

## 4 Towards a Global Nuclear Ban Treaty

### ICAN's Anti-Nuclear Triad

*John Miller*

Eighty years after their last use in combat, nuclear weapons continue to occupy considerable space in the minds of security theorists, policymakers and the global public. This is for good reason: nuclear weapons have played a starring role in much of the past century's geopolitical drama, and their capacity for causing immense destruction and human suffering is unmatched. Even the tradition of their non-use in combat has bestowed a certain mystique upon them. While great powers have fetishised these weapons as ultimate symbols of international power and coercive capacity, non-nuclear states have variously portrayed the hegemony of the nine nuclear-armed states in terms of a 'nuclear apartheid' wherein a small set of states enjoy a potentially existential upper hand over the rest of the international community (Reynaldi 2020: 889).

The existential fear concerning nuclear weapons is not overstated; they exist in a class of their own in terms of their disproportionate destructive capacity and the threat they pose to the common goals and shared values of the international community, including humanity's fundamental rights to life, peace, health, food, and a clean environment. Worst-case nuclear scenarios tend to envision the use of nuclear weapons in global great-power conflict, but even a relatively contained nuclear war—between India and Pakistan, for instance—could precipitate a global nuclear winter, killing billions via secondary effects including radiation and famine.

Global governance at the intergovernmental and UN levels has failed to secure the human and environmental security of the globe vis-à-vis the threat posed by nuclear weapons over the past 80 years. Spurred by recognition of this failure, civil society groups intent on achieving nonproliferation, nuclear arms reduction and outright prohibition have proliferated. As we will see, such groups have the power to exert a profound influence at the international level, particularly when banded together in global coalitions. This chapter will explore how the International Coalition to Abolish Nuclear Weapons (ICAN) has confronted the nuclear threat head-on and mobilised international collective action on one of the fundamental global issues of our time—one involving international existential risk, national pride and great-power posturing. It will examine the dynamic nuclear landscape within which ICAN has operated, trace the coalition's roots and analyse three key strategies it employed in order to play a pivotal role in ultimately mobilising the ratification by 91 states of the Treaty on the Prohibition of Nuclear Weapons (TPNW) (ICAN 2017), the first and only comprehensive global nuclear ban treaty to date.<sup>1</sup>

## The Nuclear Landscape

The increase in geopolitical volatility over the past decade has been reflected in the dynamics of the nuclear order. As this order is defined by the collective interpretations of its key actors, it is equally subject to domestic political and social forces as it is to inter-state relations. The order's key actors include the nine states currently possessing operational nuclear weapons: China, France, India, Israel, North Korea, Pakistan, Russia, the United Kingdom, and the United States, followed by other states that rely on the protection of nuclear states' defence umbrella. The possession of nuclear weapons among adversarial pairs, including the United States-Russia and India-Pakistan, has proven to be a particularly formidable headwind confronting nuclear disarmament and prohibition movements, as it has sustained the perceived legitimacy of deterrence. The fact that nuclear arms, if used, would have truly catastrophic consequences for the global community lies at the core of this Cold War-era theory.

Rather than serve as a reason to move towards their prohibition, the overwhelming threat has instead been a cause for nuclear weapons' further entrenchment in states' security apparatuses under the logic that nuclear weapons—and the mutually assured destruction their use would ensure—keep hostilities at bay among great powers. While the end of the Cold War and the remainder of the 1990s saw a general strengthening of the non-proliferation and nuclear security regimes, momentum has since been halted and is wavering towards retreat.

With the end of the Cold War came the end of the bipolar world order, renewing concerns over proliferation as the fulcrum of the nuclear order shifted from opposing bipolar superpowers to a focus in the West on preventing proliferation to non-Western states and even non-state actors. The commitment of nuclear powers and their allies towards this end has been seen in their willingness to take immediate, far-reaching measures to prevent rogue states and non-state actors from gaining access to nuclear weapons: from imposing the UN Security Council's sanctioning power to, in the case of Iraq, outright invasion (Bolton 2019: 318).<sup>2</sup> These attempts to prevent nuclear weapons from falling into the 'wrong' hands have distracted policymakers' attention from the tremendous dangers posed by the arsenals of the nuclear powers. This shift, coupled with a general post-Cold War complacency, has resulted in 15,000 nuclear weapons remaining in the world—over 85 per cent of which are possessed between the United States and Russia (Fihn, Bolton and Minor 2019).

The slow unravelling of the nuclear arms control regime is evidenced by open non-compliance with existing accords, including Russia's ongoing and conspicuous violation of the 1987 Intermediate Nuclear Forces Treaty, America's 2002 withdrawal from 1970's Anti-Ballistic Missile Treaty and China's refusal to agree to restraints on its warhead delivery systems. Moreover, contrary to the letter and the spirit of Article VI of the Non-Proliferation Treaty (NPT), there has been no attempt to bring the nuclear arms race to an end and set in motion a process of nuclear disarmament; rather, the nuclear powers are instead modernising and expanding their arsenals in direct contravention of the NPT and, as we will see, the TPNW. The unravelling can also be seen in non-nuclear states' open hedging by keeping a foot on both sides of the debate: while they vocally support the disarmament movement in international fora, they return home only to double down on alliances with the nuclear powers for coverage under their deterrence umbrella.

The continued global reliance on nuclear weapons has resulted in the wasting of vast economic and human resources on the production and maintenance of these weapons,

diverting funds from areas of true need, including health care, education and civil infrastructure. According to ICAN, the global expenditure on nuclear weapons was estimated at \$82.4 billion in 2021, or \$9.4 million each hour, a sum larger than the total amount of funding provided by the International Monetary Fund (IMF) to its member countries for COVID-19 impact mitigation between 2020 and 2021 (ICAN 2021).

Ironically, more than any treaty or agreement, perhaps the most important pillar of the nuclear order has been the tradition against their non-use. The decades-long erosion of this norm can be seen from Russia's 1993 abandonment of the USSR's 'No-First-Use' doctrine to current headlines concerning its nuclear posture vis-à-vis Ukraine. In fact, China is the only nuclear state to officially maintain a no-first-use policy, although implicit nuclear threats against U.S. involvement in a potential Taiwan conflict test the doctrine's credibility.<sup>3</sup> Despite worrying signals, the fact remains that the international community has refrained from the use of nuclear weapons in combat since August 1945.<sup>4</sup> Moreover, as the nuclear abolition movement gathers strength, so too may the norm be strengthened, as the idea that nuclear weapons are too destructive and indiscriminate to be used becomes internalised more broadly in the international arena.

A continued failure to take clear, effective and concerted action towards banning nuclear weapons will be to defer to their eventual use, whether on purpose or by accident—the consequences of which would be catastrophic for humanity and the planet. Although the use of nuclear weapons is currently prohibited by an array of international conventions and agreements, their possession is not subject to such restrictions under international law. This contravenes the treatment of other weapons, including biological and chemical weapons, landmines and cluster munitions, which have been outlawed as being indiscriminate, inhumane and presenting an unacceptable threat to non-combatants. Despite nuclear weapons posing an even greater threat, progress towards their prohibition has for decades been largely without meaningful consequence.

## History of ICAN

Launched in 2007 against this deteriorating backdrop, ICAN is a global civil society coalition working to affect a global prohibition on nuclear weapons through the full ratification and implementation of the TPNW. As of November 2022, ICAN consists of 652 partner organisations in 107 countries (ICAN 2023). The coalition gained international notoriety when it was awarded the 2017 Nobel Peace Prize. In bestowing the award, the Nobel Committee offered specific praise for '[ICAN's] 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' (The Nobel Prize 2017). In the space of only a decade, ICAN grew from an idea to being a crucial actor in the international nuclear disarmament discourse, doing so through its use of three key strategies: mobilising civil society, achieving a humanitarian shift in the nuclear discourse and leveraging normative forces to affect concrete change.

ICAN was first conceptualised in 2005 by Dr. Ron McCoy, a retired obstetrician from Malaysia and co-president of International Physicians for the Prevention of Nuclear War (IPPNW), which was itself awarded the Nobel Prize in 1985. Dr. McCoy's proposal followed the 2005 Review Conference of the NPT—which failed to make any substantive progress on advancing the disarmament agenda—and a subsequent World Summit which similarly failed to deliver (Ruff 2018: 237).

ICAN was formed with the understanding that disarmament would have to pursue a new direction if it were to bear any fruit. As such, ICAN was not conceived to be just another summit among world leaders or diplomats; rather, it was created to forge global partnerships among civil society groups and non-governmental organisations (NGOs) to mobilise nuclear disarmament campaigns at the national level and harness their collective strength. While many believed a global nuclear ban treaty could not hope to be effective, ICAN pursued such a treaty in hopes that, independent of its legal reach, it would further contribute to the international stigmatisation of nuclear weapons, empower non-state actors and provide new opportunities to politically and financially pressure pro-nuclear actors.

ICAN's first formal office was established in Melbourne in 2006. Bolstered by Norwegian funding, ICAN was later able to establish an Oslo office in 2010 and engage UN headquarters staff in Geneva to expand coordination across Europe, the Middle East and Africa. This funding also enabled the establishment of a Geneva office in 2011, where the organisation has since been headquartered. A crucial boost to ICAN's global profile came when Norway named it the official partner organisation of civil society for the Oslo Humanitarian Consequences Conference in March 2013. This conference broke new ground in placing the humanitarian consequences of nuclear weapons at the forefront of the prohibition discourse. At the conference, scientists presented research on the impact a nuclear detonation or war could have on humans and the environment. Specifically, a crucial wake-up call for the international community came when global aid organisations, including the United Nations Development Programme (UNDP), stated that in the event of a nuclear attack, no organisation could provide adequate emergency relief, nor was it likely that such capacity could be built in the near-term. The lasting impact of the conference was the extent to which it established and/or heightened states' awareness that the consequences of even a single nuclear detonation could not be reliably mitigated or contained.

Soon after the Oslo Conference, a new government in Norway deprioritised engagement with ICAN, cutting off a key lifeline and threatening the coalition's future. Fortunately, Austria and Mexico quickly picked up the banner and would come to provide decisive backing for the establishment of a nuclear weapons ban treaty, hosting two subsequent Humanitarian Consequences Conferences: one in Nayarit, Mexico, held in February 2014, which was attended by representatives of 146 states, and one in Vienna, Austria, held in December 2014, attended by representatives of 158 states including, for the first time, the United States and the United Kingdom. In addition to expanding upon the topics discussed in Oslo, the Nayarit Conference discussed the risks of accidental detonations. In Vienna, additional topics included the legal status of nuclear weapons in the context of international humanitarian and environmental law.

Following the success of the humanitarian conferences and rising profile of the movement more broadly, 155 states submitted a joint humanitarian appeal for nuclear disarmament to the United Nations General Assembly in October 2014. Two years later, in October 2016, the UN First Committee adopted a landmark ICAN-supported resolution to launch negotiations on a treaty outlawing nuclear weapons. This treaty, which came to be the TPNW, was adopted by a vote of 122 to 41 on July 7, 2017, with notable abstentions from China, India and Pakistan. Just a few months later, in October, it was announced that ICAN had won the Nobel Peace Prize. This award vaulted the coalition to international prominence, giving it public name recognition that no number of statements before UN committees could have achieved.<sup>5</sup> Three years later, in October 2020, the 50th state ratified the TPNW, triggering its entry into force on January 20, 2021.

In just 15 years of existence, ICAN had successfully built a global civil society coalition that placed a renewed spotlight and impetus behind the idea of nuclear prohibition, resulting in an operational global prohibition treaty. This occurred against the backdrop of decades-long international failures to achieve responsible global governance of nuclear weapons, let alone a treaty of such ambitious scope.

To achieve so much in such a short time, ICAN utilised three key strategies to refocus policymakers and the global public on the humanitarian, human rights and environmental impacts of nuclear weapons. First, it effectively mobilised a global coalition of civil society groups. Second, it critically differed from previous nuclear arms reduction efforts in reframing the disarmament debate to focus on the humanitarian threat posed by nuclear weapons, particularly the catastrophic health and environmental consequences of their use, indiscriminate targeting and long-lasting radioactive effects. In support of this shift, ICAN took a data-driven approach in disseminating scientific data on the harms of nuclear weapons, carefully documenting the medical, economic, political, and environmental impact of nuclear weapons.

Third, ICAN has also at times attempted to be intentionally performative, re-emotionalising the nuclear conversation which has been historically dry, technocratic and affectless (Bolton and Minor 2016: 391). Fourth, ICAN leveraged ‘naming-and-shaming’ tactics to augment the normative pressures the movement could apply. These pressures have also proven effective in buttressing the reach of the TPNW, giving it a second (and potentially sharper) row of teeth in addition to its legal requirements for signatories.

### **Background, History and Precedent**

In order to trace the new path ICAN forged, it is helpful to survey the successes and failures of past nuclear prohibition efforts. The history of these efforts is as long as the history of the weapons they have sought to restrict. Since nuclear weapons’ initial development and use, there has been international pressure for their prohibition. In fact, the very first resolution adopted by the United Nations General Assembly on January 24, 1946, a mere five months after the first use of atomic weapons in Hiroshima and Nagasaki, set a goal of eliminating atomic weapons and all other major weapons of mass destruction from national armaments. Unfortunately, an outright prohibition on nuclear arms would be long in coming, and efforts towards this end have persisted to the present day.

Nuclear prohibitionists met what initially appeared to be a landmark success in the NPT, which was ratified by the United States, the United Kingdom, USSR, and 40 other states, and ostensibly codified an international intention to ‘achieve at the earliest possible date the cessation of the nuclear arms race and to undertake effective measures in the direction of nuclear disarmament’ (IAEA 1968). The Treaty preamble’s acknowledgement of the need to ‘take measures to safeguard the security of peoples’ was an early indication of the humanitarian concerns that would form the cornerstone of ICAN’s mission 40 years later (*ibid.*). Unfortunately, such concerns would not have a substantive impact on deterrence doctrines, and, to date, the NPT has proven largely ineffectual. For instance, whereas Article VI of the Treaty requires states to ‘pursue negotiations ... on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament, and on a treaty on general and complete disarmament under strict and effective international control’ (*ibid.*), states’ arsenal-modernisation policies and continued use of the nuclear threat in security doctrines directly contravene their obligations under the Treaty.

Although agreement on nuclear prohibition has failed on the global level, treaties more limited in scope have seen success. Among such limited treaties are regional nuclear weapon-free zones (NWFZs), which mandate the total absence of nuclear weapons within a given geography and proliferated as progress in geographically broader bodies ground to a halt. These NWFZs cover Latin America and the Caribbean (Treaty of Tlatelolco, 1967), the South Pacific (Treaty of Rarotonga, 1985), Southeast Asia (Treaty of Bangkok, 1995), Africa (Treaty of Pelindaba, 1996), and Central Asia (Treaty of Semipalatinsk, 2006). Additional treaties have been agreed to internationally which aim to ensure the peace of any state jurisdiction and restrict the use of nuclear arms in areas beyond it. These treaties include the Antarctic Treaty (1959), which prohibits military activities such as nuclear testing and waste disposal in Antarctica; the Outer Space Treaty (1967), which prohibits the stationing of weapons of mass destruction (WMDs) in orbit or in space; and the Seabed Treaty (1971), which prohibits the stationing of WMD on the seabed beneath international waters.

Furthermore, the most effective international, categorical nuclear treaties have been those that are more limited in scope and primarily pertain to testing restrictions. These include the Partial Test Ban Treaty (1963), which prohibits all above-ground nuclear explosions; the aforementioned NPT, which prohibits non-nuclear states from testing nuclear weapons; and the Comprehensive Test Ban Treaty (1996), which bans all nuclear explosions. Whether as a result of these treaties, the nuclear taboo or other reasons, the moratorium on nuclear weapon tests has been observed universally since the late 1990s, with the exception of tests carried out by North Korea that are also in contravention of several UN Security Council resolutions.

Important as these limited treaties are, ICAN aimed to achieve a global, categorical ban. For successful precedent on this scale, the International Campaign to Ban Landmines (ICBL) and the 1997 Mine Ban Treaty it championed are instructive models. Like ICAN, ICBL is a civil society coalition. By the time the Mine Ban Treaty entered into force on March 1, 1999, it had more than 1,400 partner organisations from over 70 countries worldwide. To achieve a landmine ban, the ICBL challenged the idea of landmines' military utility and relied on expanding the view of state security to account for the prevention of harm to individual citizens rather than just the defence of states from external threats. The coalition's opposition to landmines focused on their indiscriminate nature and violation of concepts of just war. In order to influence the beliefs and, more importantly, the actions of governments, non-state actors and civil society, the ICBL applied primarily normative, rather than legal, pressure.

Progress towards the campaign's ultimate goal of a Mine Ban Treaty was rapid, though never a foregone conclusion. Prior to 1995, not a single state had announced a policy banning landmines. Less than three years later, on December 2, 1997, the Mine Ban Treaty was signed by 121 states, and as of December 2022, the number of signatories is 137. With the exception of Egypt, every non-party to the Treaty is also a nuclear power: China, India, Israel, Pakistan, Russia, and the United States. Stated reasons for resistance to the Treaty mirror those given for resistance to nuclear prohibition and reduction agreements. For instance, U.S. opposition stems from its sustained claim that landmines, irrespective of their harm to non-combatants, remain a vital tool providing a 'necessary warfighting capability' (Esper 2020). The process is a crucial demonstration of how energised, targeted normative pressures can enable fast international action in the face of resistance by great powers (Wexler 2003: 605). In recognition of its achievements, the ICBL and its coordinator, Jody Williams, were awarded the 1997 Nobel Peace Prize.

In awarding the Prize, the Nobel Committee recognised that the ICBL had created a fresh form of diplomacy, as the Mine Ban Treaty entered into force faster than any other major multilateral arms control agreement of the 20th century—the Treaty progressed from initial negotiations to adopted text in just eight months. Moreover, the campaign achieved this while simultaneously offering proof of concept that diplomacy could be driven by a minimally hierarchical civil society group without formal diplomatic ties, perhaps inaugurating what Richard Falk and Andrew Strauss called ‘the New Diplomacy’, a conception of global governance which puts civil society organisations at the centre of efforts to improve the existing architecture for international cooperation (Falk and Strauss 2001). Although ICBL members had differing reasons for wanting to ban landmines, ICBL coordinated their activities and harnessed the desire for a common end to generate the required energy to achieve a binding ban treaty. With the lessons of prior arms reduction movements and a bold, new vision for a nuclear-free future in mind, ICAN employed three key strategies which ultimately contributed to its success.

### **ICAN’s Strategy: Three Keys**

#### ***Key 1: Coalition Structure***

The first key to ICAN’s success was its structure as a minimally hierarchical coalition of civil society groups. The decision to decentralise and democratise was not an obvious one, particularly as it related to the nature of nuclear policy. As U.S. Diplomat James Marshall observed in 1949, the diplomatic and military apparatuses were the least receptive policy domains to democratisation. Unfortunately for nuclear prohibition and other arms reduction movements, this still holds true more than 70 years on (Marshall 1949: 83). In these domains, policymaking and agenda setting remain the domain of career professionals and, particularly in the nuclear sphere, technicians. This has historically limited the set of voices deemed to be legitimate in the space, negating ideas and perspectives arising outside the pro-nuclear establishment.

The successful engagement of civil society in diplomatic affairs, however, is not without precedent. During the drafting of the UN Charter in the wake of World War II, the U.S. Department of State invited over 40 domestic organisations to send representatives to the 1945 drafting conference in San Francisco. The delegates represented labour, business, agriculture, education, civic, and peace groups, among others, and contributed immensely to the American understanding of the Charter and to the nation’s eagerness to join the United Nations (an admittedly weak-by-design organisation). Crucially, their participation also augmented the belief among policymakers that the nation’s diverse interests would be represented, contributing to the Senate’s overwhelming 89–2 approval of the Charter.<sup>6</sup> Now more than ever, the globalisation of digital connectivity has enabled instant, low-cost engagement across the globe, allowing individuals and NGOs to play a more integral role in international relations than Marshall could have imagined. While the effects of this are only beginning to be seen, it is hopeful that the efforts of lay citizens will increasingly complement traditional forms of interstate diplomacy (Bhandari and Belyavina 2011: 1).

The work of non-state actors, particularly civil society groups, in diplomatic efforts has historically proven to have the most impact in its effects on institutions, communities and societies (Bhandari and Belyavina 2011: 1). Despite the frequent inability to directly affect policy, civil society efforts can have a significant influence on the perceptions and

emotions of policymakers, constituents and other actors in the policy space. For this reason, the decentralisation, democratisation and diminished influence of hierarchy within the ICAN coalition deepened ties between stakeholders, as each truly felt it had a meaningful voice and role to play.

### *Key 2: Shifting the Nuclear Discourse to Humanitarian Grounds*

This model enabled the inclusion of a plethora of voices and perspectives. The next key to ICAN's success was the content of the message these voices carried: ICAN affected a crucial shift in the nuclear discourse from a historically restrictive discursive space to one occurring on more universally intelligible humanitarian grounds. The movement capitalised on a reality that states' positions on nuclear weapons are not entirely rooted in technicians' coldly rational evaluations of deterrence and utility. Rather, they are also influenced by normative appropriateness and policymakers' entrenched perceptions (Borie 2012).

Building on the experience of the Mine Ban Treaty and Convention on Cluster Munitions (CCM), this shift would prove crucial in introducing doubts into the minds of policymakers on positions they had assumed to be true. In particular, ICAN sought to dismantle nuclear weapons' mystique by problematising the idea that nuclear weapons have some legitimising characteristic that other prohibited WMDs lack. In order to achieve this end, ICAN both minimised the credibility of the Cold War-era theory of deterrence and instead maximised humanitarian considerations. In fulfilment of ICAN's initial vision, these methods resulted in the TPNW containing language that effectively punctured the nuclear mystique, negating claims of any legitimatising quality possessed by nuclear weapons.

In affecting this shift, a key hurdle was the need to offer a substitute narrative to the theory of deterrence. For over 70 years, this dominant ideology has supported the nuclear apparatus and, as a result, entrenched a nuclear technocracy that has marginalised outsiders and non-nuclear states from the nuclear discourse (Bolton and Minor 2016: 388). At its heart, the theory of nuclear deterrence relies exclusively on consequentialist justifications as embodied in the concept of mutually assured destruction: that is, whatever ends they are believed to be able to achieve justifies their existence. In short, the belief that nuclear weapons make nuclear war prohibitively destructive is a sufficient basis for their existence, notwithstanding the obvious fact that were nuclear weapons non-existent, there would be no threat of nuclear war to begin with.

ICAN recognised early on that an effective disarmament initiative would therefore rely on problematising deterrence and distancing itself from the security framework that bases policy decisions on threats and fear (Bolton and Minor 2016: 385). To quote former U.S. Senator J. William Fulbright in 1964, 'the shape of the world a generation from now will be influenced far more by how well we communicate the values of our society to others than by our military or diplomatic superiority'. In the modern age, sustainable security cannot be created through threats and fearmongering; rather, it must be constructed through the building of relationships, work towards common goals, establishment of trust and recognition of mutual interdependence (Peebles 2017).

Indeed, the vast majority of global catastrophic risks facing humankind admit no solutions outside of a framework of much stronger international cooperation. Moreover, the reality is that threats to national security today are, in most regions, less based on the threat of armed invasion than ever before. Rather, they concern terrorism, cyber-security,



poverty, and environmental catastrophe. In each of these matters, nuclear weapons have little to no deterrent value (Peebles 2017). From 2020 to 2021, in the middle of the most disruptive global pandemic in a hundred years, having the most powerful army and largest nuclear arsenal in the world was irrelevant in the effort to protect American lives. During those two years, the number of American COVID-related fatalities surpassed the number of combat deaths the nation suffered in World War I, World War II, the Korean War, and the Vietnam War combined. Regarding environmental security, nuclear weapons not only lack deterrent value but risk causing decades-long incidences of radiation poisoning and contamination of air, soil, water, and food supplies.

Recognising this modern security landscape, the humanitarian impulse that formed the basis of ICAN's message challenged the framing of nuclear weapons as instruments of state security and stability. ICAN challenged the global community to consider nuclear weapons systems from the perspective of whether their use would cause unacceptable harm. This challenge extended beyond questions of legality to include moral and political assessments of nuclear weapons' potential effects on both civilians and combatants, and whether the use of such weapons could under any circumstance be legitimised by responsible states and military commanders (Minor 2015: 721). At its most simple, ICAN claimed the possession of nuclear weapons to be incompatible with universally accepted humanitarian considerations. This claim then shifted the burden of proof onto nuclear-armed states to show the legitimacy of their position rather than challenging the abstract idea of deterrence head-on, adding yet another vector of attack on the entrenched ideology (Minor 2015: 712). The humanitarian impacts of nuclear detonation range from the immediate blast (thermal radiation vaporising those at ground zero accompanied by a shockwave that destroys buildings and kills those further away) to long-term effects, including environmental contamination, cancer and genetic damage.

In support of its ideas, ICAN built on the precedent of the landmine and cluster munition ban initiatives to employ a data-driven approach using medical, economic, political, and environmental data that clearly defined the unacceptable impact of nuclear weapons use. Placing nuclear weapons within the framework of other banned weapon classes and measuring them according to the same criteria denied their unique nature. After all, as former UN High Representative for Disarmament Angela Kane remarked in relation to the stigma that exists around other weapons of mass destruction, 'how many states today boast that they are 'biological-weapon states' ... who speaks of a bioweapon umbrella?' (Kane 2014).

In promoting its humanitarian agenda, coalition-building could not be an end in and of itself for ICAN. The coalition's ability to gain representation in international fora, which vary in the extent to which they include civil society groups in discussions, proved to be another crucial hurdle (Foster and Shelden 2019: 34). Part of the solution to this problem was the organisation of three Humanitarian Impact Conferences, beginning in Oslo in 2013 and concluding with Nayarit and Vienna in 2014. These conferences incorporated new voices in the call for nuclear prohibition, including the *hibakusha* (survivors of the atomic bombings in Japan) and survivors of nuclear test sites in the Marshall Islands, Australia and the United States. Although marked by the notable absences of the five nuclear-armed states that are signatories to the NPT (China, France, Russia, the United Kingdom, and the United States),<sup>7</sup> the conferences, with 179 countries attending one or more of them, demonstrated the increased international will to make a change in the nuclear landscape and avoid traditional fora to do so.

The Humanitarian Impact Conferences enabled ICAN to accomplish the crucial work of building relationships, working with like-minded parties towards a common goal and establishing trust. In their wake, joint statements to the United Nations General Assembly on the subject garnered similarly substantial support. In 2013 and 2014, for instance, New Zealand delivered statements endorsed by 125 and 155 countries, respectively. In 2015, the humanitarian concerns ICAN had championed among members of the international community were codified in a United Nations General Assembly resolution which recognised that nuclear weapons present ‘unacceptable risks’ and as such ‘[pose] the most serious threat to mankind and to the survival of civilization’ (United Nations General Assembly 2015). The shift ICAN affected, embodied by this resolution, further heightened normative pressures towards nuclear prohibition. ICAN would leverage this pressure in its striving towards the establishment of a comprehensive nuclear ban treaty.

### *Key 3: Exerting Normative Leverage*

The third key to ICAN’s success was its utilisation of normative power, primarily through ‘naming-and-shaming’ tactics, to apply additional normative pressure towards nuclear prohibition and to extend the influence of the TPNW, even before its entry into force. In addition to backstopping signatories’ legal obligations, this pressure influenced non-signatories as well.

The practice of naming and shaming—calling out and shaming actors violating norms on the international stage—has a proven record of efficacy. Shaming violators of international norms serves a dual function by influencing the behaviour of the violating party and of non-violator parties; the latter internalises the norm by aiming to avoid a similar fate as the violator and through the public confirmation that the norm is broadly shared (Wexler 2003: 564). Given the didactic and self-reinforcing consequences of violations, perfect compliance is not required for the development or strengthening of a norm.

To isolate the normative capacity of international treaties, it is helpful to look at changes in the behaviour of non-signatory states. As the Mine Ban Treaty entered into force, Egypt, although not a party to the Treaty, announced a policy in parallel against producing landmines. Similarly, since the CCM entered into force in August 2010, the non-signatory United States has only used cluster munitions once in an isolated strike in Yemen. Prior to the Treaty’s entry into force, cluster munitions had been a fixture of U.S. military strategy dating back to the Vietnam War. In 2016, the United States went a step further and halted transfers of cluster munitions to Saudi Arabia, which used them frequently in airstrikes against Houthi forces in Yemen (Sanders-Zakre 2020: 8). This move came in response to significant evidence that the munitions were causing unacceptable harm to civilians. According to *Cluster Munitions Monitor*, 92 per cent of cluster munition casualties worldwide between 2010 and 2014 were civilians (Landmine & Cluster Munitions Monitor 2015).

The Mine Ban Treaty and CCM also effectively discouraged production and investment in companies that produce prohibited weapons. In tandem with the entry into force of the Mine Ban Treaty, the ICBL took to naming and shaming landmine manufacturers. Together with Human Rights Watch, it sought to inform the American public about the relationship between U.S. companies and landmine production. Its efforts prompted numerous companies to renounce that relationship, and the mere investigation prompted 17 manufacturers to renounce any future involvement in the landmine trade (Wexler 2003: 573). A similar case occurred in the wake of the CCM’s entry into force when Textron and Orbital ATK, two companies that produced cluster munitions in the United

States, halted production even though the United States was not a party to the pact. The Treaty's normative influence extended into the financial sector as well when the U.S.-based mutual fund Eventide Asset Management excluded companies that produce cluster munitions from its investments in November 2017 (Sanders-Zakre 2020: 8).

With this wealth of precedent in mind, ICAN launched a global nuclear divestment initiative called 'Don't Bank on the Bomb' in 2012. Spurring a norm not just against states but also against corporations, the initiative sought to delegitimise nuclear weapons by publishing an annual index of companies in the nuclear armaments field. It also denounced financial institutions investing in companies identified as being involved in the production and maintenance of nuclear weapons (de Champchesnel and Reisman 2018: 8). As a result of this initiative and the TPNW five years later, a number of weapon manufacturers and financial institutions have stepped away from supporting the nuclear supply chain, including one of the largest pension funds in the world, the Dutch fund ABP, which announced in January 2018 that it would divest from nuclear weapon production companies (Sanders-Zakre 2020: 9).

The shaming and education strategies employed by the ICBL, cluster munition campaign and ICAN demonstrate the potential of norms to influence the agendas of states, non-state actors and corporations alike (Wexler 2003: 605). Furthermore, they highlight the mutually reinforcing power of norms and treaties. Learning from these examples and harnessing the lessons learned to push for an ambitious nuclear prohibition treaty, ICAN would achieve its greatest success with the TPNW.

## **The TPNW**

ICAN's efforts towards a nuclear ban treaty culminated with the negotiation, ratification and entry into force of the TPNW (ICAN 2017). Alongside and in tandem with ICAN, the broader nuclear prohibition movement was energised by widespread recognition of the NPT's inefficacy and insufficiency. As faith waned in that treaty, hope was generated that a newer, better treaty might have greater effect. The movement benefitted from renewed political capital and diplomatic energy when then-U.S. President Barack Obama endorsed the goal of a nuclear-free world in a 2009 Prague speech.<sup>8</sup>

This energy continued through the 2010 NPT Review Conference, where proposals for a nuclear ban treaty emerged (although without immediate consequence). The movement found stronger footing when the 2015 iteration of the NPT Review failed to adopt a consensus final document, despite the endorsement of 160 states. Rather than work within existing fora, dissatisfied parties sought to transition efforts to a new working group within the United Nations General Assembly. The working group was formed, albeit without the participation of the nuclear-armed states; it met three times in 2016 with discussions focused on how to move the disarmament agenda forward. Tension developed between states advocating a swift ban and other states, those with a nuclear reliance, wanting to move more slowly and towards a more constrained set of objectives. The proponents of an outright ban were to prevail, and the working group voted to adopt a resolution recommending the United Nations General Assembly convene a 2017 conference to prohibit nuclear weapons. This resolution was approved by the full United Nations General Assembly body, and negotiations took place during two sessions in the spring and summer of 2017. From these sessions, the TPNW was born and formally adopted on July 7, 2017. Throughout these sessions, all rounds of negotiation were boycotted by the nuclear states, most of NATO and many nuclear-reliant states.

The TPNW was the first, and remains the only, nuclear arms control agreement to frame nuclear weapons strictly in terms of the threat they pose to international humanitarian and human rights law (Fihn, Bolton and Minor 2019). Of the many humanitarian threats nuclear weapons pose, the Treaty specifically notes their ‘grave implications for human survival, the environment, socioeconomic development, the global economy, food security and the health of current and future generations’ (ICAN 2017). The TPNW recognises the principle of international humanitarian law that ‘the right of parties to an armed conflict to choose methods or means of warfare is not unlimited’ (ibid.). The Treaty builds on the taboo against nuclear weapons, placing them alongside other pariah weapons that are banned under international humanitarian law as causing unnecessary suffering and having indiscriminate and/or disproportionate effects.

In further alignment with the treatment of other WMD, the Treaty differed from prior nuclear reduction and prohibition treaties in its integration of a concrete plan for the elimination of nuclear arms, including clear steps and a verification process. Article 1 of the TPNW places a categorical ban on nuclear weapons, making them illegal under the same type of international law covering other WMD, such as chemical and biological weapons, and weapons deemed indiscriminate, such as landmines and cluster munitions: ‘states are prohibited to use, threaten to use, develop, produce, manufacture, acquire, possess, stockpile, transfer, station, or install nuclear weapons or assist with any prohibited activities’ (ICAN 2017).

Such a ban is noted as ‘the only way to guarantee that nuclear weapons are never used again under any circumstances’ (ICAN 2017). This includes ‘detonation by accident, miscalculation or design’ and places the burden of responsibility for preventing nuclear detonation on all states, whether nuclear-armed or not (ibid.). By not only banning the use of these weapons but also articulating a comprehensive prohibition against their possession, the TPNW has established a framework for, and created more favourable conditions for, the elimination of nuclear weapons worldwide.

Upon acceding to the Treaty, signatory states must declare whether they have eliminated a previous nuclear weapons programme, currently have nuclear weapons or hold another country’s nuclear weapons within their territory, and if so, they must be eliminated or removed. Whereas the NPT does not require states to adopt or maintain safeguard protocols, the TPNW requires signatories to adhere to their current International Atomic Energy Agency (IAEA) safeguard agreements and, if none are already in place, to implement safeguards within 18 months.

Regarding non-signatories, Article 12 of the Treaty mandates signatory states to urge non-signatories to join. Holding the door open for nuclear-armed states to join, the Treaty includes two pathways for them to join: either join the Treaty and then destroy their nuclear weapons or destroy their nuclear weapons and then join the Treaty. States that destroy before joining must cooperate with a ‘competent international authority’ designated by the Treaty to verify dismantlement of its arsenal. States that join before destroying must immediately remove nuclear weapons from operational status and submit a time-bound plan for destroying the weapons within 60 days of joining the Treaty.

A final issue requiring resolution was to break from other treaties’ practice of requiring consensus decision-making. While this provision accelerates the gathering of signatures, as states need not fear they will be bound by a resolution they are not in favour of, it results in either the lowest common denominator agreements or paralysis. The TPNW sought to avoid the worst-case scenario of consensus decision-making that states had experienced as part of the UN Conference on Disarmament. At that conference, in a

remarkable mixture of lassitude and incompetence, the parties were unable to agree on even an agenda from 1996 to 2018 (Ruff 2018: 235). Fortunately, the TPNW only requires a two-thirds majority for amendments or other decisions. Through all of its efforts, ICAN has proven itself more than willing to press forward with or without the support of the nuclear-armed states.

## **Conclusion**

From its origin in 2005, ICAN confronted the dynamic and increasingly volatile global nuclear landscape with a new vision and approach. Deviating from past failures of nuclear reduction and prohibition efforts, ICAN looked towards more successful arms reduction efforts, such as the ICBL, as models on which to pursue nuclear prohibition. In its mission to achieve the passage of a nuclear ban treaty, ICAN employed three key strategies. First, it mobilised a global coalition of civil society partner organisations to generate momentum at the national level. This minimally hierarchical approach encouraged the engagement of a diversity of stakeholders. Second, the humanitarian shift it affected in the nuclear weapons discourse fundamentally altered the perspective, prevailing voices and entrenched narratives that had stymied progress for so long. Crucially, the shift removed nuclear weapons' mystique and forced engagement on the issue to take place on a concrete, human level rather than on the plane of abstract geopolitical theories. Thirdly, its self-conscious reliance on normative power both blunted the impact of nuclear-armed states' resistance to its efforts and extended its influence to non-state actors, including weapons manufacturers and financial institutions. Together, these strategies helped ICAN secure the international momentum necessary for action within the United Nations General Assembly, ultimately culminating in the TPNW.

Despite its remarkable success, ICAN continues to be met with scepticism, largely concerning the efficacy of the TPNW it helped bring into being. Some worry whether such a treaty can truly advance global peace without being ratified by the world's nuclear powers. While it is too soon to tell, the well-documented normative impact of past treaties offers hope that it can. It is also important to keep in mind that much of the TPNW's strength lies not in its legal implementation and operationalisation but in its status as a legally binding document that will further bolster the international norm against nuclear weapon use (de Champchesnel and Reisman 2018: 8). During the Treaty's negotiation, ICAN itself argued that the power of the Treaty would be the normative power it conveyed, rather than any coercive mechanisms it contained (Bolton and Minor 2016: 319). In just five years since its ratification, these normative effects have already begun to show among signatories and non-signatories alike. It is unlikely that nuclear-armed states will ratify the TPNW in the near future. However, the Treaty has without doubt placed greater pressure on these states and has forced them to engage in a humanitarian discursive environment in which past rationalisations fall short.

Beyond the unprecedented impact it has had on the nuclear discourse, ICAN has proven that landmark international agreements can have their nexus in individuals and grass-roots coalitions. The model established by ICAN—and in particular the three strategies explored in this chapter—will hopefully galvanise similar movements to break geopolitical gridlock and reframe the public conception of key issues facing the global community. From food insecurity, migration and climate change to economic instability and widespread human rights violations, there is no shortage of crises facing the global community today. The decentralised, democratic and minimally hierarchical model

ICAN embodied may be exactly what is needed to energise collective international action on these issues. As we seek solutions, the inclusion and empowerment of diverse voices and perspectives will strengthen international efforts and help to ensure that the policies pursued meaningfully differ from those that gave rise to the current state of affairs.

Jonathan Schell's (1982) *The Fate of the Earth*, a work of impressive moral force and uncanny prescience, offered a key contribution to the world's understanding of the potential consequences of the use of nuclear weapons to settle international disputes. While not the first person to sound the alarm regarding the dangers of nuclear weapons, Schell was unique in the range, strength and eloquence of his arguments. In addition to the moral issues raised by their use, he was acutely conscious of the need for new governance mechanisms to forestall and prevent a nuclear cataclysm, contending that lasting international peace would be feasible only in the context of the creation of effective global institutions based on the principles of collective security. As he stated in *The Fate of the Earth*, 'I would suggest that the ultimate requirements are in essence ... global disarmament, both nuclear and conventional, and the invention of political means by which the world can peacefully settle the disputes that throughout history it has settled by war'. Schell was no longer alive when the TPNW came into being, but we have no doubt that he would have been a strong supporter, seeing it as an important—perhaps exceptionally important—innovation to our existing global governance architecture.

We have organisations for the preservation of almost everything in life that we want but no organisation for the preservation of mankind. People seem to have decided that our collective will is too weak or flawed to rise to this occasion. They see the violence that has saturated human history and conclude that to practice violence is innate to our species. They find the perennial hope that peace can be brought to the earth once and for all a delusion of the well-meaning who have refused to face the 'harsh realities' of international life—the realities of self-interest, fear, hatred, and aggression. They have concluded that these realities are eternal ones, and this conclusion defeats at the outset any hope of taking the actions necessary for survival.

(Schell 1982)

## Notes

- 1 TPNW ratification count as of December 5, 2022.
- 2 It is important to note that the U.S. invasion of Iraq was later determined to be based on flawed intelligence about the Hussein regime's possession of WMD.
- 3 A senior Chinese military official stated his belief that the United States would stay out of a Taiwan conflict because U.S. leaders care more about Los Angeles than Taipei (Gellman 1998).
- 4 It must be noted that the direct threat of nuclear attack has been used numerous times, most notably during the Korean War, the 1961 Berlin Crisis, the 1962 Cuban Missile Crisis, and the 1973 Arab-Israeli War.
- 5 ICAN's winning of the prize continued a tradition of the Nobel Committee seeking to highlight organizations working towards the goal of nuclear nonproliferation and disarmament. Prior winners in this effort included the American chemist Linus Pauling, who worked to combat nuclear weapons testing in 1962; Japanese Prime Minister Eisaku Sato for his renouncement of the nuclear option for Japan in 1974; two diplomats, Alva Myrdal and Alfonso Garcia Robles, who worked towards disarmament at the United Nations in 1982; International Physicians for the Prevention of Nuclear War in 1985; the NGO Pugwash in 1995; and the International Atomic Energy Agency (IAEA) in 2005.

- 6 It is also important to note that another primary reason for the U.S. Senate's overwhelming approval of the Charter was because the veto power granted to the United States as a permanent member of the Security Council effectively exempted the United States from the Charter's obligations. As noted by Cord Meyer (1947), a member of the U.S. delegation to the 1945 San Francisco Conference, 'a major power can violate every principle and purpose set forth in the Charter and yet remain a member of the organization by the lawful use of the veto power expressly granted to it'.
- 7 These states took a joint position to boycott the meetings under the logic that the humanitarian discourse would undermine the strength and continued influence of the NPT—the treaty including obligations with which these same states are non-compliant.
- 8 While the Obama administration did not secure global nuclear disarmament, it did take incremental steps towards reducing the nuclear threat. These include convening 3 Nuclear Security Summits involving 50+ leaders that resulted in the removal of highly enriched uranium and plutonium for 50+ facilities in 30 countries, the negotiation of the Joint Comprehensive Plan of Action (informally known as the Iran Nuclear Deal) and the negotiation of the New START Treaty with Russia in 2010.

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