Confronting Conflict Pollution
Principles for Assisting Victims of Toxic Remnants of War

Harvard Law School International Human Rights Clinic
Conflict and Environment Observatory
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September 2020
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<td>Convention on Conventional Weapons</td>
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<td>ERW</td>
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<td>ISIS</td>
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<td>Protection of the Environment in Relation to Armed Conflicts</td>
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Executive Summary

Armed conflicts and military activities take a toll on the environment that significantly affects both people and ecosystems. Historically, the protections afforded by international and national law have proved insufficient to minimize new harm or address that which has occurred. Over the last decade, international efforts to address the environmental and associated humanitarian consequences of war have increased. These initiatives view a healthy environment as a foundation for human rights, sustainable development, and peacebuilding.

States, international organizations, and civil society have all been involved in these efforts. For example, the International Law Commission (ILC) is engaged in a multi-year process to develop principles that would enhance the “protection of the environment in relation to armed conflicts” (PERAC).\(^1\) States at the United Nations Environment Assembly (UNEA) have adopted resolutions regarding pollution and other environmental damage caused by armed conflict.\(^2\) UN-appointed experts and nongovernmental organizations have highlighted the environmental effects of armed conflict and military activities as well as the shortcomings of existing law.\(^3\) The International Committee of the Red Cross (ICRC) is updating environmental guidelines for military manuals that it first published in 1994.\(^4\)

At the same time, the concept of “victim assistance” has become a well-established component of humanitarian disarmament law. Humanitarian disarmament strives to prevent and remediate the human suffering and environmental harm inflicted by arms.\(^5\) Its major treaties—notably the Mine Ban Treaty, the Convention on Cluster Munitions, and the Treaty on the Prohibition of Nuclear Weapons (TPNW)—all require states parties to provide assistance to people, civilians and combatants alike, who have been harmed by banned weapons or the remnants they leave behind.

This report adapts humanitarian disarmament’s norms of victim assistance to the context of environmental harm, specifically the pollution associated with military activities, during armed conflict and beyond. It identifies 14 principles designed to meet the short- and long-

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term needs of those affected by “toxic remnants of war” (TRW), i.e., toxic or radiological substances resulting from military activities that form a hazard to humans or ecosystems.

These Principles do not constitute a mechanism of compensation for unlawful acts. Instead they embody a collective commitment to work towards victims’ full and effective participation in society and to help them realize their human rights.

The Principles are divided into six categories, which:

• Articulate the purpose of victim assistance, i.e., to address victims’ needs and promote their human rights;
• Define the terms “toxic remnants of war” and “victims,” thus establishing the Principles’ scope of application;
• Enumerate the many types of harm that victims of TRW experience and the corresponding types of assistance that should be provided to them;
• Outline a framework of shared responsibility under which affected states work with donor states and other actors to ensure the delivery of adequate assistance;
• Highlight key elements of implementation, focusing on the dissemination of information, the development of national strategies, and capacity building; and
• Present four guiding principles—accessibility, inclusivity, non-discrimination, and transparency—that are fundamental to effective victim assistance programs.

To develop the 14 Principles, the Harvard Law School International Human Rights Clinic (IHRC) and the Conflict and Environment Observatory (CEOBS) examined the environmental effects of armed conflict and other military activities and conducted an in-depth study of relevant law, policy, and practice. Humanitarian disarmament’s norms of victim assistance provided a foundation for the Principles, but IHRC and CEOBS modified those norms to address the specific problems of TRW. The co-authors took into account the distinctive characteristics of TRW, such as the temporal and geographic extent of TRW’s effects and the challenges of pinpointing TRW as a specific source of harm. They also used precedent from international human rights law, international environmental law, and international humanitarian law to reinforce and refine the humanitarian disarmament model. IHRC and CEOBS vetted the Principles with a variety of experts at different stages of drafting.

Part I of this report lists the Principles that resulted from this process. Part II provides a detailed commentary. The commentary includes a discussion of the meaning and importance of each principle and an analysis of precedent from law, policy, and practice. IHRC and CEOBS urge states and organizations to use the Principles and associated commentary as a guide for reducing the human cost of environmental harm related to armed conflicts and military activities.
Purpose of Victim Assistance

Principle 1: Purpose

Victim assistance should address the immediate and ongoing needs of individuals, families, and communities affected by toxic remnants of war (TRW) and promote the full realization of their human rights.

Definitions

Principle 2: Toxic Remnants of War

Toxic remnants of war are toxic or radiological substances resulting from military activities that form a hazard to humans or ecosystems.

Principle 3: Victims

Victims of TRW are individuals who have suffered harm caused or aggravated by TRW as well as their affected families and communities.

Where a certain amount and duration of exposure to a toxic or radiological substance is strongly associated with a particular harm, that exposure should be presumed to be a cause of the harm. Victim status under these Principles should not depend on identifying the actor(s) responsible for the TRW.

Types of Harm and Assistance

Principle 4: Types of Harm

Victim assistance should address harms caused or aggravated by TRW including, but not limited to: physical injuries and death; psychological injuries; social marginalization; economic loss; obstacles to participation in cultural life; adverse impacts from environmental degradation or loss of biodiversity; and substantial impairment of the realization of victims’ human rights.

Principle 5: Types of Victim Assistance

Victim assistance may include but is not limited to: medical care, rehabilitation, and psychological support; provision for victims’ social and economic inclusion; acknowledgment of harm; measures to facilitate participation in cultural life; remediation of contaminated environments; access to accurate and comprehensive information regarding the harms and risks associated with TRW; and measures to ensure victims can fully realize their human rights.

Framework of Shared Responsibility

Principle 6: Responsibility

States should provide assistance to TRW victims in areas under their jurisdiction or control.

Other states, especially states whose actions generated TRW, should provide financial, material, technical, and/or other assistance to “affected states,” i.e., those with TRW victims in areas under their jurisdiction or control, to help them meet their victim assistance responsibilities.

Principle 7: Exchange of Scientific and Technical Information

States (especially states whose actions generated TRW), international organizations, nongovernmental organizations, and other actors should, to the extent possible, share scientific and technical information with affected states regarding TRW and possible responses.

Implementation

Principle 8: Collection and Dissemination of Information

Affected states should, on an ongoing basis, collect and ensure the dissemination of information regarding the presence of TRW on their territory and the potential harms those TRW have caused or may cause.

Principle 9: National Strategy

Affected states should develop and implement a comprehensive and coordinated national victim assistance strategy that plans for victims’ short- and long-term needs.

Principle 10: Capacity Building

States, international organizations, nongovernmental organizations, and other actors should promote capacity building to ensure long-term and effective implementation of victim assistance.
Guiding Principles

Principle 11: Accessibility
In order to be effective, assistance should be accessible to victims. Accessibility requires identifying and eliminating obstacles to access, including but not limited to informational and physical barriers.

Principle 12: Inclusivity
Affected states should meaningfully consult with and actively involve victims and their representative organizations at all stages of the victim assistance process.

Principle 13: Non-discrimination
Assistance programs must not discriminate against or among TRW victims, or between TRW victims and those who have suffered harm from other causes. Victim assistance should not be provisioned or withheld on the basis of race, color, language, ethnicity, sex, sexual orientation, gender identity, age, national origin, religion, disability, geographic location, or other status. Differences in treatment should be based only on medical, rehabilitative, psychological, or socioeconomic needs.

Principle 14: Transparency
Affected states should ensure transparency with respect to the design, administration, implementation, monitoring, and evaluation of assistance.
Purpose of Victim Assistance

Principle 1: Purpose

Victim assistance should address the immediate and ongoing needs of individuals, families, and communities affected by toxic remnants of war (TRW) and promote the full realization of their human rights.

Discussion

The concept of “victim assistance” has traditionally been understood as an effort to help mitigate the harm caused by specific weapons, notably antipersonnel landmines and cluster munitions, as well as the explosive remnants of war (ERW) they leave behind. These Principles establish a similar framework that is adapted to the needs of people harmed by TRW. As discussed in more depth under Principle 2, some kinds of TRW are analogous to ERW in that they constitute the dangerous remains of a particular type of weapon. Depleted uranium, a toxic and radioactive heavy metal, is a component of certain munitions that can pollute the environment after use. The term “TRW” also refers more broadly to substances produced directly or indirectly by methods of armed conflict, such as a missile strike on a chemical factory, or by military activities beyond conflict.

Several characteristics associated with TRW inform these Principles. First, exposure to TRW can continue over time, and health problems can manifest long after an individual’s initial exposure. Contact with a landmine usually causes an immediate injury. If TRW pollute a local water supply, by contrast, a person may experience ongoing exposure to the harmful substance and only develop a physical ailment, such as cancer, years after the original contact. Some effects even cross generations.

Second, the health problems linked to TRW can often be tied to other causes and may result from a combination of factors. Some victims of ERW, who can generally identify the direct cause of the harm they have suffered, TRW victims are often unable to pinpoint TRW as a specific source of harm, particularly in the complex polluted environments of contemporary armed conflicts. While an individual who loses a limb after the detonation of a landmine may be in a position to do so provide assistance for mine victims. The difficulty of detection and geographic spread highlight the importance of building state capacity to locate and monitor TRW and notifying the public about the risks that have been identified. Regardless of the differences between TRW and ERW, these Principles share the goal of all victim assistance efforts, i.e., to advance the well-being and promote the human rights of those who suffer harm related to armed conflict and military activities.

Precedent

In adapting the concept of victim assistance to the TRW context, Principle 1 and the Principles as a whole draw heavily on humanitarian disarmament law, a part of international humanitarian law. They also look to international human rights law and international environmental law. The Principles rely further on norms and best practices in these areas. Tables of the key treaties and normative documents appear at the end of this report.

Victim assistance provisions constitute a key component of humanitarian disarmament treaties, which seek to remediate as well as prevent the harm inflicted by arms. The 1997 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (Mine Ban Treaty) mandates that all states parties “in a position to do so” provide assistance for mine victims. Expanding on that obligation,
The 2008 Convention on Cluster Munitions lays out a more detailed victim assistance framework that has been described as the “gold standard.” The Convention on Cluster Munitions obliges states parties with victims in areas under their jurisdiction or control to lead assistance efforts and other states parties to support them. The convention also enumerates requirements for the implementation of victim assistance. States parties to both of these treaties have elaborated on their obligations in implementation plans adopted at review conferences, such as the Nairobi, Cartagena, Maputo, and Dubrovnik Action Plans. The 2017 Treaty on the Prohibition of Nuclear Weapons follows the approach of the Convention on Cluster Munitions and requires states parties to assist victims of nuclear weapon use and testing, some of whom would be TRW victims under these Principles.

In addition to prohibiting the use of certain weapons and requiring victim assistance, humanitarian disarmament treaties mandate clearance of remnants of war, which can injure humans or damage the environment. For example, under the TPNW, states parties are required to “take necessary and appropriate measures towards” remediating nuclear contamination. Humanitarian disarmament treaties combine measures to relieve ongoing suffering with those to prevent future harm.

These Principles also draw on international human rights law. The 1966 International Covenant on Civil and Political Rights (ICCPR) and 1966 International Covenant on Economic, Social and Cultural Rights (ICESCR) identify numerous rights that may be adversely impacted by TRW, thus necessitating assistance. The ICESCR embodies a cooperative approach to promoting human rights that informs the Principles’ shared responsibility framework. Both covenants and other human rights treaties prohibit discrimination. The 2006 Convention on the Rights of Persons with Disabilities (CRPD) serves as a particularly important model for norms promoting the agency of rights-holders, which underlie many of these Principles.

Several political commitments on human rights, such as the 2007 UN Declaration on the Rights of Indigenous Peoples, provide further support for the Principles.

Finally, these Principles look to international environmental instruments, standards, and commentary. In particular, they borrow from the 1998 Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters (Aarhus Convention) and a number of UN declarations and expert reports that address human rights and the environment.
Definitions

**Principle 2: Toxic Remnants of War**

Toxic remnants of war are toxic or radiological substances resulting from military activities that form a hazard to humans or ecosystems.

**Discussion**

The term “toxic remnants of war” applies to substances that are released due to military activities and pose a threat to humans or ecosystems. Toxic substances are materials that are poisonous or harmful to living organisms, such as nitric acid, an oxidizing agent often mixed with fuel to launch SCUD missiles. Radiological substances are radioactive materials, ranging from fallout after nuclear weapon testing to the tritium and radium discovered in abandoned military aircraft instrument panels in Afghanistan.

The definition of TRW focuses on hazardous substances “resulting from military activities.” The definition encompasses the toxic and radiological by-products of particular weapons. It also covers toxic and radiological substances from other conflict-related sources, such as conventional weapon attacks on oil wells or industrial plants. Furthermore, the definition applies to contaminants released by military activities occurring outside armed conflict, such as the testing of weapons or the use of burn pits during an occupation.

TRW are limited to toxic and radiological materials that pose a hazard. The Oxford English Dictionary defines “hazard” as a “risk, danger, [or] jeopardy,” or a “risk of loss or harm posed by something; a possibility of danger or an adverse outcome.” The word thus excludes contaminants that do not pose a threat of harm to humans or ecosystems, although as discussed under Principle 4, harm should be understood broadly.

The inclusion of ecosystems recognizes the intrinsic value of the environment and the need for its protection. These Principles, however, focus on assisting humans harmed by TRW; addressing harm exclusively to ecosystems would require a different kind of response. Consequently, these Principles are concerned with TRW that pose hazards to ecosystems when those hazards could adversely affect humans, such as when TRW contaminate fish and wildlife, agricultural areas, or water sources.

Precedent

Principle 2’s definition of TRW, which comes from language introduced by civil society, adapts the international humanitarian law concept of remnants of war to a new context.

The TRW definition builds on the notion of explosive remnants of war, ERW are defined in the 2003 Protocol on Explosive Remnants of War to the Convention on Conventional Weapons (CCW Protocol V) as “unexploded ordnance and abandoned explosive ordnance.”

The Convention on Cluster Munitions similarly defines “cluster munition remnants,” a type of ERW, as “failed cluster munitions, abandoned cluster munitions, unexploded submunitions and ERWs.”

Like ERW and cluster munition remnants, TRW encompass a range of materials that result from military activities and risk causing harm. TRW differ from ERW, however, because the threats they pose arises from their toxic or radiological character rather than explosive effects.

Following humanitarian disarmament precedent, the definition of TRW includes remnants resulting from both armed conflict and peacetime military activities. The Convention on Cluster Munitions does not limit its definition of cluster munition remnants to objects produced or used during armed conflict; remnants can also be found, inter alia, on firing ranges or in abandoned stockpiles. While the TPNW does not define nuclear weapons or contamination, its victim assistance article calls on states to assist those affected by the “use or testing” of nuclear weapons. The reference to testing recognizes that TRW attributable to military activities outside of armed conflict can cause as much harm as weapons used during war.

As noted above, the definition of TRW differs from that of ERW because it contains a risk threshold. The nature of TRW necessitates this limitation. While any unexploded ordnance poses a risk of harm, low concentrations of toxic substances may not.

The term “TRW” emerged from the growing study of environmental consequences of armed conflict. In 2009, the UN Environment Programme (UNEP) documented the gaps in protection for the environment in armed conflict. Thereafter, the International Committee of the Red Cross suggested that environmental damage in armed conflict might be managed similarly to ERW. These developments led to the founding of the Toxic Remnants of War Project in 2012, a civil society-led research hub dedicated to documenting conflict pollution and promoting regulation. The Project, and the later Toxic Remnants of War Network, promulgated the TRW definition used in these Principles.

Several recent UN publications have referenced TRW by name. In 2016, the special rapporteur on toxics used the term in a report to the Human Rights Council regarding the impact of...
hazardous substances on the rights of the child. The International Law Commission has also used the term in its ongoing process to develop principles on the protection of the environment in relation to armed conflicts. In 2016, the special rapporteur on PERAC appointed by the ILC proposed a draft principle regarding clearance and mitigation measures to decrease “toxic and hazardous remnants of war.” The rapporteur cited the Toxic Remnants of War Project’s TRW definition in her commentary, and the ILC provisionally adopted the principle in 2018. Similar to Principle 2, the ILC’s draft principle contains a harm threshold: it references toxic remnants that “are causing or risk causing damage to the environment.” In July 2019, the ILC provisionally adopted a full set of 28 draft principles on PERAC and forwarded them to the UN General Assembly for comment.

At least one state has embraced the term “toxic remnants of war” in official documents. Specifically, the Australian Department of Defence has issued “toxic remnants of war remediation contracts” through its Defence Environment and Heritage Panel, which dates back to 2014.

Other international organizations and experts have highlighted the problems of conflict-related environmental contamination without using the term “TRW.” For example, in 2011 the ICRC noted that environmental damage “may emanate from chemicals and other pollutants leaching into the soil and groundwater as a result of military operations,” specifically citing “the destruction of power plants, chemical plants and other industrial installations” as examples.

More recently, a 2017 UN Environment Assembly resolution emphasized the need to manage pollution generated during armed conflict, one potential form of TRW.


While recognizing that some people prefer the term “survivors” to “victims” because the former is more empowering, these Principles use victim to maintain consistency with existing humanitarian disarmament treaties and adopted principles of human rights. Furthermore, the definition of victim is broader because it includes those killed as well as those who survived. Instruments that use the term “victim” include the Mine Ban Treaty, Convention on Cluster Munitions, Treaty on the Prohibition of Nuclear Weapons, Basic Principles and Guidelines on the Right to a Remedy and Reparation, and Basic Principles of Justice for Victims of Crime and Abuse of Power.

Principle 3: Victims

Victims of TRW are individuals who have suffered harm caused or aggravated by TRW as well as their affected families and communities.

Where a certain amount and duration of exposure to a toxic or radiological substance is strongly associated with a particular harm, that exposure should be presumed to be a cause of the harm. Victim status under these Principles should not depend on identifying the actor(s) responsible for the TRW.

Discussion

The definition of victims incorporates individuals directly harmed by TRW as well as their affected families and communities. Victim status is contingent on suffering harm from TRW. Absent injury, mere exposure to TRW does not make a person a victim. The range of harms that can result in an individual’s classification as a victim is addressed in more detail in Principle 4.

The ill effects experienced by victims may be caused in whole or in part by TRW, given that the injuries associated with TRW are also often linked to other factors. For example, as a result of its manufacturing process, Agent Orange, an herbicide and defoliant used widely in the Vietnam War, contained TCDD. This carcinogenic dioxin has been found to contribute to a variety of diseases that have other causes, including Hodgkin’s disease, multiple myeloma, Parkinson’s disease, and prostate cancer. TCDD is also linked to intergenerational harms, including birth defects such as spina bifida. Because many factors can increase the risk that an individual will contract one of these diseases or have a birth defect, exposure to TCDD in Agent Orange may be only a partial cause.

A victim may also experience harm aggravated by TRW. In other words, contact with toxic or radiological substances may worsen other conditions. Air pollution from TRW may lead a person to experience more frequent or acute asthma attacks. Similarly, contamination of farmland may exacerbate damage from previous pollution, reducing crop yields and presenting economic difficulties. Both the asthmatic individual and the farmer would be covered by Principle 3.

The definition of victims extends to affected families and communities because the impacts of TRW are not limited to individuals. If individuals suffer from medical conditions due to TRW, their families or communities may need to dedicate time and resources to provide health care or monetary support. By denying access to agricultural land or safe fishing
grounds, TRW may deprive farmers and fishers of their livelihoods and cause their families financial hardships. Provided that the harm to an individual—whether physical, psychologi-
social, or other—affects members of their family or community, those people are covered by the definition of victim.

A presumption of causation can help address the challenges, discussed under Principle 1, of proving that TRW were the source of a specific harm. Where an individual can demonstrate a certain level of exposure to a toxic or radiological substance or combination of substances, and such exposure is known to produce particular harms, the exposure should be presumed to be a cause. The amount and duration of exposure that activates the presumption will vary based on the substance and associated impacts and will depend on available scientific evidence. Certain harms may arise after limited exposure to TRW, while others may require significant or long-term exposure. Short-term inhalation of mercury vapor, for example, is associated with respiratory illnesses, including pneumonitis. Longer periods of inhalation can lead to neuropsychiatric effects, such as cognitive and motor dysfunction. Identifying victims who qualify for the presumption will require determining the amount and duration of their exposure and assessing known links between such exposure and ailments. The US program to assist military veterans exposed to Agent Orange exemplifies this approach. The program entitles veterans who were exposed to Agent Orange to disability benefits and health care if they develop one or more of a number of “presumptive diseases” associated with TCDD. Similarly, the approach presumes spina bifida in children of exposed service members is associated with Agent Orange.

Finally, for the purposes of these Principles, the definition of victim does not depend on persistence of factors that released the TRW. The US has suffered responsible parties do not determine the suffering a victim experiences. Furthermore, because TRW can be long-lasting and diffuse, identifying the relevant actor would in some cases present a significant obstacle. Identifying responsible parties is generally required for liability regimes, however. As is discussed under Principle 6, such regimes are not precluded by the victim definition.

The different components of Principle 3’s definition of victim draw on humanitarian disarmament, existing assistance programs, and human rights principles.

Consistent with humanitarian disarmament law, the definition of victim only encompasses people who have suffered harm from TRW, as defined in Principle 4, not those who have been exposed but not harmed. The Convention on Cluster Munitions similarly defines “victims” as “all persons who have been killed or suffered an enumerated type of injury.”

Past programs to help those experiencing health-related effects arising from environmental contamination have addressed multiple causes and aggravating factors. For example, following the September 11 terrorist attacks on the United States, the US government created the World Trade Center Health Program. The program reimburses responders for medical care and monitoring expenses. Eligible responders include those who contracted an illness where exposure to toxins was a “significant factor in aggravating, contributing to, or causing” the condition. Humanitarian disarmament law and policy recognize that victim status should extend to affected families and communities. At the First Review Conference of the Mine Ban Treaty in 2004, states parties affirmed that landmine victims include those “individually or collectively” harmed, suggesting that families and communities may be victims. The Convention on Cluster Munitions codified this approach, defining victims as those who have suffered injury “including those persons directly impacted by cluster munitions as well as their affected families and communities.” The UN Policy on Victim Assistance in Mine Action, a 2016 policy document that guides UN assistance to mine victims, also defines “victims” as “directly impacted individuals (including survivors) [and] their families and communities affected” by harmful explosive weapons or weapons remnants. Beyond the disarmament context, the Basic Principles and Guidelines on the Right to a Remedy and Reparation, which were adopted by the UN General Assembly in 2005 and draw on international humanitarian and international human rights law and standards, support the inclusion of affected families and communities. The Basic Principles and Guidelines state that “where appropriate . . . the term ‘victim’ also includes the immediate family or dependents of the direct victim and persons who have suffered harm as a result of the attack or assistance to victims in distress or to prevent victimization.” If individuals suffer gross rights violations, their family can experience collateral consequences, creating a need for assistance.

Assistance programs for harms from hazardous substances or environmental damage have used presumptive approaches. As of 2015, the United States had awarded over $2 billion in compensation pursuant to the Radiation Exposure Compensation Act to individuals who contracted certain illnesses following their participation in the US atmospheric nuclear testing program or in uranium ore processing operations. Under the act, claims are not required to prove that exposure to radioactive materials was the sole reason they suffered from specific medical conditions. The act applies to those who were physically present in areas with radioactive materials. Any of those persons who die from a disease that is scientifically linked to radiation exposure are then eligible to request compensation. The United States

52 Convention on Cluster Munitions, art. 2(1).
developed a similar approach to medical care for responders to the September 11 attacks who were exposed to airborne toxins. To be entitled to reimbursement for medical expenses under the World Trade Center Health Program, individuals do not have to prove that their condition was a result of exposure. The program covers illnesses or health conditions “for which exposure to airborne toxins . . . is substantially likely to be a significant factor” in causing or aggravating the condition.60

Lastly, humanitarian disarmament law does not require victims to identify the actor that caused harm. Under the Convention on Cluster Munitions and the TPNW, victims are described without reference to an identifiable perpetrator of a legal wrong.61 Rather, victims caused harm. Under the Convention on Cluster Munitions and the TPNW, victims are described without reference to an identifiable perpetrator of a legal wrong.61 Rather, victims encompass all individuals who have been harmed by the applicable weapon or its remnant.

International law uses mechanisms other than victim assistance to establish legal liability for those who unlawfully cause harm.

Types of Harm and Assistance

Principle 4: Types of Harm

Victim assistance should address harms caused or aggravated by TRW including, but not limited to: physical injuries and death; psychological injuries; social marginalization; economic loss; obstacles to participation in cultural life; adverse impacts from environmental degradation and loss of biodiversity; and substantial impairment of the realization of victims’ human rights.

Discussion

Victim assistance seeks to address the full range of suffering that TRW can inflict. Victims may experience one or more types of harm, concurrently or across time. While not an exhaustive list, the types enumerated in Principle 4 include health effects, socioeconomic consequences, and obstacles to participation in cultural life. TRW may also lead to environmental degradation and loss of biodiversity, which can in turn harm humans. Finally, those and other effects of TRW may infringe on victims’ human rights. Principle 4 adds cultural and environmental impacts, which are particularly relevant to TRW, to the list enumerated in earlier disarmament treaties.

Health effects encompass physical and psychological injury. Physical injuries associated with TRW include: cancer; damage to internal organs, particularly lungs and kidneys; and skin irritation. TRW can also compromise genetic material, causing intergenerational harm when mutations in cells are transmitted from parent to child. Psychological trauma may result from the knowledge or fear that one has been exposed to or harmed by toxic or radiological materials, or the stress of experiencing other harm such as ostracization or loss of livelihood. Physical injuries may also manifest in psychological symptoms. For example, childhood exposure to certain toxic substances, like lead, may cause brain damage that affects cognitive functions, such as decision-making.

Socioeconomic consequences cover a spectrum of harms related to social marginalization and economic loss. Victims of TRW may face discrimination. For example, survivors of the atomic bombings of Hiroshima and Nagasaki found it difficult to obtain employment or get married. Employers assumed that the survivors would miss work due to constant illnesses, and potential partners thought that survivors would produce malformed children.64

60 See, for example, Convention on Cluster Munitions, arts. 2(1), 5; TPNW, art. 6(1).
or families may also be deprived of access to traditional support networks in their communities when they are forced to relocate due to land contamination. As a result, victims can become alienated from society.

TRW can cause financial difficulties. Victims who experience physical or psychological injuries from TRW may no longer be able to support themselves and their families in the ways they have in the past; for example, manual laborers may become too weak to work if they suffer lung damage. TRW can also destroy livelihoods by contaminating the environment, destroying crops and fishing grounds, on which people’s livelihoods depend. The oil fires of the 1991 Gulf War are a prime example: according to the World Resources Institute, “The oil that did not burn in the oil fires travelled on the wind in the form of nearly invisible droplets resulting in an oil mist or fog that poisoned trees and grazing sheep [and] contaminated fresh water supplies.” Environmental damage can further affect communities by harming the tourism industry.

TRW can also present obstacles to participation in cultural life. Indigenous peoples, who have a unique relationship with the natural world, disproportionately experience this type of harm. The environmental destruction from TRW, for example, can displace entire communities from their homelands. When the United States conducted nuclear weapons testing on Bikini Atoll in the Marshall Islands, it relocated the local population to islands that did not allow them to engage in their cultural practices. They could no longer gather fish, fruit, and other food in traditional ways, and mothers could not pass their traditional land on to their children.

TRW can adversely affect humans through both environmental degradation generally and the loss of biodiversity in particular. The lingering effects of defoliants used in Vietnam a half-century ago exemplify the ecological devastation, including to biodiversity, caused by toxic and radiological substances. Biodiversity is essential for healthy ecosystems, central to agricultural and tourism industries, and integral to many cultures. It is also important to human health and well-being. Its loss can increase the dangers from infectious disease and reduce opportunities for sustainable development.

For example, the destruction of

See Jack Niedenthal, “Paradise Lost—‘For the Good of Mankind,’” Guardian, August 6, 2002.


40 TRW can adversely affect humans through both environmental degradation generally and the loss of biodiversity in particular. The lingering effects of defoliants used in Vietnam a half-century ago exemplify the ecological devastation, including to biodiversity, caused by toxic and radiological substances. Biodiversity is essential for healthy ecosystems, central to agricultural and tourism industries, and integral to many cultures. It is also important to human health and well-being. Its loss can increase the dangers from infectious disease and reduce opportunities for sustainable development.


43 See ECOSOC, art. 15(b)(ii); ICPR, art. 18(1).

44 See UN Human Rights Committee, General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service (Art. 25 of the ICCPR/21/Rev.1/Add.7, August 2007, https://undocs.org/CCPR/C/21/Rev.1/Add.7 (accessed January 7, 2020), para. 11 (explaining that the right to vote under the ICPR requires states to “take effective measures to ensure that all persons entitled to vote are able to exercise that right”).

45 See ECOSOC, art. 13; see also UN Committee on Economic, Social and Cultural Rights, General Comment No. 11: Plans of Action for Primary Education (Article 14 of the International Covenant on Economic, Social and Cultural Rights, E/C.12/1994/4, May 10, 1999, http://undocs.org/E/C.12/1994/4 (accessed January 7, 2020), para. 6 (noting that the compulsory element of a state’s obligation to provide primary education means that the state “are entitled to treat as optional the decision as to whether [a] child should have access to primary education”).

46 Convention on Cluster Munitions, art. 2(1).

47 TPNW, art. 6(1).

48 ICESCR, art. 15(9)(a).
and promotion of cultural life.” Thus, where TRW create obstacles to participation in cultural life, states should endeavor to eliminate those obstacles.

Cultural rights are particularly important for indigenous peoples. The UN Declaration on the Rights of Indigenous Peoples states that “[i]ndigenous peoples have the right to practise their cultural and social life.” The declaration also recognizes the land rights of indigenous peoples, which may be abridged when TRW makes land unusable and uninhabitable. The 1989 Indigenous and Tribal Peoples Convention recognizes the link between indigenous peoples’ cultures and land, obliging states parties to “respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both.” The convention further requires states parties to adopt “[s]pecial measures” to “safeguard[] the persons, . . . cultures and environment of the peoples concerned.” While humanitarian disarmament treaties have not focused on cultural rights, the TPNW preamble recognizes the “disproportionate impact of nuclear weapon-activities on indigenous peoples.”

Environmental treaties, including the 2010 Nagoya Protocol to the Convention on Biological Diversity and the 2015 Paris Agreement on climate change, have noted the relationship between the environment and the culture of “local communities” as well as indigenous peoples. The Nagoya Protocol’s preamble notes:

[1] The interrelationship between genetic resources and traditional knowledge, their inseparable nature for indigenous and local communities, the importance of the traditional knowledge for the conservation of biological diversity and the sustainable use of its components, and for the sustainable livelihoods of these communities.

The importance of the environment for local communities has also been raised in the TRW context. For example, during a UN debate about the ILC’s work on PERAC, Micronesia explained that local communities may have connections to the natural environment similar to indigenous peoples.

Principle 4 further highlights human harm resulting from environmental degradation and a loss of biodiversity. International organizations have noted the interrelationship between environmental degradation and human health and livelihoods. For example, the UNEA’s Resolution 3/1 notes:

[2] The long-term social and economic consequences of the degradation of the environment and natural resources resulting from pollution caused by armed conflict or terrorism, which include, inter alia, the loss of biodiversity, the loss of crops or livestock, and lack of access to clean water and agricultural land, and the negative and sometimes irreversible impacts on ecosystem services and their impact on sustainable recovery, contributing to further forced displacement related to environmental factors.

In 2017, the UN special rapporteur on human rights and the environment confirmed that biodiversity is necessary for ecosystem services that support the full enjoyment of human rights, including the rights to life, health, food, water, and culture. The rapporteur noted that to prevent infringement of these rights, states have a general obligation to protect ecosystems and biodiversity.

Compensation programs have also recognized environmental harms. Following the Iraqi invasion and occupation of Kuwait in 1990 and 1991, the UN Security Council created a commission to process claims for compensation as a result of Iraq’s unlawful acts. The UN Compensation Commission (UNCC) granted awards for environmental harm and depletion of natural resources, including environmental damage that reduced biodiversity.

Principle 4 concludes its list of harms with impairments to victims’ realization of their human rights. In recognition of the potential human rights impacts of cluster munitions and their remnants, the Convention on Cluster Munitions explicitly incorporated this type of harm into its definition of victims. Norms on access to justice also support identifying victims based on impairment of their rights. For example, the Basic Principles of Justice for Victims of Crime and Abuse of Power, adopted by the UN General Assembly in 1985, define “victims” as “persons who . . . have suffered harm, including . . . substantial impairment of their fundamental rights.” International human rights treaties enshrine rights that may be impaired by TRW exposure. For example, the ICCPR guarantees all citizens the right to

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82 UN Declaration on the Rights of Indigenous Peoples, art. 1(1).
83 Ibid., art. 10 (“[[i]]ndigenous peoples shall not be forcibly removed from their lands or territories.”).
85 Ibid., art. 4(3).
86 TPNW, pmbl.
88 Nagoya Protocol, pmbl.
90 UN Environment Assembly, Resolution 3/1.
93 Convention on Cluster Munitions, art. 23.
95 UN Environment Assembly, Resolution 3/1.
96 UN Human Rights Council, Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, A/HRC/Res/8 (2010), January 19, 2017, para. 5. Ecosystem services include: “provisioning services such as food, water, timber and fiber, which are necessary for basic material needs”; “regulation services such as purification of water and air, protection against erosion”; and “cultural services to the many people around the world whose religious and spiritual values are rooted in nature.” Ibid., para. 6. The formal title of the special rapporteur on human rights and the environment is special rapporteur on human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment.
97 Ibid., para. 5.
99 Convention on Cluster Munitions, art. 23.
participate in public affairs and the right to vote. The ICESCR obliges states parties to work progressively towards the full realization of, inter alia, their citizens’ rights to work, physical and mental health, and education. While these obligations are generally applicable, states should account for the ways that TRW victims in particular might be prevented from realizing their human rights.

**Principle 5: Types of Victim Assistance**

Victim assistance may include but is not limited to: medical care, rehabilitation, and psychological support; provision for victims’ social and economic inclusion; acknowledgment of harm; measures to facilitate participation in cultural life; remediation of contaminated environments; access to accurate and comprehensive information regarding the harms and risks associated with TRW; and measures to ensure victims can fully realize their human rights.

**Discussion**

Principle 5 lays out several categories of assistance. The breadth of its non-exhaustive list reflects the wide range of harms that should be addressed. A victim assistance regime should assess the needs of the people affected and, in line with Principle 12, meaningfully engage with victims in order to ensure none of their needs are overlooked. The types of assistance should be tailored to specific situations and may be provided in combination.

Physical and psychological injuries can be treated through the provision of medical care, rehabilitation, and psychological support. In addition, environmental remediation can help address the underlying causes of health problems; removing or containing toxic and radioactive substances can decrease ongoing exposure to TRW, thus reducing suffering from existing conditions, such as asthma, and preventing the emergence of new diseases over time. The provision of information about the harms and risks associated with TRW can help victims make better-informed choices to protect their own health.

Socioeconomic consequences can be mitigated through measures to provide for victims’ social and economic inclusion. For example, vocational training can prepare victims for new kinds of jobs if they are unable to return to their old ones. Environmental remediation can help enable victims to resume farming, fishing, and other forms of livelihood. The provision of information to the public may counter myths that lead to discrimination and ostracization, such as misconceptions that victims are contagious or “diseased,” and help others understand the challenges victims face. Memorialization and other types of public acknowledgment of harm can honor victims and help ensure they receive respect from the societies in which they live.

Obstacles to participation in cultural life can be overcome through environmental remediation and cultural protection measures. Ideally, remediation could restore all or part of a community’s land so that its members could return. When that is impossible, states should facilitate victims’ participation in culture in new places or new ways. Assistance could also include support for educational programs to preserve languages or pass traditions on to younger generations.

Other adverse impacts of environmental degradation and loss of biodiversity can be best addressed directly through environmental remediation. Even though it is often impossible to return an ecosystem to its pre-contamination state, efforts in that direction can still contribute to the re-establishment of environmental health and the restoration of biodiversity.

Finally, human rights abridged directly or indirectly by the presence of TRW can be addressed through a variety of measures. For example, if individuals suffer physical or psychological injury, states should ensure they have health care services that meet the standards of availability, accessibility, acceptability, and quality, which are required under the right to health. States could fulfill victims’ right to vote by facilitating absentee voting. Providing economic support to families experiencing a significant loss of income could help children return to school.

**Precedent**

Principle 5 follows the model of humanitarian disarmament treaties in enumerating specific forms of assistance that correspond to the harm victims experience. Its list of assistance types draws from these treaties as well as human rights law and international programs designed to manage harmful effects of armed conflict.

Humanitarian disarmament law identifies several types of victim assistance, including health care and measures for socioeconomic inclusion. The Convention on Cluster Munitions and the TPNW call for “medical care, rehabilitation and psychological support,” and assistance to “provide for [victims’] social and economic inclusion.” The Mine Ban Treaty similarly highlights measures for the “care and rehabilitation, and social and economic reintegration, of mine victims.” The UN Policy on Victim Assistance in Mine Action suggests that victim assistance should include a number of components, including “physical and other rehabilitation . . . as well as assistive and mobility devices” and “social and economic inclusion, inclusive education, as well as access to basic services and disability awareness.”

International human rights and humanitarian law have recognized the importance of acknowledging the harm victims experience. For example, the Basic Principles and Guidelines on the Right to a Remedy and Reparation call on states to provide reparations to victims of gross violations of international human rights law or serious violations of international humanitarian law. The document includes “satisfaction” in its list of five types of reparations. Satisfaction

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94 States could fulfill victims’ right to vote by facilitating absentee voting. See, for example, ICCPR, art. 25(b); UN Human Rights Committee, General Comment No. 25: The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service, para. 11.
95 See, for example, John Cairns, Jr., “Increasing Diversity by Restoring Damaged Ecosystems,” in Biodiversity: The New Economics of Nature and Nurture, ed. E.O. Wilson and Frances M. Peter (Washington, D.C.: National Academy Press, 1988), p. 333 (noting that it is “often difficult or impossible” to restore ecosystems to their original condition, but that alternative systems might be “ecologically superior to the damaged condition”).
97 See, for example, John Cairns, Jr., “Increasing Diversity by Restoring Damaged Ecosystems,” in Biodiversity: The New Economics of Nature and Nurture, ed. E.O. Wilson and Frances M. Peter (Washington, D.C.: National Academy Press, 1988), p. 333 (noting that it is “often difficult or impossible” to restore ecosystems to their original condition, but that alternative systems might be “ecologically superior to the damaged condition”).
98 See, for example, John Cairns, Jr., “Increasing Diversity by Restoring Damaged Ecosystems,” in Biodiversity: The New Economics of Nature and Nurture, ed. E.O. Wilson and Frances M. Peter (Washington, D.C.: National Academy Press, 1988), p. 333 (noting that it is “often difficult or impossible” to restore ecosystems to their original condition, but that alternative systems might be “ecologically superior to the damaged condition”).
99 See, for example, John Cairns, Jr., “Increasing Diversity by Restoring Damaged Ecosystems,” in Biodiversity: The New Economics of Nature and Nurture, ed. E.O. Wilson and Frances M. Peter (Washington, D.C.: National Academy Press, 1988), p. 333 (noting that it is “often difficult or impossible” to restore ecosystems to their original condition, but that alternative systems might be “ecologically superior to the damaged condition”).
100 See, for example, John Cairns, Jr., “Increasing Diversity by Restoring Damaged Ecosystems,” in Biodiversity: The New Economics of Nature and Nurture, ed. E.O. Wilson and Frances M. Peter (Washington, D.C.: National Academy Press, 1988), p. 333 (noting that it is “often difficult or impossible” to restore ecosystems to their original condition, but that alternative systems might be “ecologically superior to the damaged condition”).
The remediation obligation in a humanitarian disarmament treaty, although it had precursors in prior treaties. Article 6 of the TPNW calls on states to “take necessary and appropriate measures towards the environmental remediation” of areas contaminated by nuclear weapon use or testing. Notably, the remediation obligation appears in the same article as the victim assistance obligation. This placement is appropriate as environmental remediation can help alleviate human harms and can thus be viewed in part as a form of victim assistance. The Mine Ban Treaty and the Convention on Cluster Munitions both have analogous obligations, requiring states to remove antipersonnel landmines and cluster munition remnants from the environment. While these provisions are separate from victim assistance ones, such clearance can similarly serve to prevent human suffering.

Environmental remediation has also been a component of international programs that help states to recover from the effects of armed conflict. For example, UNEP and the Iraqi government worked together in 2004 to determine the level of threat to humans, wildlife, and the environment from contamination in Iraq after a “decade of instability and conflict.” In 2018, UNEP launched a training program to help Iraqi government officials develop skills in assessing and cleaning up oil-contamination created during the conflict with the Islamic State (ISIS). Similar environmental remediation programs have been undertaken by UN agencies in the Balkans and Sierra Leone. Additionally, the UNCC awarded funding for remediation, including prevention and cleanup of pollution and the provision of labor and supplies. This assistance was provided directly to states, which are the trustees of the environment on behalf of their citizens and victims.

Humanitarian disarmament law and practice require states to inform victims and potential victims of dangers posed by remnants of war. Under the Mine Ban Treaty, states parties “in a position to do so” are required to provide assistance for mine awareness programs. Adopting stronger language, the Convention on Cluster Munitions removes the qualifier and obliges states parties to “[c]onduct risk education to ensure awareness among civilians living in or around cluster munition contaminated areas of the risks posed by such remnants.” Like the access to information called for in Principle 5, risk education and mine awareness programs are designed to protect individuals, families, and communities from harm.

Finally, Principle 5 builds on legal precedent when it calls for “measures to ensure victims can fully realize their rights.” Consistent with the definition in the Convention on Cluster Munitions, Principle 4 describes victims as including those that suffer a “substantial impairment of the realization of their rights.” Principle 5 makes clear that states should take measures to protect the rights of TRW victims. These measures, which can be informed by international human rights law as well as humanitarian disarmament law, may go beyond other listed types of assistance.
Framework of Shared Responsibility

**Principle 6: Responsibility**

States should provide assistance to TRW victims in areas under their jurisdiction or control.

Other states, especially states whose actions generated TRW, should provide financial, material, technical, and/or other assistance to “affected states,” i.e., those with TRW victims in areas under their jurisdiction or control, to help them meet their victim assistance responsibilities.

**Discussion**

Principle 6 explains the roles of different actors with regard to victim assistance. It creates a framework of shared responsibility. The “affected state,” i.e., the state that has jurisdiction or control over areas in which TRW victims are located, should play the lead role in assisting victims in those areas. Other states should support the affected state so that it can fully implement its assistance programs.

To avoid potential gaps, Principle 6 calls on the affected state to address the needs of victims in areas under its jurisdiction or control. Persons within a state’s territory fall under that state’s jurisdiction. The control aspect is particularly relevant during occupation, where a state gains control. UNEP aims to “prevent and reduce the impacts” of conflict-related harm and “help those facing the consequences of armed conflict and environmental degradation. For example, UNEP provides technical and capacity-building assistance to affected states, which are disproportionately developing countries and thus may lack material, technical, and/or other assistance to implement its assistance programs. Furthermore, Principle 6 does not preclude victims from pursuing other forms of assistance, which seeks to advance victims’ realization of their human rights, provides one avenue for affected states to comply with this obligation.

AFFECTED STATES DO NOT, HOWEVER, BEAR SOLE RESPONSIBILITY FOR VICTIM ASSISTANCE. PRINCIPLE 6 CALLS ON ALL OTHER STATES TO PROVIDE FINANCIAL, MATERIAL, TECHNICAL, AND/OR OTHER SUPPORT TO AFFECTED STATES, WHICH ARE DISPROPORTIONATELY DEVELOPING COUNTRIES AND THUS MAY LACK RESOURCES OR EXPERTISE. THIS SUPPORT CAN TAKE A VARIETY OF FORMS, RANGING FROM MONEY TO EQUIPMENT TO ADVICE TO HUMAN RESOURCES. BECAUSE OF THE FLEXIBILITY, MOST STATES SHOULD BE ABLE TO CONTRIBUTE IN SOME WAY.

While Principle 6 calls on all states to contribute, states whose actions generated TRW hold a particular responsibility to provide support to the affected state. They have a moral and ethical responsibility to the country and its victims, regardless of whether their conduct was unlawful. Thus, they should be even more engaged in victim assistance than other non-affected states.

States may provide their support directly to the affected state or through relevant organizations. Many international, regional, and nongovernmental organizations have mandates to aid those facing the consequences of armed conflict and environmental degradation. For example, UNEP provides technical and capacity-building assistance to affected states, which are disproportionately developing countries and thus may lack material, technical, and/or other assistance to implement its assistance programs. Furthermore, Principle 6 does not preclude victims from pursuing other forms of redress from non-state actors. States should ensure affected individuals have access to organizational critiques.120

Third, the approach accords with international legal precedent. As discussed below, this draws directly from an approach used in humanitarian disarmament and articulated in the Convention on Cluster Munitions. In addition, international human rights law obliges states to ensure that persons in their territory enjoy their human rights, although, in that legal regime, the obligation extends to persons “subject to [a state’s] jurisdiction.”121 Victim assistance, which seeks to advance victims’ realization of their human rights, provides one avenue for affected states to comply with this obligation.

States may provide their support directly to the affected state or through relevant organizations. Many international, regional, and nongovernmental organizations have mandates to aid those facing the consequences of armed conflict and environmental degradation. For example, UNEP provides technical and capacity-building assistance to affected states, which are disproportionately developing countries and thus may lack material, technical, and/or other assistance to implement its assistance programs. Furthermore, Principle 6 does not preclude victims from pursuing other forms of redress from non-state actors. States should ensure affected individuals have access to organizational critiques.120

Second, the approach respects an affected state’s sovereignty by reaffirming its authority over activities within its borders. It also acknowledges state agency because it encourages affected states to set domestic assistance policies while empowering them to seek outside support.

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115 See Hague Convention (IV) respecting the Laws and Customs of War on Land, adopted October 18, 1907, entered into force January 26, 1910, annex, art. 42 (“Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised over the territory of another state.”) Recognizing the link between environmental and human harm during occupation, the ILC’s 2019 Draft Principles on PERAC state that “[j]ohn Occupying Power shall take appropriate measures to prevent significant harm to the environment of the occupied territory that is likely to prejudice the health and well-being of the population of the occupied territory.”


118 See, for example, ICCPR, art. 2(7); UN Human Rights Committee, General Comment No. 31 (2004) [206] (The Nature of the General Legal Obligation Imposed on States Parties to the Covenant, ICCPR/C/21/Rev.3/Add. 13, May 20, 2004: paragraph 10, (2016) “The laws of war derive from conventions such as the Geneva Convention concerning the Laws and Customs of War on Land, adopted October 18, 1907, entered into force January 26, 1909; annex, art. 42 (1) (“The authority over the territory of another state.”).”


national grievance mechanisms to obtain remedies for abuses by businesses and other non-state actors.127

Precedent
In developing its shared responsibility framework, Principle 6 draws on humanitarian disarmament law and policy as well as international human rights law and business and human rights principles.

The Convention on Cluster Munitions tasks a state party that has “victims in areas under its jurisdiction or control” with leading assistance efforts.128 Principle 6 describes this state as the “affected state.” While the Mine Ban Treaty does not assign primary responsibility to the affected state, its implementation plans emphasize the affected state's crucial role. The Nairobi Action Plan, adopted at the Mine Ban Treaty’s First Review Conference in 2004, describes victim assistance as “first and foremost” the responsibility “of those whose citizens suffer . . . mine incidents.”129 The Maputo Action Plan, adopted at the treaty’s 2014 Third Review Conference, furthered this approach, describing victim assistance as primarily the responsibility of states parties with victims in areas under their jurisdiction or control.130 The TPNW also assigns responsibility to affected states although it describes them as states parties with victims “under [their] jurisdiction.”131

Humanitarian disarmament goes on to place the affected state's obligations in a framework of shared responsibility. Under the Convention on Cluster Munitions and the TPNW, affected states parties are entitled to “seek and receive assistance” from other states parties.132 Other states parties “in a position to do so shall provide assistance” to the affected state or victims directly.133 Intention to both treaties, assistance can take a variety of forms, including “technical, material and financial assistance.”134 Similarly, all states parties to the Mine Ban Treaty have the “right to seek and receive assistance . . . from other States” to fulfill their obligations.135

International human rights law, like humanitarian disarmament law, supports assigning responsibility to affected states and encouraging international cooperation. Under the ICCPR, each “State Party . . . undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized” in the covenant.136 The ICCPR establishes the principle that states are responsible for guaranteeing the rights of people within their territory. Article 2 of the ICESCR requires states parties to “undertake[] to take steps, individually and through international assistance and co-operation[]” to ensure the realization of economic, social, and cultural rights.137

The TPNW supports explicitly calling on states that generated TRW to engage in assistance efforts. TPNW Article 7 holds that a “State Party that has used or tested nuclear weapons or any other nuclear explosive devices shall have a responsibility to provide adequate assistance to affected States Parties.”138 At the same time, TPNW clarifies that victim assistance is supplemental to other liability, as the obligation is “[w]ithout prejudice to any other duty or obligation that [the state] may have under international law.”139

Principle 6 establishes its shared responsibility framework in part to fill gaps left by liability-based regimes. First, some states reject the position that international environmental law continues to apply during armed conflict.140 As a result, they could not be held accountable for violating it. Second, international humanitarian law contains a high threshold for the regulation of environmental damage. Many activities that generate TRW are legally permissible under that body of law, meaning that the relevant actor may not be obliged to repair the harm.141 Third, TRW exposure often results from multiple causes, making it difficult to attribute liability to a single actor. Fourth, processes to obtain compensation for legal wrongs can be time-intensive and expensive, while the shared responsibility framework may meet victims’ needs in a more efficient and equitable manner. Nevertheless, the victim assistance measures described in these principles can be complementary to and pursued alongside efforts to obtain legal redress, which also have benefits but are beyond the scope of this report.

Humanitarian disarmament’s shared responsibility framework identifies governmental and nongovernmental organizations as essential partners in assistance programs. Under the TPNW, donor states may provide support through a variety of channels, including the UN system, international or regional organizations, and nongovernmental organizations. The Mine Ban Treaty and the Convention on Cluster Munitions contain similar provisions.142

Recent practice reflects the specific role of international and regional organizations in assistance efforts related to the environmental effects of armed conflict. UNEP, for example, has been a leader in assisting with remediation efforts for conflict-related environmental degradation. Between 2003 and 2006, it facilitated a series of activities in Iraq, including environmental monitoring and study, training and equipment transfer to Iraqi authorities, cleanup of contaminated sites, and capacity-building efforts supported by other states.143 In the aftermath of the conflict with ISIS, UNEP again led assistance efforts, undertaking studies to map oil-contaminated sites that pose health risks to surrounding communities.144

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128 Convention on Cluster Munitions, art. 5(1).
129 Nairobi Action Plan, para. 5.
130 Maputo Action Plan, para. 6(6).
131 TPNW, art. 6(3).
132 Convention on Cluster Munitions, art. 6(1); TPNW, art. 7(2).
133 Convention on Cluster Munitions, art. 6(1); TPNW, art. 7(2).
134 Convention on Cluster Munitions, art. 6(2); TPNW, art. 7(2).
135 Mine Ban Treaty, art. 6(1), 3.
136 ICCPR, art. 6(1).
137 ICESCR, art. 2(1).
138 TPNW, art. 7(6).
139 Ibid.
140 See International Law Commission, “Draft Articles on the Effects of Armed Conflicts on Treaties, with Commentaries,” Yearbook of the International Law Commission (2011), vol. 58, part. 5, p. 127 (describing state submissions during the Nuclear Weapons case before the International Court of Justice that evinced a lack of agreement on whether environmental obligations continue to apply during armed conflict).
142 TPNW, art. 7(5).
143 Mine Ban Treaty, art. 6(3); Convention on Cluster Munitions, art. 6(2).
144 UN Environment Programme, UNEP or Iraq: Post-Conflict Assessment, Clean-up and Reconstruction (Nairobi: UN Environment Programme 2007), pp. 4–6.
Finally, precedent supports affected states taking national measures to ensure non-state actors contribute to assistance efforts, including through grievance mechanisms. The ILC recognized in its PERAC draft principle on corporate liability that “[s]tates should take appropriate legislative and other measures aimed at ensuring that corporations and other business enterprises operating in or from their territories can be held liable for harm caused by them to the environment.”144 States should promote access to remedies from non-state armed groups as well as businesses. For example, the peace agreement between the government of Colombia and the Revolutionary Armed Forces of Colombia (FARC) includes reparative sanctions.145 Members of FARC who appear before a tribunal and admit responsibility for their conduct in relation to the armed conflict may be required to participate in “environmental protection programmes for Forest Reserve Areas,” and “environmental recovery programmes for areas affected by crops used for illicit purposes” during the conflict.146

**Principle 7: Exchange of Scientific and Technical Information**

States (especially states whose actions generated TRW), international organizations, nongovernmental organizations, and other actors should, to the extent possible, share scientific and technical information with affected states regarding TRW and possible responses.

**Discussion**

States, international organizations, nongovernmental organizations, and other actors should provide scientific and technical information that can help the affected state identify victims, assess needs, develop a response, and deliver assistance. While those actors may have legitimate interests in protecting national security or proprietary commercial secrets, they should make available as much information as possible to expedite and improve the quality of assistance.

States whose actions generated TRW should proactively share relevant information. They often possess valuable knowledge about the particular situation, including the cause of the release, the locations of contaminated sites, the nature of the toxic and radiological substances, and the possible effects of exposure. In some cases, these states have failed to release information about TRW. For example, the United States declined requests to provide GPS coordinates for depleted uranium rounds it used in Iraq. The coordinates became public only after the Dutch organization PAX submitted a freedom of information request to the Dutch government, which had obtained copies of the coordinates from the United States.144 According to the UN special rapporteur on toxics:

> The lack of transparency demonstrated by States regarding the pollution caused by their actions during conflict can impede the identification of contaminated sites, and thus limit access of affected communities to preventative health care, information on how to reduce risks and other protective measures. Communities affected by military bases and testing of weapons often do not have access to the classified information necessary to ensure an effective remedy for victims of the resulting contamination.144

If states that caused the TRW problem voluntarily provided such information at the outset, affected states could more quickly identify environmental threats and potential victims and initiate assistance programs.

Other states may also have expertise to share. They may possess a range of relevant scientific, medical, and technical data. In particular, they may have experience managing TRW in different situations or dealing with the impacts of comparable environmental damage attributable to an accident or natural disaster. These states could share best practices for identifying contaminated sites, preventing the spread of toxic or radiological substances, treating the health effects of such substances, and remediating the environment.

International organizations and nongovernmental organizations may have specialized knowledge—drawn from substantive expertise or practical experience—that can improve an affected state’s ability to assist victims. International organizations can share technical advice and support capacity building through well-established mechanisms in the wake of TRW incidents. For example, UN agencies and other international organizations may respond to requests for information that affected states make through UN channels or relevant international agreements such as the 1989 Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal.147 Organizations or individuals present in affected regions during an armed conflict, such as humanitarian aid groups or “civilian scientists,” may also be able to help identify contaminated areas, victims of TRW, and victims’ needs by sharing data they have collected.144

Finally, private companies may possess relevant information because TRW can result from the destruction of infrastructure or facilities they own. If a chemical plant is damaged in an airstrike, for example, its company should know which types of substances were stored in the facility and might seep into nearby soil. Whether or not their facilities are affected, companies may have information about the dangers of exposure to a contaminant and practices for safe handling and cleanup. Providing such details to the affected state would assist it in understanding the nature of the problem and developing assistance strategies.

**Precedent**

Principle 7 draws on humanitarian disarmament and international environmental law to encourage relevant actors to share technical and scientific information regarding TRW with affected states.

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Humanitarian disarmament law and policy promote robust information sharing by states, international organizations, nongovernmental organizations, and private actors. Article 4(4) of the Convention on Cluster Munitions “strongly encourage[s]” states parties to provide information on the cluster munitions they used even before the convention took effect. This paragraph supports the analogous proposition of encouraging states that generate TRW to share information.

Looking beyond the responsibility of user states, the Mine Ban Treaty and the Convention on Cluster Munitions grant states parties “[t]he right to participate in the fullest possible exchange of . . . scientific and technological information.”148 Under the Convention on Cluster Munitions, states parties can also request that international and nongovernmental organizations share information and expertise, including the location, nature, and extent of cluster munition remnants in an area and data required to reduce risks.149 The Dubrovnik Action Plan, adopted by that convention’s First Review Conference in 2015, similarly calls on international organizations and the private sector to “identify and mobilise the necessary technical, material and financial resources” and to “[d]evelop, share and promote cost-effective, innovative and successful practices of cooperation and assistance.”150

Information sharing on hazardous activities and toxic substances is also a well-established international environmental norm. For example, the Basel Convention requires immediate notification after an accident that may affect human health or the environment.151 The 2001 ILC Draft Articles on Prevention of Transboundary Harm from Hazardous Activities similarly encourage states to provide information related to hazardous activities, beginning when the hazardous activity occurs and continuing as long as appropriate.152 While these obligations and norms are limited to transboundary harm, they are nonetheless instructive even where environmental harm is limited to one country. The UN General Assembly has also called for states that have used depleted uranium to provide information to identify and help manage contaminated sites.153

Finally, Principle 7 mirrors the ILC’s draft principles on PERAC. According to Draft Principle 24, “[s]tates and relevant international organizations shall share and grant access to relevant information” to facilitate remedial measures.154 Principle 7 embraces this duty to exchange information so that affected states receive the support necessary to provide timely and effective assistance to victims of TRW.

Implementation

**Principle 8: Collection and Dissemination of Information**

Affected states should, on an ongoing basis, collect and ensure the dissemination of information regarding the presence of TRW on their territory and the harms those TRW have caused or may cause.

**Discussion**

Collecting and disseminating information regarding the presence of and harms associated with TRW is critical to responding to victims’ needs. Evidence of the presence of TRW includes details regarding the types and geographic locations of contaminants. Information on harm can include reports of the past effects of TRW as well as assessments of the risks of future ones. Qualitative research into the experiences of victims is also useful. The inadequacy of data currently represents a significant barrier to assisting victims of any toxic or radiological substance.155 Data gathering frequently occurs in an incomplete or haphazard manner through the piecemeal efforts of civil society groups, UN agencies, and other organizations.

In line with Principle 6, affected states should take responsibility for the collection and dissemination of information. Because of their proximity to the harm, they are usually in the best position to gather data regarding TRW and to determine the most effective way of sharing it. States should ensure, however, that their fact-finding is reliable and impartial, and where impartiality of state investigations is questioned, states should arrange for independent investigations. Such studies can be complemented by investigations by academics, civil society researchers, and other private actors, including communities engaging in “civilian science.”156 In disseminating information, states should ensure it is accessible, in line with Principle 11.

Information collection, whether from their own research or that of others, provides affected states with knowledge necessary to implement victim assistance measures. Without comprehensive data regarding the geographic scope and associated impacts of TRW, states will be unable to design assistance programs that effectively address victims’ needs. For example, if a state discovers that the shelling of a factory has resulted in hazardous chemicals leaking into nearby water sources, the state must determine the nature of the contamination as well as the medical, social, and economic consequences to develop an appropriate response.

Information collection in turn gives states relevant information to disseminate to victims and to people in affected areas who have yet to experience harm. If individuals are unaware of the presence or dangers of TRW, there is a greater likelihood that they will expose themselves to TRW.157

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148 Mine Ban Treaty, art. 6(2); Convention on Cluster Munitions, art. 6(3).
149 Convention on Cluster Munitions, art. 6(1).151
150 Dubrovnik Action Plan, para. 40(a).
152 International Law Commission, “Draft Articles on Prevention of Transboundary Harm from Hazardous Activities,” in John Wolfrum (ed.), Yearbook of the International Law Commission (2001), vol. 1, part 2, pp. 164–65. Similar information-sharing provisions are emphasized in the ILC’s Principles on the Allocation of Loss in the Case of Transboundary Harm Arising out of Hazardous Activities. Under those principles, the state with jurisdiction or control over the sources of transboundary damage or any state or international organization with experience in mitigating harms of that type should provide relevant information. International Law Commission, “Draft Principles on the Allocation of Loss in the Case of Transboundary Harm Arising out of Hazardous Activities,” Yearbook of the International Law Commission (2008), vol. ii, pt. 2, p. 83 ("Principle 5. Response measures. Upon the occurrence of an incident involving a hazardous activity which results or is likely to result in transboundary damage, (a) the State of origin shall promptly notify all States affected or likely to be affected of the incident and the possible effects of the transboundary damage").
155 See, for example, Wier, McCullough, and Francis, “Civilian Science: The Potential of Participatory Environmental Monitoring in Areas Affected by Armed Conflict.”
or others or fail to seek medical attention for related health problems. Individuals are likely to continue to rely on a water source for drinking or fishing unless an affected state informs them of the presence of hazardous chemicals. The dissemination of information also allows individuals and communities affected by TRW to engage more meaningfully in decision-making regarding victim assistance, a process discussed further under Principle 12. One mechanism for relaying relevant information is risk reduction education programming, which warns the local population about the health and safety risks of TRW in their vicinity. Similar programs have played an important role in reducing casualties from landmines and ERW.

Disseminating information on the lack of TRW is also important. Uncertainty about whether an at-risk area is indeed contaminated can create fear among individuals who live in the vicinity. For example, the people of a town located downstream from a bombed chemical plant may experience psychological stress because they worry that the pollution has reached their community and put them at risk of illness. States should therefore ascertain whether or not TRW are present in vulnerable areas and share that information with local residents. States should continue to monitor and report on the situation over time to ensure that the public is aware if contamination spreads or if it has been effectively remediated. Such measures can keep the public adequately informed while helping eliminate unnecessary but genuine psychological distress.

**Precedent**

Humanitarian disarmament and international environmental law provide precedent for calling on affected states to collect and disseminate information concerning TRW.

Humanitarian disarmament law and policy emphasize the importance of collecting and disseminating information regarding remnants of war. The Mine Ban Treaty and the Convention on Cluster Munitions both require states parties to identify and mark contaminated areas.158 The latter convention includes additional information-related obligations. It requires affected states parties to “collect reliable relevant data with respect to cluster munition victims.”159 As applied to these Principles, data collection could generate information about the harm TRW has already caused and provide clues to the risks for others in or near contaminated areas. The Convention on Cluster Munitions also mandates the dissemination of information through “risk reduction education to ensure awareness” for civilians living in or near affected areas.160 According to the Dubrovnik Action Plan that information should be tailored to reflect the risk-taking behavior of affected communities.161

Ensuring the accessibility of environmental information, which depends on its collection and dissemination, is a well-settled norm of international environmental law. Principle 10 of the 1992 Rio Declaration on Environment and Development, a political document centered on sustainable development, states that “each individual shall have appropriate access to information concerning the environment that is held by public authorities, including information on hazardous materials and activities.”162 While the Rio Declaration’s Principle 10 is applicable to all situations, it provides useful precedent for ensuring the dissemination of information on hazardous materials, which is especially important before, during, and after an armed conflict.

The Aarhus Convention outlines steps states parties must take to collect and disseminate information on environmental harm.163 The preamble asserts that in order to exercise their right to “an environment adequate to his or her health and well-being,” citizens must “have access to information.”164 The convention’s operative provisions obligate states parties to guide the public in accessing environmental information and to “promote environmental education.”165 Furthermore, the convention requires that environmental information progressively become “available in electronic databases which are easily accessible to the public.”166

In his 2018 Framework Principles on Human Rights and the Environment, the UN special rapporteur on human rights and the environment explained that all persons have a human right to “information on environmental matters.” He divided that right into two dimensions. First, states should “regularly collect, update and disseminate environmental information,” especially in “situations involving imminent threat of harm to human health or the environment . . . regardless of whether the threats have natural or human causes.”167 Second, states must “provide affordable, effective and timely access to environmental information.”168 The grounds for refusal of environmental information ought to be narrow, “in light of the public interest in favour of disclosure.”169

Relevant international environmental organizations have highlighted that this general principle is particularly important in armed conflict. The UNEA, for instance, adopted a resolution in 2017 stressing “the need for the swift identification, assessment, and remediation of pollution in the areas affected by armed conflict or terrorism.”170 As the UNEA recognized, immediate information-collection regarding pollution is critical in mitigating harm.

**Principle 9: National Strategy**

Affected states should develop and implement a comprehensive and coordinated national victim assistance strategy that plans for victims’ short- and long-term needs.

**Discussion**

Affected states should develop and implement comprehensive and coordinated victim assistance strategies that plan for the needs of victims and their communities.171

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158 See Mine Ban Treaty, art. 5(2); Convention on Cluster Munitions, art. 4(2).
159 Convention on Cluster Munitions, art. 5(7).
160 Dubrovnik Action Plan, para. 25(a).
162 See Mine Ban Treaty, art. 5(2), Convention on Cluster Munitions, art. 4(2).
163 Convention on Cluster Munitions, art. 5(7).
164 Ibid., art. 4(2)(d).
165 Ibid., art. 3(2).
166 Ibid., art. 3(2).
168 Ibid., para. 18.
169 Ibid., art. 5(3).
170 Ibid., para. 19.
171 Ibid. The special rapporteur additionally noted that states should provide the public with information and guidance regarding “remedies for human rights violations,” and here to access the relevant procedures, ibid., para. 27. States should specifically assist members of the public in “overcoming obstacles to access such as language, literacy, expense and distance.” Ibid., para. 30. For more information on accessibility, see Principle 11.
172 UN Environment Assembly, Resolution 3/1, para. 13.
assistance strategies at the national level to ensure victims’ needs are met. In so doing, states should uphold the principles on accessibility, inclusivity, non-discrimination, and transparency, which are discussed below.

While states have flexibility in how they design their programs, every national strategy should contain five practical elements to facilitate an adequate response to victims’ needs. A strategy should include a budget, a detailed timeline for implementation, a clear delegation of responsibilities, a focal point, and dedicated laws and policies. Clarity about funding sources, deadlines, and the actors responsible for providing each service can increase the effectiveness and timeliness of assistance. Delegating a focal point (often a specific ministry) can enhance coordination of assistance efforts, facilitate monitoring of spending, and promote accountability in implementation. Laws and policies provide mechanisms for implementation and enforcement. National strategies may, nonetheless, evolve over time in response to new information, scientific developments, or changing circumstances.

A national strategy should also plan for victims’ short- and long-term needs. While some harms associated with TRW arise immediately, as discussed under Principle 1, others may surface long after exposure. Inhalation of sulfur dioxide, like that released in 2016 after members of ISIS ignited a sulfur plant, can cause lethal respiratory damage that requires a rapid response. The medical and health impacts of certain dioxin exposure, by contrast, can occur decades, or even generations, after exposure. A national strategy should adopt a methodology for determining how to prioritize the order of assistance. For example, in developing priorities for post-conflict measures in Iraq in 2004, UNEP emphasized the importance of immediately assessing environmental threats to human health and livelihoods and then turning to sustainable development measures in later years. At the same time, national strategies should prepare for long-term assistance, given the possibility that additional impacts will emerge in the future.

To avoid the creation of redundant or conflicting programs, national victim assistance strategies should take into account existing frameworks and obligations regarding human rights, environmental protection, development, and disability. For example, many forms of victim assistance, such as health care or measures for socioeconomic inclusion, mirror general efforts undertaken by states to fulfill their human rights obligations. Depending on the context, victim assistance strategies should be incorporated into, complement, or strengthen previously established frameworks.

Finally, national strategies should strive to maximize the benefits of the international assistance called for in Principle 6. In its national planning, the affected state should consider what external support to request from other states and how best to utilize what it receives.

Precedent

Principle 9 looks primarily to humanitarian disarmament law and policy for guidance on the development and implementation of comprehensive national plans to assist TRW victims.

The Convention on Cluster Munitions requires states parties to “develop a national plan and budget, including timeframes to carry out” victim assistance activities “while respecting the specific role and contribution of relevant actors.” The convention further obliges states parties to “[d]esignate a focal point within the government for coordination” of victim assistance. The Dubrovnik Action Plan expands on this obligation, noting that the focal point should have “authority, expertise and adequate resources” to carry out victim assistance. The plan specifies that states parties should also monitor and evaluate implementation.

Promoting victim assistance that responds to victims’ short- and long-term needs is a key tenant of humanitarian disarmament. Action 29 of the Nairobi Action Plan encourages states to “[e]stablish and enhance health-care services needed to respond to immediate and ongoing medical needs of mine victims.” The Mine Ban Treaty’s Maputo Action Plan similarly emphasizes that states parties should “[b]e[r] in the immediate and long-term needs of cluster munition victims” when building their assistance programs.

Humanitarian disarmament precedent also calls on states to integrate their victim assistance programs into existing frameworks. The Convention on Cluster Munitions obliges states to develop victim assistance measures “with a view to incorporating them within the existing national disability, development and human rights frameworks and mechanisms.” The Dubrovnik Action Plan encourages states parties to adapt “existing national policies, plans and legal frameworks . . . such as disability and poverty reduction frameworks” to assist cluster munition victims. The Mine Ban Treaty’s Maputo Action Plan contains a similar call for states parties assisting landmine victims.

Under humanitarian disarmament law and policy, international assistance plays a role in the development of national strategies. The Nairobi Action Plan encourages states to “[e]nsure that the activities of the UN, national and international non-governmental organizations and other actors . . . are incorporated into national mine action planning frameworks.” The Convention on Cluster Munitions goes further and specifies that states parties may “request the United Nations system, regional organisations, other States Parties or other competent intergovernmental or non-governmental institutions to assist its authorities” in developing a national plan.

State practice demonstrates the importance placed on national strategies. In 1999, the Vietnamese government created the Office of the National Steering Committee on Overcoming Consequences of Agent Orange/Dioxin, an inter-ministerial body tasked with overseeing and coordinating the government’s response to the lingering effects of Agent Orange. The office includes members of eight government ministries and coordinates with the US State Department and US Agency for International Development.

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172 2008 Convention on Cluster Munitions, art. 5(10).
173 Ibid., art. 5(9).
174 Dubrovnik Action Plan, para. 32(a).
175 Ibid., para. 32(b).
176 Ibid., para. 32(g).
177 Ibid., para. 32(j).
178 Ibid., para. 32(a).
179 Ibid., para. 32(j).
180 Convention on Cluster Munitions, art. 5(10).
181 Ibid., para. 32(j).
182 Maputo Action Plan, para. 6.
183 Ibid., para. 6.
184 Ibid., para. 6.
International environmental law contains analogous requirements to adopt national plans to implement treaty provisions. For example, the 2001 Stockholm Convention on Persistent Organic Pollutants, an international treaty intended to reduce or eliminate the production and use of persistent organic pollutants, mandates that states parties develop plans to implement their obligations. States must review and update their national implementation plans on a periodic basis.

Principle 10: Capacity Building

States, international organizations, nongovernmental organizations, and other actors should promote capacity building to ensure long-term and effective implementation of victim assistance.

Discussion

Capacity building, which allows states to assist victims effectively over an extended period of time, involves the development and retention of technology, infrastructure, and skills. For example, detection and monitoring of toxic and radiological substances are usually key steps in the provision of assistance because they illuminate the extent and nature of the problem. Assessing environmental contamination, however, often requires specialized knowledge and tools. Depending on the types of TRW, capacity building in this area could entail establishing research labs with experts and equipment capable of analyzing the toxicity of soil or water samples, potential harms to humans, and safe levels of exposure.

Providing assistance that responds to the problems identified may similarly require specific tools and knowledge. In some cases, capacity building might involve ensuring that a state’s medical infrastructure is adequate and that health care professionals possess the skills necessary to deliver care for injuries influenced by TRW. Radiation exposure from US nuclear testing in the Marshall Islands reportedly increased the risk of cancer rates in affected persons. Around 2007, the Marshall Islands developed a plan to update its hospitals with appropriate equipment to screen for and treat cancer. Affected states may also need to hire outside specialists or train local health care professionals to diagnose and address the health effects of TRW. Such capacity building allows victims to receive the care they require within their country instead of traveling to other states.

In other cases, assistance may entail environmental remediation to restore contaminated areas. TRW victims may no longer be able to safely grow crops or rely on local livestock because their farmland and water sources are contaminated with toxic or radiological substances. Treating these substances can be a complicated process. For example, the

“in situ thermal desorption” process chosen to rehabilitate dioxin-contaminated soil in Vietnam uses heater wells to maintain a high soil temperature over a period of time and vacuum wells to extract hot air and water vapor. Capacity building would involve ensuring that affected states have access to the technology and knowledge required to remediate contaminated sites.

Capacity building can occur at the community and national levels. It should provide affected communities tools that allow them to provide for their own needs. Doing so not only improves assistance but also empowers affected communities and recognizes victims’ dignity and agency. At the national level, other states, international organizations, and nongovernmental organizations can help an affected state fill gaps in its capacity to address victims’ needs, making it less dependent on outside support over time.

Because the impacts of TRW are often ongoing, they require long-term solutions. As discussed above, the health effects of TRW can emerge years after initial exposure, necessitating continual monitoring and the ability to respond when latent illnesses manifest. Remediating farmland or fisheries can be a lengthy process, even when returning an area to its original state is not possible. Effective victim assistance thus requires sustainability, which is made possible by bolstering local and national capacity.

Precedent

Humanitarian disarmament precedent and international environmental practice highlight the importance of capacity building.

Humanitarian disarmament treaty law implicitly encourages building an affected state’s capacity to implement victim assistance programs. Recognizing the critical role of international actors, the Mine Ban Treaty and the Convention on Cluster Munitions require states parties to facilitate the exchange of “scientific and technological information” and the delivery of equipment. This obligation suggests that states parties should furnish affected states parties with knowledge and tools necessary to carry out sustainable assistance programs. In a related provision, the Convention on Cluster Munitions requires the TPNW require states parties to provide technical, material, and financial assistance to affected states parties.

Implementation plans for humanitarian disarmament treaties explicitly call for capacity building. The Maputo Action Plan encourages affected states parties to “strengthen local capacities” for victim assistance and all states parties to “enhance the capacity” of mine victims. The Dubrovnik Action Plan likewise calls on states parties to “strengthen their national capacity to provide assistance” by “mobilising adequate national and international resources.” The plan further calls on states parties to review the adequacy of existing medical, educational, and other services to identify where capacity building is needed.

International environmental programs designed to deal with the effects of armed conflict have recognized the importance of capacity building. In the early 2000s, UNEP worked to build the Iraqi government’s capacity to assess the impacts of depleted uranium use.198 The program sought to promote the Iraqi government’s ability to identify contaminated sites and test soil, water, and vegetation samples by hosting training workshops for Iraqi Ministry of Environment personnel and supplying field equipment, such as monitoring instruments.199 In 2018, UNEP initiated a new program to assist Iraq with cleaning up oil contamination from the conflict with ISIS.200 UNEP trained Iraqi officials on site assessments and carried out joint analyses to prioritize sites for cleanup.

States and international organizations have worked to build capacity at both the community and national levels. The UN Policy on Victim Assistance in Mine Action articulates the commitment of the United Nations to enhancing the “capacity of states and local communities to ensure that services for victims remain available in the long-term and that states are able to comply with their respective national and international obligations.”201 An integral part of addressing the harm caused by landmines and cluster munitions is developing local and national demining capacity. Over the past decade, for example, France and Lebanon have worked together to create a Regional School for Humanitarian Demining in Lebanon. As part of the initiative, a French technical adviser trained 35 Lebanese nationals to become instructors at the school.202 In 2018, the school trained 173 individuals from 6 countries in demining and related skills.203

Guiding Principles

Principle 11: Accessibility

In order to be effective, assistance should be accessible to victims. Accessibility requires identifying and eliminating obstacles to access, including but not limited to informational and physical barriers.

Discussion

According to Principle 11, states should design and implement victim assistance programs to guarantee they are accessible to all victims. States should make available information about the types of assistance, the process by which assistance is delivered, and the requirements for eligibility to victims. Victims should also be able to secure the actual assistance to which they are entitled. Ensuring the accessibility of a particular program depends, in part, on close consultation with the relevant stakeholders, as they understand how best to reach those in need.

Obstacles to access take a variety of shapes. Information barriers can arise from the “form and content” of the knowledge being relayed.205 Form refers to the method of communication. A population that is primarily illiterate, for example, would face difficulties understanding written rather than verbal messaging about how to apply for assistance. Content refers to the substance of the message being communicated. Victims without specialized education may be unable to comprehend complex scientific data about health risks if it is not presented in laypersons’ terms. Physical barriers may arise from features of the natural or human-constructed environment. Mountainous terrain or poorly maintained infrastructure can impede delivery of assistance to an affected community.206

Identifying and eliminating obstacles to victim assistance requires sensitivity to certain characteristics of victims, such as gender and age. Elderly victims, for example, may have problems with mobility. Using community leaders to relay information or delivering assistance to these victims’ doors rather than to a distribution site may overcome their limited ability to travel.

Adapting victim assistance programs to geographic, cultural, and religious contexts can also help increase accessibility. If affected communities are located in the countryside, moving assistance providers from urban to rural areas can overcome certain physical obstacles. When assisting indigenous victims of TRW, presenting information in local languages and delivering assistance with cultural sensitivity can make assistance more widely accessible. Program designers can further reduce cultural barriers by closely consulting with the affected communities and forming partnerships with “[e]lders and other Indigenous leaders.” Showing respect for religious beliefs is also crucial to promoting the accessibility of victim assistance.207

199 Ibid., pp. 6, 7–11. The UN General Assembly has called on states to “provide assistance to States affected by the use of arms and ammunition containing depleted uranium, in particular in identifying and managing contaminated sites and materials.” UN General Assembly, “Effects of the Use of Ammunitions and Ammunitions Containing Depleted Uranium,” Resolution 71/70, A/RES/71/70, December 14, 2016, para. 7.
200 UN Environment Programme, “Iraq Officials Trained in Assessing Oil Contaminated Sites from the ISIL Conflict,” September 27, 2018.
205 Ibid., p. 19.
In calling on states to identify and eliminate obstacles to access, Principle 11 looks to humanitar-
ian disarmament victim assistance policies and international human rights law for guidance.

Humanitarian disarmament implementation plans and policies have stressed the importance of
accessibility. The Maputo Action Plan calls on affected states parties to remove barriers to access,
including “physical, social, cultural, economic, [and] political” ones.211 Under the
Dubrovnik Action Plan, states parties to the Convention on Cluster Munition committed to
identifying and removing “barriers that prevent access,” especially in remote and rural areas.207
The UN Policy on Victim Assistance in Mine Action notes that “[m]ine and ERW victims shall
have access to the services they require.” The policy describes a number of potential barriers
to access, “such as physical obstacles” and “lack of access to information and negative
attitudes towards persons with disabilities.”212 The policy specifies that implementation of
measures to eliminate barriers to access should be sensitive to age and gender.213

The principle of accessibility has additional bases in international human rights law. The
CRPD in particular includes an “innovative provision that formulates, for the first time in a
UN human rights agreement, a right to accessibility.”214 Article 9 of the CRPD describes
accessibility as taking:

Appropriate measures to ensure to persons with disabilities access . . . to the
physical environment, to transportation, to information and communications,
including information and communications technologies and systems, and to
other facilities and services open or provided to the public, both in urban and in
rural areas. These measures . . . shall include the identification and elimination
of obstacles and barriers to accessibility.215

While the CRPD obligation applies specifically to disability-related barriers, accessibility in
Principle 11 accounts for other obstacles that may arise due to individual or community
characteristics.

Principle 12: Inclusivity

Affected states should meaningfully consult with and actively involve victims and their
representative organizations at all stages of the victim assistance process.

Discussion

Victims of TRW know their own needs and generally have valuable insights into the types of
assistance that would be most effective for them. Victims are also independent agents who
should be treated as essential partners in the assistance process. Therefore, affected states
should integrate victims fully into the design, administration, implementation, monitoring,
and evaluation of assistance programs.

States should engage in meaningful consultation with individuals, families, and communities
affected by TRW. It is not sufficient for actors providing assistance simply to seek information
from victims. Rather, meaningful consultation entails an interactive and iterative process and
should take place at every stage of victim assistance. States should collect a wide range
of perspectives and incorporate those views in the resulting programs. When amending a
proposal or reforming an existing program, states should go back to victims until an optimal
solution has been reached. Consulting a range of stakeholders can help victim assistance
address harms that differ across groups. For example, the UNEA has recognized that
conflict pollution may have “specific negative effects” on women and girls, necessitating
application of a gender perspective to the development of a response.216

Going beyond consultation, inclusivity requires actively involving victims in the decisions
and programs that affect their lives. Means of promoting ongoing involvement include
holding regularly scheduled community meetings or appointing victim representatives to
standing committees that work with the relevant government officials. In accordance with
Principle 11, victims should have access to planners, policymakers, and implementation
personnel. Victims can also be engaged in the delivery of assistance and efforts to assess
a program’s effectiveness.

Finally, consultation and involvement should extend beyond specific victims to their repre-
sentative organizations. These organizations, which are created by and comprised largely
of victims themselves, can promote the interests of victims and efficiently pool resources
to create a dedicated body for consultation. The organizations should be permitted to represent
victim interests at the local, national, regional, and international levels.

Precedent

Humanitarian disarmament law and international human rights law both call for states to
proactively consult and involve victims in the assistance process.

The duty to consult victims is clearly articulated in humanitarian disarmament treaty law and
policy. The Convention on Cluster Munitions requires states parties providing assistance to
“[c]losely consult with and actively involve cluster munition victims.”217 The Maputo Action
Plan encourages “the inclusion and full and active participation of mine victims . . . in all
matters that affect them,” including victim assistance.218 Similarly, the UN Policy on Victim
Assistance in Mine Action recognizes that “[m]ine and [explosive remnants of war] victims . . .
should be consulted in” all stages of victim assistance.219

Indigenous peoples law provides additional precedent for the duty to consult. This body of
law is relevant to the TRW context because, as the TPNW recognizes in its preamble, TRW

211 UN Environment Assembly, Resolution 3/1, para. 11.
212 One organization defines “disabled persons organizations” as “organizations run and controlled by persons
with disabilities, with a majority of staff, membership, and representatives of the governing body being persons
with disabilities.” UN Relief and Works Agency for Palestinian Refugees in the Near East, Disability Inclusion
213 Convention on Cluster Munitions, art. 5(2)(f).
214 Maputo Action Plan, para. 6(e).
215 Maputo Action Plan, para. 6(d).
216 Convention on Cluster Munitions, art. 5(2)(f).
217 Maputo Action Plan, para. 6(e).
218 Maputo Action Plan, para. 6(d).

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often affect indigenous communities." The Indigenous and Tribal Peoples Convention requires that states parties "consult the peoples concerned, through appropriate procedures and in particular through their representative institutions, whenever consideration is given to legislative or administrative measures which may affect them directly." The Inter-American Court of Human Rights has similarly recognized an "obligation to consult with indigenous and tribal communities and peoples on any administrative or legislative measure that may affect their rights." According to the court, consultation must proceed in an "active and informed manner" and "must be undertaken in good faith [and] use culturally-appropriate procedures." In addition, states must provide adequate information so that affected persons fully understand the benefits and risks of a proposed action.

Principle 12 uses the adverb "meaningfully" to indicate that consultation with victims should be substantive and interactive and that states should adapt plans based on victim input. The term "meaningful consultation" has roots in norms on relations with indigenous peoples. The UN Declaration on the Rights of Indigenous Peoples calls on states to "consult and cooperate in good faith with the indigenous peoples concerned" prior to carrying out projects on indigenous lands. In implementing the declaration, at least one state, Canada, has noted that consultation requires "meaningful engagement." Best practices for development programs have also highlighted the importance of such engagement with affected groups. The 2014 Guiding Principles on Large Scale Land Based Investments in Africa policy guidelines developed by the Land Policy Initiative of the African Union to ensure that land investments "benefit Member States and key stakeholders," call on relevant parties to base environmental and social impact assessments on "meaningful consultation of affected people." National laws inform what meaningful consultation should entail. In multiple decisions, for example, the Canadian Supreme Court has held that the Canadian government "has a duty to consult and, where appropriate, accommodate when the Crown contemplates conduct that might adversely impact potential or established Aboriginal or Treaty rights." In imple-

Principle 13: Non-discrimination

Assistance programs must not discriminate against or among TRW victims, or between TRW victims and those who have suffered harm from other causes. Victim assistance should not be provisioned or withheld on the basis of race, color, language, ethnicity, sex, sexual orientation, gender identity, age, national origin, religion, disability, geographic location, or other status. Differences in treatment should be based only on medical, rehabilitative, psychological, or socioeconomic needs.

Discussion

Victim assistance programs should comply with the human rights obligation not to discriminate. Principle 13 enumerates impermissible bases for discrimination drawn from those identified by the international human rights instruments and bodies discussed below. The principle also specifies that states shall not discriminate among victims based on their location because, in the TRW context, victims may be geographically dispersed.

In addition to calling for equitable treatment of TRW victims, Principle 13 proscribes discrimina-

International human rights law and principles also promote partnering with affected persons on decision-making processes. The CRPD obliges states parties to "actively involve persons with disabilities" when developing and implementing legislation and policies concerning them. The convention further specifies that victims should "participate fully" in efforts to monitor implementation of the treaty. Similarly, the Framework Principles on Human Rights and the Environment call on states to "provide for and facilitate public participation in decisionmaking related to the environment."

Finally, humanitarian disarmament law and policy and international human rights law support consultation with, and active participation of, representative organizations. The provisions of the Convention on Cluster Munitions discussed above refer to consultation with and involvement of cluster munitions victims and "their representative organizations." The Maputo Action Plan and UN Policy on Victim Assistance in Mine Action likewise call for inclusion of representative organizations, such as survivor organizations or disabled people organizations. The CRPD obligations to consult with persons with disabilities extend to representative organizations, and the Framework Principles on Human Rights and the Environment note that public participation can be conducted through representative bodies.

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Assistance programs must not discriminate against or among TRW victims, or between TRW victims and those who have suffered harm from other causes. Victim assistance should not be provisioned or withheld on the basis of race, color, language, ethnicity, sex, sexual orientation, gender identity, age, national origin, religion, disability, geographic location, or other status. Differences in treatment should be based only on medical, rehabilitative, psychological, or socioeconomic needs.

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Victim assistance programs should comply with the human rights obligation not to discriminate. Principle 13 enumerates impermissible bases for discrimination drawn from those identified by the international human rights instruments and bodies discussed below. The principle also specifies that states shall not discriminate among victims based on their location because, in the TRW context, victims may be geographically dispersed.

In addition to calling for equitable treatment of TRW victims, Principle 13 proscribes discrimina-

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groups in society who are all entitled to rights and whose needs, and the barriers they face, may be similar.\textsuperscript{235} In the process, it can help improve conditions for affected persons beyond TRW victims.\textsuperscript{236}

Nevertheless, the principle of non-discrimination allows states to treat victims differently under certain circumstances. Variations in treatment may be justified for medical, rehabilitative, psychological, or socioeconomic reasons. As discussed above, victim assistance should be tailored to address victims’ particularized needs, which may require different responses. A health professional could, for instance, determine that some persons exposed to TRW face a more immediate harm and thus require medical care before others. States could also prioritize the provision of assistance, ranging from health care to educational opportunities, to victims with limited financial resources.

**Precedent**

Principle 13 reflects the clear obligation under international human rights law to prohibit discrimination and draws on obligations under humanitarian disarmament law not to discriminate in the implementation of victim assistance programs.

International human rights law prohibits discrimination. The ICCPR and ICESCR prohibit discrimination on the basis of “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”\textsuperscript{237} The 1965 International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and the 1979 Convention on Elimination of All Forms of Discrimination Against Women (CEDAW) reiterate those prohibitions with regard to race and sex, respectively.\textsuperscript{238} Under the CRPD, states must “prohibit all discrimination on the basis of disability and guarantee to persons with disabilities equal and effective legal protection against discrimination.”\textsuperscript{239} The Human Rights Council has expressed concern about discrimination against persons on the basis of their sexual orientation or gender identity.\textsuperscript{240} Drawing on these sources, the Framework Principles on Human Rights and the Environment similarly note that “[i]t states should prohibit discrimination and ensure equal and effective protection against discrimination in relation to the enjoyment of a safe, clean, healthy and sustainable environment.”\textsuperscript{241}

Humanitarian disarmament treaty law and associated policies incorporate the human rights principle of non-discrimination and specifically prohibit states from discriminating in the provision of victim assistance. The Convention on Cluster Munitions expressly prohibits states from discriminating “against or among cluster munition victims, or between cluster munition victims and those who have suffered injuries or disabilities from other causes.” Under the convention, “differences in treatment should be based only on medical, rehabilitative, psychological or socio-economic needs.”\textsuperscript{242} The TPNW requires states parties to provide assistance “in accordance with applicable international . . . human rights law” and “without discrimination.”\textsuperscript{243} Finally, in the Cartagena Action Plan adopted during the Second Review Conference of the Mine Ban Treaty in 2009, states parties committed to “not discriminate against or among mine victims, or between mine survivors and other persons with disabilities.”\textsuperscript{244} Under the plan, differential treatment should be based only on victim needs.\textsuperscript{245}

**Principle 14: Transparency**

AFFECTED STATES SHOULDN’T ENSURE TRANSPARENCY WITH RESPECT TO THE DESIGN, ADMINISTRATION, IMPLEMENTATION, MONITORING, AND EVALUATION OF VICTIM ASSISTANCE PROGRAMS.

**Discussion**

Transparency at all stages of the victim assistance process has a number of benefits. First, transparency is essential to the framework of shared responsibility. Reporting by affected states can reveal gaps in addressing victims’ needs and help identify what resources are needed to fill those gaps. Reporting in turn allows other states to determine how best to tailor their support and identify useful information to share.

Second, transparency facilitates monitoring and evaluation. When information about victim assistance is made public, victims, nongovernmental organizations, international organizations, and states can better assess the progress and efficacy of programs. For example, if affected states release details about their national implementation strategies, called for in Principle 9, outside to persons with disabilities and effective legal protection against discrimination.”\textsuperscript{243} Finally, in the Cartagena Action Plan adopted during the Second Review Conference of the Mine Ban Treaty in 2009, states parties committed to “not discriminate against or among mine victims, or between mine survivors and other persons with disabilities.”\textsuperscript{244} Under the plan, differential treatment should be based only on victim needs.\textsuperscript{245}

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Third, transparency facilitates victim participation in the assistance programs, the impact of which is discussed under Principle 12. For example, victims and their representative organizations should receive information about proposed assistance programs at the design phase so that they can provide meaningful input and ensure the adopted plans are responsive to their needs.\textsuperscript{246} Transparency at this stage allows them to evaluate proposals, consult with independent experts if desired, and influence the final outcome.

Fourth, transparency helps increase the accessibility of victim assistance programs. Affected states should widely disseminate information about the availability of assistance programs and the requirements for eligibility. In accordance with Principle 11, states should rely on information in ways that take into account victims’ languages, literacy, and education levels.

Given the value of transparency, affected states should not wait for victims or other interested parties to request information. Instead they should open up about their victim assistance efforts on a proactive and ongoing basis. Doing so reduces the burden on victims and allows interested parties to track the progress across time.


\textsuperscript{236} Ibid.

\textsuperscript{237} ICCPR, art. 2(1); ICESCR, art. 2(3).

\textsuperscript{238} ICERD arts. 1-2; CEDAW, arts. 1-2.

\textsuperscript{239} CRPD, art. 5(2).


\textsuperscript{242} Convention on Cluster Munitions, art. 5(2)(e).

\textsuperscript{243} Cartagena Action Plan, para. 14.

\textsuperscript{244} For example, the US Agency for International Development involved several partners in a transparent process to select appropriate technologies for the remediation of dioxin at Da Nang airport in Vietnam. Sorensen et al., Technology Selection and Conceptual Design for Cleanup of Dioxin Contamination at the Da Nang Airport Hot Spot, Viet Nam.
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Numerous human rights treaties require states parties to report on their implementation. International human rights law provides additional support for the principle on transparency.

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Nongovernmental organizations have been effective in using the transparency mechanisms mandated by these treaties to promote accountability for humanitarian disarmament obligations. Since 1999, the International Campaign to Ban Landmines has published the annual Landmine Monitor based on Article 7 reports, Meeting of States Parties statements, and other sources. The Monitor tracks states parties’ implementation measures and compliance with the treaty, and it includes a separate chapter on victim assistance. The Cluster Munition Coalition’s Cluster Munition Monitor, published since 2010, follows the same approach.

While Article 7 mandates disclosure only to the UN secretary-general and other states parties, the reporting requirement and sharing of information with civil society suggest acceptance that all stakeholders, including victims themselves, should have information on victim assistance measures. As discussed above, such information promotes inclusivity and accessibility.

International human rights law provides additional support for the principle on transparency. Numerous human rights treaties require states parties to report on their implementation progress to a dedicated treaty body. For example, the ICCPR establishes the Human Rights Committee, a group of independent experts that interprets and monitors compliance with

Precedent
Humanitarian disarmament law and practice as well as international human rights and environmental law lay the groundwork for the transparency measures outlined in Principle 14.

Humanitarian disarmament law and policy require states to be open about their implementation efforts, including those related to victim assistance. Article 7 of the Mine Ban Treaty requires states parties to submit reports on “national implementation measures” to the UN secretary-general. Although the treaty does not explicitly reference reporting on victim assistance, the Nairobi Action Plan emphasizes the importance of transparency “as a tool to assist in implementation, particularly in cases where States Parties must still . . . assist mine victims.” Article 7 of the Convention on Cluster Munitions codifies that commitment, obliging states parties to report to the UN secretary-general on “measures taken to provide risk reduction education” and the “status and progress of implementation of its obligations . . . to adequately” assist cluster munition victims.

Meetings of States Parties to these treaties have provided a forum for transparency. The Mine Ban Treaty and the Convention on Cluster Munitions require states parties to address the “operation and status” of the conventions as well as “matters arising from the reports submitted under [their] provisions” at these annual meetings. Sharing information with other states helps illuminate the needs of affected states parties and possible opportunities for international cooperation and assistance. It is also a tool for monitoring progress in implementation.

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the covenant. The ICCPR requires states parties to submit to the committee (via the UN secretary-general) periodic reports “on the measures they have adopted which give effect to the rights recognized herein and on the progress made in the enjoyment of those rights.” Other human rights instruments, including the ICESCR, ICERD, CEDAW, and CRPD, create similar bodies and monitoring mechanisms. In addition, the Human Rights Council, consisting of 47 states elected by the UN General Assembly, requires UN member states to submit reports on their human rights records through a mechanism known as the universal periodic review.

International environmental law also encourages transparency. For example, the Aarhus Convention specifically requires states parties to disseminate information on environmental programs to the public. It states that parties shall ensure that “the way in which public authorities make environmental information available to the public is transparent and that environmental information is effectively accessible.” Such information includes not only reports on the condition of the environment but also details about legislation and “policies, plans and programmes on or relating to the environment.”
### International Humanitarian Law and Disarmament Sources

#### Principles for Assisting Victims of Toxic Remnants of War

|---------|----------------------------------|------------------------|--------------------------------|-----------------|-------------------------------|----------------|-----------------------------------------------|-----------------|------------------|-----------------|-------------------|-----------------
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| Hague Convention (IV) respecting the Laws and Customs of War on Land (1907): Establishes regulations related to belligerents, the means and methods of war, and situations of occupation. | | | | | | | | | | | | |
| Protocol on Explosive Remnants of War to the Convention on Conventional Weapons (CCW Protocol V) (2003): Creates obligations, including to assist victims, that are designed to reduce the impacts of explosive remnants of war. | | | | | | | | | | | | |
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Acknowledgments

The primary authors of this report were Bonnie Docherty, associate director of armed conflict and civilian protection at the Harvard Law School International Human Rights Clinic (IHRC), and Matthew Griechen, then a Harvard Law student in IHRC. Daniel Levine-Spound and Susannah Marshall, then IHRC students, also contributed significantly to the report’s research and writing. Jillian Rafferty, then an IHRC student, produced the tables and provided other assistance.

The report was closely reviewed by Doug Weir, research and policy director, and Stavros Pantazopoulos, legal and policy analyst, at the Conflict and Environment Observatory, as well as by Anna Crowe, IHRC’s assistant director. Wim Zwijnenburg, a humanitarian disarmament project leader at PAX, and Erin Hunt, program manager at Mines Action Canada, offered additional feedback.

The authors also wish to thank Rebecca Agule, then an IHRC fellow, and her clinical team, Marissa Brodney, Roni Druks, Robert Gustafson, and David Kimball-Stanley, for doing extensive initial research for the report and helping to craft the principles.
Confronting Conflict Pollution
Principles for Assisting Victims of Toxic Remnants of War

Armed conflicts and military activities take a toll on the environment that significantly affects both people and ecosystems. Pollution from armed conflict inflicts severe and long-lasting physical, psychological, socioeconomic, and cultural harm on individuals and communities. Peacetime military activities can leave a similar legacy.

Although international efforts to address the environmental consequences of war have increased, a framework for meeting the needs of those affected by conflict pollution has been absent. The concept of “victim assistance,” which is a widely accepted component of humanitarian disarmament law, can fill that gap.

Confronting Conflict Pollution adapts humanitarian disarmament’s norms of victim assistance to the context of toxic remnants of war. It identifies 14 principles designed to meet the short- and long-term needs of those affected by pollution from military activities, during armed conflict and beyond. The report also includes an in-depth commentary elaborating on the principles and providing legal and policy precedent for each.

The new victim assistance framework laid out in Confronting Conflict Pollution defines key terms, enumerates relevant types of harm and assistance, establishes a structure for sharing responsibility, highlights elements of implementation, and presents guiding principles fundamental to effective assistance programs. Overall, the 14 principles embody a collective commitment to work towards victims’ full and effective participation in society and the realization of their human rights.