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

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Victim assistance in the nuclear weapon ban treaty: a comprehensive and detailed approach¹

Submitted by Article 36

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1. To fulfill the humanitarian purpose of the treaty, negotiating states should ensure the text addresses victim assistance in a comprehensive and detailed manner. Victim assistance focuses on victims' needs—particularly their long-term needs—and embodies the enduring commitment of states parties where victims live (“affected states”) to work towards victims' full and effective participation in society through the realization of their human rights.

2. In the President's May 22, 2017 draft text, the first paragraph of draft Article 6, which addresses the topic of assistance more broadly, requires affected states parties that are in a position to do so to provide appropriate assistance to individuals affected by nuclear weapons use or testing. Draft Article 6 offers a solid foundation for negotiating states to build on, to strengthen the treaty's victim assistance obligations. To address victim assistance in a comprehensive and detailed manner, draft Article 6(1) should elaborate further on affected states parties' victim assistance obligations. It should also be complemented by an expanded international cooperation and assistance article (draft Article 8), which, among other elements, explicitly requires states parties to assist affected states parties to implement their victim assistance obligations.

The Importance of Victim Assistance

3. The suffering of victims of nuclear weapons has been significant and includes physical as well as non-physical harms, such as psychological and socioeconomic harms. In its preamble, the draft text notes states parties' deep concern about “the catastrophic humanitarian consequences that would result from any use of nuclear

¹ This summary paper is based on a longer research paper, ‘Victim assistance in the nuclear weapon ban treaty: a comprehensive and detailed approach,’ available at: <http://www.article36.org/wp-content/uploads/2017/06/VA-ban-treaty-full.pdf>. Contact: Anna Crowe, Harvard Law School, acrowe@law.harvard.edu or Elizabeth Minor, Article 36, elizabeth@article36.org

weapons” and adds that those consequences “pose grave implications for human survival, the environment, socioeconomic development, the global economy, food security and for the health of future generations.” Victim assistance responds to the physical and non-physical harms victims experience and requires affected states to dismantle barriers and put in place measures to ensure victims’ full and effective participation in society. In practice, victim assistance measures can range from medical care and psychosocial support for individual victims to poverty reduction strategies in affected communities.

The Need for Comprehensive and Detailed Treatment of Victim Assistance in the Nuclear Weapon Ban Treaty

4. Comprehensive and detailed treatment of victim assistance would signal its importance while also:

- a) *Furthering the treaty’s humanitarian goal*, which is to eliminate or reduce human suffering from the use and testing of nuclear weapons, by providing meaningful mechanisms to assist those who have suffered harm from the weapons’ testing or use.
- b) *Setting a clear legal standard for states parties* thereby making it easier for states parties to understand and meet their obligations, as well as providing a standard against which state implementation could be measured.
- c) *Establishing an international standard* that could influence the behavior of states not party.
- d) *Advancing international law*. While reinforcing the victim assistance obligations in past treaties, it would expand the scope to encompass toxic, as well as explosive, remnants of war. It would also require assistance for victims of a weapon of mass destruction for the first time.

Victim Assistance Elements of the Nuclear Weapon Ban Treaty

5. The nuclear weapons ban treaty should follow the model of the Convention on Cluster Munitions, whose treatment of victim assistance sets a standard for future humanitarian disarmament treaties. Victim assistance obligations could appear either as additional paragraphs (or subparagraphs) in Article 6, or Article 6(1) could form the basis of a new standalone article on victim assistance.

Victim Assistance Obligations

6. The detailed obligations on victim assistance articulated in the operative text should:

- a) Include a broad concept of a victim.

- Although a broad formulation could encompass large numbers of people, it would not make the victim assistance obligations unmanageable. Because victim assistance responds to harms people suffer as a result of nuclear weapons use or testing, if an individual suffers no harm, no obligation to provide that individual with assistance would arise under the treaty.
- b) Place primary responsibility for victim assistance on affected states parties.
- The requirement to provide victim assistance falls within a state's general obligations under international human rights law to ensure that the rights of all people in its territory are respected, protected, and fulfilled and to take steps to eliminate barriers people face to fully and effectively participating in society.
 - An affected state is better able to assess the needs of affected individuals within its territory and provide them with necessary support than a foreign state.
- c) Require affected states parties to provide a wide range of assistance.
- The draft text requires affected states parties to “adequately provide age- and gender-sensitive assistance, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion.” This formulation should be retained as it anticipates the need for assistance that responds to the needs of victims and acknowledges that these extend beyond the medical realm.
- d) Not exclude any affected states parties from the responsibility to provide victim assistance.
- The phrase “in a position to do so” should be removed from the draft text to align the text with the rights-based approach to victim assistance, which represents the standard in this area.
 - With international assistance, every affected state party should be able to meet victim assistance obligations.
- e) Outline methods and principles for providing victim assistance.
- Assistance should be tailored to victims' needs and affected states parties should be required to assess victims' needs as well as make every effort to collect reliable relevant data regarding victims.
 - Victims of nuclear weapons should be actively involved in decision making concerning them.
 - The principle of non-discrimination should be respected: affected states parties must not give preferential treatment to a group of individuals, to the exclusion of others who have similar needs and face similar barriers.

f) Give guidance on steps to implement victim assistance obligations and require states parties to report on their implementation of these obligations.

- Implementation steps include developing, implementing, and enforcing any necessary national laws and policies, as well as striving to incorporate relevant guidelines and good practices in the delivery of victim assistance, developing a national plan and budget for victim assistance activities, and designating a focal point to coordinate implementation.
- Affected states parties should be required report on the status and progress of their implementation of their victim assistance obligations within a certain amount of time after the treaty comes into force and to update that information annually.

International Cooperation and Assistance Obligations

7. Draft Article 8 is a good starting point, but should be stronger and clearer. The treaty should:

- a) Require states parties to provide assistance as well as cooperation.
- b) Elaborate on the types of assistance states parties should provide, such as technical, material, or financial help. States parties that have used or tested nuclear weapons could agree to take on obligations to give extra assistance, including in the form of information.

Enumerate areas, including victim assistance, for which international cooperation and assistance is required.