

## **Positive Obligations in a Treaty Prohibiting Nuclear Weapons: Stockpile Destruction, Environmental Remediation, and Victim Assistance**

### **Submitted by Article 36**

1. In addition to clear prohibitions on the use, development, production, acquisition, stockpiling and transfer of nuclear weapons, as well as on assistance, encouragement, inducement or financing of prohibited acts, a treaty banning nuclear weapons should include positive obligations that require certain actions of States Parties.
2. Such obligations should relate to destruction of nuclear weapons stockpiles, remediation of environments contaminated by the use of nuclear weapons, whether in conflict or in testing, and provision of assistance to any victims of nuclear weapons under a States Party's jurisdiction or control. These obligations should be supported by a commitment to international cooperation and assistance in order to facilitate their implementation.
3. Nuclear weapons must be prohibited and eliminated due to their catastrophic humanitarian consequences. A treaty prohibiting nuclear weapons should express in its preamble the determination of States Parties to put an end for all time to the suffering and casualties caused by these weapons. Such determination requires not just prohibitions to prevent suffering and casualties from future use of nuclear weapons, but also positive obligations to address harms resulting from use that has already occurred.
4. Whilst the requirement to destroy stockpiles flows logically and necessarily from the prohibition on stockpiling and the goal of preventing any future use of nuclear weapons, the obligations to remediate contaminated areas and to assist victims flow from the responsibility of states to provide protection to people under their jurisdiction or control and to uphold their rights.
5. These obligations respond directly to the humanitarian imperative that underpins the treaty. As such they should be addressed through specific legal provisions. The details of implementation may be addressed later through Meetings of States Parties, or a similar architecture, but a treaty prohibiting nuclear weapons should provide a clear framework for that implementation.

### **Stockpile destruction**

6. A treaty prohibiting nuclear weapons should articulate a clear obligation to complete the destruction of any stockpiled nuclear weapons as soon as possible, safely and in an environmentally appropriate manner. It does not itself need to specify the details of the process by which it is undertaken, but it should provide a clear framework under which any states with nuclear weapons upon accession to the treaty would proceed towards elimination.
7. Any state with nuclear weapons should be able to join the treaty on the assumption that it would implement its provisions in good faith. On that basis

such a state should come under an obligation to destroy their entire stockpile as soon as possible and according to a time-bound plan.

8. States Parties with nuclear weapons should be required to take those weapons off operational readiness and should submit to the next Meeting of States Parties a declaration on the status of their stockpile and propose a time-bound plan for the complete destruction of the stockpiles under their jurisdiction or control. Such a proposal should include the safety and environmental regulations they will adhere to, the nuclear disarmament verification mechanisms that will be applied during the process of destruction, and the safeguards that will be applied upon completion of stockpile destruction.
9. Such a proposal should then be reviewed by States Parties, with amendments proposed by States Parties if necessary, for approval by a subsequent Meeting of States Parties as appropriate. Implementation of an approved plan for stockpile destruction would then be subject to ongoing reporting, with revision subject to the approval of States Parties.
10. The article on stockpile destruction should also stipulate that these obligations do not prevent a State Party from entering into other arrangements, either with States Parties or states not party, to facilitate the verified elimination of nuclear weapons.
11. Drafted on this basis the treaty would follow the principle that prohibition precedes elimination. It would reflect a presumption that states enter into treaties intending to implement their provisions in good faith. It would be consistent with the approach taken in other weapon prohibition treaties and coherent with existing international legal instruments.
12. Such an approach would not prejudice the specific timeline and process for stockpile destruction, including the nuclear disarmament verification mechanisms and subsequent safeguards to be applied, nor would it preclude states from entering into bilateral or other arrangements to facilitate that process. On this basis the treaty would be accessible to all states, including those with nuclear weapons, and would provide a framework towards the elimination of nuclear weapons without prejudice to existing or possible future instruments.

### **Environmental remediation<sup>1</sup>**

13. Environmental remediation is crucial to mitigating the harmful effects of nuclear weapons on individuals and communities. Remediation can involve measures both for rehabilitating environments and for preventing people from being exposed to further harm. A provision on environmental remediation in a treaty to prohibit nuclear weapons should establish clear obligations and guidance on necessary actions, whilst allowing states flexibility in implementation.

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<sup>1</sup> This section is based on research and analysis provided by the International Human Rights Clinic at Harvard Law School.

14. Recent international agreements have set precedents requiring States Parties to clear dangerous remnants of war. Whilst recognizing that there are specific challenges presented by the technical characteristics of nuclear weapons, a treaty to prohibit nuclear weapons should uphold and reinforce these norms.
15. A specific provision should place responsibility on affected States Parties to undertake environmental remediation and to do so as soon as possible.
16. Affected states' obligations in this area should include: assessing the threats of nuclear contamination and prioritizing steps for remediation; taking measures to reduce the risks of communities' exposure to radiation, such as marking and fencing dangerous areas, posting warning signs, and educating civilians about threats and ways they can protect themselves; working to rehabilitate contaminated areas by removing or containing contaminants; monitoring contaminated sites and submitting reports to Meetings of States Parties to ensure progress in the remediation process; and establishing a national plan to ensure funding and implementation of these measures.
17. All states parties in a position to do so should be required to provide international cooperation and assistance to facilitate environmental remediation. Such assistance could include technical, material, or financial support.
18. Many affected states will already have undertaken some form of environmental remediation. By codifying environmental remediation as a legal responsibility, the treaty will underscore that this is vital to ending the casualties and suffering caused by nuclear weapons, set clear standards for affected states to follow, and facilitate resourcing of such efforts through international cooperation and assistance.

### **Victim assistance**

19. States that endorsed the *Humanitarian Pledge* have recognized that "the rights and needs of victims have not yet been adequately addressed." The preamble of a treaty prohibiting nuclear weapons should therefore express the determination of States Parties to ensure the full realization of the rights of all nuclear weapons victims.
20. Based on a commitment to end the suffering caused by nuclear weapons, the treaty should place an obligation on States Parties to provide assistance to victims of nuclear weapons in areas under their jurisdiction or control. It should commit all States Parties to provide international cooperation and assistance to facilitate this where they are in a position to do so.
21. Within an article on victim assistance, it should be recognized that nuclear weapon victims means persons that have been killed, suffered physical or psychological injury, economic or social marginalization, or impairment to the realization of their rights from the use of nuclear weapons, whether in conflict

or testing – including those directly impacted as well as affected families and communities.

22. The general obligation should be for assistance that is age and gender sensitive and that includes medical care, rehabilitation and psychological support as well as provisions to promote social and economic inclusion.
23. Specific actions required may include data gathering and assessment of needs; establishment of a national focal point; development of a national plan in consultation with nuclear weapon victims and representative organisations; and resource mobilization. Such actions should be integrated with existing national mechanisms and assistance should be facilitated on a non-discriminatory basis.
24. As with environmental remediation, such an obligation flows in large part from the general responsibility of the state towards the population under its authority. In many cases affected states will already be undertaking such actions. However, by recognizing a legal obligation for victim assistance the treaty will provide a framework for stronger action, for resource mobilization, and for the sharing of good practices. It will also provide a vital legal recognition that the harm experienced by individuals and communities is acknowledged and is being acted upon.

## **Conclusion**

25. The positive obligations outlined in this paper work to address the catastrophic humanitarian consequences of nuclear weapons. They would uphold and reinforce norms for stockpile destruction, environmental remediation and victim assistance established in other treaties prohibiting weapons.
26. Such provisions will also strengthen the practical operation and impact of the treaty, and will provide a basis for future cooperation amongst States Parties as they work together to end for all time the suffering and casualties caused by nuclear weapons.