

Sascha Hach

# RULE & RESISTANCE IN THE NUCLEAR ORDER

The Subversive Struggle for a Nuclear Weapons Ban

[transcript] PoliticalScience

Sascha Hach

Rule & Resistance in the Nuclear Order

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law by the end of the book. This image takes up a central theme that was addressed in the interviews about the patriarchal dominance within the nuclear order.

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# Introduction & research design

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## Relevance & research question

The nuclear shielding of Russia's war of aggression against Ukraine in February 2022 shook the foundations of trust in the reliability of the nuclear taboo and the stability of the nuclear order. The world's largest nuclear power and a permanent member of the United Nations Security Council unsettled the understanding that nuclear deterrence serves exclusively to prevent or avert existential threats to a nation within the framework of the right of self-defense. This was the only purpose of nuclear threats that the International Court of Justice had not ruled out in its opinion in July 1996 (ICJ 1996). In response to Moscow's nuclear sabre-rattling, nuclear deterrence is experiencing a considerable revaluation in several countries, especially in Western nuclear powers and states under the United States' nuclear umbrella, both at the political leadership level and among the population (NDR 2022, Strategic Posture Commission 2023). Strengthening and expanding nuclear deterrence appears to be a first-choice coping strategy, even though nuclear warfare options in doctrines had already been successively expanded before the war (US 2018, Russia 2020) – without any measurable positive effect on the security environment. When Russian President Vladimir Putin directed his attempts at nuclear blackmail against a non-nuclear weapon state, he took this dynamic of removing the boundaries of nuclear threats to the extreme.

The expansion of nuclear deterrence and options for nuclear warfare require corresponding armament and deployment to maintain credibility. It therefore comes as no surprise that all nuclear weapon states, in particular the United States and Russia, are modernizing their arsenals. The Stockholm International Peace Research Institute confirms a dramatic increase in investment in the qualitative development of warheads and delivery systems, and in the case of China also a significant quantitative expansion of its nuclear forces (SIPRI 2024, pp. 315–324). With North Korea, the number of states known to possess nuclear weapons has also recently increased (CTBTO 2017). Today, the nine nuclear weapon states (United States, Russia, United Kingdom, France, China, India, Pakistan, North Korea and Israel) together have approximately 12,100 nuclear weapons, of which about 2,100 – a growing number –

are kept in a state of high operational alert (SIPRI 2024, pp. 271–272). In addition, a renaissance in the stationing and operationalization of nuclear weapons on allied territories can be observed, as evidenced by the start of the deployment of Russian nuclear forces in Belarus (Bugos 2023a) and the swift procurement of new delivery systems in Germany (Kuhn 2023).

Meanwhile, the nuclear arms control and disarmament framework has undergone a fundamental erosion throughout the past two decades. The termination of the Anti-Ballistic Missile Treaty in 2002 by the Bush administration and the build-up of the National Missile Defense program had global implications on strategic balance (Acton 2021) and triggered a process of disintegration of the arms control architecture that was subsequently driven by both Russia and the United States. The Treaty on Conventional Forces in Europe (Nelson and Twardowsky 2022), the Intermediate-Range Nuclear Forces (Maitre 2020) and Open Skies Treaty (Woolf 2021) fell victim to this trend, which further intensified in the context of the war in Ukraine. The Russian government suspended the New Strategic Arms Reduction Treaty in spring 2023 (Bugos 2023b), and the Duma withdrew Russia's ratification of the Comprehensive Test Ban Treaty in the fall of the same year (Koplow 2023). The multilateral international forums have also been in turmoil for a long time. The Geneva Conference on Disarmament has been deadlocked for over two decades. Within the regime of the Nuclear Non-Proliferation Treaty (NPT), agreements and action programs are hardly being implemented by the nuclear weapon states (Müller 2005, 2010b, Mukhatzhanova 2015, Potter 2016).

In summary, whether we look at nuclear posture and deterrence practice, nuclear armament and deployment, or nuclear arms control and disarmament, it has been the major nuclear powers who have repeatedly taken the axe to the nuclear order over the past twenty years. The deteriorating relationships among nuclear weapon states and the resulting unstable security environment are further complicating substantial progress in nuclear disarmament and risk reduction. There is currently no nuclear weapon state that is not in a crisis or acute conflict situation.

Against this backdrop, it seems misguided to focus solely on nuclear weapon states when it comes to preventing the collapse of the nuclear order or placing it on a more solid footing. Looking at the stance of non-nuclear weapon states and a better understanding of what *they* want and (can) accomplish, by contrast, promises to be all the more insightful. Indeed, numerous non-nuclear weapon states have been providing a central and often underestimated pillar of the global nuclear order for decades with the establishment of nuclear-weapon-free zones, some of which span entire continents (Hamel-Green 2009, Finaud 2014). But it is a much more recent achievement of non-nuclear weapon states that sheds light on their potentially productive role. After record-breaking short negotiations, a total of 122 non-nuclear weapon states adopted the Treaty on the Prohibition of Nuclear Weapons (TPN) on July 7, 2017 (UN 2017i). This comprehensive ban puts nuclear weapons on an equal

footing with other weapons of mass destruction and seeks to lay the foundation for the complete elimination of nuclear arsenals.

The TPN was initiated and realized by the so-called Humanitarian Initiative, a coalition of non-nuclear weapons states from almost all continents, civil society, the International Committee of the Red Cross and academia (Kmentt 2015, Minor 2015). The movement emerged in 2010 with the aim of bringing the humanitarian dimension of nuclear weapons to the center of the debate and making International Humanitarian Law the basis for further legal discussions. It launched the process of outlawing nuclear weapons because of their devastating humanitarian consequences and carried it forward until the negotiations and adoption of the TPN. The President of Austria, one of the leading states in the Humanitarian Initiative, already encapsulated this objective at the High-Level Meeting of the United Nations General Assembly on nuclear disarmament in September 2013, stating that nuclear weapons “should be stigmatized, banned and eliminated before they abolish us” (Austria 2013b).

The fierce rejection of some nuclear powers (US 2017, UNCD 2017, pp. 4–5), however, suggests that this was not “just” about humanitarian issues. Rather, the Humanitarian Initiative had gained a political space for action with the TPN process that it was not entitled to in their eyes. From this angle, the treaty was not only directed against nuclear weapons and the harm they cause, but an affront to their owners. It can be indeed argued that a majority of non-nuclear weapon states rebelled for the first time with the force of international law against the minority of nuclear weapon states and their allies who had collectively rejected the mandate to negotiate a ban treaty (UNGA 2017). The TPN thus represents a remarkable chapter not only in the diplomatic history of nuclear arms control and disarmament, but in international relations as a whole (Kmentt 2021, p. 2). A group of militarily marginal states pursued an ambitious political goal and realized it against the will of the militarily most powerful states.

The question arises as to whether the Humanitarian Initiative and the TPN process actually constitute a resistance movement against these “nuclear rulers” of the international order rather than a merely humanitarian-motivated disarmament coalition. It is further striking that the movement relies in particular on the political support by non-nuclear weapon states from the Global South. To explore this more, it seems helpful to draw on critically informed approaches and to keep an eye on a possible post-colonial dimension. This study therefore addresses the following research question:

**What role did resistance to nuclear rule and an anti-colonial impetus play for the supporters of the Humanitarian Initiative and the Treaty on the Prohibition of Nuclear Weapons (TPN), and how were they able to realize their project of in-**



### **ternational legal reform against the will of the nuclear weapon states and their allies?**

If we consider the Humanitarian Initiative and the TPN as a form of resistance, such disobedience would appear all the more delicate as nuclear weapons play a unique role in the international order. The five permanent members with veto rights in the United Nations Security Council have so far been permitted to possess nuclear weapons under the NPT. This means that precisely those states that already occupy a prominent position in global governance within the United Nations hold a further privilege under international law by virtue of their recognized status as nuclear weapon states. In addition, the particular influence of the permanent members of the Security Council on institutions and instruments of nuclear arms control and the verification of nuclear disarmament underlines the fact that nuclear weapons are a “matter for the boss”. Therefore, the value of nuclear weapons cannot be understood solely in terms of their military significance. They are also a symbol of power and geopolitical superiority.

With its prohibitions in Article I, the TPN challenges the legal status of the five nuclear weapon states recognized in the NPT (United States, Russia, United Kingdom, France, China) and their current legitimization of nuclear weapons (UN 2017i, Art. I). Moreover, the disarmament arrangements outlined in Article IV provide an impulse for multilateralization in this area (UN 2017i, Art. IV). By questioning the legitimate possession of nuclear weapons under international law and anchoring such a right of participation in the TPN, its supporters assert their claim to global governance competence and their will to co-determine the conditions to achieve a nuclear-weapons-free world. In light of the current global power shifts and the progressive decline of the leading world powers from the 19th and 20th centuries, it seems highly relevant to clarify the extent to which resistance to a ruling regime is at play and what this means for the stability of the nuclear order.

To investigate this further, our research question contains three tracks that will help us gain deeper insights. Firstly, the focus of the study will be on the actors who participated in the Humanitarian Initiative and the TPN process and examine their perceptions and motivations as well as their actions. Only from this perspective can we understand whether resistance to nuclear rule had been a driving factor. Instead of the usual focus on the assumed rulers, who would never admit that the creation of the non-proliferation regime was in no small part about establishing nuclear rule, we are placing the ruled at the center of the analysis. An investigation of the “resisters”, examining their composition, characteristics, views and behavior promises to provide new insights into the nature of the nuclear order, following the motto: “Show me your resistance and I’ll tell you what kind of rule you’re living under!”.

Secondly, the role of actors from the Global South and a possible anti-colonial impetus will be given special consideration. Statements by some of those states indi-

cate that the TPN is not only a treaty against nuclear weapons, but also targets their owners, the nuclear weapon states, and that we are in fact dealing with a rebellion. During the general debate at the 2015 NPT Review Conference, the South African representative declared that “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). Such comments reflect a language of struggle, if not of anti-colonial resistance. But do they also reflect the spirit of the movement as a whole, or are they merely individual opinions?

Finally, the analysis will elaborate on the special means used by the resisters to bring the TPN into being. Since the adoption of the NPT and its entry into force, there have been ongoing contentions against its discriminatory features. Time and time again, non-nuclear weapon states have denounced the refusal of nuclear weapon states to disarm, forming various alliances, initiatives and movements to vent their anger and increase pressure. But this has never led to an alternative international treaty claiming to shape the future design of the nuclear order. On the contrary, it is rare for an alternative proposal for restructuring international relations to be cast in international law and a novelty in the nuclear field. Central pillars of the global order, such as the United Nations system and the institution of the Security Council, are proving to be tenacious and difficult to reform, despite growing criticism and geopolitical changes. So how were the Humanitarian Initiative and the TPN movement able to succeed in implementing their political goal against the resilience of the prevailing structures and the will of the militarily most powerful states, despite their unfavorable starting position? Solving this puzzle requires an examination of the specific strategies and instruments that have been used.

## Summary

This research explores the above-mentioned question of the role of rule and resistance and possible anti-colonial motivations behind the Humanitarian Initiative and the TPN movement, and examines in which ways and by what means they were able to successfully achieve their political and diplomatic goals. To conceptualize our object of investigation, we combine a theory of rule and resistance inspired by classical sociology with a postcolonial perspective. Drawing on the sociological concept of Max Weber (Weber 1985) and focusing the analysis on resistance (Daase et al. 2023a), this study defines rule as *a constant form of exercising power within institutionalized relationships of super- and subordination, which systematically expands or restricts the actors' scope for action and influence on control*. Resistance, in turn, is understood as *the withdrawal of recognition and thus the questioning and challenging of institutionalized relationships of super- and subordination affecting the actor's scope for action and influence on control*. This terminological approach is coupled with a post-colonial perspective

to identify colonial patterns within the nuclear order and trace a possible anti-colonial sentiment among the resisters. Six components of colonial rule – *excessive violence, eurocentrism, primacy of the state, racism, economic exploitation and patriarchal domination* – are distilled from the extensive body of post-colonial literature and used to trace colonial imprints in the nuclear context and examine the extent to which they played a role in the self-image and motivation of the resistance.

For answering the two-fold research question, the NPT (rule) and the process to the TPN (resistance) are examined within the framework of a comprehensive case study. We use a two-pronged methodological approach, combining a structured analysis of the norm genesis and the norm substance of the TPN, taking into account the NPT context, with a qualitative content analysis of interviews with supporters and sympathizers of the Humanitarian Initiative. Consequently, this study relies on a double data set. First, this includes extensive primary sources from the development process of the TPN, including protocols, reports and outcome documents of relevant international fora, conferences and institutions, official statements of state and non-state actors, *travail préparatoire* and treaty texts. Second, we use the data collected in over thirty in-depth expert interviews with high-level diplomats and civil society representatives. The investigation period extends from the beginnings of the Humanitarian Initiative in 2010 to the conclusion of the TPN in 2017.

The findings of this study prove that resistance against nuclear rule enshrined in the NPT was, alongside humanitarian concerns, a decisive driving force for the actors united in the Humanitarian Initiative and the TPN process. The vast majority reject the continued hierarchy and discrimination within the nuclear order and denounce nuclear weapon states' steering and non-nuclear weapon states' small influence. By participating in the Humanitarian Initiative and the TPN, they pursue equality and diversity and intend to empower the non-nuclear weapon states vis-à-vis the nuclear weapon states. An anti-colonial impetus is also clearly recognizable, particularly among states from the Global South, which have assumed an increasingly important political role in the movement during the TPN's emergence. However, the criticism of nuclear colonialism turns out to be selective and concentrates on certain facets of the nuclear order, especially the legacy of nuclear testing. Anti-colonial rhetoric was multi-layered, differed in strength and varied regionally. Among the focal points were the rejection of (the threat of) excessive nuclear violence and the strengthening of the subaltern and Global South perspective.

The study also sheds light on how the Humanitarian Initiative and TPN supporters – in contrast to earlier instances of contestation in previous decades – managed to manifest their defiance in a legally binding international counter-treaty, despite the structural resilience of the nuclear *ancien régime* and against the declared will of the militarily most powerful states. To succeed, the resisters relied on *subversive opposition activities*. These were always in accordance with the rules and did not violate international law. However, drawing on discursive and procedural principles

that had not previously been applied in relation to nuclear weapons and the nuclear order, the proponents of the ban subversively changed the rules of the game.

On the one hand, they used established *discursive means* to break the hegemony of the nuclear weapon states and their deterrence paradigm in the nuclear weapons discourse by resorting to the humanitarian framing, which had previously been applied to other types of weapons. In doing so, they particularly distressed the umbrella states, who had to choose between loyalty to the nuclear rulers and their own humanitarian self-image. They also exploited the humanitarian code to open new fora for action (Conferences on the Humanitarian Impact of Nuclear Weapons) and to launch diplomatic initiatives within the framework of the UN and the NPT (Humanitarian Statements, Humanitarian Pledge).

On the other hand, they circumvented the consensus principle and the control by denial of the nuclear weapon states and the umbrella states with the help of already existing *procedures* by using the majority-based modus operandi of the United Nations General Assembly for their further diplomatic operations. This enabled them to capitalize on their numerical superiority within the United Nations institutional framework and establish an Open-Ended Working Group on nuclear disarmament and convene the Negotiating Conference for the TPN, both of which worked according to the same rules of procedure.

The recourse to subversive discursive and procedural means as well as the slimmed-down anti-colonial agenda were decisive prerequisites for the success of the resistance. Even if it was subversive, almost sneaky, it always remained in the mode of an opposition movement and adhered to existing rules. Indeed, it portrayed itself as a promoter of compliance, as an action alliance for the implementation of NPT agreements. The NPT nuclear weapon states and their allies were ultimately impotent against such a coordinated coalition of non-nuclear weapon states and their clever diplomatic tactics. At the same time, this creative instrumentalization of contradictory functional mechanisms of the prevailing international order reduced the resistance's potential for transformation. The use of established discursive and procedural means came at the price of reproducing fundamental principles and institutional arrangements of the existing international (nuclear) order.

“Rule & Resistance in the Nuclear Order” exposes the structures of rule in the NPT and reveals how these have been challenged by the Humanitarian Initiative and the TPN. Understanding this as an act of resistance helps to better recognize the functional mechanisms of nuclear rule, how they can be circumvented and what changes are needed to improve the stability and legitimacy of the nuclear order. It also allows to uncover the partly anti-colonial motivations behind the ban movement. With these findings, this study provides an important contribution to deepening and broadening our understanding of the nuclear order and its practices of rule and resistance. It demonstrates the possibilities and productive potential of

contestation as well as the limits of available effective methods. At the same time, it allows us to better grasp the relationships of super- and subordination in the steering of global affairs in general, as well as the inherent dynamics and opportunities for resistance and change.

## Methodology

The first part of the research question is interested in the perceptions and motivations of the alleged nuclear resisters, while the second part focuses on their actions and means. The chosen research design and methodology to answer this two-fold research question can best be described as a comprehensive case study with several analytical combinations. The first combination consists in its terminological and conceptual approach. Two strands of theory will be combined to form the analytical framework. Firstly, it uses a sociologically inspired conception of rule and resistance that draws on Max Weber's theory of rule and focuses on the investigation of resistance (Daase and Deitelhoff 2015, Daase *et al.* 2017b, Daase *et al.* 2023a). Secondly, it deploys critical and post-colonial approaches that highlight the idea of post-colonial continuity and are sensitive to its discursive and epistemic dimension. To grasp and operationalize this in concrete terms, six components of colonial imprints will be derived from post-colonial literature: *Excessive violence*, *eurocentrism*, *primacy of the state*, *racism*, *economic exploitation*, and *patriarchal domination*. The study is thus based on a hybrid theoretical framework, for which two different existing approaches are adapted.

This mixture of terminology and concepts is reflected in its methodological approach. For answering the research question and investigating the object of study (rule and resistance in the nuclear order), the NPT (rule) and the process leading to the TPN (resistance) together form a case to which we ascribe a high degree of significance and generalization potential. To analyze this case, two methods and thus two types of data sets are combined. Firstly, we will carry out an analytically structured study of norm genesis and substance of the TPN, considering the NPT context and using mainly extensive primary sources. Embedded in this, secondly, we conduct a qualitative content analysis, for which special data is collected in a series of expert interviews. Consequently, this research project is a hybrid of several combinations or pairs: its terminological-conceptual grip, its methodological approach and its empirical data basis. The aim of this triple pairing is to acquire a comprehensive and differentiated understanding of the object of investigation, which essentially represents a couple itself (rule and resistance), and to answer the equally twofold research question (on perceptions/motivations and actions/means).

## Case selection

This book presents a qualitative single case study of rule and resistance in the nuclear order based on the NPT and the process towards the TPN. A qualitative case study is an empirical analysis of a small sample of bounded empirical phenomena that stand for similar larger phenomena (Rohlfing 2012, p. 27). The NPT and the process leading to the TPN together provide the case for the investigation of rule and resistance in the nuclear order. The NPT is seen as *pars pro toto* for the nuclear rule, the TPN as an outstanding example of resistance to it. The idea is to use them to gain deeper insights into the overall phenomenon. But what qualifies them for this purpose?

The NPT on the one hand and the TPN on the other represent two different conceptions of the nuclear order, both of which are backed by international treaties and thus ultimately manifest themselves in codified form. Both treaties and the groups of states supporting them have a global scope or are striving for it. Moreover, both claim to define framework conditions for the nuclear order, arms control and disarmament at a multilateral level.

With 191 member-states, the NPT is one of the most signed and ratified international treaties and the arms control agreement with the widest adherence, achieving near-universality. It represents almost the entire international community. Only India, Israel, Pakistan and South Sudan are not parties to the treaty. There is no other norm or regime in nuclear arms control, disarmament and non-proliferation that enjoys greater recognition. In addition, with the International Atomic Energy Agency (IAEA) serving as the regime's monitoring and verification body, it has recourse to the largest implementing institution in the field. Therefore, no other treaty embodies the *status quo* of the nuclear order better than the NPT.

The Humanitarian Initiative (HI) and the TPN, in turn, can be seen as a benchmark for the innovation of global norms, harboring transformation potential. The negotiations on the TPN were approved at the United Nations General Assembly (UNGA) in December 2016 with 113 votes in favor, 35 against and 13 abstentions (UN 2016). The Negotiating Conference was attended by 125 states from five continents. Consistent with the idea of resistance, the treaty is rejected by almost all the official nuclear powers and the military allies of the United States. China and the non-official nuclear powers India and Pakistan abstained from the UNGA vote. Among the biggest supporters of the treaty are the regional powers Brazil, South Africa and Indonesia. Consequently, the TPN has considerable geopolitical backing, albeit weaker than that of the NPT.

A closer examination of the HI and the TPN as resistance to the *status quo* therefore promises to provide new insights into the power structures in the nuclear order. It can shed light on characteristics and modes of operation that remain largely underexposed by the predominant focus on nuclear superpowers and their allies, even in academic studies. Before, *collective* resistance in the context of the nuclear order

was difficult to grasp and has therefore received little attention. Its manifestations were rather subtle, and its contours seemed to be fluid. It is precisely the crystallization of a tangible resistance movement within the HI and the TPN, which has a high value for research, offering a special opportunity for a bottom-up analysis of rule and resistance. With a support base primarily from the Global South, the case is also of outstanding interest for a post-colonial perspective.

The period under investigation, 2010–2017, extends from the time of the movement's first coalescence at the NPT Review Conference (RevCon) in May 2010 to its first substantial success, the adoption of the TPN in July 2017.

## Data basis

The empirical foundation of this study comprises, on the one hand, a comprehensive set of primary sources related to the norm genesis of the TPN as well as its norm substance, i.e. the treaty text itself. On the other hand, qualitative interviews were used to collect data on the perceptions and motivations of the resisters.

Primary sources for the analysis of the TPN norm genesis and substance

The primary sources for the analysis of the TPN norm genesis and substance include

- Protocols, documentation, reports and out-come documents of the NPT RevCon 2010 and 2015 and the NPT Preparatory Committees (PrepCom) held as part of the two review cycles in the study period, the Geneva Conference on Disarmament (CD), the three Conferences on the Humanitarian Impact of Nuclear Weapons (CHINW) in Oslo and Nayarit in 2013 and in Vienna in 2014, the sessions of the First Committee of the UNGA during the period under review, the 2013 UNGA high-level meeting on nuclear disarmament, the two Open-ended Working Groups (OEWG) on nuclear disarmament in 2013 and 2016 and the Negotiating Conferences on the TPN in March, June and July 2017 as well as their preparatory meeting in February 2017
- Relevant official statements, declarations and positions of governmental and non-governmental actors as well as state alliances that were made and developed throughout the process and at the above-mentioned conferences, bodies and forums
- *Travail préparatoire*, that is working papers, proposals, amendments und drafts (especially all drafts of the TPN treaty text) that were elaborated throughout the process and at the above-mentioned conferences, bodies and forums
- The adopted TPN treaty text
- Two detailed first-hand chronicles of the entire process, one by Ray Acheson (Acheson 2021b) from a civil society perspective and the other by Alexander Kmentt (Kmentt 2021) from an Austrian perspective, both directly involved and

leading participants who have compiled valuable background information and insights from informal meetings and processes

The primary sources used originate mainly from the archives and databases of the UNGA and the United Nations Office for Disarmament Affairs (UNODA), the United Nations (UN) Digital Library, the UN Official Document System and the UN Archives and Records Management Section. Not all relevant documents were always available on these platforms. This was remedied by the almost inexhaustible archive of the non-governmental organization (NGO) Reaching Critical Will (RCW), which carefully documents all meetings, debates, work processes and resolutions, including papers and texts that have not been published anywhere else.

#### Qualitative interviews

To learn more about the perceptions and motivations of the supporters of the Humanitarian Initiative (HI) and the TPN, it is worth talking to the people who were involved in the process. Therefore, this study conducted expert interviews with governmental and non-governmental representatives from the group of sympathizers or supporters of the HI and the TPN process. Data was systematically collected and evaluated in a qualitative content analysis (Gläser and Laudel 2009), using the special knowledge of the interviewees as “natural experts”, based on their insights, experiences and social interactions. In particular, the question of how they perceive the nuclear order and the NPT and what drove them to join the HI and the TPN are of interest. The aim was to find out first-hand whether the faith of recognition (*Legitimitätsglaube*) (Weber 1985) ascribed to the nuclear rule has dwindled and to what extent there is a resistant or even anti-colonial impetus behind the movement.

An indispensable source of contacts were recommendations and exchanges within the International Campaign to Abolish Nuclear Weapons (ICAN) network, in which the author was active from 2013–2018. Further contact details for relevant government representatives were obtained through lists of participants of relevant international conferences. The contacts for civil society representatives came from publicly accessible websites, personal address books or recommendations from former civil society colleagues. Another important source of contacts were recommendations from interviewees or well-connected colleagues within the nuclear arms control, disarmament and non-proliferation universe. In addition, a significant number of contacts were made during two field research trips. The first took place from June 18–24 2022, in Vienna in the context of the ICAN Civil Society Forum (CSF) and the TPN Meeting of States Parties (MSP). The second occurred from August 4–30 2022, in the context of the NPT RevCon 2022 in New York. Potential interviewees were approached directly on site before, after and between the sessions. Side events, informal meetings, regional group meetings and receptions



also offered opportunities to make personal contacts. Using the snowball principle (Tansey 2007, p. 765, Gläser and Laudel 2009, p. 118), it was also possible to establish previously unknown but relevant contacts. In this case, several recommending reference persons were used to avoid bias and assure a high degree of diversity of contact sources (Christian 2023, p. 79).

Due to the demanding selection criteria for interview participants the data collection was extremely challenging. The target group comprised state and non-state representatives from the group of sympathizers or supporters of the HI or the TPN process who a) shared the concerns of the HI or the TPN process between 2010 and 2017 and b) participated in one of the three Conferences on the Humanitarian Impact of Nuclear Weapons (CHINW), the Open-ended Working Group (OEWG) Sessions in 2016, the negotiations on the TPN in 2017 or the first Meeting of States Parties (MSP) in 2022. Furthermore, if they are state actors, they must have signed at least one of the initiative's Humanitarian Statements between 2012 and 2017. For the selection of the people interviewed, it was crucial that they were either personally involved or at least responsible for the NPT and the TPN at the time of the interview.

The refined composition of the final sample of interviewees (*Table 1 and 2*) is based on three additional criteria to ensure maximum relevance and to obtain the most accurate overall picture possible of the opinions expressed within the resistance. Firstly, a clear focus was placed on government representatives. This is because voting members of both the NPT and TPN are exclusively states, even if non-state actors are admitted to their RevCons and MSPs as observers and external input providers. Moreover, state representatives are also the ones who ultimately take a risk when they rebel against the nuclear order or the NPT, while non-state actors are not subjects in legal terms and therefore cannot be sanctioned directly. Secondly, the sample includes both senior level professionals as well as people who are at the middle level of their career and have played an important role as multipliers in the movement. However, it makes sense to focus slightly on experienced interlocutors with a high level of expertise in the field, as they often have an institutional memory and deep insights into the subject matter, existing relationships and conflicts. Thirdly, maximum regional representativeness needs to be ensured. This implies that participants from all UN regional groups represented within the HI and the TPN process are incorporated. These include Africa, Asia-Pacific, Latin America & the Caribbean as well as Western Europe & others. From each group, at least four representatives are part of the sample, with at least one of them enjoying a particular influence within the movement (core group or extended core group member). Finally, the interviewees from each region include at least one non-state actor.

The successful and exquisite selection of interviewees is the empirical treasure of this study with a total of 38 interviews conducted with qualified sympathizers and supporters of the HI and the TPN. All interviewees received a signed guarantee of anonymity in which the conditions for the study were specified. Five of the 38

interviews were not recorded and one was conducted in written form upon explicit request. The 32 recorded interviews used for the evaluation were all conducted on-line as part of video or audio conferences. They had an average duration of 59 min. 27 of the 32 interviews were conducted in English, the others in French and German.

Table 1: Composition of the interviewees (1)

Regional group	State representative	Non-state representative
Africa	5	1
Asia-Pacific	9	1
Latin America & Caribbean	9	2
Western Europe & other	4	1

Table 2: Composition of the interviewees (2)

Senior & top diplomats	16	Core group	4
Junior & mid-career diplomats	11	Extended core-group	9
Women	10		

Of the 32 interviewees whose answers and statements were analyzed, 6 are from Africa, 10 from Asia-Pacific, 11 from Latin America & the Caribbean and 5 from Western Europe & others. 27 of the 32 interviewees are state representatives (diplomats). In addition, one non-governmental representative from each region was interviewed (two from Latin America & the Caribbean). Government representatives from African countries were particularly difficult to recruit, not least because many have not been working on the topic for long and the number of African countries that are intensively involved in the HI or the TPN is relatively modest. The number of participating Western European & other countries is even smaller, which explains the lower number of interviewees for this region.

Of the 27 state representatives, 16 and thus the majority were senior or top diplomats at the time of the interview, meaning they had at least the rank of First Secretary. This group also includes Ambassadors, Consuls, Members of the Planning Staff, Heads of Department and former Foreign Ministers. 11 state representatives interviewed were mid-career diplomats, including Deputy Heads of Department, Councillors, Second and Third secretaries. All but one of the civil society interviewees were Presidents, Executive Directors or Program Directors of their respective

organization or institution. Four of the diplomats interviewed represented countries from the core group, nine represented countries from the extended core group.

The interviewees were not asked about their gender, but according to the forms of address used during the interviews, 10 of them were female, eight of them state representatives and two non-state representatives. This roughly corresponds to the gender distribution in the UN diplomatic arena in the field of arms control, non-proliferation and disarmament of 32% over the past forty years (Dwan 2019, Hessmann Dalaqua *et al.* 2019).

The experts were questioned in the format of semi-structured interviews (Gläser and Laudel 2009, pp. 41–42). They consisted of two large parts, which were usually discussed one after the other. The first part dealt with questions relating to the NPT and the TPN or the HI to find out whether these are associated with rule and resistance. The second part explored whether the interviewees recognized a link between the nuclear order and the colonial past, and whether there was an anti-colonial impetus behind their actions. The question guideline was therefore aligned with the definitional elements of rule and resistance as well as the identified six components of colonial imprints. At the same time, questions were formulated with as much openness as possible to give interviewees maximum flexibility and leeway in their answers to explain *their* perspective and contribute specific expertise (Gläser and Laudel 2009, p. 149, Flick 2017, p. 197). Almost all the interviews had a relaxed atmosphere, and the interviewees showed great interest in the topic and shared extensive experience. The fact that information on discreet matters was willingly provided testifies that the assurance of confidentiality and the open format were effective and that interlocutors felt safe.

32 recorded video and audio files form the basis for the content analysis, using the MAXQDA software. Coding and evaluation of the interviews are roughly geared towards the method of structuring content analysis (Kuckartz 2018, pp. 100–111), using a combination of deductive and inductive coding. Most of the codes were already determined and derived from the terminological and conceptual framework. These a priori categories (Kuckartz 2018, pp. 63–72) were based on the definitions of rule and resistance and the six post-colonial imprints. In addition, codes were developed inductively, i.e. by creating categories from the material (Kuckartz 2018, pp. 79–86). Sub-codes were also developed inductively. The final coding scheme thus arose from the combination of deductively derived and inductively developed codes, resulting in a mixed form of category building (Kuckartz 2018, pp. 95–96).

The written evaluation and presentation of the interview findings follow the coding, meaning they are structured in the same way. The overall frequency of the statements labeled with the respective code will be considered along with their distribution among the interviewees. The latter will be differentiated into regions, state and non-state representatives as well as core group members and others. No further differentiation is made, as this would contradict the guarantee of anonymity.

Numerous illustrative statements will be quoted to reflect the high quality and insightfulness of the interviews and to allow the interviewees to speak for themselves to the greatest extent possible.

## Reflections

Between 2013 and 2018, I was actively involved in the Humanitarian Initiative and the TPN process. During this period, I was Project Manager, Board Member and Executive Director of the German section of the International Campaign to Abolish Nuclear Weapons (ICAN) and participated in numerous meetings, workshops, civil society forums and conferences, including the Conferences on the Humanitarian Impact of Nuclear Weapons in 2014, the NPT Review Conference in 2015, the Open-Ended Working Group in 2016 and the TPN Negotiating Conference in 2017. I have contributed to the development of positions, strategies and working papers and have represented the organization and its concerns politically and publicly. Through this engagement, I have built up personal relationships within the ICAN network and the Humanitarian Initiative as well as the TPN's circle of supporters.

To master the resulting challenges to the integrity and impartiality of the research, I have always kept my own implication in mind and reflected on it. In this way, I have endeavored to maintain the appropriate distance from the object of research and to cultivate my identification as a researcher. It helped that my two roles as activist and researcher were strictly separated in terms of time and economic dependency. I started preparing and conducting the research after I had finished all my activities within ICAN. Being employed as a Doctoral Researcher at the Peace Research Institute Frankfurt (PRIF) from 2019 on also meant that I was physically separated from my previous working environment in Berlin.

Nevertheless, I did not leave my memory in the German capital, nor did I dissolve my social relationships and networks. On the contrary, I had a high level of prior knowledge about the subject of my study. This applied in particular to the civil society perspective, and somewhat less to the state perspective. I was well informed about the issues and chronology of events, the dynamics, turning points and emotional highs and lows of the movement. The same applies to numerous informal insights and gossip. However, I had little idea of how to tackle the whole thing analytically and process it methodically. I also realized that I did not know quite as much about the time preceding my involvement with ICAN, that is, between 2010 and 2013. My knowledge about the perspectives in the Global South was perhaps not insignificant, but far from comprehensive and differentiated.

It was crucial for a balanced and reflective handling of different bodies of knowledge to clarify to myself, as summarized above, which prior wisdom I could profitably access for this research project, but also which information and know-how I lacked. No less important are reflection and transparency regarding the social net-

works that were available to me. These had a considerable influence on the data collection during the interviews, especially with regard to field access (Breidenstein *et al.* 2020, pp. 55–60). My ICAN past and contacts provided me with significant advantages when entering the field. I was able to rely on my established networks and received support from the ICAN office to obtain contact information. Being familiar with the field I was able to quickly locate other gatekeepers, which made it easier for me to open new avenues.

Throughout the course of the research, I always made my activist past and sources transparent, as well as my new and independent role as a researcher. This was crucial for my own awareness of my position in this area and for honest communication with the people concerned (Breidenstein *et al.* 2020, pp. 66–70). My position was marked by a hybridity of past belonging and present foreignness. Nevertheless, establishing contact and making appointments was anything but easy. Personal presence and encounters in the field remained indispensable. Without the aforementioned prerequisites, however, it would certainly have been even more difficult to recruit a meaningful number of qualified interviewees. Moreover, the level trust that they and other carriers of information placed in me based on their perception that I belong to the same camp should not be underestimated. No doubt this often had a positive effect on their willingness to share valuable and sometimes discreet information.

This brings us to the consideration of the relationship between interviewer and interviewee (Bogner *et al.* 2005, p. 59; Neumann and Neumann 2015, p. 811). In principle, it was characterized by goodwill and trust for the reasons mentioned above. On the other hand, this also meant that I had to deal with this responsibly. I therefore took care not to manipulate my interviewees and to maintain and express (in word and manner) the greatest possible neutrality on the subject. I was mindful to omit my own views or, if they came up, to clearly mark them as such and to refrain from imposing or imputing theoretical or analytical assumptions on the interviewees. I also kept in mind that interviewees always justifiably pursue their own goals and have a certain interest in the outcome of the research. Maintaining awareness of such a risk of instrumentalization helped me to avoid being taken for a ride.

The experience of foreignness always plays a decisive role in the field (Bogner *et al.* 2005, pp. 50–52). This is all the truer for this study, in which I draw on a critically informed and partly post-colonial perspective and attempt to take the subaltern viewpoint into account. The overwhelming majority of my interviewees came from countries of the so-called Global South and were mostly people of color. Whereas I am a male white German citizen. This difference cannot be eliminated, but it should also not be overestimated. All my interview partners are experienced diplomats, transnational activists or academics working in an international context. They can therefore not necessarily be described as prototypes of “subaltern” identity. For me too, I can be counted among this social group of global citizens, for whom a

multicultural social environment shapes their everyday working life. However, I noticed that for my part I had a heightened sensitivity to aspects such as gender, race and colonial legacy throughout my research, possibly much more than was the case with my interlocutors.

To conclude, I would like to turn to a delicacy of the conceptual framework of this study. After all, I use critical and post-colonial approaches and combine these with concepts of rule and resistance that are rooted in traditional sociology, or more precisely in a theory of its “founding father” (what a patriarchal term!), Max Weber. This is certainly an unorthodox, perhaps even unsavory combination in the eyes of some post-colonialists. Isn't he that old white man from 19th century Germany? I can only answer, yes, indeed. And it is true that this analysis of resistance is not classic post-colonial literature and hardly meets its standards. Nor does it want to. It is a hybrid that borrows from several disciplinary, conceptual and methodological worlds to approach the object of investigation from multiple perspectives and understand its many facets in the best possible way. Ultimately, it is up to the individual reader to judge whether this endeavor has been successful.

With regard to possible conflicts of interest, I want to mention that the project, as part of which my research was conducted, was funded by the German Federal Foreign Office. I would like to emphasize, however, that this is not a commissioned piece of work. Throughout the entire process, any external influence on the choice of my research question, methods, type of data collection and evaluation has been ruled out and my freedom of research has been unconditionally guaranteed within the institutional framework of PRIF, which belongs to the independent Leibniz Association. I hope that with these reflections and disclosures I have been able to give the reader an idea of how I have dealt with the various challenges that the research process poses to intersubjectivity and integrity.

## Outline of the analysis

The further structure of this book is based on three parts. The first chapter outlines the analytical framework (1.). This includes selecting, explaining and adapting the theoretical and conceptual approaches used to analyze rule and resistance and clarifying the terminology (1.1). In addition, it discusses how a critical and post-colonial perspective can help inform the analysis of resistance. In doing so, it identifies six post-colonial imprints of rule to be explored (1.2). These include *excessive violence, eurocentrism, the primacy of the state, racism, economic exploitation and patriarchal domination*.

The second chapter explores the empirical underpinnings of the “nuclear order” and serves to verify the plausibility of the assumption of an existing nuclear rule and the crucial role of the NPT in this regard. In other words, it aims to substantiate the thesis that nuclear rule is inscribed in the nuclear order established and rep-

resented by the NPT. (2.). It begins with an assessment of what exactly the nuclear order entails, how it works and why, by definition, it comes very close to what can be understood as a nuclear rule (2.1). The NPT will then be examined in more detail as a central and *pars pro toto* component and it will be shown how nuclear- and geo-politics are interwoven in the regime to the extent that it embeds structures of rule into the nuclear order (2.2). The plausibility of this analytical approach will be illustrated with examples of past dynamics of rule and resistance in the course of the history of the NPT regime (2.3). The last subchapter recapitulates the performance of the NPT with regard to the regime's disarmament pledge, which is of vital importance to non-nuclear weapon states (2.4). It discusses the treaty's weak disarmament record and examines a possible failure of the regime.

The third chapter represents the core of this study and is devoted entirely to the empirical analysis of the resistance articulated by the Humanitarian Initiative and the TPN process (3.). It is designed along the central elements of the definition and typology of resistance of this study, while incorporating relevant aspects deriving from a critical perspective. Where possible, it follows the chronology of norm genesis of the TPN. However, its evolution is not reconstructed by a purely chronological process tracing. Instead, this study proposes a structured examination of the norm genesis and norm substance of the TPN along the terminological and conceptual framework that has been chosen for the analysis of resistance. This means that repeated leaps in time can occur, even though this is preferably avoided for ease of understanding.

The chapter first looks at which *actors* can be assigned to the Humanitarian Initiative and what their particular characteristics are (*who resists?*) (3.1). The relevant supporters of the Humanitarian Initiative are identified and assigned to different groups. The group of state actors includes the initiators and members of the core group as well as relevant state alliances. Among the group of non-state actors, the section considers in particular the role of the International Campaign to Abolish Nuclear Weapons (ICAN), the International Committee of the Red Cross and academic institutions. Special attention is paid to the choice of cooperation formats and the pooling of resources within this transnational multi-stakeholder network.

In a second step, the *gathering setting* of the first coalition of resistance, the 2010 NPT Review Conference and its first test of strength against the nuclear powers, the 2015 NPT Review Conference, are scrutinized to elaborate the significance of the NPT as a crucial political reference point for the Humanitarian Initiative (*when were forces joined?*) (3.2). Thereby we approach the object of contention of the resistance, examining i.e. the place, time and context in which the individual resistant elements come together to form a movement. The moment of association, the occasion of rallying, the opportunity for a demonstration of strength are decisive crystallization instances for the emergence of a resistant community of fate. Therefore, the two NPT Review Conferences held during the period under investigation are treated as

critical and empirically exploitable settings for the gathering and political activity of the Humanitarian Initiative and TPN supporters. While the NPT Review Conference 2010 represents their starting point, the NPT Review Conference 2015 can be seen as the culmination of their collective political confrontation with the nuclear weapon states.

This is followed by an investigation of the Humanitarian Initiative's intensive exertion of influence on the *discourse* around nuclear weapons through the humanitarian framing (*what do they say?*) (3.3). The section looks at the claims and positions of the supporters of the Humanitarian Initiative and the TPN and thus gets to the bottom of the discursive strategy of the resistance. It examines the key content, origin and tactical use of the humanitarian framing. It also explores various empirical manifestations of the humanitarian code that helped expand the discursive power and outreach of the resistance. For this purpose, the joint Humanitarian Statements of the Humanitarian Initiative and the three Conferences on the Humanitarian Impact of Nuclear Weapons held in Oslo in 2013 and in Nayarit and Vienna in 2014 represent the primary empirical material in this analytical unit.

In the subsequent evaluation of qualitative interviews with individual participants involved in the Humanitarian Initiative and the TPN process, the underlying *perspectives and motivations* on the issue are explored (*what do they mean?*) (3.4) to check whether and to what extent impulses critical of rule and even anti-colonial impulses really did play a role. The section is devoted to the perceptions and intentions behind the presented claims and positions. At this point of the analysis, we touch upon a decisive prerequisite of resistance, namely the "withdrawal of recognition" and the resulting willingness to challenge the nuclear rule. In other words, it becomes finally clear whether we can speak of a veritable phenomenon of resistance in relation to the Humanitarian Initiative and the TPN process. In addition, this section addresses the possible anti-colonial impetus of the resistance movement by exploring the views of the interviewees on the idea of post-colonial continuity and the six colonial imprints of the nuclear order.

The next section examines the *procedures* by which the Humanitarian Initiative succeeded in bringing the TPN to life despite headwinds from the nuclear weapon states, with a detailed review of the instrument of the Open-ended Working Group and the treaty negotiations themselves (*how to resist?*) (3.5). Having established that we are dealing with a phenomenon of resistance and illuminated the (anti-colonial) nature of its motivations in more detail, we return to the level of action. This part of the analysis tackles the puzzle of how the resistance succeeded in asserting itself against the will and strength of the world's most powerful states. It deals with the means used by the resistance and thus with a critical aspect in the typology of this study: the distinction between opposition and dissidence. The creation and negotiation processes of the Open-Ended Working Group on nuclear disarmament in 2016 and the TPN Negotiating Conferences in 2017 provide the empirical basis. An inter-



nal analysis will also identify differences within the resistance regarding the affinity of its members for fundamental change.

The empirical part concludes with an inspection of the nuclear rulers' *reactions* to the resistance and of its *output*, the TPN, regarding its reformative or transformative content (*what were the reactions and output?*) (3.6). Given the time frame of this study and the still relatively short effectiveness of the TPN, it is not yet possible to discuss its impact comprehensively. The focus is therefore on two empirically well-definable manifestations of its effects in the period under review: the reactions of the rulers, meaning the nuclear weapon states, and the output of the resistance, meaning the normative substance of the TPN treaty text. Of particular interest are the evolution of the dynamics of repression during the various phases of resistance and an assessment of the available options for coercive measures on the part of the nuclear weapon states and their allies. The analysis of the TPN treaty text, in turn, concentrates on weighing conservative and reformative provisions to derive further conclusions about the resistance's potential for transformation and its limits to achieving fundamental change.

The Conclusion answers the research question and summarizes and discusses the results. It presents the findings of this study on the role of rule and resistance in the Humanitarian Initiative and the TPN process and highlights the complex influence of anti-colonial resentments. Finally, it reveals the solution to the puzzle of the resistance's success. Acting as a subversive opposition made its astonishing triumph possible. At the same time, this strategy also sets clear limits to its transformation potential. This is not the only insight that raises questions for further research.

## State of the art

The discussion of nuclear weapons has a long tradition in International Relations and security studies. Roughly speaking, numerous studies can be assigned to the areas of *deterrence, proliferation, arms control and disarmament*, although their interrelationships have also been studied intensively. Early works focused on the foundations, history and practice of nuclear deterrence from a security strategy perspective. The development of intercontinental ballistic missiles stimulated a rethinking of the role of air power in military planning and the strategic conclusions to be drawn from it (Brodie 1959). The juxtaposition between diplomacy and war was questioned and nuclear deterrence policy conceived as bargaining power or diplomacy of force (Schelling 1966). Standard literature examined the history of nuclear deterrence and the associated dilemmas in order to derive lessons for strategic decisions (Freedman 1981). However, there has also been opposition to the premises of nuclear deterrence. Some have argued, for example, that it was a contradictory ideology favoring policies that benefit only a few (Marullo 1985). Others stressed the importance

of non-nuclear deterrence to avoid war (Mueller 1988). The concept of nuclear taboo (Tannenwald 2007) offers an alternative perspective to explain the non-use of nuclear weapons since Hiroshima and Nagasaki in 1945, differing from the strategic military and security thinking of nuclear deterrence. The widespread inhibition on using nuclear weapons would have emerged among the leading nuclear powers during a series of critical moments in post-World War II history and continue to provide the moral basis of nuclear restraint to this day, albeit at risk. The deconstruction of nuclear deterrence has been empirically pursued further to dispel myths about the efficacy of nuclear weapons. Historical accounts of the Japanese surrender at the end of the Second World War, the Cuban Missile Crisis, the Korean War and the Yom Kippur War would show that nuclear weapons were dangerous but useless (Wilson 2013). The major nuclear crisis in the Bay of Pigs in particular has repeatedly prompted comprehensive empirical studies of the delicate practice of nuclear deterrence (Sherwin 2020). The role of luck in the absence of unwanted nuclear explosions and the illusion of control in nuclear deterrence and military practice in general have also been the subject of research (Pelopidas 2017, 2020). The neglect of these and other factors challenging the validity and acceptability of nuclear deterrence has been attributed, among other things, to self-censorship in security studies (Pelopidas 2016).

Another key issue in nuclear weapons research is the problem of proliferation. In light of the increasing spread of nuclear technology, scholars were concerned about how to deal with the dangers of growing nuclear arsenals and the number of nuclear weapon states (Epstein 1976). Others believed that the increase and proliferation of nuclear weapons under conditions of global bipolarity could be a stabilizing factor that would prevent major wars during the Cold War (Waltz 1981). Research also looked at the reasons for the quest for nuclear weapons and the resulting proliferation. Security policy justifications (realistic assumptions), the domestic context (organization theory) and normative preconditions (constructive theory) were examined to determine the most effective way to counter the risks of proliferation (Sagan 1996). The psychological foundations of the proliferation paradigm and the importance of state leaders' conceptions of national identity have also been discussed (Hymans 2006). Most of the works mentioned focus on the perspective of the nuclear weapon states or those states that want to become nuclear powers. But there are also studies that investigate why non-nuclear weapon states that reject nuclear proliferation also oppose initiatives that strengthen the non-proliferation regime, such as the International Atomic Energy Agency Additional Protocol (Grotto 2010). The more perspectives and regions are included in the analysis of state motivations for (non)-proliferation policies, the greater the range of relevant causal factors and their interaction at and between the normative, security policy and economic levels (Fields 2018). The picture becomes even more differentiated when considering real

instances of proliferation, such as in the case of Iran and North Korea, and how to deal with them (Perry 2006, Høiseith 2015, Cha and Katz 2018, Erästö *et al.* 2020).

Research that centers on the question of how disarmament and arms control can be strengthened often deals with the conducive and obstructive conditions for the creation of a world free of nuclear weapons. This includes studies that explore the possibilities of de-alerting and deep cuts in order to gradually reduce the level of thousands of warheads to lower levels (Feiveson 1999, Zenko 2010). Certain studies also consider the problem of how to move from a low level of already greatly reduced arsenals to global zero and find specific solutions for the verification and peaceful use of nuclear technology (Perkovich and Acton 2008). Comprehensive global security studies also consider overarching political and specific regional challenges (Hynek and Smetana 2016). Others try to derive suggestions for practical steps for nuclear weapon states from past successes and failures (Kelleher and Reppy 2011). Historical research on ending the Cold War arms race and dealing with the unsecured stockpiles after the collapse of the Soviet Union emphasizes the role of individual personalities (Reagan and Gorbachev) and groups of people (Hoffman 2009). The different attitudes of states towards the goal of nuclear abolition and the role of non-state actors are also taken into account when discussing the possibilities of nuclear disarmament (Santoro and Ogilvie-White 2012). While research on strengthening disarmament and arms control was relatively extensive and ambitious in the 2000s and 2010s, more recent studies reconstruct the disarmament history of individual countries, such as in the case of Kazakhstan (Kassenova 2022) or Ukraine (Budjeryn 2022), and seek to draw helpful conclusions. Due to the difficult conditions resulting from the Russian war of aggression against Ukraine since February 2022, current analysis focus on more modest goals, such as confidence-building and risk-reducing measures (Bollfrass and Herzog 2023).

Apart from the numerous studies that focus on one of the areas outlined above, a separate body of research aims to put them together into a larger picture and explore what constitutes the *global nuclear order*. It is remarkable that nearly all these works, including introductory pieces (Kutchesfahani 2019), address the NPT as the legal framework of this order. A monumental standard work has been dedicated to the emergence of the non-proliferation regime, meticulously tracing the treaty's norm genesis and negotiations (Shaker 1980). When it comes to questions of (de)stabilization, (de)legitimization and contestation of the nuclear order, the non-proliferation regime usually takes center stage. Given the distinction between nuclear weapon states and non-nuclear weapon states enshrined in the NPT, research has been concerned since its inception with the treaty's striking inequality (Bellany 1977, Nye 1985) and the structural implications for the global (nuclear) order (Brownlie 1966, Bloomfield 1975, Bull 1975, Falk 1977). In the context of the 1995 NPT Extension Conference, the vital connection between nuclear non-proliferation and disarmament became the focus of academic analysis, which also took into account the perspective of non-

nuclear weapon states and the importance of North-South relations (Müller *et al.* 1994). That this is not a given is shown by later works, which also deal with the anchoring of disarmament in the NPT, but continue to concentrate on nuclear weapon states and states that want to become nuclear weapon states (Lodgaard 2010, 2017). Although substantial disarmament failed to materialize, the regime persisted. This called for new academic answers to the question of its (in)stability amidst glaring inequalities. Some believe that the NPT is very stable despite its dysfunctionality (Jasper 2016), ascribing this to a solid intersection of interests between nuclear weapon states and non-nuclear weapon states (Paul 2003) or even recognizing the trust relationships that have developed within the regime (Ruzicka and Wheeler 2010). Others take the crises of the NPT and resulting risks seriously (Müller 2005, Mukhatzhanova 2014, Potter 2016, Neuneck 2019) and address necessary changes and reforms (Landau and Bermant 2014). The perspective of new regional and global powers on the NPT and the nuclear order enshrined therein has also attracted attention (Dalton *et al.* 2016).

On a conceptual level, scholars not only addressed and problematized the uneven spread and regulation of nuclear hardware, i.e. the weapons themselves. The discriminatory organizational logic inscribed in nuclear deterrence policy – the software of the nuclear order – also caught scholarly interest. One of the most prominent works about the nuclear order reconstructs how it was founded on the basis of linked systems of deterrence and abstinence and how both were fragilized after a phase of build-up during the Cold War in the late 1990s due to a strategic shift by the United States towards greater protection through missile defense (Walker 2000). This sophisticated approach connects non-proliferation and deterrence with disarmament and arms control, embedding them in an overall structure of norms and institutions which would constitute the nuclear order. Despite a setback after an era of “nuclear enlightenment” and the resulting damage to the NPT, opportunities to reconsolidate the order would remain open if its various functioning logics were rebalanced (Walker 2007). To ensure its survival, this conceptual approach recommends a “pragmatic middle way” along a logic of restraint, which accepts the presence of nuclear weapons for the time being and at the same time sets limits on their possession and use (Walker 2011). These well-intentioned encouragements of balancing acts are viewed critically by theoretical works seeking to expose the discourse and practice of the nuclear order as a political ideology that had entrenched power structures and constrained the space for political action (Egeland 2021). A historical examination of the genesis of the nuclear order and the NPT as the result of power politics also takes a rather sober look at the “nuclear club” (Hunt 2022) – a coalition of powerful and developing (*sic!*) states, which had created structures that helped avoid conflicts in the industrialized North and fueled conflicts elsewhere in the world. The various facets of power disparity within the nuclear order form an integral part of the research canon. Given the concentration of power and privileges

for a few states, some argue that the five permanent members of the United Nations Security Council and NPT-nuclear weapon states possess “nuclear hegemony” (Medhurst 2006, Ritchie 2019).

The examination of privileges and discrimination in the nuclear order and the non-proliferation regime raises the question of legitimacy and justice. Looking at the prospects and possibilities of strengthening the regime, studies highlight the importance of legitimacy (Rathbun 2006) or the delicate relationship between power and justice (Müller 2010a). The refusal of the official nuclear weapon states to fulfill their disarmament obligation and promise to promote nuclear technology in developing countries would violate the principle of justice on which the treaty is based and thereby damage its legitimacy. The normative link and mutual reinforcement between disarmament and non-proliferation has been repeatedly discussed (Knopf 2012, 2018). Other contributions look at how the perception of justice influences the behavior of states in the NPT (Müller 2019) and analyze, how this can also stimulate norm dynamics (Müller and Wunderlich 2013). Most agree that a lack of justice and fairness (of norms, rules, and procedures) would be a core problem of the NPT in the long run and the cause of its structural susceptibility to crisis and threatened stability (Tannenwald 2013). In a virtually reversed view of the legitimacy issue, the special value of nuclear weapons based on their prestige and the logic of nuclear deterrence is identified as a major obstacle to disarmament (Berry *et al.* 2010). The analysis of past devaluation attempts of varying degrees suggests that only radical delegitimization could create the conditions for the elimination of nuclear arsenals (Ritchie 2013b, 2014).

Nuclear hierarchy and the resulting inequalities and injustices provoke resistance and contestation. This did not remain unnoticed by scholars. Consequently, the role of non-aligned non-nuclear weapon states, particularly the Non-Aligned Movement (NAM), entered the radar of researchers (Singham and Hune 1986). Within within this largest and most diverse political grouping of states engaged on nuclear nonproliferation and disarmament, a small subset of NAM states successfully promotes policies that tend to be at odds with those advanced by Western states in the field (Potter and Mukhatzhanova 2012). At the same time, there is also evidence that the NAM as a whole opposes the nuclear order but stays within the existing forums and institutions. The situation is different with individual member states that resist and thereby violate the rules of this order, as in the case of India, which also arouses scholarly curiosity (Daase 2003a). Later studies blame the institutionalized power inequality between States Parties and the resulting conflict over the distribution of security, economic, and technological benefits for being the main causes of contestation against the nuclear order and the NPT (Müller and Tokhi 2019). States with growing economic importance and heightened security interests would therefore be most likely to contest the *status quo*. A consideration of non-nuclear weapon states as norm entrepreneurs (Müller and Wunderlich 2018), in

turn, shows how contestation impacts the development of nuclear norms, leading to progress but also to blockade or decay. A comprehensive study of the nuclear hierarchy within the multilateral disarmament, arms control and non-proliferation architecture identifies three waves of institutional expansion that emerged from respective legitimacy crises of the nuclear order in the course of the ongoing contestations and struggles of recognition waged by the non-nuclear weapon states (Egeland 2017). Paradoxically, their institutional contestation would have led to an unintended re-legitimization and consolidation of their legal subordination as a result of the reform and expansion processes it triggered.

**Critical and post-colonial literature** on nuclear weapons is very interdisciplinary and has made considerable progress in recent years. In Marxist tradition, nuclear weapons have been theorized as a “currency of power” in the international system (Harrington de Santana 2009). Similar to how commodities and ultimately money display patterns of fetishism in capitalist society, nuclear weapons in the military realm would represent a mature expression of the fetishism of force and as such mark the behavior of states within the (social) system of international relations. Building on this, a piece of International Relations theory seeks to expose the hierarchical global nuclear order enshrined in the NPT as dominated and exploited by powerful states and capitalist interests and disclose its destructive repercussions on subaltern lives (Biswas 2014). The book shows how the pursuit and production of nuclear power causes suffering among the most vulnerable and highlights the sustained inequality of haves and have-nots in the non-proliferation regime. Critical and post-colonial studies are not only concerned with the economic and institutional structures of the nuclear order. One of the classics of critical analysis on nuclear weapons is an anthropological study of nuclear rites in a weapons laboratory in the United States at the end of the cold war, revealing a practice of othering against non-Western people and states (Gusterson 1996, 1999). The nuclear arms race and the non-proliferation policies of the United States and the Soviet Union have also been critically scrutinized with regard to their allegedly inherent racist logic (Maddock 2010). The racial dimension also plays a central role in a critical analysis of the nuclear policy of the United States in Asia during the Cold War (Jones 2010). Scholars are also increasingly looking at the apparent colonialist or imperialist bias in the selection of nuclear test sites around the world during the Cold War and the devastating effects on indigenous people (Jacobs 2013, 2022). Some focus on the long-term impact in a specific context, for example the consequences of the Manhattan Project for local communities in New Mexico (Masco 2006). A recently published series of articles illustrates the effects of “nuclear imperialism” with numerous examples of oppression and damage that have been committed or are still ongoing in this context (Maurer and Hogue 2020).

Critical research not only sheds light on the structures and practices of nuclear oppression, but also explores subaltern empowerment and action in the field. A his-

torical case study examines the Afro-Asian Legal Consultative Committee and how the Global South sought to challenge the legality of nuclear testing and contribute to decolonizing arms control during the negotiations on the Partial Test Ban Treaty (Abraham 2018). The role of advocacy organizations and small states actors and their ability to use discursive means to exert influence on global nuclear politics has also repeatedly attracted critical academic interest. A subaltern-focused analysis of several disarmament success stories draws on masterpieces of literary imagination and ethnographic fieldwork in communities affected by nuclear testing and advocacy networks (Bolton 2020b). It shows, for example, how pacific diplomats, activists and academics had flipped the “standard of civilization” through the humanitarian discourse to ban nuclear weapons (Bolton 2018, 2020a). The active role and transnational collaboration of affected and indigenous communities in reformulating the nuclear narrative has also been examined in the context of test sites in the United States and the former Soviet Union (Rozsa 2020). Another study concentrates on the commitment of black activists in the United States to nuclear disarmament, connecting the issue with the fight for racial equality (Intondi 2015). Researchers also try to make “nuclear imperialism” visible through the analysis of artistic creation, for example in the Pacific and Oceania (Keown 2018, Maurer 2018, Amundsen and Frain 2020, Schwartz 2020).

Feminist interrogations of global nuclear politics examine, inter alia, how gender norms influence discourse and policy on the proliferation and possession of nuclear weapons (Cohn and Ruddick 2004, Cohn *et al.* 2006). Early feminist works expose the gendered discourse prevalent in nuclear deterrence and strategy, whose sanitized language and emotional distancing would normalize their inherent violence (Cohn 1987a). Some pieces are dedicated to the gendered representations underpinning nuclear policies in certain regions, such as India and Pakistan (Das 2010). Others tackle the NPT for a gender-sensitive examination (Brown and Considine 2022). In a more recent special issue, a feminist and intersectional perspective is applied to uncover the lived reality of nuclear destruction in the context of a broader history of domination using numerous examples from different regions of the world (Choi and Eschle 2022). Feminist approaches also enrich the study of the Humanitarian Initiative and the TPN, exploring how feminist, queer, and Indigenous analysis and activism can help inform strategies for nuclear disarmament (Acheson 2018a, 2019, 2021a). This leads us to the fourth relevant strand of research.

The literature on the ***Humanitarian Initiative and the diplomatic process to outlaw nuclear weapons under the TPN*** has advanced considerably. The preceding political developments, the negotiations and the treaty text itself have been covered by numerous observers and dealt with in various ways in analysis, reports and journal articles. Studies have been conducted on the crucial role of civil society (Sullivan 2016, Mikhaylenko 2021) as well as that of individual states (Egeland 2019b, Maitre and

Lévy 2019) or groups of states (Richards 2022). Other publications dealt with the development process and the diplomatic activities of the Humanitarian Initiative as a whole (Kmentt 2015, Minor 2015, Bolton and Minor 2016, Potter 2017, Borrie *et al.* 2018, Tannenwald 2020). Important aspects, such as the influence of humanitarian disarmament law advocacy (Benjamin-Britton *et al.* 2020, Bolton and Minor 2020) or the course of the treaty negotiations (Caughley and Mukhatzhanova 2017, Ruff 2018) were also taken into account. The reviews of the outcome range from critical assessments, which view the TPN with disdain (Lysenko and Ostapova 2022) and skepticism (Rühle 2017) or even perceive it as a threat (Onderco 2017, Highsmith and Stewart 2018), to balanced interpretations of its implications (Roberts 2018) and largely positive assessments (Afina *et al.* 2017). Different regional perspectives on the treaty have also been taken into account (Shetty and Raynova 2017).

Right after the adoption, the relationship between the NPT and the TPN was one of the hot topics of discussion in expert communities and journals. While some consider that the two treaties are fundamentally compatible (Bundestag 2021) or even mutually reinforcing (Egeland *et al.* 2018, Hajnocz 2020), the assessment of others is mixed (Müller 2018) or critical (Marauhn and Vries 2020), as they see dissonances in the relationship. The reconcilability between the provisions of the TPN and participation in NATO, its deterrence provisions and the obligations of allies has also been addressed (Hayashi 2021, Hill 2021). Some doubt the extent to which the TPN, like other humanitarian disarmament treaties, can lead to a global consolidation of the prohibitory norm on nuclear weapons possession precisely because of the efforts undertaken to embed it in the overarching normative framework (Considine 2019).

Looking at potential new supporters and signatories of the TPN, discussions revolved around its national implementation (Revill *et al.* 2021), the challenges and opportunities for universalization (Ritchie and Kmentt 2021) and possibilities for verifying its disarmament provisions (Erästö *et al.* 2019, Patton *et al.* 2019, Podvig *et al.* 2022). Others explore which implementation options, conditions and deadlines could apply for the accession of nuclear weapon states willing to disarm (Kütt and Mian 2019, Podvig 2021) or states ending nuclear sharing (Mian and Kütt 2022). Analysts also deal with the question of how the positive obligations can be operationalized (Bolton and Minor, IHRC 2019, Docherty 2021, 2023, IHRC 2023) or whether this is associated with additional disadvantages for affected states (Hood 2023). Aside from numerous individual contributions, several special issues were dedicated to the TPN (Camilleri and Hamel-Green 2018, Pollack and Kreger 2018, CSS 2019).

Meanwhile, monographs (Mikhaylenko 2020, Krasno and Szeli 2021, Thakur 2022) and edited volumes (Camilleri *et al.* 2019, Sauer *et al.* 2020) have been published on the genesis and contextualization of the TPN. They also address the significance of the humanitarian approach and the interplay between civil society and state actors (Bolton *et al.* 2020, Hanson 2022). Two comprehensive chronicles of the norm genesis of the TPN deserve special attention. One is written from the perspective of



a state representative involved in the process (Kmentt 2021), the other from the view of a civil society representative (Acheson 2021b). The former represents an Austrian viewpoint and thus one of the leading nations of the Humanitarian Initiative. The latter takes a firmly feminist, i.e. intersectional perspective, which includes the views of those who have experienced the violence of nuclear weapons and thereby intends to dismantle the dominant (capitalist, colonialist, racist and patriarchal) discourse. Both contain insightful first-hand insider knowledge, information on informal processes and from closed circles.

Recently, individual papers have increasingly been trying to grasp the Humanitarian Initiative and the TPN as a struggle of power. For example, the TPN has been interpreted as the result of a decades-long norm contestation that led to the empowerment of nuclear have-nots (Müller and Wunderlich 2018, 2020). Some see it as an approximation of the realization of the dream of Bandung (Intondi 2019). A conceptually grounded analysis of resistance uses the ban treaty to examine hegemony and power within the global politics of nuclear weapons (Ritchie 2019). Similarly, another article sees the TPN as a codification of its supporters' aspiration to disturb the hegemonic nuclear discourse (Egeland 2019a). Based on a taxonomy of power and conception of resistance as counter-hegemonic another contribution delves into the "diplomacy of resistance", its actors and methods of delegitimizing nuclear weapons (Ritchie and Egeland 2019). In a later article, the contestation against the prevailing nuclear worldview is interpreted from a critical perspective and the relationship between power and resistance is viewed as a dichotomy of two largely incommensurable "ontologies" (Ritchie 2022). Hegemonic nuclearism and subaltern anti-nuclearism would be opposed to each other, which is why bridge building approaches denying this antagonism would curb its potential to advance nuclear disarmament.

***Where does this study fit into the body of research and which research gap does it fill?***

It joins the series of works that do not treat the areas of deterrence, non-proliferation, arms control and disarmament separately, but consider their interconnections within the nuclear order. Along with most of the International Relations and Security Studies literature, it also acknowledges the vital role of the NPT within this order. In contrast to almost all other research on the subject, it regards the NPT as a founding treaty of nuclear rule (and not just power, hierarchy or hegemony). In doing so, it draws on an resistance-focused reconceptualization (Daase and Deitelhoff 2015, Daase *et al.* 2017b, Daase *et al.* 2023a) of an established sociological theory of rule (Weber 1985) and applies it to the Humanitarian Initiative and the process leading to the TPN. It thus provides a broader analytical framework for the investigation of inequalities within the nuclear order and the non-proliferation regime, going beyond the usual grid of power relations (Müller 2010a), hierarchies (Egeland 2017) or hegemony (Medhurst 2006, Ritchie 2019). It differs from previous critical readings (Harrington de Santana 2009, Biswas 2014) by refraining from a Marxist or political economy superstructure in order to minimize the number of premises

and “let the empiricism speak”. However, the sensitivity for the subaltern perspective which is crucial for the object of investigation will be incorporated.

In other words, this analysis of rule centers on resistance and puts it in the spotlight, both conceptually and empirically. The focus on the role of the non-nuclear weapon states and the non-state actors allied with them is not common beyond critical studies. Indeed, the combination of a terminological and conceptual framework derived from classical sociologist Max Weber with a critical perspective is novel and promises a twofold gain in knowledge. First, it can clarify what role resistance played in this process from the perspective of the non-nuclear weapon states and non-state actors involved and reveal the means they deliberately resorted to. Second, it helps to better understand the nature of the prevalent nuclear rule and the complex relationships between the rulers and the ruled.

Recent contributions that come closest to this approach also stress the importance of resistance within the Humanitarian Initiative and the TPN process, but remain conceptually at the level of norm contestation (Müller and Wunderlich 2018, 2020), a struggle of power or against hegemony (Egeland 2019a, Ritchie 2019, Ritchie and Egeland 2019) or conflicting ontologies (Ritchie 2022). By choosing a binary view, most of these analyses commit substantial analytical errors. They tend to neglect the existing shades of gray, overlaps and inherent contradictions within the object of study because they isolate the poles of (hegemonic) power and (counter-hegemonic) resistance and separate the underlying discursive framings or “ontologies” too sharply. In fact, they are tapered towards the segregation of power holders and resistance, an analytical and empirical aberration that this study does not wish to follow. The two most comprehensive and in-depth empirical works on the Humanitarian Initiative and the TPN process (Acheson 2021b, Kmentt 2021), on the other hand, lack analytical systematics. Moreover, they concentrate on one subgroup of the Humanitarian Initiative, either its non-state or state actors.

Conceptual purity runs the risk of eluding empirical complexity. An overly strong orientation towards empirical intricacy, in turn, hinders the attainment of conceptual neatness. This study intends to close the research gap between conceptually rigorous and empirically saturated research on the subject. It provides a clear analytical framework and examines the Humanitarian Initiative and the TPN process in their entirety as a resistance movement against nuclear rule enshrined within the NPT. It thus goes beyond the conventional perception of the nuclear order as a space of power games, as a hierarchical structure or as an arena for hegemonic struggles. At the same time, it delves deep into the empirical realm, taking a closer look at the interwoven dynamics of rule and resistance in the nuclear order, including their many nuances, whether at the level of discourse or at the level of actors and their means. Apart from extensive primary sources from the development process of the TPN, numerous interviews with diplomats and representatives of civil society who were involved in the process form a solid empirical basis for this study. In this way, the work

accomplishes both, a conceptually informed analysis and a comprehensive empirical investigation of the topic.

# 1. Analytical framework

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The question of what role critique of rule and resistance against the nuclear powers played when the non-nuclear-weapon states participated in the TPN initiative first requires clarification of two concepts: rule and resistance. We will take a closer look at them and derive suitable definitions for our analysis (1.1). We will then delve into the theoretical world of critical and post-colonial approaches (1.2) to explore the idea of the epistemic and discursive continuity of colonialism and develop six colonial imprints that help us to grasp it in concrete terms with regard to our topic: *excessive violence, eurocentrism, primacy of the state, racism, economic exploitation, patriarchal domination*. For each of them, illustrative examples are given in the context of the nuclear order.

## 1.1 Rule & resistance

When looking at the conceptual nature of rule and resistance, one comes across a classic topic of sociology, a discipline that deals with social orders and interactions. Our first steps towards conceptual clarification therefore lead to Max Weber (Weber 1985), who has decisively influences the understanding of rule until today. However, his focus on obedience and neglect of disobedience obscure expressions of resistance against a given (ruling) order, which are crucial for our research question. Moreover, with an excess of qualifying criteria, he sets the terminological boundary of rule so tightly that only few manifestations can be grasped with it. Therefore, the terminological considerations of Christopher Daase and Nicole Deitelhoff (Daase and Deitelhoff 2015, Daase *et al.* 2017b, Daase *et al.* 2023a, Daase and Deitelhoff 2023b) will be incorporated into our analytical framework to reduce the criteria for the definition of rule to its essence. In a second step we take a closer look at the phenomenon of resistance. Consequently, we find definitions that are broad enough to cover the entire spectrum of meanings. At the same time, they contain sufficient distinguishing criteria that give contour to the phenomena of rule and resistance in the international context.

## Rule

Probably the best-known definition of rule comes from the sociologist Max Weber (Weber 1985, p. 122):

*Herrschaft soll [...] die Chance heißen, für spezifische (oder: für alle) Befehle bei einer angebbaren Gruppe von Menschen Gehorsam zu finden.*

*[Rule is supposed to mean [...] the chance to find obedience for specific (or: for all) commands among a specifiable group of people.]*

It makes clear that rule is closely linked to the exercise of power. This is not surprising. For Weber, however, not every form of exercising power equals rule. Rather, rule is distinguished from other ways of exercising power or influence over others, taking two parameters into account.

On the one hand, the binding nature or *permanence* that accompanies the description of rule as a relationship of command and obedience is striking. The latter may sound antiquated in the context of modern democracies. One might rather speak of laws or regulations that are enforced or respected. But the crucial point here is that the chance to obey orders (or the possibility to enforce laws or regulations) is based on a rather stable relationship between rulers and ruled. Weber elaborates on this aspect of (relative) permanence when he discusses the different types of rule, also describing variances (Weber 1985, pp. 122–124). But even in the general definition, which is valid for all types, the necessary network of relations in which power or influence is exercised is assumed when speaking of rule. By presupposing a given and, what is more, specific relationship (“specifiable group of people”) rule as a form of exercising power is linked to a minimum degree of permanence. When we speak of rule, power relations are thus endowed with continuity; we are dealing with a form of institutionalized superordination and subordination.

The second parameter, which is an essential part of Weber’s terminology and occupies a prominent place, is *legitimacy*. In contrast to today’s understanding, Weber understands legitimacy in a neutral way, meaning the recognition or acceptance of a relationship of rule. For Weber, legitimacy (or recognition) of rule manifests itself in obedience or docility (*Fügsamkeit*) (Weber 1985, pp. 123–124), that is, in the willingness of the ruled to follow. Which form of legitimacy prevails depends on the motives out of which the ruled obey. As the decisive source of stability, these motives are crucial in Weber’s typology of rule. They determine which type of rule we are dealing with. Legitimacy in the sense of the acceptance of the relationship of rule by the ruled has a twofold significance for Weber: First, it is a prerequisite for power to congeal into rule, and its justification determines its permanence. Second, Weber sees the type of legitimation as a central means of exercising rule and therefore

declares it to be the primary criterion for distinguishing between different types of rule.

Accordingly, there are three ideal types of rule. The *rational* or *legal* type is based on the belief in the legality of established orders and the right of those eligible to exercise rule through instructions (*auf dem Glauben an die Legalität gesetzter Ordnungen und des Anweisungsrechts der durch sie zur Ausübung der Herrschaft Berufenen*) (Weber 1985, p. 123). The *traditional* type is based on the sanctity of time-honored traditions and the legitimacy of those who derive their authority from them (*Heiligkeit von jeher geltender Traditionen und die Legitimität der durch sie zur Autorität Berufenen*) (Weber 1985, p. 123). The *charismatic* type is based on the extra-ordinary devotion to the holiness or heroic power or exemplary nature of a person and the order revealed or created by him or her (*außeralltäglichen Hingabe an die Heiligkeit oder die Heldenkraft oder die Vorbildlichkeit einer Person und der durch sie offenbarten oder geschaffenen Ordnungen*) (Weber 1985, p. 124). Weber is aware that these types of rule empirically never occur in pure form, but that there is always a mixed grounding of legitimacy. No rule is “content (...) with the only material or only affective or only value-rational motives as chances of its continuance” (*begnügt sich [...] mit den nur materiellen oder nur affektuellen oder nur wertrationalen Motiven als Chancen ihres Fortbestandes*) (Weber 1985, p. 122).

Moreover, in the political context (as opposed, for example, to the economic) Weber emphasizes the provision of *physical force* to secure rule, referring to the monopoly of force over a given territory (Weber 1985, p. 514). Weber is primarily thinking of the modern state, which has monopolized legitimate physical violence as a means of rule within a territory. It is not necessarily the use, but rather the availability of this “specific means” (*spezifischen Mittels*) (Weber 1985, p. 514) of violence that distinguishes political rule from others. Consequently, political rule is achieved by those who consolidate their power over a longer period of time and thereby gain control over the physical exercise of force (Müller-Salo 2018, pp. 22–23). This violence ensures the “seriousness of death” (*Ernst des Todes*) (Weber 1985, p. 514), which, in Weber’s view, is constitutive for the political community and generates its special cohesion compared to other communities.

The fact that Weber makes legitimacy (or recognition) the decisive characteristic of rule has far-reaching consequences for the analytical suitability of his terminology. Not every object of study requires this focus. Many classical criteria for distinguishing types of rule in political sciences, e.g. the number of rulers (monarchy, oligarchy, democracy) or their attention to the common good (philosopher-king versus tyrant) recede into the background. Certain forms of rule fall completely through the analytical grid. This is especially the case when relations of rule are unspoken or cannot be expressed (sometimes to preserve them), when their recognition as such is questionable or even denied. Or when we deal with several, diverse, partly juxtaposed, partly overlapping and contradictory relations of rule. In social reality, such heterarchical contexts and diffuse relations of rule are common. In the context of in-

ternational relations, the recognition of relations of rule is usually contested, if not denied altogether.

The emphasis on the link between (political) rule and the use of force also obscures possibilities of relations of rule at the international level, where recourse to physical violence is largely prohibited. In the absence of a monopoly on the use of force, the observation of political rule in the sphere of action of sovereign states would theoretically be ruled out. This is problematic for a practical or empirical analysis. Not only because there are numerous examples of the exercise of violence by questionable authority in global politics. We can also see very well in the international arena how power can be concentrated and consolidated in all its forms, be it economic, socio-cultural, military or political. It therefore seems advisable not to abandon the search for rule in this context, even if the use of (ruling) violence is largely taboo.

Weber's definition, however, contains also a feature that is very precious to differentiate rule from other forms of exercising power in international relations: the criterion of permanence. It can thus be distinguished from situational, spontaneous, volatile and amorphous forms of the exercise of power. Even if the basic principle of equality of states under international law applies, significant and permanent inequalities between them occur in numerous areas, which are reflected in various institutions of the international system and their decision-making (Deitelhoff and Zürn 2015, Viola *et al.* 2015). Consequently, there has long been an intense debate in the discipline of international relations (IR) about how the global sphere of action and its regulatory structures can be conceptualized (Daase *et al.* 2023b). Depending on the approach, they focus on hegemony (Ikenberry and Kupchan 1990, Ikenberry 2011, Goh 2013, Ikenberry and Nexon 2019), hierarchy (Lake 2009, Mattern and Zarakol 2016, Zarakol 2017, MacDonald 2018), status (Paul *et al.* 2014), empire (Barkawi and Laffey 2002, Barder 2015), or authority (Krisch 2017, Sending 2017, Zürn 2018). However, if one takes seriously the diversity of power differentials and norms and the various ways in which they affect the scope of action of international actors at different levels and in different policy fields, it is more accurate to adopt a broader understanding of the international order that can integrate these different approaches (Daase and Deitelhoff 2015, Daase *et al.* 2017b, Daase *et al.* 2023a).

The more inequalities between states consolidate and increase, the more the question of "rule" arises. Inequality alone, however, is not sufficient evidence of rule. Even a (permanent) unequal distribution of resources or power does not establish a relationship of rule. An advantage or disadvantage associated with unequal distribution of resources and power, affecting available options for action or even in decision-making processes, however, results in different possibilities for control and steering. Depending on how persistent and systematic these differences are in a particular context of interaction among a group of actors, inequality becomes entrenched in a more or less clear hierarchy of opportunities to influence rule-

making and enforcement. This recalls an important feature of Weber's definition of rule – the access to command.

In almost all policy fields, the number of international regulations and institutions at the regional and global level is increasing, creating a multilayered space of governance with different spheres of influence for different actors. This observation prompted a reconceptualization of “rule” in IR, which in part builds on Weber, but dispenses with certain aspects (Daase and Deitelhoff 2015, 301, 305, Daase *et al.* 2023b, pp. 14–16). The understanding of rule as a relationship of institutionalized super- and subordination is at the heart of this concept. Liability and permanence remain as important criteria for distinguishing “rule” from other forms of exercising power. Weber's association of rule with legitimacy and recognition, however, falls out. The prerogative of exclusive use of force for a particular actor or group of actors is also less important. Both may well play a role, depending on the form of “rule” we are dealing with. However, they are variable and do not have to be fully realized.

Following the discussion above, the formation of a hierarchy of qualitatively different scopes of action and spheres of influence should be characteristic of “rule” as organizing principle in a given social context. Inspired by Christopher Daase and Nicole Deitelhoff (Daase and Deitelhoff 2015, 301, 305, Daase *et al.* 2023b, pp. 14–16) this study defines:

**Rule is a constant form of exercising power and means the institutionalization of relationships of super- and subordination, which systematically expands or restricts the actors' options for action and influence on control.**

To what extent and for what reasons the relations of rule are recognized is variable. Visibility and fulfillment of the claim to power and willingness to follow can also vary. Whether and to what extent physical force is used as a means of enforcement remains also optional. Constitutive for rule is an asymmetry in power relations and resources, which is permanently consolidated in hierarchical structures and has an advantageous or disadvantageous effect on the options for action and influence on steering of different actors. This means that both the restriction of options for action (of the ruled) as well as the expansion of options for action (of the rulers), which are always thought of in relation to each other, are included in the definition. In this way, the dynamics of expansion and contraction of scopes for action in structures of rule can be considered.

In contrast to its inspiration (Daase *et al.* 2023b, pp. 14–16), the chosen terminology does not contain specific objectives of rule in its core definition. It also deliberately abandons the criteria of expectation stability. Because they can vary depending on the case or even not be present at all. Especially in tyrannical and arbitrary regimes, the goals of rule can concentrate on mere self-preservation, and the creation of uncertainty (and thus destabilization of expectations) may become



an essential source for maintaining power. Self-centeredness and unpredictability are therefore often an integral part of authoritarian practices of rule. Furthermore, objectives and means of rule can coincide. Therefore, a core definition should either separate them consistently or refrain from including them. The influence on the distribution of basic goods or resources, for example, can be both the goal and the primary method of a given system of rule. The resulting inequalities may vary according to the given type of rule or not even be part of it. Nor does the control of their distribution necessarily have to be the goal of rule. Nevertheless, this may very well be the case in a given context, as the nuclear order particularly suggests.

The chosen concept of rule can be used to describe a variety of hierarchical phenomena in global politics affecting actors' scope for action. They can be of a military, economic, diplomatic or socio-cultural nature. The recognition of their legitimacy might also vary. Legitimate and illegitimate rule become two varieties of a broader concept (Daase and Deitelhoff 2015, pp. 305–306, 2017, pp. 130–133). Likewise, the degree to which coercion or force is resorted to may differ. If both the recognition of authority and the availability of coercive means are not necessary criteria for rule, i.e. do not determine its existence but merely its variance, we arrive at a conceptual expansion, which enables us to identify previously undiscovered patterns of rule in international relations and law. However, the openness of the definition in the form of a core concept does not diminish the possibilities of a more detailed description or classification in a specific case, as in this study on the nuclear order.

When examining the complex interplay between rulers and ruled, their respective positions within the ruling structures and the evolution of their scope for action come to the fore. In this analysis, Weber has taken an interesting path by focusing on the ruled. For our context in international relations, where every state actor imagines itself as sovereign and ruling, this approach is illuminating. Because Weber's understanding of rule is not, as usual, blinded by the glamor of potency and potentates. It is not the rulers who are in the analytical spotlight. Instead, one must examine the ruled and their motivation to obey in order to understand the phenomenon of rule. This original perspective is perhaps one of the reasons for the success of Weber's typology of rule. Its angle is also promising for answering the research question of this study, which focuses primarily on the ruled (the supporters of the Humanitarian Initiative and the TPN, all non-nuclear weapon states or non-state actors).

However, our interest is not their motives for obedience. Instead, their revolt against the nuclear order is understood as an indication that an unloved relationship of rule may be present. And it is the motives of resistance, the investigation of the reasons to engage in the Humanitarian Initiative and initiate or support the TPN, from which we expect to gain more insights into essential features of the rejected nuclear rule. When looking at the behavior of various actors in a context of rule, it is precisely irregularities that stand out. It becomes particularly interesting when the recognition of the relationship of rule is explicitly withdrawn. But at this

exciting point Weber leaves us in the lurch. By limiting himself to the reasons of the ruled to obey, he conceals the motives for refusing compliance. Rule and authority thus become one lump: there is only recognized rule. With this focus on recognition and neglect of resistance, Weber's terminology leaves an empirical gap. Because in reality, rule and resistance are not mutually exclusive, but refer to each other. Therefore we now take a closer look at resistance.

## Resistance

From the perspective of the rulers, every disobedience appears as an expression of resistance. However, not every gesture of rejection, disregard of applicable regulations or refusal to obey is radical and raises the question of rule. Mostly such behavior is only directed against a certain expectation of action and not against the entire context of action. Ignorance, disinterest, criminal energy and other reasons may be responsible for non-compliance with authority, disorderly or illegal behavior. On the other hand, incomprehensibility, unfulfillability and other characteristics of instructions may also play a role. At the same time, compliance does not automatically mean that a claim to rule is recognized. Often, obedience is performed reluctantly and, under certain circumstances, even in a recalcitrant manner. Such behavior may actually contain the seeds of resistance, because sabotage often hides behind forms of apparent compliance. Thus, obedience or disobedience per se do not define resistance. So how can we grasp resistance in a meaningful way?

To speak of resistance, the action in question must be conscious and intentional. The importance of reflexivity and awareness has been repeatedly emphasized in the conceptualization of resistance (Hollander and Einwohner 2004, Caygill 2013, Butler *et al.* 2017). This reflection refers to a given political object which is questioned, criticized or challenged in whole or in part. In order to distinguish resistance critical of rule from other varieties, we must pay attention to this object of critique (Daase and Deitelhoff 2017, pp. 133–134, 2023b, p. 193). Three categories commonly used in political science help to differentiate the respective object of contention: political content and programs (*policy*), political decision-making processes (*politics*) and political structures and institutions (*polities*). For example, resistance may be directed against certain political decisions or a chosen political course (e.g., against the construction of wind turbines or an agricultural policy that is perceived as too industry-friendly). Here, it would refer to specific *policies*. If the revolt is aimed at the process or way of political decision-making (e.g., lack of participation of relevant stakeholders in a health care reform), it deals with a specific case or recurring pattern of *politics* as its object. If resistance arises against fundamental institutions of the political order (e.g., in the case of systematic corruption of constitutional bodies or in the case of fascist contempt for democracy), it is the *polity*, i.e., the ruling order itself, that is

under fire of criticism. Political resistance can thus be interpreted as a withdrawal of recognition, as a questioning and challenging of *policy*, *politics* or *polity*.

Resistance to *polity* jeopardizes the justification of rule and withdraws its recognition. It is thus the question of legitimacy that drives and constitutes resistance critical of rule. We can therefore define it in analogy to rule as follows:

**Resistance to rule means the withdrawal of recognition and thus the questioning and challenging of institutionalized relationships of super- and subordination that shape actors' scope for action and control.**

The extent to which compliance is maintained is variable. The visibility of resistance can also vary. Whether and to what extent physical violence is used as a means of pressure may differ. Central to our conceptual approach, above all, is that the conflict over the legitimacy of rule does not fall outside its terminological bracket.

Based on the same reasoning, Daase and Deitelhoff suggest tracing rule through the practice of resistance (Daase and Deitelhoff 2017, p. 122, 2023b, pp. 189–190). This highlights the conflictual, yet constitutive relationship between rule and resistance and the variety of dynamics that may arise (Daase and Deitelhoff 2023b, pp. 195–205). Thus, rule is not the end of the conflict, but manifests itself precisely when it is contested. Likewise, the dispute over legitimacy begins with resistance, but does not necessarily end rule. On the contrary, normally this dispute is inherent in every system of rule. If we assume that rule and resistance are not mutually exclusive, but coexist in varying degrees and in different forms, this dispute is even constitutive for both concepts. Where there is rule, there is resistance, where we recognize resistance, relations of rule are not far away (Daase and Deitelhoff 2017, pp. 131–132). This is precisely why resistance can be used as a key to the analysis of rule. Since rule becomes particularly visible where it struggles against resistance, it becomes describable in the observation of resistance. Regarding resistance as a natural part of rule can help to reconstruct manifestations and transformations of rule where its contours are not necessarily very strong or explicit (Daase and Deitelhoff 2023b, p. 189).

Even if rule tends to marginalize resistance by generating legitimacy and willingness to follow or by resorting to coercive means, it cannot completely neutralize it either by the subtlest techniques or by repressive force (Daase and Deitelhoff 2015, p. 307, 2017, p. 133, 2023b, pp. 190–191). This also applies to totalitarian regimes (Caygill 2013, pp. 137–146), as Hannah Arendt, among others, shows in her book “Eichmann in Jerusalem” with regard to Jewish resistance in concentration camps (Arendt 1963). Resistance can and must adapt to the respective mechanisms of rule, depending on the prevailing potential and limits. Thus, a particular system of rule can also produce its own variants of resistance. Consequently, the specific traces of a given system of rule become apparent in the characteristics of its resistance. Just as Clausewitz

describes war (Clausewitz 1992), resistance could also be described as a chameleon. Resistance movements often occur in a multitude and in the most diverse forms, degrees of manifestation and scales. In short, they are interrelated with the prevailing conditions of rule and are in no way inferior to them in their heterogeneity.

We can develop criteria that help to structure this diversity of resistance movements and distinguish between different types of resistance. To be able to better classify our object of investigation – the revolt against the nuclear powers by the HI and the TPN process – two decisive criteria shall be considered (Daase 2014, pp. 3–9). On the one hand, we can differentiate (rule-critical) resistance based on the actors involved in it (*who* resists?). When classifying according to actors, it makes sense in the context of international relations to distinguish between state and non-state actors. However, resistance movements can also be made up of mixed groups consisting of both non-state actors and state actors. In addition, there is also the question of *how* resistance is carried out. A distinction can be made between actions that respect the applicable rules and actions that violate them. On the level of the means employed, resistance can thus be divided into two types: *opposition* and *dissidence* (Daase and Deitelhoff 2017, 2019, 2023a).

Regarding the choice of means, opposition and dissidence each formulate political alternatives to the prevailing order. However, they differ in whether they accept and abide by existing rules of political participation (opposition) or reject and transgress them (dissidence) (Daase and Deitelhoff 2017, pp. 133–134, 2023b, pp. 193–195). Opposition adheres to the rules and uses the permitted means and forms of political participation to articulate its criticism or alternative proposals. Dissidence rejects, breaks or transgresses the existing rules and chooses unconventional forms of organization and articulation. Violent resistance is a particularly strong form of dissidence. This could include, for example, mutinies or violent attacks. Non-violent forms of dissident behavior are, for example, civil disobedience, leaking secrets or other forms of rule-breaking. These types of behavior rarely occur in their pure form and are therefore used conceptually in the sense of an approximation.

Empirically, the range of actors involved in resistance is often broad and we are usually dealing with opposition and dissidence of varying degree. The ratios within mixed forms of resistance can be more or less pronounced both at the level of the actors and at the level of the choice of means. Often, they are in a dynamic relationship with each other. Opposition and dissidence can also merge into one another. (Daase and Deitelhoff 2017, pp. 134–136, 2023b, pp. 193–195). This transition can be related to, accompanied by, or conditioned by changes in power relations. If, for example, opportunities for protest are restricted, this can reduce oppositional activity and favor dissident behavior. However, there is no compelling causal link between the increase and decrease of restrictive means of rule and the emergence of dissident practices.

To illustrate the spectrum of resistance in the context of IR, a few examples from previous research shall be presented. There are different ways to analyze and interpret state resistance (Deitelhoff and Zürn 2016, pp. 271–275, Daase *et al.* 2017a, pp. 3–6). Especially from a “balance of power” perspective, state resistance appears in the form of inter-state power competition and occurs primarily as a result of a shift in power (Mearsheimer 2001), for example, when a transition seems to be within reach for emerging powers (Ilkenberry 2010). Previous work suggested that new powers would reject established international institutions because of their bias in favor of the *ancien régime* (Gilpin 1981). In fact, the BRICS group of states, in which Brazil, Russia, India, China and, most recently, South Africa have joined forces as major economic powers, sees itself as a counter-weight to the international order created and dominated by the West (May 2017). However, while declaring the principle of multipolarity as the basis for the future of international politics, those states also defend the traditional principle of non-interference and sovereignty, which they want to maintain or restore. Studies show that, particularly in the economic sphere, these states criticize existing international institutions such as the World Trade Organization (WTO) or the World Bank, but adapt and use them in accordance with their interests (Nölke 2014). Yet shifts of power centers can also go hand in hand with demands for changes in the decision-making structures of global politics (Hurrell 2006). Another form of state resistance that is not tied to the emergence of new powers could be seen in the so-called forum shopping, in which states pick and choose the institutional format in which they participate according to their interests and attempt to circumvent the jurisdiction and access of inconvenient institutions (Busch 2007). A further option is the establishment of alternative institutions if states are dissatisfied with existing ones (Brem and Stikes 2009, Flesher and Westermann 2009, Morse and Keohane 2014). Finally, states might leave institutions, turn away from existing regimes, and openly break the rules (Daase 2003a).

The resistance behavior of non-state actors is also repeatedly examined. Numerous studies investigated how non-governmental organizations (NGO) criticizing the *status quo* contribute to the reform of international institutions and increasingly expand their own access and influence within them (Brühl 2003, Martens 2006, Tallberg Jonas *et al.* 2013). Well networked and professionally organized, they pursue their goals primarily through lobbying and strategic press and public relations work. Other forms of non-state resistance, such as activist movements, are less organized, attack from the outside, pursue more revolutionary goals, and confront specific international institutions or the global (economic) order as a whole (Smith *et al.* 1997, Smith and Johnston 2002, Della Porta and Tarrow 2005, Flesher Fominaya 2014). Prominent examples include the anti-globalization Battle of Seattle during the WTO Ministerial Conference in 1999, protest actions at the subsequent rounds of negotiations and at the G7/G8 summits, Occupy Wall Street, the anti-austerity protests

in the course of the European financial and currency crisis or the protest rallies of thousands of activists surrounding the World Climate Conferences in Paris 2015 and in Glasgow 2021. Some of these events also resulted in violent riots.

As a “transnational advocacy network” (TAN), resistance can also take the form of cooperation between state and non-state actors, for example when domestic NGOs generate international state and inter-state pressure on their national government via their transnational civil society networks (Keck and Sikkink 1998, 1999). The control of knowledge and “epistemic communities” that emerge in such contexts can be decisive for possible changes and thus the success of transnational resistance (Haas 1992). Multi-stakeholder networks and their influence on the discourse have also been crucial to achieve reforms in the field of humanitarian disarmament (Bolton *et al.* 2020), such as in the case of the ban on anti-personnel landmines or the prohibition of cluster munitions. If the focus is on the reform of international organizations and global governance, resistance can be interpreted as politicization (Zürn 2012) and emanate from both states and non-state actors. Deficits in the legitimacy of international institutions are addressed and publicly discussed. This can trigger reforms, as has repeatedly happened in the European Union, or lead to a weakening of multilateralism, as can be observed, for example, with regard to the United Nations Security Council.

According to our definition, these various forms of resistance have in common that they involve conscious behavior. Otherwise, these activities could not be described as such. However, determining the exact type of resistance requires further criteria. To speak of resistance *to rule* the object of contention must involve the *polity* and its legitimacy must be called into question. The composition of the *actors* and the distinction between *opposition* and *dissidence* are further key elements of the analysis. There are a few other aspects that are worth paying attention to.

To become effective in the political arena, resistance requires association of several people or actors. Without unification, without a shared goal, effective political resistance is hardly conceivable. In fact, the occasion, place or context in which resistance gathers and transforms the individually expressed criticism into a movement can be very revealing. It can even indicate the object of contention and whether the resistance is directed against rule. Prominent historical examples are the storming of the Bastille during the French Revolution or the gathering of the masses in front of the Brandenburg Gate and along the Berlin Wall on 9 November 1989.

In addition to the time, place and context of gathering, the explicit demands and openly expressed goals or agenda of the resistance movement can of course provide information as to whether it is directed against rule or something else. However, this does not necessarily have to be the case. Particularly in contexts of oppression or censorship, the articulation of resistance can take subtle forms, for example in the guise of symbols, gestures or other codes. Therefore, it is important and enlightening to look closely at what the actors of resistance say and which forms of expression

and codes they choose. However, in order to reveal the underlying intentions, the investigation must sometimes dig deeper and not shy away from researching directly in the field.

Beyond the distinction between opposition and dissidence an analysis of resistance should also retrace which exact paths the resistance takes to expand its sphere of action. After all, it depends not least on its techniques and strategies whether it succeeds in influencing, changing or even breaking through the institutionalized relationships of super- and subordination. The investigation of the approach and activities of the resisters must be sensitive to the close connection between rule and resistance, i.e. to the dynamic interplay between the expansion and contraction of the respective spheres of action. This means that the reactions of those in power also need to be considered. For the course of events also depends on which techniques and strategies the rulers use or are able to use. Up to what point do they tolerate resistance and when do they step in? What means can they actually resort to in a specific context and how much are they willing to compromise? All of this influences the resistance itself, its composition, its further course of action, its effectiveness and its chances of success.

## 1.2 Critical & post-colonial perspective

Most theoretical and empirical research on rule and resistance takes a critical or post-colonial perspective. Critical and post-colonial approaches unite very different currents and are experiencing a renaissance in a wide variety of scholarly engagement. Many of these contributions focus on how the colonial past still affects social, cultural, political, legal and economic structures today. They place special emphasis on the importance of the epistemic and discursive dimension of the exercise of power and the continuity with which colonial relations are expressed therein. As a first step, we will discuss this idea of post-colonial continuity in more detail, drawing on the relevant critical and post-colonial literature, particularly in International Relations (IR) and International Law Studies (ILS).

In a second step we develop six specific components of colonial imprint, which we derive from the body of knowledge of post-colonial studies: *Excessive violence*, *eu-rocentrism*, *primacy of the state*, *racism*, *economic exploitation*, and *patriarchal domination*. These serve to substantiate the abstract idea of a post-colonial continuity and to make it applicable to our object of study. If there is an epistemic and discursive continuity of colonialism in the nuclear order, this should be recognizable from these elements. Illustrations will be given of how the components of colonial imprint could manifest themselves in the nuclear field. When we examine the presumed anti-colonial motivations of the resistance, these aspects should play an important role.

## Epistemic & discursive continuity

The history of colonialism is one of subjugation and exploitation of non-European colonies (peripheries) by European colonial powers (metropolises). In the process, relationships of domination were established between European conquerors and indigenous peoples in non-European regions. Colonialism as a historical period can be divided into several phases (Eckert 2015). The landing of Christopher Columbus on what is now the West Indian peninsula of San Salvador on October 12, 1492, is considered to mark the beginning. This first phase of Iberian colonialism, during which the two maritime powers Spain and Portugal supported private conquests overseas, lasted until the 17th century. The 18th century ushered in the second phase and is marked by the British Empire. The practice of colonial expansion expanded with the Industrial Revolution and new technological possibilities in transportation and communication. At the same time, the Enlightenment provided an ideal justification for the Europeans' sense of superiority and drive for expansion. The burgeoning nationalism reinforced this tendency and became the hallmark of colonialism in the second half of the 19th century. This later phase is often referred to as imperialism (Mommsen 1969). The conquests reflected the competition of the European great powers for prestige and territories. Meanwhile, in addition to Spain, Portugal, and Great Britain, France, Italy, Belgium, Germany, the Netherlands, and the United States competed for colonies (Mommsen 1969, pp. 152–177). It was not until after the Second World War that decolonization really began (Eckert 2015, pp. 86–87).

Along with the temporal classification, spatial distinctions are important. Depending on the region, different emphases can be identified. Iberian domination of Latin America was particularly driven by the exploitation of mineral resources and characterized by extensive territorial and administrative control, accompanied by heavy settlement. In contrast, early British colonialism in Asia was particularly aimed at expanding trading bases and conquering new markets and resulted in little settlement by Europeans. In North America and Australia, on the other hand, the Empire spread through aggressive settlement in such a way that the indigenous population was largely displaced and decimated. In the 19th century, it was a common belief in the United States that they had a divine duty and destiny to expand their territory and influence on the North American continent (Manifest Destiny). The colonization of Africa, in turn, was not accompanied by extensive European settlement, except for parts of North Africa.

Colonialism in its various forms and manifestations is understood here as the historical practice of European domination over non-European territories between the 15th and 20th centuries. Post-colonial approaches deal critically with this era of colonialism and its aftermath. First pursued in anthropology, they have gradually found their way into almost all disciplines of the humanities and social sciences, forming a transdisciplinary research current (Moore-Gilbert 2000, Kerner



2017). Their breadth is accompanied by many differences and debates. Two theoretical sources, the Marxist and (post-) structuralist schools of thought, feed numerous post-colonial studies. Despite their diversity there is agreement that the colonial encounter played a crucial role in shaping colonizing and colonized societies and their relations (Biswas 2016, p. 221). In this context, the United States, as a former colony and later colonial power, occupies a special position. Despite their geographical location outside Europe, they are seen as part of the European cultural space and thus of the metropolis in (post-) colonial relations.

The central thesis of post-colonial approaches is that colonialism continues to have a formative effect in many areas to this day. This long-term impact of the colonial legacy includes not only the material North-South divide in a global economic system that continues to disadvantage former colonies that are deprived of their resources. Post-colonial approaches argue that colonialism persists ideationally by further dominating our basic assumptions, knowledge and understanding of the world and our exchanges about it. European or Western categories of thought and discourse dominance would thus perpetuate colonial domination. Academia and scientific disciplines would also have contributed to this and continue to do so. It is this *epistemic and discursive dimension of the continuity* of colonialism that is the linchpin of post-colonial approaches (Moore-Gilbert 2000, Kerner 2017). It would marginalize the lifeworld and experience of the majority of the world's population.

Edward Said, literary scholar and prominent Palestinian intellectual in the United States, is often referred to as the founder of post-colonial approaches. In his foundational text "Orientalism" (Said 1978), he examines the significance of Western ideas and knowledge about the Orient (and Islam) for the colonization and exploitation of foreign societies, especially in the Middle East, by Great Britain and France. The prevailing self-image of the progressive, modern West would have entailed the negation of the foreign as an archaic, underdeveloped Orient. As a result of this juxtaposition, academia would have lost access to a multi-layered and mixed perspective. Said emphasizes the interaction of colonialism and culture (defined as the production of knowledge) and conceptualized the binary othering of foreign culture as "Orientalism". This concept has had a significant intellectual impact, bringing the dimensions of culture, knowledge and ideas into the discussion of European or Western domination and highlighting how these factors enabled, accompanied and survived historical colonialism.

A liberation from the epistemic and discursive corset is extremely difficult, if not impossible, from a post-colonial perspective. For the critique of colonialism has to use the language of colonialism in order to make itself understood (Lorde 2007). It thus confirms the assignments of meaning and categories from which it wants to free itself (Chakrabarty 2008). Post-colonial approaches nevertheless attempt to uncover and dissolve epistemic and discursive structures and to recognize the political, economic, social and cultural effects of colonialism. For this to succeed, the perspec-

tives and interpretations of the oppressed and most disadvantaged, the so-called subalterns, are indispensable (Rushdie 1982, Spivak 1988, Spivak 1995). If colonial history is told from a specific, European or Western perspective and thus suppresses other forms of knowledge, post-colonial narratives are needed to counteract this epistemic and discursive suppression.

Therefore, science itself needs to embrace new, subaltern readings. In the early 1980s, “The Subaltern Studies Collective” formed in the field of Indian historical studies and gradually inspired similar projects and debates in Africa and Latin America (Guha 1998). For the most part, these post-colonial contributions take sides, mobilize the subaltern point of view and intervene politically. Adopting a (politically engaged) post-colonial perspective therefore also means questioning the strict separation of theory and practice and understanding science itself as a political practice. In this sense, post-colonial studies clearly belong to the group of critical theories (Humrich 2003).

Critical and post-colonial works have also become increasingly popular in IR. Here, too, many of the contributions are rooted in the Marxist and (post-)structuralist tradition (Laffrey and Nadarajah 2016). An important pioneer for the resurgence of the critical perspective in the discipline was Robert Cox (Cox 1983). He noted that in IR basic structures were often taken for granted and that research only took place within this predetermined framework, thus contributing to its stabilization and reproduction. Critical and post-colonial IR approaches therefore not only discuss the material factors of global affairs, but also search for the epistemic and discursive structures behind. This requires sensitivity to the interplay between theory and practice. A prominent example of such research is the critical examination of how the theory of democratic peace has found its way into the language, agenda and practice of political actors – with serious consequences for many people (Ish-Shalom 2006, Sabaratnam 2013).

Critical and post-colonial IR studies also consider limits of political engagement. They are skeptical about the extent to which emancipation may or even can be successful. For counter-narratives also run the risk of being corrupted by semantics of power or of becoming dominant and oppressive themselves. This interwoven relationship between resistance and power in the international context is critically examined. A key post-colonial study analyzes how “the empire” of European and Western dominance spans all discourses like a global network without a recognizable center (Hardt and Negri 2000). Accordingly, it is not the power of certain actors but discursive dispositive that would establish a certain order and consequently foreclose almost any formation of resistance from the outset. Only “the multitude” of decentralized and at the same time omnipresent movements of resistance relying on alternative narratives could be effective against this (Hardt and Negri 2005).

As in other disciplines, post-colonial IR approaches reflect on how colonialism persists in the assumptions and conclusions of academic research (Biswas 2016).

These include, for example, the narrative of IR itself, its storyline beginning in the European or Western context with the catastrophe of World War II and developing with the rise of the United States. Objects of study (e.g., interstate wars, the cooperation dilemma) and basic assumptions and theories (e.g., realism, liberalism, rational choice) are also scrutinized. Applying a post-colonial perspective can help expose the epistemic and discursive entrenchment of IR in the European-Western context and bring alternative or marginalized views, narratives, issues, and concepts to the fore (Biswas 2016, pp. 227–228). Post-colonial approaches have also found their way into Peace and Conflict Studies (PSC) and discuss, among other things, a narrowing of the concept of violence to its direct and physical forms (Brunner 2018). Following the concept of structural violence (Galtung 1975), they argue for an expanded understanding that takes into account economic, social, cultural, psychological, discursive, and other constraints.

In ILS, post-colonial approaches share the premise that law, like other social norms, is socially constructed and therefore historically and culturally conditioned. Here, too, the common ground is to take a critical look at how international law has enabled, legitimized and maintained colonization (Theurer and Kaleck 2020a). These contributions are often referred to as Third World Approaches to International Law (TWAIL) and examine international law as an expression of continuing Western domination (Mutua 2000, Anghie and Chimni 2003, Anghie 2006, Gathii 2011, Theurer and Kaleck 2020a). Within TWAIL as well, many researchers politically side with the formerly colonized or the Global South, try to counter further tendencies of expansion on the basis of law, denounce political marginalization, economic exploitation and cultural discrimination (Anghie 2004, Okafor 2005, Chimni 2006, Gathii 2010).

Anthony Anghie, one of the best-known TWAIL scholars, examines the role that European legal theory played in laying the foundations for interpretive sovereignty in the 16th to 19th centuries and how it continues to shape international law today, including new attributions that are related to old ones (Anghie 2004, Anghie 2006, 2016). Accordingly, political power and the epistemic power of law (or legal theory) had been closely linked throughout the epoch of colonialism, especially during the 19th century. In order to legitimize conquests and expropriations, colonial powers had literally demanded legislation, and legal scholars had willingly made themselves subservient.

For TWAIL researchers the interpretive power over legal issues constitutes both the reason for the epistemic and discursive continuity of colonialism in international law as well as the means against it, providing the tools for an alternative, decolonial development (Anghie 2006, Theurer and Kaleck 2020a). Challenging the fundamental assumptions and principles of international law is crucial in this emancipatory endeavor. Therefore, TWAIL also deal with the issue of violence in all its manifestations, including epistemic and discursive violence. What is special

about the violence of law in this context is that the properties of formality, neutrality, and objectivity attributed to it (or claimed by it) produce a particularly subtle and perfidious form of epistemic and discursive violence, making injustice invisible and unassailable. Conversely, TWAIL seek to expose this strategy of concealment.

The critical disclosure of double standards plays a special role in this context. This applies in particular to the interpretation of two fundamental concepts of international law, the principle of egalitarian sovereignty of states and the construct of *terra nullis* (Theurer and Kaleck 2020b, pp. 12–13). These concepts were implemented differently depending on which population group was affected. Post-colonial approaches question legal attributions such as ethnicity (“race”), culture, religion, class or sexuality, showing that the colonizers had the authority to determine whether and to what extent people or a society were assigned to one of these categories and whether and which law was valid (Gunn Allen 1992, Mutua 2001, Anghie 2004, Chimni 2017). The colonial practice of dividing states into civilized and uncivilized, modern and archaic states would have shaped current international law to this day (Gong 1984, Keene 2002, Orford 2006, Koskenniemi 2010). After formal decolonization from the 1960s the distinction would continue in a new guise, more subtle and professionalized, but always committed to the same “universal teleology of progressive humanitarianism” (Koskenniemi 2011, p. 156).

Looking at the field of development cooperation, for example, analysis show how discourses on development and modernization, rule of law and structural adjustment have replaced colonial discourses on civilization and contributed to the continuation of relations of dominance and exploitation between the Global North and the Global South (Anghie 2004, Anghie 2006). Historical work on the prohibition and legitimization of the use of military force, in turn, demonstrates that states were treated differently in the 19th century depending on which group they belonged to in the imperialist world, and that these distinctions would continue to have an impact into the 20th century (Verdebot 2014, Bernstorff 2017, 2018). TWAIL studies trace how double standards remain rooted in colonial distinctions today and shape concepts such as the Responsibility to Protect (Orford 2011), the self-image and agenda of international institutions (e.g., the International Criminal Court (ICC)) (Gabrielli 2023) or the interpretation of International Humanitarian Law (IHL) (Mégrez 2006).

Various TWAIL studies demonstrate the difficulty of change or resistance to the dominance of the Global North, particularly in the economic sphere. After gaining independence in the 1960s and 1970s, many people and governments in the Global South were optimistic about the creation of a new global economic order, for which even a legal-theoretical framework had been developed (Bedjaoui 1979). But fundamental reform efforts would have been undermined by old structures and Western influence, and privileges and disadvantages have been permanently enshrined (e.g. in the protection of foreign investments in transnational law) (Theurer and Kaleck 2020b, pp. 16–17). Post-colonial approaches observe how political agency of

the Global South has been repeatedly restricted by an increasingly dense network of transnational norms and international private law regimes (Chimni 2017, pp. 25–27). The area of International Human Rights (IHRL) would also be characterized by the epistemic and discursive dominance of the West. As a result, resistance actors from the Global South would have to adapt accordingly and build on the biased IHRL discourse to be successful (Rajagopal 2003). The role of non-state actors is also critically examined in this context. Financially well-off Western NGOs that see themselves as saviors, for instance, would only campaign for the enforcement of human rights in line with the prevailing neoliberal paradigm (Mutua 2001).

Research on the struggle for international law in the course of the great wave of decolonization concluded that it was successful in eliminating central epistemic and discursive dispositives of European imperialism, but new forms of Western dominance could not be averted (Bernstorff and Dann 2019). Western governments and legal scholars had succeeded in securing United States-led Western hegemony through clever demarcations between domains and policy fields, reframing of categories of civilization, integration of substantive demands of the Global South, and a focus on bilateral treaty relations over which the West has greater influence. Moreover, inherent contradictions in the strategy and demands of the Global South, which on the one hand wanted to make *tabula rasa*, but on the other sought integration into the order, have contributed to a mixed result.

This brief foray through the literature confirms important commonalities within the corpus of critical and post-colonial studies, and generally shared theoretical insights emerged. All studies in this genre emphasize the importance of the epistemic and discursive dimension for the analysis of power relations. Post-colonial approaches further highlight the continuity of the colonial legacy. This applies across all disciplines, including IR and ILS. Another joint conclusion is that resistance under these conditions is very difficult and, in the view of many, hardly possible. To have a chance of success, the subaltern perspective must break through the (post-colonial) epistemic and discursive hegemony. At the same time, the pressure to adapt and, in some cases, the desire to adapt remains high in order to be effective at all.

The idea of post-colonial continuity and its epistemic and discursive power is of central importance for our investigation on rule and resistance in the nuclear order. However, it is not sufficient as an analytical tool to get to the bottom of a possible anti-colonial motivation of the anti-nuclear resisters. For this, we need concrete attributions associated with a colonial regime. These must be tangible and not only accessible through academic debate and meta-analysis. Only if they play a role in the conscious motivation of the actors of resistance, we can reconstruct patterns of colonial rule by analyzing resistance. We therefore take a further look at post-colonial literature to search for concrete manifestations of the colonial legacy that shape

international relations and international law to this day, and try to link them to the nuclear order.

## Colonial imprints in the nuclear order

There are six specific attributions of colonial rule that this study has distilled from post-colonial literature: *excessive violence*, *eurocentrism*, *primacy of the state*, *racism*, *(capitalist) economic exploitation* and *patriarchal domination*. In various fields of international relations and international law, these elements are repeatedly identified and cited by post-colonial approaches as examples of how the colonial legacy continues to have an impact today. They are rarely considered all together, and they also do not appear systematically as they do here. In other words, they do not form a recognized canon. Rather, this compilation is the result of an inventory which this study has undertaken within the relevant research body. It should also be noted that the six components cannot be strictly separated from each other. There are close, mutually reinforcing connections between them and overlaps. Nevertheless, their distinction is important. For it helps to reveal the spectrum of colonial legacy in the nuclear order and identify relevant emphases. We will now look at the core ideas of these six colonial imprints extracted from the large corpus of post-colonial studies. For each component, exemplary manifestations in the nuclear order are briefly described to highlight their relevance for our object of study.

### Excessive violence

Post-colonial research often focuses on the phenomenon of violence associated with colonial rule. Studies not only shed light on violence in its physical form, but also examine its political, economic, social, psychological, epistemic and discursive manifestations. Although these other forms of violence are given consideration, the particular extent of physical violence, the brutality and massive use of armed force in the context of colonial rule are of special interest to scholars and increasingly well documented.

Decades of genocide and mass violence in Africa during the colonial period continue to have a profound impact today and caused unprecedented socioeconomic, political, and cultural upheaval (Bloxham *et al.* 2012). Even though African cultures, identities, and social structures were not completely destroyed, contemporary research underscores totalitarian and coercive policies of the colonizers and the close links between colonial violence and genocidal practices (Moses 2011, Reis 2011, Travis 2012). Although physical violence had been a constant of colonial rule, the forms and extent of colonial violence varied by region and time period. Research on Spanish and Portuguese colonialism in Latin America shows that they differed depending on the character of the indigenous population and the system of colonial exploitation (Gabbert 2012). In colonized India, torture and extraordinary violence (“colonial

terror”) were among the usual means of colonial violence between the early 19th century and the First World War (Heath 2021). But even in the final phase of colonial rule in the mid-20th century, the use of mass violence continued, such as the atrocities committed by the Dutch in Indonesia in the late 1940s (Luttikhuis and Moses 2012, 2018). The growing documentation of colonial excesses of violence in concentration camps, mass murders and genocides, such as those committed against the Herero in German South-West Africa, however, led to little or only belated political recognition or even apology for the crimes committed (Zimmerer 2008, 2011, Rogers 2023).

Profound analytical insights into the various facets of colonial violence, effects, and responses were already provided by early literary key works of post-colonial thought, such as Franz Fanon’s “The Wretched of the Earth” (Fanon 1969). Accordingly, the violent division of the colonial world into two compartments, one subordinate to the other, had been one of the main characteristics of this order (Fanon 1969, p. 29). This had been encouraged by lowering the linguistic threshold for violence, by dehumanizing the colonized in the language of the colonizer. The colonizer would have used a zoological language, referring to the animal kingdom when speaking about the colonized (Fanon 1969, pp. 32–33). Without knowing the thesis of the discursive and epistemic dimension of colonial power, elaborated in later post-colonial literature, Fanon observed that the universal value system, created by the colonizers, was accepted, reproduced and even defended by the colonized (Fanon 1969, pp. 34–39). A trained psychiatrist, he also examined the mental disorders created by colonial violence and in Algeria’s war of national liberation (Fanon 1969, pp. 190–225). Since colonialism practiced a systematic negation of the other, denying him every human attribute, he argues, the colonized were permanently confronted with the existential question of who they were.

But how should the colonized deal with the omnipresence, the intensity and the depth of colonial violence that penetrates their own psyche? Mahatma Gandhi and Franz Fanon, two of the main figures of the anti-colonial movement, show diametrically opposed paths. For Gandhi, anti-colonial resistance is not compatible with the use of violence. For the refusal to cooperate with evil (colonialism) would also result in the duty to cooperate with good. The total renunciation of violence would therefore be necessary to weaken evil, to defeat colonialism (Gandhi 2014, pp. 9–17). Gandhi had missionary intentions and wanted to convert the entire Indian people to his point of view by setting an example and bringing his standard of living into line with that of the poorest of the poor (Gandhi 2014, pp. 66–67). By patience and sympathy instead of force the opponent should be dissuaded from error. This did not mean inaction. Through civil disobedience, the disregard of the laws in a non-violent way, the apparatus of violence could and had to be disturbed (Gandhi 2014, p. 76).

Fanon, in contrast, sees violence not only as a legitimate, but also as a proven, if not the only means of eliminating colonialism. For him, decolonization was always a

phenomenon of violence, and the latter remained at the core of any fruitful strategy of anti-colonial resistance. Only by force could a certain kind of people be replaced by another kind and liberation be achieved (Fanon 1969, p. 27, p. 30, pp. 68–69). *Tabula rasa* would therefore be the precondition for the creation of a new order. For this to happen, a decisive and deadly clash between the two protagonists, the colonized and the colonizers, had to take place (Fanon 1969, p. 28). The revolutionary forces, however, would not be the potentially corruptible nationalist political parties and urban supporters, but the peasants and rural population, who had nothing to lose and everything to gain (Fanon 1969, pp. 46–48). The conscious struggle of a colonized people to restore national sovereignty would be the strongest expression of culture (Fanon 1969, p. 169). Fanon evokes the downfall of Europe in a passionate call to arms (Fanon 1969, pp. 239–242). Yet, by giving the European narrative of progress a new garment and reformulating it in a subaltern variant, he retains Europe as a point of reference and the same Promethean tongue, declaring that a “new man” with a “new skin” must be created (Fanon 1969, p. 242, 2009).

If the threat and use of excessive violence is one of the hallmarks of colonial rule, it makes sense to view nuclear weapons in this light, even if their ultimate destructive power was only tested and used towards the end of colonial history. The catastrophic impact of nuclear weapons exceeds in its spatial and temporal dimensions the potential of all other types of weapons, including biological and chemical weapons of mass destruction. Their effects are not only of greater magnitude, but are particularly manifold (Sartori 1983, London and White 2019). These include devastating heat of several thousand degrees and light that cause fatal burns on a large scale and can lead to firestorms. The explosion creates a massive shock wave, causing tremendous destruction to buildings, injuries and, again, numerous deaths. In addition, an electron-magnetic pulse is released (Oreskovic 2011) and radioactive rays spread over hundreds or even thousands of kilometers, causing disease and death of humans, animals and plants (Ozasa *et al.* 2012, Hsu *et al.* 2013, Grant *et al.* 2017). In the atmosphere, the concentration of ozone changes. Whirled-up dust particles darken the sky, so that in the event of a major nuclear war, the climate would cool down (nuclear winter), causing crop failures and famine (Aleksandrov and Stenichkov 1983, Robock *et al.* 2007, Coupe *et al.* 2019). In addition to the long-term health consequences caused by the radiation, the survivors of the nuclear attacks on Hiroshima and Nagasaki also suffered socio-economic exclusion and discrimination (Dower 1995, Horie 2018).

Gandhi made direct reference to nuclear weapons and their (physical) destructive power in his reflections on anti-colonial resistance. He depicted the “atomic bomb” as *the* contrary (colonial) force to anti-colonial non-violence. As early as 1946, he began to deal with the atomic age heralded by the bombs dropped on Hiroshima and Nagasaki. Confronted with the fact that these events could shake the validity and practicability of his approach, Gandhi defended his belief in the moral and spir-



itual superiority of truth and non-violence, against which no physical and material force could prevail (Gandhi 2014, pp. 78–79). Truth and renunciation of violence would be much more powerful than the destructive power of nuclear weapons but would have to be recognized and practiced by everyone to save humanity from self-destruction. He thus sets considerable preconditions for the realization of non-violent decolonization. Even if India ultimately decided otherwise (in favor of deterrence through the acquisition of these new weapons) there was no alternative for Gandhi. Bombs could never be rendered harmless by other bombs (Gandhi 2014, p. 79). We will come back to this attitude when we examine the anti-nuclear resistance and its motive of rejecting the excessive violence of nuclear weapons.

### **Eurocentrism**

In almost all post-colonial contributions “Eurocentrism” appears as a guiding theme. It is understood as the tendency to regard Europe as a primary (normative) frame of reference. The notion of Europe is interpreted more in terms of its cultural and ideational meaning rather than as a geographical entity. The content and localization of Europe can therefore change in time and space, and is usually equated with “the West”, which also contains other countries, especially the United States (Laffrey and Nadarajah 2016, p. 123). Although not part of the West, Russia, which was itself an imperial and colonial power, is usually included in this cultural or ideational reference space from a subaltern perspective. During the Cold War, the ideological division of the world into West and East was overlaid by a no less pronounced divide between South and North. Therefore, the term “Global North” is also frequently used. Eurocentrism thus goes back historically and locally to the European continent, but over time has come to refer to an imaginary Europe that is geographically and temporally detached.

Through colonialism, the specific development and modernization of Europe was propagated worldwide as an ideal of progress worthy of imitation. The European or Western narrative of progress served as a universal script for economic, political and cultural development. Post-colonial analysis point out that this model is often seen as applicable to all regions of the world and as the only development path to a positive future for all (Anghie 2004, Skouteris 2009, Buzan and Lawson 2015). Modernization theory, it is argued, has made the European or Western model of development the standard against which all societies in the world can be measured and to which they can converge through the process of modernization. This applies not only to economic, political and social development, but also to language, culture and religion. Normative frameworks and value standards were set by “European” reason and rationality, which in turn had a decisive influence on the development of the law (Gathii 1998, Baxi 2006).

Looking at the history of international law and institutions, post-colonial studies highlight how Eurocentrism has shaped their design and the debates among legal

scholars, regardless of whether this was due to well-meaning intentions or opportunism (Koskenniemi 2010). In this way, European concepts and categories and the European-defined model of universal legal progress have been incorporated into legal studies (Chakrabarty 2008). Examples of this European historiography of law include the enforcement of concepts such as *ius gentium*, natural law, the law of nations, and European public law, but also the division of the body of law into “political”, “economic”, “secular”, “religious”, “private” or “public” domains. This infiltration would also affect international institutions, regimes and processes of global governance. Even if their functional differentiation and technical professionalism seem self-evident, international organizations and courts would in fact be based on European and United States models (Koskenniemi 2011). Their self-image, working methods, structure and language would correspond to those of Western authorities, universities, think tanks and NGOs.

Where can we observe Eurocentrism and neglect of the subaltern with respect to nuclear weapons and the nuclear order? An example could be seen in the system of deterrence and nuclear sharing. Not only the practice itself, but also most security studies and nuclear strategies dealing with deterrence focus entirely on the Global North (Miller 1984, Nye 1987, Heisenberg 1989, Yost 1993, Cimbala 2019, Richter 2020, Arbatov 2021, Badalassi and Gloriant 2022). The security interests of other states or the Global South are largely left out of the design of deterrence postures and sharing policies. These involve, for example, the global consequences of a possible nuclear escalation. The focus on the assumed security benefits of strategic stability relates exclusively to the Global North and ignores the costs for other countries. These include both the transnational and global consequences in the event of nuclear escalation (impact on climate and food security, lasting transnational environmental damage) and those caused by the practices to maintain the balance of deterrence (nuclear weapons testing in indigenous and subaltern areas, exploitation of uranium and plutonium in the Global South).

Nuclear deterrence and sharing can thus be regarded as a Euro- or Western-centric system of inclusion and exclusion. All nuclear weapon states, umbrella states and sharing states involved in it are exclusively from the Global North, more precisely, part of the Western alliance or the Russian military bloc. Moreover, in its historical and current practice, deterrence policy has developed an expansionist tendency that can be seen as characteristic of a Eurocentric approach. With the concept of extended deterrence, which was developed during the Cold War and is still used today (Slocombe 1984, Hlatky and Wenger 2015, Richter 2020) nuclear deterrence is not just about a nuclear response to a nuclear first strike. The stated goal of extended deterrence was to prevent a conventional attack from the Soviet Union by threatening to use nuclear weapons. If this failed, Soviet conventional aggression was to be stopped using tactical nuclear weapons stationed in European NATO countries. To respond, the Soviet Union gradually established a similar system of ex-

tended deterrence. Today, the doctrines of Russia, the United States, United Kingdom, and France – all former colonial powers – contain manifold deployment options for the use of nuclear weapons. These range from responding to a nuclear first strike to defending against attacks with other weapons of mass destruction and also include scenarios for reacting to diffusely defined existential threats to the nation, whereby conventional threats are not excluded as a possible justification (US 2018, Russia 2020). In November 2024, the Kremlin presented a revised nuclear posture that further lowers the threshold for the use of nuclear weapons and explicitly provides for it in response to “critical” conventional attacks on Russian or allied territory (Belarus) (Russia 2024).

By extending its nuclear umbrella over its NATO allies in Europe and beyond to Asia, the United States deterrence policy creates a three-tier nuclear system consisting of the nuclear weapon states, the sharing and umbrella states and the non-nuclear weapon states without deterrent. In the wake of its war of aggression against Ukraine, Russia has been trying to reattach to this model by stretching its nuclear umbrella over Belarus and occupied parts of Ukraine and deploying tactical nuclear forces on Belarusian territory (Bugos 2023a). Against this backdrop, Russia’s nuclear-shielded war of aggression against Ukraine and nuclear deployment in Belarus can be seen as a prime example of a nuclear expansion policy based on extended, even overstretched deterrence (Hach and Sinovet 2023, pp. 2–3). Its revised doctrine exploits ambivalences and thus attempts to underpin Moscow’s nuclear escalation dominance on the European continent with unpredictability (Russia 2024). The situation is more complex with France’s stand-by commitments under the European Union and the Treaty of Aachen (France and Germany 2019), which include the French nuclear *force de frappe* but do not involve any material or military underpinning in doctrine or armed forces. The United Kingdom’s nuclear policy, on the other hand, is strongly oriented toward or even subordinate to that of the United States (Kristensen and Korda 2022d).

In contrast, the nuclear doctrines of China and India are more restrained and prescribe a non-first-use policy (Kristensen and Korda 2022a, 2022b). Chinese diplomats even regularly object to Beijing’s no-first-use policy being seen as deterrence. It remains to be seen, however, whether this declaratory stance will endure in view of China’s current nuclear modernization and rearmament. India, too, does not see its nuclear arsenal as an accommodation to imperialism, but precisely as an anti-colonial measure of resistance against hierarchy and double standards in the nuclear order (Daase 2003a). Accordingly, India’s nuclear arsenal would only serve to repel a nuclear strike and relate solely to the regional conflict with Pakistan. Even if Pakistan’s nuclear doctrine keeps other deployment scenarios open due to India’s conventional superiority, its policy remains clearly centered on the bilateral conflict over Kashmir and does not include a trans-regional or global strategy (Kristensen and Korda 2022c). Israel’s ambivalent policy of not declaring its nuclear weapons

possession likewise eludes expansive tendencies of nuclear deterrence. In the case of North Korea, an increasingly aggressive nuclear deterrence policy, including threats against South Korea and the United States, can be observed, but this does not structurally involve any other state either.

A more event-related example of Eurocentrism and less indicative of practice than of the academic debate can be found in the narrative of the Cuban Missile Crisis. From a post-colonial standpoint the scientific discussion of the crisis was shaped by the major powers, neglecting the perspective and interests of the subalterns and thus contributing to the reproduction of international hierarchies (Laffey and Wel-des 2008). Although the Cuban Missile Crisis is probably the most studied security crisis in history, much of the literature had marginalized Cuba's role as a site of action, while spotlighting the United States and the Soviet Union as actors.

### Primacy of the state

An important theme of post-colonial studies, especially in TWAIL, is to reconstruct the contemporary state system and the primacy of statehood in international relations as a consequence of the globalization of European international law, which was driven by colonialism. The primacy of the state as the organizing principle of international relations and law would go back to the European Renaissance. Grotius and Vattel, pioneers of international legal theory, applied Hobbes' concept of the anarchic state of nature, in which all men are equal (Hobbes 2017), to European international relations and international law in the 17<sup>th</sup> and 18<sup>th</sup> centuries, using the idea of state sovereignty in the sense of the legal personality of sovereign states (Grotius 2010). Since its emergence, the discipline of IR has also seen states as the primary actors (Morgenthau 2006).

The Peace of Westphalia of 1648 was thus regarded as the crystallizing point for the establishment of European international law and the creation of a system of independent states, which then had expanded through the system of colonial empires in the course of the 19<sup>th</sup> century (Koskenniemi 2010). The globalization of the concept of statehood was completed in the 1960s with the emergence of new nation states in Asia and Africa within existing borders and legal frameworks, ironically as a result of decolonization. From this historical perspective, the establishment of the international system of states in the 19<sup>th</sup> and 20<sup>th</sup> centuries followed the European model, which had been based on the principle of sovereignty and non-interference within Europe between the 15<sup>th</sup> and 18<sup>th</sup> centuries. In the process, European states built colonial empires outside Europe, violating the same principle when it came to non-European territories, which were considered *terra nullis* (Anghie 2004, Theurer and Kaleck 2020b, p. 12).

Post-colonial analyses reveal further implications of the primacy of state sovereignty. For example, that it would propagate the idea that the interest of the nation (the people, the population) is represented by the state (Biswas 2016). The

norms for the protection of the integrity of the territory and the prohibition of any intervention are derived from this assumption. As a result, this ideal would promote the reproduction of the colonial or imperial legacy, especially in international law (Anghie 2004, Anghie 2016). Paradoxically, this would succeed precisely because the premise of formally equal sovereigns obscures the structural inequality and practice of double standards in world politics. Therefore, the primacy of statehood itself is problematized and seen as part of Europe's history of expansion (Biswas 2016, p. 224). The concept had been and would continue to be used for the exploitation of resources and the dissolution of social and cultural structures in the colonized states.

Moreover, the geographical boundaries were drawn by the colonial states, which divided and pitted the existing communities against each other in the struggle for access to resources (Biswas 2016, p. 224). The states that were created in this way would be so fragile and fragmented that many of them would be unable to develop genuine sovereignty, either internally or externally. The continuity and universalization of the Westphalian system had even provided the basis for powerful states to keep building empires, albeit not in the formal form that they did in the 19th century (Anghie 2016). Empirical examples of recent developments would point to a comeback of rivalries between great powers and the return of imperial states, driven by the desire to secure "one's own" territories, spheres of influence and economic interests.

Regarding the nuclear order, the primacy of the state finds expression in the prevailing principle of state security when it comes to assessing nuclear risks and threats. It is assumed that the state is the (legitimate) protector of its population and territory. Ensuring state security and survival is therefore the goal of mainstream nuclear weapons policy. The sovereign state thus becomes both the subject and the object of nuclear security. It appears both as the agent responsible for creating security and as the beneficiary, since security means above all state security (Laffrey and Nadarajah 2016, pp. 128–129). Until recently, the consequences of nuclear policy and nuclear use were viewed primarily in terms of safeguarding state existence (of nuclear weapon states and their allies), not in terms of the humanitarian and ecological effects of nuclear weapons activities on the people affected and the environment.

Academia and think tanks in security studies would contribute to this nuclear weapons discourse. Most of them would work in nuclear weapon states and nuclear umbrella states and, due to their bias, propagate the state-centric view and shared practices in line with the discourse shaped by the states that dominate the nuclear *status-quo*. This would reinforce a conservative nuclear policy that prioritizes a stable international order dominated by nuclear powers (Craig and Ruzicka 2013, Biswas 2014, pp. 25–26). Thus, an influential epistemic community has emerged that maintains an orientation towards state security, or rather the security of nuclear weapon states. As a result, little attention has been paid in the political and scientific de-

bate to those affected by nuclear weapons use and testing, or to the ecological and transnational effects.

The primacy of the state not only has implications for the security value of nuclear weapons. It also promotes their status as a symbol of national prestige. The connection between nuclear weapons and national pride and identity has been increasingly studied. The image of prestige and political power, as well as domestic political dynamics play an important role in anchoring nuclear weapons in the politics, economics, and culture of certain countries (Sagan 1996, Hymans 2006, Ritchie 2013b). Nuclear weapons development, possession and nuclear deterrence would be associated by these states with the idea of being important players on the global stage. They become a reflection of states' national identity and self-esteem. To be an important world leader, countries would need nuclear weapons as a mirror, as an enabler of this power (Ritchie 2013b).

Interestingly, nuclear weapons seem to have a particularly high identification value for nation states with traditionally high power projection, but whose international influence and imperial status have declined sharply, such as Russia and France. Here, even more than in other nuclear weapon states, the nuclear security doctrine becomes an integral part of the *raison d'état* and is almost mystified as a national sanctuary. Nuclear status ensures these states a remnant of materialization of their imperial phantom, becoming the last remaining proof of global *rayonnement* (radiation), in the bitter sense of the word. The need to maintain nuclear weapons as a badge of superpower is further supported by the link between official nuclear status and permanent membership of the United Nations Security Council, which associates the possession of nuclear weapons with exclusive power in the international order.

## Racism

Post-colonial scholars examine how racist colonialism has created and reproduced patterns of thought and forms of representation of ethnic superiority and inferiority. Racism played a key role in legitimizing the systematic exploitation and massive violence against indigenous people. Studies criticize that in global politics and in the academic debate, countries are still assigned to different categories such as First and Third World, developed and underdeveloped countries, etc. These distinctions would not be neutral and would not only refer to geographical regions or economic facts, but would also include certain notions of culture, religion and ethnicity and thus incorporate a racist connotation (Theurer and Kaleck 2020b, p. 24).

From a post-colonial viewpoint, such attributions involve a discursive (re-)production of identity on the basis of primarily binary categories and stereotypical contrasts such as "civilized" versus "uncivilized" and numerous variations, which, however, always follow a clear hierarchical order (Said 1978). The Orient, for instance, would be portrayed in a racist (and sexist, see below) manner as "regressive", "emo-

tional”, “barbaric”, etc., while the Occident appears as “progressive”, “rational”, “civilized”, etc. (Said 1978, Chakrabarty 2008). In this way, the subaltern had already been discursively prepared as an object of conquest and exploitation for the Occident. Non-Western inferiority would be taken for granted, while heterogeneity and hybridity, mutuality and interpenetration would be neglected (Bhabha 1994).

Numerous TWAIL studies postulate that this form of racism is still expressed in international law today through double standards. These would rely on the division of the international community into civilized, barbarian, and savage peoples when international law and its legal categories developed in the 19<sup>th</sup> century (Koskenniemi 2010). Only the first group was fully entitled to the rights derived from sovereignty. However, it was assumed at the time that the other groups would benefit from the international legal order as a whole despite being disadvantaged. The racial devaluation, post-colonial scholars argue, persists until today, facilitating unequal treatment in global politics and international law. The civilizing mission would not only be a historical phenomenon of the 19th century, but would be deeply anchored in international law and international institutions and continue to have an impact today, carrying forward the idea of civilizing progress (Anghie 2016).

After the International Convention on the Elimination of All Forms of Racial Discrimination came into force in 1969, new justifications were needed to maintain double standards. In numerous studies on various topics, TWAIL scholars analyze how racially rooted differentiations continue to operate, even if they are justified differently today (Anghie 2004, Mégret 2006, Orford 2006, Kaleck 2012, Bernstorff 2017, 2018). The discourse on modernization and progress is often highlighted as an example of the continuation of the discriminatory civilization narrative (Skouteris 2009). While the term “civilization” had since been consistently banned in the course of decolonization (Bernstorff and Dann 2019), the idea would have remained as a driving force, perpetuating a racially inspired worldview and world order. Through the narratives of modernization and progress, cultural differences could be explained as different stages of a unified process in which Europeans were once again ahead (Koskenniemi 2010, pp. 74–76).

A post-colonial perspective can help to expose how racism and practices of “othering” contribute to the enforcement of Western or imperialist views and imagination in the nuclear order. Comprehensive field research, among others at Lawrence Livermore National Laboratory and the Nevada Nuclear Test Site in the 1980s, including interviews with nuclear research and development program staff and anti-nuclear activists, revealed the phenomenon of “nuclear Orientalism” (Gusterson 1996, 1999). The term designates a racist attitude that clearly divides the West from the rest of the world when it comes to nuclear weapons. While the West is seen as a responsible and rational actor whose handling of nuclear weapons contributes to global security, actors from the Global South are classified as impulsive, unpredictable, etc., and are therefore denied the ability to handle nuclear weapons

responsibly. Based on this dichotomy, the NPT would legally solidify a discriminatory nuclear regime that is racially justified in Western public and professional discourse (Gusterson 1996, p. 6, Biswas 2014, pp. 75–108). The distinction between states that can be trusted to possess nuclear weapons and those that cannot would be based on prejudices, such as that states in the Global South are too poor and technically incompetent to have nuclear weapons, that they cannot handle nuclear deterrence in a stabilizing manner or lack political maturity (Gusterson 1996, p. 6).

These common assertions about why the official nuclear weapon states can be trusted with nuclear weapons and “the others” cannot are questionable. For even nuclear weapon states get into dangerous crises and have considerable security problems despite the technical excellence of their nuclear deterrent system (Schlosser 2013). As for the political maturity of the nuclear powers, Donald Trump’s erratic nationalist foreign policy and Vladimir Putin’s repeated military aggressions and nuclear escalations provide grounds for skepticism. It is therefore not surprising that the view from other regions is sensitive to the racial dimension, as a historical study on the nuclear policy of the United States in Asia during the Cold War demonstrates (Jones 2010). The connection between the quest for nuclear supremacy and non-proliferation policy is also examined as a system of apartheid because of an alleged inherent racial bias (Maddock 2010). In fact, states such as India and South Africa have also denounced the supposedly racist nature of the nuclear order or the NPT as “nuclear apartheid” (Singh 1998, South Africa 2015). Even if this comparison is not entirely accurate against the backdrop of China’s official nuclear weapons status, it highlights the tendency to exclude and marginalize people of colour and actors from the Global South when it comes to nuclear issues.

The patterns of distinction become particularly clear when the negative effects of building and maintaining nuclear arsenals and nuclear deterrence come into play. The history of nuclear weapons testing can hardly be reviewed without taking racist conceptions into account (Bergkvist and Ferm 2000, pp. 6–11, Jacobs 2013, Johnson 2018). The tests mostly took place in indigenous areas and colonized locations. The United States carried out over 1,030 tests, 904 of them at the Nevada Test Site alone, traditionally Western Shoshone and South Paiute land. Others were conducted near the Aleutian Island of Amchitka in southwest Alaska; Ruliso and Rio Blanco in Colorado; Hattiesburg, Mississippi; and Alamogordo and Farmington in New Mexico. 106 explosions were detonated on the islands of Bikini and Eniwetok Atoll and on Johnson and Christmas Island. The Soviet Union conducted 715 tests, mainly in Kazakhstan at the Semipalatinsk Test Site. The United Kingdom conducted 45 tests in Australia on Aboriginal territory and in the Pacific (Monte Bello islands) and in cooperation with the United States at the Nevada Test Site. France conducted 210 tests, including 17 in Algeria and 193 in French Polynesia. China tested its nuclear weapons 45 times at the Lop Nor test site in Xinjiang, on Uyghur territory.



The nuclear weapons tests had far-reaching health, ecological, economic, social and cultural consequences for the local populations (Prävälje 2014, Jacobs 2022). Their homeland and their (natural) living environment were destroyed. An increasing number of case studies, taking into account the colonial dimension, show the devastating costs of United States testing for indigenous peoples in New Mexico (Masco 2006), Nevada (Frohmborg *et al.* 2000, Johnson 2018) and the Bikini Atoll (Pincus 2021). Similar conclusions are drawn from French nuclear weapons tests that were carried out in Algeria until its independence in 1962 (Panchasi 2019) and then transferred to the Polynesian islands (Philippe and Statius 2021), which were also appropriated during the French colonial period. The disproportionate effects of British tests on the native peoples of Australia (Tynan 2016, Hawkins 2018) and Kiribati (Becky *et al.* 2021), as well as the tests of the Soviet Union on the local population in Kazakhstan (Hennaoui and Nurzhan 2023) have also been studied. Less is known about the situation in Xinjiang, where the People's Republic selected its test site in the same way. In all these places, residents were displaced and relocated and are still suffering from the consequences of the radioactive fallout, the deprivation of access to traditional food sources and the loss of their natural and cultural habitat (Baldus *et al.* 2021, pp. 8–12). In July 2017, at the TPN Negotiating Conference, 35 indigenous groups from different countries criticized that “governments and colonial forces” had tested nuclear weapons on their sacred lands, complaining that they were “never asked for” and “never gave permission to poison our soil, food, rivers and oceans” (RCW 2017a).

### **Economic exploitation**

Early anti-colonial literature already dealt with the capitalist exploitation of the disadvantaged or “the wretched” in (formerly) colonized countries (Fanon 1969). Accordingly, European prosperity was built on the backs of slaves and grown out of the soil of the underdeveloped world (Fanon 1969, p. 75). The colonial regimes had robbed the colonized territories of the raw materials they needed for their industry. Only the renunciation of capitalism and the election of a socialist regime, it is argued, could therefore end the economic exploitation (Fanon 1969, pp. 75–84). Young nations that had declared themselves independent would otherwise continue to be forced to maintain the trade relations established by the colonial regime. World-system theory (Wallerstein 1974, 1980, 1989), which is also based on Marxist tradition and was influential for a long time, supports this assumption of a genuinely exploitative world economic system that has its historical roots in colonialism and lives on in global capitalism. Consequently, fundamental social change and emancipation would depend on overcoming an unjust neo-colonial division of labor. The essential units of the world-system, however, would not be nation states, but transnational zones of privileged core countries, dependent semi-periphery countries and marginalized periphery countries, whose composition can change over

time. This contradicts modernization theories that assume a single evolutionary path of progress for all countries and overlook the transnational structures that limit local and national development.

Contemporary post-colonial scholarship also examines imperialism as an early form of economic globalization and pays attention to the role of modern forms of capitalism (Hardt and Negri 2000, Anghie 2016). Institutions of the world economic order such as the WTO, the International Monetary Fund (IMF), and the World Bank, but also regimes for the protection of intellectual property or foreign investments as well as numerous free trade agreements are important objects of study in this regard. TWAIL scholars attempt to define the essential features of contemporary international law on the basis of political economy (Chimni 2017). In doing so, they aim to shed light on the accumulation of capital at a global level and determine the social forces and features of international law that drive this process. Some of these approaches go astray when they make sweeping references to an obscure and abstract “transnational capitalist class” as the causative agent, which would be supported by all other relevant actors (Robinson and Harris 2000), including international organizations (Chimni 2004). Such analyses are largely dystopian and drift into conspiracy-theory. Nevertheless, the evidence of structural relations of exploitation in international trade and economic law, originating in the colonial era and continuing in various forms, represents an important contribution of post-colonial studies.

With regard to nuclear weapons, recent Marxist-inspired contributions also note a tendency towards the exclusive accumulation of specific “goods”. This would not only stem from their explosive capabilities, but also from the central social value attributed to them, namely that of power (Harrington de Santana 2009, p. 327). Nuclear weapons would thus (in line with capitalist logic) serve the enrichment with power. Through the close association with their deterrent property, they would become a physical embodiment of power in the community of states, similar to how money became the physical embodiment of social value and wealth in society (Biswas 2014, pp. 109–134). While in Marxist doctrine money becomes an expression of commodity fetishism, nuclear weapons would constitute the mature expression of the fetishism of force. Just as money would decide the opportunities and position of the individual in the social hierarchy, nuclear weapons would determine access to power and thus the position of states in the international order. This would explain that they were accumulated in excessive numbers in arms races, although they were useless in themselves and should supposedly never be used.

The nuclear deterrence doctrine and ideology of “mutually assured destruction” (MAD), others agree, had created a truly “mad” doomsday machine that contradicts all rationality and is ultimately self-destructive (Ellsberg 2017, Acheson 2018b). The nuclear complex driving this would be a very expensive system of men, machines, institutions, etc. that would most likely wipe out the world and human life (Acheson

2018b, p. 339). In the United States, this would rely on a long-established political economy of war that pursued only its own ends and turned arms production into a low-risk business that was less about the efficient production of military goods than about the maintenance and enlargement of the entire military-industrial empire (Melman 1970, p. 65). Since the end of the Second World War, it is argued, a perception of international relations, according to which war and aggression loom everywhere, would have contributed to the emergence of a permanent-war economy (Mills 2000, pp. 185–186). The massive increases in military spending, others add, would derive from the intertwining of the defense industry with the military and political elite, especially when it comes to nuclear weapons (Hartung 2017, pp. 56–58). This development would be supported by a hidden architecture of think tanks, academic institutions and lobbyists who would advocate and ensure high levels of investment in nuclear weapons (Cabasso 2017).

It is certainly a combination of several factors, including those mentioned above, that lead to high and rising nuclear military expenditure. This is illustrated by the annual figures of the Stockholm International Peace Research Institute on the status and development of nuclear arsenals and delivery systems worldwide (SIPRI 2024, pp. 271–358). Maintaining nuclear deterrence is a global trillion-dollar business. NGOs regularly compile reports on which companies and investors, banks, funds and insurers profit from it and to what extent (Snyder 2017, Muñoz 2022), but also on who pulls out (Snyder 2022). Commissions and capital flow into the construction, modernization and upkeep of arsenals, carrier systems, infrastructures and development centers. As all of this is financed with public taxpayers' money, which is consequently lacking for other expenditure (health, environment, education or social sector), we are dealing with a considerable redistribution of wealth. In turn, there is usually no money to compensate for the externalized costs of the nuclear arms race, which are largely borne by indigenous populations and marginalized groups.

The economic and financial attraction of nuclear power particularly exacerbates the exploitation of people and the environment in poorer countries. As a striking example of (capitalist) exploitation in the nuclear order, reference is repeatedly made to uranium mining on the backs of indigenous people. A glance at global uranium extraction and the ten largest mines in the world, in which primarily native populations are exploited confirms the neo-colonial character of this industry (NFFF *et al.* 2020, pp. 28–29). The health impact of this practice is also documented, at least in the United States (elsewhere the data situation is much poorer or non-existent). Cancer rates among the Navajo Nation increased between the 1970s and 1990s, and abandoned mines continue to contaminate the groundwater (Brugge and Goble 2002). Poor working conditions in the mines and hardly any redress for damage to health characterize the treatment of those affected to this day. While some of them have received compensation under the Radiation Exposure Compensation Act, most

indigenous people affected by global uranium mining have received nothing (NFFF *et al.* 2020, pp. 10–23).

### **Patriarchal domination**

Numerous post-colonial approaches have identified the binary sexual and gender categorization as a legacy of colonialism (Gunn Allen 1992, McClintock *et al.* 1997, Mohanty 1997, Oyewùmí 1997, Sigal 2003, Lugones 2007). The gendered division of people into two categories would have resulted in a devaluation of the constructed subject “woman”. This, in turn, would have been a necessary prerequisite and component of the violent subjugation and cultural devaluation of indigenous populations. Studies on the effects of patriarchal domination attempt to reveal this with regard to different indigenous peoples (Lugones 2007, Theurer and Kaleck 2020b, pp. 24–27). From a post-colonial lens, social identity was historically constructed through the discursive (re)production of primarily binary categories of difference. Gender (as a social role expectation) and sexuality have a prominent meaning in this context.

To illustrate this, here are some examples of studies on the spread and enforcement of binary gender roles in the course of colonial history. An influential feminist-inspired study examines the physical and cultural genocide of the indigenous population of the Americas as a consequence and expression of the patriarchal fear of gynocracy (Gunn Allen 1992). Accordingly, the colonizers of European origin – Puritans, Catholics, Quakers and Missionaries – resented the fact that women held key and decision-making positions in indigenous communities and participated in meetings with settlers. Many First Nations, it is argued, were organized matriarchally. Their social structure had been based on a system of reciprocity that provided for two complementary leadership roles: Domestic leadership (responsible for cohesion and managing internal affairs) was in the hands of a woman, while foreign leadership (responsible for mediating between the community and outsiders) was the responsibility of a man. Some First Nations would have assumed that the primary force in the universe was female (Gunn Allen 1992, pp. 41–42). The creative primacy of the feminine had been suppressed and replaced by a masculinized Christian image of creation. The instrumentalization of colonized men, who readily appropriated patriarchal role models and could thus be used as agents to enforce patriarchal domination, had also played an important role.

Further case studies show that socially recognized (ritual) same-sex practices and male homosexuality in colonial and pre-colonial America were quite common and an important projection surface for white aggression (Sigal 2003). Others examine social structures in indigenous communities that do not necessarily have to be gendered or in which gendered categorization is not a priority (Oyewùmí 1997). Instead, social roles in the examined communities would depend more on relative age. By contrast, the imported social model of the nuclear family with its origins

in Europe, would have contributed to establish structural economic dependencies of women on men and destroyed the structure of traditional communities in which gender had not been a major organizing factor.

What these studies have in common is that they use an intersectional approach in order to uncover the extent to which sexism and racism (and possibly other attributions) are inscribed and interwoven in the exercise of colonial power (Lugones 2007, Theurer and Kaleck 2020b, pp. 24–27). The concept of intersectionality takes into account the overlap and simultaneity of a person's different social identities and incorporates various factors of advantage and disadvantage (gender, race, class, religion, physical appearance, etc.) in a comprehensive analysis of discrimination. Colonialism did not simply impose European notions of gender roles on the colonized. Instead, a new system of ascribing relationships between gender and race had emerged in which colonized men and women were assigned different roles than their white counterparts (Lugones 2007). White European women, for example, were characterized as fragile and sexually passive, while black women were ascribed a level of sexual aggression that gave them the strength necessary to perform the hard slave labor in the South of the United States (Hill Collins 2009, p. 82). Black female slaves were portrayed as overly sexually desirable and endowed with inexhaustible fertility. They were not allowed to nurse their own children and instead served as wet nurses for white children and as emotional and physical comfort for their white owners.

Perhaps the clearest manifestation of patriarchal violence in the nuclear order are the greater impact and long-term effects of nuclear weapons on the health of women, young children, and the unborn. Long-term exposure to ionizing radiation increases the risk of cancer for women and growing children more significantly in comparison to men (UN 2008). In a long-term study, women survivors of the nuclear weapon drops on Hiroshima and Nagasaki showed a twofold increase in mortality over men due to ionizing radiation (Ozasa *et al.* 2012). Studies on women's health following the use of nuclear weapons against Japan, as well as the tests on the Marshall Islands or in Kazakhstan and the reactor accidents in Chernobyl and Fukushima, show high rates of stillbirths, miscarriage, congenital birth defects, effects on reproductive health and breast cancer. The gender-specific consequences of radiation go even further when the everyday behavior of women, which is associated with greater exposure, is taken into account. For example, Marshallese women bathed in contaminated water and commonly ate bones and organs from fish in which radioactive isotopes had accumulated to a greater extent (Georgescu 2012). The health, economic and socio-cultural effects of nuclear weapons production, testing and maintenance thus vary according to gender, but also race and class (Choi and Eschle 2022).

But it is not only the disproportionate level of physical violence that makes the gender dimension significant for the analysis of nuclear weapons. Discursive patriarchal violence also plays a major role. For example, masculinity and men-slang

appear to be particularly prevalent in nuclear discourse when examined through a critical lens. Early analyses of the language of defense intellectuals reveal the emotional currents in this overtly masculine discourse (Cohn 1987b, 1987a). Nuclear strategies, planning and war scenarios would be largely dominated by gendered codes. Expressions such as “vertical erector launchers”, “soft lay downs” or “deep penetration” etc. would be examples of such gendered symbolism that translates sexual potency into military power (Cohn 1987a, p. 693). Through the connection of sex and death, by linking masculinity with the ability to exercise maximum violence, the seriousness and deadly consequences would be downplayed. These findings about macho language have also been confirmed in cultural anthropological studies of the Los Alamos milieu (Gusterson 1996). Not only do comparisons of potency fuel the risk of nuclear escalation in conflicts (Hach 2018). The notion of masculine strength in relation to nuclear weapons (seen as instruments of male power), would also be one of the main obstacles to their elimination (Cohn *et al.* 2006). The gender-connoted juxtaposition of rationality (male) and emotionality (female), by valorizing supporters of rearmament as rational decision-makers and devaluing advocates of disarmament as emotional dreamers, would make it difficult to develop, articulate and implement alternative security concepts (Cohn and Ruddick 2004). A gender-sensitive analysis of reactions to the anti-nuclear weapons campaign yields a similar result, revealing classic patriarchal rhetoric, attributions and tactics (Acheson 2019).

Finally, studies show that women are underrepresented in the decision-making processes and bodies of the (nuclear) arms control and disarmament architecture (Dwan 2019, Hessmann Dalaqua *et al.* 2019). The more important a body, the fewer women are represented and the less often they are in leadership roles. While the proportion of women has increased in recent years, they take up only 32% on average in groups of 100 or more, and only 20% in smaller formats (Hessmann Dalaqua *et al.* 2019). 76% of delegations in disarmament fora such as the UN First Committee, the Conference on Disarmament in Geneva or the NPT conferences are led by men (Dwan 2019, p. 3). However, simply appointing women to top positions would not automatically change the patriarchal structures and constraints in the security discourse. Rather, space would have to be opened up inside and outside the institutions where women and people of diverse gender identities (but also ethnic and social backgrounds) could contribute diverse perspectives (Acheson 2021b, pp. 28–29). While the importance of women in nuclear arms control and disarmament is increasingly discussed, the situation of LGBTQ remains largely unconsidered and has hardly been studied.



## 2. The NPT as founding treaty of nuclear rule

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This chapter sets out the extent to which the NPT can be regarded as a founding treaty of nuclear rule. As a reminder, rule is defined in this study as *a constant form of exercising power and means the institutionalization of relationships of super- and subordination, which systematically expands or restricts the actors' options for action and influence on control*. First, we discuss how the treaty is embedded in the nuclear order as a whole and what central role it plays in it (2.1). For this purpose, we examine what exactly can be understood by nuclear order, i.e. what rules apply to the possession and disposition of nuclear weapons and what organizing logics (or principles of order) underlie them. This includes a brief overview of international treaties and institutions involving nuclear weapons and the distinction between order and regime. On this basis, we will analyze the central position of the NPT in the nuclear order. This is followed by a summary of the NPT norm genesis and an analysis of its norm substance with a view to elements that establish nuclear rule (2.2). Its genesis, its provisions, its three pillars and the underlying “grand bargain” are therefore explored. Furthermore, the indefinite extension of the treaty and its (reinforcing) effects on patterns of rule in the NPT will be examined. In line with our conceptual link between rule and resistance, another section looks at the past dynamics of contestation of rule in the NPT (i.e. before the Humanitarian Initiative (HI) and the TPN) (2.3). The point here is to underscore the argument that the NPT embodies a nuclear rule and to give plausible examples of opposition and dissidence movements within it. This also illustrates the different perspectives of nuclear weapon states and non-nuclear weapon states on the treaty. Finally, we will investigate the extent to which this questioning of the legitimacy of the NPT and forms of resistance affect its stability and whether the regime is effective with regard to the goals associated with it (2.4). The focus will be on the fulfillment of the non-proliferation and disarmament promises. In addition to the academic debate on the issue, the performance of the regime will be subjected to empirical scrutiny.



## 2.1 The nuclear order

To identify rule in the nuclear order, it is first necessary to clarify what is meant by nuclear order. The term is usually used without explanation, as if it was self-explanatory. But what does it consist of, which organizing principles underlie it and how does it shape international relations as a whole?

To recognize order in a space, one looks at how things are distributed, arranged, sorted. If one looks at the world's total of approx. 12,500 nuclear weapons (Kristensen and Korda 2023, pp. 247–336), a North-South divide immediately comes to mind. All nuclear weapon states (NWS) – the United States (US), Russia, the United Kingdom (UK), France, China, India, Pakistan, North Korea and Israel – are located in the northern hemisphere. If we look closely at where else nuclear weapons are permanently stationed – in Germany, Belgium, the Netherlands, Italy, Turkey (Kristensen 2005) and presumably Belarus (Bugos 2023a), the focus remains on the north. These countries participate in NATO's so-called nuclear sharing and have US nuclear weapons stationed on their territory or, in the case of Belarus, it is about cooperation with Russia and the alleged stationing of Russian nuclear weapons. Regarding the distribution of nuclear weapons, it is therefore possible to draw up a ranking in three phases (nuclear weapon states (NWS), sharing states, non-nuclear weapon states (NNWS)). If one takes into account that approx. 90% of nuclear weapons belong to Russia or the US (Kristensen and Korda 2023), one arrives at a four-stage division with a concentration of possession and disposal in the Global North. If one includes the umbrella states – NATO member states, Japan, South Korea, Australia (as the only state in the southern hemisphere) – which are under the nuclear umbrella of the US (Erästö 2023), the result is a division into five groups (US/RUS, other NWS, sharing states, other umbrella states, NNWS).

The factual distribution clearly reveals three-, four- or five-layered relationships, but does not yet imply a normative structure. The latter results from existing rules relating to nuclear weapons. How is the distribution of and dealing with nuclear weapons organized? In general, four components are distinguished: nuclear deterrence, arms control, non-proliferation und disarmament (Horsburgh 2015). They form the basic elements and at the same time the subjects of dispute in the organization and regulation of nuclear weapons since the beginning of the nuclear age. Nuclear deterrence describes a military doctrine that seeks to prevent an adversary state from using nuclear weapons by threatening nuclear retaliation or complete nuclear destruction (Arbatov 2021). In the latter case, one also speaks of mutually (assured) destruction (MAD) (Sokolski 2004). Accordingly, it is not the ability to defend oneself that creates deterrence, but the ability to punish (Waltz 1981). Nuclear arms control, in turn, refers to treaties and monitoring between states to limit their nuclear military capabilities in order to minimize the likelihood and scale of a military conflict (Horsburgh 2015, p. 22). Nuclear non-proliferation is about preventing the

spread of nuclear weapons to other states, i.e. preventing the number of NWS from growing. Finally, nuclear disarmament involves the reduction of nuclear arsenals and/or their delivery systems up to their complete elimination.

These four elements cannot really be sharply separated from each other. Disarmament and non-proliferation, for instance, are two specific forms of arms control. In the terminology of this study, arms control thus functions as an umbrella term for agreements and processes aimed at regulating, limiting and reducing or even eliminating armament. It can refer to warheads, delivery systems or other technical components (such as, in the nuclear field, centrifuges for enriching nuclear material). The four-part distinction is nevertheless helpful in grouping the numerous regulations, treaties and institutions on nuclear weapons in terms of content. Even if disarmament and non-proliferation are conceptually sub-genres of arms control, they deserve to be mentioned separately, not least because they are treated and evaluated differently on the political level. NWS, for example, understand nuclear arms control as a whole in the context of strategic stability and prefer to regulate limitations and reductions bilaterally to improve their own security (Arbatov 2020, Gottemoeller 2020, Rogers *et al.* 2022). NNWS, on the other hand, focus on nuclear disarmament as a global good for the establishment of international security and insist on its implementation in a multilateral framework. From this angle, other arms control measures are partly criticized as diversionary tactics to avoid complete disarmament (Acheson 2022). NWS and NNWS are equally interested in non-proliferation and accept multilateral arrangements for this. Nuclear deterrence, on the other hand, is highly controversial. For NWS, sharing states and umbrella states, it preserves order and stability. NNWS see it, as well as the mere existence of nuclear weapons, as a source of disorder and instability.

Under international law, the four components are reflected in numerous bilateral and multilateral (regional and global) treaties. The following overview shows how far-reaching and ramified this body of rules is. Although the list is not exhaustive, it includes the most relevant agreements from the various areas. The year in which the negotiations were concluded is indicated in brackets. Nuclear arms control treaties that precisely regulate and monitor limitations and disarmament were exclusively negotiated among the NWS themselves. Most of them are bilateral treaties between the US and the Soviet Union (USSR), later Russia. They include the Strategic Arms Limitation Talks Agreements (SALT) I (1968) and II (1979), the Anti-Ballistic Missile (ABM) Treaty (1972), the Strategic Arms Reduction Treaties (START) I (1991) and II (1993), the Intermediate-Range Nuclear Forces (INF) Treaty (1987), the Strategic Offensive Reductions Treaty (SORT) (2003) and the updated Strategic Arms Reduction Treaty (New START) (2010). The Treaty on Open Skies (1992) is an example of a multilateral treaty with a regional scope (within the OSCE framework) that promotes confidence-building and transparency including nuclear facilities. Apart from the New START Treaty, which was extended until 2026 but suspended

by Russia at the beginning of 2023 in the course of its war against Ukraine, all these treaties have expired or been withdrawn from. The NWS are thus hardly bound by any bilateral or regional arms control limitations.

The best-known multilateral treaty on nuclear weapons with global reach is the Treaty on the Non-Proliferation of Nuclear Weapons or Non-Proliferation Treaty (NPT) (1968), which will be examined in more detail later. In addition, the Comprehensive Nuclear-Test-Ban Treaty (CTBT) (1996), ratified by 178 states, sets a globally recognized standard and has an effective monitoring system, although it has not yet entered into force. It has not been ratified by India, North Korea, Pakistan, Egypt, Israel, Iran, China and the US, which belong to the group of 44 states whose ratification is necessary for the treaty to enter into force, as they either possess nuclear weapons or have the technological prerequisites to do so (UNGA 1996, Annex 2). Both treaties are the result of intensive negotiation processes between NWS and NNWS, as will be shown in more detail later.

NNWS have taken on agency in the further development of international law on nuclear weapons and have concluded treaties on (regional) nuclear-weapon-free zones (NWFZ) among themselves. These include the Tlatelolco Treaty (1967) in Latin America and the Caribbean, the Rarotonga Treaty (1985) in the South Pacific, the Bangkok Treaty (1995) in Southeast Asia, the Treaty of Pelindaba (1996) in Africa, and the Semipalatinsk Treaty (2006) in Central Asia. In addition, Mongolia declared itself a single-state NWFZ in 1998.

It is noteworthy that most of these agreements were concluded despite political tensions and in regions where nuclear weapons were already developed or deployed or nuclear rivalries prevailed. In some cases, they were even triggered by crises, such as in Latin America and the Caribbean in the Cuban missile crisis or in the South Pacific, where the UK, the US and France tested nuclear weapons (which consequently was also prohibited). In Southeast Asia, the zone covers the entire ASEAN area, where transit by air and sea is prohibited, as is deployment on military bases. In total, the NWFZs cover 56% of the land surface of the Earth, 60% of the member states of the UN, but only 39% of the world population (Finaud 2014). The Treaty on the Prohibition of Nuclear Weapons (TPN) (2017), which has a global design and will be discussed in more detail, has so far likewise only been signed by NNWS. In a way, it links the various regional NWFZs into a global network of NWFZs.

All NWS except Israel are parties to the Antarctic Treaty (1959), which also establishes an NWFZ. And all NWS participate in the ban on nuclear weapons in the Outer Space Treaty (1967). But France, Pakistan, North Korea and Israel did not ratify the Seabed Arms Control Treaty (1971), and only Pakistan ratified the Moon Treaty (1979). Through the adoption of specific protocols by some NWS to individual NWFZ treaties, they are also subject to obligations not to deploy nuclear weapons in those zones or to use them against members of the zones.

In addition to international treaties, various international institutions and bodies also deal intensively with nuclear weapons. Since its foundation, the United Nations (UN) claims authority for dealing with the challenges raised by the existence and proliferation of nuclear weapons. After all, several of its main goals as defined in its Charter are at stake (UN 1945, article I): the safeguarding of world peace, the observance of international law, the protection of human rights and the promotion of international cooperation. In 1946, the UN General Assembly (UNGA) addressed the nuclear threat in its very first resolution, calling for the destruction of all nuclear weapons and other weapons of mass destruction (UNGA 1946). Since then, the so-called “UN disarmament machinery” has evolved over time. It refers to “multilateral processes, procedures and practices, and relevant international bodies whose purpose are to deal with issues of disarmament, non-proliferation and arms control” (UNIDIR 2010, p. 1). After many reforms, it now essentially comprises four bodies: The Conference on Disarmament (CD) consists of 65 member states, meets in Geneva and represents the UN’s main body for arms control negotiations. It decides upon consensus. The UN Disarmament Commission (UNDC) is also conceived as a negotiating body and includes all UN member states. Decision-making is also based on consensus. The United Nations Security Council (UNSC) has the power to pass legally binding resolutions. Its quorum depends on the approval of the five permanent members and veto powers. The UNGA and its First Committee, which deals with disarmament and international security, decide according to the majority principle. However, their resolutions are not binding under international law (UNIDIR 2010, pp. 15–18).

The record of the UN and its disarmament machinery regarding nuclear weapons is very poor when measured against the aspiration formulated by the UNGA in 1946. Since the CTBT in 1996, no arms control treaty has been negotiated in the CD. There is no progress on the so-called “Four core issues” (Reif 2015): nuclear disarmament, a Fissile Material Cut-off Treaty (FMCT), the Prevention of an Arms Race in Outer Space (PAROS) and assurances for NNWS against the use of and threat with nuclear weapons, i.e. Negative Security Assurances (NSA).

The situation is different for the institutions that monitor compliance with obligations in the two above-mentioned multilateral treaties with global reach (NPT, CTBT). Both the International Atomic Energy Agency (IAEA), which is responsible for monitoring the non-proliferation provisions enshrined in the NPT, and the Comprehensive Test Ban Treaty Organization (CTBTO), which is responsible for the CTBT, have functioning verification instruments, fulfil their missions and are widely recognized as effective institutions of nuclear arms control. Considering that the CTBT is still awaiting entry into force, the CTBTO’s performance is particularly remarkable.

This first and still superficial screening of international treaties and institutions dedicated to nuclear weapons already reveals differences between NWS and NNWS

regarding their room for maneuver in the four areas of deterrence, arms control, disarmament and non-proliferation: Treaties that regulate nuclear disarmament in a legally binding, precise and verifiable manner or noticeably affect the nuclear deterrence regime are exclusively concluded among NWS themselves, more precisely between the US and Russia. Restrictions on deterrence in connection with NWFZ treaties have so far been limited and incomplete. Arms control agreements which substantially restrict NWS in a verifiable manner and set deadlines are predominantly bilateral, and their monitoring remains under their own control. Currently, apart from the suspended New START treaty, almost no such treaty is in force (Russia and the US still respect treaties from the 1980s on information exchange and risk minimization). In contrast, NNWS are subject to their own agreements to renounce nuclear weapons (NWFZ) as well as to the multilateral obligation in the NPT.

If one looks at the institutions by which the rules are negotiated, monitored or sanctioned, this impression is reinforced. The area of non-proliferation is comprehensively monitored by the IAEA and violations can be sanctioned by the UNSC. Through their veto power in the UNSC and the consensus principle in the CD and UNDC, the NWS have control over the decision-making capacity of almost all bodies of the UN disarmament machinery. In practice, they make use of the resulting and far-reaching possibilities to nip any change in the *status quo* in the bud. UN institutions responsible for disarmament negotiations have thus been permanently blocked for decades. Only the UNGA and its First Committee can pass resolutions without the consent of the NWS, but these are not legally binding. The only nuclear arms control institution that monitors NWS and NNWS alike, the CTBTO, does so without an effective treaty.

Treaties and institutions have the greatest normative effect when they interact. This is how a fully developed regime emerges. In IR, a regime is defined as “sets of implicit and explicit principles, norms, rules, and decision-making procedures around which actors’ expectations converge in a given area of international relations” (Krasner 1982, p. 185). There are thus more or less strongly developed, treaty-based and institutionalized regimes. The nuclear non-proliferation regime with the NPT as its center-piece is a striking example of a fully developed regime which, in addition to a far-reaching treaty, also comprises institutions and bodies interwoven with it. These include the IAEA, which was founded in 1957 to promote and monitor the peaceful use of nuclear technology. Its role was further strengthened by the more stringent verification measures incorporated in the Additional Protocol (IAEA 1998). Moreover, there is the so-called NPT review process with the Review Conferences (RevCon) at five-year intervals and the annual Preparatory Committees (PrepCom) in between. Finally, the regime has export control agreements and procedures, such as the Zangger Committee (1971), the Nuclear Suppliers Group (NSG) (1974) or the Wassenaar Arrangement (1996). The area of non-proliferation is thus the most

consolidated and most restrictively regulated of the four components of the international regulatory framework dealing with nuclear weapons.

The *de facto* international distribution of nuclear weapons proves to be normatively ensured by treaties, institutions and their interaction in a regime. While deterrence and disarmament are relatively weakly regulated and supervised, and NWS largely settle self-restricting arms control among themselves, non-proliferation is highly developed and NNWS are subject to a multitude of multilateral arms control arrangements. This suggests that the network of treaties, institutions and the non-proliferation regime follows an organizational logic. But what added value would the identification of such a principle of order bring compared to the mere observation of inequality in the *de facto* distribution of nuclear weapons or in the normative handling of them?

An answer to this is provided by William Walker's conceptualization of nuclear order (Walker 2000, 2007, 2011). He discerns an ordering force, or rather ordering forces, behind the nuclear order: The proliferation and regulation of nuclear weapons reflects power relations (which is neither surprising nor exceptional in international relations). These, in turn, ensure the preservation of certain principles of order or, in Walker's words, "management systems" (Walker 2000, 2007, 2011). This brings us to the very foundation of the nuclear order, in which the proliferation of nuclear weapons is not left to chance and the handling of them is not left to the free development of appropriate rules. According to Walker, the nuclear order can be understood as a configuration of power comprised of "a managed system of deterrence and a managed system of abstinence" (Walker 2000, p. 703). The nuclear order is thus based on two organizing principles or "systems" (Walker 2011, p. 24): a managed system of military engagement with nuclear technology (i.e. deterrence) and a managed system of military abstinence from, and civil engagement with, nuclear technology" (i.e. non-proliferation).

Nuclear arms control in the broader sense and nuclear disarmament would then be subordinate to these two systems. Walker thinks that their functioning logic is based on "patterns of thought and activity that serve primary goals of world survival, war avoidance and economic development; and the quest for a tolerable accommodation of pronounced differences in the capabilities, practices, rights and obligations of states" (Walker 2011, p. 12). Changes ("evolution") would be possible, both of ideas (e.g. the belief in deterrence or the vision of a world free of nuclear weapons) and practices (e.g. arms control measures or civil use of nuclear technology), which would serve to secure world survival, avoidance of war, and promotion of economic development ("goals"). Regardless of the validity of such an idealistic or even enlightened underpinning of the nuclear order, we can summarize for our investigation that nuclear power is distributed by a hierarchical, distinguishing principle of order. Whether this serves a good purpose, a "global good", or merely the assertion of power claims is debatable.

What are the implications of these organizational principles or “management systems” for the different groups of actors? Walker’s first system includes first and foremost the NWS, which on the one hand practice nuclear deterrence to avoid (nuclear) war among themselves, and on the other hand maintain their arsenals to project power and gain prestige. The aforementioned scale of nuclear arsenals combined with the neglect of nuclear disarmament underline the importance of the latter motive. The second system comprises NNWS that do not seek nuclear weapons, use nuclear technology for civilian purposes or intend to do so, and subject these activities to international monitoring. Inherent in this dichotomy are two opposing forces that have to be balanced and reconciled in the nuclear order: armament and disarmament (Walker 2011, p. 751). The underlying interests diverge and separate the two groups of nuclear haves and nuclear have-nots. The differentiation of capabilities, practices, rights and obligations between groups of states means that different priorities are set and these can come into conflict.

More precisely, the interest group of the NWS also includes their allies in a graded manner. Through participation in nuclear deterrence and even more clearly through nuclear sharing or the deployment of nuclear weapons of an allied NWS on their territory, they become partly nuclear-haves and thus part of the system community of states that are militarily engaged with nuclear technology. At the same time, this affiliation (the nuclear umbrella or participation in the deployment of nuclear weapons) goes in hand with some degree of military abstinence from nuclear technology (renunciation of own nuclear weapons possession). This dual group membership is linked to the challenge of reconciling the two contradictory system logics. The majority of allies under the nuclear umbrella of the US (umbrella states) are confronted with this challenge, particularly the states participating in nuclear sharing. Since the alleged stationing of Russian nuclear weapons on its territory in 2023, Belarus is equally involved in the system of military engagement with nuclear technology, playing an exclusive role in Russia’s revised nuclear posture (Russia 2024).

According to Walker, stabilizing the nuclear order by balancing both systems is an enduring task that sometimes succeeds more and sometimes less over time (Walker 2000). The NPT and its review process are the lynchpin for these recalibration efforts. The US, however, would have severely disrupted this fragile endeavor in the late 1990s and early 2000s at the height of its hegemonic power (Walker 2007) and thus caused considerable damage to the nuclear order, which it largely created itself. From this analytical perspective, the survival of the nuclear order is closely linked to the survival of the NPT as the “connecting instrumental and normative tissue” (Walker 2011, p. 24) between the two systems. To maintain the nuclear order, the NPT can help to find a “pragmatic middle way” (Walker 2011, p. 5) through self-restraint of NNWS and their acceptance of a temporary presence of nuclear weapons, while also setting limits on the possession and use of nuclear weapons that do not preclude

nuclear deterrence and the transfer of nuclear material and technology for civilian purposes.

The findings of this section can be summarized as follows. The uneven *de facto* distribution of nuclear weapons is reflected in the normative structure of treaties and institutions governing their possession and use. This arises from two conflicting organizational principles that restrict the military availability of nuclear weapons to different degrees for different groups of states. The resulting nuclear order translates prevailing power relations into two management systems with clearly differing scopes of action for different groups of states. Different interests prevail that have to be balanced. Options for action and possibilities of influence therefore vary considerably between NWS, states in which nuclear weapons are deployed, umbrella states, and NNWS without military nuclear cooperation arrangements. Against the backdrop of these observations and analysis, the nuclear order already comes very close to what is understood as “rule” in this study.

In stabilizing this fragile arrangement, the NPT and its review process play a central role as an instrument and mechanism for balancing. It therefore makes sense to take a closer look at the NPT, focusing on the question of rule. But it is not only the essential function of the NPT for the stability of the nuclear order that suggests using it as a *pars pro toto* in an analysis of rule and resistance in this context. Within the nuclear order, it forms the backbone of the non-proliferation regime, its largest web of norms, treaties and institutions. It reaches into all four areas of nuclear weapons regulation (deterrence, arms control, disarmament, non-proliferation), embodying their interrelations and tensions, confronting and interweaving them. The NPT includes the various groups of the nuclear order (two major NWS, smaller NWS, sharing states, umbrella states, NNWS without military engagement in nuclear technology) and must therefore also deal with the power imbalances between them. The next step is to describe how this large treaty community has come into being and how the nuclear order is consolidated within it. We will take a closer look at why the NPT also establishes nuclear rule.

## 2.2 The non-proliferation regime as a system of rule

The nuclear arms race between the US and the Soviet Union (USSR) and the resulting bipolar threat of nuclear annihilation during the Cold War form the geopolitical and international security background for the development of the NPT. The increasing proliferation of civilian use of nuclear technology, its dual use character and the importance attached to it for economic development fueled fears that the number of states acquiring the capability to produce nuclear weapons might increase. In the US, it was assumed in the early 1960s that the number of NWS could soon rise to more than twenty (ACA 2022). Worldwide, this was seen as a central security prob-



lem. The first efforts to initiate measures within the UN to prevent proliferation were made by Ireland between 1958 and 1961 (Chossudovsky 1990). But the negotiation and birth of the NPT was a turbulent process that took almost a decade. Detailed explanations of the origins and the process of formation of the treaty, the underlying resolutions, drafts and debates can be found in the respective standard work by the Egyptian diplomat Mohamed Ibrahim Shaker (Shaker 1980). In the following, we consider the norm genesis and norm substance of the NPT to further investigate the trace of a nuclear rule within the regime.

In December 1961, the UNGA adopted by consensus Resolution 1665, based on an earlier Irish draft, calling for negotiations to prevent the dissemination of nuclear weapons to other states. (UNGA 1961). It reflects the ideational basis for the NPT and ultimately led to its negotiation. The forum for disarmament negotiations at that time was the Eighteen Nation Disarmament Committee (ENDC), a precursor of the Geneva CD. The ENDC represented the international bipolar order more than the entire international community and consisted of five Western countries, five countries from the Soviet bloc and eight non-aligned countries. Since the UNGA repeatedly instructed the ENDC to work towards the general and complete elimination of nuclear weapons, non-proliferation and disarmament were closely linked in the discussions and negotiations within that forum. The US and the USSR always rejected this interconnection, but only gradually managed to shift the focus from disarmament to stopping the spread of nuclear weapons. Another demand repeatedly made by NNWS included security guarantees that nuclear weapons would not be used against them and that they would not be threatened with them.

In August 1965, the US submitted its first draft proposal for a treaty to the ENDC, followed in September by the USSR with its own. Both drafts were also submitted to the UNGA First Committee in the same year. However, a resolution submitted by the eight non-aligned ENDC members prevailed. In November 1965, the UNGA adopted Resolution 2028 (UNGA 1965), which called on the ENDC to begin negotiations as soon as possible on an international treaty to prevent the proliferation of nuclear weapons, but on condition that a balance be maintained between the responsibilities and obligations of NWS and NNWS. This included that the treaty to be negotiated would be a step towards achieving general and complete disarmament and would leave room for possible regional nuclear weapon-free zone treaties.

This led to the treaty negotiations in the ENDC between 1965 and 1968. In August 1967, the US and USSR separately submitted identical draft treaties. However, the discussions did not lead to the adoption of a final draft. Again, with a UNGA mandate, the ENDC reconvened in 1968, with the US and USSR separately submitting two identical revised drafts. Further revisions were made during the negotiations. In March 1968, the US and USSR finally submitted a joint draft treaty. It was not adopted by the ENDC, but it was included in its report for the UNGA (UNGA 1968a, Annex 1). The report also included a draft resolution (drafted by the US, USSR and

UK) for the UNSC on security assurances for NNWS (UNGA 1968a, Annex 2). The latter, however, did not contain a legally binding waiver of use and threat against NNWS (negative security guaranties) but merely the promise to assist them in the event of a nuclear attack (positive security assurances).

The First Committee considered the report instantly in the spring and early summer of 1968 and recommended that the UNGA should adopt a revised draft text. On 12 June 1968, UNGA adopted Resolution 2373 (UNGA 1968b) with the draft text of the NPT by 95 votes to 4 (Albania, Cuba, Tanzania, and Zambia) with 21 abstentions. The three depositary governments, the USSR, the UK and the US, were invited to open the treaty for signature and ratification at the earliest possible date. This happened on 1 July 1968 in London, Moscow and Washington D.C. In addition to the three depositary states, more than fifty other states signed the NPT on the same day. On 5 March 1970, the NPT entered into force in accordance with its Article IX, requiring the ratification by the depositary states and 40 other states (UN 1968, Article X).

The protracted genesis of the NPT testifies to the struggle between NWS and NNWS for a balance on disarmament and non-proliferation, two central arms control components of the nuclear order. It demonstrates the efforts to reconcile the contradictory ordering principles (or management systems), i.e. military engagement in and military abstinence from nuclear technology. The drafts of the US and the USSR, which were repeatedly revised in these negotiations, as well as the final treaty itself did not end their nuclear status. On the contrary. The fact that the major nuclear powers are not only the original authors of the NPT, but also, together with the UK, the depositary states (thus becoming its guardians) points to the treaty's supporting function for the establishment of a nuclear hierarchy that favors (certain) NWS. This is confirmed by a closer look at the treaty's provisions, especially Article IX. By defining a state "which has manufactured and exploded a nuclear weapon or other nuclear explosive device prior to January 1, 1967" (UN 1968, article IX) as a NWS and endowing it with different rights and obligations than the other states, the NPT establishes the legally discriminatory treatment of recognized NWS and NNWS. Since then, a nuclear hierarchy has been anchored in international law.

The US had tested a nuclear weapon for the first time in 1945, the USSR in 1949 and the UK in 1952. When the NPT entered into force, the two other NWS recognized under Article IX, France (first test in 1960) and China (first test in 1964), were not yet parties to the treaty. China justified its refusal to sign with the discriminatory nature of the NPT. France gave assurances that even without signing it would behave like the parties to the treaty (ACA 2022). It was not until 1992 that both joined the NPT. South Africa (no test known yet) joined in 1991 after the end of the apartheid regime and the dismantling of its military nuclear program (van Wyk and van Wyk 2015). Belarus, Kazakhstan (Kassenova 2022) and Ukraine (Budjeryn 2022) were admitted to the treaty community after the collapse of the USSR and the elimination of the nuclear arsenals on their territories in the 1990s. India (first test in 1973), Pakistan

(first test in 1998), Israel (no known test so far) and North Korea (first test in 2006) are not recognized as NWS according to the definition in Article IX and currently outside the treaty (the legality of North Korea's withdrawal in 2003 being disputed).

The victorious powers of the Second World War and five permanent members of the UNSC (US, Russia, UK, France and China) thus also form the group of NWS recognized under international law by the NPT. The nuclear order codified by the NPT is thereby linked to the hierarchy of the international order established in the UN. The steering capacities of the permanent members of the UNSC, the only body with the authority to adopt (legally) binding resolutions, are expanded and linked to their nuclear status. With their veto power in the UNSC, the five NPT NWS also have the main control over the imposition of international sanctions, authorization of military interventions, selection of candidates for the UN Secretary General (UNSG) and the admission of new member states. By this interlocking the NPT translates and underpins the international privileges of the permanent UNSC members in the nuclear realm. Through this institutionalization of relationships of super- and subordination and the consolidation of different options for action and influence on control the NPT establishes rule in the nuclear order.

But how did such a clear distinction between different groups of states and a further legal privileging of the five permanent UNSC members succeed in an international treaty under sovereign equals? And how deep is the disparity within the relationships of super- and subordination enshrined in the NPT? How fundamental are the differences between NWS and NNWS regarding their options for action and influence on control? To answer these questions, it is helpful to examine its provisions and the "Grand Bargain" (Weiss 2003, Garvey 2013) behind them.

At first glance, the 11 articles of the NPT contain something for everyone (UN 1968). Article I prohibits the transfer of nuclear weapons and nuclear technology, Article II prohibits their receipt. Article III requires acceptance of safeguards by the IAEA. Article IV guarantees all Parties the "inalienable right" to the peaceful use of nuclear technology and the promotion of access to it. Article V assures participation in the benefits of research and development of nuclear explosions conducted by the NWS for peaceful purposes (in the 1950s and 1960s, infrastructure projects were still considered a possible area of application, but this is now obsolete). Article VI commits the NWS to negotiations for complete nuclear disarmament. Article VII allows for the creation of regional NWFZs. Article VIII creates the basis for the review process with RevCons at five-year intervals. Article IX regulates signature, ratification and entry into force and defines which states are recognized as NWS. Article X clarifies the conditions of withdrawal and limits the validity of the treaty to an initial period of 25 years. Article XI regulates the storage of the treaty text and its translations in the archives of the depositary governments.

In common understanding, the NPT rests on three pillars: Non-proliferation, disarmament and peaceful use. The first and third pillars are in tension with each

other. Since it is a dual-use technology, mastering its civilian use in principle also enables the development of nuclear weapons. Of course, there is a political compromise behind this, because a treaty that demands dual (military and civilian) nuclear abstinence would never have been accepted. After all, nuclear technology was considered a ticket to modernity and a guarantee for economic development. This nuclear nimbus is still valid today in many parts of the world. But it is not only this inherent logical contradiction between non-proliferation of military use and proliferation of peaceful use of nuclear technology that contributes to the fragile statics of the NPT. A closer examination of its provisions and the grand bargain reveals that there is a glaring imbalance between the three pillars.

If, roughly speaking, the legal recognition of the NWS and the non-proliferation provisions in Articles I and II are on one side of the NWS-NNWS deal, on the other side are Article IV (“inalienable right” to and access to peaceful use) and Article VI (nuclear disarmament). The deal does not seem to be a bad one in this simplified juxtaposition. The inclusion of Article VI was a central demand of the NNWS, especially of Brazil, India, Mexico and Sweden (Bunn 2008, Graham 2008). However, in return for non-proliferation, India and Sweden demanded a whole package of *quid pro quos* from the NWS, including a freeze on nuclear weapons production (Shaker 1980, p. 508), which did not make it into the NPT. The negative and positive security assurances repeatedly demanded by NNWS during the negotiations (Shaker 1980) did not become part of the treaty either and were instead separated from it and only partially included in a UNSC resolution (UNGA 1968a, Annex 2).

Most problematic, however, is the vague formulation of the disarmament obligation in Article VI, according to which each Party (*sic!*) – i.e. no distinction between NWS and NNWS – “undertakes to pursue negotiations in good faith 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” (UN 1968, Article VI). The NNWS’ demand for specification during the negotiations was not implemented in the treaty text due to the refusal of the US and USSR (Shaker 1980, p. 570). There are no detailed provisions on deadlines and verification, let alone sanction options in case NWS do not disarm. In addition, no one is committed to results, only to efforts to negotiate, and that again softened into subjectively interpretable “good faith”. The fact that at least “effective measures” are mentioned corresponds to a compromise formulation proposed by Mexico (Shaker 1980, p. 571), but does little to reduce the leeway for interpretation. It remains equally unclear what can be understood by “early date”. 75 years after the entry into force of the NPT, the world is still waiting for the fulfilment of its Art. VI.

Apart from the vagueness of Art. VI, the imbalance between the pillars stems from the disparity in control and verification. In terms of implementation, the non-proliferation obligations (Articles I and II) from Pillar I are strictly monitored. The

IAEA serves a fully developed supervisory body for this purpose. However, only the NNWS are under a legally binding obligation to conclude safeguards agreements with the IAEA (Article III). In contrast, with regard to Pillars II and III, the NWS only have to undergo a RevCon assessment after five years (and possible subsequent ones). The extensive exemption of the NWS from monitoring and verification reinforces the unequal treatment between the Pillars. Obligations are formulated with varying degrees of precision, monitored to varying degrees and sanctionable to varying degrees. The hierarchy between NWS and NNWS is thus enshrined in the wording, monitoring and verification of the NPT.

All this was acceptable to the NNWS mainly because of the initially provisional character of the NPT. A permanent distinction between “nuclear haves” and “nuclear have-nots”, a lasting consolidation of the nuclear hierarchy was hardly enforceable at the time. Art X therefore leaves two exit options open to NNWS. Firstly, the possibility of withdrawal in case that “extraordinary events [...] have jeopardized the supreme interests” of a Party (UN 1968, Article X). A state only has to notify all other parties and the UNSC three months in advance of its intention and explain the reasons. Such withdrawal clauses are common in international law. The inclusion of the UNSC (where the NWS have a veto) to take up the matter and act if necessary, demonstrates the already discussed institutional linkage of the NPT with the UN’s highest governing body. It also shows that the NWS, despite all their rivalries, trusted that their overriding interests would converge in questions of nuclear rule and make cooperation possible. However, this only worked to a limited extent, as the case of North Korea shows (Habib 2016). The second and politically more significant exit option for the NNWS was to limit the validity of the treaty to an initial period of 25 years. A conference would then be convened to decide by majority whether the NPT should remain in force indefinitely or be extended for one or more periods which were to be specified.

Despite the fuzzy codification, Article VI combined with Article X provided political leverage to achieve nuclear disarmament in the long term. The legal anchoring of the nuclear hierarchy was subject to the caveat that the latter would only have a provisional character (Fehl 2015, p. 117). In its original design, the NPT was supposed to maintain a balance between the recognition of a (temporary) nuclear hierarchy and the concession to level it out in the long term. Only through this arrangement and potential equalizing mechanism it appeared compatible with the self-understanding of the NNWS as sovereign equals. By committing to complete nuclear disarmament, the NPT dedicated itself to the goal of eliminating inequality within the treaty community and abolishing the injustice inherent in the nuclear order (Müller 2010a, p. 195). The multilateral review process and the option to extend or limit the treaty’s validity (UN 1968, Articles VIII & X) created a procedure that granted the NNWS an active role and opportunities for participation in the governance of

the nuclear order (Fehl 2015, p. 117). The NPT was thus designed as a time-limited system of rule that promised the NNWS influence on governance.

Therefore, Article VI and its (non-)fulfilment are closely linked to the NNWS' regulatory expectation of the NPT to reduce inequalities and hierarchy in the nuclear rule. The recognition of the (temporary) right of the NWS to possess nuclear weapons and the (progressive) initiation of equal rights for the NNWS are closely related in a dynamic (mutually reinforcing) regulatory sense. The provisional character of a discriminating nuclear rule is central to the recognition of legitimacy and thus to the stability of the NPT. In other words, the better Art. VI is fulfilled by NWS, the greater the acceptance of their (dwindling) nuclear status. The more NNWS feel involved in the governance of the nuclear rule via Article VIII (review process) and the more inclusive the nuclear disarmament machinery works, the less the exclusion effects caused by the possession of nuclear weapons by a minority will matter. Articles VI, VIII and X curb the relations of super- and subordination and the different options for action and influence on control inscribed in the NPT. In fact, they were intended to prevent the system of rule from becoming permanently entrenched.

From 17 April to 12 May 1995, the Review and Extension Conference of the NPT was convened in New York in accordance with Article X, 25 years after its entry into force. More precisely, the Extension Conference preceded the RevCon. This gave the NNWS an outstanding opportunity to press their demands. In the meantime, the group of NWS recognized by the NPT was fully represented with the accession of China and France in 1992. Following renewed calls for negative security assurances (NSA) (to refrain from attack with and the threat of nuclear weapons), the five NPT NWS and permanent UNSC members supported the adoption of Resolution 984 (UNSC 1995) in the run-up to the conference. However, this was essentially an update of Resolution 255 (UNSC 1968), adopted in the context of the 1968 NPT negotiations, which provided positive security assurance (PSA) to NNWS in the event of a nuclear attack, supplemented by a declaration of intent to provide procedures for the victim of aggression to receive compensation from the aggressor under international law.

After intensive weeks of negotiations, the States Parties agreed on a "renewed NPT bargain" (Dunn 2009, p. 160). Among other things, this provided for a significant expansion of the NPT review process (UNODA 1995d) through 3 annual PrepCom meetings preceding the RevCons. In addition, the review process should not only evaluate past work, but also develop recommendations for the future implementation of the treaty's provisions. Indonesia and South Africa in particular had advocated for this to better hold NWS accountable to their commitments (ACA 2022). Even more significant was the agreement on further commitments in the "Principles and Objectives for Nuclear Non-Proliferation and Disarmament" (UNODA 1995b). These provided for negotiations on a FMCT and the conclusion of negotiations on a CTBT by 1996 at the latest.

While negotiations on an FMCT in the CD continue to be blocked, the CTBT was adopted on schedule. The background to this efficiency is remarkable. It was achieved through an unconventional circumvention of the CD by Australia (this country and its creative diplomatic approach will be recalled later). The almost completed CTBT draft, which was supported by most delegations at the conference, was rejected by India because of the lack of nuclear disarmament measures and the *status quo* it allegedly entrenched (Singh 1998, p. 41). Australia therefore proposed to submit the draft to the UNGA for a vote even without reaching consensus in Geneva. This was done at a specially convened meeting of the UNGA on 10 September 1996, at which the CTBT was adopted (UNGA 1996). The CTBT thus sets a precedent for circumventing the consensus principle in the matter of nuclear disarmament and arms control.

A further and final element of the extension package was a resolution urging the creation of a Weapons of Mass Destruction Free Zone (WMDFZ) in the Middle East (UNODA 1995c) to win the support of the Arab states, which were disturbed by the alleged nuclear weapons status of non-NPT member Israel. Whereas the Extension Conference agreed to the indefinite extension in conjunction with this comprehensive package (UNODA 1995a), a group of non-aligned states prevented the adoption of a joint final document for the RevCon. This was not least to express dissatisfaction over the lack of nuclear disarmament and the continuing inequality in the regime. However, from then on, the NNWS had given up the political leverage to maintain their room for maneuver and to exert pressure on the NWS. Through the indefinite extension of the NPT, the above-mentioned institutionalized relationships of super- and subordination in the nuclear rule and the differences between NWS' and NNWS' options for action and influence on control had been permanently enshrined.

The nuclear rule anchored in the NPT in 1968 and cemented in 1995 consolidates the hierarchy between "nuclear haves" and "nuclear have-nots". With its different rights and obligations for different groups of states, it is in tension with the basic principle of equality between sovereign states in international law and diplomacy (UN 1945, Articles I & II). By mirroring the permanent membership of the UNSC, the nuclear hierarchy contributes to a conflation of authority, influence, and nuclear possession. Nuclear For the five permanent members, the regime secures an extension of their privileged UNSC status. Extended indefinitely, the NPT cemented the exclusivity and control of the five recognized NWS over the nuclear rule, which was redesigned in such a way that decisions could only be made by consensus. Without political clout, Article VI, once conceived as a potential equalizer, became a fig leaf to hide the encrustation of institutionalized relations of superiority and subordination. But can a system of rule, as firmly and permanently inscribed on paper as it is, survive if its legitimacy remains disputed?

### 2.3 Dynamics of rule & resistance within the NPT

From its inception, the NPT has been a matter of contestation. The NWS see its purpose in ensuring strategic security and their nuclear (great power) status, thus focusing on the area of non-proliferation. NNWS see its main purpose in achieving a nuclear weapons-free world and reducing hierarchy, therefore focusing on the area of disarmament. Do nuclear weapons contribute to stability, security and peace, or do they cause chaos, insecurity and war? The diverging perspectives and interests between the rulers and the ruled were always accompanied by disputes. Various dynamics of rule and resistance in the NPT can be traced in the past. The following illustrations from the time before 2010 may help to make our conceptualization of rule and resistance more vivid and plausible.

Examples for state resistance to nuclear rule enshrined in the NPT (object in the sense of *polity*) in its oppositional and dissident form are in the foreground. Alliances of states always resisted within the framework of applicable rules. When considering individual state resistance, some cases of refusal to comply with rules of the non-proliferation regime can be found. Most of these cases involve resistance behavior that at least partially addresses the *polity* of nuclear rule itself. This radical motivation, however, is not always articulated, and the occasion for resistant or even dissident behavior can be a concrete or absent political decision or change of direction in the sense of a *policy*. Dissatisfaction with the way a policy has come about and with political decision-making processes, i.e., *politics*, also plays a role. However, both oppositional and dissident forms of state resistance in the NPT context are dominated by the *polity* aspect and thus by a critical political motivation toward the *status quo*.

The so-called Group of 77 (G77) has long been the preferred forum for opposition to discrimination in the NPT by states from the Global South (Potter and Mukhatzhanova 2012). Founded in 1964 in Geneva by 77 non-aligned members on the occasion of the UN Conference on Trade and Development (UNCTAD), the coalition today comprises 135 developing countries. In addition to representing their economic interests and overcoming colonialism, global disarmament was one of its main concerns. As expected, at the first RevCon in 1975 (91 NPT parties), the lack of disarmament and the intensifying arms race was the most controversial issue. Nevertheless, the NPT member states were able to agree on a final declaration. This changed at the second RevCon in 1980 (112 NPT parties). Again, the debate revolved around the same matters, but the participants were unable to agree on a final declaration due to fundamental differences between the members of the G77 and the NPT NWS. The criticism that the NWS did not comply with Article VI, while the NNWS complied with Article II, grew louder and louder. At the 1985 RevCon (131 NPT parties), this was compounded by debate and differences of opinion between NWS and NNWS over the CTBT, particularly with regard to its integration into a comprehensive process for the elimination of nuclear weapons. Nevertheless, after intensive negotiations,



a compromise was reached in which certain contentious issues were excluded from the final declaration but remained part of the final document. In the course of the 1980s, the G77 gained stature and strength, becoming the driving oppositional force within the NPT. The G77's blocking of consensus, however, was not so much a fundamental challenge to the regime itself. Rather, it was aimed at improving the implementation of the disarmament commitment enshrined in the treaty in order to restore its balance (Daase 2003b, p. 353).

The situation was similar with the Non-Aligned Movement (NAM), whose membership largely coincides with that of the G77 and to which opposition activities shifted in the run-up to the RevCon 1990 (1940 NPT parties) (Singham and Hune 1986, Potter and Mukhatzhanova 2012). The NAM, which does not belong to any formal alliance with the (nuclear) superpowers, has repeatedly coordinated within the NPT and has been able to assert the concerns of its 120 members, mainly from the Global South. This has been achieved by the fact that the NAM unites two-thirds of the members of the UN and represents more than half of the world's population. The Final Communiqué of the Asian-African conference of Bandung in 1955, the founding document of the NAM, already emphasized concerns about the nuclear threat and described disarmament and the prohibition of the production, experimentation and use of nuclear weapons as "imperative to save mankind and civilization from the fear and prospect of wholesale destruction" (NAM 1955). Numerous NPT statements of the NAM express their criticism of the distinction between "nuclear haves" and "nuclear have-nots", as a database provided by the James Martin Center for Non-Proliferation Studies impressively shows (CNS 2023). Stockpile reductions by the US and USSR in the late 1980s failed to mitigate this. The NNWS pointed to the development of new weapons and continued adherence to doctrines. In addition, there were differences over the implementation of safeguard agreements, the promise of peaceful use, and the increasingly prominent issue of security assurances for NNWS. The major point of contention, however, remained the lack of progress on the CTBT (Simpson and Howlett 1990). This prevented the adoption of a final declaration and plunged the NPT into a deep crisis of legitimacy (Frankel 1990). At the center of this convulsion was again Article VI. From the NAM's point of view, its implementation was linked to the negotiation of a CTBT. Although nuclear weapons testing declined significantly in the 1990s (ACA 2023), negotiation of a CTBT remained a major NAM demand at the 1995 Extension Conference and RevCon (178 NPT parties). As described before, the NNWS organized in the NAM succeeded in negotiating substantial concessions for the indefinite extension, including UNSC Resolution 984 on security assurances (UNSC 1995), a strengthening of the review process (UNODA 1995d), the "Principles and Objectives for Nuclear Non-Proliferation and Disarmament" (UNODA 1995b) which included the adoption of a CTBT by 1996 and FMCT negotiations, and the resolution calling for the establishment of a WMDFFZ in the Middle East (UNODA 1995c). Repeated pushes for such a WMDFFZ

and the adoption of the CTBT are among NAM's successes and prove its effective oppositions during the 1990s.

Another example for a successful alliance-based opposition is the New Agenda Coalition (NAC), in which Brazil, Egypt, Ireland, Mexico, New Zealand, and South Africa have joint forces. Slovenia was also an original member but withdrew immediately after its founding in spring 1998. For Brazil, which joined the NPT in the same year, membership in the NAC was an important compensation for the imbalance of power in the NPT. The goal of the alliance was to increase pressure for nuclear disarmament and to prevent the extension of the NPT from being interpreted in terms of a perpetuation of the right to possess nuclear weapons. Through its geographically mixed membership, the group aims to bridge the North-South divide in the NPT but sharply attacks the nuclear powers for their inadequate disarmament efforts. While prospects at the outset of the 2000 NPT RevCon (187 NPT parties) initially seemed bleak, the conference adopted both a final declaration and a substantial work program. The NAC played a central role for this outcome. It was instrumental in getting the NWS to agree to the 13 steps toward nuclear disarmament under Article VI of the NPT, including an "unequivocal undertaking by the NWS to accomplish the total elimination of their nuclear arsenals" (UNODA 2000, vol. I, part I, pp.14-15). The fact that the NWS agreed to the far-reaching 13 steps and the "unequivocal undertaking" was due not least to their concern to stabilize the regime and the NAC's bargaining power. The alliance became the *de facto* negotiating partner of the NWS and gained considerable authority among all NPT parties. These three collective initiatives, while clearly positioning themselves against the will of the nuclear powers, operated within the framework of the existing rules and pursued their concerns within the existing institutions. They can thus be understood as an opposition to the nuclear rule supported by an alliance of states.

In the case of individual state resistance to the nuclear rule inscribed in the NPT, the picture is different. The nuclear armament and rejection of the NPT by India (Perkovich 2001) can be understood as an example of dissidence (Daase 2003a). India has never been an NPT member and always rejected the non-proliferation regime as discriminatory. Since its independence, the country strongly advocated nuclear disarmament (Jain 1974) but kept open the option of acquiring its own nuclear arsenal (Kapur 1978). The country did test a nuclear device for the first time in 1974 after the third Indo-Pakistani war and following US intimidation attempts (Daase and Deitelhoff 2023b, p. 196). It was also a signal against the privileged position of the five NWS recognized under the NPT (Rajan 1975, p. 324). However, India emphasized the peaceful nature of that nuclear explosion (Müller *et al.* 1994, p. 24), refrained from further testing for 24 years thereafter and kept demanding nuclear disarmament from all. The indefinite extension of the NPT in 1995 and permanent establishment of the special status of the NWS recognized therein can be read as a defining moment for India's policy shift. Its nuclear tests in 1998 and its overt development of

nuclear weapons thereafter came at a time when the nuclear order was being expanded into an increasingly rigid system of rule that left less and less room for legitimate criticism (Daase 2003a, pp. 32–33). Indian security policy makers argued that the indefinite extension of the NPT formally legitimized the continued existence of nuclear arsenals and an unequal nuclear regime, which was not acceptable to India (Singh 1998). Although the indefinite extension of the NPT cannot be seen as a direct cause of India's nuclear weapons testing, the connection and its dynamics express the reciprocal relationship of rule and resistance in the nuclear context. In the same month, May 1998, archrival Pakistan tested nuclear weapons of its own. Even though Pakistan does not equally share India's great power ambitions, it wanted to catch up with its neighbor. "If India builds the bomb, we will eat grass or leaves, even go hungry, but we will get one of our own" (NYT 1979), former Pakistani Prime Minister Zulfikar Ali Bhutto expressed the desire to see eye-to-eye. In his testimonies written in the death cell he stated that "Christian, Jewish and Hindu civilizations possess this ability. The communist powers also possess it. Only Islamic civilization was without it, but that should change" (NYT 1979). Today, the number of Indian nuclear weapons is estimated at about 172, with the country expanding its nuclear arsenal as well as production facilities (SIPRI 2024, pp. 325–329). Pakistan is believed to have about 170 nuclear warheads and is also expanding its arsenal and delivery systems (SIPRI 2024, pp. 332–338), as well as the amount of fissile material for military purposes (SIPRI 2024, pp. 359–367). Both states are thus acting outside and against the rules of the game which are accepted by the vast majority of the international community. Their dissidence is critical of rule, but of dubious credibility. They both refused to recognize the status of the official nuclear powers and became NWS themselves.

North Korea's nuclear weapons program represents an even clearer case of dissidence. After all, North Korea had joined the NPT in 1985. Later, the country refused to allow the IAEA access to one of its nuclear facilities. In March 1993 Pyongyang announced its withdrawal from the NPT because of the disputes with the IAEA over non-proliferation safeguards and following a US-South Korean nuclear war exercise (Albright 1993) but suspended that withdrawal in June of the same year, one day before it would have entered into force (ACA 2022). Talks and agreements with South Korea, the US and China succeeded in restoring cooperation. In June 1994, an agreement was reached with the US to halt North Korea's nuclear weapons program. The country remained a member of the NPT until the publication of US intelligence reports in 2002 on prohibited nuclear activities on the peninsula. When the dispute with Washington escalated in January 2003, Pyongyang demonstratively declared its withdrawal (North Korea 2003), ten years after its initial announcement. The legal validity of the North Korean withdrawal remains controversial, but repeated calls by the UN and the IAEA for Pyongyang to return to the NPT speak for a recognition that North Korea is outside the treaty. The North Korean regime is confirming this by stepping up its military nuclear activities. In October 2006, North Korea conducted

its first nuclear weapons test (CTBTO 2006). 2016 and 2017 saw the height of North Korea's nuclear testing, with the latest having an explosive force similar to that of a hydrogen bomb (CTBTO 2017). Meanwhile, the North Korean arsenal is estimated at about 50 nuclear warheads (SIPRI 2024, pp. 393–353). The country also possesses, develops, and tests ballistic missiles across the range spectrum. No other country has challenged the NPT and the nuclear rule as much as North Korea. No other state has been subject to comparable sanctions. Even China, which is aligned with North Korea on security issues and has a geopolitical interest in its defense capability, approved sanctions and banned the import of raw materials and export of weapons-grade goods. This shows the willingness of the NPT NWS to cooperate despite all rivalries when their nuclear rule is challenged. Thus, North Korea's dissident behavior did not go unpunished. However, its resistance could not be broken and Russia's isolation in the context of the Ukraine war is reviving cooperation.

In the much-discussed case of Iran, things are more complicated. Tehran recognizes the NPT and has been so far complying with the obligations enshrined therein (Erästö *et al.* 2020). However, Iran is suspected of being interested in nuclear technology not only for civilian use but also for the development of nuclear weapons. In fact, Iran's proven enrichment activities have repeatedly exceeded what is necessary for civilian energy production, and the country has not always fulfilled its obligation to report all facilities to the IAEA. In June 2003, the IAEA published a report on clandestine nuclear activities that Tehran had failed to report to the organization, in violation of its safeguards agreement. The suspicion that Tehran was working on a nuclear weapons program was substantiated (Høiseth 2015). After nearly two years of inspections of undeclared nuclear activities, the IAEA found Iran in non-compliance with its safeguards obligations in September 2005 and referred the case to the UNSC in 2006. However, neither its condemnations (UNSC 2006a, 2006b, 2007, 2008a, 2008b) nor the imposition of numerous multilateral and bilateral sanctions could change anything. On the contrary, Iran threatened to withdraw from the NPT (The Guardian 2006). It was only after years of negotiations that the JCPOA was concluded in 2015, allowing for extensive controls on Iran's nuclear program and severely restricting enrichment. In return, sanctions imposed by the UN, the EU, and the US were to be eased. As the US unilaterally withdrew from the JCPOA in 2018 and imposed new sanctions (which also restricted third countries from trading with Iran), plunging the agreement into crisis, Iran gradually suspended its nuclear-related JCPOA commitments. Iranian nuclear activities thus represent a hybrid case of opposition and dissidence. Tehran openly criticizes restrictions on the use of nuclear technology. The country gropingly oversteps boundaries, only to revert to rules under certain conditions. Iran thus oscillates between the two forms of resistance to an apparently well-dosed degree. It deliberately keeps the expansion of its nuclear technology activities ambivalent and uses them to exert pressure. At the same time, it recognizes the fundamental obligations of the nonproliferation

regime and the associated authority of the IAEA. Tehran professes obedience, sometimes tricks, and remains a party to the NPT. That NWS sometimes have difficulty isolating Iran within the NPT community shows that the recalcitrant country, with its fickle method of challenging the legitimacy of the nuclear order, does enjoy sympathy.

Israel's nuclear armament represents a special case that cannot be grasped by the definition of resistance used here. That Israel is a nuclear power has long been suspected, but never acknowledged. As early as the 1950s, the construction and operation of nuclear research centers was supported by the US and France. Government documents from the US and Israel that have since been released suggest that the country began building its nuclear arsenal in the early 1960s, before the conclusion of the NPT (SIPRI 2020, p. 375). There have been repeated reports of uranium shipments and other aid, especially from the US (Smith 2012). During the 1973 Yom Kippur War, Israeli Prime Minister Golda Meir reportedly initiated preparations for a nuclear strike. Informed about this and seeking nuclear de-escalation, the US responded with extensive military support for Israel (Farr 1999). In late 1986, The Sunday Times published clues and photographs by Israeli nuclear technician Mordechai Vanunu about the nuclear research program in the Negev. To this day, Jerusalem pursues a policy of opacity that neither confirms nor denies possession of nuclear weapons. Experts estimate that there are about 90 nuclear warheads ready for use, some of which could be delivered by fighter planes, ballistic missiles and possibly submarine-launched cruise missiles (SIPRI 2024, pp. 354–358). Israel, like India and Pakistan, has never joined the NPT and refuses IAEA inspections of its nuclear facilities. Thus, the NPT rules of the game are not binding under international law for any of the three states. By keeping a low profile regarding its nuclear weapons activities and not criticizing the nuclear order, Israel's behavior differs from the other examples. Also, its status as a NWS presumably acquired at an earlier stage, would not, strictly speaking, be NPT-incompatible. In part, it has close alliance ties with nuclear-armed states, especially the US. Thus, Israel's exceptional behavior cannot be interpreted as a form of resistance or even dissidence according to the definition chosen here.

## 2.4 Regime failure on disarmament

The division into “nuclear haves” and “nuclear have-nots” has been a linchpin not only of political dispute but also of scholarly discussion and debate since the treaty's inception. The viability, permanence, and resilience of its inherently discriminatory structure have been problematized from the beginning (Brownlie 1966, Bloomfield 1975, Bull 1975, Falk 1977). There is consensus among researchers that the treaty is discriminatory and consolidates a hierarchy. But there is disagreement on the question

of its stability. For example, one analysis sees the NPT as dysfunctional but stable, which is explained by “nuclear conventionalism” (Jasper 2016). Over time states had internalized and habitualized its structures and schemes in the Bordieuan sense, thus ultimately naturalizing and reifying its hierarchical formation along with its dogmas. Some put the emphasis on the concept of trust (Ruzicka and Wheeler 2010), attributing the stability of the NPT to the development of a series of trusting relationships between states and showing how these underpinned the treaty from its inception.

Others see destabilizing tendencies (Müller 2005, Mukhatzhanova 2014, Potter 2016, Egeland 2017, Neunack 2019) that could develop into threatening legitimacy crises. These revolve around the (non-) fulfillment of Article VI and the question of exclusion and inclusion of the NNWS in the governance of the regime. They can be understood as struggles for recognition of NNWS against permanent legal subordination (Egeland 2017). The less the disarmament commitment conducive to the elimination of inequality among NPT member states was implemented and the lower the level of NNWS involvement, the more precarious the legitimacy and recognition of the NPT was, the more fundamental the crisis of legitimacy was (Egeland 2017, pp. 34–37). However, the legitimacy crises did not lead to a collapse. Instead, they have caused a recalibration of the original NPT settlements and led to an expansion of the web of institutions that make up the multilateral disarmament framework (Egeland 2017).

But what does the empirical data say about the stability and performance of the NPT? In fact, the mixed substance of the regime translates into a mixed record. The non-proliferation performance is respectable, thanks to the verification carried out by the IAEA. The regime helped prevent states from crossing the threshold into nuclear weapons possession. Only India, Pakistan, North Korea and Israel have acquired nuclear weapons since the NPT entered into force. Thus, the number of NWS today is much smaller than had been feared in the 1960s. In contrast, the number of NPT member states grew steadily. Its disarmament performance, on the other hand, is vanishingly small. Despite the disarmament obligation under the NPT, no further multilateral nuclear disarmament agreement involving the NWS has entered into force to date, and no nuclear disarmament process has been placed under multilateral control.

Nevertheless, substantial disarmament progress did occur in the period between four NPT RevCons from 1985 to about 2000, predominantly on the bilateral level. The golden age of nuclear arms control (Lever 2014) found its credo with the famous formulation that “a nuclear war cannot be won and must never be fought” (Reagan and Gorbachev 1985) at the 1985 Soviet-American summit in Geneva. At the 1986 Reykjavik Summit, Ronald Reagan and Mikhail Gorbachev initiated the nuclear détente policy which was to last until the turn of the millennium and lead to important successes, including bilateral arms control treaties such as the

INF Treaty (1987), the START I (1991) and II (1993), and the Treaty on Open Skies (1992). At the multilateral level, the indefinite extension of the NPT (1995) and the adoption of the CTBT (1996), which has not yet entered into force, were successfully achieved. The NPT RevCon 2000 also agreed on the ambitious final document with 13 disarmament steps to implement Article VI (UNODA 2000). Russia ratified the CTBT as early as the fall of 2000, fulfilling the 1st of the 13 steps shortly after the RevCon. The debates in the First Committee of the UNGA in 2000 demonstrated that the non-proliferation versus disarmament balance in the NPT seemed to be restored in the eyes of many NNWS (Egeland 2017, pp. 157–158). In the years that followed, however, none of the 13 steps would materialize. The package still awaits full implementation to this day. The turn of the century marked the turning point for nuclear disarmament. Existing disarmament and arms control treaties were gradually dismantled.

The trend reversal was heralded by the change of administration in the US by George W. Bush in 2001. The terrorist attacks of September 11 had a direct impact on bilateral disarmament and arms control between Russia and the US as well as on multilateral regimes. Further decisive factors were the advancing technological development and military superiority of the US. Other security policy goals were subordinated to the implementation of the revolution of military affairs (Chapman 2003), the fight against “rogue states” (Bush 2002) and terrorism. This particularly affected the area of cooperative security. The administration at the time was fundamentally skeptical of, or even disregarded, the disarmament and arms control components of collective security and multilateral settings as a whole (Miller 2003).

As of 2001, the US refused to ratify the CTBT and thus abandoned the 1st of the 13 disarmament steps agreed upon in the final document of the NPT RevCon 2000 (UNODA 2000, vol. I, part I, pp.14–15). The already signed CTBT was not forwarded to the Senate for ratification. To date, this remains one of the key obstacles to its entry into force. In December 2001, the US revoked the 1972 Anti-Ballistic Missile (ABM) Treaty on the grounds that it prevented the government from protecting its population from future “terrorist or rogue state missile attacks” (NYT 2001), referring to the expansion of the US’s missile defenses. In doing so, the US violated the 7th of the 13 disarmament steps (UNODA 2000, vol. I, part I, pp.14–15). At the same time, this also violated principle of mutual vulnerability, depriving the bilateral US-Russian disarmament and arms control architecture of its conceptual foundation – strategic stability. The Russian Duma had linked the ratification of START II, and thus its entry into force, to the ABM Treaty. The envisaged START III negotiations also defaulted under these conditions. The latter was replaced by the SORT (2003), which did not dismantle nuclear warheads but merely withdrew them from their operational status (Müller 2010a, p. 193).

The US (together with several other states) also opposed the negotiations on a FMCT in the Geneva CD and thus the 3rd of the 13 disarmament steps (UNODA

2000, vol. I, part I, pp.14-15). Any progress in the matter failed because of the consensus principle. In 2003, the US launched the Iraq War under the false pretext of preventing Saddam Hussein from acquiring weapons of mass destruction. It was no surprise, therefore, that from 2003 onward, skepticism and concern grew among NNWs about NWS's compliance with international law and arms control. The anger over this was increasingly vented by NAC and NWFZ members at the annual First Committee Sessions of the UNGA (Egeland 2017, pp. 159–160). The 2003, 2004, and 2005 NPT PrepComs also made the deep rift between NWS and NNWS abundantly clear (Simpson and Nielsen 2005, p. 274).

The NPT RevCon 2005 ended in a fiasco without adoption of a joint final declaration. The growing discord was rooted in the refusal of the US and France to even acknowledge the results of the RevCon 2000 as a basis for negotiations (Müller 2005, pp. 34–35). The Bush administration openly judged the 13 disarmament steps agreed upon in the 2000 NPT final document as legally non-binding, an interpretation that was echoed by France. In the summer of 2005, the US also undermined the credibility of the “grand bargain” by negotiating a nuclear agreement with non-NPT member India by 2006 and working toward a corresponding exemption in the NSG guidelines. This challenged the benefits enshrined in the NPT for parties to redeem the “inalienable right” (UN 1968, Art. IV, 1) to nuclear energy for peaceful purposes. But it was not only the NPT that was weakened. The entire multilateral disarmament machinery had come to a standstill. The Geneva CD was unable to negotiate new disarmament and arms control treaties, let alone adopt them. Since 1997, it could not even agree on a joint work program. Bit by bit, the erosion of nuclear disarmament and arms control was to continue for several more years (Neuneck 2019).

The analysis of the organizing principles of the nuclear order and examination of the NPT as a founding treaty of nuclear rule revealed the tension between the areas of non-proliferation and disarmament, between the goal of maintaining the nuclear hierarchy in the *status quo* and the expectation of a flattening of the relationships. The fundamental differences in perspectives and interests between NWS and NNWS fostered dynamics of rule and resistance within and beyond the treaty community. So far, these have included rule-compliant opposition by various alliances of states and multiple forms of dissidence by individual states. Although phases of intense resistance have led to veritable crises of legitimacy, the nuclear rule has not been overthrown. Despite its discriminatory character and the rejection of the consolidating hierarchy, despite its poor performance on disarmament and the resulting loss of faith in its legitimacy (*Legitimätsglaube*) among the ruled, the NPT remained in place. Meanwhile, its overall record is mixed. While the treaty has largely delivered on its non-proliferation promises, it has not had a substantial impact on NWS to push them to completely eliminate their arsenals. It can be argued that it has not produced any immediate disarmament gains at all. Stockpile reductions to date have been based on unilateral or bilateral initiatives. The performance of the



nuclear rule with regard to securing the exclusivity of the “nuclear club” has proven its worth. In terms of nuclear disarmament, one must speak of a regime failure.

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

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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, Kmentt 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 not 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-

humanitarian 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 Hynek 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, 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 (Baldus *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, Kmentt 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.



## Conclusion

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This study addressed the dual research question of *what role resistance to nuclear rule and an anti-colonial impetus played for the supporters of the Humanitarian Initiative and the Treaty on the Prohibition of Nuclear Weapons (TPN) and how they were able to realize their project of international legal reform against the will of the nuclear weapon states and their allies.*

The first part of the research question revolves around the perceptions and motivations of the TPN movement. To answer to what extent resistance and an anti-colonial impetus were involved, this study firstly drew on a concept of rule derived from Max Weber, which focuses on resistance (Daase and Deitelhoff 2015, Daase *et al.* 2017b, Daase *et al.* 2023a), and developed this further. It defines rule as *a constant form of exercising power within institutionalized relationships of super- and subordination, which systematically expands or restricts the actors' options for action and influence on control.* Resistance, in turn, means the *withdrawal of recognition and thus the questioning and challenging of institutionalized relationships of super- and subordination that shape the actors' scope for action and steering.* In addition, critical and post-colonial approaches were used to trace a possible anti-colonial sentiment. To this end, this study pursued the idea of post-colonial continuity in the nuclear order and developed six components of potential colonial imprints: *excessive violence, eurocentrism, primacy of the state, racism, economic exploitation and patriarchal domination.*

The second part of the research question exposes the puzzle of how such manifest resistance and the negotiation of a treaty that contradicts essential elements of the nuclear order could succeed against the will and power of the nuclear rulers. Since decades-long contestations within the Nuclear Non-Proliferation Treaty (NPT) have never led to such a counter-draft under international law, we are particularly interested in the specific strategies, procedures and means used by the Humanitarian Initiative and in the TPN process to achieve precisely this.

The research project explored these two focal points of interest (the perceptions and motivations of the TPN movement on the one hand and its actions and means on the other), taking into account comprehensive empirical data. Its findings are based, firstly, on an analysis of the norm genesis and substance of the TPN which was structured along the terminological-conceptual framework and drew on numer-

ous primary sources. Secondly, the evaluation of qualitative interviews with sympathizers and supporters of the resistance movement provided further insights. It is therefore mainly first-hand information that forms the basis for our conclusions.

A summary of the results: Resistance against nuclear rule enshrined in the NPT was, alongside humanitarian concerns, a decisive driving force for the actors united in the Humanitarian Initiative and the TPN process. An anti-colonial impetus also played a substantial role, especially when it came to the issue of nuclear weapons testing. However, the critique of colonialism vis-à-vis the nuclear order is selective, concentrating on certain facets while others appear multi-layered or differ by region. Focal points of the anti-colonial agenda include the rejection of the (threat of) excessive nuclear violence and the reinforcement of the subaltern perspective.

The recipe for success of the anti-nuclear, partly anti-colonial resistance relied primarily on *subversive opposition activities*. These took place in accordance with the rules and did not violate any provisions of international law. However, they drew on existing discursive and procedural principles that were previously not applied with regard to nuclear weapons and the nuclear order. In doing so, resisters subversively changed the rules of the game.

On the one hand, they used *subversive discursive means* to undermine the hegemony of the nuclear weapon states in the nuclear weapons discourse: With deliberate calculation, they resorted to the humanitarian framing of other prohibition processes to work towards a shift in the nuclear weapons debate. This led away from the prevailing deterrence paradigm founded on state security and strategic balance. In this way, the resisters wanted to divide the group of rulers and, in particular, put the umbrella states in a quandary. They also used the humanitarian code to open up new spaces for action (Conferences on the Humanitarian Impact of Nuclear Weapons) and options to take initiative (Humanitarian Statements, Humanitarian Pledge).

On the other hand, they circumvented the nuclear weapon states' and umbrella states' control by denial (based on the consensus principle in the nuclear disarmament machinery) with *subversive procedural means*: Using the majority principle in the modus operandi of the United Nations General Assembly, they exploited their numerical superiority within the institutional framework of the United Nations to establish an Open-Ended Working Group on nuclear disarmament and the Negotiating Conference for the TPN that both operated according to the same rules of procedure. They embedded this entire process into the political monitoring mechanism of the nuclear rule itself by declaring all these measures, including the treaty text itself, as an implementation of the decisions agreed upon within the framework of the NPT review process.

The recourse to subversive discursive and procedural means as well as the slimmed-down anti-colonial agenda were decisive prerequisites for the success of the resistance. At the same time, they diminished its potential for transformation.

In the following, further interesting findings of the comprehensive resistance analysis undertaken by this study will be discussed in more detail. Particular attention will be paid to the limits of the impact it has revealed, the implications of the empirically tight interweaving of rule and resistance for the dynamics in the nuclear order and what we have been able to learn about nuclear rule and its stability. This final section also summarizes which questions remain unanswered and give rise to further research.

## Role of rule & resistance in the Humanitarian Initiative & TPN process

The study has shown that the Humanitarian Initiative and the TPN process fulfill all criteria of the chosen definition of resistance. The movement can be understood as a revolt that withdraws recognition from institutionalized relationships of super- and subordination that shape the actors' scope for action and control in the nuclear order and thus questions and challenges them. The *spectrum of actors* is exceptionally broad and *includes a wide variety of state and non-state protagonists* who have joined forces in a transnational multi-stakeholder network to pool their resources and skills. The process could only be initiated and maintained through the interlocking of state and non-state actors. This is evidenced not least by the Amersham and Berkshire meetings, from which the core group emerged, which gradually took over the steering of the resistance in various constellations. Although the format of these meetings and the composition of the core or extended core group were fluid, they constituted the command center of the movement. Consequently, the resistance did not happen spontaneously or by chance, but was carefully prepared over the long term and built from the outset on numerous conscious decisions and fine-tuned coordination.

Cooperation between various players was central not only for the constitution of the leading group, but also for the broader reach and expansion of the resistance. This applies in particular to the unusually close cooperation between a relatively small group of players from the Global North and the much larger group from the Global South, without which the daring venture would probably not have been able to succeed. Non-state actors played an important advisory and lobbying role. They also helped with the organization of the resistance, the multiplication of its circle of supporters and the public outreach of its agenda. With their campaigning activities, they also ensured that the resistant spirit was fueled and maintained. One could say that they acted as think tanks, logistics centers and cheerleaders of the resistance.

However, the heterogeneity and division of labor within the Humanitarian Initiative should not obscure the fact that it was ultimately the diplomats who bore the risk of the resistance enterprise. After all, states are first and foremost the subjects over which nuclear rule and its rulers have direct influence and on which they can



exert pressure. While civil society actors cannot be held accountable in this context, the diplomats involved must take responsibility to their respective capitals and governments for potential political costs. Consequently, they also had the lead, in other words they took the strategic decisions and had the mandate as TPN negotiators.

The resistance analysis has also clearly highlighted that its *object of contestation* and its main point of reference is the NPT, or more precisely the components of the NPT that establish a nuclear hierarchy. Throughout the process, the NPT remained the point of departure and return for the resistance. Its 2010 Review Conference served as an opportunity to connect its key actors for the first time. During the review cycle between 2010 and 2015, they concretized their concerns and demands for “effective legal measures” (NAC 2014, 2015). In the context of the 2015 Review Conference, the movement reached its political momentum (Kmentt 2021, pp. 62–85), confronted the NPT nuclear weapon states with numerous joint statements and working papers and took the helm of the diplomatic debate. At the same time, the Outcome Documents repeatedly served as the basis for justifying taking action. The NPT thus represents the main object of resistance.

The evaluation of the interviews confirms this observation. Across the board, the hierarchy and double standards in the NPT were discussed and criticized. The criticism of rule emerged clearly regarding all relevant elements (objecting hierarchy and discrimination, denouncing nuclear weapon states’ steering and non-nuclear weapon states’ limited influence, questioning institutionalization). The central motivating factor behind the Humanitarian Initiative was precisely to break up this structure and to withdraw the faith of recognition (Max Weber’s *Legitimitätsglaube*) from the nuclear rule (i.e. the distinction between nuclear weapon states and non-nuclear weapon states enshrined in the NPT). It therefore constitutes a radical contestation, as *polity* itself was the bone of contention.

Furthermore, both the evaluation of the conversations with the resisters and the analysis of the norm genesis (and the reactions of the nuclear weapon states and umbrella states to it) revealed that the relations of superordination and subordination in the nuclear order display a *three-tier structure*. The latter arises from the practice of nuclear deterrence and entails a juxtaposition of *nuclear weapon states and umbrella states* on the one hand and *non-nuclear weapon states without deterrence arrangements* on the other. This meta-structure of the nuclear order apparently overlays all other group constellations in the NPT and TPN process.

According to the interviews analyzed, no significant differences can be identified between the different country groups involved in the Humanitarian Initiative (Africa, Asia-Pacific, Latin America & the Caribbean, Western Europe & others) when it comes to the perception and motivating effects of all relevant elements in the NPT regarding the definition of rule. The perception of two main legitimacy deficits fueled the withdrawal of the faith of recognition. Firstly, the output legitimacy of the NPT increasingly evaporated with respect to its disarmament pillar. Secondly,

the power-political design of the NPT and its interpretation as a founding treaty of nuclear rule were rejected. In this double sense, the Humanitarian Initiative and the TPN process are an expression of a profound crisis of legitimacy (Egeland 2017, p. 210). The latter stems not only from dissatisfaction with the lack of fulfillment of the disarmament commitment, but above all from the indignation about the resulting persistence of relations of super- and subordination and the different influence on control.

The interviewees not only expressed criticism, but repeatedly emphasized *positive resistant motivations*, confirming the terminological and conceptual framework of this study. They justified their participation in the Humanitarian Initiative and the TPN process not only with the humanitarian agenda, but above all with the pursuit of equality and participation, empowerment and the desire to get things moving and change. Most supporters of the resistance are convinced that their sphere of action has expanded and that the Humanitarian Initiative and the TPN will remain important platforms for them to coordinate their efforts, maintain pressure on the nuclear weapon states and influence the NPT. The shared experience of solidarity and self-enhancement within the movement encouraged a great majority to become more engaged in the nuclear field and keep going.

A further (although perhaps not surprising) finding from the interviews and the analysis of the actors' behavior in the course of the norm genesis of the TPN is that the special position of the umbrella states among the non-nuclear weapon states and their political complicity with the nuclear weapon states is primarily associated with the United States. This is, of course, because other nuclear weapon states, especially Russia, did not have comparable extended deterrence arrangements in place during the period under study. However, it reveals an important internal differentiation among the nuclear rulers, with the *United States playing a prominent role*. Consequently, the influence on control within the nuclear rule is less determined by how large the nuclear arsenals of the individual nuclear weapon states are (in which Russia has an advantage) than by how strongly they can activate a critical mass of followers within the group of non-nuclear weapons states to avert their isolation and to weaken the resistance.

The reactions of the "empire" and its attempts to contain the resistance made little impression on the rebels themselves or in fact spurred them on. The impact on the umbrella states, by contrast, was all the greater. And this is almost exclusively owed to the United States. In the course of the entire process, Washington managed to prevent the umbrella states from switching to the humanitarian track and maintained its control over this group. Both at the votes in the United Nations General Assembly and at the 2016 Open-Ended Working Group, they repeatedly demonstrated their loyalty to the regime. After a blunt warning from Washington towards its NATO partners that any support for a ban on nuclear weapons would shake the foundations

and preconditions for military cooperation within the alliance (US 2016b), they also voted against the TPN negotiations and boycotted them in 2017.

Despite all hostilities, even Moscow relied on Western cohesion and referred to the size of this group when it came to depicting the TPN process as illegitimate (Russia 2016b). Even though Russia, together with France, were the harshest and most fundamental critics of the Humanitarian Initiative and pushed for the greatest possible solidarity among the five permanent members of the United Nations Security Council, it was ultimately the United States that were able to mobilize political support for the nuclear rule via NATO and its allies in the Asia-Pacific.

At the same time, the reconstruction of the TPN negotiations and internal analysis of the resistance during the conference shows that *the “nuclear club”* of nuclear weapon states and umbrella states *was able to exert a limiting influence on the further course of events*. They put pressure on the International Atomic Energy Agency and prevented the multilateral monitoring and verification organization from actively participating in the genesis of the TPN. In addition, the A-Team always hovered like a phantom in the negotiating rooms, albeit only as a projection of possible future treaty parties, and thereby molded the wording of the individual provisions. This applies in particular to formulations in the prohibitions of assistance, the conditions for joining the treaty and the associated disarmament and verification requirements.

Last but not least, a pronounced awareness among negotiators of existing economic and technological dependencies ensured that more fundamental reform proposals were repeatedly thwarted and that the doors for dialog with the “nuclear club” remained open in the treaty text. The argument of keeping options for cooperation prevailed in many controversial points at the expense of more far-reaching changes to the *status quo*. The conservative forces generally included negotiators from the group of Western European & other states, states with close economic ties to the United States and middle powers. Non-state actors, smaller states and regional powers (Brazil, South Africa) often advocated for more fundamental or more comprehensive prohibitions, usually in vain. The interviews also proved that most TPN supporters are aware of the given balance of power and resources and know that they will ultimately not be able to achieve nuclear disarmament and other goals without the nuclear weapons states and umbrella states.

The *non-official and non-NPT nuclear weapon states* India, Pakistan, North Korea and Israel were also criticized by the resisters on the grounds of the humanitarian consequences and risks of nuclear weapons. In the context of the prevailing conflict of rule, however, they fade into the background and are not identified as the main opponents. This underpins the preliminary conceptual considerations of this study that resistance arises within the frame of reference of a system of rule (in this case the NPT) and is intimately intertwined with it. The symbiotic and unintended side-effect of this is that the Humanitarian Initiative and the TPN process reproduce cer-

tain principles of the nuclear rule, for instance that the ascribed main responsibility for the performance of the nuclear order remains in the hands of the NPT nuclear weapon states and permanent members of the United Nations Security Council.

Even though *China* takes a special position with its no-first use policy and has tried to get itself out of the line of fire by abstaining from numerous votes during the TPN process, it is still regarded by the resisters as a member of the inner circle of the nuclear rulers. The analysis of the reactions of the nuclear weapon states confirmed this perception. Though China, unlike its fellow NPT nuclear weapon states, did not attempt to contain the resistance and took a much softer stance, no Chinese representative appeared at one of the three Conferences on the Humanitarian Impact of Nuclear Weapons in 2013 and 2014 or one of the two Open-Ended Working Groups in 2013 and 2016. When the resistance took action and changed the procedures, Beijing aligned itself with the other NPT nuclear weapon states, supporting and announcing their joint statements (China *et al.* 2015). The cohesion of the blockade and partly disconcerting solidarity among the five permanent members of the United Nations Security Council reflects their prime interest in preserving the nuclear rule, which overrode all other squabbles among them.

### **Complex influence of the anti-colonial impetus**

The group of state sympathizers and supporters of the Humanitarian Initiative and the TPN process consists almost exclusively of countries from the Global South. However, a closer analysis of the actors and their historical composition revealed that the *initial conceptual and diplomatic impetus for the resistance came primarily from governments of European countries*, especially Switzerland and Norway. The non-governmental strand of the movement was also activated primarily from Oslo and Geneva after the International Campaign to Abolish Nuclear Weapons (ICAN) had relocated its coordination center there from Melbourne. The headquarters of the International Committee of the Red Cross has always been in Geneva. Furthermore, the resistance's networking, campaigning and lobbying activities were largely financed with Western funds (mainly from Norway and to a lesser extent from Austria, but also from the United States, United Kingdom, Australia, Sweden and Germany on the civil society side). This is particularly evident in the Norwegian government's sponsorship of ICAN and other Non-governmental Organizations.

Even though the growing core group in the following years included important countries of the Global South, in particular Mexico and South Africa, European countries (Norway, Austria, Ireland) were disproportionately overrepresented at first. If one adds the relatively substantial contributions of other Western states during the initial phase (Liechtenstein, Sweden, Holy See and New Zealand), one can hardly say that a subaltern uprising was in the pipeline. Two of the three Con-

ferences on the Humanitarian Impact of Nuclear Weapons in 2013 and 2014 took place in Europe (Oslo and Vienna), one in a country closely tied to the United States (Nayarit). The first Humanitarian Statement was initiated by Switzerland. The Austrian government formulated the Humanitarian Pledge, presented it in Vienna and initially named it the Austrian Pledge. Looking at the first years, it seems that the Humanitarian Initiative was rather driven by a competition to set a historic diplomatic milestone in a European capital than by an anti-colonial rebellion. After landmines were banned in Ottawa and cluster bombs in Oslo in the interest of humanitarian and civilizational progress, Oslo (again) and Vienna appeared as possible sites for the conclusion of a humanitarian-inspired nuclear weapons ban.

However, this latent Eurocentrism of the Humanitarian Initiative gave way over time. *With increasing politicization* of the prohibition issue and the growing size and strength of the movement, *countries of the Global South shaped the process*, as the detailed analysis of the norm genesis underlines. In addition to Mexico and South Africa, two important countries of the Global South, Brazil and Nigeria, joined the core group and became central players in the movement, getting increasingly involved until the negotiations of the treaty. Within the extended core group, Thailand, Indonesia, the Philippines, Malaysia, Costa Rica and others exerted increasing influence on tactical and strategic planning and decisions. They were also important connecting points for the mobilization of further supporters.

Groups of states from the Global South also played a key role. This applies both to nuclear-weapon-free zones and to the New Agenda Coalition, which, with the exception of Ireland, is composed almost exclusively of arms control protagonists from the Global South. These states and groups of states served as hubs for outreach and increasingly as agents of steering and implementation. They contributed numerous joint statements, resolutions and working papers to the NPT Review Conference 2015 review cycle, the Open-Ended Working Group 2016 and the TPN negotiations in 2017 and set the course for the diplomatic follow-up. Due to their sheer number and multiple alliance options, they provided the political muscle of the resistance. States affected by nuclear testing also became increasingly vocal. By contrast, the Non-Aligned Movement was unable to become a pivotal platform for the implementation of a nuclear weapons ban owing to its diverse composition and inclusion of non-official nuclear weapon states. But it fortified the movement as a resonance space, recruitment pool and historical ground for the anti-colonial narrative.

Among the non-state members of the Humanitarian Initiative, a similar development could be seen, albeit less pronounced. The voices of affected and indigenous people gained weight, which is particularly evident in the growing number of interventions by victims of nuclear weapons tests in colonized or formerly colonized areas. Interestingly, at the non-state level, the Global South did not gain as much influence on the political steering of the campaign as could be observed at the state level. The development of policy and strategy remained firmly in the hands of West-

ern civil society leaders. However, the overall structured analysis of norm genesis reveals how actors from the Global South were increasingly taking on and appropriating the Humanitarian Initiative and the TPN process. The more the Humanitarian Initiative turned into a manifest resistance movement, the stronger the leading role of the Global South became (and vice versa).

This assessment is bolstered by the fact that many of the *European protagonists gradually withdrew*. While Norway already disembarked at the end of 2013 due to a conservative change of government and subsequently joined the camp of the other NATO fellows and umbrella states, countries such as Switzerland and Sweden gradually disengaged following the political showdown at the 2015 NPT Review Conference. This can be attributed not least to the increased backfire of the “empire” and its attempts to contain the resistance at that time. Although these two European states, which were important for the humanitarian campaign, participated constructively and substantially in the Open-Ended Working Group 2016 and the TPN negotiations in 2017, they no longer fought in the front ranks for the nuclear weapons ban. Instead, they adopted more cautious or conservative positions, which were visibly influenced by the criticism of the nuclear weapon states and umbrella states. Neither of them signed or ratified the TPN. Against this background, the fact that Austria, Ireland and New Zealand remained loyal to the endeavor and retained their leading role is an interesting anomaly that warrants further research. It seems likely that a conjunction of domestic circumstances and a unique self-conception in foreign and disarmament policy could play a role here.

The analysis of the interviews has shown that there is a clear *awareness of post-colonial continuity in the nuclear order* among sympathizers and supporters of the Humanitarian Initiative and the TPN and that this has *contributed substantially to the motivation and successful outreach of the resistance*. Only isolated statements from interviewees denied the significance of the anti-colonial dimension. Even without being explicitly asked, the colonial past was frequently addressed and linked to nuclear issues. It was primarily related to nuclear testing and thus promoted anti-colonial solidarity with the affected states. Although not to the same extent, the extended deterrence arrangement was also repeatedly associated with imperialist practices. The dividing lines between the nuclear weapon states and umbrella states involved in nuclear deterrence on the one hand and the non-nuclear weapon states excluded from it on the other coincide with those between the Global North and the Global South. This was seen by some as an indication of post-colonial continuity.

Regarding the *six components of colonialism* developed in this study, the vast majority considered their relevance to be positive or differentiated. But the degree of anti-colonial impetus varied considerably depending on the component. In fact, we can even speak of a *selective anti-colonial impetus*:

The interviewees unanimously condemned the excessiveness of nuclear violence, albeit only linking it directly to colonialism in relation to nuclear testing. The

subaltern perspective and voice of the Global South were consistently emphasized and linked to the Humanitarian Initiative and the TPN process. Interviewees often contrasted this with the NPT and the discourse of the nuclear weapon states and umbrella states, which were also criticized as Eurocentric. While the primacy of the state and focus on state security was regularly questioned in line with humanitarianism, the advocacy of human security only went as far as it did not affect the interests of the own nation state. Anti-racist motives tended to play a subordinate role and were raised (if at all) primarily in connection with the nuclear weapons tests. As for the economic and financial dimension of the nuclear order, the proponents of the resistance movement complained across the board about a lack of economic fairness, a waste of resources and the resulting imbalance in the allocation of financial assets. They often combined this with a systemic criticism of capitalism. However, if there was a benefit from the economic exploitation within the nuclear economy (i.e. through uranium extraction), this aspect was ignored. This applied in particular to states that cooperate closely with nuclear capable states in the area of civilian use or in which uranium mines and mills are operated. The desire to fight against structures of patriarchal domination varied significantly between the actors. For civil society, Latin American and Western supporters, it was a central concern. In the Asia-Pacific region, differentiated views prevailed, while skepticism was repeatedly encountered in some African states. Only a minority perceived an anti-colonial motivation behind the gender aspect. Most saw the commitment to gender sensitivity and equity as a reflection of a more general political trend and our times.

In other words, anti-colonial resentment certainly played a significant motivating role for participating in the Humanitarian Initiative and the TPN process. However, the ostensibly anti-colonial program was tactically and strategically adjusted according to *Realpolitik* constraints. Essential principles of colonial legacy were thus reproduced, in particular the primacy of the state and structures of economic exploitation.

These findings are largely confirmed by the analysis of the TPN negotiations and the treaty text. While the preamble expresses the commitment of States Parties to strengthen the participation of women in nuclear disarmament and recognizes the disproportionate impact of nuclear weapons on women and the indigenous population (UN 2017i, preamble), these concerns were not shared or prioritized by all parties. It was mainly civil society and a mixed group of state representatives from Western countries and the Global South that advocated these progressive elements. Similarly, the wording on the financial and economic aspects merely mentions the waste of resources and ignores the exploitative structures of uranium mining. Representatives from the Global South were particularly vigilant in ensuring that the “inalienable right” to peaceful use remained untouched or indeed was reinforced.

Apart from the comprehensive prohibition of nuclear violence, its threat and all related activities, other elements that relate to colonial imprints hardly feature in the TPN's provisions. One exception are the positive obligations, which also deal with the legacy of the (colonial) practice of nuclear testing (UN 2017i, Art. 6 & 7). It is the first time that the demands and interests of affected indigenous communities have been taken into account in a multilateral treaty. However, by leaving the main responsibility for victim assistance and environmental remediation with the affected states, the TPN reproduces inherited injustices of the colonial legacy on the basis of the principle of state sovereignty.

Familiar disparities between more powerful and less powerful states continued during the TPN negotiations. Smaller delegations remained at a disadvantage and particularly dependent on logistical technical and content-related support from civil society actors and academia. Mostly, states that held more conservative positions on key issues triumphed over more far-reaching demands from civil society and more radical state negotiators. This was particularly true when members of the core group advocated a more cautious stance.

It is remarkable, however, that a group of state negotiators from the Global South prevailed over the two core group members Austria and Mexico on the issue of an explicit ban on nuclear deterrence, which touches on a central aspect of the functional logic and the three-tier structure of the nuclear rule.

## The puzzle (and limits) of success: a struggle of subversive opposition

The answer to the first part of the research question has highlighted the significance of (the United States') extended nuclear deterrence for the structure of nuclear rule and identified it as a decisive mechanism for generating international support for the *ancien régime* and containing resistant efforts politically and diplomatically. The nuclear rulers possess a further lever for maintaining the *status quo*: the consensus principle that applies in the forums of the multilateral nuclear disarmament machinery. This **control by (procedural) denial is characteristic of the nuclear rule** and was consolidated with the indefinite extension of the NPT in 1995. In addition, the **nuclear weapon states steer the debates on nuclear arms control, non-proliferation and disarmament through the discourse of nuclear deterrence**, which is geared towards state security and strategic balance. Against this backdrop, contestations against the various shortcomings and injustices associated with the NPT have repeatedly reached their limits in the past.

In its analysis of the norm genesis of the TPN, this study has worked out how the Humanitarian Initiative and TPN supporters have succeeded in breaking these limits and control mechanisms against the will of the NPT nuclear weapon states and their allies. In doing so, a remarkable "sneakiness" of the supporters of the Hu-



manitarian Initiative can be detected from the very beginning. This became evident in the reference to the humanitarian framing in the final document of the 2010 NPT Review Conference, which expressed “deep concern at the catastrophic humanitarian consequences of any use of nuclear weapons” (UNODA 2010, part I, p. 19). The fact that this formula served as a justification for all further activities of the Humanitarian Initiative and as a hinge for its feedback into the NPT review process illustrates how subtly and subversively *the humanitarian code was used to gradually expand the movement’s scope for action*.

In order to move forward unnoticed and undisturbed after the NPT Review Conference 2010, the first protagonists initially networked in *informal formats outside the established forums* where they discussed and planned further action. The Amersham and Berkshire meetings accompanied the entire process between 2011 and 2017 and progressively established themselves as venues for tactical and strategic consultations and preparations for resistance. With diplomatic professionalism and sophistication, core group members drove the daring project forward within these discreet settings. These meetings laid the groundwork for the three Conferences on the Humanitarian Impact of Nuclear Weapons, the Open-Ended Working Group in 2016 and the TPN Negotiating Conferences in 2017. They also dovetailed the resistance with the timing of the UN disarmament machinery to ensure its effectiveness, in particular the sessions of the United Nations General Assembly and its First Committee as well as the NPT review cycle.

The diplomatic operationalization of the humanitarian code in the form of the Humanitarian Statements, the Conferences on the Humanitarian Impact of Nuclear Weapons, the Humanitarian Pledge and the working papers and resolutions developed by the members of the Humanitarian Initiative demonstrates the high degree of sensitivity of the movement regarding the importance of the discursive-epistemic dimension and its subversive potential in the fight against nuclear rule. It provided one of the few available opportunities to increase their influence. The fragility of discursive authority was the weak point of the nuclear weapon states and at the same time the chance for resistance.

Using humanitarian language, they put pressure on numerous Western umbrella states, as this ultimately scratched their own foreign policy self-image as advocates of human rights, international law and nuclear disarmament. While the umbrella states felt compelled to participate in the Conferences on the Humanitarian Impact of Nuclear Weapons and the Open-Ended Working Group 2016, the nuclear weapon states prioritized their power and geopolitical interests, tried to ignore the new wording and kept their distance. However, the Humanitarian Initiative succeeded in using its discursive means to at least influence the political space of Western nuclear weapon states via the umbrella states and domestic civil society. The ideational smoothness of the humanitarian code concealed the rebellious driving force behind it.

The multi-stakeholder network remained true to its overall subversive strategy throughout the entire process. Initially employed to achieve a *shift in the discourse*, it was later used to force a *shift in the procedure*. Once again, standards that were already recognized but uncommon in the nuclear sector were used to impose fundamental changes. With the adoption of the United Nations General Assembly rules of procedure based on the majority principle as the working mode for the Open-Ended Working Group 2016 (UNGA 2015d) and, one year later, the TPN Negotiating Conference 2017 (UNGA 2017), *the resisters overturned the control mechanism of consensus*. The nuclear weapon states and their allies could no longer set the pace of the United Nations disarmament machinery, their control advantage was undermined. The evaluation of the qualitative interviews confirmed that self-empowerment was both the result of an act of resistance and an important motivation for participating in it.

While the discursive departure from the prevailing nuclear weapon states' narrative (strategic security & deterrence) elicited rather restrained reactions (avoidance) on the part of the rulers, this changed with the procedural departure from the established decision-making process. Here, the functional logic of control by denial, which is vital for the survival of the nuclear rule, was attacked. At this point at the very latest, one can speak of a manifest resistance that openly challenged the steering of the nuclear weapon states and umbrella states. The NPT nuclear weapon states saw their regime under threat, put aside their other differences and closed ranks. When the resistant non-nuclear weapon states made use of the majority vote option for the first time in the Open-Ended Working Group 2016, the umbrella states also abandoned their efforts to contain the resistance through mediation and joined the boycott of the nuclear weapon states.

Despite increasing polarization and confrontation between the camps of the "nuclear club" and the states without nuclear deterrent, the conflict between rulers and resisters always took place within the framework of the established rules. Even when the resistance was subversive, almost sneaky, it always remained in the mode of an opposition movement. Indeed, it disguised itself as a promoter of compliance, as an action alliance for the implementation of NPT agreements. It derived its procedures from the *modus operandi* of the United Nations General Assembly and used the United Nations as an institutional framework for the preparation and implementation of a revolt under international law. *The TPN is thus the product of a subversive struggle by an opposition to nuclear rule*. The resistance started within the NPT, returned to it, aligned itself with its cycle and never violated the rules of the game. At the same time, its radical objectives, discursive framing and procedural choices undermined the steering mechanisms of the non-proliferation regime that constitute the nuclear rule.

The *nuclear rulers were ultimately impotent* against this subversive approach. The analysis of the impact of the nuclear weapon states' reactions revealed that boycotts

and confrontation instead contributed to a strengthening of the resistance. They did not achieve their goal of intimidating and weakening the movement. Although the nuclear weapon states and umbrella states found a common wording to counter the subversive attacks against their discourse hegemony, they did not find a common strategy. The NPT nuclear weapon states distanced themselves and blocked, while other nuclear weapon states and umbrella states could not or did not want to completely escape the humanitarian argument. When the resistance moved on to infiltrate the rulers' control of denial, i.e. to take procedurally subversive action, the ranks of the NPT nuclear weapon states and umbrella states closed – which produced astonishing coalitions among the rulers – but they had no chance against the mass of resisters within the framework of the United Nations General Assembly, where the principle of equality under international law is married to the principle of majority voting thereby leveling differences in power.

Although the analysis brought to light various demarches against non-allied non-nuclear weapon states and individual (but unproven) reports of bilateral blackmailing, this study does not come to the conclusion that significant coercive instruments were at play. Rather, it appears that the “nuclear club” was unable to counter a numerically significant collective uprising on the diplomatic level. Against the group of non-nuclear weapon states, as long as united, nuclear weapons and nuclear deterrence do not appear to be an effective “diplomatic weapon” or booster of bargaining power (Schelling 1966). In the absence of usable and effective repressive means, the ability to cooperate and engage in dialog appear to be more suitable instruments for regaining influence over control. This would mean that the relationship between rule and resistance can be particularly dynamic in the nuclear order.

This predisposition is likely to become all the more pronounced today as both sides, the rulers and the ruled, are now each equipped with their own discursive tools and options for procedural control. The *transformative potential* of the resistance experience and the TPN lies precisely in this *reconfiguration of the respective spheres of action and influence on control*. The treaty proposes a nuclear order stripped of the components of rule and unequivocally rejects the interpretation that the NPT grants permanent members of the United Nations Security Council the right to possess nuclear weapons and that nuclear deterrence is a legitimate practice. It thus represents the biggest challenge to date to the legitimacy of the nuclear *status quo*. With the entry into force of the TPN in January 2021, the non-aligned non-nuclear weapon states have regained a potentially effective political lever to break up the control by denial of the nuclear weapon states, something they had lost in the course of the indefinite extension of the NPT in 1995. If they remain united and are prepared to use the TPN together with the discursive and procedural options available to them, they now have an equivalent threat mechanism at their disposal.

So far, no tendencies towards such a decomposition are discernible. Nevertheless, the supporters of the TPN appear to be prepared to continue to use their treaty and networks in a targeted manner in order to exert further influence on the NPT. At the first TPN Meeting of States Parties in Vienna in June 2022, which was deliberately scheduled before the NPT Review Conference in August of the same year, the compatibility between the two regimes was a major concern (UNODA 2022, annex III, 3). The second TPN Meeting of States Parties in December 2023, by contrast, made clear that the fight against the nuclear rule did not end with the entry into force of the TPN and that they were willing to challenge the continued practice of nuclear deterrence in light of the war in Ukraine (UNODA 2023, annex II, 5).

Just as the success of the resistance is based on its subversive means, the *limits of its potential for change* also result from choosing these means. ***Even if the TPN calls into question fundamental elements of nuclear rule, it perpetuates central features of the established nuclear order.*** Most importantly, its arms control *acquis* and institutional framework remain intact and are integrated into the ban treaty. The TPN thus becomes a founding treaty of a transformative, yet conservative nuclear order. It is transformative because it tries to reorganize its power structures. It is conservative in that it draws on its arms control governance structures and achievements and the norms on which they are based. The analysis of the interviews and the treaty negotiations confirm such an interpretation of the TPN treaty text. The resistance actors were extremely keen to preserve or strengthen the arms control substance of the NPT and the regime's institutionalized verification and implementation arrangements. The TPN even draws on the International Atomic Energy Agency by enshrining the existing safeguard agreements (UN 2017i, Art. 3). It also defines the framework conditions and verification provisions in such a way that the International Atomic Energy Agency appears to be the most likely candidate for monitoring (UN 2017i, Art. 4).

The supporters of the TPN and the treaty itself therefore very clearly ***separate the arms control content from the power politics content of the NPT.*** By adopting and partly strengthening the normative framework on non-proliferation, they ensured the compatibility of the NPT and the TPN in this regard. The TPN negotiators also did not want to dilute at any price the NPT's promise of promoting the peaceful use of nuclear technology. Especially states that maintain close cooperative relations with the Nuclear Suppliers Group or other states that have developed nuclear technology in the civilian sector considered this "inalienable right" (UN 2017i, preamble) to be sacred. In contrast, the power-political content of the NPT was filtered out and all elements of nuclear rule were removed when drafting the new treaty. However, major overlaps of interest between the "nuclear club" and the anti-nuclear resistance remain and can be used to maintain the non-proliferation regime in the future.

The subversive use of the humanitarian code as a key to change, in turn, has the flip side that it perpetuates essential parts of the ***norm stock of the so-called liberal (or***

**Western) international order.** The recourse to the concept of human security for weakening the epistemic and discursive continuity of the dominant discourse of state security and strategic stability ultimately came at the cost of reproducing ideas that had mainly been developed by Western nuclear weapon states and umbrella states. By drawing on discursive sources that had already been established, the movement set sensitive limits to any radical transformation. This applies no less to using International Humanitarian Law as a medium, as its origins can also be traced back to an international legal system that was largely created by European states. But there is another reason why the discursive shift via humanitarian law and the concept of human security quickly reached its limits. For it was counteracted by the procedural shift that was subsequently chosen. By adopting the United Nations General Assembly's rules of procedure, they maintained the primacy of the state and set strict limits on the inclusion of non-state actors and their interests.

This became most evident during the TPN negotiations, where ICAN and other non-state actors had no negotiating mandate and remained excluded from the closed rounds of the treaty negotiations. Their pioneering role in the movement was reduced to that of a service agency, encouraging smaller delegations to participate and providing logistical support for government decision-making processes. Their substantive positions continued to attract a great deal of attention. However, they ended up being the softest bargaining chip in reaching a compromise. As mentioned above, the situation is similar with the slimmed-down anti-colonial agenda. Its pragmatic selectivity sets narrow limits for structural changes, which particularly affects the primacy of the state.

Ultimately, the subversive struggle and its product, the TPN, reaches its clearest **limit at the rift with the nuclear weapon states and umbrella states.** It is not foreseeable that states from this group will join the treaty. Nevertheless, Australia, Germany, Norway and Switzerland took part in the last TPN Meeting of States Parties 2023 as observer states and thus showed a willingness to engage in dialog. The clarification of fronts could indeed offer an opportunity for productive conflict resolution. The debate item "Taking forward multilateral disarmament negotiations" has been an integral part of the annual agenda of the First Committee of the United Nations General Assembly since 2011 and represents an invitation to address the multilateralization of the nuclear arms control and disarmament architecture. A long-term stabilization of the nuclear order will depend not least on whether the "nuclear club" will be able to accept this offer. To this end, they would have to find convincing answers to the growing criticism of nuclear deterrence and take credible measures for nuclear risk reduction.

The nuclear weapon states and umbrella states could also help to ease tensions if they were to become involved in the increasing efforts to provide victim assistance and environmental remediation (Baldus *et al.* 2021, IHRC 2023) or respond to the growing calls for negative security guarantees. There are also numerous entry points

for a win-win solution regarding the practical implementation of the multilateralization of nuclear disarmament and arms control sought by the TPN supporters (Erästö *et al.* 2019, Hach 2021). So far, TPN proponents have demonstrated patience and goodwill within the forums they share with the nuclear weapon states and umbrella states. It was not them who caused the Review Conferences in 2015 and 2022 to fail, but the nuclear rulers. In 2015, Washington vetoed the wording on the Middle East. In 2022, Moscow vetoed a passage addressing the precarious nuclear safety situation at the Zaporizhzhia nuclear power plant.

A change in behavior seems more likely to be achieved through domestic pressure via civil society. The declarations of support initiated by ICAN from cities (ICAN 2023a) or parliamentarians (ICAN 2023b) for the TPN as well as successful divestment campaigns (Muñoz 2022, Snyder 2022) did have some impact. However, since the outbreak of the war in Ukraine and massive nuclear threats from Moscow, clear limits have become apparent. While TPN sympathizers and supporters hold nuclear deterrence partly responsible for the crisis, a rapid renaissance of nuclear deterrence is taking place in most nuclear weapon states and umbrella states. Even in nuclear-sceptical Germany, a backlash can be observed, which is reflected not only in the prompt and undisputed procurement of new delivery systems for the United States nuclear weapons stationed there, but also in the unprecedented support for nuclear sharing in surveys (NDR 2022).

## Questions arising for further research

This study provided a comprehensive and empirically saturated answer to the research question on the role of rule and resistance in the Humanitarian Initiative and the TPN process, the anti-colonial impetus of the movement and the reasons for its success. Its findings, however, raise new questions for further research on the nuclear order, arms control, disarmament and non-proliferation, as well as for studies on power politics and steering in international relations in general.

Although the non-nuclear weapon states came up with an alternative to the existing nuclear order (TPN), the old order (NPT) is still in place and even persists as part of the new one. This yields interesting questions, both empirically and theoretically. What does the withdrawal of recognition mean for the continued existence of nuclear rule? Can it survive in the long term as a variant of rule without recognition? Will the withdrawal of legitimacy and the resulting tension between the NPT and TPN lead to an erosion of the non-proliferation regime or even to its collapse in the long term? Or, conversely, will the disappointment that nothing fundamental has changed lead to the TPN's appeal waning, nuclear rule becoming more entrenched and resistance gradually fading?

The observation that the prime rulers in the nuclear order are not those who possess most nuclear weapons or threaten the most (Russia), but those who can at least partially contain resistance through their relations with the umbrella states and members of the group of non-nuclear weapon states without deterrence (United States) suggests that nuclear rule is part of the overall Western dominated liberal world order. This would confirm the classic International Relations thesis of a (United States) hegemonic system. Would that mean that the successful anti-nuclear resistance is an expression of the eventual fading or imminent end of this international order lead by the West, as many have been predicting for a long time and with increasing vehemence? Or do the United States, unlike Russia and China, remain fit to rule despite geopolitical turmoil – as its lasting influence on the umbrella states and many TPN supporters suggest? Comparable processes in other policy areas could be examined to get to the bottom of possible patterns.

If the insights from this analysis of the nuclear order can be generalized, the future of the so-called liberal world order, its stock of norms and institutions, might depend not only on the relative gain in influence of other great powers and the further development of their relations with the powers of the West, but also, and in particular, on the behavior of the numerous countries of the Global South. Their continued endorsement of and engagement with the existing normative and institutional framework, in particular the United Nations, proved to be a decisive factor for the further development of international law, according to this study. Ultimately, the preservation of a social order or even rule depends not only on power relations, but above all on its acceptance by the majority of social actors (in the context of international relations, mostly states). This applies equally to the United Nations and other global institutions, regimes and norms. The present study should therefore encourage future research in International Relations and International Public Law to focus more on the supposedly less powerful countries and states of the Global South and to examine their active role in challenging, maintaining, developing or transforming orders or even systems rule in other policy areas as well.

International governance and regime research already offers analytical tools that examine the interplay between specific regulatory structures and forms of contestation. Approaches that work with the notion of authority and observe an increasing politicization resulting from the growing competencies of international organizations and regimes, for example, concentrate on individual sectors of global governance. Consequently, the overall relationships and interplay between different sectors (international trade, security, health etc.) recede into the background. The analytical lens provided by our concept of rule and resistance has shown that this is insufficient. Instead, research on international and transnational contestation must be further developed and embedded in an analysis of broader power politics, paying attention to the interplay of various sectors and dependencies at different levels. The comprehensive analysis of resistance conducted by this study has shown

that inter-state relations in other sectors have a strong influence on the extent to which a state participates in contestation or politicization in a particular sector. In addition, developments in other sectors and regimes can even have a spillover effect and trigger, reinforce or contain contestation in a given sector. These phenomena can be better analyzed if the larger context of (global) rule and resistance and the interplay of different fields of relations and various regimes with different scopes of action and steering options are taken into account.

For research interested in stabilization mechanisms of the nuclear order or other international regimes, it could be useful to pay more attention to (nuclear) resisters than to (nuclear) rulers in the future. Is the resilience of the old order possibly greater among the resisters than among the rulers? Can an order in international relations be maintained without rule (or rulers), without relations of superiority and subordination and different levels of influence on control? What room for maneuver remains for the Western allies of the United States within this new configuration of rule and resistance in the nuclear order and the associated spheres of action? Paradoxically, the greatest opportunities for the continued existence of the nuclear order could be found in resistance to nuclear rule. Can the resisters stabilize the nuclear order at a time when the rulers are dismantling it? These questions are also relevant for other areas and regimes with strong power imbalances and dysfunctions or even tendencies towards decomposition. What (dialectical) potential does resistance drawing on existing discursive, normative and procedural sources offer for repairing the international system or the United Nations or help them to meet global challenges? Two possible areas for further investigation should be mentioned in this context:

Further research could examine to what extent resistance movements offer new opportunities for the international community to combat climate change and develop more effective multilateral coping strategies. The potential effects of political resistance for better management, prevention and crisis response in the event of global health hazards in the future also await inquiry. In the fight against climate change, for instance, the rifts between developed industrialized countries and developing countries most affected by the consequences of global warming within the Paris Agreement and the COP process are widening and protests are becoming more and more manifest. Another example is the World Health Organization, which has been shaken by the Covid pandemic and double standards in crisis management. Therefore, the conditions and potential for successful reform and restructuring processes in the context of profound political conflicts would be of great interest. Resistance initiatives such as the diplomatic fight for a Fossil Fuel Non-Proliferation Treaty by island nations that are particularly vulnerable or the struggle of states from the South for a new global health architecture and reform of medical patent protection provide exciting avenues for exploring the productive regulatory impact of counter-movements.



Post-colonial questions about the nuclear order are also far from being fully clarified with this study. The fact that the examined nuclear resistance was only partially motivated by anti-colonialism does not mean that the nuclear order and nuclear rule cannot have a strong colonial imprint. The conceptual reflections and illustrations of the six colonial imprints offer numerous starting points for exploring this question further. Focusing on the perceptions, motivations and actions of the resisters, the methodology of this study is also confronted with the problem of the internalization of post-colonial structures. According to critical and post-colonial approaches, it is difficult or almost impossible to recognize them as such. This is likely to be all the more complicated since diplomats, as representatives of states, can be seen as custodians of the post-colonial order. Given that an anti-colonial impetus has nevertheless (partly) emerged among them, wouldn't this even emphasize a critical awareness? Or is this just an expression of a purely opportunistic or even colonized mindset? How can the variances and regional differences in the perception of post-colonial continuity and its motivational role be explained in this context?

Probably the most fundamental questions for critical and post-colonial research, however, arise from the conceptually and empirically supported finding of this work that rulers and resisters in nuclear rule are intimately connected: in their reciprocal relations of dependency, in terms of mutual recognition and de-recognition, and in terms of the means available to them for dealing with their political conflicts. In the context of the diplomatic sphere, these connections do not appear to be one-sidedly in favor of the rulers. Instead, numerous ambivalences have emerged that cannot be understood by simply contrasting power holders and the disempowered, hegemonic and anti-hegemonic forces, colonizers and the colonized. Rather, their scopes for action seem to depend on their willingness and ability to act in unity and to draw on the repertoire of existing epistemic beliefs, discursive framings, normative grounds and procedural tools. Even if the origins of this repertoire mostly go back to the rulers, this study has demonstrated that it can be charged with new meaning, endowed with a new function and thus directed against the rule.

At the same time, the findings of our analysis relativize the strict separation between rulers and ruled, or rulers and resisters, as both groups are very heterogeneous in composition and, not least for this reason, can exert an influence far into the political sphere of the other group. In contrast to previous literature examining resistance to hierarchies, hegemonic dominance or colonial power, the sociologically inspired approach of this study offers the advantage that it better captures and explains the multi-layered nuances between rulers and resisters and the permeability of the boundaries between them. Instead of maximum demarcation and polarization, it is the intimate knowledge and appropriation of the instruments, procedures and discourses of rule that enable successful resistance, as this research has shown. Effective international resistance uses the mechanisms of the global appara-

tus of rule and operates within its gears. The findings further indicate that attention should be paid to the behavior of different groups (of states) within the resistance and their specific relationships towards the “rulers” when analyzing them. Middle powers, which predominantly benefit from the *status quo* of international relations, have behaved very differently (more conservative / stabilizing the *status quo*) than larger regional powers (more revolutionary / destabilizing the *status quo*) or small states and civil society, for example.

These interconnections are more reminiscent of Hegel’s dialectical Phenomenology of Spirit and the genuinely inter-subjective constitution of the self-consciousness of *Herr* (master) and *Knecht* (servant) than of the asymmetrical relationships within hierarchies, hegemonic power disparities or between colonial master and slave, as analyzed in traditional critical and post-colonial literature. This insight is highly relevant for other areas of International Relations and International Public Law, as it reveals entirely new possibilities for the articulation and manifestation of (anti-colonial) critique and resistance in general, but consequently also for hybrid and (therefore) more self-aware academic debates about it.



## Postscript

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On a sunny morning in July 2017, I stood at the railing of the New York City Ferry on my way across the East River from Williamsburg to Manhattan for the TPN Negotiating Conference held at the United Nations Headquarters. Like many others, I enjoyed the panoramic view of the city. An elderly lady assumed I was a tourist and wanted to show me something she thought was very special. She did not direct my gaze to One World Trade Center, the Chrysler Building, or the Empire State Building, but drew my attention to a relatively inconspicuous, almost negligible tower block in the so-called “International Style”. Unaware that I knew this building all too well, she explained to me that this was the United Nations, where all the countries of the world come together to discuss problems.

I am writing this book at a time when, in my personal opinion, the danger of nuclear weapons being used is high. The five permanent members of the United Nations Security Council and NPT nuclear weapon states are engaged in several serious geopolitical conflicts especially along their demarcation lines – in the Eastern European border region with Russia, in the Taiwan Strait and on the Korean Peninsula – which harbor the potential for nuclear escalation. I live in a country that would be involved very quickly in case of a nuclear proxy war between the United States and Russia, due to NATO’s nuclear sharing arrangements within the framework of extended deterrence. While military preparedness and nuclear capabilities have been expanded both in the Russian sphere of influence (Belarus) and among United States allies, the spaces for diplomatic exchange and political discussion are shrinking. But we need to keep talking.



## Abbreviations

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ABM	Anti-Ballistic Missile
ACA	Arms Control Association
Af	Africa
A-P	Asia-Pacific
ASEAN	Association of Southeast Asian Nations
ATT	Arms Trade Treaty
BLM	Broadly Likeminded Group
BRICS	Brazil, Russia, India, China, South-Africa
BWC	Biological Weapons Convention
CARICOM	Caribbean Community and Common Market
CCM	Convention on Cluster Munitions
CD	Conference on Disarmament
CELAC	Community of Latin American and Caribbean States
CFE	Treaty on Conventional Forces in Europe
CFS	Civil Society Forum
CHINW	Conference on the Humanitarian Impact of Nuclear Weapons
CNS	James Martin Center for Non-Proliferation Studies
CTBT	Comprehensive Test Ban Treaty
CTBTO	Comprehensive Test Ban Treaty Organization
DPRK	Democratic People's Republic of North Korea
ENDC	Eighteen Nation Disarmament Committee
FMCT	Fissile Material Cut-off Treaty
G77	Group of 77
GAG	Gay Against Guns
HI	Humanitarian Initiative
IAEA	International Atomic Energy Agency
ICAN	International Campaign to Abolish Nuclear Weapons
ICBM	intercontinental ballistic missiles
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross

<b>IFRC</b>	International Federation of Red Cross and Red Crescent Societies
<b>IHL</b>	International Humanitarian Law
<b>IQAN</b>	International Queers Against Nukes
<b>ILPI</b>	International Law and Policy Institute
<b>ILS</b>	International Law Studies
<b>IMF</b>	International Monetary Fund
<b>INF</b>	Intermediate-Range Nuclear Forces
<b>IPND</b>	International Partnership for Nuclear Disarmament Verification
<b>IPPNW</b>	International Physicians for the Prevention of Nuclear War
<b>IR</b>	International Relations
<b>IRCRCM</b>	International Red Cross and Red Crescent Movement
<b>ISG</b>	International Steering Group
<b>JCPoA</b>	Joint Comprehensive Plan of Action
<b>LA &amp; C</b>	Latin America & the Caribbean
<b>LGBTQ</b>	Lesbian, Gay, Bisexual, Transsexual/Transgender, Queer
<b>MAD</b>	mutually assured destruction
<b>MSP</b>	Meeting of States Parties
<b>NAC</b>	New Agenda Coalition
<b>NAM</b>	Non-Aligned Movement
<b>NATO</b>	North Atlantic Treaty Organization
<b>New START</b>	New Strategic Arms Reduction Treaty
<b>NFFF</b>	Nuclear Free Future Foundation
<b>NGO</b>	Non-governmental Organization
<b>NMD</b>	National Missile Defense
<b>NNWS</b>	non-nuclear weapon state
<b>NPDI</b>	Non-Proliferation and Disarmament Initiative
<b>NPT</b>	Treaty on the Non-Proliferation of Nuclear Weapons
<b>NSA</b>	Negative Security Assurances
<b>NSG</b>	Nuclear Suppliers Group
<b>NSR</b>	non-state representative
<b>NTI</b>	Nuclear Threat Initiative
<b>NWFZ</b>	nuclear-weapon-free zone
<b>NWS</b>	nuclear weapon state
<b>OEWG</b>	Open-ended Working Group
<b>OPANAL</b>	Agency for the Prohibition of Nuclear Weapons in Latin America and the Caribbean
<b>OSCE</b>	Organization for Security and Co-operation in Europe
<b>P5</b>	permanent members of the United Nations Security Council
<b>PANG</b>	Pacific Network on Globalization
<b>PAROS</b>	Prevention of an Arms race in Outer Space
<b>PrepCom</b>	Preparatory Committee

<b>PRIF</b>	Peace Research Institute Frankfurt
<b>RCW</b>	Reaching Critical Will
<b>RevCon</b>	Review Conference
<b>SALT</b>	Strategic Arms Limitation Talks Agreements
<b>SEHLAC</b>	Latin America Human Security Network
<b>SIPRI</b>	Stockholm International Peace Research Institute
<b>SORT</b>	Strategic Offensive Reductions Treaty
<b>SR</b>	state representative
<b>START</b>	Strategic Arms Reduction Treaty
<b>TAN</b>	transnational advocacy network
<b>TPN</b>	Treaty on the Prohibition of Nuclear Weapons
<b>TWAIL</b>	Third World Approaches to International Law (TWAIL)
<b>UK</b>	United Kingdom
<b>UNASUR</b>	Union of South American Nations
<b>UNCD</b>	United Nations Conference on Disarmament
<b>UNCTAD</b>	United Nations Conference on Trade and Development
<b>UNDC</b>	United Nations Disarmament Commission
<b>UNDP</b>	United Nations Development Programme
<b>UNGA</b>	United Nations General Assembly
<b>UNIDIR</b>	United Nations Institute for Disarmament Research
<b>UNODA</b>	United Nations Office for Disarmament Affairs
<b>UNSC</b>	United Nations Security Council
<b>UNSG</b>	United Nations Secretary General
<b>UNSSOD</b>	United Nations Special Session on Disarmament
<b>US</b>	United States
<b>USSR</b>	Union of Soviet Socialist Republics
<b>VCDNP</b>	Vienna Center for Disarmament and Non-Proliferation
<b>WE&amp;O</b>	Western Europe & others
<b>WILPF</b>	Women's League for Peace and Freedom
<b>WMDFZ</b>	Weapons of Mass Destruction Free Zone
<b>WP</b>	Working Paper
<b>WTO</b>	World Trade Organization





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