

PEACE AND SECURITY

HUMANITARIAN ACTION ON NUCLEAR WEAPONS

Reinvigorating Nuclear Diplomacy in the NPT and Beyond

Matthew Breay Bolton
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The August 2022 Review Conference of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT) is overshadowed by geopolitical insecurities arising from Russia's nuclear threats, the war in Ukraine, and renewed concerns about proliferation.



By contrast, the first meeting of states parties to the Treaty on the Prohibition of Nuclear Weapons (TPNW) in June 2022 led to the most comprehensive global policy framework addressing humanitarian and environmental impacts of nuclear weapons.



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By contrast, the first meeting of states parties to the Treaty on the Prohibition of Nuclear Weapons (TPNW) in June 2022 led to the most comprehensive global policy framework addressing ongoing humanitarian and environmental impacts of nuclear weapons to be achieved in the almost eight decades of the Atomic Age.



So far, many Western states have had an ambivalent engagement with the TPNW and its victim assistance and environmental remediation obligations, while complying with the humanitarian requirements of treaties that curb landmines and cluster munitions.



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Contents

1	INTRODUCTION	2
2	NUCLEAR WEAPONS HAVE ONGOING HUMANITARIAN AND ENVIRONMENTAL IMPACTS	3
3	GLOBAL POLICY ADDRESSING NUCLEAR WEAPONS LEGACIES IS WEAK AND FRAGMENTARY	5
4	TPNW POSITIVE OBLIGATIONS GENERATE COOPERATIVE DIPLOMACY	7
5	MINE ACTION OFFERS A MODEL OF PRAGMATIC GLOBAL COOPERATION ON HUMANITARIAN IMPACTS OF WEAPONS	11
6	CONCLUSION AND RECOMMENDATIONS	14
	Endnotes	15

1

INTRODUCTION

The use and testing of nuclear weapons has had catastrophic humanitarian and environmental consequences, which have been inadequately addressed by global policy. The Treaty on the Prohibition of Nuclear Weapons (TPNW), negotiated at the United Nations (UN) in 2017, is a categorical rejection of what had been the only weapons of mass destruction not yet banned by international law. But the TPNW also includes »positive obligations,« addressing the ongoing consequences of nuclear weapons use, testing, and related activities. These provisions were a major topic of discussion at the first meeting of states parties to the TPNW in June 2022 in Vienna, Austria. Discussions also centered on survivors' voices and offered surprising moments of openness and collaboration between states parties and observer states that are not yet party to the TPNW, including some in nuclear alliances. The resulting Vienna Action Plan outlines a practical and forward-looking agenda, addressing the long-neglected impact of the more than 2,000 nuclear detonations in affected communities. It also provides opportunities for states to pursue other diplomatic priorities of the 21st century, including sustainable development, gender equity, disability justice, the rights of Indigenous Peoples, and mitigation of environmental pollution.

By contrast, traditional forms of nuclear diplomacy are stymied by entrenched positions, exclusion, acrimony, obfuscation, and little real-world impact. The 1968 Treaty on the Non-Proliferation of Nuclear Weapons (NPT) is widely regarded as the »cornerstone« of international law and diplomacy on nuclear weapons. However, the NPT states parties are gathering in New York for their August 2022 Review Conference at a time of great insecurity. The previous Review Conference, in 2015, failed to come to an agreed outcome. Russia's hinted nuclear threats and the war in Ukraine, increasing nuclear modernization and rearmament across the nuclear-armed states, and renewed concerns about proliferation have taken global tensions to a height not seen since the Cold War.

In this context of increasing peril, addressing the ongoing humanitarian and environmental impacts of nuclear use and testing could serve as a confidence and security-building measure, with the potential to revive trust between states to the NPT and beyond. States in the Western security architecture, including NATO and other nuclear alliances, should set aside ideological obstacles blocking cooperation with TPNW states parties and engage pragmatically to assist victims

of and remediate environments contaminated by nuclear weapons.

This study starts by outlining the ongoing humanitarian and environmental impact of nuclear weapons use, testing, and related activities. It shows how weak and fragmentary global policy has failed to adequately address such concerns, stymied by traditional nuclear geopolitics. However, the report then demonstrates how cooperative diplomacy on the victim assistance and environmental remediation provisions of the TPNW has developed a comprehensive new framework for supporting affected communities. While states in the Western security architecture have so far only demonstrated ambivalent engagement with the TPNW and its positive obligations, this report offers a case study of humanitarian efforts addressing landmines, cluster munitions, and other explosive remnants of war as a useful model for pragmatic collaboration. The study calls on foreign aid donors to contribute to nuclear victim assistance and environmental remediation, concluding with recommendations for further policymaking in the NPT, TPNW, and beyond.

2

NUCLEAR WEAPONS HAVE ONGOING HUMANITARIAN AND ENVIRONMENTAL IMPACTS

In 1945, the US atomic bombings of Hiroshima and Nagasaki, Japan, killed more than 200,000 people. Those who survived have faced many difficulties. As of March 2017, there were more than 164,000 *hibakusha* (atomic bomb survivors) living in Japan,¹ who face elevated rates of cancer and other health problems.² Ionizing radiation has a disproportionate impact on women, who have also struggled with pervasive social stigma.³ These early nuclear detonations had a global impact, as a considerable number of foreigners were also exposed to the blasts and subsequent radioactive contamination. Notably, 22,000 Korean nationals (many of whom were coerced

into labor and sexual slavery) died and 30,000 survived the atomic bombings.⁴ There were Allied prisoners of war in both cities, including American, Australian, British, and Dutch soldiers, as well as students from China, Brunei, Malaysia and Indonesia, and other residents from Germany and Russia.⁵ More than 250,000 troops from the US, UK, Australia, New Zealand, India, and Nepal served in the occupation forces in Hiroshima and Nagasaki. Many of these »atomic veterans« have experienced health problems attributable to exposure to ionizing radiation.⁶

Box 1:

States/territories where nuclear weapon detonations have taken place⁷

Affected state/territory	In atmosphere (tests or, where indicated, use in war)	Underground tests (includes »peaceful nuclear explosions«)	Total
Algeria	4 (by France)	13 (by France)	17
Australia	12 (by UK)		12
China*	23	22	45
DPRK (North Korea)		6	6
French Polynesia (non-self governing territory administered by France)	46 (by France)	147 (by France)	193
India		6	6
Japan	2 (WWII atomic bombings by USA)		2
Kazakhstan	125 (by Soviet Union; including 9 missile tests from Russia)	372 (by Soviet Union)	497
Kiribati	33 (9 by UK and 24 by USA)		33
Marshall Islands	66 (by USA; not including 1 detonation over open ocean)		66
Pakistan		6	6
Russia	88 (by Soviet Union; not including launches of 9 missile tests that detonated inside Kazakhstan)	125 (by Soviet Union)	213
Turkmenistan		1 (by Soviet Union)	1
Ukraine		2 (by Soviet Union)	2
United States	113 (including 12 at Johnston Atoll and the Trinity test)	939 (24 with UK)	1,052
Uzbekistan		2 (by Soviet Union)	2
Total within territories controlled by states	512	1,641	2,153
Open ocean (not under jurisdiction of any one state)	7 (by USA, 3 in South Atlantic; 4 in Pacific)**		7
TOTAL	519	1,641	2,160

* The three failed Chinese tests, including two in 1979 (one underground, one atmospheric) and one in 1992 (underground), are not included in this table.

** The 1979 »South Atlantic Flash,« which some analysts believe was a South African and/or Israeli atmospheric nuclear test, is not included in this table, due to lack of confirmation.

Between 1945 and 2017, more than 2,000 nuclear test explosions were carried out at locations within, what are today, territories administered by 15 states (see Box 1). According to UN High Representative for Disarmament Izumi Nakamitsu, the legacy of the tests continues to have »profound, harmful, and long-lasting effects on the environment, human health, and the economic development of some of the world’s most fragile regions.«⁸ Nuclear-armed states frequently tested devices in areas they considered peripheral, which has placed a disproportionate burden of environmental contamination on Indigenous Peoples.⁹ The harms of nuclear testing were not confined to the states and territories in which they occurred. Millions of civilian and military personnel—from across the Soviet Union, USA, UK, France (including the Foreign Legion), China, Australia, Canada, Fiji, New Zealand, and North Korea—participated in nuclear test programs, often far from home; many test veterans suffered from ongoing health and psychological issues as a result.¹⁰ Radioactive fallout dispersed around the world, detected in states thousands of miles away from test sites.¹¹ The United States, the Soviet Union, and possibly other states, too, exposed people to ionizing radiation in experiments without their informed consent.¹²

Climate change poses serious challenges to former nuclear test sites, such as in the Marshall Islands, where rising sea levels are threatening the radioactive waste repository on Runit Island. The concrete dome which covers dangerous waste from US nuclear tests, including plutonium, is displaying cracks and leaking waste into the ocean. UN Secretary General Antonio Guterres has raised the alarm about the waste »poisoning the waters.«¹³

There have been many accidents related to the development, production, transportation, storage, and deployment of nuclear weapons and/or their key components, which may expose those handling them, or the general public, to radiation, or may pose other risks (such as the blast and incendiary effect of a chemical explosion).¹⁴ Other nuclear weapons activities, such as the mining, milling, storage, and transportation of uranium for nuclear weapons production, may expose those involved in the supply chain, as well as the general public, to ionizing radiation.¹⁵

In addition to the harms caused by nuclear weapons, accidents at nuclear power plants have had persistent and devastating humanitarian and environmental consequences.¹⁶

3

GLOBAL POLICY ADDRESSING NUCLEAR WEAPONS LEGACIES IS WEAK AND FRAGMENTARY

Several states particularly impacted by the legacy of nuclear weapons have established national (and occasionally regional) policies and programs addressing humanitarian and environmental concerns. However, few of these efforts adequately address the needs of affected communities.¹⁷ A weak and fragmentary global policy framework has failed to exert pressure to provide better victim assistance and environmental remediation and has stymied initiatives for countries to cooperate and aid affected communities across international boundaries.

One can find a nascent but truncated norm of assistance in the final outcome documents of NPT Review Conferences. Since 1995, outcome documents have called on states parties to develop »rigorous national measures and international cooperation« for radioactive waste management.¹⁸ The 2000 outcome highlights »bilateral and multilateral activities that have enhanced the capabilities of the international community to study, minimize, and mitigate the consequences of the accident at the Chernobyl nuclear power plant in support of the actions taken by the Governments concerned.«¹⁹

The most recent outcome, from 2010, acknowledged »the catastrophic humanitarian consequences« of nuclear detonations.²⁰ It welcomed »attention to problems of safety and contamination related to the discontinuation of nuclear operations formerly associated with nuclear-weapons programmes, including, where appropriate, safe resettlement of any displaced human populations and the restoration of economic productivity to affected areas.« Echoing language also found in the 2000 document,²¹ the 2010 outcome »encourages all Governments and international organizations that have expertise in the field of clean-up and disposal of radioactive contaminants to consider giving appropriate assistance as may be requested for remedial purposes in these affected areas...«

However, the NPT policy framework for assisting affected communities is weak.²² It is normative rather than legally-binding—encouraging states to take action rather than requiring them to do so. It lacks a human rights framing. NPT Review Conferences are widely recognized as privileging the voices of nuclear-armed states, marginalizing survivors, civil society, and non-nuclear-armed states, particularly those from the Global South. The discourse of the NPT favors abstract discussions on deterrence and strategic stability over

humanitarian, human security, human rights, and environmental concerns. The NPT Review Conferences are often acrimonious spaces. The interpretation of the consensus rule of decision-making is all too often wielded as a veto by the most intransigent nuclear-armed states.²³ The last conference, in 2015, collapsed without an agreed outcome. Given current international tensions, many commentators worry about the obstacles to achieving a successful conclusion in 2022.²⁴

There are other signs of an emerging norm of assistance scattered across the international system. The 2007 UN Declaration on the Rights of Indigenous Peoples (UNDRIP) recognizes the right »to the conservation and protection of the environment« (Article 29[1]), and calls on states to »take effective measures« to address the impact of »storage or disposal of hazardous materials,« through »programmes for monitoring, maintaining and restoring the health of indigenous peoples« (Article 29[2&3]). It also calls for the demilitarization of indigenous lands (Article 30).²⁵ Similarly, UN Environment Assembly (UNEA) resolutions on protecting the environment in armed conflict stress the »critical importance of protecting the environment at all times,« as well as »its restoration« following damage caused by military activities.²⁶ But neither the UNDRIP nor the UNEA specifically address the impact of nuclear weapons.

During the 1990s, the International Atomic Energy Agency (IAEA) passed resolutions on nuclear testing that requested states to inform the agency »of any adverse impact on health, safety and the environment as a consequence of ... nuclear testing.« It called on states to »to ensure that sites where nuclear tests have been conducted are monitored scrupulously and to take appropriate steps to avoid adverse impacts on health, safety and the environment.«²⁷ This resulted in several studies of radiological conditions at former test sites.²⁸

More recently, the UN General Assembly has passed resolutions concerning the humanitarian and environmental impact at the Semi/Semipalatinsk Soviet nuclear weapons test site in Kazakhstan,²⁹ in Maohi Nui/French Polynesia,³⁰ and the Chernobyl-affected region.³¹ All the latest versions of these resolutions were passed unanimously (and thus include the support of all nuclear-armed and nuclear-allied states). The Maohi Nui/French Polynesia resolution »encourages« France to »take steps« regarding »recognition and compensation of victims of nuclear tests« and requests that the UN

Secretary-General »provide continuous updates on the environmental, ecological, health and other impacts.«³² The Semi/Semipalatinsk resolution urges »the international community to provide assistance to Kazakhstan ... for the treatment and care of the affected population, as well as in efforts to ensure economic growth and sustainable development....«³³ Mandated by these resolutions, the UN system, notably the UNDP, has assisted recovery efforts in both Semi/Semipalatinsk and the Chernobyl-affected region.³⁴ In 2017, the UN Secretary-General published a report on »The environmental, ecological, health and other impacts of the 30-year period of nuclear testing in French Polynesia.«³⁵

The need to adequately protect the human rights of those living in former nuclear testing zones has also been highlighted in reports on the Marshall Islands and Kazakhstan by UN Special Rapporteurs.³⁶ In 2015, the Human Rights Committee of the International Covenant on Civil and Political Rights recommended that France »take all the necessary steps to ensure the effective recognition and compensation of all the victims of French nuclear tests, especially the local population.«³⁷ Kiribati received a recommendation during its Universal Periodic Review in the Human Rights Council, to »address the human rights impacts of nuclear testing by monitoring, assessing and responding to continuing rights issues.«³⁸

However, these international resolutions, development programs, and human rights institutions have only focused normative or programmatic attention on a few sites of concern, rather than establishing comprehensive, legally binding international obligations to address global nuclear weapons legacies.

4

TPNW POSITIVE OBLIGATIONS GENERATE COOPERATIVE DIPLOMACY

Responding to the 2010 NPT Review Conference's recognition of the »catastrophic humanitarian consequences« of nuclear weapons, in 2013–2014, states met in Oslo, Nayarit, and Vienna to consider the scientific evidence on the humanitarian impact of nuclear weapons. These conferences led to the circulation of a »Humanitarian Pledge,« in which states committed to »fill the legal gap for the prohibition and elimination of nuclear weapons,« the only weapon of mass destruction not yet banned by international law.³⁹ Subsequently passed as a UN General Assembly Resolution, the Pledge acknowledged that the »rights and needs of victims have not yet been adequately addressed.«⁴⁰ The Pledge also laid the political foundation for the General Assembly to open negotiations on the TPNW, adopted by 122 states in 2017. However, states in alliance or a close security relationship with nuclear-armed states—including NATO members, Japan, South Korea, and Australia—have expressed opposition to

the Treaty in various ways, boycotting negotiations and advancing disingenuous claims that the TPNW is incompatible with the NPT.⁴¹ States supporting the TPNW assert that it fulfills the obligations imposed by the NPT on all states parties »to pursue negotiations in good faith on effective measures relating to ... nuclear disarmament« (Article 6).

The TPNW's entry into force in January 2021 established a comprehensive new framework for addressing the humanitarian and environmental consequences of nuclear weapons activities. At the time of writing, the TPNW had 66 states parties and 86 signatories. As outlined in Box 2, the Treaty's positive obligations require states affected by nuclear weapons use and testing to provide assistance to victims and remediate contaminated environments (Article 6). All states parties »in a position to do so« are required to engage in international cooperation and assistance to support affected

Box 2:

TPNW positive obligations on victim assistance and environmental remediation

The preamble of the 2017 TPNW expresses concern for the »catastrophic humanitarian consequences« of nuclear detonations and associated activities, which pose dangers to »socioeconomic development, the global economy, food security and the health of current and future generations« and have had disproportionate impacts on »women and girls« and Indigenous Peoples. These concerns are addressed in the Treaty's positive obligations:

Victim Assistance

»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« (Article 6[1]).

Environmental Remediation

»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« (Article 6[2]).

International Cooperation and Assistance

To ensure that undue burden is not placed on affected states, Article 7 requires states parties »in a position to do so« to engage in »international cooperation and assistance,« including »technical, material and financial assistance to States Parties affected by nuclear-weapons use or testing.« Given the many ways a state can assist, most states parties should be able to offer some form of support to affected communities. Article 7(6) particularly obliges states parties that have »used or tested nuclear weapons or any other nuclear explosive devices« to contribute to »adequate assistance to affected States Parties, for the purpose of victim assistance and environmental remediation.«

states parties. The positive obligations draw directly from the language used in the 1997 Antipersonnel Landmine Ban Treaty (MBT or Ottawa Convention) and 2008 Convention on Cluster Munitions (CCM or Oslo Convention), filling the gap in international law where different standards of assistance apply to victims of conventional remnants of war versus victims of nuclear weapons.⁴² At the TPNW's First Meeting of States Parties (1MSP) in June 2022 in Vienna, Austria, New Zealand's Disarmament Minister Phil Twyford declared that: »More than any other aspect, it is the positive obligations that best express the humanitarian goals of the Treaty.«⁴³

States parties at 1MSP committed to a political declaration and action plan to guide the treaty's implementation. The declaration expressed alarm at threats to use nuclear weapons, affirmed the complementarity of the TPNW and NPT, and called for the treaty's universalization. The declaration also asserted that »[t]he Treaty's humanitarian spirit is reflected in its positive obligations, aimed at redressing the harm caused by nuclear weapons use and testing.« States parties vowed to »strengthen international cooperation« and »work with affected communities to provide age and gender sensitive assistance without discrimination to survivors of use or testing of nuclear weapons, and to remediate environmental contamination.«⁴⁴ In the action plan, states parties agreed to assess needs and establish national and international mechanisms to provide victim assistance and environmental remediation, centering on the concerns of affected communities (see Box 3).

Beyond the specific agreed actions, however, the negotiation of the TPNW and Vienna 1MSP have modeled a more inclusive and collaborative approach to nuclear diplomacy than traditional mechanisms.⁴⁵ The 2017 TPNW negotiations were, according to a peer-reviewed study, »remarkable, in the context of the patterns of state participation in international forums and frameworks addressing disarmament and weapons issues.« States from the Global South were better represented both in terms of presence and actual participation. Delegations were also more gender diverse.⁴⁶

Similarly, policymaking at 1MSP was rooted in people's actual experience of nuclear detonations, rather than abstract theories of deterrence or strategic stability. UN High Representative for Disarmament Izumi Nakamitsu said »the in-person participation by representatives of communities affected by nuclear testing ... brings a much-needed human touch to the political discussions.«⁴⁷ The rules of procedure for 1MSP enabled extensive participation from the Red Cross and Red Crescent Movement and civil society.⁴⁸ Diplomats heard testimony from people affected by nuclear weapons activities in Australia, Japan, Kazakhstan, Marshall Islands, Maohi Nui/French Polynesia and the USA. The Marshall Islands, not currently a TPNW state party, expressed gratitude on Twitter for the »inspiring words« of Marshallese youth and civil society representatives, raising awareness of the legacies of nuclear testing and need for »#nuclearjustice.«⁴⁹

Box 3:

Vienna Action Plan commitments on victim assistance and environmental remediation

The Vienna Action Plan, adopted at the TPNW First Meeting of States Parties in Vienna, Austria, outlines specific measures to operationalize the Treaty.⁵⁰ Regarding its positive obligations, states parties committed to:

- »Actively involve...affected communities at all stages,« as well as international organizations, Indigenous Peoples, civil society, the Red Cross and Red Crescent Movement, and youth (Actions 19, 24, and 25);
- »Assess the effects of nuclear weapons use and testing« in affected states, focusing on the »needs of victims and contamination of the environment, as well as national capacities to address them« (Action 30);
- Conduct all assistance activities according to »principles of accessibility, inclusivity, non-discrimination, and transparency and in coordination with affected communities,« in an »age- and gender-sensitive« manner and mindful of »the disproportionate impact of nuclear weapons use and testing on women and girls and indigenous people« (Action 25);
- Establish »national focal points,« »relevant national laws and policies,« »national plans,« voluntary reporting mechanisms, »budgets and timeframes« (Actions 21, 22, 27, 28, and 31);
- »Coordinate and develop mechanisms« to facilitate »international cooperation and technical, material, and financial assistance« to affected states parties, including a possible »international trust fund for states that have been affected by the use or testing of nuclear weapons« (Actions 23, 29, and 32);
- »Engage and promote information exchange with states not party to the Treaty that have used or tested nuclear weapons« with regard to their »provision of assistance to affected states parties« (Action 20);
- Review and learn best practice, including »lessons from implementation measures for positive obligations in other treaty regimes« and »relevant approaches in other humanitarian disarmament instruments« regarding gender and age sensitivity (Actions 26, 49, and 50).

The Vienna Action Plan also established mechanisms to aid Treaty implementation more broadly, including a Scientific Advisory Group (Actions 33 and 34) and a Gender Focal Point (Action 48). At 1MSP, states parties also agreed to establish an Informal Working Group on positive obligations, chaired by Kazakhstan and Kiribati to meet in the intersessional period between the first and second meeting of states parties.⁵¹

Kazakhstan and Kiribati, the two states parties whose territory had been subjected to nuclear testing, were asked by the Chair to lead extensive informal consultations on how to implement the TPNW's positive obligations in the run up to the conference. These consultations were open to all states (including those not party to the Treaty), as well as representatives of affected communities and civil society. Kazakhstan and Kiribati then presented a Working Paper to the 1MSP,⁵² which formed the basis for the specific commitments on victim assistance and environmental remediation in the Vienna Action Plan (see Box 3). In his closing remarks, the Chair of 1MSP, Ambassador Alexander Kmentt of Austria thanked delegates, the International Committee of the Red Cross (ICRC), civil society, academia, and the UN Secretariat, but, »[a]bove all ... survivors and affected communities. We've set a new standard of working together closely and efficiently in the TPNW framework.«⁵³

The TPNW has also enabled the participation of states that are not UN Members, as well as representatives from non-self-governing territories. Niue and the Cook Islands, which are not party to the NPT (nor UN Members), are both party to the TPNW. At 1MSP, the Cook Islands shared its experience of being »sandwiched« between two test sites (US and UK tests in Kiribati and French tests in Maohi Nui / French Polynesia) and stated that the TPNW's positive obligations »bring a human face and human heart« to nuclear disarmament.⁵⁴

In Vienna, in addition to extensive interventions from Kiribati and Kazakhstan, 1MSP heard supportive statements on the TPNW's positive obligations from states parties around the world, including the major non-NATO US allies New Zealand, Philippines, and Thailand, as well as Austria, Cambodia, the

Cook Islands, Comoros, Costa Rica, Cuba, Ecuador, El Salvador, Fiji, Holy See, Ireland, Malaysia, Malta, Nigeria, Panama, Samoa, and South Africa. Signatory states also made statements in support of the TPNW's positive obligations, including Nepal and the Dominican Republic.

As an indication of this cooperative spirit, states that have so far opposed or expressed ambivalence about the TPNW engaged more collaboratively on victim assistance and environmental remediation (see Box 4). Samoa, a TPNW state party, »welcome[d] the expression of support for victim assistance and environmental remediation from States not yet party«⁵⁵

The active participation of affected communities, inclusivity, and collaborative spirit has had a substantive effect. The TPNW and 1MSP have quickly developed a comprehensive global policy framework addressing humanitarian and environmental impacts of nuclear weapons—something no other form of nuclear diplomacy has achieved in the almost eight decades of the atomic age. It has a forward-looking and action-oriented approach, which addresses other pressing global policy concerns regarding gender, disability justice, the rights of Indigenous Peoples, and the need to mitigate environmental pollution. In a working paper submitted to 1MSP, the NGO Mines Action Canada pointed out that implementation of the TPNW not only complements the NPT, it »can [also] help the States Parties meet their obligations under a number of agreements on human rights and sustainable development,« including UNDRIP, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the Convention on the Rights of the Child (CRC), the Convention on the Rights of Persons with Disabilities (CRPD), and Sustainable Development Goals (SDGs).⁵⁶

Box 4:

Supportive statements related to ongoing humanitarian and environmental impact of nuclear weapons from states not yet party to the TPNW present as observers at 1MSP

Switzerland stated they »are convinced that efforts within the framework of the TPNW can complement those undertaken within the NPT« and that TPNW »provisions on assistance to victims and environmental remediation are areas where synergies may even be realized.«⁵⁷ They »commend[ed] the efforts to translate those obligations into action and to put in place effective structures to identify needs, to raise resources and to address the humanitarian harm with concrete work on the ground.« Switzerland asserted that »[g]iven the magnitude of the damage, this will be a long-term endeavor.« As a result, »it will need support by the widest possible group of states.« They expressed »hope that the structures and instruments can be put in place in a way to take this work forward« by including »potential donor states as well as ... beneficiaries« that are not party to the TPNW.⁵⁸

Germany told 1MSP that it was »committed to engaging in constructive dialogue and exploring opportunities for practical cooperation« with TPNW states parties. In particular, »[w]e are interested to hear more about the ›positive obligations‹ of the Treaty. Indeed, we believe that the provision of victim assistance and environmental remediation from the long-term damages of nuclear testing deserve broader attention and engagement.«⁵⁹

Norway described »[w]ork to draw attention to humanitarian consequences of the use of nuclear weapons« as »important for nuclear disarmament.« As a result, »[w]e need to update our insights and are seeking to establish a fact-based understanding of the effects of a nuclear detonation. This includes both immediate and long-term effects on human health, critical infrastructure, the environment, soil, and air.«⁶⁰

Sweden recognized that the »humanitarian and environmental consequences« of the atomic bombings of Hiroshima and Nagasaki, as well as the first nuclear test in New Mexico, USA »are still visible.«⁶¹

Headway on victim assistance and environmental remediation in the TPNW may even be having subtle normative effects on states that refused to participate in 1MSP. While Italy boycotted the meeting, its Chamber of Deputies adopted a resolution committing the government to follow »Italy's great humanitarian tradition« by evaluating »possible actions to approach the contents of the TPNW Treaty, in particular with regard to actions of ›Assistance to victims and environmental rehabilitation.«⁶² Prompted by Kiribati's leading role in convening discussions on TPNW positive obligations, UK politicians asked several parliamentary questions regarding the TPNW and the legacy of the UK's nuclear testing in the Pacific. In response, James Cleverly, Minister for Europe, responded that the »UK government appreciates the importance of the biodiversity and cultural value of the many islands that make up the Republic of Kiribati including those affected by nuclear testing in the pre-independence period.... The UK hopes that its increased funding for environmental and climate related initiatives in the Pacific region will be able to contribute to the ... the needs of Kiribati communities in the islands.«⁶³ In an otherwise very contentious moment for the Pacific Islands Forum (PIF) (Kiribati withdrew from the regional body in July 2022; the Republic of the Marshall Islands was boycotting proceedings⁶⁴), the declaration of its 2022 Foreign Ministers meeting »noted« 1MSP »and Pacific Island nations' support in this regard.« Several PIF Member States are not yet party to the TPNW, including Australia, a nuclear-allied state; the Marshall Islands and Federated States of Micronesia, which are in Compacts of Free Association with the nuclear-armed USA; as well as non-self-governing territories—Maohi Nui/French Polynesia and Kanaky/New Caledonia—administered by nuclear-armed France. Subsequently the PIF Leaders Meeting noted progress »address[ing] the ongoing impacts of nuclear testing« through regional bodies, including renewed assessments »to provide the evidentiary basis for ongoing Forum advocacy on nuclear legal issues.«⁶⁵ The PIF Leaders Meeting approved a »2050 Strategy for the Blue Pacific Continent,« which committed PIF states to »adopting a precautionary and forward looking approach to protect the region's biodiversity, its environment and resources from ... nuclear contamination.«⁶⁶

Norwegian diplomat and humanitarian Jan Egeland has written about how states' entrenchment of military interests is fetishized as a kind of »power politics.« But this ideological rigidity can actually reduce policymakers' power to address human rights, development, and environmental concerns.⁶⁷ Therefore, if they cling too tightly to traditional forms of nuclear diplomacy—dominated by nuclear-armed states and the vested interests of the arms industry—states opposed to the TPNW may be forced into policy positions contradicting their own national interests. For example, Sweden claims it »pursues a feminist foreign policy,« which is »based on the conviction that sustainable peace, security and development can never be achieved if half the world's population is excluded.«⁶⁸ However, opposing the TPNW, Sweden places itself outside the only nuclear disarmament treaty to recognize the gendered impact of nuclear weapons, call for »equal, full and effective participation of both women and men« in peace and security policy, require gender sensitivity in

implementation, and, at its 1MSP, establish a Gender Focal Point. Similarly, Canada asserts that it is »championing the rights of Indigenous peoples around the world«⁶⁹ and has »strongly supported the inclusion of indigenous issues« in international institutions.⁷⁰ However, by boycotting the TPNW entirely, Canada has marginalized itself from the only international disarmament process to engage seriously with Indigenous concerns. The TPNW is the only global disarmament treaty to specifically mention Indigenous Peoples and the Vienna Action Plan commits states parties to »[e]ngage with ... indigenous peoples« in the implementation of the positive obligations, taking into account the ways they have been disproportionately impacted by nuclear weapons use and testing (Actions 19 and 25).

5

MINE ACTION OFFERS A MODEL OF PRAGMATIC GLOBAL COOPERATION ON HUMANITARIAN IMPACTS OF WEAPONS

States in the Western security architecture, with NATO and other US alliances have, to varying degrees, expressed antipathy toward the TPNW and refused to engage collaboratively, even with victim assistance and environmental remediation. However, practice in other policy settings—even disarmament and security matters—demonstrates that these same states are capable of acting very differently. In the field of mine action, many of these states are leaders in international cooperation, providing risk education and victim assistance to communities affected by landmines, cluster munitions, and other explosive remnants of war, as well as remediation of contaminated land through demining. As shown in Box 5, states that are not currently collaborating on nuclear victim assistance and environmental remediation are among the top donors funding mine action programs. Their engagement with the MBT and CCM has shown them to be better at listening to affected communities, collaborating across political divisions, and adopting an action-oriented approach.

The success of the mine action sector in reducing harm is an outstanding global achievement, with hundreds of square kilometers of contaminated land being cleared, millions of landmines and cluster munition bomblets being destroyed, and millions of dollars being raised to assist victims.⁷¹

There are skeptics who argue that mine action's collaborative practice is not relevant for dealing with the much more politicized and strategically significant nature of nuclear weapons. However, the positive obligations in the TPNW drew on the precedent set by other humanitarian disarmament treaties, notably the Oslo and Ottawa Conventions, which addressed the harm caused by inhumane conventional weapons. The Vienna Action Plan actually commits TPNW states parties to learning »lessons from implementation measures for positive obligations in other treaty regimes« (Action 26), particularly »humanitarian disarmament instruments« (Actions 49 and 50) (see Box 3).

Box 5:

Top donors funding mine action⁷²

Rank	Donor state	Contribution to mine action, 2016–2020 (US\$ million)	Position on MBT	Position on CCM	Position on TPNW
1	US	1,056.9	Not party	Not party	Not party, nuclear-armed state
2	EU	418.4	N/A	N/A	N/A
3	Germany	257.1	Party	Party	Not party, observer 1MSP
4	Japan	187.1	Party	Party	Not party
5	Norway	199.0	Party	Party	Not party, observer 1MSP
6	UK	213.7	Party	Party	Not party, nuclear-armed state
7	Switzerland	81.3	Party	Party	Not party, observer 1MSP
8	Denmark	80.5	Party	Party	Not party
9	Netherlands	92.5	Party	Party	Not party, observer 1MSP
10	Canada	52.6	Party	Party	Not party
11	Sweden	48.2	Party	Party	Not party, observer 1MSP
12	New Zealand	44.3	Party	Party	Party
13	France	41.6	Party	Party	Not party, nuclear-armed state
14	Australia	40.2	Party	Party	Not party, observer 1MSP
15	Italy	20.9	Party	Party	Not party
16	Ireland	16.5	Party	Party	Party
17	Belgium	15.9	Party	Party	Not party, observer 1MSP
18	Finland	13.2	Party	Not party	Not party, observer 1MSP
19	Austria	8.4	Party	Party	Party
20	South Korea	7.0	Not party	Not party	Not party

In the early campaign to ban landmines, the bid to place ethical and humanitarian concerns at the center of diplomatic conversations was called »the Phnom Penh formula,« following a landmark conference in Cambodia, one of the world's most mine-affected countries.⁷³ In its statement before the TPNW 1MSP, Cambodia, called on the international community to learn from mine action policymaking, rather than treating it as a totally separate sector. The MBT »has shown how crucial positive obligations can be in remediating contaminating environments, assisting victims and providing risk education.«⁷⁴

Survivors played a pivotal role in the civil society campaigns on landmines and cluster munitions, shaping the resulting treaties and human rights and disability justice framing of the mine action sector. For example, early drafts of the MBT failed to include victim assistance, but such provisions were added as a result of the concerted advocacy of landmine survivors themselves.⁷⁵ The eventual language on victim assistance in the MBT was relatively weak, requiring only those states »in a position to do so« to aid affected communities. However, mobilization by survivors ensured better provisions in the CCM, which placed victim assistance in a human rights framework.⁷⁶ Articles 6 and 7 of the TPNW are based on this stronger language of the CCM (see Box 2), which has also positively influenced practice on landmine victim assistance.⁷⁷

The »Phnom Penh formula« thus reshaped many states' policies by encouraging them to take the empirical humanitarian realities of landmines and cluster munitions seriously, rather than present abstract doctrines of military strategy. For example, as late as 1995, Norway's foreign minister resisted the negotiation of a standalone treaty on landmines outside the traditional, consensus-based channels. However, by 1997 Norway had reversed its position and even hosted one of the MBT negotiating conferences. Norway has since emerged as a strong supporter of the MBT and CCM, especially in the remediation of land through demining.⁷⁸ Norway hosted the most recent MBT Review Conference; the resulting Oslo Action Plan committed states parties to »ensure sustainable, integrated support for victims« and »increase the survey and clearance« of contaminated land.«⁷⁹

Then Foreign Minister Jonas Gahr Støre drew inspiration from the MBT in shepherding the »Oslo Process« that successfully banned cluster munitions.⁸⁰ Subsequently, the country turned its attention to nuclear weapons, seeking to »draw on experience from the humanitarian disarmament agenda« and in 2013, the Norwegian government hosted the first conference on the humanitarian impact of nuclear weapons in Oslo. However, when its own initiative led to the TPNW negotiations, Norway was pressured by the US to oppose the proceedings.⁸¹ Støre is now prime minister, but has not yet realigned Norway's position on the TPNW with his humanitarian approach.⁸²

Indeed, few states in the Western security architecture have adopted consistent positions on how to assist communities affected by landmines and cluster munitions versus nuclear weapons. In its statement as an observer to the TPNW

1MSP, the Netherlands failed to mention the humanitarian or environmental consequences of nuclear weapons use or testing. It offered no comment on victim assistance and environmental remediation; not even using the words »victim,« »survivor,« »affected community,« or »hibakusha.« Instead, the Netherlands claimed that disarmament policy had to be balanced with »Deterrence and Defense« in the interests of »strategic stability.«⁸³ By contrast, in the very same week, the Netherlands delivered a detailed speech on victim assistance at the MBT Intersessional Meeting in Geneva, calling for an »inclusive« and »people centered approach« placing »the needs of mine survivors, their families and communities ... at the centre of our attention. They are the ones who suffered most and must be given a chance to rebuild their lives after the atrocities they have gone through.« The Netherlands called on both MBT states parties and those not party to the Treaty to adopt a »holistic approach...not only to direct survivors, but also to their communities,« including psychosocial support in »their broader victim assistance priorities within Mine Action and beyond...«⁸⁴ Similarly, Japan, which boycotted 1MSP, has asserted that the »international community must unite and mobilize its utmost effort« to provide »[c]omprehensive and sustainable assistance« to help »mine victims and survivors to overcome the damages they suffered and restore their livelihood.«⁸⁵

US policy toward the MBT and CCM could serve as a model for realigning the Western security architecture's relationship with the TPNW. The US played spoiler during the MBT negotiations and has refused to join the Treaty; it actively sought to undermine negotiation of the CCM.⁸⁶ However, US policy has increasingly adjusted to the provisions of the MBT and CCM.⁸⁷ The US has ratified the 2003 Explosive Remnants of War (ERW) Protocol of the Convention on Certain Conventional Weapons, which includes victim assistance and remediation provisions mirroring the MBT. While TPNW 1MSP was meeting, the White House announced that it planned to overturn the retrograde Trump-era policy on landmines, which allowed the US military to produce and deploy anti-personnel landmines anywhere in the world. Though remaining outside the MBT legal framework, President Biden broadly realigned US policy with the Treaty (except on the Korean peninsula). In its announcement, the US celebrated its achievements as »the world's single largest financial supporter of steps to mitigate the harmful consequences of landmines and explosive remnants of war around the world, including through land clearance and medical rehabilitation and vocational training for those injured by these weapons.«⁸⁸ The US has also provided increasing support for risk education, victim assistance, and remediation of the land contaminated by cluster bombs and other explosives dropped in the Vietnam War. This has aided normalization of US diplomatic relations with Vietnam and Laos.⁸⁹

Rather than condemning the TPNW and/or boycotting meetings, states not currently party to the Treaty could collaborate productively by participating in MSPs and intersessional meetings and contributing foreign aid to victim assistance and environmental remediation. As an encouraging example, while Switzerland has expressed ambivalence about

the TPNW, it played a leading role in the negotiation of the positive obligations and voted to adopt the Treaty.⁹⁰ At 1MSP, where it was an observer, Switzerland described nuclear victim assistance and environmental remediation as »an area where we should explore complementarities and synergies ... we hope this issue will be taken forward at the 10th NPT Review Conference, since the humanitarian consequences should unite us all.«⁹¹

6

CONCLUSION AND RECOMMENDATIONS

Traditional nuclear policy arenas like the NPT—while foundational to the global order—are dominated by nuclear-armed states, plagued by a lack of transparency, and offer little space for creative new thinking. They still have value, but states should not dismiss complementary initiatives out of habit or ideological complacency. By contrast, the TPNW has created a space of nuclear diplomacy that is responsive to the pressing international concerns of the 21st century, including gender equity, disability justice, the rights of Indigenous Peoples, and the need to mitigate environmental pollution. Discussion of TPNW provisions on victim assistance and environmental remediation have amplified the voices of affected communities and demonstrated an openness to civil society, humanitarian agencies, and scientific knowledge.

Productive and action-oriented cooperation addressing the ongoing humanitarian and environmental impact of nuclear weapons use, testing, and related activities offers a way to build bridges between TPNW states parties and those not yet supportive of the Treaty. Victim assistance and environmental remediation programs can be conceived of as confidence and security-building mechanisms addressing the current hostile global political context. At a time of increasing tension in nuclear diplomacy, focus on humanitarian and environmental concerns could build much-needed trust in the 2022 NPT Review Conference. The humanitarian approach used by states in mine action—covering landmines, cluster munitions, and explosive remnants of war—offers a model of pragmatic and collaborative practice.

Consequently, this study recommends that:

1. Leading mine action donor states should extend their humanitarian concern to communities affected by nuclear weapons activities, by providing foreign aid—including technical, material, and financial support—to victim assistance and environmental remediation efforts;
2. States that have used and/or tested nuclear devices—as well as states that contributed personnel and/or other assistance to such activities—have a particular responsibility to provide financial, material, and technical support to assist victims and remediate contaminated environments;
3. NPT states parties should call for the language used in the final Outcome Document of the 2022 Review Conference to welcome progress in and support for victim assistance, environmental remediation, and international cooperation, as well as assistance to address the humanitarian and environmental consequences of nuclear weapons and other radioactive contamination;
4. States not yet party to the TPNW should engage cooperatively and productively with the Vienna Action Plan's provisions on victim assistance and environmental remediation;
5. TPNW states parties should welcome and facilitate productive collaboration by states not yet party to the Treaty on nuclear victim assistance and environmental remediation;
6. All states should engage in other collaborative efforts to bridge the gap between TPNW state parties and states not yet party, such as by developing cooperation to address gender inequities and Indigenous concerns in nuclear disarmament policymaking;
7. States not yet party to the TPNW should reconsider their position and sign and ratify as soon as possible;
8. All states should explore additional forums for policy collaboration on nuclear victim assistance and environmental remediation, including the UN General Assembly First Committee, UN Human Rights Council, UN Environment Assembly, and UN Permanent Forum on Indigenous Issues.

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ABOUT THE AUTHOR

Matthew Breay Bolton is Professor of Political Science at Pace University, New York City. His books on disarmament include *Political Minefields* (I.B. Tauris, 2020) and *Global Activism and Humanitarian Disarmament* (Palgrave, 2020). He has a PhD in Government and a Master's in Development Studies from the London School of Economics.

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Responsibility for content:
Michael Bröning | Executive Director
Friedrich-Ebert-Stiftung | New York Office
747 Third Avenue, Suite 34D | New York, NY 10017 | USA |
FES New York Phone +1-212-687-0208
www.fesny.org

Contact/Order: Christiane.Heun@fes.de

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