



INTERNATIONAL HUMAN RIGHTS CLINIC
HUMAN RIGHTS PROGRAM AT HARVARD LAW SCHOOL

VICTIM ASSISTANCE AND ENVIRONMENTAL REMEDIATION IN THE TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS

Myths and Realities

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While the Treaty on the Prohibition of Nuclear Weapons (TPNW) is best known for banning nuclear weapons, it also requires states parties to assist victims, remediate the environment, and provide international cooperation and assistance.

- Article 6(1) of the TPNW obliges states parties to provide assistance to individuals who have been affected by the use or testing of nuclear weapons. This assistance should include physical and psychological health care, rehabilitation, and measures to promote socioeconomic inclusion. It ultimately aims to ensure that individuals affected by nuclear weapons use or testing can enjoy their human rights.
- Article 6(2) requires states parties to address the environmental damage caused by nuclear weapons use and testing by taking “necessary and appropriate measures” toward remediating contaminated areas.
- Article 7 stipulates that, to facilitate implementation of the treaty, all states parties should cooperate and those “in a position to do so” should provide affected states parties with technical, material, or financial assistance.

These obligations address the ongoing harm caused by nuclear weapons use and testing and can have an immediate effect, regardless of the involvement of nuclear-armed states.

This paper seeks to raise awareness of these so-called “positive obligations,” reproduced in full in the appendix, and to correct misconceptions and misrepresentations about their content. It identifies and dispels 10 myths about the provisions and explains why the provisions are a valuable tool for advancing the TPNW’s humanitarian aim.¹

¹ For more information, see Harvard Law School International Human Rights Clinic (IHRC), “Victim Assistance under the Treaty on the Prohibition of Nuclear Weapons,” April 2018; IHRC, “Environmental Remediation under the Treaty on the Prohibition of Nuclear Weapons,” April 2018, both available at <http://hrp.law.harvard.edu/staff/understanding-victim-assistance-and-environmental-remediation-under-the-treaty-on-the-prohibition-of-nuclear-weapons/> (accessed April 17, 2019).

Myth No. 1: Positive obligations have no place in a nuclear weapon ban treaty.

Reality: Positive obligations, which are a fundamental part of humanitarian disarmament, further the TPNW’s goal of addressing the “catastrophic humanitarian consequences” of nuclear weapons.²

- The TPNW is the most recent humanitarian disarmament treaty. This people-centered approach to disarmament seeks to prevent and remediate the human suffering and environmental harm inflicted by arms.³
- While prohibitions can prevent future harm, positive obligations are necessary to address the ongoing harm caused by nuclear weapons use or testing.
- Earlier humanitarian disarmament treaties, notably the Mine Ban Treaty and the Convention on Cluster Munitions, have effectively coupled prohibitions with measures to assist victims and clear remnants of war.⁴

Myth No. 2: The TPNW imposes an unfair burden on affected states parties because it assigns them responsibility for victim assistance and environmental remediation.

Reality: The TPNW places primary responsibility on affected states parties in order to promote more effective and timely assistance and remediation, respect national sovereignty, and follow international legal precedent.

- Because of their proximity to victims and contaminated areas, affected states are in the best position to assess needs, deliver assistance, and remediate the environment.
- Placing primary responsibility on affected states parties respects their sovereignty because it recognizes their authority over victim assistance and environmental remediation activities within their territory.

² See Treaty on the Prohibition of Nuclear Weapons, adopted July 7, 2017, opened for signature September 20, 2017, pmbl., para. 2 (expressing deep concern for “the catastrophic humanitarian consequences that would result from any use of nuclear weapons”).

³ Humanitarian Disarmament, “About,” <https://humanitariandisarmament.org/about/> (accessed April 4, 2019).

⁴ Mine Ban Treaty, adopted September 18, 1997, entered into force March 1, 1999, arts. 1, 5, 6(3); Convention on Cluster Munitions, adopted May 30, 2008, entered into force August 1, 2010, arts. 1, 4, 5.

- This approach accords with international human rights law, which requires states to ensure the human rights of their people.⁵ It also follows the precedent of earlier humanitarian disarmament treaties.⁶

Myth No. 3: Under the TPNW, affected states parties bear sole responsibility for victim assistance and environmental remediation.

Reality: The TPNW spreads responsibility for the positive obligations across states parties.

- Article 7(2) of the TPNW recognizes that affected states parties may need help to meet their treaty obligations and acknowledges their “right to seek and receive assistance.”
- Article 7(3) obligates each state party “in a position to do so” to provide technical, material, or financial assistance to affected states parties. This international assistance is designed to facilitate affected states parties’ implementation of the treaty and, in particular, its victim assistance and environmental remediation provisions.
- Because assistance can take a variety of forms, each state party should be in a position to support affected states parties in some way. For example, a state party with fewer financial resources may share expertise or equipment.
- Article 7(1) obligates each state party to “cooperate with other States Parties to facilitate the implementation of” the treaty. States parties should make the provision of assistance as easy as possible and remove barriers such as customs duties or burdensome restrictions on the transfer of information or equipment.⁷

Myth No. 4: The TPNW absolves states parties that have used or tested nuclear weapons (“user states”) from any responsibility to address the harm they caused.

Reality: The TPNW explicitly requires user states parties to help mitigate the harm they have caused and does not undercut other obligations user states may have toward the states they affected.

⁵ See, for example, International Covenant on Civil and Political Rights (ICCPR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force March 23, 1976, art. 2(1); International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted December 16, 1966, G.A. Res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 49, U.N. Doc. A/6316 (1966), 993 U.N.T.S. 3, entered into force January 3, 1976, art. 2.

⁶ See, for example, Convention on Cluster Munitions, art. 5.

⁷ For a similar interpretation of a comparable provision in the Convention on Cluster Munitions, see Bonnie Docherty and Richard Moyes, “Article 6: International Cooperation and Assistance,” in *The Convention on Cluster Munitions: A Commentary*, eds. Gro Nystuen and Stuart Casey-Maslen (Oxford: Oxford University Press, 2010), p. 418.

- Article 7(6) of the TPNW obligates user states parties to “provide adequate assistance to affected States Parties for the purpose of victim assistance and environmental remediation,” reinforcing that user states parties have legal and moral responsibility to address the harmful consequences of their actions.
- Article 6 specifies that its victim assistance and environmental remediation obligations “shall be without prejudice to the duties and obligations of any other States under international law or bilateral agreements.” For example, the TPNW will not legally alter other agreements in which user states have pledged to provide aid to affected states after nuclear weapons use or testing.
- Nothing in the TPNW precludes an affected state party from seeking other forms of redress from a user state.

Myth No. 5: The TPNW’s victim assistance provision is impractical because it cannot fully address the human harm caused by nuclear weapons use and testing.

Reality: Despite the scale of the harm caused by nuclear weapons, victim assistance measures can make a significant difference in the lives of individual survivors.

- A variety of concrete measures can be taken to help people affected by nuclear weapons use and testing. These measures include, but are not limited to: screening for diseases associated with nuclear fallout, providing treatment for physical and psychological injuries linked to the use or testing of nuclear weapons, and ensuring socioeconomic inclusion for affected populations, such as by reducing the stigma associated with being a victim.
- The holistic nature of victim assistance not only addresses the health problems of affected individuals but also promotes their participation in society and the realization of their human rights.
- The human rights principle of progressive realization further alleviates concerns about the practicality of the TPNW’s victim assistance and environmental remediation obligations. Progressive realization requires states to strive to realize economic, social, and cultural rights, but it recognizes that full attainment may take time due to resource constraints.⁸

⁸ See, for example, ICESCR, art. 2(1) (“Each State Party to the present Covenant undertakes to take steps, individually and through international assistance and cooperation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.”). See also Office of the UN High Commissioner for Human Rights, “Fact Sheet No. 33: Frequently Asked Questions on Economic, Social and Cultural Rights,” December 2008, <https://www.ohchr.org/Documents/Publications/FactSheet33en.pdf> (accessed March 1, 2019), pp. 13-14.

Myth No. 6: The TPNW’s obligation to assist victims is overly broad and unworkable because it is too difficult to determine who is entitled to its benefits.

Reality: The identification of individuals who should receive victim assistance under the TPNW should be guided by the core purpose of this victim-centered provision: to assist individuals whose exposure to nuclear weapons use or testing has increased their risk of experiencing harm closely linked with the effects of nuclear weapons.

- The TPNW entitles individuals “affected by the use or testing of nuclear weapons” to victim assistance. Determinations of who qualifies as affected can take into account factors such as the level of exposure and the nature of harm. For example, if an individual can demonstrate a certain amount or duration of exposure and has experienced a type of harm associated with that level of exposure, that individual could be considered affected for the purposes of a victim assistance program.⁹
- The TPNW does not oblige victims to meet traditional evidentiary standards of legal liability. If there is uncertainty as to whether an individual’s harm was caused by nuclear use or testing, “a precautionary approach that emphasizes the likelihood of risk over conclusive proof may prove more prudent and protective of [human] rights.”¹⁰
- Implementation of this provision should focus on those most affected by nuclear weapons use or testing. Special attention should be paid to groups that have been disproportionately affected, such as indigenous peoples and women and girls.¹¹
- While individuals whose injuries are tenuously linked to nuclear weapons use or testing could claim they have a right to assistance, the possibility of marginal cases should not be used as an excuse to dismiss the victim assistance provision of the TPNW.

⁹ Certain diseases, such as thyroid cancer and birth defects, have been linked to heightened radiation exposure consistent with nuclear fallout or contamination. See, for example, US Environmental Protection Agency, “Radiation Protection: Radiation Health Effects,” <https://www.epa.gov/radiation/radiation-health-effects> (accessed February 10, 2019); Environmental Pollution Centers, “Radioactive Pollution Diseases,” 2017, <https://www.environmentalpollutioncenters.org/radiation/diseases/> (accessed February 10, 2019).

¹⁰ UN Human Rights Council, Report of the Special Rapporteur on the Implication for Human Rights of the Environmentally Sound Management and Disposal of Hazardous Substances and Wastes, Calin Georgescu, Addendum: Mission to the Marshall Islands (27-30 March 2012) and the United States of America (24-27 April 2012), A/HRC/21/48/Add.1, September 3, 2012, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/163/76/PDF/G1216376.pdf?OpenElement> (accessed March 27, 2019), para. 55.

¹¹ TPNW, pmb1, paras. 4, 7; International Campaign to Abolish Nuclear Weapons (ICAN), “Victim Rights and Victim Assistance in a Treaty Prohibiting Nuclear Weapons: A Humanitarian Imperative,” submission to the UN Conference to Negotiate a Legally Binding Instrument to Prohibit Nuclear Weapons, Leading Towards their Total Elimination, A/CONF.229/2017/NGO/WP.14, March 31, 2017, <https://www.un.org/disarmament/tpnw/pdf/A%20CONF.229%202017%20NGO%20WP.14.pdf> (accessed March 27, 2019), paras. 10, 17, 19.

Myth No. 7: Victim assistance programs will be detached from the individuals they seek to help.

Reality: Accepted principles of victim assistance require that programs be inclusive, sensitive to victims' needs, and nondiscriminatory.

- States parties are expected to involve affected individuals and their representative organizations at all stages of developing, implementing, and assessing victim assistance measures. For example, states parties can schedule regular meetings with the community or appoint victim representatives to work with the government on different aspects of assistance programs. Such practices facilitate victim participation and improve understanding of victims' needs and perspectives.
- Under TPNW Article 6(1), victim assistance must be implemented “without discrimination.” In other words, programs must not discriminate among victims on the basis of such characteristics as race, color, language, ethnicity, sex, gender identity, age, national origin, religion, disability, or geographic location.
- Standards developed in the context of other humanitarian disarmament treaties, especially the Mine Ban Treaty and the Convention on Cluster Munitions, provide guidelines for effective, victim-centered implementation of the TPNW's assistance provision.¹²

Myth No. 8: Trying to implement the TPNW's environmental remediation obligation is futile because of the extent of the environmental damage caused by nuclear weapons.

Reality: The TPNW requires “necessary and appropriate” steps toward remediating contaminated areas, while recognizing that the environment cannot necessarily be returned to its pre-detonation state.

- Environmental remediation can contain or reduce contamination from nuclear weapons use and testing. It can take a variety of forms, including but not limited to: gathering radioactive soil and material and storing it in a safe containment facility onsite¹³;

¹² Third Review Conference of the Mine Ban Treaty, “Maputo Action Plan,” APLC/CONF/2014/WP.5, June 16, 2014, https://www.apminebanconvention.org/fileadmin/user_upload/Maputo_Action_Plan_on_Mine_Clearance.pdf (accessed April 17, 2019), para. 6; Convention on Cluster Munitions, art. 5.

¹³ For example, the Runit Dome, located on Enewetak Atoll in the Marshall Islands, was built as an onsite storage facility, sealing radioactive waste from US nuclear testing with concrete. See Coleen Jose, Kim Wall, and Jan Hendrik Hinzl, “This Dome in the Pacific Houses Tons of Radioactive Waste—and It’s Leaking,” *Guardian*, July 3, 2015, <https://www.theguardian.com/world/2015/jul/03/runit-dome-pacific-radioactive-waste> (accessed April 17, 2019). The United States has also stored onsite contaminated soil from its nuclear testing conducted at the Nevada National Security Site (formerly the Nevada Testing Site). US Office of Environmental Management, “Nevada Program Set for Substantial Progress in Groundwater, Soil Cleanup,” January 31, 2017, <https://www.energy.gov/em/articles/nevada-program-set-substantial-progress-groundwater-soil-cleanup> (accessed April 17, 2019).

removing the contamination to a facility offsite¹⁴; and introducing in the soil other materials, such as potassium, that plants absorb instead of radioactive material, thus keeping contamination out of the food chain.¹⁵

- These methods have been used in numerous countries, including in the cleanup of several nuclear reactor meltdowns and the remediation of nuclear weapons testing and production sites.¹⁶ Multiple case studies show that environmental remediation can decrease levels of radiation in the soil.¹⁷
- Environmental remediation should also include measures to prevent people from interacting with contaminated areas until comprehensive remediation can be undertaken and completed. For example, erecting warning signs and fencing, routinely monitoring contamination, and disseminating information through risk reduction education programs can reduce exposure.

Myth No. 9: The TPNW's victim assistance, environmental remediation, and international cooperation and assistance provisions will dissuade some states from ratifying the treaty.

Reality: States parties can meet their positive obligations in a variety of ways that match their individual capacities.

- Many heavily affected states have ratified previous humanitarian disarmament treaties, such as the Mine Ban Treaty and Convention on Cluster Munitions.¹⁸ These and other

¹⁴ During the Cold War, the Savannah River Site, located in South Carolina, produced materials used in US nuclear weapons. As part of its cleanup efforts, the US Department of Energy has shipped radioactive waste from the Savannah River Site to New Mexico for offsite storage. US Department of Energy, "Savannah River Site Federal Facility Agreement Community Involvement Plan," WSRC-RP-96-120 Revision 7, February 2011, https://sro.srs.gov/docs/CIP_2011.pdf (accessed April 18, 2019), pp. 7, 26.

¹⁵ Marshall Islands Dose Assessment & Radioecology Program, "Bikini Atoll: Remediation Options," last modified April 17, 2015, <https://marshallislands.llnl.gov/bikini.php> (accessed April 17, 2019).

¹⁶ These and other methods of remediation have been used to remediate radioactive waste in the environment in countries including, but not limited to, Japan, the Marshall Islands, Ukraine, and the United States.

¹⁷ For example, the United States has undertaken significant remediation efforts at the Nevada National Security Site and the Savannah River Site. By September 2014, a US Department of Energy program at the Nevada site had remediated 99 percent of all industrial sites, i.e., "sites that may have become contaminated as a result of activities conducted in support of nuclear testing," and 70 percent of the contaminated soil. US Department of Energy Environmental Management Nevada Program, "Environmental Restoration," DOE/NV-537 REV5 factsheet, November 2014, https://www.nnss.gov/docs/fact_sheets/DOENV_537.pdf (accessed April 17, 2019), p. 2. US Department of Energy cleanup measures at the Savannah River Site had sent more than 10,000 drums of transuranic waste to a storage facility in New Mexico by 2004, 12 years ahead of schedule. US Department of Energy, "Savannah River Site Federal Facility Agreement Community Involvement Plan," p. 26.

¹⁸ For example, Afghanistan, Cambodia, Colombia, and Iraq are among the states most heavily affected by landmines, and all have ratified the Mine Ban Treaty. International Campaign to Ban Landmines, *Landmine Monitor 2018*, November 2018, http://www.the-monitor.org/media/2918780/Landmine-Monitor-2018_final.pdf (accessed April 17, 2019), p. 25. Iraq, Laos, and Lebanon, which are among the states most heavily contaminated by cluster munitions, are states parties to the Convention on Cluster Munitions. Cluster Munition Coalition, *Cluster Munition Monitor 2018*, August 2018, http://the-monitor.org/media/2907293/Cluster-Munition-Monitor-2018_web_revised4Sep.pdf (accessed April 17, 2019), p. 62.

countries have benefited from international cooperation and assistance, which has helped them assist victims and clear remnants of war.¹⁹

- Recognizing the limitations of affected states' resources, the TPNW allows for the progressive realization of its positive obligations. It does not require affected states to fully implement victim assistance and environmental remediation programs overnight.
- The TPNW also acknowledges the different capabilities of other states parties to support affected states parties. The treaty allows each state party to determine what level of international assistance it is "in a position" to provide.
- Similarly, because international cooperation and assistance can take many forms, states parties may choose how they can best support affected states parties. For example, states parties with fewer financial resources may provide technical expertise, equipment, or human resources.

Myth No. 10: The TPNW will fail to produce any real change as long as nuclear-armed states refuse to join.

Reality: Regardless of nuclear-armed states' participation in the TPNW, the treaty's prohibitions and positive obligations create international norms and establish obligations that help address the ongoing humanitarian consequences of nuclear weapons.

- By making nuclear weapons unlawful, the TPNW increases the stigma against nuclear weapons and places greater pressure on nuclear-armed states to relinquish those weapons.
- The treaty's provisions on victim assistance and environmental remediation, which do not appear in earlier nuclear weapon treaties, set new international standards for dealing with the effects of the use and testing of these weapons. The provisions also extend the application of positive obligations from explosive remnants of war to toxic remnants of war.²⁰
- As soon as the TPNW enters into force, the positive obligations can begin providing tangible benefits for people and areas affected by nuclear weapons use or testing. These benefits do not depend on nuclear-armed states' ratification of the treaty.

¹⁹ For example, 25 states parties to the Mine Ban Treaty have contributed funding to victim assistance between 2007 and 2017. Afghanistan, Cambodia, Colombia, and Iraq have collectively received more than US\$50 million for victim assistance in that period. Landmine and Cluster Munitions Monitor, "Mine Ban Treaty Funding for Victim Assistance," <http://www.the-monitor.org/media/2921969/VictimAssistanceFunding.pdf> (accessed February 27, 2019).

²⁰ The term "explosive remnants of war" encompasses "unexploded ordnance and abandoned explosive ordnance," including cluster munition remnants. Convention on Conventional Weapons Protocol V on Explosive Remnants of War, adopted November 28, 2003, entered into force November 12, 2006, art. 2(4). The term "toxic remnants of war" refers to "any toxic or radiological substance resulting from military activities that forms a hazard to humans or ecosystems." Humanitarian Disarmament, "Toxic Remnants of War," <https://humanitariandisarmament.org/toxic-remnants-of-war/> (accessed April 4, 2019).

APPENDIX

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.