

‘Victim assistance’ in international agreements on civilian protection and weapons policy: Understanding the value to past, present and future instruments

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This paper looks at the content and implementation of the commitments to ‘victim assistance’ that have featured in recent weapons treaties as well as the Safe Schools Declaration. It argues for the value and necessity of including similar commitments in future international agreements relating to weapons policy and civilian protection, and concludes with recommendations to this effect.

The impetus for several recent international agreements to prohibit or restrict specific weapons or practices in armed conflict has been to prevent future suffering. Treaties prohibiting anti-personnel landmines,¹ cluster munitions² and nuclear weapons³ have been agreed with the intention that there should be no further victims from the use of these weapons. The Safe Schools Declaration (SSD),⁴ an international political commitment, aims to prevent both humanitarian harm and the denial of the right to education from attacks on educational facilities and the military use of schools.

If prevention is a key goal, those that have already been victimised – or may be harmed after these agreements, from the remnants of weapons or other impacts of past actions – also continue to have rights, and needs, that must be addressed.

The concept of ‘victim assistance’ obligations responds to this fact. Originating in disarmament law, it features in these four agreements, as well as Protocol V of the Convention on Certain Conventional Weapons.⁵ It emerged from the demands of landmine survivors for an international, practical response to the harms and barriers to full participation in society that they faced following landmine injuries.⁶ In all these frameworks, the obligation or commitment to provide or improve assistance to victims on the part of affected states – countries

Girls attend a class at their school damaged by a recent Saudi-led air strike, in the Red Sea port city of Hodeidah, Yemen October 24, 2017. REUTERS/ Abduljabbar Zeyad



with victims under their jurisdiction or control – is also accompanied by commitments by all states to international cooperation and assistance.⁷ This means practically that greater resources and means should flow to states and communities to support victims as a result of these international frameworks. Other remedial measures to address past harm and prevent future harm – such as land clearance – are also integral and essential to these agreements.

Humanitarian concerns and the suffering of victims were the basis for the Anti-Personnel Mine Ban Treaty, as well as subsequent international agreements. A commitment to address victims' needs and rights for rehabilitation and reintegration might therefore be considered a logical and necessary addition to such instruments – and perhaps the fulfilment of a moral imperative towards those whose experiences were mobilised for these causes. It can also be considered a useful mechanism for highlighting and strengthening states' obligations towards affected individuals.

International agreements better to protect civilians from certain weapons or practices can often also leave much of states' abilities to wage war intact, whilst challenging particular aspects that cause most harm. Obligations to better acknowledge and respond to existing harm should be considered a clear duty, rather than an additional imposition, in this context.

Nevertheless, the inclusion of victim assistance in international agreements has been heavily contested at different times by states (and others), on various grounds. These have included stated concerns that including victim assistance would create obligations that are overly onerous or burdensome on some countries; that focusing on assistance by affected states is problematic, for not adequately addressing the issue of liability or reparation from user states (or individual perpetrators); and the concern that including victim assistance obligations could falsely raise expectations among affected individuals if it cannot be practically implemented.

It is argued here that notwithstanding such concerns, victim assistance should be considered a duty by states – and it is emerging as a consistent element of international instruments addressing weapons policy and civilian protection. Furthermore, victim assistance should be conceptualised as an obligation to reach the highest *possible* standards: even states with fewer resources can take meaningful steps to implement it and improve policies and provision, particularly with the assistance of other countries and organisations.

This paper provides an overview of: the development of victim assistance obligations in international agreements; how these have been or might be implemented in practice; and what implications and lessons past policy and practice might have for future international frameworks addressing weapons policy and civilian protection. It argues that victim assistance commitments are practical and essential to include, both in principle and for the ultimate impact of these international instruments for communities affected by violence – even if policy and practice has so far been imperfect.

THE DEVELOPMENT OF VICTIM ASSISTANCE OBLIGATIONS AND COMMITMENTS

The concept of 'victim assistance' has developed in the sphere of humanitarian disarmament⁸ and civilian protection as a way to focus and guide states on fulfilling their obligations towards individuals affected by armed violence, to ensure these individuals can fully participate in society.

Though the term may imply a charitable orientation to victims, in the policy sphere practitioners now understand and refer to victim assistance as a 'rights-based' concept, centred on the recognition of the agency and entitlements of directly affected individuals, their families and communities (who are all included in the definition of a 'victim'). Victim assistance is also seen as grounded in principles found in the Convention on the Rights of Persons with Disabilities, and broader human rights law.⁹ For survivor-advocates, the meaning of 'victim assistance' has from the beginning been the recognition of their rights, voice and dignity.¹⁰

The first disarmament treaty to include a commitment to providing victim assistance was the Anti-Personnel Mine Ban Convention (MBT), concluded by states in 1997. The MBT categorically prohibits anti-personnel landmines and currently has 164 states parties. The need to provide greater international resources to landmine victim assistance was recognised in the Ottawa Declaration that commenced the treaty negotiation process,¹¹ following campaigning by landmine survivors, with the support of other civil society organisations, the International Committee of the Red Cross, and many states.¹² However, a comprehensive obligation on all affected parties to provide victim assistance with international support was not included in the treaty.

Instead, a wish by states to "do their utmost in providing assistance for the care and rehabilitation, including the social and economic reintegration of mine victims" was included in the preamble; and Article 6(3) of the MBT obliges states "in a position to do so" to provide such assistance to mine victims, as part of states' commitments to international cooperation and assistance. According to the text, such assistance can be provided between states, or through humanitarian and other organisations.

Though relatively weak, this legal obligation was nonetheless a major step forward, in recognising commitments to the victims of a prohibited weapon for the first time. In the Convention on Certain Conventional Weapons' Protocol V on Explosive Remnants of War, agreed in 2003, an almost identical provision for the assistance of the victims of explosive remnants of war was included – this time with no significant controversy.¹³ It was adopted by consensus, including by the major users of military technology that dominate this forum. The victim assistance provision in the MBT also laid the foundations for work by states, international organisations and civil society to respond more effectively to the rights and needs of landmine victims, and led to the further development of the concept of victim assistance amongst them.

The first Review Conference of the MBT in Nairobi in 2004 resulted in an Action Plan that developed recognition of the primary responsibility of affected states to implement victim assistance for their populations (with the support of other countries and organisations, through the mechanism of international cooperation and assistance). This is now core to the concept of victim assistance. This framing of responsibility

derives from: the duties states have towards their people to ensure and enable the fulfilment of their rights; the structure of disarmament treaties as instruments concluded between sovereign states (rather than being centred around the rights of individuals); and the practical question of who is in the best position in principle to coordinate and give assistance, which will generally be the state with victims under its jurisdiction or control.¹⁴

This responsibility to provide victim assistance is separate from victims' or states' rights to seek reparation or establish liability from those that have caused harm. Victim assistance does not address this, though it does not preclude it, and can be seen as complementary to it the pursuit of a full realisation of victims' rights.¹⁵ The question of including more 'user-state' (or perpetrator) obligation was a point of controversy during the subsequent negotiations of the Convention on Cluster Munitions (CCM) and Treaty on the Prohibition of Nuclear Weapons (TPNW). Some states argued strongly that this type of responsibility should be given greater prominence on the grounds of justice (as opposed to the practicalities of humanitarian service provision). Wording on actions user states are "strongly encouraged" to take in relation to land clearance (but not victim assistance) is included in the CCM.¹⁶ It is stated in the TPNW that user states have "a responsibility" to provide assistance to affected states for victim assistance and environmental remediation.¹⁷ Two political problems with including stronger obligations on user states were the absence of some of them at these negotiations, and the apparent political challenges of including decisions on liability in such international treaties.

The MBT's 2005 Nairobi Action Plan also expanded the agreed understanding of what victim assistance involved beyond the text of the MBT, to include for example data collection, psychological support, and requiring age- and gender-sensitive assistance. It further contained a detailed elaboration of steps that states should take to implement victim assistance, including integrating victims into the work of the MBT.¹⁸ All these aspects, including survivor inclusion, have become broadly understood as key to victim assistance.

Following the agreement of the Convention on the Rights of Persons with Disabilities (CRPD) – a process in which many landmine survivors participated¹⁹ – the CCM, which prohibits cluster munitions and currently has 106 states parties, was adopted in 2008. It has a comprehensive and detailed obligation on states parties to undertake victim assistance, contained in Article 5. Survivors again played a key role in ensuring the inclusion and strength of this provision, with states agreeing early in the process for the CCM that a separate article on victim assistance should be part of the treaty.

Solidifying and advancing on the developments made to the concept of victim assistance under a decade of the MBT framework and considering the CRPD, the CCM in Article 5: locates primary responsibility for victim assistance with affected states (alongside creating a framework of shared responsibility for implementation through international cooperation and assistance in Article 6); recalls International Human Rights Law; includes the principle of non-discrimination (against victims, among them, or between victims and others with similar needs); and contains detailed requirements for implementation.

These requirements include: assessing needs and collecting data; taking national steps such as implementing laws and policies, designating a focal point for coordination, and incorporating victim assistance into relevant national frameworks such as those dealing

with development, disability and human rights; mobilising national and international resources and seeking out good practices for implementation; and ensuring the consultation and involvement of victims and organisations that represent them. The CCM further requires reporting on the implementation of the victim assistance commitment, under Article 7.

The CCM gives an elaborated definition of victim, which includes "those persons directly impacted by cluster munitions as well as their affected families and communities,"²⁰ and all those who have been "killed or suffered physical or psychological injury, economic loss, social marginalisation or substantial impairment of the realisation of their rights caused by the use of cluster munitions." The definition of a 'victim' in this concept of victim assistance responds to people whose rights have been violated or who have suffered adverse impacts from the technology or practice being regulated by the international agreement, and requires this to be rectified.²¹

Subsequent to the elaborated standard set by the CCM, advocates attempted to include an obligation to assist the victims of armed violence in the 2013 Arms Trade Treaty (ATT), with the support of some states. Though ultimately unsuccessful, the need for victim assistance is acknowledged in the ATT's preamble, where states recognise the "challenges faced by victims of armed conflict and their need for adequate care, rehabilitation and social and economic inclusion."²²

A victim assistance obligation was included in the 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW). This represented the first time a clear and comprehensive obligation towards the victims of nuclear weapons use and testing was included in an international legal agreement.²³

The TPNW's victim assistance obligation retains the approach established in the CCM and replicates core wording, though the TPNW does not elaborate detailed implementation requirements. The TPNW's Article 6 requires affected states to "adequately provide age- and gender-sensitive assistance, without discrimination, including medical care, rehabilitation and psychological support," to individuals affected by nuclear weapons use or testing, "as well as provide for their social and economic inclusion," in accordance with international humanitarian and human rights law. A similar framework to previous treaties, of international cooperation and assistance to support affected states with implementing victim assistance, is also included in the TPNW's Article 7.

Some similar concerns to those expressed twenty years earlier at the MBT were raised about including victim assistance in the TPNW during its negotiation. For example, the feasibility and possible burden on affected states was discussed, as well as the appropriateness of including such obligations in a prohibition treaty, and issues around user-state responsibility. Negotiating states managed to sufficiently resolve these issues by the time of the adoption of the text, developing a common understanding of victim assistance as an obligation to raise standards as much as possible within a framework of international support for affected states, rather than one that could create impossible requirements. Following concerns raised by some states, understanding was also reached that including a victim assistance obligation on affected states did not in any way affect liability, or negate any existing agreements by states that had used or tested nuclear weapons to address the harm they had caused.

Victim assistance has also been referenced and discussed under international political commitments. In the outcome document of the second ministerial review conference in 2011 of the Geneva Declaration on Armed Violence and Development for example, states committed to recognising the rights of victims, and to actions that constitute victim assistance (though the Geneva Declaration has now wound up as a political framework).²⁴

In 2015, a commitment to victim assistance was included in the Safe Schools Declaration (SSD), under which states have pledged to “provide assistance to victims, in a non-discriminatory manner” as well as to collect “reliable and relevant data” on the victims of attacks on education. The possibility that such a commitment could be too onerous for affected states was raised during consultations to develop the SSD, but nevertheless remained in the final text.²⁵

The legal and political frameworks discussed above are relatively diverse in their content and intent, but can be linked through a broad lens of civilian protection and the prevention and mitigation of armed violence. They can also be linked through the overlapping policy community of states, international organisations and civil society that have participated in the development of all of them. These common threads have meant that over the past two decades the concept of ‘victim assistance’ has gained traction in different policy areas, and developed in legal and textual terms. The core elements of commitment wording at least are now broadly agreed on and understood by states and practitioners.

MEANING, IMPLEMENTATION AND IMPACTS SO FAR

Broadly, the range of activities involved in victim assistance are now understood within the policy community to include:

- × Assessing needs and challenges through relevant and reliable data collection;
- × Ensuring the provision of more immediate responses to harm such as emergency and ongoing healthcare, rehabilitation and psychological support, as well as broader and longer-term measures for social and economic inclusion, participation and the realisation of a range of rights; and
- × The development of national implementation structures as well as international contributions. (This includes by making relevant laws and policies, ensuring the participation of victims and their representative organisations, and developing communities of expertise and practice).

Principles such as age- and gender- sensitivity and non-discrimination in provision are also key parts of the concept. Its definition of a victim includes those directly affected by the problem being addressed, as well as their families and communities. The impacts that victim assistance addresses are physical, psychological, socio-economic, or those that generally cause substantial impairment of an individual's rights.

Implementing victim assistance commitments can be seen as a way and means for states to more fully comply with some of their human rights obligations to people in their countries with support from the international community, particularly where specific groups of people or services have been under-resourced or neglected. Implementing victim

assistance can either strengthen, be folded into, or complement existing provision. Victim assistance has been conceptualised by practitioners through the lens of the progressive realisation of rights, or as an obligation to reach the highest possible standards. This means that even countries with fewer resources can take steps to implement, particularly with the assistance of other states and organisations.

In terms of what states have so far interpreted their commitments to victim assistance to mean, what activities they have carried out in practice, and what impact these have had, the broad picture has been mixed but with real progress in relation to the two frameworks where there have been some years of implementation – the MBT and CCM. This paper cannot give a comprehensive empirical review and evaluation, but some indications based on state reporting and independent assessments are given below.

In general, the developments in treaty law and associated political commitments under the MBT and CCM appear to have correlated with developments and advances in states' national policies and activities focused on victims. This has included efforts to involve victims and their representative organisations in both national planning and international meetings (including on official country delegations to the MBT and CCM) – though this participation has not always amounted to substantial or meaningful inclusion for victims.²⁶ Beyond activities of policy development and national planning,²⁷ the greatest amount of practical implementation activity and progress reported by states parties to the MBT and CCM has related to improving services for survivors with disabilities in particular.²⁸

A review of states' reporting to the MBT's last Review Conference in 2014 reveals a significant emphasis on the provision of assistance to persons with disabilities. Reporting on the integration of mine victim assistance policies and activities with work under the CRPD was also given considerable attention by states.²⁹ Integrating victim assistance within broader disability strategies has become recognized as good practice (as well as a requirement under the CCM). Since the MBT was agreed, a number of states have succeeded in improving provision to people with disabilities, informed by and in a way that is mutually reinforcing with victim assistance.³⁰ In turn, in some cases the implementation of victim assistance has given impetus to broader national strategies on disability.³¹ Some states have been able to make greater advances in provision than others, depending on factors including the size of their affected populations and the national resources available or made available for services.³²

For cluster munition victims, since the entry into force of the CCM, the availability of rehabilitation services for survivors in affected countries has reportedly increased.³³ At the First Review Conference of that treaty, ten of the thirteen affected states parties reported on actions that had improved the quality and accessibility of such services.³⁴

Under both treaties, less progress and reporting has been seen in the areas of psychosocial support and socio-economic inclusion for such survivors – though some has been documented. These are however core areas in the agreed language on victim assistance in both treaties, and were priorities for survivors at the time of the MBT (and CCM)'s negotiation, given survivors' focus on their rights, and resistance to purely charitable or medical models of responding to their needs.

A Humanity and Inclusion (formerly Handicap International) survey of landmine survivors in twenty-five affected countries after a decade of

the MBT documented a general improvement in the overall picture of services and policies on victim assistance. This was especially the case with respect to better emergency and continuing medical care for survivors, but with psychosocial and economic support services lagging behind.³⁵ This general pattern of some improvement in services for victims, with inconsistencies across different types of provision and between different countries, appears to have continued during the following decade for victims of mines and cluster munitions.³⁶

A majority of landmine and cluster munition victims live in lower-income countries, and much reported victim assistance programming continues to rely heavily on international rather than dedicated national funding, with implementation often carried out by international or non-governmental organisations.³⁷ Though carrying clear limitations in terms of local ownership and sustainability, this might indicate some implementation of the framework of shared responsibility and international cooperation and assistance set up by the MBT and CCM for victim assistance: affected states parties that have requested and received support for victim assistance under these treaties have reported achievements as a result of receiving international funding.³⁸

Nevertheless, resourcing for victim assistance under the MBT and CCM remains a challenge both nationally (where states' prioritisation of resources may impact the level of activity they achieve) and internationally. In 2017, most affected parties to the MBT did not receive any direct international support for victim assistance,³⁹ and parties to the CCM reported significant funding shortfalls.⁴⁰ In addition, very little dedicated mine action funding goes directly to victim assistance projects (around 2% of the total in 2017⁴¹), with donors more focused on funding clearance, and giving general support to implementing organisations (whereby victim assistance activities might be considered an outcome of spending).

Some states have reported under the MBT and CCM that their broader development aid spending has contributed to victim assistance. Such integration could be positive: ultimately, holistically addressing the rights and needs of victims will involve countries achieving broader health, development and rights goals. The non-discrimination principle could also be served through integrated services (though it should be noted that, in general, specific victim assistance projects have enhanced overall provision through targeted interventions, rather than creating discriminatory provision for victims⁴²). However, these states have not necessarily been able to clearly demonstrate that this spending has had this impact.⁴³ It may not be possible or sensible for donors to fund separate provision for victim assistance when undertaking broad development or healthcare systems support. A reasonable approach for enhancing victim assistance in these cases however could be to highlight a requirement to ensure assistance is improved to victims within these funding agreements.

For mines and cluster munitions, understanding and implementing victim assistance for the groups of individuals beyond those directly affected – to include families and communities, who in turn must be engaged for the inclusion of survivors in society – does not appear to have advanced as much as other areas. Overall, countries and agencies have so far focused to a greater degree on the most direct, tangible needs of survivors – and particularly those with disabilities. There is room for the implementation of victim assistance under the MBT and CCM to be expanded in scope, but some real progress and benefits for victims does appear to have been made.

COMMITTING TO AND IMPLEMENTING VICTIM ASSISTANCE GOING FORWARD

Victim assistance under the MBT and CCM has faced challenges, particularly in resourcing, and the range of individuals that reported activities have reached. Nevertheless, the development of victim assistance obligations in these treaties has correlated with: the development of state policies in this area; reported interventions targeted at victims' various needs, and improved services; international cooperation and assistance in the form of funding and programming; and the development of communities of practice among states, international organisations and civil society to more effectively address the needs of survivors.

Progress may be imperfect and incomplete, but including victim assistance commitments in these treaties has been valuable in bringing increased focus on to victims' rights and needs – and in giving a forum for at least some victims and their associated organisations to articulate how these should be best addressed. If the obligation for victim assistance demands that states work to improve provision to the highest standards that are possible within the limitations of their means, it is evident that advancements have been made.

For international initiatives focused on civilian protection or addressing the humanitarian impacts or risks of different weapons, committing to and implementing victim assistance must be part of a holistic response. If 15% of a post-conflict population might be considered victims of armed violence under the definition referred to in this paper,⁴⁴ and long term rehabilitation and re-integration is key to addressing the consequences of armed violence, states' efforts cannot be focused only on the prevention of future suffering, but on addressing that which already exists. With no comprehensive international instrument that responds to victims of armed violence as a category,⁴⁵ it is even more important that individual agreements continue to highlight victims' rights and commit to increasing assistance.

The sections below explore how victim assistance might be implemented or committed to under more recently agreed instruments (the TPNW and SSD) and other emerging issues. Some questions for the future of victim assistance include: what a 'rights-based' approach to victim assistance might mean in different issue areas, in terms of the different harms to be addressed; what sets of activities might be most relevant for responding to these harms, and whether contributions to broader responses (such as wider development or humanitarian activities) or targeted interventions (more specifically framed as victim assistance) will be most appropriate; and how international funding and other contributions might best support victim assistance through international frameworks, considering these issues.

Nuclear weapons and toxic remnants of war

As the TPNW approaches entry in to force, states parties will need to develop a common understanding of what implementing victim assistance – and international cooperation and assistance to support it – should mean under the treaty.⁴⁶ A number of steps will be necessary to prepare for this, including for countries to more fully understand: the current global pattern of impact and harm from past nuclear weapons use and testing; current responses by states and organisations; and where the gaps in knowledge and provision are.

States parties must then identify what can and needs to be addressed under the TPNW in terms of physical, psychological and socio-economic impacts, and the substantial impairment of rights. For example, it was estimated in 1991 that 2.4 million people worldwide may eventually die from cancers attributable nuclear testing and the global and downwind effects of fallout (which may prove to be an underestimate based on more recent understandings).⁴⁷ States may not however consider it to be reasonably within the scope of the TPNW to focus on improving global cancer care through the treaty. On the other hand, within the most heavily affected states parties where nuclear testing has occurred, it might be reasonable for states to look in cooperation at how services could be improved for individuals suffering from health conditions or disabilities that might be attributable to nuclear weapons. In some states with affected individuals, services may already be adequate; in others, further support and activity through the mechanism of the TPNW will be beneficial.

The involvement of affected individuals, communities and their representative organisations, as well as other experts and agencies will be necessary in this process of impact and needs assessment, and for the prioritisation of what states can focus on through the TPNW framework. Both affected states and donor states who are party to or have not yet joined the TPNW could be involved in this conversation: the victim assistance obligation in the TPNW should provide an opportunity to engage all relevant stakeholders in a holistic conversation about the current global state of the response to the victims of nuclear weapons. Parties to the TPNW will primarily take this forward, but others can support it. The agreement of the MBT, for example, was followed by a large increase in resourcing to humanitarian mine action, due to the focus the treaty brought to the issues. Much of this was contributed by a state not party to the MBT.⁴⁸

In contrast to landmine and cluster munition remnants, which cause immediate and devastating physical injuries from explosions, the physical health impacts for survivors today of exposure to ionising radiation from past nuclear testing or use may be more varied, and emerge at different points in time. For example, the exposure to ionising radiation of people in the vicinity of a nuclear explosion from its fallout is understood to cause or be highly associated with certain cancers, which an individual could suffer from either quite shortly following exposure or decades after, resulting from damage to their DNA. Some harm from exposure is also understood to have intergenerational effects, with for example higher incidence of miscarriages amongst exposed parents, and congenital conditions and intellectual disabilities amongst their children, as well as some evidence of higher rates of cancers among these children.⁴⁹ These effects are gendered, with women suffering greater harm than men from exposure to ionising radiation, and girls more than boys – with children also suffering more than adults.⁵⁰

A 'rights-based' approach to victim assistance under the TPNW may then plausibly include looking at: the rights to health and of persons with disabilities in countries and populations affected by nuclear weapons; the level of services that people with conditions associated with nuclear harm are receiving; and how these might be improved further, including through international assistance from other states or international and non-governmental organisations.

Considering how the health/disability side of victim assistance could be implemented with respect to nuclear weapons intersects with the broader question of how it could be operationalized for harm from

other sources of environmental contamination from conflict, or toxic remnants of war.⁵¹ In these cases, the chain of causality and scope of effects can be more complex and less immediately visible than the impact of explosive weapons on the human body. Comprehensive evidence of the exact or likely health effects can take many years of harm and study to emerge.⁵² This can generate complexities in conceptualising what the provision of victim assistance should look like – as well as contestation over whether and what harm should be addressed in the first place.

One example relevant to conceptualising victim assistance practice in this sphere has been the US government's recent approach of supporting assistance to individuals affected by its use of Agent Orange and other defoliants contaminated with dioxin during the conflict in Vietnam.⁵³

Through USAID development funding, the US has funded health and disability services, including rehabilitation and economic integration (training/employment support), as well as community awareness programmes and work by organisations to support the government of Vietnam with the development of legal and policy frameworks on disabilities. This has many resonances with victim assistance practice under the MBT and CCM. The government of Vietnam also has steering committee that serves as a focal point of cooperation between ministries on Agent Orange issues.

The US approach to supporting health and disability provision has been to support services relating to conditions that might be attributable to dioxin exposure, in areas considered 'hotspots' of use – without requiring individuals' conditions to have a particular cause.⁵⁴ This approach is generally consistent with implementing the principle of non-discrimination in victim assistance, whilst attempting to target services at victim populations – though victims and others with similar conditions living outside 'hotspot' areas may face inadequate provision.

Governments' approaches to providing enhanced healthcare provision, financial compensation or allowances to individuals affected by nuclear weapon use and testing have so far varied in how they manage this issue of inclusion/attribution for the sake of provision or redress, using indicators such as an individual's location, time spent in contaminated areas, and associated health conditions.

The Japanese government has for example based their provision of financial and medical assistance to atomic bomb survivors (*hibakusha*) on an assessment of likely radiation dose and risk, based on a combination of factors including age, sex and proximity to ground zero at the time of the atomic bombing, as well as considering a list of diseases attributable to exposure. Australia provides enhanced health coverage to individuals who worked on the British nuclear tests in Australia, entered certain areas within two years of the test, or patrolled these areas up to 1998. In Kazakhstan (where the Soviet Union conducted nuclear tests), monthly payments are provided to those residing within a certain zone, whether the experience health problems or not. The US Radiation Exposure Compensation Act (RECA) provides lump-sum pay-outs to individuals who participated in or suffered effects from being downwind of nuclear tests in the US, based on their location and time spent in relevant places, and a list of associated illnesses.⁵⁵

Many schemes or laws responding to nuclear harm so far have addressed individual compensation rather than broader victim assistance, and required litigation from affected individuals rather than a presumption of provision. Enhancing provision through a victim assistance framework under the TPNW would likely benefit from a broader approach to supporting the improvement of relevant services in affected areas, rather than requiring individual ‘proof.’ A current example of practice that could be considered relevant as a model of ‘victim assistance’ with international cooperation and assistance for individuals affected by nuclear weapons testing is the internationally supported programme to provide enhanced health, social and economic reintegration services in the Semipalatinsk area of Kazakhstan. This has been led by UNDP in partnership with other UN agencies and funding from the Japanese government.⁵⁶

Much of the current framework addressing nuclear weapon victims nationally in different countries has resulted from the long struggles of affected people, including nuclear test veterans from nuclear-armed and non-nuclear-armed states, for compensation, recognition and justice for the harm they have suffered. The current global picture significantly reflects the success and agency of some of these groups so far – though has in no way fully responded to their demands, which also invoke rights to truth and redress (which the concept of victim assistance does not address).⁵⁷ The rights and requirements of other affected populations (particularly civilians and indigenous peoples) may have had even less of a response. In some countries, there is very little information at all on what the impacts of nuclear testing might have been (for example in India and Pakistan). In others, studies of health and environmental affects have not been officially acknowledged (for example in China).⁵⁸

As well as the rights to health and of persons with disabilities, and rights associated with justice and redress,⁵⁹ the current global pattern of impact and harm from past nuclear weapons use and testing also implicates other individual and collective rights.

For example, the TPNW acknowledges the “disproportionate impact of nuclear-weapon activities on indigenous peoples” – the first time that impacts on indigenous peoples have been recognised in an international weapons treaty. In several countries (including present-day Russia, Australia and the Republic of the Marshall Islands) indigenous peoples were displaced from their lands either to make way for nuclear tests or by the dangers posed by contamination. This has led to economic, psychological and cultural harms, many of which have gone unaddressed so far. With respect to the legacy of nuclear weapons and other toxic remnants of war, implementing victim assistance may be closely linked in this and other ways with more effectively addressing environmental contamination and the restoration of property or lands.⁶⁰ Parties to the TPNW will need to consider how implementing victim assistance might engage this broader range of rights.

Attacks on education and the Safe Schools Declaration

The Safe Schools Declaration is substantially framed around addressing harm to education, and students’ right to it – whilst also being grounded in the more immediate humanitarian impacts and civilian protection implications of attacks on education and the occupation or use of educational buildings by parties to armed conflicts.⁶¹

Additionally to addressing harms such as to the right to health and different socio-economic rights, which might be core to victim assistance under other frameworks, restoring and upholding the right to education might therefore be considered one key part of implementing ‘victim assistance’ under the SSD.

Implementing other areas of commitment within the SSD will be relevant to this, including ensuring continuity of education and the restoration of educational facilities during armed conflict, and implementing conflict-sensitive education approaches.⁶² Taking these steps may involve interventions that address physical infrastructure and collective goods – such as the rebuilding of schools – as well as victim assistance that addresses people more directly as individuals. Initiatives addressing the right to education in emergencies more broadly might also be considered to contribute to fulfilling the victim assistance commitment under the SSD. Endorsers of the SSD might therefore wish to focus on reviewing their contributions to these initiatives and policies in considering how best to implement the Declaration and support its agenda.

In line with previous articulations of the concept described above in this paper, victims requiring assistance within the SSD framework could also include individuals suffering physical or psychological harm, socio-economic exclusion or the substantial impairment of other rights as a result of attacks on education or the military use of schools. Making relevant assistance available to these individuals might involve specific programming, if their particular needs resulting from attacks on education were not well served through existing services.

On the other hand, it might be more effective to ensure that broader humanitarian, health, civilian protection, development and other programming in conflict-affected countries or states where attacks on education are taking place sufficiently address and include victims of attacks on education, and any specific needs they might have. For example, the Global Coalition to Protect Education from Attack (GCPEA) recommends the integration of support to victims of attacks on education into humanitarian programming (as well as educational provision), whilst ensuring accessibility and non-discrimination, including between genders. As with victim assistance under other frameworks, documentation is a first step for providing assistance, and can also help to raise victims’ perspectives and involvement.⁶³

Through either integration into broader services or specific programming, provided nationally or with international assistance, one type of assistance that might be important to focus on for victims of attacks on education is psychosocial support. Protracted stress and trauma is inflicted on students and teachers working in conditions of violence and instability. But also, education has a known protective role for children living through armed conflict. Psychosocial support to teachers and student can help them stay in schools. This, in turn, can support the right to education.⁶⁴

Ensuring age-sensitivity in providing victim assistance is evidently important in considering how assistance can be conceptualised specifically in relation to attacks on education, and the services and actors whose contributions may need resourcing. Given the differential impact of attacks on education on men, boys, women and girls, gender-sensitivity in the provision of response and reintegration services will also be key to considering how provision for victims can be enhanced in the context of the SSD. Providing effective assistance to victims of sexual and gender-based violence associated with attacks on

education is an important area in this regard, as is the reintegration of children recruited by conflict parties.⁶⁵

Overall, considering how victim assistance can be implemented in any given framework should be an opportunity for states to assess whether existing provision to victims is sufficiently specific and adequate, and how gaps can be filled or addressed. It might not necessarily require the establishment of new structures or streams of work, where these could unnecessarily duplicate or would not add value to existing efforts: but committing to victim assistance should lead to states focusing on raising standards and provision. This will be important for endorsers of the SSD to evaluate.

Currently there is not a self-identifying community of survivors of attacks on education, or their representative organisations, involved in the SSD initiative – though, through organisations that are part of GCPEA, affected individuals have taken part in the process. Formal organisational structures or the self-identification of victims as such may not be necessary to create. Nevertheless, the meaningful involvement of individuals and communities affected by attacks on education and the military use of schools in international discussions should be an objective for countries implementing the SSD. Involving affected communities in this way is also essential to the effective conceptualisation and implementation of victim assistance.

Broadening assistance to victims of explosive weapons

The main body of policy, practice and implementation of victim assistance so far has related to addressing the rights of individuals affected by two types of prohibited explosive weapons, anti-personnel landmines and cluster munitions. International concern has been growing in recent years around the broader problem of the effects on civilians of the widespread use of explosive weapons in populated areas, particularly explosive weapons that produce wide area effects (from their high explosive yield, inaccuracy or the use of multiple munitions).⁶⁶

States are now moving towards developing an international political commitment on protecting civilians from the use of explosive weapons in populated areas. The UN Secretary-General has recommended this step, as a way to catalyse action on addressing this pressing issue in the protection of civilians in armed conflict. Over one hundred states have acknowledged the harm caused by the use of explosive weapons in populated areas,⁶⁷ and Austria will be hosting a conference on ‘Protecting Civilians in Urban Warfare’ in autumn 2019, to discuss the issues and the proposal to develop a political declaration.⁶⁸

In this context, there is both scope and an imperative to extend international commitments towards the victims of explosive weapons beyond those to landmines and cluster munitions, or people affected by explosive remnants. High numbers of people suffer from the destruction caused by the use of explosive weapons in populated areas, presenting challenges for short-term humanitarian response as well as longer-term rehabilitation, reconstruction and reintegration activities. As with the issues areas discussed above however, the scale or complexity of the challenges should not detract from the rights of victims, or the need to include work on addressing these in an international response to the problems of harm associated with the use of explosive weapons in populated areas. This response should be consistent with the principles included in previous agreements focused on responding to

humanitarian harms from weapons, and so must include victim assistance.

Including a commitment to victim assistance has already been part of the discourse around a possible new international political declaration on protecting civilians from explosive weapons. For example, Humanity and Inclusion (HI) has made a range of recommendations for addressing victim assistance in a future declaration, drawing on consultations with a wide range of expert stakeholders – including victims – and building on the standards set by the CCM. HI recommends that the commitments with respect to victim assistance in any future political declaration should include: ensuring that victims’ basic needs are met (including safety and shelter); providing for healthcare, rehabilitation and socio-economic inclusion; and, responding to the specificities of the destruction and humanitarian impacts caused by the use of explosive weapons in populated areas, action to address the loss of homes and livelihoods these practices cause.⁶⁹

CONCLUSIONS AND RECOMMENDATIONS

A commitment to victim assistance is becoming an established part of the provisions that states will include in international agreements on weapons policy and civilian protection, where these have humanitarian foundations and goals. If states are to respond holistically to humanitarian harms in future similar agreements – by not only preventing future harm, but also addressing what has already been inflicted on people – victim assistance commitments must be included. This is important both for coherence and on principle – and for the practical impacts that these commitments can have for communities affected by armed violence.

The picture of implementation and provision of victim assistance so far may have been mixed. Nevertheless, international commitment to it has: had value as a means to bring focus on to the ongoing needs and rights of people affected by armed violence; provided a placeholder for the inclusion of survivors and their specific interests in international frameworks that address harms that have been inflicted on them; and, helped to strengthen provision and build communities of practice around these specific needs.

Conceptualising and implementing victim assistance involves managing certain tensions. These include upholding non-discrimination whilst attempting to bring attention to and improve provision for specific individuals. Providing comprehensive, non-discriminatory victim assistance could also ultimately stretch to a very broad range of activities to improve health, sustainable development and rights for all. Finding a way to use international frameworks to meaningfully raise standards and provision through victim assistance commitments, through identifying what gaps can be addressed and focus can be brought by these agreements, is the task for states and communities of practice on these issues.

As outlined generally in this paper, there is a range of ways in which victim assistance can potentially be implemented on a practical level, from highly specific programming, to ensuring that the victims of specific weapons or practices and their particular needs are acknowledged and catered for within broader interventions. Such interventions may include humanitarian response, development programming, healthcare, services for persons with disabilities, or other provision.

If the activities that could be interpreted as fulfilling victim assistance can potentially be wide, it is crucial that the ongoing work of international frameworks including it give victims the opportunity to shape what implementation should best mean in practice, alongside states and other experts.

Going forward, the following general recommendations are offered to stakeholders – including states, practitioners and experts (of whom affected communities are a key constituency):

- × Victim assistance should be included in future international agreements on weapons policy and civilian protection that address humanitarian harms. Different issues may require different types of victim assistance response. Nevertheless, future commitments, the definition of victims, and the structure of state responsibility should continue to follow or build on the standards and understandings set by previous agreements. The CCM in particular can provide a basis, through giving the most detailed elaboration of these standards, structures and definitions in Articles 2, 5 and 6;
- × Implementing victim assistance should be approached as a way to bring focus and resources to victims, and improve provision to the highest possible standards, within an international framework of cooperation and assistance. This should be engaged with as an opportunity rather than a burden for states;
- × To ensure that victim assistance activity is meaningful to people on which harm has been inflicted, the engagement and inclusion of victims in international discussions and national policy development and practice should be a key first step in implementation;
- × The activities that might be prioritised in order to best implement victim assistance may vary depending on the issue area. In considering this, and mapping needs and gaps in provision, states and practitioners could examine which individual or collective rights have been most affected, as a way to structure their work;
- × Victim assistance can and should either be integrated into or contribute synergistically to broader sustainable development, humanitarian or human rights activities and objectives. Where victim assistance is covered by broader interventions, mechanisms to ensure that victims' rights will be addressed and the specific requirements of victims should be highlighted. Where specific programming is being considered, the issues of whether and what new structures might be necessary should be reviewed to avoid duplication;
- × In relation to the above, in funding or otherwise resourcing victim assistance through agreements between states, to international organisations or civil society, donors should ensure that more general support will cover victim assistance (though mechanisms such as specifying this in agreements), and that more specific funding is integrated effectively in to the broader context.

NOTES:

- 1 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction (Mine Ban Treaty, MBT), 1997, available at: http://disarmament.un.org/treaties/t/mine_ban/text
- 2 Convention on Cluster Munitions (CCM), 2008, available at: http://disarmament.un.org/treaties/t/cluster_munitions/text
- 3 Treaty on the Prohibition of Nuclear Weapons (TPNW), 2017, available at: <http://disarmament.un.org/treaties/t/tpnw/text>
- 4 Safe Schools Declaration (SSD), 2015, available at: https://www.regjeringen.no/globalassets/departementene/ud/vedlegg/utvikling/safe_schools_declaration.pdf
- 5 See Article 6(3) of the MBT; Article 5 of the CCM; Article 6 of the TPNW; the second commitment of the SSD; and Protocol on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (Protocol V), 2003, Article 8(2), available at: http://disarmament.un.org/treaties/t/ccwc_p5/text
- 6 For an account of these demands and the role of landmine survivors, see Jerry White and Ken Rutherford (1999), 'The Role of the Landmine Survivors Network,' in Maxwell A. Cameron et al (eds), *To Walk without Fear: The Global Movement to Ban Landmines*
- 7 See Article 6 of the MBT; Article 6 of the CCM; Article 7 of the TPNW; and the fifth commitment of the SSD
- 8 For a detailed account of the legal evolution of victim assistance in humanitarian disarmament (alongside other its positive obligations of land clearance see Bonnie Docherty (forthcoming in 2020), 'Completing the Package: The Development and Significance of Positive Obligations in Humanitarian Disarmament Law,' in *Disarmament Law*, eds. Treasa Dunworth and Anna Hood (Routledge). See also Bonnie Docherty (2013), 'Ending Civilian Suffering: The Purpose, Provisions, and Promise of Humanitarian Disarmament Law', *Austrian Review of International and European Law* 15:1, 7-44 available at: http://hrp.law.harvard.edu/wp-content/uploads/2013/08/04_docherty_neu-FINAL.pdf and Bonnie Docherty (2018) 'A "light for all humanity": the treaty on the prohibition of nuclear weapons and the progress of humanitarian disarmament,' *Global Change, Peace & Security*, 30:2, 163-186 available at: <https://www.tandfonline-com.liverpool.idm.oclc.org/doi/full/10.1080/14781158.2018.1472075>. For a narrative of this development see also Matthew Bolton and Elizabeth Minor, (forthcoming, 2020) 'The Agency of International Humanitarian Disarmament Law: The Case of Advocacy for Positive Obligations in the Treaty on the Prohibition of Nuclear Weapons,' in Matthew Bolton, et al., *Global Politics of Humanitarian Disarmament: Mitigating the Harm of Weapons through International Advocacy, Aid and Diplomacy* (Palgrave Macmillan)
- 9 See for example *Humanity and Inclusion (HI)* (2014), 'Victim assistance in the context of mines and explosive remnants of war' available at: https://handicap-international.ch/sites/ch/files/documents/files/assistance-victimes-mines-reg_anglais.pdf
- 10 See White and Rutherford (1999) above note 6
- 11 See Declaration of the Ottawa Conference, October 3-5, 1996, available at: https://www.apminebanconvention.org/fileadmin/APMBC/10th-anniversary/The_1996_Ottawa_Declaration.pdf
- 12 See White and Rutherford (1999) above note 6
- 13 Protocol on Explosive Remnants of War to the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons which may be deemed to be Excessively Injurious or to have Indiscriminate Effects (Protocol V) (2003), Article 8(2)
- 14 For analysis on these points and the interaction between disarmament and human rights law, see Anna Crowe (forthcoming 2020) 'Human-Rights Humanitarianism in Disarmament Law,' in *Disarmament Law*, eds. Treasa Dunworth and Anna Hood (Routledge) See also International Human Rights Clinic at Harvard Law School (2018), 'Victim Assistance Under the Treaty on the Prohibition of Nuclear Weapons,' available at: <http://hrp.law.harvard.edu/wp-content/uploads/2018/04/Victim-assistance-short-4-8-18-final.pdf>, p. 2.
- 15 Anna Crowe (forthcoming)
- 16 CCM (2008), Article 4(4)
- 17 TPNW (2017), Article 7(6)

- 18 MBT (2004), 'Nairobi Action Plan 2005-2009,' available at: <http://www.icbl.org/media/933290/Nairobi-Action-Plan-2005.pdf>
- 19 See for example Jerry White and Kirsten Young (2008), 'Nothing about us without us: Securing the disability rights convention,' Williams, Goose and Wareham (eds), *Banning Landmines*
- 20 CCM (2008), Article 2(1)
- 21 Though because victim assistance has not so far addressed the right to remedy, reparation and accountability, it has not fully incorporated this aspect of human rights law. See Anna Crowe (forthcoming) above note 15
- 22 Arms Trade Treaty (2013), available at: <http://disarmament.un.org/treaties/t/atf/text>
- 23 Previously, the strongest recognition covering all victims under an international framework was in the 2010 outcome document of the Nuclear Non-Proliferation Treaty, which welcomed "attention to problems of safety and contamination" including the resettlement of displaced people and "restoration of economic productivity" to affected areas. See: 2010 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, Final Document, Volume I, UN Document NPT/CONF.2010/50 (Vol. I), para 70 available at: [https://undocs.org/NPT/CONF.2010/50%20\(VOL.I\)](https://undocs.org/NPT/CONF.2010/50%20(VOL.I))
- 24 Switzerland and UNDP (2011) '2nd Ministerial Review Conference on the Geneva Declaration on Armed Violence and Development: Outcome Document,' available at: <http://www.genevadeclaration.org/fileadmin/docs/GD-MRC2/GD-2ndMRC-Outcome-Documents.pdf> action 10(e)
- 25 See Article 36 (2019), 'Reflections from the Safe Schools Declaration process for future international political commitments on civilian protection,' available at: <http://www.article36.org/wp-content/uploads/2019/08/SSD-process-reflections.pdf>
- 26 Based on a review of materials from the Landmine and Cluster Munition Monitor
- 27 Which states concentrated on making progress on in the first decade of the MBT, as per the discussion above on developing the concept of victim assistance – see generally, e.g., ICRC (2011), 'The Mine Ban Convention: Progress and Challenges in the Second Decade,' available at: <https://www.icrc.org/en/publication/0846-mine-ban-convention-progress-and-challenges-second-decade>; Handicap International (2009), 'Voices from the Ground: Landmine and Explosive Remnants of War Survivors Speak Out on Victim Assistance,' available at: https://reliefweb.int/sites/reliefweb.int/files/resources/778DB75940854604492576450012486A-FuII_Report.pdf. During the early years of the MBT regime, international organisations including a variety of UN agencies also integrated victim assistance into their work and strategies. Policy development and the establishment of national structures were also key state activities in the first years of the CCM
- 28 Landmine and Cluster Munition Monitor (2013), 'Frameworks for Victim Assistance: Monitor Key Findings and Observations,' December 2013, available at: http://www.stopclustermunitions.org/media/131747/Frameworks_VA-December-2013.pdf Under the MBT, states parties have been encouraged to report on assistance provided to victims, and within the CCM, reporting on Article 5 is required.
- 29 See Third Review Conference of the Mine Ban Treaty (2014), 'Final Document: Addendum,' available at: [https://www.unog.ch/80256EE600585943/\(httpPages\)/AD36270C8916E8A8C1257C30005DEEDC?OpenDocument](https://www.unog.ch/80256EE600585943/(httpPages)/AD36270C8916E8A8C1257C30005DEEDC?OpenDocument) pp. 25-58
- 30 See, e.g., Lao Veng and Sisary Kheng (2012), 'The Development of Victim Assistance in Cambodia,' *Journal of Conventional Weapons Destruction*, vol. 16, issue 3, article 11; Landmine and Cluster Munition Monitor (2013), 'Frameworks for Victim Assistance'; Anti-Personnel Mine Ban Convention Implementation Support Unit (2011), 'Assisting Landmine and Other ERW Survivors in the Context of Disarmament, Disability and Development,' available at: <https://www.gichd.org/resources/publications/detail/publication/assisting-landmine-and-other-erw-survivors-in-the-context-of-disarmament-disability-and-development/>
- 31 Anti-Personnel Mine Ban Convention Implementation Support Unit (2011)6, 2018), May impacts of these x. LOST FIRST REFERENCE AT SOME POINT.] re. ed further progress in this area. .
- 32 Based on a review of Landmine and Cluster Munition reporting and thematic and regional reviews of victim assistance interventions from the last decade
- 33 Landmine and Cluster Munition Monitor (2012), 'Fact Sheet: Victim Assistance Since Entry into Force of the Convention on Cluster Munitions,' available at: <http://the-monitor.org/media/984233/Victim-Assistance-Since-Entry-Into-Force-of-the-Convention-on-Cluster-Munitions.pdf>
- 34 Convention on Cluster Munitions Review Conference (2015), 'Croatia Progress Report,' available at <https://digitalibrary.un.org/record/803126> para. 52.
- 35 Handicap International (2009), 'Voices from the Ground,' pp. 229-237.
- 36 Review of Landmine and Cluster Munition Monitor resources, available at <http://www.the-monitor.org/en-gb/our-research/victim-assistance-resources.aspx#CCM>
- 37 Review of reports of the Landmine and Cluster Munition Monitor.
- 38 See, e.g., Third Review Conference of the Mine Ban Treaty, 'Final Document: Addendum,' pp. 25-58; 'Croatia Progress Report,' pp. 12-14.
- 39 Landmine Monitor (2018), 'Victim Assistance,' available at: <http://www.the-monitor.org/en-gb/reports/2018/landmine-monitor-2018/victim-assistance.aspx>
- 40 Cluster Munition Monitor (2018), 'Victim Assistance,' available at: <http://www.the-monitor.org/en-gb/reports/2018/cluster-munition-monitor-2018/victim-assistance.aspx>
- 41 Landmine Monitor (2018), 'Support for Mine Action,' available at: <http://www.the-monitor.org/en-gb/reports/2018/landmine-monitor-2018/support-for-mine-action.aspx>
- 42 See for example Handicap International (2014), 'Victim assistance in the context of mines and explosive remnants of war,' available at: https://handicap-international.ch/sites/ch/files/documents/files/assistance-victimes-mines-reg_anglais.pdf and Handicap International (2014), 'How to ensure mine/ERW survivors participate in, and benefit from, disability-inclusive development?' available at: <https://reliefweb.int/report/world/victim-assistance-how-ensure-mineerw-survivors-participate-and-benefit-disability>
- 43 Landmine and Cluster Munition Monitor (2013), 'Frameworks for Victim Assistance'; Handicap International (2014), 'The Way Forward for Victim Assistance,' available at: https://hi.org/sn_uploads/content/DOC21_ENG.pdf
- 44 Nerina evra and Jane Hunter (2013), 'Writing the rights: Highlighting the international standards on the rights of victims of armed violence,' *Action on Armed Violence*, available at: <https://aoav.org.uk/wp-content/uploads/2014/02/AOAV-Writing-the-Rights.v2.2014.pdf>
- 45 *ibid*
- 46 For more discussion and recommendation on these issues see research reports of the International Disarmament Institute at Pace University on this issue, available at: <https://disarmament.blogs.pace.edu/reports/> and of the International Human Rights Clinic at Harvard Law School, available at: <http://hrp.law.harvard.edu/areas-of-focus/arms-armed-conflict/nuclear-weapons/>
- 47 IEER and the International Physicians for the Prevention of Nuclear War (1991), *Radioactive Heaven and Earth*, available at: <https://ieer.org/wp/wp-content/uploads/1991/06/RadioactiveHeavenEarth1991.pdf>; Tilman A. Ruff (2015), 'The humanitarian impact and implications of nuclear test explosions in the Pacific region,' *International Review of the Red Cross* 97, no. 899 available at: https://www.icrc.org/en/download/file/24546/irc97_15.pdf
- 48 This was the US, which is still the largest donor globally to humanitarian mine action. This is not to suggest that the TPNW will lead to funding flowing from the same states (many of whom have been vociferously opposed to the initiative) – but that the treaty can provide attention and focus on the issue, which can potentially mobilise interest and resourcing beyond those directly involved in the framework.
- 49 For an overview, see for example Matthew Bolton (2018), 'Humanitarian and Environmental Action to Address Nuclear Harm,' *International Disarmament Institute of Pace University*, available at: <https://cpb-us-w2.wpmucdn.com/blogs.pace.edu/dist/0/195/files/2018/01/Humanitarian-Action-to-Address-Nuclear-Harm-6-1eili3g.pdf>
- 50 This is acknowledged in the TPNW's preamble. See for example Mary Olson (2019), 'Disproportionate impact of radiation and radiation regulation,' *Interdisciplinary Science Reviews*, Vol. 44 No. 2 available at: <https://doi.org/10.1080/03080188.2019.1603864>
- 51 For a framework of principles for victim assistance with respect to toxic remnants of war, see Harvard Law School International Human Rights Clinic and Conflict and Environment Observatory, *Principles for Assisting Victims of Toxic Remnants of War* (forthcoming 2020).
- 52 Even if toxic materials might be presumed to have negative impacts at the time of their use, and civilian rather than military standards on contamination can take a more precautionary orientation to exposure.

- 53 The US government contested the health and environmental impacts of dioxin contamination from defoliant use for many years, leaving the provision of assistance to some specialist organisations and general national provision.
- 54 For a detailed account of this provision, see Michael F. Martin (2019), 'U.S. Agent Orange/Dioxin Assistance to Vietnam,' Congressional Research Service, available at: <https://fas.org/sgp/crs/row/R44268.pdf>
- 55 References from background research provided by the International Human Rights Clinic at Harvard Law School
- 56 See Bolton (2018)
- 57 The UK government's granting of £25 million to a Nuclear Community Charity Fund, following a long campaign from the British Nuclear Test Veterans Association (BNTVA), which is set up to fund research, education and memorialisation activities as well as care for veterans, somewhat bridges demands for assistance and better information and acknowledgement – though other veterans groups have expressed concerns that this could undermine ongoing calls for the admission of liability, and justice.
- 58 See Bolton (2018)
- 59 The concept of victim assistance has not yet responded to these rights, but may plausibly cover them through activities to do with recognition, education and memorialisation; for discussion of this, see the International Disarmament Institute at Pace University's report series on 'Addressing the Humanitarian and Environmental Harm from Nuclear Weapons,' available at: <https://disarmament.blogs.pace.edu/reports/>
- 60 For some discussion on this point see International Human Rights Clinic at Harvard Law School (2018), 'Victim Assistance Under the Treaty on the Prohibition of Nuclear Weapons,' available at: <http://hrp.law.harvard.edu/wp-content/uploads/2018/04/Victim-assistance-short-4-8-18-final.pdf>.
- 61 See Article 36 (2019), 'Framing harms: Analysing responses to different harms in international commitments to address armed violence,' available at: <http://www.article36.org/updates/framing-harms/>
- 62 See SSD (2015) commitments four and five
- 63 Global Coalition to Protect Education from Attack (2017), 'The Safe Schools Declaration: A Framework for Action,' available at: http://protectingeducation.org/sites/default/files/documents/a_framework_for_action.pdf
- 64 See for example Global Coalition to Protect Education from Attack (2016), 'What Schools Can Do to Protect Education from Attack and Military Use,' available at: http://www.protectingeducation.org/what_schools_can_do and Global Coalition to Protect Education from Attack (2016), 'Guide to Implementing the Principles of State Responsibility to Protect Higher Education from Attack,' available at: http://www.protectingeducation.org/sites/default/files/documents/guide_to_implementing_principles.pdf
- 65 See for example Global Coalition to Protect Education from Attack (2018), 'What can be done to better protect women and girls from attacks on education and military use of educational institutions?' available at: http://www.protectingeducation.org/sites/default/files/documents/what_can_be_done_to_better_protect_women_and_girls.pdf
- 66 See resources from the International Network on Explosive Weapons (INEW) available at: www.inew.org
- 67 For an up to date list, see International Network on Explosive Weapons (INEW), 'Political Response,' available at: <http://www.inew.org/political-response/>
- 68 See Republic of Austria Federal Ministry of Europe, Integration and Foreign Affairs (2019), 'Vienna Conference on Protecting Civilians in Urban Warfare,' available at: <https://www.bmeia.gv.at/en/european-foreign-policy/disarmament/conventional-arms/explosive-weapons-in-populated-areas/protecting-civilians-in-urban-warfare/protecting-civilians-in-urban-warfare/>
- 69 Handicap International (2016), 'Victim assistance in the context of the use of explosive weapons in populated areas,' available at: http://blog.handicap-international.org/influenceandethics/wp-content/uploads/sites/4/2018/01/Study2016_victimassistance_newcharte_EN_WEB.pdf