

Obligations towards victims and the environment in the Convention on the Prohibition of Nuclear Weapons

The imperative to prevent any use of nuclear weapons, and therefore to prohibit and eliminate them, is driven by the catastrophic consequences of any use of nuclear weapons; the existential threat they pose; and the lack of any adequate humanitarian response capacity to assist the victims in the aftermath of a nuclear weapon explosion. Establishing and promoting norms and obligations for victim assistance and environmental remediation is nevertheless important, and reinforces the urgent requirement to prohibit and eliminate nuclear weapons.

Severe, lifelong, indiscriminate and transgenerational harm has resulted not only from the nuclear bombings of Hiroshima and Nagasaki, but also from the testing, development and production of nuclear weapons. Late effects and long-lived environmental contamination will continue to create new victims.

It is therefore vital that the Convention on the Prohibition of Nuclear Weapons adequately addresses the rights and responds to the needs of the victims of nuclear weapons. It should similarly respond to the environmental consequences of nuclear weapons, which pose a continuing hazard to human health and communities.

Concern at the catastrophic consequences of nuclear weapons for individuals and the environment has been a key underpinning for the initiative to prohibit these weapons. States should fully follow through on these concerns by including strong provisions for the people and places affected by nuclear weapons in the final text of the treaty.

Obligations towards the victims of nuclear weapons must be at least equal to the provisions afforded to victims of other prohibited weapons in international treaties.

A rights-based approach is the international standard here. This means that victims are identified by whether the realization of their rights has been impaired.

With this approach, the primary responsibility for ensuring that victims' rights are respected and needs are met lies with the state in whose jurisdiction or control they live or work. This is consistent with states' general human rights obligations and responsibilities towards any of their citizens.

Placing primary responsibility with affected states for the remediation of affected environments would similarly be consistent with states' general human rights obligations and would respect state sovereignty.

However, taking this approach should not mean that affected states must face these issues alone or be solely responsible for addressing them. Establishing strong international cooperation and assistance provisions is crucial to helping affected states meet their obligations to victims and the environment, and in order to establish responsibility for these matters amongst all states party to the treaty.

This approach does not seek to place undue burdens on affected states. Rather, it seeks to elevate international visibility and expectations, and put international measures in place that can support the addressing of rights and needs. This has been the function of provisions on victim assistance and clearance in previous treaties to prohibit anti-personnel mines and cluster munitions. Provisions in the current treaty can be modeled on these examples. Heavily affected states have joined both these treaties.

Also, whilst these obligations do not seek to address questions of blame or liability, or financial compensation for the use of particular weapons, including these obligations would also not in any way preclude states parties from seeking redress from others that have used or tested nuclear weapons in areas under their jurisdiction or control.

The draft text of the Convention on the Prohibition of Nuclear Weapons contains elements in draft Article 6 that provide a solid basis for robust victim assistance obligations, as well as for useful provisions on the remediation of affected environments. Draft articles 6 and 8 contain the basis for international cooperation and assistance obligations. The suffering of victims and the catastrophic harm to the environment caused by nuclear weapons are also highlighted in the preamble.

These aspects of the draft text and the progress made so far on these issues should be welcomed. However, the treaty's provisions on victim assistance and environmental remediation – as well as international cooperation and assistance – must be strengthened and clarified in the final text.

Obligations for victim assistance

In order to best serve the victims of nuclear weapons, reflect the humanitarian underpinnings of the treaty, and uphold standards set by other treaties with respect to victim assistance:

- The requirement to uphold the rights of and assist victims under a state's jurisdiction or control must apply to all states
- The principle of non-discrimination – meaning that those affected by nuclear weapons detonations should not be discriminated against, and that there should be no discrimination in assistance given between victims of nuclear weapons detonations and others with similar needs – should also be included in the treaty
- The need to fully realize the rights of all victims should be referenced in the preamble, as should human rights law
- The text should outline in more detail the principles for victim assistance and ways in which it can be provided, and provide guidance and provision for reporting. Article 5(2) of the Convention on Cluster Munitions can serve as a guide
- The formulation of the range of assistance that should be provided to victims in Article 6(1) and the reference to legal frameworks is strong and should be retained

Obligations for environmental remediation

Currently, draft article 6 only refers to the right of parties to request assistance with environmental remediation, but does not establish an obligation on states to undertake remediation. To follow and build on standards for other prohibited weapons, the text should:

- Articulate the responsibility of states to take steps to remediate environments under their jurisdiction or control to the extent possible
- Outline in more detail principles for environmental remediation and ways in which it can be undertaken. This should include measures for the protection of populations and the reduction of risk, including risk reduction education. It should also provide guidance and provision for reporting. Provisions on clearance,

marking, fencing and posting warnings in previous treaties – for explosive, rather than toxic remnants of war – can provide guidance

- Reference environmental law and sustainable development in the preamble
- Note that states that have used or tested nuclear weapons or other nuclear explosive devices should be strongly encouraged to provide assistance and remediation

Underpinning these provisions with international cooperation and assistance

International cooperation and assistance is particularly important for the Convention on the Prohibition of Nuclear Weapons, because the scale of the effects of these weapons makes it difficult for states to manage these alone.

In considering implementation measures, states should ensure that the treaty details the areas in which parties will have a right to seek and receive assistance, and elaborate the areas in which those in a position to do so shall provide assistance as well as cooperation to help other states meet their responsibilities under the treaty. Currently draft Article 8(1) only refers to cooperation.

The right to seek and receive assistance for victim assistance and environmental remediation, and the obligation to provide cooperation and assistance in these areas to other states, should be fully articulated in the treaty.

The types of assistance to be sought and provided should also be described, such as legal or legislative assistance, institutional capacity-building, and technical, material or financial assistance.

The international cooperation and assistance provision should specify, as Article 6(3) does currently, how assistance can be provided.

Clarity would be gained by placing states' obligations with respect to areas under their jurisdiction or control in one or two articles addressing victim assistance and environmental remediation, and placing all international cooperation and assistance provisions in a separate article (rather than dividing the latter between Articles 6 on assistance and 8 on cooperation).