addressing post-colonial continuity in testing”). Beyond this practice, however, nuclear violence was not directly identified as a specifically post-colonial phenomenon.

Promoting a subaltern perspective

The understanding that the HI and the TPN promote the subaltern perspective or counter Eurocentrism was widely shared and very frequently expressed. Statements to this effect were made in just over 90% (29 out of 32) of the interviews, with no differences between regions, governmental and non-governmental representatives, members of the core group or other countries. Nuanced statements were made by four interviewees from four regions. Two interviewees expressed skepticism regarding this approach.

When it comes to nuclear disarmament, many observe a North-South divide in perspectives and opportunities to influence the discourse (including within the NNWS).

I think obviously collective security was thrown around a lot. But what is the collective? I think you would find non-aligned states thinking of collective as well, but maybe more universal, in terms of general disarmament, while NWS and the allies would see collective as NATO and their region. (SR A-P, 22/11/16)

Representatives of smaller states repeatedly stated that they and their concerns are marginalized within the international community. Some complain that they were not permitted to have a say or were unable to have a say due to a lack of capacity. Yet anticipatory consideration for the sensitivities of NWS is also cited as a reason for subaltern reticence.

There's always this 'we shouldn't step on people's toes' mentality. But to achieve a nuclear free world, nuclear justice, you have to do the uncomfortable work. [...] Governments from nuclear affected states need to play a more active role at the international level, sharing these narratives. (NSR A-P, 23/12/13)

The strong representation of the Global South in the HI and the TPN, on the other hand, would help to push vested interests into the background and a global good into the fore. The HI and the TPN process are perceived as an opportunity to raise the voice of the Global South, the subalterns, and to increase their participation. For some, this had boosted their diplomatic presence. European interviewees also noted a shift in the discourse and perspective on nuclear issues in favor of the Global South and affected communities. The concerns of smaller states, and particularly those affected by nuclear weapons tests would receive more attention globally.

We get to know how that machinery works and when we need to get senior leaders out and what type of meetings and events they should be participating in. [...] Previously, there'd be probably a northern NGO in Vienna talking on our behalf, which we probably never heard of. (SR A-P, 22/12/20)

Of course, there has clearly been an effect that these voices are being heard more. [...] In the past, it was mainly the hibakushas from Japan. There has been a great deal of diversification, with other victim groups now also appearing and getting actively involved. (SR WE & O, 23/04/28)

Overall, the TPN would have helped to bring together the Global South, which is often divided on other issues.

What I have seen [regarding the TPN] is that at least in the nuclear order the Global South has been coming together. I don't see that in other areas, trade, development or human rights, where political or ideological divisions are strong. (SR LA & C, 22/07/21)

However, one person interviewed questioned whether the Global South perspective was helpful in the nuclear context and referred to the nuclear status of India and Pakistan, among other things. Two people also pointed out that it was Western actors who decisively steered the HI and the TPN process.

If I were a country from the Global South, I would probably see it a little differently. But the fact that countries from the WE & O group were so strongly committed to this treaty and played a decisive role in its development speaks for itself [...] The achievements of countries like New Zealand, Ireland, or Austria were crucial in helping this treaty to succeed. (SR WE & O, 21/10/01)

It's quite interesting that you find more popular debate and awareness of the ban treaty in the West. [...] It's the Western centers of nuclear disarmament advocacy that sponsor elite politics, negotiations, interactions that eventually lead to nuclear ban ratifications in the Global South. (NSR Af, 22/04/05)

From the perspective of many interviewees, the traditional nuclear weapons discourse is dominated by the (Western) NWS and umbrella states while the view of the Global South and those affected is marginalized. In the opinion of almost everyone, this has changed with the HI and the TPN process. They had brought about a discursive shift in favor of strengthening the perspective of the Global South and subaltern participation. This would particularly benefit the states and communities affected by nuclear weapons tests, whose concerns were ignored in the past. The promotion of the subaltern and Global South perspective was also supported by the members of the movement who belong to the group of Western European and other states. Furthermore, some observed that the Global South now speaks with one voice in the nuclear field and is united. However, individual interviewees also warned against excessive euphoria about the discursive Pyrrhic victory of the subalterns or recalled the formative role of Western state and non-state actors in the entire process and discourse.

Standing up for human security

Very frequently, almost 88% (28 out of 32) of respondents associated the TPN with human security, which of course corresponds to the humanitarian tone of the movement. They often contrasted this with the primacy of the state. In those cases, they associated the NPT with state security. The participation and importance of civil society in the HI and the TPN process was also widely recognized. There were no significant differences between regions, state and non-state representatives, members of the core group and other states. Six interviewees from two regions (four from Asia & Pacific) also provided more nuanced statements. Four interviewees with no regional focus and mostly representing civil society actors reported that ultimately the primacy of state persists in the TPN framework.

The status quo of the nuclear order, especially the NPT, appears state-centric to many interlocutors. Larger and major powers, the umbrella states and NWS, would benefit most from it. Even if disarmament were to take place, it would be driven primarily by their national interests and not oriented towards the global common good.

The NPT has a complete disparity. It has an apartheid even beyond just possessing nuclear weapons, including the use of nuclear energy and technology. It's very state centric and benefits the nuclear states. (SR Afr, 23/04/08)

Although we've seen a drastic reduction in the number of nuclear weapons today compared to the peak of the Cold War, these reductions have always been not primarily led by a disarmament ideology, but much more by a national security and strategic stability ideology, when states have been able to qualitatively improve their nuclear capabilities to the extent that they didn't require as many warheads as they did before. (NSR Af, 22/04/05)

Conversely, the HI and the TPN process would promote human security and would have opened up a door out of the state-centered NPT box.

Before you wouldn't have been able to talk about the impact of testing on indigenous population. There was nothing about that because all you were thinking about was the state and how we're going to do deterrence. [...] But once you start to look at the people and the humanitarian aspect, then issues around racism, colonialism, all of those are coming to the fore. Now that we're leveling the playing field, we're opening up a disarmament taboo. We are putting people at the center. (SR LA & C, 23/02/20)

The discourse on the part of the NWS and their allies is still more strongly characterized by a – well, I'm not a political scientist – perhaps more realistic concept, where states are the principal actors and they have to counterbalance each other. The TPN and

the humanitarian perspective focus more on people and the effects of weapons. (SR WE & O, 21/08/31)

The priority on human security would also reflect the inclusive approach. The HI and the TPN would have been significantly shaped by civil society and would have simultaneously upgraded its status (see section “pursuing equality and diversity”).

We must give importance to the human being that we are. We must give priority to human life and protect it. And it's on this basis that I see how civil society has become involved or mobilized, even working with states, to shout out loud and clear about the dangers of the humanitarian consequences of using nuclear weapons. (SR Af, 23/03/30)

Nonetheless, some civil society actors stress that the primacy of the state would ultimately continue to prevail within the TPN, which would become particularly evident when non-state and state interests come into conflict. Certain victim groups and grievances in the nuclear production chain, in particular uranium mining, were therefore overlooked.

Not many states, probably not any states are interested in highlighting the ill practices of uranium mining because it goes against the national interest, regardless of what it does to the body of indigenous people in those states. [...] It's going to be very difficult to talk about uranium mining. Precisely because the primacy of state has been left untouched. (NSR Af, 22/04/05)

In line with the humanitarian framing, the HI and the TPN emphasize human security in the eyes of the overwhelming majority of interviewees. They often contrast this with the state- and military-centered framing of the NWS and umbrella states. The NPT, shaped by the latter, would also embody the primacy of the state in international relations. The new focus on human security is closely associated with the greater influence and participation of civil society within the movement. However, individual critical voices point out that in the TPN process, too, the national interest defined by state representatives and social elites may ultimately triumph over dissenting humanitarian and civil society concerns. Human security and civil society would then once again be subordinated to the primacy of the state. This assessment corresponds to findings of this study that were obtained in other sections.

Isolated criticism of nuclear racism

A total of only 8 interviewees, i.e. just a quarter, clearly criticized racism in the nuclear order or related to nuclear weapons. Among these, five were government representatives and three were non-governmental representatives. Three of them were from Asia-Pacific and five from Latin America and the Caribbean. Not a single

interviewee from Africa or Europe and no one from the core group saw a resolutely racist connection. Four interviewees also made differentiated comments on the topic, two of them from Africa and one each from Asia-Pacific and Latin America and the Caribbean. Three state representatives from three different regions made statements that denied a link between racism and nuclear weapons.

Some statements alluded to the racist connotation of the self-image of NWS as rational, controlled and responsible actors, by which they would distinguish themselves from other actors, especially from the Middle East.

The most obvious example would be the contrasting of Europe versus the Middle East. They [the NWS] would say: 'It's fine for us to have it and we keep it at a minimum with nuclear risk reduction and we can do it, whereas some of the Middle Eastern countries cannot be trusted with them, because they are irresponsible actors.' (SR A-P, 22/11/16)

One diplomat lamented condescending treatment by NWS and their allies when it comes to nuclear weapons, especially by European states.

It's extremely difficult for an African diplomat to function in the environment of the UN because you are constantly being patronized. [...] It comes a lot from European states in the arguments that we make about nuclear weapons. [...] There is a condescension that underpins the disarmament discourse in the sense that those that have and rely on nuclear weapons almost feel they're duping the rest of us. And then we are too unsophisticated to understand the security dimensions, whereas they are the responsible ones. (SR Af, 23/04/28)

When racism was explicitly criticized, it was usually in connection with the choice of nuclear test sites.

Being able to see the victims, these human beings, you realize they all have dark skin. (SR LA & C, 22/07/21)

The people from the colonies were like guinea pigs. When the nuclear weapons tests were carried out [...], the local population was told that they would be safe [...], whereas authorities knew that the opposite was true. It's incredibly perverse and racist. (NSR LA & C, 23/05/21)

According to individual interviewees, discrimination against the indigenous population would have continued when it came to compensation for the health effects of nuclear weapons tests.

They took care of the veterans when they came back and asked for help. But they continued to say [to the local population on the test sites]: 'Sorry, your illness has nothing to do with what we did in [name of the country].' (SR A-P, 22/11/18)

Others struggle with the term racism. In some cases, the link with racism was denied.

[The NPT] values the security of some group of people above others. Overwhelmingly, I would say in favor of the European white, or American transatlantic type. I wouldn't say racist, rather nationalistic. Because the security of those states extends to all their citizens. [...]. To call it racist, we'd have to reach further to the underpinnings of that nationalism. It's more an attitude of national superiority than an explicit racist one, even though probably the roots exist in that sense [...] which is a very fine line, I would say. (SR Af, 23/04/28)

I don't see racism coming into play here. The Chinese have got nuclear weapons. The Indians have got nuclear weapons. The Russians have got nuclear weapons. The Americans have got nuclear weapons. Israel has got nuclear weapons. I don't see any, um, African country having a nuclear weapon. Of course, Africa is a NWFZ. So, we don't have it, and we do not aspire to have it. (SR Af, 22/10/27)

Sharp criticism of nuclear racism was sometimes voiced and embedded in anti-colonial critique. In some cases, this involved primarily the European-Western nuclear weapons possession (and sharing arrangement). More frequently, the issue was linked to the choice of nuclear weapons test sites and the treatment of the local and indigenous population. Only a minority of the total number of interviewees clearly condemned a racist bias. Others drew a more differentiated picture, making a connection between colonialism and attitudes of imperialist or national superiority. A few opinions denied a correlation. Overall, the evaluation of the interviews does not permit any generalization regarding the perception and motivating function of this component within the HI and the TPN process.

Complaining about economic unfairness

Frequently, and around two thirds of respondents (21 out of 32) mentioned a lack of economic fairness in the nuclear order. The nuclear status quo would thereby promote economic and financial inequality or is even perceived as genuinely capitalist. Economic injustice was identified by interviewees from all regions, although only one was from Europe. The topic was addressed with similar frequency by state and non-state actors, and no noticeable differences could be observed between members of the core group and other state representatives. Many state and non-state representatives from all regions also made differentiated statements with regard to the economic matter. Two state representatives thought that the economic dimension

of nuclear weapons was negligible and would take a back seat to the security considerations defined by the state.

The interviewees attached varying degrees of importance to the financial and economic dimension of nuclear weapons, but rarely associated this with colonial exploitation. Instead, they pointed to the high expenditure for the military use of nuclear technology, which was seen as a bad investment and part of global economic injustice. Consequently, it would stand for a systematic misallocation of resources to the military. The money would be better spent on supporting developing countries or in other areas such as health, education or social welfare.

For many countries in the Global South, it's also about resources. This is now becoming more and more of an issue, that nuclear weapons and the maintenance of these arsenals devour so much money that could actually be used much more to combat climate change and to fulfill the Sustainable Development Goals [SDGs]. (SR WE & O, 21/08/31)

If you have 500 billion dollars for credible deterrence, the same 500 billion dollars could also be used for healthcare that will directly, tangibly save 100 000 lives because you have more hospitals available. (SR A-P, 21/09/03)

In addition, there was also talk of assumed (post-colonial) discrimination in the provision of nuclear technology and that this would prevent developing countries from unfolding their economic potential and making progress on the path to modernization. Besides criticizing various facets of injustice in the nuclear economy, many interviewees assumed that the military industrial complex, or capitalism in general, was a main driver of the nuclear arms race. Corresponding statements occasionally coincide with neo-Marxist reflections on global post-colonial financial entanglements in the nuclear order.

We would not have nuclear weapons if there wasn't an economy behind. I'm sure you are familiar with the military industrial complex. Once you establish the need and industry behind, [referring to several branches] they start to have a life of their own. Like any social organism its instinct is to preserve its survival. (SR A-P, 21/11/02)

The political economy of the nuclear order is a very strong dimension because it implies great public expenditures. And whenever you have so much public spending, then you have beneficiaries, and you create interests as well. (SR LA & C, 22/07/21)

Following a completely different logic, one person referred to the concrete expenses imposed on NNWS. Due to the existence of nuclear weapons, they would have to incur high expenditures for nuclear disarmament diplomacy.

It's at our expense because we have to continue pushing for disarmament. And that is costly within the UN. [...] While NWS invest in maintaining weapons, we are spending money to try to combat that. (SR A-P, 21/12/09)

Quite a few pointed to the prohibition of assistance in the TPN, which would forbid investments in nuclear weapons and related activities. They also highlighted initial divestment successes. But there were also doubts that fundamental change would occur, as the members of the HI and the TPN could not afford to punish states over economic issues if they wanted to increase the number of supporters.

It is no coincidence that [...] nobody is pointing the finger at anyone and saying that if you want to join, then you have to throw such and such companies out of your country or take such and such portfolios out of your pension funds. Because on the one hand that would not be easy to implement and on the other hand it would stand in the way of universalization efforts. (SR WE & O, 23/04/28)

Unlike civil society representatives, state representatives did not express any economic exploitation or damage to health and the environment when it comes to the peaceful use of nuclear energy and uranium mining.

We've talked extensively about testing, but the other dimension of the nuclear economy that has perhaps caused more human loss of life in the Global South has been the uranium mining and extraction industry. [...] It has disproportionately affected indigenous and mining communities. [...] These practices have almost perfectly mirrored the practices of colonial exploitation of mineral resources of other kinds prior. (NSR Af, 22/04/05)

A vast majority of interviewees associate economic inequality and injustice to the detriment of the Global South with the maintenance of arsenals and nuclear deterrence or the (restricted) access to the peaceful use of nuclear technology. Quite a few confirm post-colonial considerations and assumptions of political economy, whereby capitalism and the military industrial complex would be the driving forces of the nuclear order. Yet when the existence of concrete patterns of exploitation were touched upon, state representatives remained silent and only a few non-state actors familiar with the issue spoke about the colonial practice of uranium mining and extraction.

Debating gender sensitivity

By far the most vividly discussed component of colonial imprints in the interviews was the topic of gender and nuclear weapons, which dealt with patriarchal domination. More than 60% of the interviewees (20 out of 32) from all regions emphasized the high gender sensitivity of the HI and the TPN process and recognized a gender

bias, be it in relation to the disproportional impact of nuclear weapons or the unequal opportunities for women to participate in the field of nuclear disarmament and arms control. Among the gender-advocates interviewed, representatives from Latin America and the Caribbean were particularly strong, those from Africa and Asia-Pacific somewhat less so. There were no significant differences between state and non-state representatives. Among the members of the core group, all stressed the importance of the gender dimension.

Nuanced statements on the topic were also common and expressed by 44% (14 out of 32) of interviewees from all regions. Such mixed statements only rarely came from members of the core group or a non-governmental representative. In addition, statements containing predominantly skepticism or clear objection to the gender aspect were not uncommon and were made by 38% (12 out of 32) of the interviewees. They also came from all regions. Again, members of the core group and non-governmental representatives were rare. It is noticeable that none of the interviewed women denied or relativized a gender connection.

Interviewees who highlighted the relevance of gender always addressed several facets. The aspect of intersectionality and the presumed connection to colonialism was also covered by most of them, in particular regarding the gender-specific impact of nuclear weapons testing.

With scientific evidence progressing we began to understand the particular long-term health impacts on women. [...] The second part of the gender story is that the leaders were men. [...] Under the [name of colonial state] system, when you wanted to seek access to government services, it was the man who had to seek access to health on behalf of his mother or wife. (SR A-P, 22/12/20)

Interviewees also diagnosed a gender bias in deterrence's mindset and the the NPT regime.

[Deterrence] is related to the way men think: 'We, the powerful, are going to protect you, the very needy and weak. And we are the sole protectors of the international community with these powerful weapons that are shaped like a phallus.' This has to do with the way the patriarchal society works. (SR LA & C, 22/08/30)

[The NPT] is very much a strategic, militaristic, almost hyper masculine approach. [...] [The HI and TPN] is a more holistic approach to understanding the humanitarian, environmental, gendered, socio-economic implications of nuclear weapons. (SR Af, 23/04/28)

Many of the interviewees stated that the discrimination of women would also affect their participation in the nuclear weapons discourse, and that this would change

with the TPN. Latin American and Caribbean state representatives see themselves as feminist spearheads and were also perceived as such.

It was a process [HI, TPN] that was in the hands of women. This was a process that had a lot of female input into it. (SR LA & C, 22/07/21)

For Latin America and the Caribbean, we tend to have more women in our delegations, as you would have probably seen from the research. [...] Progressively, these things will also happen in the field of disarmament. The last NPT RevCon finally had a paragraph on the issue. It's a small one, but it's a step and there's always resistance. (SR LA & C, 23/02/20)

Many interviewees took a differentiated stance towards the “gender revolution” celebrated within the HI and the TPN, arguing that gender mainstreaming was a matter of time and not due to the (subaltern) composition of the treaty community.

It's both the reflections of time we are living in which the importance of the gender dimension has reached a critical mass that allows it to be streamlined into all elements of the international agenda. But it's also a reflection of the fact that some of the key states that were behind those negotiations of the TPN are gender champions. (SR LA & C, 21/09/15)

If we look at the TPN process prior to the 2017 Negotiating Conferences, we still see an overwhelming majority of male dominated missions, because the discourse around gender equity is much more pronounced in the West. There remain significantly more constraining patriarchal cultures in the Global South today that are protected under the umbrella of being part of a non-Western culture. (NSR Af, 22/04/05)

A substantial number of interviewees denied that gender sensitivity and equity was a distinguishing factor between NWS and NNWS or Global North and South.

The countries that started to have more prominent women spokespersons, ambassadors and experts on international security issues [...] are Canada, Australia, New Zealand, the Netherlands and a few others. [...] They are proponents of the NPT so to speak. And at the same time there are proponents of the TPN that continued to be led by male experts. (SR A-P, 21/09/03)

Some cautioned against using the gender weapon too sharply, as it could otherwise fire back. Others openly criticized excessive gender mainstreaming, especially with regard to queer gender identities.

I don't know whether the way it's been pushed now is backfiring. There's been a lot of frustration that gender is just being put everywhere whether there is direct relevance or

not. (SR A-P, 22/11/16)

What happens with the gender perspective, the indigenous peoples, sexual minorities, etc.? All of these are now addressed to the point of pointlessness. I've witnessed negotiations where they want to bring the LGBTQ plus thing into biological weapons just to have it mentioned without any scientific evidence that toxins or pathogens have a harder impact on them. (SR LA & C, 21/10/14)

The interviewees were divided on the topic of gender. Most of them stressed the importance of this dimension regarding the impact of nuclear weapons and policy development. When asked whether the specific composition of the HI and TPN community (with a high Global South representation) would promote progress in terms of gender equity, most responded in a differentiated manner and referred to a general trend. Some warned against too much gender eagerness as it could harm the nuclear disarmament cause. Others rejected greater engagement in this area. The broad spectrum of gender advocates, skeptics and critics spanned all regions, even if the self-image varied considerably.

Summary

The evaluation of the interviews regarding the perception and critique of post-colonial continuity as well as the relevance of colonial imprints in the nuclear order for the motivation to participate in the HI and the TPN process reveals a multi-layered picture. Dealing and coming to terms with the colonial nuclear legacy certainly played an important role. The majority of interviewees explicitly referred to the nuclear tests in occupied territories and waters in that regard. The (Western) practice of extended nuclear deterrence also has a post-colonial flavor in the eyes of several interviewees.

Among the six components of colonial imprints, the subaltern or Global South perspective, which was contrasted with Eurocentrism, stood out. It was equally highlighted by the members of the movement who belong to the group of Western European and other states and who held a key role in the movement. The advocacy of human security against the primacy of the state was also a concern shared by almost all interviewees. Given the humanitarian framing of the movement, this was no surprise. However, the willingness to place people at the center ended where it interfered with the state's own interests. Common perceptions and motivations included a general rejection of excessive nuclear violence. Yet the latter was not necessarily associated with colonialism, except again in the context of nuclear weapons testing. Only for a minority is nuclear racism at play and a driving force for resistance. Regarding the economic and financial dimension of nuclear weapons and the nuclear order, the majority of interviewees strive for a redistribution of resources; quite a few saw their commitment against nuclear weapons embedded

in a struggle against unjust capitalist structures. Systematic economic exploitation of the subalterns, which is typical of colonialism, was only recognized by individual non-state representatives in the practice of uranium mining and extraction. When it comes to combating and overcoming patriarchal domination, the analysis reveals a very heterogeneous picture. Apart from advocates of a feminist foreign policy, the circle of interviewed supporters and sympathizers of the HI and the TPN also includes numerous sceptics and a few gender-frustrated individuals. However, with its gender-sensitive approach, the anti-nuclear resistance reflects the *Zeitgeist* and could thus contribute to progress, even if the group remains divided on this issue.

In sum, anti-colonial resentment certainly and substantially played a motivating role in joining the HI resistance and the TPN process. At the same time, the analysis of the role of post-colonial continuity and the six components of nuclear imprints reveals that the anti-colonial impetus was selective. This echoes the tactical use of the humanitarian code. Wherever the anti-colonial resistance agenda runs counter to one's own interests, it is pragmatically trimmed down. Thinning out the ideological grit helped facilitate the broadest possible mobilization and effectiveness. To achieve something, compromises had to be made and opportunities seized. The flipside of such an adaption to *Realpolitik* is the inherent limitation of transformative potential, whereby essential principles of the colonial legacy are reproduced. This applies in particular to the preservation of the primacy of the state and the structures of economic exploitation when it comes to uranium mining and extraction. The greatest potential for transformation, on the other hand, could lie in combining the subaltern perspective in the fight against nuclear violence with an anti-colonial agenda, elevating the legacy of nuclear testing to a new political priority.

3.5 How to resist? Subversion by changing procedures

After the NPT RevCon 2015 the HI resistance was united in its objective of prohibiting nuclear weapons based on IHL. However, there were different ideas on how this could and should be achieved. Some advocated a process outside the UN, a coalition of the willing, along the lines of the Mine Ban Treaty and the Cluster Munitions Convention. Others wanted to remain within the UN framework or return to it. For many Latin American states and the NAM, this was the only viable option. The question of whether a comprehensive prohibition or a lean ban treaty was the method of choice had also not yet been fully resolved.

The compromise ultimately consisted of embedding the negotiations on a nuclear weapons prohibition in the institutional framework of the UN but avoiding the usual consensual decision-making procedures for nuclear arms control and disarmament. The resistance thus resorted to the majority voting principle of the

UNGA. Once again, generally valid and recognized rules were applied to the nuclear weapons context, in which they had not previously been used. The subversive potential of this creative instrumentalization of existing rules and their transfer to the nuclear field has already been explored with regard to the concept of human security and IHL, i.e. *substantive* norms. By resorting to the UNGA's rules of procedure to operationalize the diplomatic process, the HI again referred to this approach, exploding this time the subversive potential of existing *procedural* norms.

This section investigates in more detail the Open-ended Working Group (OEWG) 2016 and the negotiations on the TPN 2017, in which the resistance used the majority principle to override the NWS's monopoly on nuclear arms control and disarmament. We will examine how the proponents of the HI pushed through the resolution to establish the OEWG 2016 (UNGA 2015d) during the 2015 session of the UNGA First Committee, drawing on a series of precursor initiatives and relying on well-coordinated preparation. The analysis also takes a closer look at the meetings of the OEWG 2016 and reconstructs how they set the framework for possible treaty negotiations. For the actual Negotiating Conference in 2017, the focus of the analysis will be on the parameters, the process and the structure of negotiations, as well as the crucial topics and the associated conflicts during the meetings. We will also look at the internal constitution, subdivision and performance of the resistance by analyzing the negotiating behavior of its various actors.

The open-ended working group: a rebellion according to the rules

To ensure that a nuclear ban would be embedded as deeply as possible in the institutional structure of the UN, the decision-making process on the start of negotiations needed to be mandated by the international community. Following the failure of the 2015 NPT RevCon, the HI core group opted for the format of a UNGA working group, which has been used before in the context of nuclear arms control and disarmament. The OEWG, which began its work in spring and summer 2016, was to make decisions according to the principles of the UNGA, i.e. by majority vote. This idea was not entirely new either. However, previous initiatives were repeatedly abandoned or ultimately did not make use of the option of majority voting. This section considers the institutional history of the OEWG 2016, outlines the circumstances surrounding its establishment in the context of the 2015 UNGA First Committee Meeting and discusses its development and significance for the start of the TPN negotiations.

In its decision in summer 2015 to initiate the establishment of a majority-based OEWG in 2016, the core group was able to build on a number of *predecessor initiatives*. The first was undertaken in the wake of the failed NPT RevCon 2005 and pursued an agenda that had already been defined in the Geneva CD. At the 2005 UNGA First Committee meeting, six countries – Brazil, Canada, Kenya, Mexico, New Zealand and Sweden – submitted a proposal (Brazil *et al.* 2005), to set up four

“Open-ended Ad-Hoc Committees” to deal with the “four core issues” (FMCT, nuclear disarmament, PAROS, NSA). The aim was to get the nuclear arms control and disarmament debate on track by removing the requirement for consensus in the Geneva CD and having the four ad hoc committees proceed in accordance with the UNGA’s rules of procedure. In other words, the topics were conservative and more or less consensual, while the procedure was innovative. However, this was opposed by the NWS, but also by other states that wanted to stick to traditional procedures and the consensus culture. In the end, the proposal was not submitted to the First Committee for a vote.

A second attempt was undertaken by Austria, Mexico and Norway one year after the 2010 RevCon with a draft resolution entitled “Taking forward multilateral nuclear disarmament negotiations” at the meeting of the UNGA First Committee in 2011 (Austria *et al.* 2011). It reverted to the same format (majority-based OEWG) for the same work program (“four core issues”). Again, the initiative met with vigorous disapproval from the NWS and also NNWS raised warnings against parallel structures and a duplication of debates (Acheson 2011). Once again, the initiators withdrew the proposal and announced a resubmission for the 2012 UNGA session. At the 2012 UNGA First Committee session, Austria, Mexico and Norway submitted another draft resolution on the establishment of an OEWG under the same title (UNGA 2013b). This time, Chile, Costa Rica, Iceland, Ireland, Liechtenstein, New Zealand, Nigeria, the Philippines, Trinidad and Tobago and Uruguay co-sponsored the resolution. This broader support along with informal consultations of the sponsoring states with skeptical NAM states (Kmentt 2021, p. 33) contributed to the adoption of the resolution with a large majority of 147 votes. 31 states, including China, India, Pakistan and Israel, abstained. Iran and North Korea voted in favor. Only France, Russia, the UK and the US voted against (UNGA 2012, pp. 20–21), citing in particular their rejection of the OEWG’s rules of procedure and announcing that they would not be able to support the resulting outcomes (France *et al.* 2012).

With Resolution 67/56 and the establishment of the OEWG in 2013, the consensus principle, as it prevailed in the Geneva CD and the NPT, providing the (NPT) NWS with a mechanism to maintain control by veto, was thus overruled for the first time at UN working level in matters of nuclear disarmament and arms control. The NNWS gained an opportunity for real participation. The OEWG was also more open to soliciting input from civil society actors and scientific experts. The new possibilities for involvement were actively used. Numerous contributions and working papers (WP) dealt with the important role of NNWS and their concrete contributions, for example by highlighting the humanitarian and human security dimension and reframing the discourse (Austria 2013a) or by promoting the stigmatization and prohibition of nuclear weapons including the option of a ban treaty (Ireland and Switzerland 2013). It was the first time that the idea of a ban, albeit not in the spotlight and not yet fully fleshed out, was brought into play by governments on paper.

NGO input was much more pronounced on the ban option and its assumed accelerating effect on nuclear disarmament, be it with or without the involvement of the NWS (Acronym Institute 2013).

The influential working paper of the NAC (NAC 2013) in turn distinguished between “end state prohibitions”, which had to be developed in order to secure a world free of nuclear weapons, and “interim measures”, which were intended to drive forward progress in nuclear disarmament. It was a precursor to the WPs presented later in the NPT Review Process, which discussed different variants of “effective legal measures” (NAC 2014, 2015). The core idea of the WP was that “end state prohibitions” and “interim measures” did not have to be implemented one after the other but could and should be tackled immediately and simultaneously. However, the NAC still envisaged a comprehensive legal framework for this (i.e. not a lean prohibition treaty): “What is needed is a comprehensive and legally binding framework committing all States to a world free of nuclear weapons” (NAC 2013, p. 4). On behalf of the NAC, Brazil declared that the NWS had a debt to the NNWS, which had already fulfilled their obligations by renouncing nuclear weapons, and concluded: “The unsustainable divide between haves and have-nots must end. The narrow national security interests of a few cannot trump the collective security interests of all” (Brazil 2013).

Australia, Canada, Germany, Japan, the Netherlands and other US allies and NATO member states also actively contributed to the OEWG with proposals based on their step-by-step approach (Australia *et al.* 2013a). Representatives of India and Pakistan, who had abstained from voting on the resolution, participated constructively. The working atmosphere in the novel discussion forum was described overall as objective and cooperative (Kmentt 2021, p. 34), hence the OEWG ultimately did not have to make use of its majority voting option when adopting its final report (OEWG 1 2013) and remained loyal to the traditional practice of consensual decision-making. The range of WPs and open debate culture of the OEWG created a space for free-floating ideas, many of which were still half-baked. This productive context encouraged greater participation from NNWS, particularly from the Global South. The final report (OEWG 1 2013) takes up many of the ideas discussed, but avoids statements that were not shared by everyone. For example, it mentions a prohibition of nuclear weapons as a necessary element to ultimately secure a (achieved) nuclear weapons-free world. But it leaves open whether this should be embarked upon at an earlier stage. However, it reaffirms the responsibility arising from the catastrophic humanitarian consequences of nuclear weapons and also acknowledges the NNWS’ role in promoting global nuclear disarmament.

The discussion within the UN remained at this point until the **UNGA First Committee session in 2015**. There was disagreement within the sponsorship group as to whether it would be beneficial to set up an immediate successor to the OEWG in 2013, and therefore no corresponding initiatives for the UNGA First Committee were taken in 2013 and 2014 (Kmentt 2021, p. 35). Yet the debate item “Taking forward

multilateral disarmament negotiations” was kept on the agenda through respective resolutions without an OEWG component so that it could be used if necessary. Eventually, this proved to be an important precautionary measure for the further operationalization and institutional anchoring of HI resistance within the UN.

After the failed 2015 NPT RevCon, the mood and dynamics within the HI had changed and this shift radiated to the entire international community. The attempt to achieve something in cooperation with the (NPT) NWS, by consensus and within the established forums, had visibly proven to be fruitless. The battle lines had been drawn, so to speak, and the political “momentum” (Kmentt 2021, pp. 62–85) of the resistance had come. The only possible arena for its activities left was the UNGA and its First Committee, which operated according to the majority principle. And here, the agenda item “Taking forward multilateral disarmament negotiations” provided the ideal entry point.

On July 15, 2015, Austria invited representatives from Ireland, Mexico and South Africa, who had been particularly committed to the HI during the NPT RevCon, to informally discuss the further strategy (Kmentt 2021, pp. 71–75). There was consensus that deepening the HI’s connection to the UN was essential to secure its room for maneuver. To this end, several resolutions were to be prepared, coordinated and introduced for the UNGA First Committee session in autumn 2015 to maximize the reach and mobilization potential of the UNGA. Two key challenges had to be met to elevate the resistance in the UN framework to a new level and unleash its political force: First, the NAM states, influential in the UN, had to join in. Secondly, the humanitarian discourse and the HI as a whole had to be connected in its entirety with the debate on “effective legal measures” (Kmentt 2021, p. 73). While not all participating states were ready to enter into negotiations for a ban, the formula of “effective legal measures” appeared to be acceptable to all. The solution was obvious: the submission of a resolution to establish an OEWG on the issue of “effective legal measures” that would not work on the basis of consensus. A suitable draft resolution was to be associated with the already established debate item “Taking forward multilateral nuclear disarmament negotiations” and thus implemented as a follow-up of the OEWG 2013 (UNGA 2013b, OEWG 1 2013).

The UNGA First Committee Session in October 2015 was marked by widespread outrage over the failed NPT RevCon. As expected, the demands of the HI dominated the debates and the agenda. Numerous states called for a legal prohibition of nuclear weapons, including Botswana, Chile, Costa Rica, Ghana, Indonesia, Jamaica, Lebanon, Mexico, Nigeria, Peru, the Philippines, Tanzania, Thailand, Uganda, Ukraine, Uruguay and Zambia, as well as regional groups such as the African Group, ASEAN and CELAC (Gandenberger 2015). Austria submitted the RevCon Joint Statement on the “Humanitarian Consequences of Nuclear Weapons” (UNGA 2015b) and the Humanitarian Pledge (UNGA 2015c) in the form of resolutions. Numerous NNWS referred in individual and coalition statements to the “legal

gap” diagnosed therein, which in their view had to be closed (Austria, Costa Rica, Guatemala, Jamaica, Kenya, South Africa, Uruguay, Zambia, CARICOM, Union of South American Nations (UNASUR)) (RCW 2015b). South Africa sponsored a resolution on the ethical imperative of a world free of nuclear weapons (UNGA 2015a). These three resolutions were adopted by a large majority in the First Committee and later in the plenary of the UNGA.

Mexico was the main sponsor of the updated resolution “Taking forward multilateral nuclear disarmament negotiations” to establish an OEWG, which was mandated to discuss and propose appropriate measures and also to “substantively address concrete effective legal measures, legal provision and norms that will need to be concluded to attain and maintain a world without nuclear weapons” (UNGA 2015d). The OEWG was to meet in Geneva for three weeks in the spring and summer of 2016 and submit a report of its work and recommendations to the UNGA, which would reconvene in the second half of the year. The states participating were to “make their best endeavors to reach general agreement”. However, due to the UNGA rules of procedure, they had recourse to the possibility of a majority decision.

To the surprise of the countries involved in the resistance of the HI, a counter-draft to the Mexican proposal was submitted. It envisaged the establishment of a respective OEWG that would work strictly according to the consensus principle. Neither the NPT NWS nor the nuclear umbrella states submitted this proposal. It was Iran that introduced the draft resolution “Effective measures on nuclear disarmament” (Iran 2015) to the UNGA First Committee a few months after the conclusion of the JCPoA, in anticipation of sanctions relief and better relations with the US and the other co-negotiators (Kmentt 2017, pp.77-79). This move certainly had the potential to divide the resistance that was united in the HI. After all, as a protagonist of resistance and chronic victim of the ruling nuclear elite, Iran enjoyed sympathy in the eyes of many NAM states. While the Iranian draft resolution found the most favor among the US’s European allies, the latter and the P5 could not muster the political will to support it (France 2013c). Abandoned by those it had tried to persuade, Tehran withdrew its proposed resolution when Israel demanded a vote. The HI resolution won competition between the two draft resolutions, which were similar in substance but differed in the choice of their formal procedure. After adoption in the First Committee, Resolution 70/33 (UNGA 2015d) was approved in the plenary of the UNGA with 138 votes in favor, 12 against and 34 abstentions (UN 2015a). The movement emerged strengthened and with a UN mandate.

The **2016 OEWG** met from 22–26 February, 2–4 May, 9–13 May and on 5, 16, 17 and 19 August 2016. As with its predecessor, the NPT NWS boycotted its work. India, Pakistan, Israel and North Korea also stayed away. The nuclear umbrella states participated. The Thai Chair made full use of the opportunities contained in the mandate to involve civil society and academia. Separate panels were built into the work program for this purpose. For example, UNIDIR and ILPI presented a study on how a prohi-

bition could be implemented (Borrie *et al.* 2016), and their recommendations were incorporated into the further work of the OEWG. Testimonies from survivors of Hiroshima and Nagasaki also provided important input. In line with its mandate, the OEWG dealt with both effective legal measures and other measures to promote multilateral nuclear disarmament negotiations. The first part was the most contentious between the two participating negotiating blocs, the supporters of HI and the US allies.

The US allies tried to prevent progress towards a ban treaty. To this end, a group coordinated by Australia, the “Broadly Likeminded Group” (BLM) (Australia, Belgium, Bulgaria, Canada, Croatia, the Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Italy, Japan, Lithuania, Luxembourg, the Netherlands, Poland, Portugal, Slovakia and Spain) was formed. Statements from the HI states emphasized how important it was to make use of the new scope for action created by the OEWG. Ireland, for example, stated: “We have an opportunity here for real and genuine debate, open to all and blockable by none” (Ireland 2016). The most important political impetus to boost the agency of the NNWS and drive the discussion within the OEWG towards a ban treaty came from Brazil. Its WP advocated an immediate legal prohibition regardless of the participation of the NWS: “Universality [...] can be either a precondition or an objective of any negotiating process. History shows that the latter is the most effective approach, at least in disarmament affairs” (Brazil 2016, 7., p.2). Brazil called on the NNWS to act: “While the NWS continue to hesitate and falter, it is the responsibility of the NNWS to take the lead in reigniting the nuclear disarmament agenda” (Brazil 2016, 19., p.4). It also laid the foundation for getting as many NAM states on board as possible. Weighing up a comprehensive universal nuclear weapons convention (traditionally supported by many NAM states including Brazil) and a simpler ban treaty, which would initially only be supported by like-minded states (now favored within the core group of the HI), the paper argues for a both/and approach. Hence, the “most viable option for immediate action” would be the negotiation of a treaty prohibiting nuclear weapons, which could later be supplemented by corresponding agreements on disarmament steps and verification (Brazil 2016, 16., p.2; 19., p.4).

With the 2-phase approach (prohibition now, elimination and verification later), a bridge was built between two camps within the resistance. From then on, the HI was united not only in its language and objectives, but also in its choice of means (ban treaty). Malaysia and Costa Rica, which had submitted drafts for a nuclear weapons convention to the UN in the past (Costa Rica and Malaysia 2008) joined this procedure and emphasized in their WP that norms have an impact on the behavior of states even beyond their legally binding nature, even if the latter reject the norm or deny its existence (Costa Rica and Malaysia 2016). The untying of the Gordian knot meant that numerous states that were usually reticent on nuclear disarmament issues, not least states that were affected by nuclear weapons tests,

increasingly took a clear and pointed stance on the issue. Fiji, Nauru, Palau, Samoa and Tuvalu, for example, addressed the suffering caused to the Pacific islands and their populations by over half a century of nuclear weapons testing and the resulting motivation to make a substantial contribution to a ban treaty (Fiji *et al.* 2016). Representing various regions where NWFZs have been established, Argentina, Brazil, Costa Rica, Ecuador, Guatemala, Indonesia, Malaysia, Mexico, the Philippines and Zambia proposed that the OEWG recommend to the UNGA that a conference open to all states be convened in 2017 “to negotiate a legally-binding instrument to prohibit nuclear weapons” (Argentina *et al.* 2016). Other states that have always supported the NAM position of a comprehensive nuclear weapons convention and were cautious about a ban treaty, such as Kenya and Sri Lanka, joined the integrative approach in favor of an immediate ban as a first step and defended it as consistent with earlier demands (RCW 2016).

Although opinions differed between the US allies and the supporters of the HI on the question of whether the UNGA should be recommended to convene a Negotiating Conference for a legally binding treaty prohibiting nuclear weapons in 2017, almost all states participating in the OEWG endeavored to reach a consensual final report. A corresponding draft mentioned that such a recommendation would be supported by a majority (OEWG 2 2016a, V, para. 59). When Australia disputed this finding, representatives of the African Group (54 states), ASEAN (10 states), CELAC (33 states) and other states from Asia and the Pacific and Europe came forward and confirmed their support. Despite the performative evidence, the point remained controversial, prompting the OEWG Chair to invite opposing delegations to his residence on the eve of the final day and announce that dinner would only be served after agreement had been reached on the paragraph in question (Kmentt 2021, p. 99). The supporters of the HI eventually relented and agreed to a softer formulation that such a recommendation received “widespread support” (OEWG 2 2016b, V., para. 67).

For the moment, it seemed as if all disputes had been settled, the consensus culture had triumphed, and the rebellion had been put to rest. However, the vote on the last day was to be different. After consultation with the headquarters in Canberra, the Australian ambassador informed the Chairman of the OEWG that his country could not agree to the report after all and canceled the compromise at the last minute. The patience of the HI’s supporters ran out and the room erupted in unrest and indignation. Guatemala demanded the reintroduction of the clearer wording that was contained in the draft before the dinner. To get the situation and the further process under control of the core group, South Africa requested a short break. The HI states used this pause to consult and agreed to reformulate the paragraph as follows: “The Working Group recommended, with widespread support, the convening, by the General Assembly, of a conference in 2017, open to all States, with the participation and contribution of international organizations and civil society,

to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination” (UNGA 2016).

The amended report was then voted on by majority with a result of 68 votes in favor, 22 against and 13 abstentions (OEWG 2 2016b, p. 15). It was a moment of liberation, and the atmosphere was almost festive. NGO representatives were asked to capture the scene and state delegates (particularly from the Global South) were holding up signs with their country’s name on them. The announcement of the result was accompanied by cheers and applause. Thus, the OEWG 2016 marked a rupture with the consensual practice of decision-making in the field of nuclear arms control and disarmament and provided the stage on which the rebellious power of the HI was condensed and unleashed.

It was a humiliation for the diplomatic corps of the West, whose own negotiating failure provoked a revolt in the halls of the Geneva Palace of Nations. The unprofessionalism of the Australian government and disunity among the nuclear allies opened the floodgates. Only when they were no longer serious cooperation partners did the NNWS use their numerical superiority to pursue their own path. Ultimately, a TPN Negotiating Conference would probably have been convened even without the clear OEWG recommendation. But with the unexpected triumph over the US allies, the final hurdles to negotiations were a mere formality. Nobody inside or outside the resistance had any doubts about this.

On September 1, 2016, the report of the OEWG was submitted to the UNGA (UNGA 2016). Building on this, the sponsor group of the original OEWG resolution (UNGA 2015d), Austria, Ireland, Mexico and South Africa, together with Brazil and Nigeria, prepared an updated draft that was intended to operationalize the recommendation of a Negotiating Conference for 2017. This was submitted on October 14. The support of Brazil and Nigeria expressed the backing from most NAM states. In the end, over 50 other states co-sponsored the resolution. As expected, this draft resolution shaped the debates in the UNGA First Committee. The group of ban supporters stood united with almost routine statements from the various regional subgroups, such as the African Group, ASEAN, CARICOM and CELAC (UNODA 2016). The practice of nuclear deterrence by the NWS and its allies was also increasingly criticized. On October 27, the UNGA First Committee approved the resolution with an overwhelming majority (123 votes in favor, 16 abstentions, 38 against). On December 23, 2016, one day before Christmas Eve, the UNGA decided by 113 votes in favor, 35 against and 13 abstentions (UN 2016), to convene a conference in 2017 to negotiate a ban on nuclear weapons (UNGA 2017).

With UNGA Resolution 71/258, the HI states obtained the mandate for negotiations within the UN system, but under the rule of procedures of the UNGA, a compromise between negotiations within the consensus-based Geneva CD and a process outside the UN. In doing so, they followed the model of the ATT negotiation process

(Bromley *et al.* 2012, Lustgarten 2015), which appealed to many skeptical states and therefore met with broad support.

Negotiating without nuclear weapon states

For the analysis of the negotiations, their parameters, formal course and structure will first be summarized. On this basis, it will be explored how the TPN's normative substance developed during the negotiations, focusing on the most important topics and related conflicts. The examination identifies conservative and progressive elements and seeks to reveal the priorities and inclinations of various negotiators within the HI. This ultimately allows an assessment of the inner constitution of the resistance at the peak of its activity. Besides evaluating its general performance, the aim is to shed light on which currents within the HI prevailed in the treaty text and on the relationship between those that tended to work towards fundamental change and factions that took a cautious or sensitive approach with regard to the *status quo* (especially the NPT).

We first take a look at the *parameters, formal course and structure of the negotiations*, which largely determined the dynamics of the diplomatic process and at the same time set clear limits. In addition to the Negotiating Conference itself, the mandate provided for a one-day organizational meeting in New York in spring and a report on progress for the UNGA in autumn 2017 (UNGA 2017, para. 11, 13, 15). The latter served as a back-up to be able to mandate a second Negotiating Conference at short notice if necessary. The main sponsoring states of Resolution 71/258 (Austria, Brazil, Ireland, Mexico, Nigeria, South Africa) took care of the organizational preparations with the support of the UN Secretariat and approached Ambassador Elayne Whyte Gómez from Costa Rica to act as President of the Negotiating Conference (Kmentt 2021, pp. 110–111). A skilled and experienced diplomat from a smaller state from the Global South, with a long history of engagement in the field, she was a suitable choice. Vice-Presidents were representatives from Austria, Chile, Indonesia, Iran, Morocco, New Zealand and South Africa. At the preparatory meeting on February 16, 2017 (UN 2017d), the Iranian representative again insisted on consensual decision-making and, together with his Syrian colleague, tried to limit the participation of civil society, both in vain (Kmentt 2021, pp. 111–112).

The TPN negotiations lasted only four weeks and took place in New York from March 27–31 and June 15 to July 7, 2017, in accordance with the underlying UNGA resolution. A total of 135 states took part, representing two thirds of the NPT States Parties. According to the list of participants, Austria, Brazil, Costa Rica, Ghana, Indonesia, the Netherlands, the Philippines, South Africa, Sweden and Thailand made up particularly strong delegations (at least 10 people) (UN 2017a). None of the NWS or the umbrella states (except the Netherlands) took part. Even Norway, which had been instrumental in initiating the HI and the TPN process, did not attend. The

Netherlands was the only NATO country to participate following a parliamentary resolution in response to a broad-based civil society lobbying campaign. However, the government was determined from the outset not to support the adoption of a ban treaty (Shirobokova 2018). This composition of negotiators had the advantage that, with one exception, there were no differences among them in terms of nuclear status and fundamental interests in relation to the issue to be negotiated.

Yet the Negotiating Conference did not come without difficulties. The first challenge arose from the diversity of negotiating partners. The complex group comprised a wide range of positions and priorities on the substance. The group of state representatives was divided into small and medium-sized states from different regions, with different relationships to NWS and umbrella states, different levels of competence and preparation and varying degrees of motivation. In addition, there was civil society, in particular ICAN and associations of affected people, the ICRC, academia and international organizations, which, although they had no negotiating mandate, still had considerable access and political influence on the progress of the negotiations.

The second challenge lay in the limited time available, which demanded maximum efficiency from the negotiators, despite their diversity. It was clear to everyone that this would be a one-shot opportunity and that it was unlikely that a second or even third Negotiating Conference could be pushed through and carried out. There was too great a risk that “the Empire” would regain room for maneuver to pool its resources and contain the political momentum of the resistance or that the energy within the HI would dissipate over time. Moreover, the budget for the negotiations was also limited and derived from unused funds from the Geneva CD, so there was no buffer for additional days of negotiations (Kmentt 2021, p. 132).

The first round of the Negotiating Conference from 27 March to 31 March 2017 began with a two-day opening plenary in which state representatives, regional groups, the ICRC, civil society and academia representatives expressed their general views and expectations (a ban treaty based on IHL) and emphasized the historic dimension of the negotiations (UN 2017b, First Session, RCW 2017b, 03/29, pp.7-9). It became apparent that most of the delegations did not yet hold firm negotiating positions. The following discussions were grouped into three topics: principles and objectives, core prohibitions and institutional arrangements. Here, too, things did not go beyond an exchange of general, not yet fully developed positions. There were essentially no negotiations during the March session. Better-prepared delegations, international organizations, the ICRC and NGOs submitted more detailed ideas in working papers (WP) (UN 2017c). Input from experts on technical and legal issues in the form of conference materials and sessions for technical discussions was particularly important for further refining the often less elaborated national positions (Borrie *et al.* 2018, Casey-Maslen 2019).

Based on the inputs and statements as well as the WPs, in particular those of the ICRC and OPANAL, the President, with the support of experts from the UN Office for Disarmament Affairs (UNODA), prepared an initial draft treaty text (Potter 2017, pp. 97–98). Particularly in technical aspects, it drew on formulations from the NWFZ treaties, the NPT, CTBT and the CCM. The text was circulated in Geneva on May 22 (UN 2017e), after the end of the NPT PrepCom meeting. The draft summarized where agreement already existed and, as the President underlined, adhered to three fundamental principles: Complementarity (to existing instruments, especially with the NPT), reinforcement (avoiding loopholes circumventing existing non-proliferation norms), simple and non-discriminatory nature (clear nuclear weapons prohibition for all) and laying a basis for the future (incorporating flexible and sustainable frameworks for NWS accession (Gomez 2017). The first draft treaty thus already took into account the existing regulatory framework and sought maximum compatibility with the non-proliferation regime. At the same time, it broke with the hierarchy of the regime and embodied the NNW's claim to more participation.

The substantive round of negotiations kicked off at the meeting from June 15 to July 7, 2017. During the first five days, the draft treaty text was commented on in a plenary session. The main sponsoring states of resolution 71/258 (negotiating core group) were particularly dissatisfied and sought better involvement in the subsequent revisions (Kmentt 2021, p. 127). Based on the feedback, a second draft was circulated on June 27 (UN 2017f). Then ensued the most intensive phase of negotiations. The Chair divided the talks into four areas and appointed facilitators to assist in resolving the outstanding issues: Article 1 (general obligations and prohibitions); Articles 2–5 (transparency, stockpile destruction and verification); Articles 6–7 (national implementation and positive obligations, international cooperation); Articles 8–21 (institutional arrangements, final clauses, withdrawal and relationship with other treaties) (Afina *et al.* 2017, pp. 4–5, Kmentt 2021, pp. 115–132, Krasno and Szeli 2021, pp. 100–102).

Smaller working groups negotiated on each of the four areas in closed meetings. Civil society, ICRC and academia (including UNIDIR) did not have direct access to these sessions. However, communication between the government representatives inside and the non-governmental actors outside was ensured via friendly delegations providing briefings during breaks and engaging in on-going consultations during the meetings via “WhatsApp diplomacy”, using smartphones and text messages (Acheson 2021b, p. 262). The outcomes of the closed small group negotiations and informal meetings were subsequently incorporated into a third draft text, which was circulated on July 3 (UN 2017g). After a further revision, the treaty text (UN 2017i) was adopted on July 7 with the votes of almost all participating states.

The following section analyzes the *different thematic complexes and related conflicts*, tracing the evolution of the substance of the treaty. In part, it builds on earlier reconstructions of the negotiations (RCW 2017b, Kmentt 2021, pp. 117–126, Acheson

2021b, 223–258, Krazno and Szeli 2021, pp. 99–104). It begins with the preamble, which was mainly discussed in the plenary sessions, and then examines the four areas negotiated mainly (but not only) in the smaller working groups, taking into account the respective controversial issues (in brackets) – i.e. Article 1 (scope of prohibitions), Articles 2–5 (nature and extent of safeguards and dealing with NWS), Articles 6–7 (responsibility for victim assistance and environmental remediation) and Articles 8–21 (possibility and conditions of withdrawal). The different priorities of states and groups of states regarding the reform or transformation content of the TPN are in the spotlight. Who was pursuing a more conservative approach, who a more progressive one? Due to the complexity of the subject matter and the inevitable contradictions this entails, this cannot always be said with absolute certainty. However, tendencies among the negotiators can be identified.

There was agreement on a clear and detailed anchoring of the humanitarian approach in the *preamble*. In 24 paragraphs, it explains the basic principles of the treaty and the underlying motivations of the States Parties. Within a short period of time, numerous additions to the first draft of the treaty were introduced and approved in order to reflect the entire range of the humanitarian dimension of nuclear weapons jointly developed since 2010 (RCW 2017b, 06/16 pp.3-6, 06/19 pp.3-6, 06/28 p.5, 07/06 p.6). This led to a substantial expansion of the preamble, by mentioning the risks of an unintended detonation, inadequate response capacities, the reference to human rights law and detailed explanations of the principles of IHL (UN 2017i, preamble). In addition, some states (including Algeria, Brazil, Cuba, Mexico, the Philippines, South Africa, Switzerland, Venezuela and Thailand) insisted on a reaffirmation of the “inalienable right” to “use of nuclear energy for peaceful purposes” (UN 2017i, preamble). RCW and the Swedish delegation, on the other hand, successfully advocated for the consideration of the special concerns of women and girls and the importance of the role of women in nuclear disarmament (Krasno and Szeli 2021, p. 106). Another concern of ICAN and civil society was the special recognition of the suffering of indigenous populations. In a joint statement (RCW 2017a), 35 indigenous groups urged states to take into account the disproportionate impact on indigenous communities. During the discussion of the preamble, there was little dissent and most of the suggestions (including those of ICAN and civil society) were accepted.

With regard to *Article 1*, which regulates the prohibitions, more divergent opinions arose. The initial draft did not provide for a prohibition on the threat of use, i.e. the policy of deterrence (UN 2017e, Article 1). Due to strong pressure from several states (in particular Algeria, Brazil, Chile, Indonesia, Kazakhstan, South Africa and Thailand), this was included in the third draft and in the final treaty text (UN 2017g, Article 1), despite the objections of a few (in particular Mexico and Austria) (RCW 2017b, 06/19 pp.6–8, 06/20 pp.3-5, 06/28 p.5, 07/06 pp.6-7). Austria argued that the UN Charter already provides for a general prohibition on the use of armed force and

that the validity of this norm should not be implicitly called into question. This view resonated within ICAN, but opinions differed and the campaign did not find a unified position on this central matter (Acheson 2021b, p. 231).

The situation was similar with regard to the question of what was covered by assisting, encouraging or inducing and what should be mentioned in addition. Numerous states (in particular Indonesia, Thailand, Iran, Mozambique, Venezuela, Uganda, Palestine and Bangladesh) as well as ICAN and the ICRC were in favor of explicitly naming planning and preparations for the use of nuclear weapons as a prohibited act (RCW 2017b, 06/19 pp.6-8, 06/20 pp.3-5, 06/28 p.5, 07/06 pp.6-7). Others (especially Austria) argued that such a broad understanding of assistance activities would make it easier for US allies to reject the treaty and would also make it more difficult for those who would eventually abandon nuclear deterrence and sharing to join the TPN. ICAN and the ICRC backed down due to Austria's objections (Acheson 2021b, p. 233). In the end, the more modest version (without reference to planning and preparations) prevailed, even though, according to several legal opinions, the paragraph still poses problems for the accession of NATO states (Dall 2017, Gro Nystuen *et al.* 2018, pp. 11–13, Casey-Maslen 2019, p. 158, Bundestag 2021, pp. 10–13).

There was also controversy as to whether the transit of nuclear weapons through national territory, maritime waters or airspace of the States Parties should be mentioned as a prohibited act. While this was rejected by some because it would be too complicated to implement (Austria, New Zealand, Singapore, ASEAN), proponents (CELAC, especially Cuba and Ecuador, Iran, Kazakhstan, Nigeria, and ICAN) pointed out that this was common practice and that existing treaties on the security of nuclear material and UNSC resolutions on the proliferation of weapons of mass destruction would oblige states to ensure this (RCW 2017b, 06/19 pp.6-8, 06/20 pp.3-5, 06/28 p.5, 07/06 pp.6-7). ICAN again conceded to the Austrian request in order not to hinder the progress of the negotiations (Acheson 2021b, p. 236). Due to a lack of agreement, this point was also dropped in the end, with the justification that transit was included in assistance anyway.

On the matter of whether financing of nuclear weapons should be explicitly mentioned, a wide group of supporters (Thailand, Kazakhstan, Guatemala, Ecuador, Egypt, Peru, Philippines, Iran, Cuba, ICAN) and opponents (South Africa, Austria, Ireland, Mexico, Mozambique, Sweden, Switzerland) faced each other (RCW 2017b, 06/19 pp.6-8, 06/20 pp.3-5, 06/28 p.5, 07/06 pp.6-7). The latter pointed out that financing is not explicitly prohibited under the Mine Ban Treaty and Cluster Munitions Convention, but understood as a form of assistance covered by both regimes. For ICAN, this point was crucial from a strategic point of view regarding future divestment campaigns. It was partly successful in gaining support from negotiating states, but also abandoned this position under pressure from delegations

that felt it threatened the conclusion of negotiations. Once again, the slimmer and less precise version prevailed.

With regard to testing, the first draft contained wording from the CTBT (UN 2017e, Article 1e), which was considered too narrow by some states (in particular Cuba, Ecuador, Egypt, Iran, Singapore, Venezuela, Vietnam), as it would not include computer-based and sub-critical testing in particular (RCW 2017b, 06/19 pp. 6–8, 06/20 pp. 3–5, 06/28 p. 5, 07/06 pp. 6–7). Others (Mexico, Austria, Ireland and Sweden) supported the CTBT formulation or called for an explicit reference to the CTBT (Switzerland, Netherlands). As a compromise, the verb “test” was added to the list contained in Article 1a without specification and a reference to the CTBT was made in the preamble (UN 2017i, preamble, Article 1a).

There were also differences on *Articles 2–5*. The provisions on safeguards were a major point of contention. These refer to the agreements between states and the IAEA on verification to ensure that nuclear material and technology is used exclusively for peaceful purposes. According to Article 3 of the NPT (UN 1968, Article 3) all NPT NWS must conclude such comprehensive safeguards, in contrast to the NPT NWS. Many states (141 in total) have also ratified the Additional Protocol (IAEA 1998) which grants the IAEA even more extensive verification options (IAEA 2023). While some states (in particular Switzerland, Sweden and the Netherlands) wanted to include ratification of the Additional Protocol as an obligation in the TPN and thus set a new standard for safeguarding non-proliferation, those that had not yet agreed or enacted one (in particular Brazil, Egypt, Iran and Venezuela) vehemently rejected this on the grounds that they did not want to further cement the existing double standards and hierarchies (RCW 2017b, 06/20 pp. 5–7, 06/28 pp. 5–6, 07/06 p. 7). The safeguards issue was also highly controversial, because the NPT NWS and some nuclear allies successfully exerted pressure on the Director General at an IAEA Board of Governors meeting before the start of the TPN negotiations to stay away from the conference despite being invited by the President (Kmentt 2021, p. 121). This positioned the IAEA, which actually sees itself as an independent and impartial international organization, against the TPN negotiations. ICAN stayed out of the sensitive issue of ambitious safeguard agreements. The German ICAN chapter’s reasoning that the inclusion of the Additional Protocol would debunk the criticism that the TPN would weaken the non-proliferation regime and highlight the HI’s global governance competence (superior to that of the NWS) was met with suspicion that it was acting as an undercover agent of the German government. This shows how high the tension was among many at the Negotiating Conference, as this was obviously not the case. In the end, the solution to this contentious issue was that, in addition to the general commitment to safeguards agreements with the IAEA (i.e. the already established NPT standard), the maintenance of more far-reaching safeguards obligations that already existed at the time of TPN ratification (i.e. the Additional Protocol concluded by the vast majority) was equally enshrined in the treaty text (UN

2017i, Article 3). This avoided mentioning the Additional Protocol by name and released the states without additional obligations.

No less tricky was the question of how the treaty should deal with NWS or with those states that claim in their TPN declaration on their nuclear status (UN 2017i, Article 2) to possess or to have possessed nuclear weapons. A regulation had to be found without the input of the affected NWS. Should NWS have already destroyed their arsenals before joining the TPN (destroy-and-join) or should they be able to join and in doing so reach an agreement on destruction and verification with the other parties to the treaty (join-and-destroy)? In the 2016 OEWG, the proposal to exclude the question of concrete disarmament and elimination and leave it for a later date enjoyed great support. During the TPN negotiations in New York, however, there was a growing number of voices calling for detailed specifications in this regard (in particular Austria, Ireland, Mexico, New Zealand, South Africa) in order to allow access to states that had not yet fully disarmed (RCW 2017b, 06/20 pp. 5–7, 06/28 p. 6, 07/06 p. 7). The ICRC also supported the accession option for NWS to first remove nuclear weapons from their operational status and systematically destroy them as a party to the treaty within the framework of binding and time-limited elimination commitments (Schroeder 2018, p. 73). There was sympathy for this within ICAN, but no common position due to the technicality of the issue. In the end, the negotiators adopted a dual approach, as proposed by South Africa, which was able to contribute its experience in the elimination of arsenals and thus compensate somewhat for the absence of the NWS. It provided for an accession option for those states that have already completely disarmed – in line with the first draft text (UN 2017e, Article 4), as well as for those that have not yet completed elimination. A state from the first group will be required by the final treaty text (UN 2017i, Article 4, 1.) to cooperate with a “competent international authority” to verify the complete cessation of the nuclear weapons program and irreversible conversion of all nuclear weapons related facilities as well as to conclude a safeguards agreement with the IAEA for the peaceful use of nuclear energy. A state belonging to the second group must immediately remove its nuclear weapons from operational status and eliminate them as soon as possible, at the latest by a deadline to be determined by the TPN States Parties. This shall be implemented within the framework of a legally binding and time-bound plan for a verified and irreversible elimination negotiated with the TPN States Parties in cooperation with the “competent international authority” (UN 2017i, Article 4, 2.). Safeguards for the peaceful use of nuclear energy then also apply for these states (UN 2017i, Article 4, 3.).

The arrangement is thus similar to that in the Chemical Weapons Convention (UN 1993, Article 3, 4, 5), to which states can also accede while an agreed disarmament process is still underway or being initiated. South Africa, which had already eliminated its nuclear arsenal and program prior to the adoption of the treaty, does not fall under this category and, unlike future ex-NWS, does not have to meet any

further requirements but is treated like states that have never developed or possessed nuclear weapons. The term “competent international authority” (UN 2017i, Article 4, 1., 2., 6.) was chosen because the IAEA had not participated in the negotiations and therefore no agreements containing new competences for it would have been possible and legally valid (Casey-Maslen 2019, p. 194). However, given the wording and overall strong focus of the TPN on the arms control provisions of the NPT and the IAEA, it can be assumed that the latter is a candidate for this role.

Article 4, 4. (UN 2017i, Article 4, 4.) regulates the withdrawal of nuclear weapons from nuclear umbrella states willing to accede and also stipulates a deadline to be determined by the States Parties. While some states (especially Mexico) wanted to determine these deadlines during the TPN negotiations, in the end a majority did not consider it feasible to set a viable schedule in the short time available.

Regarding the positive obligations set out in *Articles 6 and 7*, which deal with victim assistance and environmental remediation (UN 2017i, Article 6 & 7), there was a debate as to who should bear responsibility. That the NWS were primarily responsible (Sweden, Cuba, Egypt, Iran, Thailand, Malaysia and Vietnam in particular took this position in a joint statement) (UN 2017b, Statement Sweden 27.07.2017), seemed plausible to most (RCW 2017b, 06/21 pp. 5–6, 06/28 pp. 6–7, 07/06 pp. 7–8). The NNWS also wanted to avoid additional obligations of their own given the already existing nuclear injustice (Baldus *et al.* 2021, pp. 20–21) and imbalances in the regulatory burden. However, many states (particularly members of the Caribbean Community, Brazil, Ghana, Holy See, Ireland, Mozambique and the Philippines) argued that the responsibility of states affected by humanitarian impacts for their citizens should not be relativized. This would be to the detriment of those affected and would lead to a vacuum, and it would also contradict the principle of sovereignty (RCW 2017b, 06/21 pp. 5–6, 06/28 pp. 6–7, 07/06 pp. 7–8). Similarly, on environment remediation, many states, especially those affected by nuclear weapons tests (in particular Marshall Islands, supported by the Fijis, Cuba, Ecuador, Egypt, Iran, Nigeria (RCW 2017b, 06/21 pp. 5–6, 06/28 pp. 6–7, 07/06 pp. 7–8) opposed taking on any further obligations of their own, and preferred provisions that the polluter states would have to deal with.

At the same time, it was clear to all those involved that the treaty would have to contain effective and not just fictional (for the non-acceding polluter states) provisions both with regard to victim assistance and environmental remediation, if it wanted to meet the humanitarian aspirations of the movement articulated throughout the entire process and enshrined in the preamble. ICAN, the associations of those affected and victims, and the ICRC insisted on this point (Acheson 2021b, pp. 247–248). From their perspective and according to the standards set by the Mine Ban Treaty and the CCM, the main responsibility for the victims and disabled as well as for environmental remediation lay with the affected states, which have jurisdiction or control over the areas and legal entities in question (ICRC 2017, pp. 5–6). Other-

wise, the provisions would be meaningless, would have no progressive impact and would even represent a step backwards compared to the achievements of previous humanitarian disarmament treaties. This view was also supported by some states, particularly Brazil (Krasno and Szeli 2021, p. 110). Ultimately, affected negotiators agreed to accept responsibility under the positive obligations.

In return, the positive obligations also point out that other states (referring to the states that have caused harm and pollution) must fulfill their obligations under international law or bilateral agreements (UN 2017i, Article 6, 3.). According to Article 7, which regulates international cooperation and assistance (UN 2017i, Article 7), states that have tested or used nuclear weapons “shall have a responsibility to provide adequate assistance to affected States Parties, for the purpose of victim assistance and environmental remediation” (UN 2017i, Article 7, 6.). In addition, Article 7 obliges all contracting parties “in a position to do so” to show solidarity in supporting the affected states (UN 2017i, Articles 3, 4, 5). Importantly, those provisions are not limited to future nuclear weapons detonations, since it was the intention of most of the negotiating parties to cover also past use and testing (Balduš *et al.* 2021, p. 21).

Among the topics covered by *Articles 8–21*, the issue of withdrawal proved to be particularly controversial (UN 2017i, Article 17). An intensive discussion arose during the final review of the text on July 5. Numerous states (including Brazil, Mexico, Mozambique, Chile, Liechtenstein, Ecuador, New Zealand, South Africa, Ghana, Guatemala, Indonesia and Palestine (RCW 2017b, 06/28 p. 7, 07/06 pp. 9–10, Kment 2021, pp. 125–126) as well as ICAN (Acheson 2021b, pp. 251–253) called for the withdrawal clause to be waived. Similar to the UN Charter, a treaty banning nuclear weapons would only be meaningful if it was permanent and did not provide for the possibility of termination. Others (above all Iran, Sweden, Egypt, Austria, Switzerland and Algeria (RCW 2017b, 07/06 pp. 9–10) wanted it to be included in the treaty and referred to common practice. Ultimately, the first group renounced the clause’s removal. Following an initiative by the ICRC, the requirements for activating the withdrawal clause by a contracting party were tightened somewhat. Neither interstate nor intrastate conflicts ought to be present (UN 2017i, Article 17). Regarding the relationship between the TPN and other treaties (in particular the NPT), the first draft provided for a formulation that sought to maximize compatibility, stating that the TPN should not affect the rights or obligations of NPT States Parties (UN 2017e, p. 19). This, however, would have encompassed the possession of nuclear weapons. At Malaysia’s suggestion, a formulation borrowed from the Arms Control Treaty (UN 2014, Article 26, para. 1) was chosen, whereby the “implementation of this Treaty shall not prejudice obligations undertaken by States Parties with regard to existing international agreements, to which they are party, where those obligations are consistent with the Treaty” (UN 2017i, Article 18).

After the last disputed points were clarified during a plenary debate, the Chair declared the negotiations to be concluded and arranged for the draft treaty text to

be translated into the six official UN languages. On July 7, 2017, the negotiators convened for the official adoption. As the Netherlands wanted to express its rejection, it requested a recorded vote. Supported by a last-minute phone campaign by ICAN, 124 state representatives gathered in the conference room. The TPN was adopted with 122 votes in favor, one abstention (Singapore) and one vote against (Netherlands). In its explanation of vote, the Netherlands noted that the treaty would be incompatible with its NATO obligations and lack concrete verification mechanisms (Netherlands 2017). Singapore explained its abstention by stating that there were existing legal uncertainties with regard to other nuclear disarmament instruments that still needed to be examined (UN 2017h)

The positions and the behavior of the negotiators, their interaction and manner of settling conflicts provide insights on the *internal constitution, subdivision and performance of the resistance* at the peak of its activities. Overall, the fundamental positions were largely consolidated and streamlined through its long-standing and cooperative group-building process. The fundamental questions on which dissent prevailed (treaty negotiations within or outside the UN? With or without NWS? Consensus or majority principle? Comprehensive treaty with verification regime or lean ban?) had already been resolved before the Negotiating Conference. The core group spearheading the resistance relied on broad trust and recognition of its authority. The involvement of civil society, affected groups and academia and the inclusive and fact-oriented approach of the entire process also contributed to strong belief in the legitimacy (*Legitimitätsglaube*) of the resistance itself, but also towards the leading states.

All relevant groups of states and regional associations supported the negotiation objectives and leadership by the core group and the Chair. The high degree of cohesion of the resistance was crucial, not least because the timeframe for the negotiations was very tight. Given the limited or even severely restricted temporary and financial resources, neither state actors nor civil society wanted to risk major conflicts and resultant disruptions that would have jeopardized the achievement of a ban treaty. Thus, the advanced stage of integration of the HI even turned the lack of time into an advantage. Internal cohesion and time constraints thus facilitated cooperation, by increasing the focus and willingness to compromise. Especially when comparing the TPN Negotiating Conference with other UN negotiations, its efficiency stands out.

In terms of (quantitative) participation, the commitment of the negotiations core group comprising Austria, Brazil, Ireland, Mexico, Nigeria and South Africa was particularly high with numerous interventions and amendment proposals. At the beginning, however, there were difficulties in the collaboration between this group and the President, who relied primarily on the secretariat and whose first drafts were seen critically (Kment 2021, pp. 126–127). After a consultation, the coordination improved, and the core group was finally able to fulfill its political

steering function in order to broker an agreement. This was achieved not least through dialogue between individual core group members and regional groups, as in the case of South Africa and Nigeria vis-à-vis the African Group or Brazil and Mexico vis-à-vis the Latin American-Caribbean regional group CELAC (Borrie *et al.* 2018).

There were also productive negotiators outside the core group. Argentina, Cuba, Ecuador and New Zealand contributed detailed amendment proposals (Krasno and Szeli 2021, p. 113). Further active negotiators included Algeria, Chile, Costa Rica, Egypt, Ghana, Guatemala, Holy See, Indonesia, Iran, Jamaica, Liechtenstein, Malaysia, Mozambique, the Netherlands, Peru, the Philippines, Switzerland, Sweden, Thailand, Vietnam and states affected by the nuclear weapons tests (Fiji, Kazakhstan, Marshall Islands). Overall, participation was very broad and countries from the Global South made an unusually strong contribution.

While almost all state representatives took part in the plenary debates, only around 20–30 delegations were involved in the intensive rounds of negotiations in the small working groups (Krasno and Szeli 2021, p. 101). Especially smaller delegations had problems ensuring a full presence in all negotiation threads, some of which ran in parallel (Afina *et al.* 2017). This could only be compensated to a limited extent by the substantive and logistical support provided by civil society and academia. Due to the permeable drafting process, the latter had more opportunities for input than usual. Nevertheless, their ability to participate also encountered boundaries. They had no negotiating mandate and were excluded from the closed meetings. The diversity within ICAN also made it difficult to keep up with the dynamics of the negotiations, to act flexibly and to quickly develop common positions.

Looking at the content of the various contributions and their impact on the outcome, an even more differentiated picture emerges. Views on the scope and provisions of the envisaged prohibition treaty differed widely among the parties. No strictly defined negotiating blocs, winners or losers can be identified. However, the above analysis of which contributions were more innovative, and which were more conservative reveals clear tendencies. Some negotiators tried to work towards a broad scope of the TPN and a high level of reform or transformation content, while others wanted to keep the scope rather limited and sought the greatest possible overlap with existing international law.

Negotiating states that stood geographically or politically closer to the NWS and their allies (Austria, Ireland, Liechtenstein, the Netherlands, Mexico, Switzerland, Sweden) tended to support more conservative variants for the prohibition provisions and a tighter alignment with existing norms and practices. Within this group, a further distinction has to be made between Austria, Ireland, Liechtenstein and Mexico (who were determined to push ahead with the ban treaty) on the one hand and the much more cautious Sweden and Switzerland on the other. The latter partic-

ipated constructively, but continuously expressed skepticism and were mainly concerned about the integrity of the IAEA safeguards, the CTBT and NPT. Much to their dismay, their contributions rarely prevailed. Consequently, they only agreed to the final treaty text with reservations (UN 2017b). To a lesser extent, Argentina, Colombia and Singapore (which also have a Western orientation) were likewise among the “skeptical-constructive” states (Kmentt 2021, p. 137). The Netherlands, which as a NATO member state had an outsider role and only took part for domestic political reasons due to a parliamentary resolution. With their statements, they intended to put on record their demarcation from the entire process in order to ensure maximum legal certainty for their NATO commitments.

The intragroup dynamics within the HI during the negotiations also indicates a certain divide between the Global North and South, even if not systematically and with a generally cooperative attitude. It was mostly states from the Global South that advocated an expansion of the substantive provisions and the most comprehensive prohibitions possible, insisting on strictness towards NWS and their allies. Representatives of smaller states and states affected by nuclear weapons tests also frequently supported strong regulations and more far-reaching provisions to this effect. The NAM countries Cuba, Egypt and Iran similarly made ambitious demands, but frequently took positions that fell outside the HI’s general agenda (Kmentt 2021, pp. 128–129). Some of them were inspired by the idea of a comprehensive prohibition treaty. Ultimately, however they also behaved constructively.

In addition to these two trends, the members of the core group as a whole, regardless of their geographical location and political affiliation to the US or the West, tended to advocate the integration of the TPN into international law and the preservation of the disarmament and arms control *acquis* in controversial situations. Time and again, they intervened in moments of decision-making in favor of a leaner, more cautious, perhaps more “reasonable” solution. This brings to light a third plausible dividing line in negotiating behavior, according to which leading states of the resistance as well as middle powers or regional powers often exerted a moderating influence on smaller states and marginal players.

ICAN and civil society, the ICRC and academia mostly introduced progressive elements into the negotiations and tended to make far-reaching demands. But even within ICAN and civil society, positions and priorities drifted apart depending on the geographical or national background of individual member organizations. A good example is the positioning with regard to the peaceful use of nuclear energy, which was generally viewed more critically by NGOs from the Global North than from the Global South. Moreover (and similar to the core group among the state participants), members of the ICAN International Steering Group (ISG) and the staff team often represented *realpolitik* positions and argued for concessions and compromises vis-à-vis more demanding member organizations. Their persuasive efforts were not least based on tactical considerations and were also associated with

the close interaction between ICAN's political leadership and the diplomats from the core group (especially Austria) (Acheson 2021b, pp. 266–268). While the more activist wing of ICAN pushed for maximum results, the ISG and the staff team pursued a containment strategy. Despite this conciliatory approach, ICAN hardly pushed through its own requests in contentious cases. This was especially the true when it came to far-reaching demands for prohibitions that were widely agreed upon within the campaign, such as financing, transit, planning and preparations or the withdrawal clause.

The analysis of the various contentious issues during the negotiations and the positioning of different groups of states reveals the invisible but ever-effective presence of the (NPT) NWS and umbrella states throughout the entire process. Even without their active participation, the NPT NWS had a considerable impact on the TPN negotiations. From the outset, the negotiations were designed to strengthen rather than weaken the arms control provisions of the non-proliferation regime and its safeguards (Gomez 2017), which had been largely determined by the NPT NWS. It is also interesting to note how the NPT NWS indirectly influenced the course of the TPN negotiations through their intervention vis-à-vis the IAEA and thus unintentionally contributed to the inventive formulation of the provisions on the elimination of nuclear arsenals (UN 2017i, Article 4). The NPT NWS and umbrella states hovered over the TPN negotiations as a fictitious authority, so to speak, against which the NNWS wanted to prove themselves with a solid negotiation outcome. As potential contracting parties of the future, whose motivation and possibilities for accession had to be considered, NWS and umbrella states became the natural and permanent linchpin of the discussions and decisions in New York.

Furthermore, their (especially the US') concrete and very real relationships to the negotiators also had a decisive impact on the latter's positioning and behavior. The closer these ties were, the greater the consideration for the core interests of the NWS. This was particularly true for Sweden and Switzerland, but also for the key states Austria and Mexico, which (though to varying degrees) often worked towards limiting the substance of the treaty. During the negotiations, they made sure that the treaty text remained as open as possible for future accession by NWS and NATO states. They also appeared to be impressed by the argument that the TPN could generate or exacerbate tensions in the NPT and were keen to avoid undermining the non-proliferation regime. This factor and the unconditional will to lead the resistance to success seem to have played a decisive role in ensuring that the parties often agreed on a more moderate position, which may not have satisfied the more "radical" proponents but contributed to consensus-building. This pragmatism was ultimately also reflected in the fact that, when things got serious, the state negotiators settled the contentious issues among themselves and left civil society out of the equation to reach a result.

3.6 Which were the reactions & output? Backfire & potential for change

It is still too early to say what impact the HI's resistance will have on the nuclear rule in the long term. However, the period under review (2010–2017) allows for a look at the immediate reactions of the rulers and an examination of the output of the HI and the negotiation process it initiated, in other words the TPN, with a view to its reform and transformation content.

This section first deals with the attempts of the NWS and umbrella states to contain the resistance. These were not limited to the NWS boycott of the CHINW (with the exception of the Vienna conference), the two UNGA OEWG in 2013 and 2016 and the absence of the “nuclear club” at the TPN Negotiating Conference. Together with the umbrella states, the NPT NWS sought to recapture the resistance rhetorically and diplomatically. The analysis identifies various practices within this group. In addition, the development and intensity of the reactions to the resistance in its respective phases (humanitarian framing, changing of procedures, adoption of the TPN) are examined in a differentiated manner.

In a second step, the last empirical section of this study is dedicated to the normative substance of the TPN and examines it in terms of its innovative and conservative content. The identification and comparison of renewing and preserving components aims to assess the transformative potential of the TPN, which ultimately also depends on its support and use by the states of the HI as a political and legal instrument to challenge the nuclear rule in the future.

Attempts to contain the resistance

After the final document of the NPT RevCon 2010 gave expression to the “deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons” (UNODA 2010, part I, p. 19), it took a considerable amount of time for the NPT NWS and umbrella states to become aware of the political implications of these formulations. This changed with the Humanitarian Statements beginning in 2012 and the CHINW in Oslo, Nayarit and Vienna in 2013 and 2014, when the resistance became visible and created a space in which it manifested itself. Meanwhile, through the alliance of NNWS, civil society and academia, and with the establishment of ICAN as its 2nd track arm, it also began to have a domestic impact within (Western) NWS and umbrella states.

In the first phase, when the HI merely used the humanitarian framing to draw on existing *substantial* norms to mobilize resistance (subversive opposition through the humanitarian code), the reactions of the nuclear rulers were still relatively moderate. They intensified, when the existing *procedural* norms for majority decisions were applied to integrate the resisting activities into the UN system (subversive opposition through the UNGA modus) with the aim of circumventing the consensus princi-

ple that underpins the nuclear rule. When things finally got serious and the decision on a Negotiating Conference was imminent in the UNGA First Committee in 2016, not only the rhetoric of the NPT NWS escalated, but they also increased pressure on their allies and supporters of the HI not to participate in this process through diplomatic demarches. Following the adoption of the TPN, the efforts of several NPT NWS concentrated on preserving legal certainty for their continued nuclear weapons possession and the practice of nuclear deterrence and on making the treaty's entry into force somewhat more difficult. In this section, we trace these three phases and the dynamics of the nuclear rulers' reactions to the resistance and examine the consequences and limits of their containment attempts.

From the beginning, the NPT NWS and umbrella states had difficulties responding to the *humanitarian framing* (Humanitarian Statements 2012–2015 and CHINW in 2013 and 2014). After all, it referred to existing norms, which the nuclear powers and the US allies officially and formally recognized, albeit to varying degrees. Their self-image as civilized nations, which they occasionally cultivate using the same discourse, was seriously affected. This caused particular problems for the Western states. The humanitarian code, in fact, stems from the rhetoric “arsenal” of the liberal world order which they claim to stand for. In a way, the resistance was attacking the authorities of that order with their own weapons. By reproducing the humanitarian discourse and applying it to nuclear weapons, the HI highlighted their double standards and weaknesses. They were thus put in the position of being measured against their own standards.

When the Humanitarian Statements were supported by more and more states, there was growing concern about a shift in discourse that would ultimately not remain without regulatory consequences and isolate the NWS. This concern was particularly evident among the umbrella states. To prevent such a development and to offer an alternative that acknowledges the humanitarian dimension but sets clear limits with regard to political and international legal conclusions, Australia initiated a separate Humanitarian Statement for the UNGA First Committee in October 2013 (Australia *et al.* 2013b), which was initially supported by 17 states. By the time of the 2015 NPT RevCon, a total of 26 US allies endorsed that statement (Australia *et al.* 2015). It welcomes the Humanitarian Statement presented by the other NNWS and recognizes the importance of the humanitarian impact of nuclear weapons. At the same time, the umbrella states emphasized that progress towards a world free of nuclear weapons can only be achieved with a realistic, step-by-step approach that includes the NWS and that “simply banning nuclear weapons will not lead to their elimination” (Australia *et al.* 2013b). Japan, which supported the HI because of its historical sensitivity and domestic pressure from civil society, simultaneously joined the Australian initiative as a matter of alliance policy. It therefore most vividly embodies the dilemma of umbrella states that could not escape the humanitarian fram-

ing, but were on the conservative side when it came to the implications for the nuclear rule and maintaining the *status quo*.

The five NPT NWS, on the other hand, initially shunned humanitarian terminology. To be on the safe side, they did not even attend the 2013 Oslo Conference, dedicated to humanitarian consequences. In a joint explanation, they showed understanding for the “serious consequences” of the use of nuclear weapons and justified their absence with the concern “that the Oslo Conference will divert discussion away from practical steps to create conditions for further nuclear weapons reductions” (China *et al.* 2013). Like the umbrella states, they countered the strategy of a ban treaty with their supposedly more realistic step-by-step approach. Through their absence, they also expressed their persistent objection to any prohibition norm that might emerge from this or subsequent conferences. In doing so, they attempted to prevent any interpretation as customary international law from the outset (Hill 2021). Many US allies and NATO member states were present at the Oslo conference but remained in the background. It is noteworthy that the NWS that are not parties to the NPT did not distance themselves from the HI in such a way, as they did not fear any legal disadvantages from its activities. Some (India and Pakistan) even participated in the CHINW from the outset.

During the meetings of the Geneva CD in 2013, the NPT NWS portrayed the Oslo Conference and the HI as a diversionary tactic and reaffirmed that they would stick to the step-by-step approach (France 2013b, UK 2013). The UK even took the precaution of refuting that nuclear weapons were illegitimate (UK 2013). The US emphasized the importance of the P5’s unity and agreement not to participate in the conference (US 2013a), clarifying that the HI could not assert universal validity of its claims. However, the US still referred to civil society as a partner that would like to achieve the same goal (a world free of nuclear weapons) in different ways (US 2013a) and voiced its appreciation for the feminist approach of RCW and ICAN (US 2013b). Russia lamented the trend of introducing new pathways and additional obligations that would aim to delegitimize not only the use but also the possession of nuclear weapons (Russia 2013b). These concerns were also echoed by China. Although Beijing welcomed the goal of complete multilateral nuclear disarmament, it emphasized that the path to this goal could only lead via the established forums of the nuclear disarmament machinery, in particular the NPT and the Geneva CD, and that these should not be undermined by new mechanisms (China 2013).

Prior to the Nayarit Conference, there were apparently first signs of a softening of the NPT-NWS bloc and attempts by Western states to cautiously influence the conference agenda. Reportedly, the US and the UK considered attending; after all, Mexico was a neighboring country and an important international partner (Potter and Pack 2014, p. 6, Potter 2017, p. 91). In addition, relations with Russia had been at a low point since the annexation of Crimea in 2014, and potential cooperation in nuclear arms control and disarmament had become a distant prospect. Wor-

ried about the progress of the humanitarian debate, and with the Mexican government unresponsive to a US request to adjust the conference agenda, Washington finally decided not to attend. Australia and Japan also reportedly made unsuccessful demarches to Mexican missions in advance of the conference to influence its direction (Acheson 2021b, p. 173). Most of the umbrella states attended and increasingly represented the interests and positions of the NPT NWS, by emphasizing the security dimension and importance of nuclear weapons in the international system (as opposed to cluster munitions and landmines), warning against increasing polarization, and urging a realistic approach (“step-by-step”) as well as the involvement of the NPT NWS (Germany 2014).

The strategy of avoidance and suppression adopted by the NPT NWS regarding the HI’s statements and events became increasingly difficult to sustain in light of its growing strength in the run-up to the NPT RevCon 2015. The US and UK declared their participation at short notice and finally attended the conference in Vienna. Apart from the realization that the previous boycott was useless, the intention was probably to contribute to a constructive atmosphere for the upcoming NPT RevCon 2015, after Obama’s Global-Zero agenda had tangibly lost credibility. The US expert community, which had initially viewed the HI skeptically, had also come to a reassessment and called on the US government to attend the conference (ACA 2014). In addition, several umbrella states closely affiliated with the host had undertaken diplomatic *démarches* to prevent a political bias of the conference in favor of a ban treaty and had received assurances from Austria that their contributions would be adequately considered in the envisaged summary document (Kmentt 2021, p. 42). In their statements, the US and the UK hardly addressed the issue of the humanitarian consequences (the UK touched on it and stated that it was nothing new) (UK 2014, US 2014b) and instead used the opportunity to present their own disarmament record and once again refer to the established forums for the realization of a nuclear weapons-free world. The UK prudently emphasized that it would adhere to minimal nuclear deterrence for as long as necessary. Although both the Humanitarian Statements and the three conferences had not yet determined which procedure the HI intended to take to close the “legal gap” or adopt “effective legal measures”, the reactions of the NPT NWS increasingly concentrated on this point in anticipation.

When the HI began to pursue its subversive activities not only with the help of existing substantial norms (human security and IHL) but expanded them with reference to existing procedural norms (decision-making in the UNGA according to the majority principle), the NPT NWS and umbrella states saw their suspicions confirmed. Their reactions to the *OEWG 2013, 2016* and the subsequent decision on a *negotiating mandate in the UNGA First Committee* proved much stronger. After all, the NNWS of the HI did not stop at words but began to establish forums for nuclear arms control and disarmament at the UN working level that would no longer be under their control and break with the traditions of the consensus-based Geneva CD

and the NPT. However, only France, Russia, the UK and the US voted against the 2013 resolution on the establishment of the OEWG (UNGA 2013b) and justified their rejection in the UNGA First Committee in November 2012 with its rules of procedure (UNGA 2012, pp. 20–21). The Western NPT NWS announced that they would not support the resulting outcomes and warned that the new body could jeopardize consensus on the 2010 NPT Action Plan (France *et al.* 2012). China, India, Pakistan and Israel abstained, while North Korea voted in favor. During the Geneva CD in spring 2013, criticism of the first majority-based OEWG continued to be voiced by NPT NWS. Russia expressed concern that the agenda of the CD would be torn out and fragmented (Russia 2013a). France also warned against fragmentation and emphasized the primacy of the Geneva CD, the importance of the consensus principle and the path taken with the 2010 NPT Action Plan (France 2013a). Obviously, this insistence on the established tracks was linked to the fear of losing control. By contrast, most of the umbrella states participated constructively in the OEWG meetings in spring and summer 2013.

When it became clear that the HI had developed into a veritable political force and had gained its political momentum in the context of the 2015 RevCon (Kmentt 2021, pp. 62–85), the ranks of the NPT NWS closed despite growing geopolitical tensions among them. In their joint statement at the RevCon (China *et al.* 2015) they admitted the humanitarian aspects but stressed the importance of the security dimension and urged the NNWS of the HI “to accept that the hard practical work necessary to bring us closer to a world free of nuclear weapons must still be done, including focus on not just humanitarian but also security considerations. There are no short cuts” (China *et al.* 2015). With the failure of the 2015 NPT RevCon, the NPT NWS realized that the patience of the HI’s NNWS had run out and that a diplomatic process towards a nuclear weapons ban was imminent. Their tone became harsher in the course of 2015 and 2016. Following the 2015 NPT RevCon, there were reportedly even diplomatic demarches by the US to numerous ASEAN members and interventions by Australia to discourage them from a ban treaty (Acheson 2021b, pp. 215–219). France allegedly became diplomatically active in Africa in 2015 and 2016.

The US summarized its line of argumentation in a comprehensive statement in October 2015 when the decision on the establishment of a second majority-based OEWG was on the agenda of the UNGA First Committee session (US 2015). Again, they contrasted the humanitarian considerations with the security dimension. A ban on nuclear weapons could not succeed as it would ignore the “verification capabilities” and “security conditions for progress on disarmament”. Furthermore, it would risk creating “a very unstable security environment”, which would make the use of nuclear weapons even more likely. Deterrence and nuclear disarmament would be complementary. At the procedural level, they urged to promote nuclear disarmament through the P5 process. While the achievement of a nuclear weapons-free world should be placed exclusively in the hands of the NPT NWS, in the same

breath the US repeatedly accused Russia of having no interest in arms control negotiations and of breaking existing treaties, international law and the UN Charter (US 2015).

Throughout the 2016 OEWG, the umbrella states essentially represented the same interests and positions as the US (and other NPT NWS) and attempted to prevent progress towards a ban treaty. In a joint statement presented by Canada, 20 participating US allies expressed their conviction “that to achieve nuclear disarmament requires a balance between the ultimate goal of removing all such weapons, and the risk that their unilateral elimination would be destabilizing and harmful to both our national security and to international security more broadly” (Canada *et al.* 2016). In its working paper (WP), the Broadly Likeminded Group (BML) coordinated by Australia advocated a “progressive approach”, according to which a nuclear weapons ban would only be possible as the final building block in a whole series of previously implemented measures (Australia *et al.* 2016). The national positions of the umbrella states were much more pronounced, if not more offensive. Canada stated in its own WP that the possession and use of nuclear weapons (*sic!*) was not illegal under current customary international law (Canada 2016, 7., p.2) and that the imposition of a ban treaty could polarize and endanger the stability of the NPT (Canada 2016, 9., p.3). Moreover, the US allies questioned the effectiveness of measures without the NWS. For example, Germany argued that an approach without the inclusion of security considerations and participation of the NWS “will [...] fail to be “effective”, since it would not offer any operational value added” (Germany 2016a). A “stand-alone instrument” bypassing the NPT NWS would actually cause harm, as it could lead to an “even more divided NPT community” which in turn would “weaken the existing disarmament and non-proliferation regime” (Germany 2016b). The Netherlands followed suit and concluded: “This means that we need to continue to involve those states as much as we can” (Netherlands 2016). Poland also called for an inclusive debate and for consideration to be given to “how to attract them” (Poland 2016). Belgium described any other approach as a waste of time (Belgium 2016). Italy emphasized not only the role of the NPT NWS in this context, but also their right to possess nuclear weapons and recalled the security dimension and stabilization function of nuclear deterrence (Italy 2016).

When the recommendations of the OEWG were debated in the UNGA First Committee in October 2016 and the decision to convene a Negotiating Conference on a nuclear weapons ban was on the agenda, the tone of the NPT NWS intensified. Russia labeled the idea of banning nuclear weapons as “extremely counterproductive”, stressed the importance of strategic stability and reminded “that under the NPT the nuclear weapons of the five nuclear powers are considered to be legitimate weapons” (Russia 2016a). To outlaw them in a new treaty would result in “two legal frameworks with mutually exclusive provisions on the status of nuclear weapons”. Russia would under no circumstances “participate in activities that are detached

from reality and run counter to previous accords and agreements". For these "would undermine strategic stability and thus plunge "the world into chaos and dangerous unpredictability", jeopardizing the "integrity of the NPT regime" (Russia 2016a). The US also complained that the security environment was not being taken into account and warned that the NPT could be undermined, as a ban treaty "risks creating an unbridgeable divide between states" and would therefore limit "any future prospect for achieving consensus, whether in the NPT review process, the UN, or the CD" (US 2016a). This deepening divide, they cautioned, "could impact [...] strengthening cooperation in the peaceful applications of nuclear energy". This can certainly be interpreted as an indirect threat with negative consequences for the promotion of peaceful use, which is important to many NNWS. The US announced that it would not participate in any negotiations and predicted that a ban treaty without a verification regime and without NWS would not lead to any further reductions. France described the OEWG's proposal in 2016 as "dangerous" and consented that nuclear disarmament should not be decoupled from the security context and that a ban treaty would be ineffective and destabilizing (France 2016a). China reacted much more mildly to the draft resolution resulting from the 2016 OEWG, emphasizing its defensive nuclear strategy, the special position of its policy of non-first use and consistent renunciation of nuclear threats against NNWS and NWFZ and expressing its understanding for "the wishes and aspirations of countries towards a nuclear-weapon-free world at an early date" (China 2016). Nevertheless, Beijing also described the rejection of the consensus principle as "counterproductive" and called for the issue to be addressed "under the existing multilateral disarmament mechanisms".

Before and during the 2016 UNGA First Committee meetings, reportedly numerous *démarches* were made by France, Russia and the US to African, Asian, Latin American and Caribbean states (Kmentt 2021, pp. 103–104). Before the vote on Resolution 71/258 in the UNGA, the US is said to have invited the members of the African Group to a meeting in New York and asked them not to support the resolution. Within the BRICS, Russia allegedly addressed and problematized the ban treaty. Reports on how intensively the diplomatic corps of the Global South were approached vary widely (Acheson 2021b, pp. 215–219).

Considerably better documented and also measurable in its effect was the pressure exerted by the US on its Western partners. In a leaked non-paper from the US NATO mission in Brussels dated 17 October 2016, immediately before the UNGA votes, the US government warns its allies that "efforts to negotiate an immediate ban on nuclear weapons or to delegitimize nuclear deterrence are fundamentally at odds with NATO's basic policies on deterrence and our shared security interests." (US 2016b, p.(1–1)). As evidence it lists some of the expected direct and indirect consequences of such a treaty, which would restrict nuclear-weapons-related planning, training and transit as well as the use of nuclear-capable delivery systems. They "could be wider-ranging" and "impact non-parties as well as parties", which

is why the US appealed to all allies and partners “to vote against negotiations on a nuclear weapons treaty ban, not to merely abstain. In addition, if negotiations commence, we ask allies and partners to refrain from joining them.” (US 2016b, 2., p.(2-1)). The paper demonstrates how much the US was concerned about the established structures of the nuclear order, especially those components that are key to the privileges of the NPT NWS and their nuclear deterrence policy. Nevertheless, it is also remarkable that Washington uses dramatic words to outline a kind of doomsday scenario for the alliance, but refrains (at least in writing) from blackmail and the threat of repercussions in the event of non-compliance with American demands. This also seemed unnecessary, as all nuclear umbrella states apart from the Netherlands (which abstained) voted unanimously against granting a negotiating mandate both in the vote on October 27, 2016 in the UNGA First Committee and when the resolution was approved by the UNGA on December 23, 2016.

After the vote in the UNGA First Committee, France, the UK and the US issued a joint statement saying that they were aware of the devastating humanitarian effects of nuclear weapons, but that “neither those consequences nor those concerns are new” (France 2016b). They were “dismayed at the fact that the disarmament debate has turned in that direction” and reiterated that the draft resolution “contradicts the consensus-based approach” and “will set back the cause by further deepening the divide among NPT States Parties” (France 2016b). Russia, unusually unanimously, endorsed these assessments and conclusions: “Like our partners in the P5+1 we believe that the initiative to prohibit nuclear weapons is destructive” (Russia 2016b). The effects of polarization on the NPT would be “catastrophic”, the “scattering of positions and outright antagonism” had already become apparent in the OEWG, where a third of the participants (mainly US allies, author’s note) had abstained or spoken out against talks on a nuclear weapons ban. It repeated that under the NPT “five States possess nuclear weapons with absolute legitimacy”, renewed its warning of “chaos and dangerous unpredictability” and pleaded “to once again give serious thought to the deadly, destructive repercussions that inevitably will follow” the adoption of the draft resolution and “not to yield to the treacherous temptation to resolve all nuclear-weapon-related problems at a stroke” (Russia 2016b).

Table 3: UNGA voting result on Resolution 71/258 on December 23, 2016 (UN 2016)

Y = yes, N = no, A = abstention

AFGHANISTAN	Y	DOMINICA		LITHUANIA	N	SAO TOME & PRINCIPE	
ALBANIA	Y	DOMINICAN REPUBLIC	Y	LUXEMBOURG	N	SAUDI ARABIA	Y
ALGERIA	Y	ECUADOR	Y	MADAGASCAR	Y	SENEGAL	Y
ANDORRA	N	EGYPT	Y	MALAWI		SERBIA	N
ANGOLA	Y	EL SALVADOR	Y	MALAYSIA	Y	SEYCHELLES	
ANTIGUA AND BARBUDA	Y	EQUATORIAL GUINEA	Y	MALDIVES	Y	SIERRA LEONE	Y
ARGENTINA	Y	ERITREA	Y	MALI	A	SINGAPORE	Y
ARMENIA	A	ESTONIA	Y	MALTA	Y	SLOVAKIA	N
AUSTRALIA	N	ETHIOPIA	Y	MARSHALL ISLANDS	Y	SLOVENIA	N
AUSTRIA	Y	FIJI	Y	MAURITANIA	Y	SOLOMON ISLANDS	
AZERBAIJAN	Y	FINLAND	A	MAURITIUS	Y	SOMALIA	
BAHAMAS	Y	FRANCE	N	MEXICO	Y	SOUTH AFRICA	Y
BAHRAIN	Y	GABON	Y	MICRONESIA	N	SOUTH SUDAN	
BANGLADESH	Y	GAMBIA		MONACO	N	SPAIN	N
BARBADOS	Y	GEORGIA		MONGOLIA	Y	SRI LANKA	Y
BELARUS	A	GERMANY	N	MONTENEGRO	N	SUDAN	A
BELGIUM	N	GHANA	Y	MOROCCO	A	SURINAME	Y
BELIZE		GREECE	N	MOZAMBIQUE	Y	SWAZILAND	
BENIN		GRENADA		MYANMAR	Y	SWEDEN	Y
BHUTAN	Y	GUATEMALA	Y	NAMIBIA	Y	SWITZERLAND	A
BOLIVIA	Y	GUINEA		NAURU		SYRIAN ARAB REPUBLIC	
BOSNIA & HERZEGOVINA	N	GUINEA-BISSAU		NEPAL		TAJIKISTAN	Y
BOTSWANA	Y	GUYANA	Y	NETHERLANDS	A	THAILAND	Y
BRAZIL	Y	HAITI		NEW ZEALAND	Y	THE F.Y.R. OF MACEDONIA	Y

BRUNEI DARUS-SALAM	Y	HONDURAS	Y	NICARAGUA	A	TIMOR-LESTE	Y
BULGARIA	N	HUNGARY	N	NIGER	Y	TOGO	Y
BURKINA FASO	Y	ICELAND	N	NIGERIA	Y	TONGA	Y
BURUNDI		INDIA	A	NORWAY	N	TRINIDAD AND TOBAGO	Y
CABO VERDE	Y	INDONESIA	Y	OMAN	Y	TUNISIA	Y
CAMBODIA	Y	IRAN	Y	PAKISTAN	A	TURKEY	N
CAMEROON		IRAQ	Y	PALAU	Y	TURKMENISTAN	
CANADA	N	IRELAND	Y	PANAMA	Y	TUVALU	
CENTRAL AFRICAN REPUBLIC		ISRAEL	N	PAPUA NEW GUINEA	Y	UGANDA	Y
CHAD	Y	ITALY	Y	PARAGUAY	Y	UKRAINE	
CHILE	Y	JAMAICA	Y	PERU	Y	UNITED ARAB EMIRATES	Y
CHINA	A	JAPAN	N	PHILIPPINES	Y	UNITED KINGDOM	N
COLOMBIA	Y	JORDAN	Y	POLAND	N	TANZANIA	Y
COMOROS	Y	KAZAKHSTAN	Y	PORTUGAL	N	UNITED STATES	N
CONGO	Y	KENYA	Y	QATAR	Y	URUGUAY	Y
COSTA RICA	Y	KIRIBATI	Y	REPUBLIC OF KOREA	N	UZBEKISTAN	A
CÔTE D'IVOIRE	Y	KUWAIT	Y	R. OF MOLDOVA		VANUATU	Y
CROATIA	N	KYRGYZSTAN		ROMANIA	N	VENEZUELA	Y
CUBA	Y	LAO P.D.R.	Y	RUSSIAN FEDERATION	N	VIET NAM	Y
CYPRUS	Y	LATVIA	N	RWANDA		YEMEN	Y
CZECHIA	N	LEBANON	Y	SAINT KITTS & NEVIS	Y	ZAMBIA	
D.P.R. OF KOREA		LESOTHO	Y	SAINT LUCIA	Y	ZIMBABWE	Y
D. R. OF THE CONGO		LIBERIA		SAINT VINCENT & THE GRENADINES	Y		
DENMARK	N	LIBYA	Y	SAMOA			
DJIBOUTI	Y	LIECHTENSTEIN	Y	SAN MARINO	Y		

When adopting Resolution 71/258, with which the UNGA issued the mandate for a Negotiating Conference in 2017 on a prohibition of nuclear weapons (*Table 3*), 113 states voted in favor and 35 against. 14 states abstained. A slightly larger than average group was not present at the vote, which took place on the day before Christmas Eve. The votes against came almost exclusively from the NPT NWS and US allies. This demonstrates that Washington's efforts to maximize cohesion in NATO and among the umbrella states have paid off. Only the Netherlands abstained due to strong domestic political support for a ban treaty. Even Japan, the only state against which nuclear weapons have been used to date, voted against negotiations to outlaw them. Russia voted largely without its traditional supporters. China, India and Pakistan remarkably abstained. It is striking that those NWS that consider themselves to be major players, but not in the tradition of colonialism, sympathized with the Global South at this crucial moment and did not vote with the other NPT NWS. This may certainly have been motivated by tactical considerations, especially with regard to China, which had supported the joint and hostile position of the NPT NWS and P5 until the very end. However, as a permanent member of the UNSC, its opting out definitely bears political significance. It must also be borne in mind that China's stance was much milder than its fellow members from the outset and that Beijing has consistently distinguished itself from them for a long time through its non-first use policy and rejection of extended deterrence.

At the start of the TPN Negotiating Conference in March 2017, the US boycott under the Trump administration, which had been in office since January, took on grotesque proportions. Then US Ambassador to the UN Nikki Haley organized a press event in front of the doors of the meeting room at the UN Headquarters, where the NNWS of the HI had gathered. Together with a dozen representatives of allied states (UK, France, Australia, South Korea, Turkey and some Eastern European countries), she wanted to publicly express her rejection and declared: "As a mom, as a daughter, there is nothing I want more for my family than a world with no nuclear weapons, but we have to be realistic". She justified the fact that the US was not taking part in the negotiations by stating that "in this day and time, we can't honestly say that we can protect our people by allowing the bad actors to have them and those of us that are good trying to keep peace and safety not to have them" (Politico 2017). It was a memorable moment that illustrated the NPT NWS impotence in the face of resistance in the UNGA. Whereas only a few US allies stood by and stated one after the other that they rejected the negotiations, there was no comparable campaign on the part of China and Russia. Neither the media nor the negotiating room were impressed by the somewhat helpless-looking group of diplomats protesting against their exclusion in front of a negotiating room that remained open to everyone. Rather, they reinforced the sense of group belonging and the feeling of agency of those sitting in the negotiating room.

Following the *adoption of the TPN*, most NPT NWS and the Netherlands concentrated on maintaining legal certainty by continuously documenting their objections and increasingly directed their criticism at the text of the treaty itself. The relationship to the NPT in particular, but also the regulations on nuclear safeguards, were at the forefront. Right after the vote, the US, UK and France released a joint statement clarifying that they “do not intend to sign, ratify or ever become party to it” and that therefore “there will be no change in the legal obligations on our countries with respect to nuclear weapons”, including customary international law (US 2017). The ban treaty “clearly disregards the realities of the international security environment” and would be “incompatible with the policy of nuclear deterrence”. It would not promote disarmament, but “the exact opposite by creating even more divisions at a time when the world needs to remain united in the face of growing threats” (US 2017). In addition, the UK documented in its own statement that it had always rejected the treaty, had not participated in its adoption and that it therefore would “not be binding on the UK” (UK 2017). It also stressed that it would reject any argumentation on the basis of customary international law. The Netherlands, an umbrella and nuclear sharing state involved in the negotiations, focused in its explanation of vote on the incompatibility of the TPN with its NATO obligations, the “inadequate verification provisions” and harmful effects on the TPN (Netherlands 2017). When the Geneva CD convened the following month, Russia repeated the objections it had already raised and likewise asserted that it does not consider itself bound by the obligations under the TPN (UNCD 2017, pp. 4–5). As evidence, it referred to its numerous statements and its voting behavior in the relevant forums. With regard to the treaty text and the allegedly growing divisions, Moscow saw itself confirmed “that we made the right decision in not attending the New York conference” and attested that the treaty “has not yet entered into force, and is not even open for signature, and negative consequences are already being felt” (UNCD 2017, pp. 4–5). China refrained from commenting on the text of the treaty and, as before, distanced itself from the process. All efforts towards nuclear disarmament would have to “support the principle of consultation and consensus” and “be carried out through the existing machinery” (UNCD 2017, p. 8).

There are indications and reports that demarches were made to discourage states from supporting, signing or even ratifying the ban treaty. These are even said to have included attempts by the US and France to blackmail states and threaten them with the suspension of de-mining programs or development aid (Ruff 2018, p. 235, Krasno and Szeli 2021, p. 118). There is no evidence for the latter and the credibility of these reports can be questioned given the extensive parliamentary scrutiny of such budgetary decisions. The political risk of a broad-based foreign policy maneuver of this kind would be considerable compared to the gain (individual small states do not sign or support a resolution). Shortly before the TPN reached the critical threshold of 50 ratifications, which was decisive for its entry into force,

letters were reportedly sent to signatories in which the US allegedly stated that, although it would recognize the sovereign right of ratifying and acceding to the TPN “we believe that you have made a strategic error and should withdraw your instrument of ratification or accession” (AP 2020, IDN 2020). This information should also be evaluated with caution. The methods of exerting pressure on close security policy partners appear more plausible. In August 2017, an alleged letter from the US Secretary of Defense to his Swedish counterpart was leaked, warning that joining the TPN would “adversely affect Swedish defense cooperation with the US and with NATO” (Svenska Dagbladet 2017). Sweden voted in favor of adopting the TPN in July 2017 and took a favorable stance on the project. In July 2019, the Swedish Ministry of Foreign Affairs declared that the government would “refrain from signing or pursuing ratification” of the TPN at the present time (Sweden 2019).

At the Nobel Peace Prize Award ceremony for ICAN in December 2017, France, the UK and the US did not send ambassadors to express their reservations towards ICAN and the TPN (France 24 2017). China has not attended the ceremony since a dissident was awarded a Nobel Prize in 2010. India and Pakistan announced that their ambassadors were out of town, and North Korea has no embassy in Norway. Russia and Israel, on the other hand, both dispatched representatives at ambassador level. The fact that the three Western NWS were not represented at a high diplomatic level at one of the most important and popular political events in Norway, a NATO member state and home to the Secretary General of the alliance, once again reflects a highly defensive approach. In the years that followed, the P5 and NPT NWS (re-united) repeatedly dissociated themselves from any legal binding effect of the TPN in joint statements and what have since become routine wordings (UK 2018).

To summarize, the attempts to contain the resistance emanated exclusively from the NPT NWS and the US umbrella states. India, Pakistan, North Korea and Israel hardly made an appearance in this context; the former two rather displayed sympathy than dissociation with the HI and participated in its conferences. Even among the P5, there is a notable difference in the sharpness of tone and intensity of containment against the rebellion with Russia and the Western NPT NWS on the one hand and China on the other. Beijing took a more conciliatory stance and, based on available data, abstained from political pressure or diplomatic *démarches* towards partners or supporting states of the HI. Rhetorically, the attacks against the movement from Russia and France were the sharpest. When it comes to attempts to exert diplomatic pressure on individual states or groups of states to distance themselves from the HI, the US outshines all other NPT NWS. This, of course, derives from Washington’s incomparably greater capabilities in this area, especially with regard to its partners and allies. The US’s success in tying its umbrella states to its cause stands out in comparison to Russia’s inability to mobilize political support for the NPT NWS cartel. Indeed, in the context of the UNGA decision in December 2017 to convene a Negotiating Conference on a nuclear weapons ban, this even led to Moscow explic-

itly relying on the voting behavior of the US allies in the 2016 OEWG (Russia 2016b), despite major political tensions with the West.

In terms of content, the arguments put forward by the NPT NWS and their allies were largely coordinated and repeatedly raised the same points: They contrasted the project of an immediate ban treaty with the (realistic) step-by-step approach. They criticized the focus on the humanitarian impact of nuclear weapons as one-sided, since it ignored the security dimension, the security environment and the importance of strategic stability. They constantly bemoaned the exclusion of the NWS and pleaded for an inclusive approach, although they were invited to all HI conferences and could also have taken part in the OEWG and the TPN Negotiating Conference. But what they meant was the preservation of the consensus principle and the use of established forums for nuclear disarmament and arms control. The guardians of the status quo denied the legitimacy of other procedures and bodies. In addition, they questioned the effectiveness of a ban treaty without them and criticized the lack of a verification regime. The safeguards in the TPN itself would be inadequate and the ban would not be compatible with the NPT and the policy of nuclear deterrence, from which arms control could not be conceptually decoupled. A ban treaty would therefore even be harmful, as it would undermine existing norms and institutions (especially the NPT) and divide the international community.

Many objections of the NPT NWS and umbrella states could logically be resolved through complementarity, compromise or their own contribution. Where this is not possible, we touch upon the core of the disagreement: the question of whether they were entitled to retain control over debates and processes of nuclear disarmament and arms control and uphold their nuclear rule. In other words, an immediate ban on nuclear weapons was incompatible with nuclear deterrence, the legitimate possession and (shared) control of nuclear weapons.

While the substantive argumentation of the NPT NWS and umbrella states shows a high degree of continuity and uniformity, the strategy and course of action varied significantly depending on the actor(s) and time. For example, the NPT NWS initially avoided reacting to the humanitarian framing and tended to pursue a strategy of denial. The umbrella states, on the other hand, found this more difficult, since many of them (e.g. Germany, the Netherlands, Belgium, Spain) considered themselves promoters of nuclear arms control and disarmament and bridge builders between the camps. In addition, quite a number of them had a positive record in the field of humanitarian disarmament and participated in other treaties in this area. This explains why most of them acknowledged the humanitarian concerns from the very start and attended the CHINW. To fully exploit the potential of their hybrid role, they adopted a dual approach with their own humanitarian statements, seeking to reconcile the concept of strategic stability and practice of nuclear deterrence with the humanitarian framing.

This strategy was ultimately not abandoned due to its inherent contradictions. Instead, umbrella states changed their behavior when the HI began to draw not only on *substantive* norms (human security and IHL) that were unwonted in traditional debates and forums, but also on unconventional *procedural* norms (decision by majority rule) for its subversive opposition. The balancing act thus became too great for the US allies. Confronted with the OEWG 2016 and in the end with the TPN Negotiating Conference, they had to take a clear stand and either acted as proxies for the NPT NWS (OEWG 2016) or joined their boycott (TPN Negotiating Conference). When it became inevitable to prioritize alliance loyalty and national security interests over principles of human security and IHL, the umbrella states unreservedly stood up as defenders of the nuclear rule. Not only their allies but also their geopolitical rivals, Russia and China, could rely on this. Even within the P5 and NPT NWS, despite all the nuances and differences mentioned, it can be observed that the ranks closed at the latest when it came to preserving the exclusive “nuclear club” – and this was always the case on the procedural issue.

After the treaty was adopted, the Western NPT NWS and Russia pursued a defensive strategy and sought to limit the damage by repeating and documenting their persistent objection. The intention was to prevent any legal binding effect that the TPN could acquire through customary international law. No similar statements are known from the other NWS. This suggests that they were less concerned about legal implications or even obligations regarding their status or nuclear policy. The alleged attempts by the US to lobby HI supporters and TPN signatories in order to impede the treaty’s entry into force are difficult to prove, in contrast to their influence on allies. It can be assumed that the resistance was under great political pressure, regardless of specific interventions or acts of blackmail. After all, it was facing the largest military powers in the world. Yet their efforts to contain it were ultimately unsuccessful. This impotence of the nuclear rulers probably found its most vivid expression in the press event of the US ambassador to the UN, when she and a few others voiced their protest in front of the open doors of the negotiating room. Her message quickly faded in the media. In the negotiating room, it triggered laughter for a long time and spurred the negotiators on.

A founding treaty of a transformative, yet conservative nuclear order

Just 7 years after the Humanitarian Initiative (HI) first emerged in the haze of the 2010 NPT RevCon, the UNGA-mandated Negotiating Conference adopted the TPN treaty text on July 7, 2017. During the High Level Segment plenary session of the UNGA on September 20 of the same year in New York, the TPN was opened for signature by the UN Secretary-General (and depositary) António Guterres. According to Article 15, the treaty entered into force on January 22, 2021, 90 days after the fiftieth instrument of ratification was deposited.

The analysis of resistance undertaken so far has concentrated on the actors – their claims, motivations and strategy – and the genesis of the TPN norm. In the following, the focus will be on the result, the normative substance of the treaty text itself. As in the analysis of the negotiations, the evaluation of the negotiated output of the HI focuses on its reform or transformation content regarding the nuclear rule. What is new about the treaty, where does it initiate changes and how far-reaching are these? In contrast, where does it reaffirm existing provisions and ensure continuity? These two questions structure the following section. It examines the relevant components of the TPN with regard to innovative and conservative elements. At the end, it attempts an assessment of the transformative potential of the TPN.

Innovative elements can be found throughout the entire substance of the TPN. The preamble (UN 2017i, preamble) explicitly addresses the humanitarian dimension and condenses the insights gained from the HI process, in particular the three CHINW. In contrast to the NPT, it declares the applicability of IHL, its fundamental principles (“the rule of distinction, the prohibition against indiscriminate attacks, the rules on proportionality and precautions in attack, the prohibition on the use of weapons of nature to cause superfluous injury or unnecessary suffering, and the rules for the protection of the natural environment”) and human rights as the basis of the treaty. The preamble also reaffirms the deep concern about the “catastrophic humanitarian consequences that would result from any use of nuclear weapons”, the awareness of the many risks associated with the existence of nuclear weapons and the realization that there are no adequate response capabilities for the impact that transcends national borders and affects all areas (“human survival, the environment, socioeconomic development, the global economy, food security, health”). For the first time, the “disproportionate impact on women and girls” and on indigenous people is recognized and the suffering of the victims of the use of nuclear weapons (Hibakusha) and nuclear weapons testing is explicitly considered. The recognition that equal participation of men and women promotes peace and security and that greater participation of women in nuclear disarmament is needed, also represents an important innovation in the field. For the first time, this aspect has entered an international treaty on weapons. Finally, the preamble acknowledges the efforts of a multitude of actors (the UN, the ICRCM, international and regional organizations, civil society, religious leaders, parliamentarians, academics and the hibakusha) required to achieve a nuclear weapons free world, which also constitutes a refurbishment and expansion in the field. Another novelty is the mentioning of the importance of peace and disarmament education.

Regarding the provisions, the prohibitions set out in Article 1 in particular go far beyond the *status quo* by outlawing numerous activities related to nuclear weapons (UN 2017i, Article 1). This includes development, testing, production, manufacture, acquisition, possession, stockpiling, transfer as well as the use and the threat of use. Any assisting, encouraging or inducing of these activities is also prohibited.

In contrast to the NPT, the TPN not only limits the geographical proliferation of nuclear weapons, but formulates a comprehensive ban on nuclear weapons without exceptions. It therefore not only contradicts the legality of the possession of nuclear weapons and thus calls into question the status of the NPT- and other NWS. It also clearly rejects the policy of deterrence and the associated practice of nuclear sharing, transfer and deployment of nuclear weapons on foreign territories (UN 2017i, Art. 1 b, c, d, g). The treaty thus also challenges the nuclear umbrella states and their participation in nuclear deterrence or the practice of nuclear sharing. Two central dimensions of the nuclear rule are thus contested. By not granting NPT NWS any special rights and also negating any form of participation in nuclear postures, the TPN presents itself as a regulatory alternative to the NPT and seeks to eradicate the nuclear hierarchy enshrined in it.

The intention to equalize and abolish special rights is a recurrent theme throughout the treaty and also shapes its provisions on safeguards and verification. Without exception, all contracting parties must conclude comprehensive safeguards agreements with the IAEA as a minimum (UN 2017i, Article 3 & 4), including former NWS and NWS that have not yet fully disarmed at the time of accession (Giorgou 2018). Prospectively, the disarmed NWS would then be placed on an equal footing with the NNWS with regard to safeguards for the peaceful use of nuclear technology. Today, the NPT NWS only have voluntary agreements in place with the IAEA, which merely relate to part of their nuclear material. In comparison to the NPT, the TPN requires all states to meet basic standards. To ensure that this does not lead to a downgrading of States Parties that have already committed to higher standards than the comprehensive safeguards agreement, all parties are obliged to maintain agreements already concluded with the IAEA (UN 2017i, Art. 3). Of course, this primarily refers to the Additional Protocol, even if it is not explicitly mentioned. Another new element is the definition of parameters under which NWS and nuclear umbrella states would accede to the ban treaty and would be required to have the disarmament and elimination of their arsenals verified (UN 2017i, Art. 4). The TPN negotiators demonstrated pragmatism and deliberately formulated the treaty in an open manner in order to allow states that currently still have nuclear weapons to join at a later date. The relevant provisions offer flexibility and room for input and expertise from the acceding (ex-)NWS in the negotiation of the precise monitoring and verification provisions. The actual innovation, though, is that the NWS would have to negotiate the exact conditions and deadlines with the NNWS and that the overarching framework for these negotiations is to be determined by the TPN contractual community. The NNWS in the TPN thus claim to have an equal say on arms control and disarmament issues. Moreover, they signal their willingness to break with the previous practice of monopolizing monitoring and verification among nuclear powers. The TPN thus creates a legal basis and a framework for multilateral nuclear arms control and disarmament – although this will not affect practice for

the time being. However, this effort for multilateralization represents a paradigm shift in the normative handling of nuclear weapons and the legal allocation of global governance competence in this area.

Taking into account the existing NWFZ and NPT obligations, the national implementation of the TPN provisions (UN 2017i, Art. 5) by the NNWS presently subject to the treaty will certainly not result in any fundamental changes. However, small restrictions on the current scope of action of NWS as a result of the TPN are worth mentioning. If all prohibited activities and support services were implemented by States Parties through appropriate national measures and legislation and violations were punished accordingly, this would impede investments in and the financing of nuclear weapons internationally. The treaty would therefore have an impact on the military-industrial complex even without the involvement of the NWS. The results of divestment campaigns and studies by PAX and ICAN show some initial successes in terms of financing relevant companies and projects as well as the investment policies of banks, funds and insurance companies (Muñoz 2022, Snyder 2022) In addition, a strict interpretation of the prohibition of assisting activities would also restrict the relocation of nuclear weapons, as transit by sea, land and air through the territories of states that adhere to the treaty would no longer be permitted. The extent to which these prohibitions really materialize is hardly verifiable and also questionable since transit and other assistance activities were deliberately not explicitly listed in Article 1. The Russian tests of nuclear-capable ICBMs on Kazakh soil in 2023 (on the basis of previous bilateral agreements) validate these doubts (Hernández 2023).

The positive obligations (UN 2017i, Articles 6 & 7) certainly belong to the legal innovations in the TPN that can make a difference and bring about improvements for the affected people and areas even without the involvement of the NWS. The fact that the TPN States Parties affected by nuclear weapons tests were willing to assume primary responsibility under their jurisdiction to assist victims (including through “medical care, rehabilitation, and psychological support” (UN 2017i, Article 6) and clear contaminated areas (UN 2017i, Article 7), shows how serious they were about closing the accountability gap. Following the example of previous initiatives of international humanitarian disarmament law, particularly the 1997 Anti-Personnel Landmines Convention and the 2008 CCM, they introduced the first multilaterally guaranteed right to remedy and reparation in the nuclear field (Rietiker 2019). The latest progress in humanitarian disarmament has thus been complemented by the nuclear dimension. Unlike the previous body of humanitarian disarmament treaties, the humanitarian and environmental impacts resulting from the testing of the prohibited weapon are also taken into account in the TPN’s positive obligations on victim’s assistance and environmental remediation, which of course is due to the special nature of the subject matter, but nevertheless sets new standards. With the TPN’s positive obligations the supporters of the resistance translate their claimed agency into action and demonstrate their will and ability to assume leadership in order to pro-

vide global public goods and thereby restore order in important, previously inadequately regulated policy areas.

Article 8 (UN 2017i, Art. 8), which regulates the review process, reflects the inclusivity in the norm genesis of the TPN and ensures the access of UN agencies, relevant regional and international organizations, the ICRC, the IFRC and civil society to future Meetings of States Parties. The outreach to potential new signatories is also reflected in the provision by explicitly keeping the review process open to observer states. This openness and permeability can certainly be seen as another progressive impulse of the TPN.

The Withdrawal Article (UN 2017i, Art. 17) also contains a new feature compared to the NPT, as the TPN is intended to be effective indefinitely from the date of its entry into force and places somewhat stronger restrictions on the right of States Parties to withdraw, i.e. the hurdles are set slightly higher. A 12-month cancellation period applies. And during this time, the state in question must not be involved in any (interstate or intrastate) armed conflict (UN 2017i, Article 17, 3.).

In its relations with other treaties (UN 2017i, Art. 18) the TPN claims supremacy for the contracting parties. According to Art. 18, all obligations (not rights!) resulting from other international agreements remain valid *as long as* they are compatible with the treaty. The *status quo* is thus only preserved to the extent that it is consistent with the TPN, which, as the discussions during the negotiations revealed, above all exempts the possession of nuclear weapons and the policy of nuclear deterrence. From this, a key conclusion can be drawn regarding the reform and transformation content of the TPN with respect to the nuclear rule. Norms and practices derived from existing relevant international law (in particular the NPT) that relate to arms control or disarmament are maintained and perpetuated. Regulations and behavior that imply status differences and a hierarchy, i.e. attribute different scopes of action and influence on decision-making processes and control to different state actors, lose their validity within the TPN contractual community.

The entire arms control and disarmament *acquis*, the “managed system of abstinence” (Walker 2000, p. 703) is to be preserved, while the “managed system of deterrence” and thus the second organizing principle of the nuclear order shall be brought to an end. The TPN thus aims to fundamentally transform its *modus operandi*. By extracting the principle of military engagement with nuclear technology (i.e. armament & deterrence) and universalizing military abstinence from nuclear technology (i.e. disarmament & non-proliferation), the TPN seeks to abolish the dualism of the nuclear order and replace it with a single rationale and organizing logic shared by all. It intends to eradicate the patterns of distinction and disparate influence on control, their permanence and institutionalization. In other words, it strives for the elimination of nuclear rule. This intriguing separation, indeed filtration, of disarmament and arms control aspects on the one hand and features of power and rule on the other has far-reaching and systematic implications for the TPN’s legal compatibility with

the NPT. With regard to the NPT normative substance, which is concerned with anchoring the nuclear rule, the TPN represents a veritable counter-draft to the NPT.

In addition to equal treatment in terms of rights and obligations, inclusive participation is also mirrored in the normative substance of the TPN. The review process, for example, gives non-parties and numerous other stakeholders the opportunity to participate as observers. Furthermore, monitoring and verification are multilateralized. Finally, the preamble and the prohibitions on positive obligations not only refer to states, but also address the role and claims of individually affected people, in particular women and girls as well as indigenous populations. The interests of affected smaller states, which are otherwise often neglected, are also given special consideration, particularly when it comes to dealing with the legacy of testing. To deduce a democratization of nuclear arms control and disarmament from this is certainly too far-fetched. The different status of state and non-state actors persists, the internal constitution of States Parties (democratic versus authoritarian) remains ignored and representativeness of the world population plays no role in the composition of the treaty community. Democratic participation in decision-making processes thus remains limited to the standards of international law, but pluralistic participation in deliberations is significantly expanded in the normative substance of the TPN, in keeping with the tradition of its norm genesis.

The conservation of arms control and disarmament policy achievements clearly illustrates that the TPN represents no *tabula rasa* and that not everything is being reset. On the contrary, **large parts of the nuclear order are being kept alive**, thus reproducing shortcomings and contradictions and, not least, institutional arrangements that were largely created and controlled by the (NPT) NWS. This also points to the limited resources and capacities of the resistance as well as its reluctance to build the nuclear arms control and disarmament machinery from scratch or distance itself too extensively from existing treaties and agreements. In fact, the TPN remains dependent on their functioning and thus indirectly linked to the continuity of the nuclear rule behind.

Existing treaties and regimes served as a blueprint when the first draft text of the TPN was drawn up, especially when it came to technical aspects (Potter 2017, p. 98). Consequently, the treaty text contains numerous endorsements of existing resolutions, norms, treaties and regimes, in particular the NPT. The preamble refers to the first UNGA resolution of January 24, 1946, and subsequent resolutions calling for the elimination of nuclear weapons. Most importantly, the NPT is praised as the “cornerstone of the nuclear disarmament and non-proliferation regime” (UN 2017i, preamble). The TPN recognizes the NPT’s “vital role to play in promoting international peace and security” and the commitment to complete nuclear disarmament enshrined in it. Other treaties and regimes that are acknowledged by name are the CTBT and the NWFZ.

The determination of the States Parties to achieve a “legal negation of hierarchy” (Egeland 2017, pp. 202–205) has led them to avoid introducing provisions that would result in additional inequalities. Therefore the inalienable right to the peaceful use of nuclear energy, deriving from the NPT, was reproduced and enshrined in the normative substance of the TPN (UN 2017i, preamble). By reaffirming civilian use, the dual-use problem remains unresolved, impairing the implementation of the overarching treaty objectives. The TPN thus inherits the intrinsic contradiction in the substance of the NPT, which prohibits the transfer of warheads and weapons systems but promotes the transfer of dual-use goods and components, thereby potentially undermining its primary non-proliferation purpose. Ensuring a world free of nuclear weapons, as the TPN claims, becomes much more difficult to realize with this inconsistency. This shortcoming is reinforced by the fact that the TPN, again to avoid additional obligations for NNWS, neither mentions the Additional Protocol nor stipulates it as a generally applicable legal obligation. The desire for equality woven into the treaty text thus considerably restricts its transformative potential to achieve and secure a world free of nuclear weapons.

Instead of setting new standards for the creation of global public goods and for the ethos of global governance, the TPN thus follows a paradoxical practice of *Besitzstandswahrung* (protecting vested rights), drawing on the very institutions by which the non-proliferation regime primarily aims to protect the privileges of the NPT NWS. The IAEA and the comprehensive safeguards agreements play a major, if not decisive, role in the implementation, monitoring and verification of the TPN (UN 2017i, Art. 3). Since the TPN obliges states that have not yet concluded and implemented safeguards to verify the peaceful use of nuclear material (essentially the NWS) to do so, the potential scope of IAEA safeguards is even increased. The IAEA thus remains the undisputed supervisory body for nuclear non-proliferation under the TPN. Considering that the IAEA is also the most likely option for the role of “competent international authority” (UN 2017i, Article 4, 1., 2., 6.) for the verification of future disarmament and elimination processes of acceding (former) NWS, its competences will prospectively be expanded even beyond the verification of peaceful use – despite the strong influence that the NWS exert on the organization.

By not universally applying one part of the IAEA verification standards (Additional Protocol) for the sake of equity, but at the same time opportunistically drawing on the other part (comprehensive safeguards agreements), the TPN inevitably exposes itself to the accusation of cherry-picking. While the TPN States Parties reject the nuclear rule, they continue to rely on the global public goods it provides (monitoring and verification regimes) free of charge and to any extent they choose, without recognizing any output legitimacy or contributing any resources. Consequently, the verification provisions and instruments of the TPN are therefore largely based on the current *status quo* and therefore remain insufficient to ensure a world free of nuclear weapons. The IAEA’s mandate and capacities would have to be significantly

enhanced to cover the relevant amount of material and number of facilities. There is still a long way to go to achieve such a comprehensive verification regime for nuclear disarmament given the political and technical challenges involved (Erästö *et al.* 2019).

Regarding the positive obligations (UN 2017i, Art. 6 & 7), which are certainly among the most tangible changes brought about by the TPN, it can be argued that although they constitute a notable reform achievement, their character is not transformative in as strict sense. They are based on the concept of human security and IHL and thus reproduce norms already in place and created by leading powers. This ultimately is the price of the subversive recourse to the humanitarian framing, with which the TPN-NNWS sought to rattle the discursive and epistemic foundations of the nuclear rule. The fact that the costs of this tactic (implementation of Art. 6 & 7) in the end have to be borne mainly by the states affected by nuclear weapons use and testing, and that the NWS and perpetrator states cannot be held adequately accountable, is the flip side of a rebellion that draws on the conceptual and legal means of those in power.

Furthermore, the TPN does not tackle the problem of how a breach of the rules, the unauthorized use of nuclear weapons, can be deterred and, if necessary, sanctioned. If all other states renounced nuclear weapons and nuclear deterrence in line with the treaty, the contractual community would be defenseless against the despotism of a nuclear pariah. This impotence weighs all the more heavily since the TPN, like many other international treaties, can be revoked (UN 2017i, Art. 17), leaving even the possibility of legally acquiring nuclear status and practicing nuclear deterrence. The TPN provisions on withdrawal do not introduce any pioneering innovations to deal with this issue. Although confirming the indefinite effectiveness of the treaty (UN 2017i, Article 17, 1.), States Parties can withdraw in case that “extraordinary events related to the subject matter of the Treaty have jeopardized the supreme interest of its country” (UN 2017i, Article 17, 2.), which is not uncommon in international treaty law. The TPN therefore remains incomplete and would have to be further enhanced or supplemented by another treaty.

It must be acknowledged, though, that the text allows for precisely these possibilities. But while the legal requirements for future collaboration with the NWS have been defined, the question of the political feasibility remains open: Will an agreement by consensus be possible if NWS are to be integrated? Will they even want to join at some point? In any case, Article 18 will not facilitate NPT NWS accession to the TPN (UN 2017i, article 18), as it clarifies the relationship between the two treaties in favor of the TPN and only incorporates (compatible) obligations (but not the rights) from the NPT. The superiority of the TPN over the NPT has both an innovative and a conservative side. It is conservative because such hierarchization is not uncommon in the conclusion of newer treaties. In addition, the wording is largely taken from

the ATT (UN 2014, p. 26), which again shows how much the negotiators endeavored to adhere to already established standards of international law.

To summarize, the TPN contains both transformative elements, particularly with regard to the abolition of the legal nuclear hierarchy and the equalization of opportunities for participation, as well as conservative components, especially with respect to the arms control and disarmament policy *acquis*, the affirmation of prevailing monitoring and verification regimes and the reproduction of existing international law and norms. The substance of the TPN is not enough to accomplish a radical transformation of the nuclear order in terms of achieving a world free of nuclear weapons. However, it provides a basis and offers a space to set this in motion. The (NPT) NWS and umbrella states are granted a pivotal role and scope for action when the time for implementation has come. Ultimately, the transformative impact of the TPN will therefore also depend on how successfully it is deployed by the States Parties for the time being to exert political pressure on the NWS to honor their disarmament commitments and on their ability to gradually engage the “nuclear club” in the TPN framework. The latter in particular seems unlikely in the foreseeable future.

All the more important therefore will be the (future) support and practical use of the TPN by the NNWS. By creating a univocal, binding norm that prohibits nuclear weapons and nuclear deterrence, the NNWS have gained a new legal and political instrument to contest the nuclear rule of the NPT NWS and its support system. The supporters of the HI can use it as a coordination platform to leverage their weight in the NPT and Geneva CD or to agree on further joint UNGA initiatives. All this presupposes, however, that they maintain their unity and that all TPN negotiators join the treaty and use it coherently as a legal and political “weapon”. However, a look at the current number and composition of the TPN contracting parties reveals clear differences compared to the HI resistance community as a whole and an undeniable regional disparity (*Table 4*).

As of December 1, 2024, the TPN had 94 signatories and 73 States Parties (UN-ODA 2024). It thus has an impressive group of supporters with tangible political weight. Compared to the number of states that have supported the Humanitarian Statements (up to 159) and the Humanitarian Pledge (127) as well as UNGA resolution 71/258, which issued the TPN negotiating mandate (113), or participated in the negotiations (135), it appears somewhat smaller. In addition, only a few states have joined since it came into force on January 22, 2021. However, it is likely that at least the signatory states – nearly half of the international community – will eventually become fully-fledged member states.

Table 4: Number of states that have adopted, signed and ratified the TPN by regional group (ratio of the number of states to the total number of the respective regional group) (UNODA 2024) Not included are the UN observer states Holy See and Palestine, both signatories and States Parties, as well as the contracting parties Cook Islands and Niue, which are represented at the UN by New Zealand. December 1, 2024.

Number of TPN supporters, signatories and States Parties			
UN regional groups	Adoption (yes)	Signatory states	States Parties
African: 54	42 (78%)	33 (61%)	17 (31%)
Asia-Pacific: 55	38 (69%)	22 (40%)	21 (38%)
Eastern European: 23	2 (9%)	0	0
Latin -American & C.: 33	30 (91%)	31 (94%)	26 (79%)
W. European & O.: 28	8 (29%)	6 (21%)	5 (18%)

In principle, the TPN offers a powerful platform for mobilizing the Global South on issues of nuclear arms control and disarmament. States that normally stay out of the debates in the field have already repeatedly disrupted the discriminatory dynamics in these forums with the help of the HI and the TPN and have become increasingly involved (Minor 2020, pp. 243–245). Thanks to its review process and the conferences and meetings held within this framework, the TPN can contribute to increased active participation in the topic by states from Latin America and the Caribbean, Africa, Asia and the Pacific. If they seize this opportunity for coordinating their participation in the NPT review process, the debates in the Geneva CD and within the UNGA and the First Committee, there is a good chance that the TPN community matures to become a lasting and influential political force in the field.

On closer inspection (*Table 4*), the high level of political support from the Global South shows a clear regional divide. The breakdown by regional group shows that support from Latin American and Caribbean states is almost unanimous and universal, both in terms of the vote on adoption (91%) and when it comes to more binding commitments as signatories (94%) and States Parties (79%). In contrast, support from the African group was very high at the conclusion of the negotiations (78%), while significantly fewer states from this region signed (61%) or ratified (31%) the TPN. On the part of Asian-Pacific states, there is a clear gradation between adoption (69%) and signature (40%), with the latter rate almost on a par with that of ratification (38%), which is mainly due to the fact that the procedure for these two acts coincides in many of these states. Almost none of the Eastern European states took part in the negotiations or agreed to the treaty text, and not a single one signed and ratified the TPN. Support is somewhat greater among the Western European and other

states (which include Australia and New Zealand as well as the US and Canada). Of these, 29% voted in favor of adoption, 21% signed and 18% ratified the treaty.

Looking more closely at the number and composition of its supporters shows that the TPN has the political backing of the Global South, albeit with significant regional variations in commitment. Its treaty community includes above all small and medium-sized states, while militarily powerful and influential states have largely stayed out of the treaty. The comparatively populous and, at least at regional level, politically important signatory states are all from the Global South, including Brazil, the Democratic Republic of the Congo, Indonesia, Malaysia, Mexico, Nigeria, the Philippines and South Africa. The vast majority of European and North American states remain outside the treaty. Austria, Ireland and a few small states are the exceptions. Among the Western states, New Zealand's support is also worth mentioning. Important European protagonists of the humanitarian cause and leading states of the HI, including Norway, Switzerland and Sweden, have left the resistance and no longer want to have anything to do with its output. With few exceptions, the future of resistance to nuclear rule, which was largely driven and masterminded by states of the Global North, is now mainly in the hands of the Global South.

