



IRSEM

INSTITUT DE RECHERCHE STRATÉGIQUE
DE L'ÉCOLE MILITAIRE

May 2021

THE TPNW ENTERS INTO FORCE

A TURNING POINT FOR THE CAMPAIGN TO BAN NUCLEAR WEAPONS?

Dr Tiphaine de Champchesnel

Research Fellow in Nuclear Deterrence and Disarmament, IRSEM

REPORT – No. 79



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To quote this publication

Tiphaine de Champchesnel, *The TPNW enters into force: A turning point for the campaign to ban nuclear weapons?*, Report 79, IRSEM, May 2021.

Dépôt légal

ISSN : 2268-3194

ISBN : 978-2-11-155532-7

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Founded in 2009, the Institute for Strategic Research (IRSEM) is a research institute attached to the Ministry of the Armed Forces' General Directorate for International Relations and Strategy (DGRIS). The institute employs a staff of forty-five civilian and military personnel, and its primary aim is to further French research on defense and security stakes.

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BIOGRAPHY

Tiphaine de Champchesnel joined IRSEM in 2017 as a researcher on nuclear deterrence and disarmament, to carry out work based on her professional experience gained within the Ministry for the Armed Forces, the Defense staff and then the Delegation for Strategic Affairs (DAS) and the Directorate General for International Relations and Strategy (DGRIS). She holds a PhD in political science from Paris-Panthéon-Assas University. Her thesis focuses on the mobilization that contributed to put the negotiations of a nuclear ban treaty on the UN agenda.

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ABSTRACT

By entering into force on January 22, 2021, did the Treaty on the Prohibition of Nuclear Weapons (TPNW) ban nuclear weapons? From a legal perspective, the scope of the treaty does not reach beyond its members, all of whom already committed years ago not to acquire nuclear weapons, through the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Yet, the international campaign led by a group of players, the most visible undoubtedly being the International Campaign to Abolish Nuclear Weapons (ICAN), asserts that nuclear weapons are “outlawed”.

In particular, ICAN builds on this development to legitimize its action and chart a course that is no doubt necessary to secure its future and improve the image of the TPNW. At the same time, this NGO is driving a strategy to delegitimize nuclear weapons and stigmatize a number of States among those that have chosen to base their security on nuclear deterrence. This study aims to examine the challenges inherent in implementing the TPNW and the mechanisms involved in its use by ICAN.

INTRODUCTION

The International Campaign for the Abolition of Nuclear Weapons (ICAN) has been quite engaged in activism in recent years: not only was it the driver behind the movement that led to the Treaty on the Prohibition of Nuclear Weapons (TPNW), but it also succeeded in obtaining the fifty ratifications necessary for the treaty to enter into force,¹ which could only occur “90 days after the fiftieth instrument of ratification, acceptance, approval or accession has been deposited.”² This period began on October 4, 2020 when Honduras joined the TPNW, and ended on January 22, 2021.

Several actors of the movement that led to the adoption of the TPNW welcomed this step forward. ICAN naturally marked the event on social media networks, claiming: “We did it. Nuclear weapons are illegal now”.³ This is a mixed message. Beyond the question of the prohibition, ICAN also strengthens the identity of the group formed around this cause. The “we” is sufficiently imprecise to suggest that the group is open. This emphasis placed on the inclusive nature of ICAN’s campaign follows on from the attention paid to it by the makers of the Treaty. In fact, the TPNW would no doubt have failed to emerge without the convergence of several initiatives and the cooperation of multiple stakeholders, including states. In addition, several monographs have even highlighted the role played by certain diplomats.⁴ Ray

1. The awarding of the Nobel Peace Prize to ICAN in 2017 highlighted the role played by NGOs but the movement also relied on the initiative taken by States, and on the impetus given by the ICRC.

2. Treaty on the Prohibition of Nuclear Weapons, Article 15, paragraph 1.

3. ICAN (@nuclearban), “So we’ve reached 50 ratifications for the #nuclearban. This is such a huge moment for everyone who has worked so hard on this treaty, but what does it actually mean? Thread”, Twitter, October 25, 2020, 12:30, <https://twitter.com/nuclearban/status/1320326835985670144?s=20> [viewed on December 14, 2020].

4. See Kjølvs Egeland, “Oslo’s “new Track”: Norwegian Nuclear Disarmament Diplomacy, 2005–2013”, *Journal for Peace and Nuclear Disarmament*, 2, 2019, p. 468-490; also see Emmanuelle Maitre, Pauline Levy, “Becoming a disarmament champion: the Austrian crusade against nuclear weapons”, *The*

Acheson, the Director of Reaching Critical Will, one of the main NGOs working in multilateral disarmament fora,⁵ welcomed “the culmination of so much courage from so many activists and diplomats.”⁶ At the same time, the statement by Peter Maurer, President of the International Committee of the Red Cross (ICRC), recalled that this organization, while keen to assert its independence, has truly contributed to the “humanitarian” initiative on nuclear weapons and intends to pursue its action.⁷ Furthermore, the United Nations High Representative for Disarmament Affairs has also backed the TPNW since it was concluded. On the eve of the fiftieth ratification, Izumi Nakamitsu welcomed the ratifications by Nauru and Jamaica: “there is only one more to reach 50 required for the Treaty’s entry-into-force.”⁸ With the legitimacy of all this backing and the campaign led by ICAN, this support will no doubt grow and gain in strength.

Nonproliferation Review, 26:5-6, 2019, p. 537-557. In both of these articles, the writers underline the involvement of certain diplomats in particular.

5. Reaching Critical Will (RCW) is actually the disarmament program of the NGO Women for International League for Peace and Freedom (WILPF). Founded in 1999, RCW maintains a resource website on many disarmament-related topics. By monitoring and publishing discussions in UN fora (NPT News in Review for NPT review process meetings for example, or the First Committee Monitor for the UN General Assembly First Committee), RCW has become a key organization. It was quickly associated with the ICAN campaign and assisted the organization right from the start.

6. Ray Acheson (@achesonray), “The Treaty on the Prohibition of Nuclear Weapons just reached 50 ratifications! It enters into force on 22 January 2021”, Twitter, October 24, 2020, 10:20, <https://twitter.com/achesonray/status/1320097807089487876?s=20> [viewed on December 14, 2020].

7. Peter Maurer, “Nuclear Weapons Ban: Victory for Humanity and Promise of a Safer Future”, October 26, 2020, <https://blogs.icrc.org/news-delhi/2020/10/26/nuclear-weapon-ban-a-victory-for-humanity-and-promise-of-a-safer-future/> [viewed on December 17, 2020]. This statement refers to: Jakob Kellenberger, “Bringing the era of nuclear weapons to an end”, statement to the Diplomatic Corps, Geneva, April 20, 2010, <https://www.icrc.org/en/doc/resources/documents/statement/nuclear-weapons-statement-200410.htm> [viewed on December 14, 2020].

8. Izumi Nakamitsu (@INakamitsu), “Welcome @Republic_Nauru and Jamaica to the Treaty on the Prohibition of Nuclear Weapons #TPNW. With their ratifications, there is only one more to reach 50 required for the Treaty’s entry-into-force”, Twitter, October 24, 2020, 3:36, <https://twitter.com/INakamitsu/status/1319814965935616001?s=20> [viewed on December 14, 2020].

The entry into force of the TPNW should be a powerful accelerator for a number of communication and advocacy actions. But is this really the “historical” moment that the TPNW’s proponents say it is? What changes can this new step in an initiative pursuing the stated aim of eliminating nuclear weapons bring at the international level? The responses to these questions will not be without consequences for the credibility and continuation of the campaign, which has an obvious interest in depicting the entry into force of the TPNW as a significant milestone.

This study aims to provide insights by focusing closely on the purpose, along two lines: first, by examining what the TPNW makes provision for after its entry into force and, second, by considering the continuation of the campaign, as presented by ICAN.⁹

9. Other players develop actions (e.g., diplomatic, advocacy) or campaigns in favor of the TPNW, but our study will focus primarily on the work of ICAN. For example, although there are ties between ICAN and the ICRC, the latter runs a relatively independent campaign covered by another research work of the author.

The Beginnings of ICAN

When it won the Nobel Peace Prize in 2017,¹⁰ the NGO ICAN had only been in existence for ten years. It was officially launched in 2007, first in Melbourne where its first office was based, and then internationally at the NPT Preparatory Committee meeting held in Vienna.

The story of the origins of ICAN attributes the idea for this organization to Ronald McCoy, who was one of the leaders of International Physicians for the Prevention of Nuclear War (IPPNW). IPPNW is a long-standing anti-nuclear organization which also received the Nobel Peace Prize in 1985 “for spreading authoritative information and by creating awareness of the catastrophic consequences of nuclear war”.¹¹

On several occasions, particularly in interviews for the press, R. McCoy has recounted how, after the 2005 NPT review conference, he had thought about launching a “process similar to the Ottawa Process for the abolition of nuclear weapons”.

This would require bringing together several organizations, seeking the support of like-minded governments and working to obtain a convention on nuclear weapons. Hence the idea of founding “the International Campaign to Abolish Nuclear Weapons, with the logo ICAN”.¹²

The Australian branch of IPPNW, the Medical Association for Prevention of War (MAPW), decided to contribute to the implementation, particularly by finding the necessary funding and providing very practical support for the start of the project.

10. The Nobel Peace Prize was awarded to ICAN “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”, see the (video) announcement by Berit Reiss-Andersen, Chair of the Norwegian Nobel Committee, October 6, 2017, <https://www.nobelprize.org/prizes/peace/2017/prize-announcement/> [viewed on March 25, 2021].

11. Information provided on the Nobel Prize website, <https://www.nobelprize.org/prizes/peace/1985/physicians/facts/> [viewed on March 25, 2021].

12. See in particular “The International Campaign to ban nuclear weapons”, presentation at an ICAN campaign meeting in Geneva on April 30, 2016, <http://www.icanw.org/wp-content/uploads/2016/07/THE-CAMPAIGN-TO-BAN-NUCLEAR-WEAPONS.pdf> [viewed on March 22, 2021].

In just a few years, ICAN has carved out a place for itself in the relatively dense landscape of nuclear-abolition NGOs working alongside official action taken by multilateral bodies addressing nuclear issues. The organization, which has gradually diversified its sources of funding,¹³ gained recognition at the Oslo Conference on the Humanitarian Impacts of Nuclear Weapons (HINW), in March 2013.¹⁴ It was tasked with preparing a major “civil society forum” by the Norwegian organizers who also enabled it to broadcast a long campaign commercial at the introduction to the Conference of States. ICAN broadly illustrated the topic of HINW and recommended banning nuclear weapons.

At the time, promoting this aim was relatively new as, until then, ICAN had campaigned for the negotiation of a convention on nuclear weapons. Several NGOs specializing in law had developed a model at the end of the 1990s and it was submitted to the United Nations General Assembly by Costa Rica in 1997. It was endorsed by Secretary-General Ban Ki-Moon who included it in his Five-Point Proposal for Nuclear Disarmament in 2008. A growing number of delegations expressed support for such a convention, but the international context made it a hopeless prospect.

After pursuing this process, ICAN therefore took a new turn in 2013. This change would have been made much earlier internally, as its leaders were quickly convinced by this option which required neither lengthy negotiations, nor the participation of nuclear-weapon states. A prohibition treaty would not directly bind the latter, but, according to its proponents, it would be a necessary first step towards fostering abolition.

13. There is very little available information about the financing of this organization.

14. This conference and the two that were then organized on the topic in Mexico and Austria in 2014 formed the core of what is known as the Humanitarian Initiative.

I. IMPLEMENTING THE PROHIBITION

The entry into force of the TPNW raises the question of how to implement the ban on nuclear weapons without the nuclear-weapon possessor states. The substance of its implementation without these states can indeed be queried. But the treaty includes a number of specific provisions that the States Parties, even if they do not possess nuclear weapons, must apply. We will examine the content of the TPNW through three themes: the scope of the ban; the implementation of the treaty; and the first meeting of the States Parties.

SCOPE OF THE BAN

Nuclear weapons are prohibited for states that do not possess them

Does the entry into force of the TPNW entail the prohibition of nuclear weapons? To ICAN, the answer is yes, naturally. When the fiftieth ratification was obtained, the organization's Executive Director, Beatrice Fihn, said for example: "This is a new chapter for nuclear disarmament. Decades of activism have achieved what many said was impossible: nuclear weapons are banned."¹ The ICRC spoke of a "new global norm [...] explicitly prohibiting nuclear weapons."² While the TPNW effectively bans nuclear weapons for its members, for the moment those members are precisely non-nuclear-weapon States (NWS) within the meaning of the NPT.³ And the prohibition does not apply to non-signatory states.

1. ICAN, "Historic milestone: UN Treaty on the Prohibition of Nuclear Weapons reaches 50 ratifications needed for entry into force", <https://www.icanw.org/historic-milestone-un-treaty-on-the-prohibition-of-nuclear-weapons-reaches-50-ratifications-needed-for-entry-into-force> [viewed on December 14, 2020].

2. Peter Maurer, "Nuclear Weapons Ban: Victory for Humanity and Promise of a Safer Future".

3. According to the Vienna Convention on the Law of Treaties (Article 18), signatory States that have not ratified the treaty must not defeat its object or purpose.

In practical terms, the scope of the prohibition is therefore limited to states that have already accepted this requirement pursuant to the NPT. On this point in particular, the TPNW does not establish any new obligation. The provisions of paragraphs a and b of Article 1 only differ very slightly to those of the NPT⁴: the States Parties undertake never to “Develop, test, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices” (Article 1a); transfer such weapons or control over such weapons (article 1b); receive the transfer or control over such weapons (Article 1c).

The difference lies in the addition of a prohibition on developing and testing. It seems logical for the prohibition to apply to testing, but surprisingly no mention is made of the CTBT. Without this reference, the treaty is more like a policy statement than a legal instrument aiming to ensure compliance with this ban.⁵

With regard to the safeguards given by the International Atomic Energy Agency (IAEA) concerning civil nuclear activities of non-nuclear-weapon states (NNWS), the TPNW does not create any additional obligation. These states are required to conclude a comprehensive safeguards agreement if they have not yet done so or to “at a minimum, maintain its International Atomic Energy Agency safeguards obligations in force at the time of entry into force of this Treaty.”⁶ We will come back later to the question of safeguards which is clearly very important for the treaty’s credibility.

4. NPT, Article 1: “Each nuclear-weapon State Party to the Treaty undertakes not to transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly, or indirectly; and not in any way to assist, encourage, or induce any non-nuclear-weapon State to manufacture or otherwise acquire nuclear weapons or other nuclear explosive devices, or control over such weapons or explosive devices.”

5. In the framework of the CTBT, the norm established is firmly supported by an international monitoring system to detect any breach of the ban laid down. As we will see in the second part of this study, ICAN appears to have become aware of this credibility issue affecting the TPNW.

6. TPNW, Article 3.

The provisions that follow are on a different level, commencing with a prohibition on using and threatening to use nuclear weapons (Article 1d) which echoes the demands habitually made by several states in multilateral fora. In particular, a connection can be established with the resolution for a convention on the prohibition of the use of nuclear weapons, presented each year by India and co-sponsored by almost all the members of the NAM.⁷ This Article 1 (paragraph g) also includes a commitment to never “Allow any stationing, installation or deployment of any nuclear weapons or other nuclear explosive devices in its territory or at any place under its jurisdiction or control.” Here again, the idea of such a prohibition can be found in positions expressed by several countries such as China, Russia or Iran. NATO’s nuclear sharing arrangements are clearly targeted. Lastly, paragraphs e and f of Article 1 on encouraging and inducing others to engage in activities prohibited by the treaty and seeking assistance to engage in such activities are drafted imprecisely and will no doubt give rise to discussions between the members.

Prohibition on assistance

As it stands, the TPNW does not create any new restrictions for its members, with the exception of Kazakhstan. Attention has indeed been drawn to the fact that this country allowed Russia to carry out ballistic tests on the Sary-Shagan site located on its territory.⁸ According to some experts, Sary-Shagan would be a

7. Reference of the resolution tabled at the first committee in 2015: A/C.1/70/L.21. The NAM recalls that the only safeguard against the use or threat of use of nuclear weapons is their elimination but supports this resolution, which can also be tied to their demand for “effective, universal, unconditional, non-discriminatory and irrevocable legally binding security assurances against the use or threat of use of nuclear weapons, under all circumstances” (see, for example, *Working paper submitted by the Group of Non-Aligned States Parties to the Treaty on the Non-Proliferation of Nuclear Weapons*, NPT/CONF.2015/WP.13).

8. See, for example, Ulrich Kühn, “Kazakhstan – Once More a Testing Ground?”, *Carnegie Endowment for International Peace*, July 12, 2019, <https://carnegieendowment.org/2019/07/12/kazakhstan-once-more-testing-ground-pub-79510> [viewed on December 15, 2020]. The Article was first published on

“testing ground” for the new Treaty,⁹ suggesting that the way in which the States Parties evoke this issue will reflect on the credibility of the TPNW.

In 2019, the Nuclear Weapons Ban Monitor published by the NGO Norwegian People’s Aid considered that it was a case of non-compliance with Article 1f concerning assistance with the development of nuclear weapons.¹⁰ In the 2020 version, the document took a softer approach by first mentioning the responsibility of NWS and stressing the fact that no new “proof” had been found that any tests of missiles capable of carrying nuclear warheads had been carried out in Kazakhstan in 2020. It thus concluded that this State could be regarded as compliant with the prohibition on assistance.¹¹ The drafters of these paragraphs were no doubt keen to find a balance between the need to demonstrate how seriously compliance with this provision is examined and to show consideration for one of the States Parties. This likely explains why these paragraphs on assistance in developing nuclear capacities also underline the merits of Kazakhstan, presenting it as “a staunch supporter of international nuclear disarmament efforts.”¹²

the Valda Club website (<https://valdaclub.com/a/highlights/kazakhstan-once-more-a-testing-ground/>).

9. Ibid. The title is a play on words around “testing ground” (with the double meaning of experimentation site and a symbolic test bench for the TPNW).

10. Nuclear Weapons Ban Monitor, 2019, p. 5, URL: https://banmonitor.org/files/Nuclear_Weapons_Ban_Monitor_2019.pdf [viewed on April 22, 2022]. The 2019 report mentions the “generous funding” of Austria, Ireland, Norway and New Zealand.

11. Nuclear Weapons Ban Monitor 2020, p. 49, URL: <https://banmonitor.org/files/Nuclear-Weapons-Ban-Monitor/TNWBM-2020.pdf> [viewed on April 22, 2022].

12. Kazakhstan’s involvement in the movement to ban nuclear weapons would be particularly interesting to study and to place in the broader context of the disarmament diplomacy it develops in various fora - including in the past with regard to the Central Asian nuclear-weapon-free zone and through other initiatives. See Stephen Burgess and Togzhan Kassenova, “The Rollback States: South Africa and Kazakhstan” in Tanya Ogilvie-White and David Santoro, *Slaying the Nuclear Dragon: Disarmament Dynamics in the Twenty-First Century*, University of Georgia Press, 2012.

The basis of a customary norm?

Beyond treaty law, there is the question of customary law and a possible new referral to the International Court of Justice (ICJ).¹³ Many observers have mentioned this possibility as a logical continuation of the TPNW. In practical terms, with several NWS standing as persistent objectors to the establishment of a customary norm rooted in the TPNW, there would be a certain logic to this prospect.¹⁴ The advisory opinion on the legality of nuclear weapons, issued in 1996, certainly left a taste of unfinished business among abolitionists and in particular the NGOs that had taken the initiative and wanted to see nuclear weapons made illegal.¹⁵ Like Jean-Marie Collin, spokesperson for ICAN-France, we can question the added value of a new referral, given that the TPNW has entered into force: “[...] would such a legal step be worthwhile? Why should we want an opinion from the ICJ, when (once the TPNW is in force) international law will have a norm that already recognizes this illegality?”¹⁶ However, it would no doubt be worthwhile for a campaign that is partly based on delegitimizing nuclear weapons (see below) and which faces refusal from NWS.

As several observers point out, the TPNW is not enforceable against NWS while they remain non-signatories. However, they could be under more pressure if the prohibition were regarded

13. It shall be noted that several judges said at the time that, while existing international law did not contain any prohibition on the use or threat of use of nuclear weapons, the opinion identified how States could amend it.

14. As soon as the TPNW was concluded, the US, the UK, and France published statements along these lines. See, for example, Déclarations sur le Traité d’interdiction des armes nucléaires, Permanent representation of France to the Conference on Disarmament in Geneva, July 7, 2017, <https://cd-geneve.delegfrance.org/Declarations-sur-le-Traite-d-interdiction-des-armes-nucleaires-New-York-7> [viewed on January 12, 2021].

15. Three NGOs (International Peace Bureau, International Physicians for the Prevention of Nuclear War, and International Association of Lawyers Against Nuclear Arms) mainly supported the World Court Project that campaigned for a referral to the ICJ on the legal status of nuclear weapons.

16. Jean-Marie Collin, *Le Traité sur l’interdiction des armes nucléaires*, GRIP report, December 28, 2018, p. 28.

as belonging to the realm of customary law.¹⁷ Nonetheless, the persistent objection of several NWS, as mentioned above, runs counter to the efforts of those that have sought to bring to light new elements likely to change the Court's opinion.

The refusal of these states to be bound by the ban is reinforced by that of the NATO member states. When the TPNW was about to come into force, they published a statement clearly indicating their "opposition" to this treaty; they even explained the legal issue: "We do not accept any argument that the ban treaty reflects or in any way contributes to the development of customary international law. The ban treaty will not change the legal obligations of our countries with respect to nuclear weapons."¹⁸ The obstacle posed by the position of this group of states to the formation of a customary international prohibition norm may explain why a recent article on the topics to be discussed at the first meeting of TPNW States Parties suggests examining the legal status of the persistent objector rule itself.¹⁹ The underlying idea seems to be that if the rule cannot be applied in a way that favors prohibition, then it should be changed.

Furthermore, some authors question how the campaign would gain from formulating another question. For instance, J.-M. Collin thinks it would be better to concentrate on "the lawfulness of nuclear weapons being hosted by "non-nuclear weapon" states within the meaning of the NPT or, due to their

17. See for example, Gail Lythgoe, "Nuclear Weapons and International Law: The Impact of the Treaty on the Prohibition of Nuclear Weapons", EJIL: Talk! (blog), December 2, 2020, <https://www.ejiltalk.org/nuclear-weapons-and-international-law-the-impact-of-the-treaty-on-the-prohibition-of-nuclear-weapons/> [viewed on January 12, 2021].

18. "North Atlantic Council Statement as the Treaty on the Prohibition of Nuclear Weapons Enters Into Force", NATO Press Release, December 15, 2020, https://www.nato.int/cps/en/natohq/news_180087.htm?selectedLocale=fr [viewed on January 12, 2021].

19. Graham Kennedy, "The TPNW Conference of Parties: What Is to Be Discussed?", *Journal for Peace and Nuclear Disarmament*, 2020, 3:2, p. 15.

security alliance, those supporting a policy of deterrence."²⁰ But at this stage, attention remains focused on the ban.

IMPLEMENTATION OF THE TREATY

National declarations

The TPNW contains a number of provisions that the States Parties will therefore have to implement, even without the accession of NWS. First, Article 2, which provides for the communication of information about the State Party's nuclear weapons status, is not limited to requiring them from possessor states, but from all the States Parties. Within thirty days of the entry into force of the TPNW, each State Party must therefore have sent a declaration to the United Nations Secretary-General stating whether it possessed nuclear weapons prior to the treaty's entry into force²¹ (which is the case of South Africa for example). The Secretary-General is then required to transmit these declarations to the States Parties. The treaty does not indicate whether these documents will then be distributed to the Member States or possibly made public but several declarations are already on line on the website of the UN Office for Disarmament Affairs.²²

Transposition into domestic law

In addition, Article 5 of the TPNW provides for national "legal, administrative and other measures, including the imposition of

20. J.-M. Collin, *Le Traité sur l'interdiction des armes nucléaires*, p. 29. The author also mentioned the idea that the "environmental issue" could be taken into account by the ICJ.

21. Article 2 also makes provision for the case of States that still possess nuclear weapons (paragraph b) and that of States which host the nuclear weapons of another State (paragraph c).

22. Declarations available on <https://www.un.org/disarmament/wmd/nuclear/tpnw/article-2-of-the-tpnw> [viewed on April 22, 2022]. The ICRC had proposed a declaration template in four versions depending on the Member State's status, <https://www.icrc.org/fr/document/article-2-declarations-traite-sur-linterdiction-des-armes-nucleaires> [viewed on February 9, 2021].

penal sanctions, to prevent and suppress any activity prohibited [...] undertaken by persons or on territory under its jurisdiction or control.”²³ The ICRC developed a model for transposing the TPNW into domestic law covering all the provisions as well as the sanctions in the event of a breach and the text’s extra-territorial application.²⁴ Now, the manner in which national legislations are designed and integrate the provisions of the TPNW will provide an indication of the dominant interpretations of the treaty and the materialization of the ban.²⁵ The States are also required to encourage non-party states to join the treaty (Article 12 “Universality”). Some NGO representatives have already started commending countries that have worked to that effect.²⁶

Assistance and remediation of the environment

The entry into force of the TPNW also binds the States Parties in respect of assistance and environmental remediation that are central to the humanitarian dimension. Several activists from ICAN or affiliated organizations have spotlighted this issue, sometimes even more so than the ban itself.

Article 6, which commits States Parties to remedy the problems that concern them (providing assistance in the form of medical care, rehabilitation and psychological support, as well as social and economic inclusion to individuals under their

23. TPNW, Article 5, paragraph 2.

24. ICRC-Advisory service on international humanitarian law, Model law for the treaty on the prohibition of nuclear weapons, March 2019, <https://www.icrc.org/en/document/model-law-treaty-prohibition-nuclear-weapons-0> [viewed on January 12, 2021].

25. I warmly thank the person who suggested this remark after a careful review.

26. The *Nuclear Weapons Ban Monitor* (2019) devotes several paragraphs to different initiatives by States, often taken in partnership with ICAN, to promote the TPNW (p. 34-35). It particularly mentions regional seminars such as in Pretoria in August 2018 or the organization in September 2018 of a high level signature ceremony at the United Nations headquarters in New York by several States (Austria, Brazil, Costa Rica, Indonesia, Ireland, Mexico, New Zealand, Nigeria, South Africa, Thailand).

jurisdiction and remediating areas under their jurisdiction or control), is followed by Article 7 on international cooperation and assistance. Help may be provided by other states, and by appropriate international organizations. Paragraph 6 of this article specifically refers to States Parties that have “used or tested nuclear weapons” but the situation has not yet arisen as none of the states liable to be concerned have joined the treaty so far.

FIRST MEETING OF THE STATES PARTIES

Technical questions

The entry into force of the TPNW also means that the States Parties will hold their first meeting. In accordance with Article 8, the first meeting will be convened by the Secretary-General of the United Nations within a year, and then every two years.²⁷ The following meetings should then be held every six years.²⁸

As expected, these meetings aim to consider the treaty’s implementation and measures concerning the “irreversible elimination of nuclear-weapon programs”. This latter point is not expected to be on the agenda of the first meeting. So what will the function of that meeting be and what expectations have already been expressed? Contrary to what we might imagine given the purpose of the treaty, this first meeting will have several topics to address despite the absence of NWS.

First of all, this meeting will have to settle a number of organizational matters such as the adoption of rules of procedure.²⁹ The

27. However, the States Parties may decide to change this frequency as provided by Article 8, paragraph 2.

28. The first must be held five years after the entry into force (therefore in 2026). In the meantime, a second meeting of States Parties is expected to take place in 2024. The first meeting was scheduled to take place in Vienna from January 12 to 14, 2022 but it was postponed due to the pandemic and is scheduled to take place from June 21 to 23, 2022 in Vienna. URL: <https://meetings.unoda.org/meeting/tpnw-msp-1-2022/> [viewed on April 22, 2022].

29. It is specified that “Pending their adoption, the rules of procedure of the United Nations conference to negotiate a legally binding instrument to

costs will be borne not only by the participating States Parties but also by observers,³⁰ as underlined in particular by Alicia Sanders-Zakre, Policy and Research Coordinator for ICAN, when mentioning the case of Switzerland and Sweden: “Observer states, including signatory states, and some non-signatory states, including at least Sweden and Switzerland, will also attend and share the cost of the meeting.”³¹ As observer status is not limited to states and international and regional organizations, but also includes NGOs, many such organizations may wish to attend the proceedings and maybe play an active role if the rules of procedure so permit.

Compliance

Then, attention will no doubt focus on implementation and compliance. The situation of Kazakhstan, mentioned above, may be discussed, even if it is no longer regarded as a case of non-compliance by the Nuclear Weapons Ban Monitor. Some observers also believe a standing committee will be formed to monitor compliance with the provisions on assistance and encouraging prohibited activities.³²

Other matters that should be on the agenda despite the absence of NWS include the deadline for the elimination of nuclear weapons. According to the treaty, states possessing nuclear weapons must eliminate their nuclear weapons “as soon as possible but not later than a deadline to be determined by the first meeting of States Parties”.³³ A ten-year deadline to be renewed if necessary

prohibit nuclear weapons, leading towards their total elimination, shall apply” (Article 8, paragraph 2).

30. TPNW, Article 9.

31. Alicia Sanders-Zakre, “Five Common Mistakes on the Treaty on the Prohibition of Nuclear Weapons”, *War on the Rocks* (blog), November 16, 2020, <https://warontherocks.com/2020/11/five-common-mistakes-on-the-treaty-on-the-prohibition-of-nuclear-weapons/> [viewed on December 14, 2020].

32. Nuclear Weapons Ban Monitor, 2019, p. 58.

33. TPNW, Article 4, paragraph 4.

has been mentioned.³⁴ The idea of a closer date for weapons hosted by non-possessor states, “for example three years”, has been considered.³⁵ Again regarding elimination, TPNW implementation is awaiting membership by NWS. However, the States Parties may already designate the competent authority “to negotiate and verify the irreversible elimination of nuclear-weapons programs” (Article 4, paragraph 6).

Finally, the issue of assistance will undoubtedly focus the attention of a large number of players because it is the tangible translation of the initiative’s humanitarian dimension. However, the implementation of this provision will likely be difficult. Several publications on the subject mention principles that should guide its application, but some also appear to see how challenging it will be for the States concerned to determine which populations are indeed victims.³⁶

Campaign echo chamber

Beyond these technical questions, these meetings of the States Parties will certainly be highly symbolic for them. Several proponents of the ban stressed that the adoption of a humanitarian approach to nuclear weapons had given voice to NNWS, whereas the debate had hitherto been dominated by the opinions of NWS. Will this sense of empowerment³⁷ come into play in this new forum? What role will observers play, particularly

34. Moritz Kütt and Zia Mian, “Setting the Deadline for Nuclear Weapon Destruction under the Treaty on the Prohibition of Nuclear Weapons”, *Journal for Peace and Nuclear Disarmament*, 2, 2019, p. 410-430, <https://doi.org/10.1080/25751654.2019.1674471>.

35. Nuclear Weapons Ban Monitor, 2019, p. 58.

36. See for example Bonnie Docherty, “From Obligation to Action: Advancing Victim Assistance and Environmental Remediation at the First Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons”, *Journal for Peace and Nuclear Disarmament*, 3:2, 2020, p. 253-264 and Nuclear Weapons Ban Monitor, p. 74.

37. On this concept, see for example Anne-Emmanuèle Calvès, “‘Empowerment’ : généalogie d’un concept clé du discours contemporain sur le développement”, *Revue Tiers Monde*, 200:4, 2009, p. 735-749.

NGOs? Under the banner of ICAN, they will no doubt seek to organize key events on the sidelines of the official proceedings. What stands will the various players take?

And finally, without addressing the question of the intention of the TPNW negotiators,³⁸ the first meeting of the States Parties brings us back to the topic of the relationship between this treaty and the NPT. Hopefully the diplomats involved in this new process will be careful not to undermine the regime established by the NPT.

38. TPNW proponents vigorously state that they do not want to undermine the NPT.

II. THE CAMPAIGN GOES ON

The entry into force of the TPNW does not bring ICAN's campaign to an end, nor the other actions undertaken by various players, some of whom have been involved since the start of the movement on humanitarian consequences. In fact, ICRC President, Peter Maurer, emphasized this point in a speech following the fiftieth ratification, declaring: "So, while we celebrate the entry into force of the Treaty on the Prohibition of Nuclear Weapons, we must not forget that prohibiting nuclear weapons is the beginning – not the end – of our efforts."¹

Although the TPNW effectively represents a basis and a rallying point for a number of abolitionists, it is still far off the universal dimension to which it aspires. The prohibition is conceived only as one necessary but insufficient component of a strategy underpinned by the idea that a normative change will bring a change in practices. Other actions are therefore required.

Three focuses can be analytically identified: first, the reinforcement of the treaty by gaining new members; second, enhancing its image to boost its legitimacy; and third, developing a policy norm by delegitimizing and stigmatizing. The second part of this study will therefore explore the continuation of ICAN's campaign along these three lines.

GAINING NEW MEMBERS

Upon its entry into force, the TPNW had 51 members, as Cambodia joined on January 22, 2021, and 33 signatories. Several states appear to have initiated a procedure to ratify the treaty and in turn become members. However, to be more convincing,

1. Peter Maurer, ICRC President, Statement, October 25, 2020, "We must not forget that prohibiting nuclear weapons is the beginning – not the end – of our efforts", <https://www.icrc.org/en/document/we-must-not-forget-prohibiting-nuclear-weapons-beginning-not-end-our-efforts-0> [viewed on December 2, 2020].

the TPNW needs to recruit further.² The amount of support is indeed decisive for a treaty intended to found a political and moral norm. For the purposes of the campaign, ICAN, through the Nuclear Weapons Ban Monitor, proposes a typology of states based on their degree of support for the TPNW.³ It includes: States Parties, Signatories, Other Supporters, Undecided states and those that are Opposed.

Categorization for campaigning purposes

The latter three categories (Other Supporters, Undecided and Opposed) are not defined directly according to accession to the TPNW. The definition is based on their vote in negotiations on the TPNW⁴ or their position in relation to the treaty resolution, submitted each year at the United Nations General Assembly (UNGA) since its conclusion.⁵ While this criterion seems relevant, it does not allow the same qualification as other factors such as the Explanations of Vote associated with this resolution or the national statements made at the First Committee of the UNGA dedicated to security and disarmament.

We will take the example of the Non-Aligned Movement (NAM), several members of which have signed or even acceded to the TPNW, including some that can be described as influential in the movement. While most NAM members vote for the TPNW

2. On the relationship between TPNW membership and the creation of a prohibition norm, see the analysis based on the work of M. Finnemore and K. Sikkink on the life cycle of norms, in Jean-Baptiste Jeangène Vilmer, "The forever-emerging norm of banning nuclear weapons", *Journal of Strategic Studies*, 2020, <https://www.tandfonline.com/doi/full/10.1080/01402390.2020.1770732>.

3. The Nuclear Weapons Ban Monitor (2021) gives the following figures for each category: 59 States Parties (51 in 2020), 30 signatory states (37 in 2020), 49 Other Supporters (50 in 2020), 17 Undecided, 42 Opposed (for these latter two categories, the figures did not change from 2020 to 2021).

4. As a reminder, 122 states voted for the TPNW at the end of the negotiation conference held on July 7, 2017 while one state abstained (Singapore) and another voted against it (Netherlands).

5. "Treaty on the Prohibition of Nuclear Weapons", Draft Resolution X, in Report of the First Committee (A/76/444), p. 96.

resolution,⁶ its support for the treaty is not very emphatic, as suggested for example by an address delivered by Indonesia on NAM's behalf at the First Committee of the UNGA in 2020. Out of more than two pages devoted to nuclear disarmament, the only paragraph mentioning the TPNW is not overly enthusiastic: "Moreover, NAM takes note of adoption of the Treaty on the Prohibition of Nuclear Weapons on 7 July 2017. It is hoped that, when entered into force, the Treaty would contribute to furthering the agreed global objective of total elimination of nuclear weapons."⁷ The phrase "takes note" represents only one of the first degrees for marking support. Real backing could have been expressed by "welcomes with satisfaction". Therefore, a NAM state that voted for the resolution could be counted among "Other Supporters" by ICAN even though it does not necessarily take a clear stance.

Consequently, the future evolution of these states' position is difficult to predict. There is no certainty that the fifty or so states in this "other supporters" category will join the TPNW. The vast majority did not vote in favor of the treaty when it was adopted on July 7, 2017 and the others did not take part in the vote. Participation in the vote is not a reliable indicator of whether or not the states concerned will join the treaty. Firstly, as we have seen, forty states that voted 'yes' to the treaty in the negotiations have not signed it despite their apparent support, whereas others voted for it but then took a back seat – and are therefore in the Nuclear Weapons Ban Monitor "Undecided" category. Secondly, on the other hand, a small number of states that did not vote for the TPNW when it was adopted have now signed and sometimes even ratified it nonetheless.⁸

6. In 2020, the vast majority of NAM states voted for the resolution, except for 16 countries which did not vote, one that abstained (Belarus) and one that voted against (Mongolia), which could be a mistake given Mongolia's usual position and its positive vote on this same resolution at the plenary session.

7. Statement by Indonesia on behalf of the Non-Aligned Movement, First Committee of the General Assembly of the United Nations, General Debate, October 9, 2020.

8. Central African Republic, Libya, Niger and Zambia have signed the TPNW. The Cook Islands, Comoros, Dominica, Maldives, Nauru, Nicaragua,

“Undecided” and “Opposed” States

Whatever the case may be, this classification by ICAN provides an indication of the priority targets of the campaign. The “Undecided” will no doubt be among them, since their hesitation could be a fulcrum for convincing them to join the treaty. Ironically, some of the “Opposed” states are asserted targets.⁹ This category includes countries with diverse statuses, namely nuclear-armed states and nuclear-weapon endorsing states.

a) Nuclear-armed states encompass states recognized as possessing nuclear weapons by the NPT, those that have developed nuclear weapons without signing the NPT and finally, one state that has violated the NPT and continues to strengthen its arsenal.¹⁰ Clearly to ICAN, the nuclear order no longer hinges on the NPT’s distinction between NWS and NNWS. The typology and terminology employed are different, implicitly ignoring the non-proliferation norm.¹¹ ICAN does not hope to gain the support of these states, but that of the category we will focus on in the paragraphs below.

b) States described as “endorsing” nuclear weapons are those that have chosen to seek protection from the nuclear weapons of a third country,¹² i.e., the NATO Member States, other US allies

Niue and Tuvalu have ratified it. *Nota bene:* according to the NWBM 2020, the Maldives did not vote but later formally indicated that they had intended to vote for the TPNW.

9. Beyond the categories of states described in the following paragraphs, the “Opposed” include Micronesia and Monaco.

10. The North Korean leader has repeated his ambition to strengthen his country’s nuclear arsenal. See for example, Sangmi Cha, “N. Korea’s Kim urges stronger military capabilities as party congress ends”, Reuters, January 13, 2021, <https://www.reuters.com/article/northkorea-politics/n-koreas-kim-urges-stronger-military-capabilities-as-party-congress-ends-idUSL4N2JN44F> [viewed on February 3, 2021]. North Korea is also conducting intense missile testing. See for example the online chronology of the Nuclear Threat Initiative: <https://www.nti.org/analysis/articles/cns-north-korea-missile-test-database/> [viewed on April 22, 2022].

11. This raises the question of a potential change to the conception of deviation within the regime.

12. These 32 states include, on the one hand, the NATO non-nuclear-weapon states (27), 3 allies of the United States (Australia, South Korea, and

(Australia, South Korea, and Japan), and two states identified as being under the Russian umbrella (Armenia and Belarus).¹³ As these latter two abstained in the vote on the TPNW resolution at the General Assembly between 2017 and 2021, they are therefore classed as “Undecided” rather than “Opposed”.

However, ICAN would appear to be centering its pressure on states “endorsing” nuclear weapons in the “Opposed” category. This is easy to comprehend in light of the Nuclear Weapons Ban Monitor’s evaluation identifying certain states as “more in internal conflict over the TPNW than others”, referring to the letter in support of the treaty published by 56 NATO key figures, Japan and South Korea in September 2020.¹⁴ This assessment of the situation at least partly explains why the NGO hopes to win over these Opposed states. It appears to believe that the opposition is not solid enough and could crumble. Some TPNW proponents think they have already identified some “first cracks in the NATO wall.”¹⁵

Maximum pressure on NATO

In general, ICAN pursues the goal of “changing Europe’s calculations”.¹⁶ NATO is therefore particularly targeted, especially

Japan) and on the other, Armenia and Belarus identified in the report as being under the Russian “nuclear umbrella”.

13. Russian nuclear doctrine clearly mentions the protection of its allies (without naming them). See “Basic principles of State Policy of the Russian Federation on Nuclear Deterrence”, June 2, 2020, https://www.mid.ru/en/foreign_policy/international_safety/disarmament/-/asset_publisher/rp0fiUBmANaH/content/id/4152094 [viewed on May 11, 2021].

14. See “Open Letter in Support of the Treaty on the Prohibition of Nuclear Weapons”, signed by 56 former Presidents, Prime Ministers, Foreign Ministers and Defense Ministers from NATO member states, South Korea and Japan, September 21, 2020.

15. Tom Sauer and Claire Nardon, “The Softening Rhetoric by Nuclear-Armed States and NATO Allies on the Treaty on the Prohibition of Nuclear Weapons”, *War on the Rocks* (blog), December 7, 2020, <http://warontherocks.com/2020/12/the-softening-rhetoric-by-nuclear-armed-states-and-nato-allies-on-the-treaty-on-the-prohibition-of-nuclear-weapons/> [viewed on February 5, 2021].

16. Beatrice Fihn and Daniel Högsta, “Nuclear Prohibition: Changing Europe’s Calculations”, *European Leadership Network*, November 25, 2020,

by a strategy to delegitimize which we will examine further on. A growing number of publications and addresses seek to explain what these states should do, while trying to minimize the impact this could have on their security and their involvement in NATO. For example, one of the documents prepared by ICAN about NATO gives a fairly vague explanation of how the accession of a NATO member to the treaty would take place: “NATO states would need to modify some of their policies or behaviors around the nuclear dimension of the alliance, but they are free to join the treaty and continue to engage in the non-nuclear weapon elements of the military alliance.”¹⁷ A few lines further down, the document also asserts that “For most of the NATO countries that endorse the nuclear weapon dimension of the alliance, joining the TPNW and renouncing its endorsement would not be an alliance-shattering split, but rather a weakened degree of involvement in one aspect of the alliance’s activities.” In addition, the nuclear dimension of NATO is denied as being part of its original identity,¹⁸ although it in fact dates back to the organization’s creation.¹⁹

This influence strategy is implemented in many other ways, such as a suggested position at the upcoming NPT review conference (postponed due to the health crisis²⁰) consisting of recognizing the TPNW’s value for nuclear disarmament, for the implementation of Article VI of the NPT and for the reinforcement of non-proliferation. Despite appearing relatively insignificant, this proposal is not neutral at all as it would lead the relevant states to support *de facto* the position of TPNW advocates, against that of NATO, with the risk of causing a divide within the organization.

<https://www.europeanleadershipnetwork.org/commentary/nuclear-prohibition-changing-europes-calculations/> [viewed on January 14, 2021].

17. ICAN, “Briefing paper: NATO and the TPNW”, December 2020, p. 1.

18. By writing that NATO only announced itself as a “nuclear alliance” in 2010, ICAN suggests that this is a recent dimension. No factual evidence puts this statement into perspective and it therefore remains surrounded by omissions.

19. See for example William Alberque, “The NPT and the Origins of NATO’s Nuclear Sharing Arrangements”, *Proliferation Papers*, 57, February 2017.

20. The NPT Review Conference was postponed several times due to the COVID pandemic. It is scheduled to take place from August 1 to 26, 2022.

Above all, such a change in the position of certain allies would not be neutral for ICAN which could then consolidate that support around the idea that the TPNW reinforces the NPT. Now, this idea is a major factor of legitimacy for the campaign and the treaty. Although some supporters of the nuclear weapons ban seek to set aside the NPT, most, on the other hand, confirm that they wish to maintain it and implement its Article VI through the TPNW.²¹ At the same time, its opponents denounce the damage that this treaty and the enterprise surrounding it have already done to the NPT and threaten to do in the future. ICAN is understandably focusing its attentions on this point, particularly as several “Undecided” states have shown that it was one of their main reservations vis-à-vis the TPNW. Communication on this issue appears to be part of a normalization effort that will be examined in further detail in the paragraphs below.

IMPROVING THE TREATY’S IMAGE

In response to the criticism of the treaty’s weaknesses and shortcomings, ICAN is most certainly concerned about improving its image. For example, this is the case of the TPNW’s compatibility with the NPT as mentioned above, or the question of verification which represents a vast case study.

Communication in support of verification

In theory, the verification of a treaty aiming to abolish nuclear weapons should guarantee the disarmament of nuclear-armed states and prevent the arming or re-arming of one or more states. Given the major civil applications of nuclear energy, it cannot be banned. Therefore, as is the case with the NPT, this use of nuclear power must be permitted while ensuring that it is not diverted to military purposes and that weapons are not developed illegally.

21. See for example, Joellen Pretorius, Tom Sauer, “Is It Time to Ditch the NPT?”, *Bulletin of the Atomic Scientists*, September 6, 2019, <https://thebulletin.org/2019/09/is-it-time-to-ditch-the-npt/> [viewed on February 5, 2021].

During a first phase, it will also be necessary to verify the dismantling of arsenals.²²

Regarding non-nuclear-armed states, the TPNW is in keeping with the NPT. Article 3 of the TPNW stipulates that each NNWS “shall, at a minimum, maintain its International Atomic Energy Agency safeguards obligations in force at the time of entry into force of this Treaty, without prejudice to any additional relevant instruments that it may adopt in the future” and if it has not yet done so, shall conclude a comprehensive safeguards agreement with the IAEA.²³

The TPNW keeps up appearances but there is clearly a problem. Had it been concluded in the 1960s like the NPT, or at least before the discovery of Iraq’s clandestine program in the early 1990s and the development of an additional protocol (AP) to the IAEA comprehensive safeguards agreements (CSA), it would have been understandable if it had not referred to it. But with knowledge of this context, the negotiators should have taken these developments into account. This serious deficiency can be explained by the opposition – political in some cases – of several states that were part of the core group²⁴ of supporters of the ban during the negotiation conference. Sweden and Switzerland, meanwhile, worked hard to integrate this verification standard into the treaty (CSA and AP).

22. On this point, see the work of the International Partnership for Nuclear Disarmament Verification (IPNDV) and the NuDiVe (Nuclear Disarmament Verification) exercise conducted in Germany in 2019 and 2022. For a summary, see Emmanuelle Maitre, “Les enjeux de la vérification du désarmement nucléaire”, *Recherches & Documents*, 09/2020.

23. Negotiation of such agreement shall commence within 180 days from the entry into force of this Treaty for that State Party. The agreement shall enter into force no later than 18 months from the entry into force of this Treaty for that State Party.

24. The core group consisted of South Africa, Austria, Brazil, Ireland, Mexico, New Zealand, and Costa Rica which chaired the TPNW negotiations. See for example, the press release of the Arms Control Association awarding the “Arms Control Persons of the Year” prize in 2017, <https://www.armscontrol.org/pressroom/2018-01/acpoy-2017-winner> [viewed on February 9, 2021].

Some proponents of the TPNW deplore the fact that it does not include the obligation to conclude an additional protocol.²⁵ Others take up defensive arguments on the question of TPNW verification or even seek to demonstrate its added value in this regard. While they might struggle to convince those who take the time to read the texts, they could no doubt delude those that do not.²⁶ Their argument is extremely simple: the TPNW requires states to maintain safeguards agreements already in force (proposal no. 1) so the TPNW requires states that already have an additional protocol to maintain it (proposal no. 2); *however* the NPT “does not legally require states to adopt or maintain the additional protocol” (proposal no. 3) so the TPNW adds an obligation compared to the NPT.²⁷ While the first two proposals are true, the third is questionable. The obligations of States Parties to the NPT as regards safeguards do not stop at concluding an agreement which must obviously remain in force. Therefore, the NPT requires existing safeguards to be maintained, and therefore the additional protocol. Above all, the reasoning here concerns a particular case, but in reality, any state acceding to the TPNW without an additional protocol is absolutely not required to conclude one.

ICAN’s communication on verification sometimes results in completely distorting the reality. The informational graphics posted on social media to explain what the entry into force of the

25. The Nuclear Weapons Ban Monitor (2019) recalls that Sweden had particularly made such a proposal during the TPNW negotiations and regrets the fact that the states failed to agree on this point. In fact, it recommends that the first meeting of the States Parties to the TPNW examine this question (p. 56).

26. This may explain the letter of support for the TPNW, signed by high-level political leaders, which describes the treaty as an agreement establishing a framework for the verifiable and irreversible elimination of nuclear weapons. See “Open Letter in Support of the Treaty on the Prohibition of Nuclear Weapons”, signed by 56 former Presidents, Prime Ministers, Foreign Ministers and Defense Ministers from NATO member states, South Korea and Japan, September 21, 2020.

27. Alicia Sanders-Zakre, “Nuclear Weapons Ban Treaty to Enter Into Force: What’s Next?”, *Arms control today*, November 2020, <https://www.armscontrol.org/act/2020-11/features/nuclear-weapons-ban-treaty-enter-into-force-whats-next> [viewed on December 5, 2020].

TPNW will require of states is a perfect illustration. Article 3 of the treaty, titled “Safeguards”, becomes “Accepting international inspections” (a phrase that appears neither in Article 3, nor in the rest of the treaty). While this kind of communication material is designed to allow a rapid understanding, here the simplification creates a message that fits little with the treaty’s provisions. The wording suggests that the TPNW introduces such international inspections, but with no reference to the competent authority, i.e. the IAEA. In actual fact, acceptance of such “international inspections” is already given by adhering to the NPT, whose Article 3 requires the conclusion of safeguards agreements within a certain time limit.²⁸ Therefore, for the States Parties to the NPT, the TPNW has no added value in this regard.

ICAN’s insistence on this issue would appear to reveal its predicament and the challenge that this question represents. A certain ambivalence can be seen when the same Nuclear Weapons Ban Monitor extols the virtues of the TPNW as regards verification but suggests that the first meeting of States Parties should adopt a recommendation that they conclude an additional protocol.²⁹ This idea could reassure the “Undecided” states like Sweden or Switzerland that had tried to direct negotiations so as to render the treaty credible in terms of safeguards, but to no avail.

Necessary normalization

It may seem ironical to talk about normalization in connection with an organization that has positioned itself as a legitimate authority in a process of establishing norms. However, this development is easily explained by the fact that, on the one hand, the prohibition of nuclear weapons is not yet a norm and,

28. Under Article 3, the agreement negotiations were to begin within 180 days of the NPT’s entry into force or upon accession if it occurred after entry into force. The agreement concluded was to be implemented no later than 18 months after the start of its negotiation.

29. Nuclear Weapons Ban Monitor, “Recommendations to the First Meeting of States Parties”, chap. 6, recommendation no. 4, p. 81.

on the other hand, existing norms, even if they have been challenged at several levels, are almost universally accepted and have structured the international and multilateral environment for several decades. In this context, “normalization” refers to all the actions aiming to enhance the legitimacy of the TPNW and durably establish it in this environment, especially multilateral.

This primarily leads to striving for legitimacy as institutional players.³⁰ When presenting itself, ICAN for example stresses the fact that it promotes a “United Nations” treaty. The ICRC’s support is also frequently mentioned. And this legitimacy benefitting the TPNW naturally reflects on the organization behind it. In this way, ICAN boosts the symbolic power it has already gained by winning the Nobel Peace Prize in 2017 and the legitimacy it derives not only from its NGO status but also from that of a coalition of NGOs which lends further weight to the idea that ICAN represents the voice of civil society.

The TPNW has only just come into force and although it is included in the United Nations treaty collection, its integration into the normative landscape is not established. This explains why its proponents are closely focused on seeing the next NPT review conference admit that the TPNW allows implementation of Article VI of the non-proliferation treaty. Gaining such recognition by all NPT States Parties, including NWS, is obviously of key importance for the continuation of the campaign.

30. Whereas the supporters of a process outside UN fora have sought to free themselves from institutions and criticized the weight of the “disarmament machinery” (through the “blocking” of the Conference on Disarmament, some experts are now advocating a form of institutionalization of the TPNW, with, for example, the establishment of an Implementation Support Unit, based on the model of the Biological Weapons Convention in particular). See for example, Tamara Patton, Sébastien Philippe and Zia Mian, “Fit for Purpose: An Evolutionary Strategy for the Implementation and Verification of the Treaty on the Prohibition of Nuclear Weapons”, *Journal for Peace and Nuclear Disarmament*, 2:2, 2019, p. 387-409, <https://doi.org/10.1080/25751654.2019.1666699>. Furthermore, in a campaign document from September 2020, titled “The Significance of the Entry Into Force of the Treaty on the Prohibition of Nuclear Weapons”, ICAN recommends establishing additional infrastructure to support the treaty’s goals, such as a conference to promote its universalization.

The treaty's articulation with the CTBT is also important. While the TPNW does prohibit testing, it does not compel its States Parties to join the CTBT. Therefore, it does not subject them to any system of verification unlike the CTBT which is associated with the development of a global monitoring system. ICAN appears to have realized that the TPNW's credibility was suffering on this point. The Nuclear Weapons Ban Monitor (2020) recommends that the first meeting of the States Parties request the TPNW signatories and members to join the CTBT if this is not already the case.³¹

In addition, special efforts to position the TPNW in a long timescale and within the realms of possibility can be seen. During the campaign, several ICAN representatives complained of being seen as irrational and disconnected from reality. With the entry into force of the TPNW and the ambition to establish a norm, ICAN must definitely continue to drive home the idea that the aim of eliminating nuclear weapons is not utopic, but "an actual achievable goal" as asserted by ICRC President, Peter Maurer, who was cited by Beatrice Fihn and Daniel Högsta in an article published shortly after the fiftieth ratification.³² The credibility of the treaty and the expansion of support for it are at stake.

Although the weight carried by the "possibility" argument in the movement that led to the TPNW cannot be measured, it is easy to see in the rhetoric of the ban's advocates. From this perspective, it is understandable why ICAN is keen to follow in the footsteps of previous campaigns - on the banning of landmines and then of cluster munitions - which have been a source of inspiration since the very beginning and from which it undoubtedly intends to derive some legitimacy for itself and its action (see below). For example, the drafting of a Nuclear Weapons Ban Monitor, the counterpart of the Landmine Monitor and Cluster

31. Nuclear Weapons Ban Monitor (2020) recommendation no. 4, mentioned above. We will note that a decision of the conference of States Parties would not have the same legal force as an amendment to the treaty itself. The 2021 version does not include such recommendations.

32. Beatrice Fihn and Daniel Högsta, "Nuclear Prohibition: Changing Europe's Calculations".

Munitions Monitor, illustrates the desire to borrow from the proven methodology used by other campaigns but also to position itself as a reference on nuclear weapons.³³

Finally, normalization leads, more generally, to actions aimed at responding to the presumed expectations of campaign targets. In this respect, it is of particular interest for the campaign, with a view to "converting" undecided states or those identified as opposed. Special attention is clearly paid to creating a responsible and serious image. This is particularly noticeable in how ICAN has changed its approach to disarmament verification. To begin with, the fact that the TPNW did not address this question was often justified by the idea that the involvement of NWS was needed and that actual elimination would occur in a second stage: the sequence consisted of the prohibition, followed by elimination, as two separate phases. The treaty leaves the matter in the hands of a competent international authority to be designated at a later date. However, for the first time in 2020, the Nuclear Weapons Ban Monitor proposed a detailed schedule on verification, setting out the different "missions".³⁴ The presentation is only a one-page table, but this new feature no doubt points to a shift in focus by ICAN in its quest for recognition.³⁵

STIGMATIZING DETERRENCE

Although it might seem contrary to the aim of improving the image of the TPNW and of ICAN, the organization is driving a strategy to delegitimize nuclear weapons and stigmatize a number of players. This is only an outward contradiction, as

33. The document also includes a detailed review of the status of other treaties, thereby strengthening its centrality.

34. Nuclear Weapons Ban Monitor, 2020, p. 290.

35. It shall also be noted that in the recommendations (no. 3) for the first meeting of the States Parties, the Nuclear Weapons Ban Monitor (2020) suggests beginning "consideration of the mandate and capacities of the competent international authority or authorities for verification of nuclear disarmament referred to in Article 4", and establishing "a working group on verification of disarmament obligations under the Treaty" which "should engage with states not party to the Treaty with relevant expertise in the field".

ICAN stands by these processes which it asserts as fully legitimate methods of action. The homepage of the NGO's website states that "ICAN is the international campaign to stigmatize, prohibit & eliminate nuclear weapons".³⁶ In several testimonies, organization leaders have explained how, based on the model of the landmines or cluster munitions campaigns, ICAN would pursue this strategy aimed at forcing NWS to justify themselves, and how the TPNW would be the turning point in it. This is very clearly explained by Beatrice Fihn in an article published before the treaty was concluded: "Stigmatizing weapons creates perceptions of unacceptability which can be incompatible with the identity a state wishes to hold in the world. A treaty prohibiting nuclear weapons will make it more difficult for nuclear-armed states to continue to justify possessing and planning to use nuclear weapons."³⁷ The entry into force of the TPNW is therefore an additional asset in this campaign.

A discursive strategy

This repeated use of "delegitimization" and "stigmatization" raises the question of their application to nuclear weapons. What do these processes encompass? What precisely are their aims? Do they target weapons as an object or rather the deterrence strategy or policy choices of certain states? What goals and means of action are envisaged? In the theory of international relations, these terms echo the "constructivist project" and the idea of social construction of identities, interests and conduct.³⁸ However, the nuclear weapons ban is a very interesting case which questions both the possibility of using the theory for political purposes and the limits of constructivism. Several sources indeed confirm that

36. <https://www.icanw.org/> [viewed on December 2, 2020].

37. Beatrice Fihn, "The Logic of Banning Nuclear Weapons", *Survival*, 59:1, 2017, p. 43-50, <https://doi.org/10.1080/00396338.2017.1282671>.

38. Dario Battistella, "Le projet constructiviste", in Dario Battistella, Jérémie Cornut and Élie Baranets, *Théorie des relations internationales*, Paris, Presses de Sciences Po, 6th ed., 2019, chap. 9, p. 311-346, <https://www.cairn.info/theories-des-relations-internationales--9782724624656-page-311.htm>.

ICAN's strategy has been defined by players who have used the theory and tried to put it into practice. "ICAN's leaders were aware of the constructivist, feminist and post-structuralist academic literature on the stigmatization of weapons. They self-consciously adopted a discursive strategy casting nuclear weapons (and those who defended them) as immoral pariahs."³⁹

This "discursive strategy" does not go unnoticed. The way certain words and expressions are hammered out shows a desire to change the current terminology. The words are obviously not neutral and ICAN is counting on the dissemination of this language to bring about a normative change. "The supporters of the ban are aiming to replace the NPT's distinction between nuclear haves and have-nots with a distinction between nuclear civilizers and barbarians."⁴⁰ In this regard, it can be noted that this change is also based on an exacerbation of the NWS/NNWS antagonism rooted in the NPT review process. One factor that explains why states have been successfully mobilized by the humanitarian initiative is the "frustration" felt by NNWS and described by several experts and observers of the NPT review process.⁴¹ ICAN has tried to deny the importance of this factor to focus on concerns regarding the humanitarian consequences,⁴² which is obviously a necessary tactical choice for the image of the NGO and the TPNW. Rather than fueling this antagonism, ICAN is gradually trying to merely

39. Matthew Bolton, "The Nuclear Taboo and the International Campaign to Abolish Nuclear Weapons", *E-International Relations* (blog), May 2, 2018, <https://www.e-ir.info/2018/05/02/the-nuclear-taboo-and-the-international-campaign-to-abolish-nuclear-weapons/>.

40. Kjølsv Egeland, "Banning the Bomb: Inconsequential Posturing or Meaningful Stigmatization?" *Global Governance: A Review of Multilateralism and International Organizations*, 24:1, January 1, 2018, p. 11-20, <https://doi.org/10.1163/19426720-02401002>.

41. See, for example, William Potter, "Disarmament Diplomacy and the nuclear ban treaty", *Survival*, 59:4, p. 81, <http://www.tandfonline.com/doi/pdf/10.1080/00396338.2017.1349786?needAccess=true>.

42. See Beatrice Fihn (@BeaFihn), "Reading a bunch of articles that refers to #TPNW as a result of frustration and I feel the need to once again expose how patronizing and intentionally dismissive that description of the #nuclearban treaty is", Twitter, December 28, 2018, 7:33, <https://twitter.com/BeaFihn/status/1078675420848050176> [viewed on October 22, 2019].

stigmatize certain players, as we will see through three case studies: the NWS that ICAN stigmatizes without seeking their membership; the NATO NNWS which it aims to “convert”; and lastly the example of one “undecided” state whose signing of the TPNW would be crucial with a view to converting other states in Europe. Through these three examples, it is clear that stigmatization is not only used to shape a norm in general, but also to influence conduct and decisions, and not just indirectly.

Stigmatizing to delegitimize

Overall, the nuclear-armed states have very clearly rejected the TPNW. Therefore, ICAN will not expend energy seeking their adherence, but will focus on stigmatizing them with a view to undermining their legitimacy. This stigmatization can take various forms. Here we will look at two examples that differ greatly by the register used in the message, but are similar in the action undertaken. One seeks to be funny, the other serious, but both communications aim to depict defeated stakeholders. The first is a video posted on Twitter by Beatrice Fihn after the fiftieth ratification in which, with a triumphant face, she can be seen drinking out of a cup marked “P5 Tears”.⁴³ The second example is an article published in *Le Monde* following the announcement of the fiftieth ratification. Beatrice Fihn threatens NWS that might “believe they are above this new norm” and says that states that are not parties to the treaty will nonetheless suffer the consequences of the TPNW’s entry into force. She then adds: “politicians and diplomats will have to justify their keeping of illegal weapons and can no longer claim to comply with international law or even to be a “responsible” state”.⁴⁴ The aim is clearly to “reverse the burden of proof” mentioned in several feedback documents on the Oslo and

43. Beatrice Fihn (@BeaFihn), “Walking to the office today like...”, Twitter, October 26, 2020, 13:08, <https://twitter.com/BeaFihn/status/1320698914207576064?s=20>.

44. Beatrice Fihn: “Le 22 janvier 2021, nous entamerons une nouvelle décennie où les armes nucléaires seront illégales au regard du droit international”, *Le Monde*, October 26, 2020.

Ottawa processes.⁴⁵ Criticizing nuclear-armed states and the P5 in particular appears to be a general immediate reaction.

However, on closer examination, an exception to the stigmatization would appear possible for China which, although it does not plan to join, keeps up a rhetoric favorable to the TPNW, to which some ICAN representatives are sensitive. One, for example, has mentioned the possibility of China playing a role in mediating future negotiations, claiming that “despite its totalitarian regime, [it] adopted a relatively open attitude towards the process that led to the adoption of the Treaty on the Prohibition of Nuclear Weapons (TPNW)”.⁴⁶ Still, the leader of ICAN is no doubt less taken in by the rhetoric and seems to focus more on the actual development of China’s arsenal. Thus, when the Chinese mission to the United Nations welcomed the entry into force of the TPNW, repeating that its advocacy for “complete prohibition and thorough destruction of nuclear weapons” was “fundamentally in line with purposes of the TPNW”,⁴⁷ Beatrice Fihn took a firm stand: “This is great, but maybe stop modernizing your nuclear arsenals and join the treaty then!”⁴⁸ At the same time, Alicia Sanders-Zakre (ICAN), in an article for *War on the Rocks*,

45. See, in particular, John Borrie, Maya Brehm, Silvia Cattaneo and David Atwood, “Adapter les enseignements tirés des processus d’Ottawa et d’Oslo pour enregistrer d’autres succès en matière de désarmement et de maîtrise des armements”, *Forum du désarmement*, 2, 2009, p. 22.

46. Luigi Mosca, “L’entrée en vigueur du Traité d’interdiction des armes nucléaires : quelles perspectives ?”, *Pressenza*, October 30, 2020, <https://www.pressenza.com/fr/2020/10/lenree-en-vigueur-du-traite-dinterdiction-des-armes-nucleaires-queelles-perspectives/> [viewed on January 27, 2021].

47. Chinese Mission to UN (@Chinamission2un), “China has always been advocating complete prohibition and thorough destruction of nuclear weapons, which is fundamentally in line with purposes of #TPNW. China will continuously make relentless efforts towards a nuclear-weapon-free world”, Twitter, October 25, 2020, 2:39, <https://twitter.com/Chinamission2un/status/1320178238069624832>.

48. Beatrice Fihn (@BeaFihn), “This is great, but maybe stop modernizing your nuclear arsenals and join the treaty then!”, Twitter, October 26, 2020, 8:47, <https://twitter.com/BeaFihn/status/1320633080974069762?s=20>.

symbolically praised the Chinese tweet which she compared with that of a “US official” who called the treaty “counterproductive”.⁴⁹

It would be interesting to understand just how the idea that China supports the TPNW influences ICAN’s action, particularly as the greater permeability to communication or influence actions of other NWS’ political systems no doubt explains the difference in treatment displayed.⁵⁰ Generally speaking, the stigmatization strategy described by ICAN is criticized due to the dead ground that non-democratic regimes represent. As George Perkovich, for example, points out in an article published in November 2020, even if this were not the intention, it is difficult to see how the strategy can avoid penalizing states that have adhered to democratic norms authorizing freedom of association and lobbying.⁵¹

Converting opposed NNWS

NNWS that are NATO members are seeing their security policy criticized from a moral perspective: “The TPNW exposes these states for what they are at the moment: complicit in the legitimation of the most destructive and inhumane weapon ever invented – and standing ready to participate in the annihilation

49. Alicia Sanders-Zakre, “Five Common Mistakes on the Treaty on the Prohibition of Nuclear Weapons”.

50. We can think of the number of cities that signed the Appeal or even the number of partner NGOs, about which Brad Roberts noted that at the end of 2018, of 468 NGOs affiliated with ICAN, more than 200 belonged to U.S. allied states while only nine came from other nuclear weapon states (“Ban the Bomb? Or Bomb the Ban?”, March 22, 2018, p. 2, <https://www.europeanleadershipnetwork.org/policy-brief/ban-the-bomb-or-bomb-the-ban/>). ICAN’s website [viewed on April 22, 2022] mentions two partner organizations: IPPNW and Humanist Association of Hong Kong. IPPNW is the major international organization that gave birth to ICAN. And it effectively has a contact in China. The other partner’s website has been inactive since April 2016. The question of the room for maneuver of NGOs in China is a topic in its own right.

51. See George Perkovich, “[Living With the Nuclear Prohibition Treaty: First, Do No Harm](#)”, *Carnegie Endowment for International Peace* (blog), November 10, 2020. G. Perkovich focuses on NATO vs. Russia.

of cities and mass murder of civilians.”⁵² The leaders of ICAN are clearly aiming to delegitimize the governments concerned by casting doubt on the democratic nature of their policies.⁵³ In support of their arguments on the mismatch between these policies and the wishes of the public, they produce polls showing that the majority demands accession to the TPNW, opposes investments by banks in nuclear weapon activities and quite simply supports ICAN’s positions, thus reinforcing the legitimacy of representing civil society, to which it aspires.⁵⁴ Implicitly, it also questions the ability of these governments to decide, by regularly suggesting that their decisions are swayed by pressure from the United States or other Alliance members.⁵⁵ At the same time, in contrast with this discrediting pressure, attempts at persuasion and even seduction can be seen, to encourage states to join a movement described as being “on the right side of history”.⁵⁶

Whatever the case, the Allies are “complicit”⁵⁷ states or “weasels”, according to another term used by some advocates of the ban in the years in which the initiative on humanitarian

52. Beatrice Fihn and Daniel Högsta, “Nuclear Prohibition: Changing Europe’s Calculations”.

53. ICAN, “The polls are clear: Europeans back the #nuclearban!”, Facebook, January 28, 2021, 18:38, <https://www.facebook.com/watch/?v=192423802662945> [viewed on February 5, 2021]. Beatrice Fihn presents polls with Daniel Högsta and describes the choice of host states in the context of NATO’s nuclear-sharing arrangements as “anti-democratic”.

54. See ICAN, “Polls: Public opinion in EU host states firmly opposes nuclear weapons”, Campaign News, URL: https://www.icanw.org/polls_public_opinion_in_eu_host_states_firmly_opposes_nuclear_weapons [viewed on April 22, 2022].

55. “Three states in Europe – Austria, Ireland and Malta – have joined the TPNW. The fact that they find themselves in the minority in Europe is no surprise: the long-standing peer pressure from within NATO and the United States in particular to hold the line against the ban is, by now, well-known” (Beatrice Fihn and Daniel Högsta, “Nuclear Prohibition: Changing Europe’s Calculations”).

56. Ibid.

57. The use of this phrase for stigmatizing purposes is underlined by Jean-Baptiste Jeangène Vilmer, “The forever-emerging norm of banning nuclear weapons”, p. 2.

consequences was being rolled out. Indeed, the figure *Wildfire* – the former Australian diplomat Richard Lennane – used this term particularly with reference to NATO NNWS (but also other non-armed states that have opted for nuclear deterrence). Other developments came with this coining of this term, including publicity for a “recovery program”, various goodies and a cardboard statute position in different places on the sidelines of multilateral meetings. Stigmatization can also take the form of a farce. The impact of such influence operations is hard to measure. There is a significant gap between the image projected in this way and the one that states wish to maintain internationally and/or internally, but the spread of these stigmatizing representations seems quite limited for the moment. In any event, they may contribute to maintaining a certain climate in multilateral fora and creating pressure that local delegations will no doubt report back to their respective capitals.⁵⁸

Deciding the “Undecided”

Among the “undecided” states identified by ICAN, Switzerland is a special case since it has retreated in relation to the TPNW after instigating the introduction of the “humanitarian aspect”⁵⁹ at the 2010 NPT review conference and then continuing to be a driving force for several years. After taking part in the negotiations and voting for the adoption of the treaty, it nonetheless expressed several reservations about the outcome of the negotiations, decided that a “careful assessment” of the treaty would allow it to “fully comprehend the impact and consequences of its provisions”, that it would follow closely the manner in which the treaty was interpreted and implemented and would also assess whether “it effectively complements and strengthens the nuclear disarmament and

58. Pressure in multilateral fora then adds to that perceived at the national level.

59. Statement by Micheline Calmy-Rey, Head of the Federal Department of Foreign Affairs, at the Non-Proliferation Treaty review conference, general debate, May 4, 2010.

non-proliferation regime.”⁶⁰ For this purpose, a working group was set up, led by the Federal Department of Foreign Affairs. Its conclusion, in June 2018, was very clear: “for Switzerland the arguments against an accession to the TPNW outweigh the potential opportunities of an accession.”⁶¹ However, parliament ultimately objected and asked the government to join the TPNW.⁶²

Switzerland displays a “humanitarian tradition” around which the diplomacy of this neutral, NATO-partner state, is organized. The humanitarian dimension of its identity on the international stage is a natural fulcrum for a campaign like ICAN’s. Here, similar observations can be made to those established about the “Oslo process” on cluster munitions and particularly the ‘naming and shaming’ strategies when they seek to “publicly expose the contradictions between the behaviors and normative commitments of their targets.”⁶³ A process of “rhetorical entrapment”⁶⁴ is underway. Switzerland adheres to the humanitarian framework but not to the result of the initiative, the TPNW. It has promised to reassess its decision, in principle after the NPT review conference. Should it continue to reject the TPNW, it would struggle to show that it

60. Statement by the Permanent Representative of Switzerland to the Conference on Disarmament, explanation of vote at the Treaty on the Prohibition of Nuclear Weapons negotiation conference, July 7, 2017.

61. Report of the working group to analyze the Treaty on the Prohibition of Nuclear Weapons, Federal Department of Foreign Affairs FDFA, June 30, 2018.

62. In June 2018, the National Council (lower house) adopted motion 17.4241 presented by Carlo Sommaruga in December 2017, by 100 votes to 86 and one abstention. The Foreign Affairs Committee of the Council of States (upper house) initially rejected the motion by seven votes to six, and adopted another motion (18.4097) tasking the Federal Council with reviewing the situation by the end of 2020, but the plenary assembly vote led to the adoption of motion 17.4241 in December 2018 by 24 votes for, 15 against and two abstentions.

63. Hélène Dufournet, “Le piège rhétorique : une contrainte par la morale ?”, *Revue française de science politique*, 65:2, 2015, p. 264.

64. Ibid. Hélène Dufournet worked on France’s involvement in the cluster munitions ban process as part of her doctoral thesis. In the article cited, she notes that there is a mechanism of “rhetorical entrapment” whereby France sees its decisions framed in particular by its previous international commitments and its “image as a virtuous country on the international stage”. According to H. Dufournet, “the French public authorities would have had no choice but to comply with the expectations of civil society”.

nonetheless adheres fully to the humanitarian framework. This position is indeed hard to explain in the context of a campaign in which the debate is binary, including from a moral standpoint.

Beyond words

Beyond words, ICAN develops several actions intended to stigmatize weapons and their environment.⁶⁵ Such actions include raising awareness of the cause and disseminating ICAN messages through its national entities, particularly through the “Cities Appeal” which was joined by two capital cities of NWS (Washington and Paris),⁶⁶ several cities in these states and fourteen others, most of which are NATO members or otherwise under the protection of US nuclear deterrence.⁶⁷ ICAN also recommends initiating debates in parliaments and in the media of non-States Parties. And it has launched an initiative targeting universities that contribute to the development of nuclear weapons. So far, it seems to be limited to the United States where it has identified “complicit” universities thus described as “Schools of Mass Destruction”.⁶⁸ The divestment campaign, “Don’t bank on the bomb”, launched several years ago, would appear to be gaining ground.⁶⁹ It aims to prompt banks and pension funds to withdraw their investments from businesses participating in nuclear armament programs. Once again, this action is the transposition

65. Here, “environment” refers not only to nuclear weapon states but also states benefitting from a “nuclear umbrella”. The use of this term also suggests that beyond states, other entities are targeted, such as banks. ICAN does not directly seek to stigmatize individuals.

66. It would be interesting to understand the decision-making processes that led these cities to support the campaign.

67. Australia 38 (33), Belgium 83 (66), Canada 16 (12), Croatia 2 (2), France 52 (35), Germany (68), India 2 (1), Italy 38 (36), Japan (2), Luxembourg 13 (13), Netherlands 9 (6), Norway 62 (42), Spain 74 (14), Sweden (1), Switzerland 7 (7), United Kingdom 28 (15), USA 62 (37), https://cities.icanw.org/list_of_cities [viewed on February 21, 2021 and then on April 22, 2022].

68. See https://universities.icanw.org/types_of_involvement [viewed on February 21, 2021].

69. The campaign has a website: <https://www.dontbankonthebomb.com/> [viewed on April 22, 2022].

to the nuclear domain of those previously launched for landmines and cluster munitions that ICAN describes as having had “quite a concrete impact in reducing companies’ willingness to be involved in these practices.”⁷⁰ Regarding cluster munitions for example, several firms did indeed gradually cease producing prohibited materials, but not immediately. Furthermore, many states are yet to sign the convention, including several producers.⁷¹ The Cluster Munition Monitor estimates that 17 States Parties have ceased production, while the 16 states that are not party to the convention continue this activity (or have suspended it but without committing not to resume it). The report stresses the fact that Russia and China conducted R&D activities on new capacities in 2020.⁷² ICAN therefore uses these examples to lend credit to its action, even though the comparison between the three processes quickly reaches its limits. By encouraging these entities to change their policies, ICAN not only attempts to hinder the development of nuclear weapons programs, but also to create another source of input to the stigmatization process.

70. John Mecklin, “Beatrice Fihn: How to implement the nuclear weapons ban treaty”, *Bulletin of the atomic scientists*, December 7, 2020, <https://thebulletin.org/premium/2020-12/beatrice-fihn-how-to-implement-the-nuclear-weapons-ban-treaty/>.

71. As of September 15, 2020, 74 states remain outside the convention. They particularly include three permanent members of the United Nations Security Council (China, USA, Russia) and several members of the European Union (Estonia, Finland, Greece, Latvia, Poland, Romania).

72. Cluster Munitions Monitor 2020, “10-year review”, p. 21. And Cluster Munitions Monitor 2021, p. 16.

CONCLUSION: WHAT TO DO WITH THE TPNW?

The TPNW is now in force. While its supporters find it worthwhile, doubts remain as to its benefits in terms of security. And some clear questions are raised about the strategic imbalance it could create if the campaigners achieved their aim, particularly as regards extended deterrence. Advocates of the TPNW claim to see a laughable contradiction between the finding that the treaty is ineffective and the assessment of the risks it entails. These two evaluations are obviously placed at different levels. So what should be done with the TPNW?

Whatever normalization efforts ICAN makes, the strengthening of its campaign and the continuation of stigmatization actions will no doubt further heighten tensions within multilateral fora and discourage opposed states from joining the initiative.

The question therefore remains unanswered. While some experts are of the opinion that the TPNW should not be ignored, current events call for progress on urgent issues such as the rebuilding of arms control or whatever will take its place, because the future may well prove those who believe that the era of formal agreements between the US and Russia is over, to be right.¹

Lastly, the question we raise as a conclusion also requires a response from researchers. What should be done with the TPNW? By shedding light on the facts and presenting certain mechanisms, we have sought to lay the groundwork for future studies. The fact that communication and influence are so prevalent calls for further analysis of these modes of action when they are used by NGOs at international level. As some of their actions have been analyzed as

1. George Perkovich, "[Living With the Nuclear Prohibition Treaty: First, Do No Harm](#)".



United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination

New York, 27-31 March and 15 June-7 July 2017

Agenda item 9

Negotiations, pursuant to paragraph 8 of General Assembly resolution 71/258 of 23 December 2016, on a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination**Treaty on the Prohibition of Nuclear Weapons***The States Parties to this Treaty,**Determined* to contribute to the realization of the purposes and principles of the Charter of the United Nations,*Deeply concerned* about the catastrophic humanitarian consequences that would result from any use of nuclear weapons, and recognizing the consequent need to completely eliminate such weapons, which remains the only way to guarantee that nuclear weapons are never used again under any circumstances,*Mindful* of the risks posed by the continued existence of nuclear weapons, including from any nuclear-weapon detonation by accident, miscalculation or design, and emphasizing that these risks concern the security of all humanity, and that all States share the responsibility to prevent any use of nuclear weapons,*Cognizant* that the catastrophic consequences of nuclear weapons cannot be adequately addressed, transcend national borders, pose grave implications for human survival, the environment, socioeconomic development, the global economy, food security and the health of current and future generations, and have a disproportionate impact on women and girls, including as a result of ionizing radiation,*Acknowledging* the ethical imperatives for nuclear disarmament and the urgency of achieving and maintaining a nuclear-weapon-free world, which is a global public good of the highest order, serving both national and collective security interests,*Mindful* of the unacceptable suffering of and harm caused to the victims of the use of nuclear weapons (hibakusha), as well as of those affected by the testing of nuclear weapons,

Recognizing the disproportionate impact of nuclear-weapon activities on indigenous peoples,

Reaffirming the need for all States at all times to comply with applicable international law, including international humanitarian law and international human rights law,

Basing themselves on the principles and rules of international humanitarian law, in particular the principle that the right of parties to an armed conflict to choose methods or means of warfare is not unlimited, 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 a nature to cause superfluous injury or unnecessary suffering, and the rules for the protection of the natural environment,

Considering that any use of nuclear weapons would be contrary to the rules of international law applicable in armed conflict, in particular the principles and rules of international humanitarian law,

Reaffirming that any use of nuclear weapons would also be abhorrent to the principles of humanity and the dictates of public conscience,

Recalling that, in accordance with the Charter of the United Nations, States must refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the Purposes of the United Nations, and that the establishment and maintenance of international peace and security are to be promoted with the least diversion for armaments of the world's human and economic resources,

Recalling also the first resolution of the General Assembly of the United Nations, adopted on 24 January 1946, and subsequent resolutions which call for the elimination of nuclear weapons,

Concerned by the slow pace of nuclear disarmament, the continued reliance on nuclear weapons in military and security concepts, doctrines and policies, and the waste of economic and human resources on programmes for the production, maintenance and modernization of nuclear weapons,

Recognizing that a legally binding prohibition of nuclear weapons constitutes an important contribution towards the achievement and maintenance of a world free of nuclear weapons, including the irreversible, verifiable and transparent elimination of nuclear weapons, and determined to act towards that end,

Determined to act with a view to achieving effective progress towards general and complete disarmament under strict and effective international control,

Reaffirming that there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control,

Reaffirming also that the full and effective implementation of the Treaty on the Non-Proliferation of Nuclear Weapons, which serves as the cornerstone of the nuclear disarmament and non-proliferation regime, has a vital role to play in promoting international peace and security,

Recognizing the vital importance of the Comprehensive Nuclear-Test-Ban Treaty and its verification regime as a core element of the nuclear disarmament and non-proliferation regime,

Reaffirming the conviction that the establishment of the internationally recognized nuclear-weapon-free zones on the basis of arrangements freely arrived at

among the States of the region concerned enhances global and regional peace and security, strengthens the nuclear non-proliferation regime and contributes towards realizing the objective of nuclear disarmament,

Emphasizing that nothing in this Treaty shall be interpreted as affecting the inalienable right of its States Parties to develop research, production and use of nuclear energy for peaceful purposes without discrimination,

Recognizing that the equal, full and effective participation of both women and men is an essential factor for the promotion and attainment of sustainable peace and security, and committed to supporting and strengthening the effective participation of women in nuclear disarmament,

Recognizing also the importance of peace and disarmament education in all its aspects and of raising awareness of the risks and consequences of nuclear weapons for current and future generations, and committed to the dissemination of the principles and norms of this Treaty,

Stressing the role of public conscience in the furthering of the principles of humanity as evidenced by the call for the total elimination of nuclear weapons, and recognizing the efforts to that end undertaken by the United Nations, the International Red Cross and Red Crescent Movement, other international and regional organizations, non-governmental organizations, religious leaders, parliamentarians, academics and the hibakusha,

Have agreed as follows:

Article 1 **Prohibitions**

1. Each State Party undertakes never under any circumstances to:

- (a) Develop, test, produce, manufacture, otherwise acquire, possess or stockpile nuclear weapons or other nuclear explosive devices;
- (b) Transfer to any recipient whatsoever nuclear weapons or other nuclear explosive devices or control over such weapons or explosive devices directly or indirectly;
- (c) Receive the transfer of or control over nuclear weapons or other nuclear explosive devices directly or indirectly;
- (d) Use or threaten to use nuclear weapons or other nuclear explosive devices;
- (e) Assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Treaty;
- (f) Seek or receive any assistance, in any way, from anyone to engage in any activity prohibited to a State Party under this Treaty;
- (g) Allow any stationing, installation or deployment of any nuclear weapons or other nuclear explosive devices in its territory or at any place under its jurisdiction or control.

Article 2 Declarations

1. Each State Party shall submit to the Secretary-General of the United Nations, not later than 30 days after this Treaty enters into force for that State Party, a declaration in which it shall:

(a) Declare whether it owned, possessed or controlled nuclear weapons or nuclear explosive devices and eliminated its nuclear-weapon programme, including the elimination or irreversible conversion of all nuclear-weapons-related facilities, prior to the entry into force of this Treaty for that State Party;

(b) Notwithstanding Article 1 (a), declare whether it owns, possesses or controls any nuclear weapons or other nuclear explosive devices;

(c) Notwithstanding Article 1 (g), declare whether there are any nuclear weapons or other nuclear explosive devices in its territory or in any place under its jurisdiction or control that are owned, possessed or controlled by another State.

2. The Secretary-General of the United Nations shall transmit all such declarations received to the States Parties.

Article 3 Safeguards

1. Each State Party to which Article 4, paragraph 1 or 2, does not apply shall, at a minimum, maintain its International Atomic Energy Agency safeguards obligations in force at the time of entry into force of this Treaty, without prejudice to any additional relevant instruments that it may adopt in the future.

2. Each State Party to which Article 4, paragraph 1 or 2, does not apply that has not yet done so shall conclude with the International Atomic Energy Agency and bring into force a comprehensive safeguards agreement (INF/CIRC/153 (Corrected)). Negotiation of such agreement shall commence within 180 days from the entry into force of this Treaty for that State Party. The agreement shall enter into force no later than 18 months from the entry into force of this Treaty for that State Party. Each State Party shall thereafter maintain such obligations, without prejudice to any additional relevant instruments that it may adopt in the future.

Article 4 Towards the total elimination of nuclear weapons

1. Each State Party that after 7 July 2017 owned, possessed or controlled nuclear weapons or other nuclear explosive devices and eliminated its nuclear-weapon programme, including the elimination or irreversible conversion of all nuclear-weapons-related facilities, prior to the entry into force of this Treaty for it, shall cooperate with the competent international authority designated pursuant to paragraph 6 of this Article for the purpose of verifying the irreversible elimination of its nuclear-weapon programme. The competent international authority shall report to the States Parties. Such a State Party shall conclude a safeguards agreement with the International Atomic Energy Agency sufficient to provide credible assurance of the non-diversion of declared nuclear material from peaceful nuclear activities and of the absence of undeclared nuclear material or activities in that State Party as a whole. Negotiation of such agreement shall commence within 180 days from the entry into force of this Treaty for that State Party. The agreement

shall enter into force no later than 18 months from the entry into force of this Treaty for that State Party. That State Party shall thereafter, at a minimum, maintain these safeguards obligations, without prejudice to any additional relevant instruments that it may adopt in the future.

2. Notwithstanding Article 1 (a), each State Party that owns, possesses or controls nuclear weapons or other nuclear explosive devices shall immediately remove them from operational status, and destroy them as soon as possible but not later than a deadline to be determined by the first meeting of States Parties, in accordance with a legally binding, time-bound plan for the verified and irreversible elimination of that State Party's nuclear-weapon programme, including the elimination or irreversible conversion of all nuclear-weapons-related facilities. The State Party, no later than 60 days after the entry into force of this Treaty for that State Party, shall submit this plan to the States Parties or to a competent international authority designated by the States Parties. The plan shall then be negotiated with the competent international authority, which shall submit it to the subsequent meeting of States Parties or review conference, whichever comes first, for approval in accordance with its rules of procedure.

3. A State Party to which paragraph 2 above applies shall conclude a safeguards agreement with the International Atomic Energy Agency sufficient to provide credible assurance of the non-diversion of declared nuclear material from peaceful nuclear activities and of the absence of undeclared nuclear material or activities in the State as a whole. Negotiation of such agreement shall commence no later than the date upon which implementation of the plan referred to in paragraph 2 is completed. The agreement shall enter into force no later than 18 months after the date of initiation of negotiations. That State Party shall thereafter, at a minimum, maintain these safeguards obligations, without prejudice to any additional relevant instruments that it may adopt in the future. Following the entry into force of the agreement referred to in this paragraph, the State Party shall submit to the Secretary-General of the United Nations a final declaration that it has fulfilled its obligations under this Article.

4. Notwithstanding Article 1 (b) and (g), each State Party that has any nuclear weapons or other nuclear explosive devices in its territory or in any place under its jurisdiction or control that are owned, possessed or controlled by another State shall ensure the prompt removal of such weapons, as soon as possible but not later than a deadline to be determined by the first meeting of States Parties. Upon the removal of such weapons or other explosive devices, that State Party shall submit to the Secretary-General of the United Nations a declaration that it has fulfilled its obligations under this Article.

5. Each State Party to which this Article applies shall submit a report to each meeting of States Parties and each review conference on the progress made towards the implementation of its obligations under this Article, until such time as they are fulfilled.

6. The States Parties shall designate a competent international authority or authorities to negotiate and verify the irreversible elimination of nuclear-weapons programmes, including the elimination or irreversible conversion of all nuclear-weapons-related facilities in accordance with paragraphs 1, 2 and 3 of this Article. In the event that such a designation has not been made prior to the entry into force of this Treaty for a State Party to which paragraph 1 or 2 of this Article applies, the Secretary-General of the United Nations shall convene an extraordinary meeting of States Parties to take any decisions that may be required.

Article 5**National implementation**

1. Each State Party shall adopt the necessary measures to implement its obligations under this Treaty.
2. Each State Party shall take all appropriate legal, administrative and other measures, including the imposition of penal sanctions, to prevent and suppress any activity prohibited to a State Party under this Treaty undertaken by persons or on territory under its jurisdiction or control.

Article 6**Victim assistance and environmental remediation**

1. Each State Party shall, with respect to individuals under its jurisdiction who are affected by the use or testing of nuclear weapons, in accordance with applicable international humanitarian and human rights law, adequately provide age- and gender-sensitive assistance, without discrimination, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion.
2. Each State Party, with respect to areas under its jurisdiction or control contaminated as a result of activities related to the testing or use of nuclear weapons or other nuclear explosive devices, shall take necessary and appropriate measures towards the environmental remediation of areas so contaminated.
3. The obligations under paragraphs 1 and 2 above shall be without prejudice to the duties and obligations of any other States under international law or bilateral agreements.

Article 7**International cooperation and assistance**

1. Each State Party shall cooperate with other States Parties to facilitate the implementation of this Treaty.
2. In fulfilling its obligations under this Treaty, each State Party shall have the right to seek and receive assistance, where feasible, from other States Parties.
3. Each State Party in a position to do so shall provide technical, material and financial assistance to States Parties affected by nuclear-weapons use or testing, to further the implementation of this Treaty.
4. Each State Party in a position to do so shall provide assistance for the victims of the use or testing of nuclear weapons or other nuclear explosive devices.
5. Assistance under this Article may be provided, inter alia, through the United Nations system, international, regional or national organizations or institutions, non-governmental organizations or institutions, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies, or national Red Cross and Red Crescent Societies, or on a bilateral basis.
6. Without prejudice to any other duty or obligation that it may have under international law, a State Party that has used or tested nuclear weapons or any other nuclear explosive devices shall have a responsibility to provide adequate assistance to affected States Parties, for the purpose of victim assistance and environmental remediation.

Article 8**Meeting of States Parties**

1. The States Parties shall meet regularly in order to consider and, where necessary, take decisions in respect of any matter with regard to the application or implementation of this Treaty, in accordance with its relevant provisions, and on further measures for nuclear disarmament, including:
 - (a) The implementation and status of this Treaty;
 - (b) Measures for the verified, time-bound and irreversible elimination of nuclear-weapon programmes, including additional protocols to this Treaty;
 - (c) Any other matters pursuant to and consistent with the provisions of this Treaty.
2. The first meeting of States Parties shall be convened by the Secretary-General of the United Nations within one year of the entry into force of this Treaty. Further meetings of States Parties shall be convened by the Secretary-General of the United Nations on a biennial basis, unless otherwise agreed by the States Parties. The meeting of States Parties shall adopt its rules of procedure at its first session. Pending their adoption, the rules of procedure of the United Nations conference to negotiate a legally binding instrument to prohibit nuclear weapons, leading towards their total elimination, shall apply.
3. Extraordinary meetings of States Parties shall be convened, as may be deemed necessary, by the Secretary-General of the United Nations, at the written request of any State Party provided that this request is supported by at least one third of the States Parties.
4. After a period of five years following the entry into force of this Treaty, the Secretary-General of the United Nations shall convene a conference to review the operation of the Treaty and the progress in achieving the purposes of the Treaty. The Secretary-General of the United Nations shall convene further review conferences at intervals of six years with the same objective, unless otherwise agreed by the States Parties.
5. States not party to this Treaty, as well as the relevant entities of the United Nations system, other relevant international organizations or institutions, regional organizations, the International Committee of the Red Cross, the International Federation of Red Cross and Red Crescent Societies and relevant non-governmental organizations, shall be invited to attend the meetings of States Parties and the review conferences as observers.

Article 9**Costs**

1. The costs of the meetings of States Parties, the review conferences and the extraordinary meetings of States Parties shall be borne by the States Parties and States not party to this Treaty participating therein as observers, in accordance with the United Nations scale of assessment adjusted appropriately.
2. The costs incurred by the Secretary-General of the United Nations in the circulation of declarations under Article 2, reports under Article 4 and proposed amendments under Article 10 of this Treaty shall be borne by the States Parties in accordance with the United Nations scale of assessment adjusted appropriately.

3. The cost related to the implementation of verification measures required under Article 4 as well as the costs related to the destruction of nuclear weapons or other nuclear explosive devices, and the elimination of nuclear-weapon programmes, including the elimination or conversion of all nuclear-weapons-related facilities, should be borne by the States Parties to which they apply.

Article 10 **Amendments**

1. At any time after the entry into force of this Treaty, any State Party may propose amendments to the Treaty. The text of a proposed amendment shall be communicated to the Secretary-General of the United Nations, who shall circulate it to all States Parties and shall seek their views on whether to consider the proposal. If a majority of the States Parties notify the Secretary-General of the United Nations no later than 90 days after its circulation that they support further consideration of the proposal, the proposal shall be considered at the next meeting of States Parties or review conference, whichever comes first.

2. A meeting of States Parties or a review conference may agree upon amendments which shall be adopted by a positive vote of a majority of two thirds of the States Parties. The Depositary shall communicate any adopted amendment to all States Parties.

3. The amendment shall enter into force for each State Party that deposits its instrument of ratification or acceptance of the amendment 90 days following the deposit of such instruments of ratification or acceptance by a majority of the States Parties at the time of adoption. Thereafter, it shall enter into force for any other State Party 90 days following the deposit of its instrument of ratification or acceptance of the amendment.

Article 11 **Settlement of disputes**

1. When a dispute arises between two or more States Parties relating to the interpretation or application of this Treaty, the parties concerned shall consult together with a view to the settlement of the dispute by negotiation or by other peaceful means of the parties' choice in accordance with Article 33 of the Charter of the United Nations.

2. The meeting of States Parties may contribute to the settlement of the dispute, including by offering its good offices, calling upon the States Parties concerned to start the settlement procedure of their choice and recommending a time limit for any agreed procedure, in accordance with the relevant provisions of this Treaty and the Charter of the United Nations.

Article 12 **Universality**

Each State Party shall encourage States not party to this Treaty to sign, ratify, accept, approve or accede to the Treaty, with the goal of universal adherence of all States to the Treaty.

Article 13 **Signature**

This Treaty shall be open for signature to all States at United Nations Headquarters in New York as from 20 September 2017.

Article 14 **Ratification, acceptance, approval or accession**

This Treaty shall be subject to ratification, acceptance or approval by signatory States. The Treaty shall be open for accession.

Article 15 **Entry into force**

1. This Treaty shall enter into force 90 days after the fiftieth instrument of ratification, acceptance, approval or accession has been deposited.

2. For any State that deposits its instrument of ratification, acceptance, approval or accession after the date of the deposit of the fiftieth instrument of ratification, acceptance, approval or accession, this Treaty shall enter into force 90 days after the date on which that State has deposited its instrument of ratification, acceptance, approval or accession.

Article 16 **Reservations**

The Articles of this Treaty shall not be subject to reservations.

Article 17 **Duration and withdrawal**

1. This Treaty shall be of unlimited duration.

2. Each State Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty if it decides that extraordinary events related to the subject matter of the Treaty have jeopardized the supreme interests of its country. It shall give notice of such withdrawal to the Depositary. Such notice shall include a statement of the extraordinary events that it regards as having jeopardized its supreme interests.

3. Such withdrawal shall only take effect 12 months after the date of the receipt of the notification of withdrawal by the Depositary. If, however, on the expiry of that 12-month period, the withdrawing State Party is a party to an armed conflict, the State Party shall continue to be bound by the obligations of this Treaty and of any additional protocols until it is no longer party to an armed conflict.

Article 18

Relationship with other agreements

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.

Article 19

Depositary

The Secretary-General of the United Nations is hereby designated as the Depositary of this Treaty.

Article 20

Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Treaty shall be equally authentic.

DONE at New York, this seventh day of July, two thousand and seventeen.

THE TPNW ENTERS INTO FORCE

A TURNING POINT FOR THE CAMPAIGN TO BAN NUCLEAR WEAPONS?

Dr Tiphaine de Champchesnel

By entering into force on January 22, 2021, did the Treaty on the Prohibition of Nuclear Weapons (TPNW) ban nuclear weapons? From a legal perspective, the scope of the treaty does not reach beyond its members, all of whom already committed years ago not to acquire nuclear weapons, through the Treaty on the Non-Proliferation of Nuclear Weapons (NPT). Yet, the international campaign led by a group of players, the most visible undoubtedly being the International Campaign to Abolish Nuclear Weapons (ICAN), asserts that nuclear weapons are “outlawed”. In particular, ICAN builds on this development to legitimize its action and chart a course that is no doubt necessary to secure its future and improve the image of the TPNW. At the same time, this NGO is driving a strategy to delegitimize nuclear weapons and stigmatize a number of States among those that have chosen to base their security on nuclear deterrence. This study aims to examine the challenges inherent in implementing the TPNW and the mechanisms involved in its use by ICAN.