Victim Assistance under the Treaty on the Prohibition of Nuclear Weapons: An Analysis

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ABSTRACT
The article analyses the provision of victim assistance present under the Treaty on the Prohibition of Nuclear Weapons (TPNW) by examining the nature and scope of positive obligation on States Parties (affected states, user states and other states) to provide assistance and the constituents of assistance. Throughout the analysis, the author assesses where the Treaty has surpassed the previous humanitarian disarmament treaties in its formulation and where it has lessened the scope of its normative framework for victim assistance. The paper also investigates the specific aspect of victim assistance which helped in fulfilling the humanitarian goals of the Treaty such as including age and gendered approach, protecting the rights of indigenous communities, applying the principles of International Humanitarian Law (IHL) and International Human Rights Law (IHRL). The article highlights the contemporary developments in the provision of victim assistance as contributed by the TPNW by introducing the unprecedented obligation on user states and some of its possible reforms for future such as aiming at more robust implementation and transparency measures.

Introduction

The Treaty on the Prohibition of Nuclear Weapons (TPNW), which is adopted on 7 July 2017 (UNTS 2017) by a vote of 122 States in favour (with one vote against and one abstention), is a first legally binding international agreement that prohibits nuclear weapons, leading towards their total elimination. The Treaty will come into force 90 days after the fiftieth instrument of ratification, acceptance, approval or accession has been deposited. The Treaty reached its fiftieth ratification on 24 October 2020, meaning that on 22 January 2021 it will enter into force (UNODA 2020). The TPNW includes a comprehensive set of prohibitions on participating in any nuclear weapon activities such as not to develop, test, produce, acquire, possess, stockpile, use or threaten to use nuclear weapons. Providing adequate assistance to individuals affected by the use or testing of nuclear weapons also forms the part of this normative framework under the TPNW.

There is an agreement among scholars on the three kinds of provisions which characterize humanitarian disarmament treaties (Docherty 2010; Finaud 2017, 9;
Docherty, Levine-Spound, and Osman 2018, 4²). For instance, Bonnie Docherty put the absolute prohibition of these weapons as the first provision under any humanitarian disarmament treaties, secondly, the remedial measures such as victim assistance and thirdly, the cooperative approaches to implementation (Docherty 2010). Victim assistance is one such provision under humanitarian disarmament treaties that places primary responsibility on the States to ensure that victims have met their rights and their needs are respected (GICHD 2011, 10). The term “victim assistance” first appeared in the text of Mine Ban Treaty (MBT), 1997 (UNTS 1997) and since then it has been used in several humanitarian disarmament treaties. The provision has evolved enormously in the last two decades (Docherty 2017, 5)³ The latest treaty to incorporate this provision is the TPNW, which has included the provision of victim assistance under its preamble and articles to further its humanitarian goal (Hunt 2017, 5)⁴ The earlier weapon treaties like 1868 Saint Petersburg Declaration and 1899 Hague Convention have also been guided by the provision of victim assistance in a very limited sense by only putting a complete prohibition on those weapons that are capable of causing unnecessary sufferings to individuals. But it was only in 1997 that the weapon treaties incorporated victim-centric provisions which focus on the rights of victims of the use of such weapons under its separate operative clauses (Rutherford, Čevra, and Begley 2008, 42; Eitel 1999, 2; GICHD 2011).

However, there are considerable debates among the scholars on the importance of humanitarian disarmament treaties in general and on the role of victim assistance provision under the TPNW in facilitating its humanitarian goals. Some author supports the development of humanitarian disarmament treaties (Borrie 2005)⁵ and argues that the inclusion of provision such as complete ban, and victim assistance furthers the humanitarian goal of disarmament treaties (Docherty 2018⁶; Hunt 2015⁷, 2017, 8; Fihn 2017). Matthew Bolton states that the TPNW places a strong legal obligation on States to address the humanitarian concerns of nuclear weapons and is the most comprehensive international instrument addressing nuclear harms (Bolton, Matthew 2017, 15). The TPNW further recognizes the special vulnerability of certain groups that need higher protection, that is, female individuals of all ages and indigenous communities (Rietiker 2018, 5). On the other hand, some author criticises the humanitarian disarmament treaties in general (Benjamin-Britton, Bolton, and Njeri et al. 2020) while some focus

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¹Finaud has reflected that the humanitarian motivation of disarmament treaty is efforts to protect civilian populations from the suffering caused by weapons used in conflict or armed violence.
²The authors argued that humanitarian disarmament places civilian protection, rather than national security, at the centre of disarmament, commonly prohibits a specific type of weapon, obligates states parties to eliminate stockpiles, and requires the provision of assistance to victims and clearance of contaminated land.
³Docherty has reflected upon the evolution of victim assistance and how it grew stronger and become more established with time comparing it under the MBT and the CCM..
⁴Hunt stressed the importance of victim assistance provision to minimize the humanitarian harm caused by nuclear weapons..
⁵Borrie argued that bringing humanitarian perspectives further into multilateral disarmament and arms control’s community would be beneficial.
⁶Docherty reflected the TPNW as the latest step in humanitarian disarmament and its role in strengthening humanitarian disarmament. She further argued that the TPNW followed the humanitarian disarmament model in its practical elements as well as its conceptual framing. For example, to further its humanitarian purpose, the treaty packages preventive measures with remedial ones, that is, victim assistance provision.
⁷Hunt noted that including victim assistance would do just that, putting the humanitarian into humanitarian disarmament.
on the criticisms of the TPNW as a whole (Harries 2017; Onderco 2017, 391; Highsmith and Stewart 2018, 129) or its victim assistance provision (Bolton 2018).

The article attempts to contribute to the existing literature on victim assistance by examining victim assistance provisions in the TPNW, how the provision has evolved since the adoption of the MBT, and its role in furthering the goal of humanitarian disarmament. The article places the Convention on Cluster Munitions (CCM) in 2008 (UNTS 2008) as the standard precedent for the provision of victim assistance (Reiterer 2010, 25; Docherty 2009, 949), along with the MBT and Protocol V of the Convention on Certain Conventional Weapons (CCW) (UNTS 2003) from which comparison and assessment are done for the TPNW. The paper assesses the comprehensiveness of victim assistance provision under the TPNW and examines where the Treaty has surpassed the previous humanitarian disarmament treaties in its formulation and where it has lessened its normative framework. The paper also investigates the specific aspect of victim assistance which helped to fulfil the humanitarian goal of the Treaty.

Part II of the paper discusses the provision of victim assistance under the TPNW by examining the intention of negotiating parties for its inclusion and by analysing its relevance vis-à-vis previous humanitarian disarmament treaties, particularly the CCM. The chapter aims to trace out all the substantial parts of the TPNW, where States are obligated to provide assistance to victims, and the nature of such assistance. Part III of the paper evaluates the victim assistance in the light of humanitarianism. It seeks to analyse the relevance of humanitarian goals in the TPNW and further explores the various facets of victim assistance that helps to promote the humanitarian goal of the treaty. The last part concludes the study by highlighting the contemporary developments in the provision on victim assistance as contributed by the TPNW and some of its possible reforms for the future.

**Victim Assistance under the TPNW**

The TPNW is the latest treaty in the series which has included the provision on victim assistance. As discussed above, the provision first emerged in the MBT and since then has been evolving through incorporation in various humanitarian disarmament treaties. The TPNW has, instead of following the path of other weapons of mass destruction conventions, incorporated the obligations similar to the three humanitarian disarmament treaties: the MBT, the CCW and the CCM. The positive obligation to assist the victims has not just been mentioned comprehensively in the substantive provisions, but also

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9Harries pointed out that the TPNW will only succeed if it would have been negotiated with the active participation of several of the nuclear-armed states, and that it undermines the importance of the Comprehensive Nuclear Test Ban Treaty and the Non-Proliferation Treaty.

9Onderco reflected that ban treaty is a bad idea because it would neither strengthen the norms, nor make the world a safer place.

10Bolton argued that the TPNW has less details on the administrative systems and structures for implementing victim assistance provision than other humanitarian disarmament instruments and should learn lessons from the implementation of the MBT, the CCM and the Explosive Remnants of War (ERW) Protocol, as well as other relevant instruments like the Arms Trade Treaty and Programme of Action on Small Arms and Light Weapons. He also suggested that States Parties must support a coordinated effort to conduct global, regional, national and local needs assessments on the humanitarian and human rights harms of nuclear weapons.

11Docherty stated that the most ground-breaking achievement of the CCM lies in the sphere of victim assistance as previous weapons treaties do not include such an extensive provision to meet victims' needs. Docherty also refers to it as a “precedent-setting provision”.
elaborated in length under the preambular paragraphs of the TPNW. The preamble together with the provisions of the TPNW forms the legal basis for the victim assistance. This chapter seeks to investigate the major provisions under the TPNW which establish an obligation for States Parties to provide assistance, and the rights of victims that can be exercised by them. It further assesses the prospective participants upon whom such responsibility is imposed and the targeted victims who can fulfil their rights through this treaty.

**Positive Obligation on States**

**Obligation on the Affected States**
The nature of the obligation to provide assistance to victims has evolved over time, and the present concept of victim assistance is not similar to the concept found under the previous humanitarian disarmament treaties. The MBT, for instance, spells out non-binding obligations on the Member States to provide assistance to the mine victims as it provides “*Each State Party in a position to do so…*” The term “in a position to do so” combines the responsibility of affected states, user states as well as other State Parties to provide assistance (Reiterer 2010, 25). It further gives the option to the Parties to depart from its responsibilities of providing assistance to victims under its jurisdiction solely on the ground of being incapable to do so. Protocol V of the CCW states similar obligation by using the same language, “*Each High Contracting Party in a position to do so.*” It was only in 2007 with the adoption of the CCM that the obligation to provide victim assistance was made mandatory, bringing substantial change in the obligation of affected states (Article 36 and IHRC 2017, 8). It states that “*Each State Party with respect to cluster munition victims in areas under its jurisdiction or control shall…*”. Here, the term “shall” signifies that there is no escape for State from its obligation of providing assistance to the victims under their jurisdictions. This will ensure that the rights of all people in the State’s territory are respected, protected, and fulfilled, and that States will take steps to eliminate barriers faced by people and promote effective participation in society. At the same time, it also respects the State’s sovereignty over the activities within its jurisdiction or control (Article 36 2017b; IHRC 2019).

The provision on victim assistance underlying in the TPNW is largely motivated by the provision articulated under previous humanitarian disarmament treaties. Initially, the drafters intended to include a language similar to that in the MBT by laying down the non-binding obligation on affected states to provide victim assistance (The President of the Conference 2017). This was objected by various States such as Fiji which advocated establishing primary responsibility on affected states to provide victim assistance (The President 2017). Other organizations such as the International Committee of the Red Cross (ICRC) also recommended deleting the phrase “in a position to do so” in providing victim assistance, as it differed significantly from an approach taken in Article 5 of the CCM which was widely heralded as an important development of IHL to further a needs-based, humanitarian approach to victim assistance (ICRC 2017). States like Iran, on the contrary, supported the language which does not put primary responsibility on the affected states (The President 2017).

During subsequent negotiations of the TPNW, the provision has undergone substantial changes. More comprehensive and solid provisions were presented in its further
drafts, and, finally, a provision similar to what is under the CCM was introduced. It has incorporated provisions which put a mandatory obligation on States to provide assistance to victims who are under its jurisdiction. This ensures effective application of the provision, as the mere non-binding provision would have given the chance to the countries to escape from their responsibility to assist the victims. Also, the assistance provided by affected states to its victims is most helpful and the best possible way for assisting the needy, as they would be in a better position to assess the needs of victims, provide urgent medical facilities and provide assistance to everyone present in their jurisdiction (Article 36 and IHRC 2017, 21).

However, what is important to note here is that the CCM provides a more comprehensive framework as guidance for fulfilling its victim assistance obligation than the TPNW. Article 5(2) of the CCM provides several measures to implement the obligation of victim assistance which not only imposes duties on States to assess the needs of victims; develop, implement and enforce laws; mobilize resources; and designate focal point, but also gives rights to the victims to be closely consulted and actively involved in the process. Not prescribing explicit ways for carrying out responsibilities under the provision on victim assistance may affect the effectiveness and significance of the assistance under the TPNW. However, this also means that the States are free to choose measures which suit them best for providing assistance.

**Obligation on Other States**

Article 6 sets out the primary obligation on the affected states to provide assistance to victims under their jurisdictions. The Treaty further lays down the secondary obligation on other State Parties to provide assistance to victims of use or testing of nuclear weapons. This obligation stems from previous humanitarian disarmament treaties which place a similar secondary obligation on the State Parties as provided under Article 6 of the MBT, Article 8 of Protocol V of the CCW and Article 6 of the CCM. The need for a similar provision in the TPNW was stressed by several countries and organisations in its negotiation process. For instance, Sri Lanka stated in its statement that “In our quest to totally eliminate nuclear weapons, international cooperation, both in terms of finances and technical aspects, plays a pivotal role. Therefore, we strongly believe that the Treaty must provide for international cooperation and assistance, so that States parties could find recourse to them to meet the obligations arising from the Treaty (Sri Lanka 2017).” And a working paper submitted by “Article 36”, a civil society group, echoes the same opinion by stating that “Based on a commitment to end the suffering caused by nuclear weapons, the treaty should place an obligation on States Parties to provide assistance to victims of nuclear weapons in areas under their jurisdiction or control. It should commit all States Parties to provide international cooperation and assistance to facilitate this where they are in a position to do so.” This posture of several actors depicts the willingness to include responsibility on State Parties to commit themselves to providing victim assistance. The responsibility of the affected states eventually led to the enactment of Article 7 in the TPNW.

Article 7 of the TPNW is titled “International Cooperation and Assistance”, and states in its subclause (4) that “Each State Party in a position to do so shall provide assistance for the victims of the use or testing of nuclear weapons or other nuclear explosive devices.” The presence of obligation on other State Parties gives a sigh of relief to affected states which
are not fully capable of providing assistance to its victims (Article 36 and IHRC 2017). The obligation on each State Party not only entails the shared and collective responsibility but also strengthens effective and efficient implementation of the victim assistance mechanisms (Pace University 2017, 5).

There are two major points where the TPNW broadens its scope concerning obligation on other states. Article 7(4) stipulates the responsibility for providing assistance not only to victims of use or testing of nuclear weapons but also to victims of use or testing of other nuclear explosive devices. Neither nuclear weapons nor nuclear explosive devices are defined in the treaty, but, if we follow the general definition, all nuclear weapons are nuclear explosive devices. Meanwhile, not all nuclear explosive devices need to be nuclear weapons (Nuclear Weapons Ban Monitor n.d.; CTBTO Preparatory Commission n.d.). Nuclear explosive devices are more generic and broader in nature and contain devices beyond nuclear weapons. This broad understanding of nuclear explosive devices as compared to nuclear weapons affects the responsibility of the State Parties in providing assistance by opening the door for wide application of this provision (Article 36 and IHRC 2017, 11). Secondly, subclause (3) of Article 6 further recalls the obligations of any other state under international law or bilateral agreements which shall remain unaffected. For example, the treaty would be without prejudice to the reparations that the United States owes to the Marshall Islands based on the “Compact of Free Association” Agreement between the United States and the Marshall Islands concluded in 1983, and especially its Section 177 of the agreement establishing a 150 USD million Nuclear Fund as a means to address past, present and future consequences of the Nuclear Testing Program (Rietiker and Mohr 2018; Bolton and Minor 2020).

However, there is a major difference in the scope of obligation under Article 7 from the one under the CCM. The CCM has elaborated the scope of international cooperation and assistance by putting a general obligation on States to contribute to the economic and social recovery needed as a result of cluster munition use, contribute to relevant trust funds to facilitate the provision of assistance, take all appropriate measures to facilitate the timely and effective implementation of this Convention, and cooperate to ensure the full and prompt implementation of agreed assistance programmes. These obligations are not specific to victim assistance provision but are applicable in general to facilitating the implementation of the CCM. This broadened scope of obligation on other State Parties is not present in the TPNW. However, there is still hope for including similar provisions in the future Action Plans of the TPNW. A detailed provision on administrative and institutional arrangements along with strong verification standards (Bolton and Minor 2020, 86–87) can be added to the TPNW as well. The inclusion of specific provision for the safety of whistleblower is also needed under the Treaty (Bolton and Minor 2020, 69; Acheson 2017, 19).

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12As is the case with the NPT, the TPNW does not define “nuclear weapons” or “other nuclear explosive devices”. There is, though, a settled understanding among states of what these terms mean. A nuclear explosive device is an explosive device whose effects are derived primarily from nuclear chain reactions. A nuclear weapon is a nuclear explosive device that has been weaponized, meaning that it is contained in and delivered by, for example, a missile, rocket, or bomb.

13Nuclear explosive device: Nuclear explosive device means any nuclear weapon or other explosive device capable of releasing nuclear energy, irrespective of the purpose for which it could be used. The term includes such a weapon or device in unassembled and partly assembled forms but does not include the means of transport or delivery of such a weapon or device if separable from and not an indivisible part of it.
Obligation on User States

The TPNW includes another kind of obligation on States which is novel and unprecedented. Article 7(6) lays down the obligation on States which have used or tested nuclear weapons or any other nuclear explosive devices to provide assistance to affected States for two purposes: victim assistance and environmental remediation. This provision departs from previous treaties by obliging user States to provide victim assistance to affected States. No other humanitarian disarmament treaties have put such an obligation on user States. In these treaties, victim assistance is not mandatory.

The obligation on user States under Article 7(6) is a “shall” provision, which means it is a mandatory obligation unlike Article 7(4) which relaxes the burden to provide assistance by prefixing the obligation with a phrase “in a position to do so”. Also, this responsibility of user States is without any prejudice to any other duty or obligation that it may have under international law whose context can be traced from Article 6(3) which is discussed above. However, user States’ responsibility is not as extensive as that present for affected States under Article 6(1). The article uses more clear and concrete language by stating “shall provide adequate assistance” and not “shall have a responsibility to provide adequate assistance.” The context in which the word “responsibility” is used is not clear, i.e. whether it is a legal or moral responsibility (Casey-Maslen 2019, 224). Further, there is no requirement for providing age and gender-sensitive assistance nor the requirement of providing assistance in accordance with the applicable principles of IHL and IHRL. But at the same time, the provision does not prohibit affected States to seek from user States any other forms of redress which are not mentioned in the Treaty (Article 36 2017; IHRC 2019).

Constituents of Assistance

Adequate Assistance

The assistance received by victims is not like any other assistance, but it needs to be “adequate.” What the word adequate means and what amounts to adequate assistance has not been defined under the treaty. However, applying the rules of interpretation as given under the Vienna Convention on Law of the Treaties, “adequate” assistance can be interpreted from looking at the overall context and in light of the object and purpose of the TPNW (UNTS 1969, Article 31). In an ordinary sense, the term “adequate” means “legally sufficient” (A. Garner 2009, 45). What may be interpreted from legally sufficient in the context of victim assistance is that the assistance can be monetary compensation or only health-related benefits, but by prefixing the term “adequate” in the treaty, the intention of the States was clearly to provide something more than just monetary compensation. This is also reflective in the overall context of the treaty as Article 6(1) states that the assistance includes medical care, rehabilitation, and psychological support, as well as provide for their social and economic inclusion without any discrimination. We can say that assistance is termed to be adequate only if it fulfils these criteria, though this list is not exhaustive.

Taking the recourse of supplementary rules of interpretation (UNTS 1969, Article 32), by looking at the negotiating history of this treaty, we found that States, civil societies or international organization made a similar statement that the right of nuclear weapons victims has not been met adequately yet (Fiji, Nauru, Palau, Samoa and Tuvalu 2016, 5;
Article 36 (2017a, 3) and hence the adequate assistance need to be provided through this provision which goes beyond medical realm (Article 36 (2017b, 3) or financial compensation (IHRC 2018). The language of this paragraph in Article 6 is taken verbatim from the CCM which provides the same assistance to Cluster munitions victims and represents the subsequent practice in the field of victim assistance. This depicts the rights-based approach to victim assistance that is consistent with general human rights obligations. It outlines the methods and principles by which victim assistance should be provided, such as the principle of non-discrimination, age- and gender-sensitive requirement and the principle of inclusion (ICAN 2017, 3–4).

Gender-Sensitive Assistance
Assistance to victims should be sensitive to differences existing among victims and must meet the needs of every individual. Women, men, girls, and boys have different experiences to nuclear detonations and have different physical, social, economic and cultural needs and likewise face different challenges. One-size-fits-all approach will not be effective in the case of nuclear weapons. Distinction needs to be made among different categories in assistance (ICAN 2017, 3–4).

The gender-inclusive approach in the TPNW can be seen in the overall context of the treaty as well as in its negotiating history (UNTS 1969, Article 31). The preamble mentioned the rights of women and girls twice in the paragraphs. Firstly, it states that nuclear weapons have a disproportionate impact on women and girls, including as a result of ionizing radiation. Secondly, it recognizes the equal, full and effective participation of men and women to attain sustainable peace and security and is committed to support and strengthen the effective participation of women in nuclear disarmament. The negotiating history of the treaty suggests that the legal precedent on victim assistance such as the CCM has guided the inclusion of such strong language on a gendered approach in providing victim assistance (Pace University 2017, 3). The CCM includes in its preamble the duty to recognizing the need to provide age- and gender-sensitive assistance to cluster munitions victims and to address the special needs of vulnerable groups. Article 5 of the treaty also mentions the need to adequately provide age- and gender-sensitive victim assistance. Similar protection to women and girls can also be found in the TPNW. Paragraph 1 of Article 6 titled “Victim Assistance and Environmental Remediation,” states that assistance must be provided appropriately, which includes an obligation to take due account of gender. This applies throughout the life cycle of assistance to victims, from medical care to rehabilitation, including the efforts to promote social and economic inclusion (Casey-Maslen 2019, 214).

Age-Sensitive Assistance
Age-sensitive protection primarily gives protection to the children who may face greater obstacles because they are disproportionately affected by nuclear weapons. Children and the unborn are especially prone to harmful effects of radiations because of their rapid cell division during physical growth, as DNA is most vulnerable to radiation impact when cells divide rapidly. This not only causes cancer and birth defects. The gene pool permanently mutates, sometimes resulting in developmental deficiencies in the foetus, hereditary disease, accelerated ageing, and such nonspecific effects as loss of immune competence (Folkers and Olson 2004). The damage caused by nuclear explosions is not
limited to one lifetime. Stigma against the children and grandchildren of survivors has been reported in many nuclear-affected communities where such an explosion took place (ICAN 2017, 16).

The importance of having an obligation concerning age-sensitive assistance has been highlighted in the negotiation process of the TPNW (Pace University 2017) and mirrors the provision under the CCM. Age-sensitive assistance has been mentioned once in the text of TPNW under Article 6 which states that assistance must be provided appropriately, which includes an obligation to take due account of the age of victims. As per the nature and degree of impact of radiations on children, their needs will not be the same as those of men, which in turn might also differ to the needs of women for assistance (Casey-Maslen 2019, 214).

**Application of IHL and IHRL**

Article 6(1) further obligates the States to assist victims with applicable international humanitarian and human rights law. IHL shall only apply to situations of armed conflict where nuclear weapon is used during, and in connection with, an armed conflict, but not on nuclear testing as it does not fall within the conduct of hostilities (Casey-Maslen 2019, 212). IHRL applies to those affected by either use or testing of a nuclear weapon. The right to a highest attainable standard of health, which is outlined in various human rights treaties including the ICCPR, applies equally to the victims of nuclear weapons or testing, and confers the right to remedy in case of its violation which includes reparative measures in addition to financial compensation (Casey-Maslen 2019, 213).

The provision on victim assistance incorporated under the TPNW is highly motivated by previous humanitarian disarmament treaties, especially including the CCM. While it has included a similar obligation on affected States and other State Parties as under the CCM, the TPNW has gone a step ahead by stating the explicit responsibility on user States. However, as compared to the CCM, the TPNW does not incorporate some of the aspects of assistance that can be provided by affected States under Article 6 and other State Parties under Article 7.

**Role of Victim Assistance in Promoting Humanitarian Goals of the Treaty**

Humanitarian concerns emanate from the humanitarian consequences of the use of certain weapons which can be solved only by aiming at achieving the humanitarian goal. The humanitarian goal of a treaty is often understood as ending the sufferings of civilians at its central focus. The humanitarian disarmament approach has gained significant influence and momentum by advancing, solidifying, and upholding new humanitarian norms in the weapon treaties (Benjamin-Britton, Bolton, and Njeri et al. 2020, 8). The humanitarian goal in these treaties is to eliminate the civilian harm caused by problematic weapons involving harmful behaviour, and to protect and ensure the rights of victims and survivors of the use of such weapons (Docherty 2010; Finaud 2017). A humanitarian basis for prohibiting weapons goes beyond the legal, moral or political imperatives and is founded upon concern about the effects of the weapons (for instance, on civilians, or superfluous suffering on combatants) (Borrie and Caughley 2012, 37; Stavrianakis 2015, 842).
To understand the objective of achieving the humanitarian goals in the context of the TPNW, we first need to look at the humanitarian consequences and concerns emanating from the use of nuclear weapons and then at the text of the treaty which is aimed at the furtherance of this humanitarian goal.

**Humanitarian Perspectives in the Context of Nuclear Weapons**

Nuclear weapons detonations cause massive destruction and terrible humanitarian consequences. Humanitarian consequences of nuclear weapons have been a key driving force behind all efforts to address and control nuclear weapons (Kmentt 2016, 683). Nuclear weapons have a unique ability to cause destruction and human suffering (ICRC 2020). They are considered as potentially the most dangerous category of weapons of mass destruction, capable of causing massive civilian casualties, as demonstrated by the atomic bombings of Hiroshima and Nagasaki in 1945 (Finaud 2017, 31). The use of nuclear weapons, even on a limited scale, would have catastrophic and long-lasting consequences on human health, environment, climate, food production, and socioeconomic development. The health and environmental impacts of these weapons can last for decades (ICRC 2015). It becomes important, first, to ban this weapon completely, so that such a dangerous weapon cannot be used again in future, and secondly, to provide remedies to the victims of these weapons. Both these requirements need to be fulfilled under the TPNW to achieve its humanitarian goal.

The humanitarian perspectives are reflected in the preamble of the TPNW (Bolton and Minor 2020, 84). The preamble underlines the humanitarian nature of the treaty and is, as such, inspired by similar language in the preamble of the MBT (Benjamin-Britton, Bolton, and Njeri et al. 2020, 14) and the CCM (Reiterer 2010, 26). The second paragraph of the preamble shows “the deep concern of States about the catastrophic humanitarian consequences that would result from any use of nuclear weapons, and recognizing the consequent need to eliminate such weapons, which remains the only way to guarantee that nuclear weapons are never used again under any circumstances.” The TPNW declared in its preamble for the first time that nuclear weapons are contrary to international humanitarian and human rights law (Bolton and Minor 2020, 84). It further states in the fourth paragraph that “the catastrophic consequences of nuclear weapons cannot be adequately addressed, transcend national borders, pose grave implications for human survival, the environment, socioeconomic development, the global economy, food security and the health of current and future generations, and have a disproportionate impact on women and girls, including as a result of ionizing radiation.” The preamble also focuses on the “importance of peace and disarmament education” and “raising awareness of the risks and consequences of nuclear weapons for current and future generations.” This is the novel introduction in the international treaty because disarmament education has been mentioned only in non-binding declarations and resolutions (Bolton and Minor 2020, 85). These parts of the preamble reflect the recognition of the humanitarian impact on victims and the intention of State Parties to include the humanitarian orientation in the treaty by addressing the humanitarian consequences of nuclear weapons through protecting and assisting the victims and survivors.
**Furtherance of Humanitarian Goal through Victim Assistance**

Humanitarian disarmament treaties contain a certain positive obligation which is to be followed by all State Parties that helps them address the humanitarian concerns of the use of certain weapons. Three kinds of obligation help to further the humanitarian goal of any humanitarian disarmament treaty. First, these instruments establish absolute bans on the use, production, transfer, and stockpiling of specific weapons to prevent any harm in the future. Second, there is a requirement for remedial measures that reduce the effects of past use, such as victim assistance and clearance of stockpiles and unexploded ordnance. Third, they provide for a cooperative approach for the implementation of these obligations (Docherty 2010, 8). All these three obligations need to be comprehensively covered under the TPNW. Since the focus of this paper is victim assistance, the next section only focuses on the role of victim assistance in the furtherance of the humanitarian goal.

Humanitarian disarmament treaties obligate states to recognize the rights of those people who are harmed by certain weapons and take steps to limit such harm. Victim assistance under Article 6 of the TPNW is a manifestation of such a positive obligation of the State (Bolton and Minor 2020). This provision helps reduce the sufferings and harms caused to victims by providing them with not just monetary compensation but also support beyond material objects. The motive of such comprehensive protection is to provide for the inclusion of victims in the society and to protect them from any discrimination, which is a very novel concept as far as nuclear weapons or any other weapons of mass destruction are concerned. The inclusion of a provision on victim assistance itself has not helped address the humanitarian concerns emanating from nuclear weapons, but the humanitarian principles that guide the formulation of this treaty do. Addressing the needs of the disproportionately affected population, complying with the applicable laws of IHL and IHRL and introducing the concept of shared responsibility in providing assistance are some examples of such guidance. Special consideration granted to female and children along with the application of IHL and IHRL is discussed in the previous section. This section explores other features included in the provision on victim assistance under the TPNW which promotes the humanitarian goals of the treaty.

Typically, conversations about victims of nuclear weapons focus on the nuclear bombings in Hiroshima and Nagasaki. However, testing in or near Algeria, Australia, China, French Polynesia, India, Kazakhstan, Kiribati, the Marshall Islands, North Korea, Pakistan, Russia, Turkmenistan, Ukraine, the USA, and Uzbekistan have also resulted in victims of nuclear weapons detonations around the world (Article 36 2015). The testing of nuclear weapons causes similar impacts on individuals as the use of nuclear weapons by ruining the lives of the nuclear test victims, causing cancers, fertility problems, birth defects that passed down the generations, and radiation sickness (Casey-Maslen 2019, 211). The rights of these victims have also been comprehensively covered under the text of the TPNW. The preamble states that State Parties are mindful of the unacceptable suffering of, and harm caused to the victims of those affected by the testing of nuclear weapons. The treaty also obliges States Parties to provide adequate assistance to individuals affected by the use or testing of nuclear weapons under Article 6. The article states that “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.” The age- and gender-sensitive requirement apply equally to the victims of nuclear testing.

Nuclear weapons detonations, due to both immediate sufferings they cause and their long-term impacts, have also interfered with the exercise of many of rights of indigenous communities such as self-determination and self-identification, the right to culture, religion, language and identity, and the right to health, family and healthy environments. The environmental consequences of nuclear weapons are of particular concern. The results of nuclear explosions prevent indigenous communities around the world from realizing their human rights and the rights specific to them as indigenous communities (Mines Action Canada 2017, 4). In many cases, indigenous communities and their land were selected for nuclear testing due to colonial and discriminatory policies resulting in the continued suffering of multiple generations. For instance, indigenous communities in Algeria were heavily affected by French nuclear detonations in the Sahara Desert. Nuclear bomb tests conducted by the United States in the Marshall Islands from 1946 to 1958 affected the indigenous community adversely (Mines Action Canada 2017, 2–3). The history of exploitation of indigenous communities and its land without their consent for nuclear testing has led to the formulation of their rights as a separate category under the TPNW. However, the operative clause does not provide any separate category of indigenous community for receiving assistance, as is done for age- and gender-sensitive assistance. But the treaty states in its preamble that it recognizes the disproportionate impact of nuclear weapon activities on indigenous communities.

However, these broad categories of people depict only the recipients of assistance but do not define “nuclear victims.” Unlike other treaties (e.g. the CCM and the MBT), it does not speak anything about affected families and community members who have indirectly suffered harm. Also, the broad categories which include women and child do not say anything on persons with disabilities. This is considered as a step backwards as the obligation to assist persons with disabilities has been mentioned very comprehensively under the CCM which provides in its preamble and a substantive clause the need to respect the rights of persons with disabilities (IHRC 2018). The preamble of the CCM requires States Parties to ensure and promote the full realisation of human rights and fundamental freedoms of all persons with disabilities without discrimination of any kind based on disability. Furthermore, article 5(2)(e) provides for non-discrimination among cluster munitions victims and those who have suffered injuries or disabilities from other causes. Also, the TPNW has not mentioned anything about refugees, migrants and internally displaced persons due to the use or testing of nuclear weapons. The CCM mentions in its preamble, albeit in limited terms, such a concern that cluster munitions delay or prevent the return of refugees and internally displaced persons which persists for many years after use. However, the TPNW has not dealt with the issue although catastrophic harm caused by nuclear weapons to the health and environment in the society has led to greater displacement from such regions (Mines Action Canada 2017).

Moreover, the humanitarian goal can be achieved only when the provision is effectively implemented. As discussed in the previous section, the treaty, unlike the CCM, does not offer any ways prescribed for the implementation of its victim assistance provision, as under Article 5(2) of the CCM (Docherty 2009, 951). The general transparency and implementation clause which is to be applied on the treaty as a whole is also absent under the TPNW, making it difficult to bring accountability on the acts of State
Parties. Unlike the CCM, there is no separate provision under the TPNW which lays down the obligation on State Parties to report to the Secretary-General of United Nations on the implementation of the provisions of the treaty, including victim assistance. The CCM has provided a very comprehensive framework in laying down transparency measures, particularly relating to victim assistance. The treaty not only obligates Parties to report on the status and progress of the implementation of their obligations under Article 5 of this Convention but also provides for reporting on the number of national resources, including financial, material, or in kind, allocated to its implementation, and on the amounts, types and destinations of international cooperation and assistance provided under Article 6.

There are some concerns raised by activists over the whole concept of “victim assistance” under the TPNW. They argue that the inclusion of victim assistance clause would unfairly raise the expectations of nuclear weapons use or testing’s survivors, and imply that contaminated environments could be fully remediated, even when this is not the case (Bolton and Minor, 72). Furthermore, it is also highlighted that the inclusion of victim assistance in the TPNW would undermine the core and evidenced argument that there could be no full or adequate humanitarian response to a nuclear detonation (Bolton and Minor, 72). However, despite widespread humanitarian effects of nuclear detonations, we must also take into account the significant difference which the victim assistance measures can make in the lives of victims of the use of nuclear weapons and testing (Article 36 and IHRC 2017).

Another major concern which is prevalent in all the other humanitarian disarmament treaties along with the TPNW is that there is no provision for an appropriate judicial mechanism, specifically central to the victims. Despite adopting a victim-centric and humanitarian approach, the treaty nowhere provides for the judicial recourse for victims in case of violation of their rights. Article 11 of the TPNW on the settlement of dispute only mentions the disputes which arise between two or more States. There is also no specific mechanism as such for individual victims to approach any dispute settlement forum for the resolution of their disputes. Further, a platform in the form of a committee or forum where individual victims can submit their grievances relating to the application of treaty provisions including victim assistance is missing in these humanitarian disarmament treaties. Guidance can be taken from the IHRL where specific human rights monitoring mechanism is established (e.g. certain committees like the Committee against Torture (CAT) and the Committee on the Elimination of Discrimination against Women (CEDAW) under the respective Convention/Optional Protocol have been granted the right to receive complaints from individuals). An improvised model of a similar format best suited to the needs of nuclear weapon victims can be established in future through any action plan or roadmap under the TPNW. Although the States have been shown some reluctance in the past in ratifying the agreements providing for a complaint mechanism for individuals (Ulfstein 2012, 73–74), it cannot override the positive aspects of incorporating victim-centred approach in the remedial mechanisms (Ulfstein 2012, 114–115).

**Conclusion**

As discussed in the above sections of this paper, the obligation to assist victims of prohibited weapons is now becoming an international norm by getting the normative
status realised under several humanitarian disarmament treaties. This new trend of incorporating the obligation on the State to assist victims began in the late 1990s and is continued. With the huge acceptance of these norms by States and advocacy by the civil society and international organizations, it becomes evident that, in coming years, this norm will find its place in future humanitarian disarmament treaties. The obligations to assist victims under the TPNW shows a significant and positive step towards achieving the humanitarian goal of the treaty while simultaneously attempting to mitigate the impact of these indiscriminate weapons. Incorporating the provisions highlighting the concerns of disproportionality impacted people such as female, children and indigenous communities and emphasising on the rights of victims affected due to nuclear testing are examples of the inclusion of humanitarianism as the guiding factor in formulating victim assistance provision of the treaty.

The TPNW to a great extent follows the CCM format in laying down substantive provisions on victim assistance. Providing a mandatory obligation on affected States and secondary obligation on other State Parties to provide victim assistance can be traced back to the CCM. Additionally, the precedent for incorporating the nature of assistance in the form of adequate and age- and gender-sensitive assistance, following the applicable IHL and IHRL, can be found in the CCM as well. However, there are certain places where the TPNW has deviated from the CCM by either surpassing it or narrowing down the scope of victim assistance. For instance, the CCM explicitly lays down the ways in which assistance can be provided by affected States, while such a provision is missing under the TPNW. This will affect the effective implementation of this provision under the TPNW. On the other hand, the TPNW has introduced a novel concept of putting a mandatory obligation on user States to provide assistance to victims, which is not present under the CCM or any other humanitarian disarmament treaties. These differences in the formulation of victim assistance provision make one thing clear – there are no universally accepted principles of victim assistance, and hence the divergence in its formulation and implementation still remains even more than 20 years after its genesis.

The provision on victim assistance under the TPNW surely paves a way for the inclusion of humanitarianism in the family of weapons of mass destruction treaties. Highly motivated by the CCM, the provision under the TPNW contributes to setting a strong precedent for the inclusion of a victim-centric approach in International Law. The remaining elements and components of victim assistance can be incorporated under the TPNW at the latter stage through action plans as under the MBT and the CCM. What is needed at the moment is to have all the countries, especially the Nuclear Weapon States, sign and ratify this treaty to implement its goals effectively (Mathur 2018, 236)\(^{14}\)

**Disclosure Statement**

No potential conflict of interest was reported by the author.

\(^{14}\)Mathur raised a concern over the TPNW that even after signing this treaty, the concerns remain about its ability to foster a change in the behaviour of powerful nuclear weapon states such as the United States..
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