

The origins and influence of victim assistance: Contributions of the Mine Ban Treaty, Convention on the Rights of Persons with Disabilities and Convention on Cluster Munitions

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Abstract

The establishment of victim assistance as a core element of humanitarian disarmament emerged from three treaties: the 1997 Mine Ban Treaty (MBT), the 2006 Convention on the Rights of Persons with Disabilities (CRPD) and the 2008 Convention on Cluster Munitions (CCM). The MBT introduced the concept of victim assistance, and the CRPD created a framework of human rights that influenced its evolution. Drawing on its predecessors, the CCM made victim assistance a robust and rights-based legal obligation. This article analyses the negotiating history and content of the treaties to show how victim assistance evolved, particularly in the areas of inclusion and human rights. It examines the treaties' implementation, which reveals that while the CRPD set standards for victim assistance, the MBT and CCM's victim assistance programmes have benefitted persons with disabilities in practice. Finally, it offers lessons from the MBT, CRPD and CCM for implementation and interpretation of victim assistance obligations under the 2017 Treaty on the Prohibition of Nuclear Weapons. The article concludes that the three treaties have collectively established assisting victims as a feature of disarmament law, helped persons with disabilities realize their rights, and laid the groundwork for adapting victim assistance to new challenges.

Keywords: Disarmament, victim assistance, Mine Ban Treaty, Convention on Cluster Munitions, Convention on the Rights of Persons with Disabilities, Treaty on the Prohibition of Nuclear Weapons.

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Introduction

The establishment of victim assistance as a core element of humanitarian disarmament can be credited to a trio of treaties adopted at the turn of the twenty-first century. The 1997 Mine Ban Treaty (MBT) introduced the concept.¹ The 2006 Convention on the Rights of Persons with Disabilities (CRPD) created a framework of human rights that influenced its evolution.² The 2008 Convention on Cluster Munitions (CCM) made victim assistance a robust and rights-based legal obligation.³ These instruments have improved the lives of landmine and cluster munition victims and persons with disabilities and informed the addition of victim assistance provisions to nuclear weapons law.

This article traces the history, implementation and influence of these three treaties with regard to victim assistance. In the first part, analysis of the instruments' history and content shows how victim assistance became increasingly inclusive and rights based. In the second part, discussion of implementation reveals that while the

1 Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction, Oslo, 18 September 1997 (entered into force 1 March 1999) (Mine Ban Treaty).

2 Convention on the Rights of Persons with Disabilities, New York, 13 December 2006 (entered into force 3 May 2008).

3 Convention on Cluster Munitions, Dublin, 30 May 2008 (entered into force 1 August 2010).

CRPD has set standards for victim assistance, the MBT and CCM's victim assistance programmes have benefitted persons with disabilities in practice. The third part draws lessons from the MBT, the CRPD and the CCM for implementation and interpretation of victim assistance obligations under the 2017 Treaty on the Prohibition of Nuclear Weapons (TPNW).⁴ The article concludes that the three treaties have collectively established assisting victims as a feature of disarmament law, helped persons with disabilities realize their rights, and laid the groundwork for adapting victim assistance to new challenges.

History and content

The processes behind and provisions of the MBT, the CRPD and the CCM illuminate the evolution of victim assistance. They show an increased attention to inclusion and the emergence of a rights-based approach to assisting victims. The MBT's novel humanitarian emphasis encouraged civil society and survivor participation and introduced victim assistance to disarmament. The CRPD was spearheaded by organizations of persons with disabilities and represented the first international legal framework for disability rights. Merging the developments of the previous instruments, the CCM established dramatically enhanced human rights-based victim assistance obligations, negotiated by and for cluster munition victims.

Mine Ban Treaty

The MBT marked a turning point in disarmament law. While previous weapons treaties were driven by national security concerns, the MBT adopted a humanitarian approach to disarmament. It was the first in a line of treaties with the primary goal "to prevent and remediate arms-inflicted human suffering and environmental harm through the establishment and implementation of norms".⁵ As part of this shift, the MBT, in its process and substance, contributed two innovations that would benefit those affected by landmines. It recognized the importance of including civil society and affected individuals in decision-making, and it became the first disarmament treaty with a victim assistance provision.

Civil society and survivor inclusion

Civil society and survivors drove the Ottawa Process that created the MBT, and their involvement led to the adoption of a victim assistance provision in the final text. The

4 Treaty on the Prohibition of Nuclear Weapons, New York, 7 July 2017 (entered into force 22 January 2021).

5 Humanitarian Disarmament, "About Humanitarian Disarmament", available at: <https://humanitarianandisarmament.org/about/> (all internet references were accessed in September 2022). See, generally, Bonnie Docherty, "Ending Civilian Suffering: The Purpose, Provisions, and Promise of Humanitarian Disarmament Law", *Austrian Review of International and European Law*, Vol. 15, 2010.

International Campaign to Ban Landmines (ICBL), a global civil society coalition founded in 1992, highlighted the humanitarian impacts of landmines and pushed for a new instrument banning them. It became a critical actor in the negotiations, which took place outside of the United Nations (UN) and thus could have more inclusive rules of procedure. The ICBL, including landmine survivors, also held meetings parallel with the diplomatic conferences. The two types of convenings reinforced each other and promoted a strong partnership of States and civil society that achieved the treaty in 1997.⁶ The ICBL and its coordinator, Jody Williams, received the Nobel Peace Prize for their efforts.

Landmine survivors, including those with disabilities, played a key role in the treaty negotiations, and advocated strongly for a victim assistance obligation, although they faced indifference or opposition to the inclusion of these provisions from some States and civil society members. In 1996, two landmine survivors – Jerry White and Kenneth Rutherford – founded the Landmine Survivors Network to ensure that survivors were fairly represented in the ICBL and that their demands were included in the campaign’s messaging.⁷ Rutherford described the often uphill battle to incorporate assistance for victims on the agenda and in the treaty and to treat landmine survivors not as “poor victims” and “poster children” for the humanitarian harm of landmines, but as equals and human beings with agency.⁸

As the Ottawa Process unfolded, the Landmine Survivors Network consistently pressed for provisions on victim assistance through direct lobbying with governments, advocacy stunts and press conferences.⁹ A February 1997 civil society conference in Mozambique released a declaration calling for assistance for survivors.¹⁰ The first draft treaty text presented in Brussels in June 1997 excluded such a provision, but non-governmental organizations (NGOs), including the Landmine Survivors Network, Handicap International, Medico International and the Jesuit Refugee Service, pushed back and issued a strongly worded statement. By the end of that conference, they had secured support from South Africa and the International Committee of the Red Cross (ICRC) that a landmine ban treaty must include victim assistance.¹¹ Other allies joined over the months that followed, and at the time of the treaty’s adoption, victim assistance was a recognized element of both the ICBL’s platform and the treaty text.

The MBT acknowledges the importance of inclusion in the preamble of its final text. Specifically, it recognizes the efforts “undertaken by the International Red

6 Kenneth R. Rutherford, *Disarming States: The International Movement to Ban Landmines*, Praeger Security International, Santa Barbara, CA, 2010, pp. 91–105.

7 Jerry White and Ken Rutherford, “The Role of the Landmine Survivors Network”, in Maxwell A. Cameron, Robert J. Lawson and Brian W. Tomlin (eds), *To Walk Without Fear: The Global Movement to Ban Landmines*, Oxford University Press, Toronto, 1998, pp. 99–117.

8 K. R. Rutherford, above note 6, p. 66; J. White and K. Rutherford, above note 7, p. 105.

9 J. White and K. Rutherford, above note 7.

10 University of Pennsylvania – African Studies Center, “Final Declaration of the 4th International NGO Conference on Landmines: Toward a Mine Free Southern Africa”, Maputo, Mozambique, 25–February 1997, available at: www.africa.upenn.edu/Urgent_Action/apic_32197.html.

11 J. White and K. Rutherford, above note 7, p. 111.

Cross and Red Crescent Movement, the International Campaign to Ban Landmines and numerous other non-governmental organizations around the world”.¹²

Documents produced at the MBT’s review conferences have reinforced and expanded on the principle of inclusivity, although, at least in the early years, advocates had to maintain pressure to preserve victim assistance’s place on the treaty’s agenda.¹³ In Action 38 of the Nairobi Action Plan, adopted at the First Review Conference in 2004, States Parties commit to “[e]nsure effective integration of mine victims in the work of the Convention, inter alia, by encouraging States Parties and organizations to include victims on their delegations.”¹⁴ Action 39 calls for ensuring the effective contribution of “health, rehabilitation and social services professionals and officials”, and encourages their inclusion on State delegations.¹⁵

This culture of inclusion has also embraced the principle of non-discrimination, which is a prerequisite for inclusion. The 2009 Cartagena Review Conference Final Report, for example, states that: “victim assistance efforts should promote the development of services, infrastructure, and policies to address the rights and needs of all women, girls, boys and men with disabilities, regardless of the cause of the disability”.¹⁶

Introduction of victim assistance

The MBT’s humanitarian purpose, along with its inclusive process, led to the introduction of disarmament’s first victim assistance provisions. According to the preamble, the treaty’s goal is to “end the suffering and casualties caused by anti-personnel mines”.¹⁷ Negotiators recognized that a comprehensive response to this suffering necessitated not only preventing future use but also addressing the harm that had already occurred.¹⁸

12 Mine Ban Treaty, above note 1, preamble.

13 Interview with Janet E. Lord, Senior Fellow, Harvard Law School Project on Disability, and formerly with the Landmine Survivors Network, online, August 2022 (on file with the authors).

14 First Review Conference of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines on Their Destruction, “Nairobi Action Plan 2005–2009”, 29 November–3 December 2004, Action 38, available at: www.icbl.org/media/933290/Nairobi-Action-Plan-2005.pdf (Nairobi Action Plan).

15 *Ibid.*, Action 39.

16 Second Review Conference of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, Final Report, UN Doc. APLC/CONF/2009/9, 17 June 2010, para. 100 (Cartagena Final Report). See, also, First Review Conference of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines on Their Destruction, Final Report, UN Doc. APLC/CONF/2004/5, 9 February 2005, para. 68 (Nairobi Final Report) (calling for the “non-discrimination of victims”).

17 Mine Ban Treaty, above note 1, preamble.

18 South African Ambassador Jacob Selebi, who served as president of the final negotiations, stated that including provisions for victim assistance as well as clearance obligations were “central to the comprehensiveness of the treaty”. Jacob S. Selebi, “Foreword by Ambassador Jacob S. Selebi, South Africa”, in Louis Maresca and Stuart Maslen (eds), *The Banning of Anti-Personnel Landmines: The Legal Contribution of the International Committee of the Red Cross 1955–1999*, Cambridge University Press, Cambridge, 2000, p. xxii.

The MBT includes two references to victim assistance. The preamble expresses States Parties' desire "to do their utmost in providing assistance for the care and rehabilitation, including the social and economic reintegration of mine victims".¹⁹ Article 6(3) requires States Parties "in a position to do so ... [to] provide assistance for the care and rehabilitation, and social and economic reintegration, of mine victims and for mine awareness programs".²⁰ The provision is important for introducing the concept of victim assistance to disarmament and for addressing both medical and socio-economic needs. Nevertheless, the operative provision applies only to States Parties "in a position to do so", and lacks details about how to implement it.²¹ In addition, the term "victim assistance", which continues to be used, is disempowering and not reflective of a rights-based approach.

Subsequent treaty documents helped to expand the understanding of victim assistance under the MBT. The Nairobi Action Plan broadened the scope of victim assistance to encompass psychological care, specified that it should address age and gender considerations, and established institutional guidelines, such as those regarding data collection and monitoring of progress. The Nairobi Action Plan also commits States to ensure that rehabilitation and other services are provided to "all persons with disabilities".²² The Nairobi Final Report explicitly referenced human rights, stating that "States Parties have come to recognize that victim assistance is more than just a medical or rehabilitation issue – it is also a human rights issue."²³

Convention on the Rights of Persons with Disabilities

The CRPD opened for signature a decade after the MBT. Its provisions are directed at all persons with disabilities, not just victims of specific weapons. They also cover a wider range of rights. Nevertheless, the CRPD's history and content are relevant to the evolution of victim assistance. The CRPD's negotiations elevated the bar for including civil society organizations. The final treaty articulated rights applicable to those affected by arms that can inform the provision of victim assistance.

Inclusion of civil society and persons with disabilities

Like the MBT, the CRPD was significantly influenced by those most affected by its provisions. An international disability rights movement led by persons with disabilities gathered momentum in the late 1990s. The International Disability Alliance, a network of organizations of persons with disabilities founded in 1999, established the International Disability Caucus (IDC), which would be

19 Mine Ban Treaty, above note 1, preamble.

20 *Ibid.*, Art. 6(3).

21 *Ibid.*

22 Nairobi Action Plan, above note 14, Action 33.

23 Nairobi Final Report, above note 16, para. 68.

instrumental in the negotiation of the CRPD.²⁴ States began the process to create the CRPD in 2001 when they adopted a UN General Assembly resolution, introduced by Mexico. The resolution established an *ad hoc* committee to consider proposals for a convention to “promote and protect the rights and dignity of persons with disabilities”.²⁵

Between the first and second *ad hoc* meetings in 2002 and 2003, the IDC built support and issued recommendations for a treaty.²⁶ By the end of the second *ad hoc* committee, New Zealand proposed and the committee agreed to create a working group of States and twelve representatives of disability organizations to develop the draft text—a revolutionary decision from an inclusivity perspective.²⁷ At the third *ad hoc* committee meeting, the chair suggested closing discussions to all civil society, including disability organizations; however, there was significant pushback from States and civil society, and the meetings remained open.²⁸ The IDC intervened throughout the process on substantive issues ranging from defining disability to outlawing compulsory treatment of persons with disabilities.²⁹

Many landmine survivors and their representative organizations participated in the CRPD negotiations and lobbied for provisions associated with victim assistance. For example, they advocated for peer support as a measure to support independence and inclusion. The concept had emerged from efforts to reintegrate landmine survivors into society, an MBT obligation, and the CRPD references peer support in Article 26 on Habilitation and Rehabilitation. Landmine survivor advocates also encouraged the disability rights community to consider international humanitarian law and include Article 11 on Situations of Risk and Humanitarian Emergencies, which encompasses situations of armed conflict.³⁰

The final text of the CRPD established inclusion as a key principle. Article 3 states that one of its general principles is “[f]ull and effective participation and inclusion in society.”³¹ Article 4 highlights the importance of inclusion, declaring: “States Parties shall closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative

24 The International Disability Alliance, “History”, available at: www.internationaldisabilityalliance.org/content/history.

25 UN General Assembly, Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities, UN Doc. A/RES/56/168, 19 December 2001, para. 1.

26 Rosemary Kayess and Phillip French, “Out of Darkness into Light? Introducing the Convention on the Rights of Persons with Disabilities”, *Human Rights Law Review*, Vol. 8, No. 1, 2008, p. 16. For example, see Disabled Peoples’ International, “Position Paper Regarding a New International Human Rights Convention for Disabled People”, 25 February 2003, available at: www.un.org/esa/socdev/enable/rights/contrib-dpi.htm.

27 Theresia Degener and Andrew Begg, “From Invisible Citizens to Agents of Change: A Short History of the Struggle for the Recognition of the Rights of Persons with Disabilities at the United Nations”, in Valentina Della Fina, Rachele Cera and Giuseppe Palmisano (eds), *The United Nations Convention on the Rights of Persons with Disabilities: A Commentary*, Springer, Cham, 2017, p. 19.

28 *Ibid.*, p. 22.

29 R. Kayess and P. French, above note 26, pp. 20–33.

30 Interview with Janet E. Lord, above note 13.

31 Convention on the Rights of Persons with Disabilities, above note 2, Art. 3.

organizations”, during implementation of the CRPD and other decision-making processes relevant for persons with disabilities.³²

The CRPD lists non-discrimination as a general principle, and it appears in the preamble and several specific operative articles, including those addressing women and children with disabilities.³³ Article 5 on Equality and Non-Discrimination, for example, “prohibit[s] all discrimination on the basis of disability and guarantee[s] to persons with disabilities equal and effective legal protection against discrimination on all grounds”.³⁴ The principle of non-discrimination is essential to ensuring persons with disabilities are included in society and can enjoy their human rights.

Codification of a rights-based approach

The final text of the CRPD codified a rights-based approach to disability.³⁵ It contrasted with earlier international instruments that adopted a medical model, regarding disability as a “an impairment that need[ed] to be treated, cured, fixed, or rehabilitated”. Under that model, persons with disabilities required “shelter and welfare”.³⁶ The CRPD, by contrast, represented what the chair of the *ad hoc* committee referred to as a “paradigm shift”.³⁷ The UN High Commissioner for Human Rights explained that the convention “reject[ed] the ‘view of persons with disabilities as objects of charity, medical treatment and social protection’ and as affirming persons with disability as ‘subjects of rights, able to claim those rights as active members of society’”.³⁸

The CRPD enumerates a range of human rights and applies them to the disability context. It encompasses civil and political rights, including the right to life, the right to access to information, and the right to participate in political and public life. It also highlights economic, social and cultural rights, such as the rights to education, health and work. These rights are also relevant for victim assistance because they apply to those affected by arms as well as persons with disabilities.

Convention on Cluster Munitions

Victim assistance in the next humanitarian disarmament treaty, the CCM, drew significantly from the MBT and its action plans as well as the CRPD.³⁹ Following

32 *Ibid.*, Art. 4. In addition, Article 33(3) mandates that “[c]ivil society, in particular persons with disabilities and their representative organizations shall be involved and participate fully” in the process of monitoring the convention’s implementation. *Ibid.*, Art. 33(3).

33 *Ibid.*, Arts 6 and 7.

34 *Ibid.*, Art. 5.

35 R. Kayess and P. French, above note 26, p. 3.

36 Theresia Degener, “A New Human Rights Model of Disability”, in V. Della Fina *et al.* (eds), above note 27, p. 42.

37 R. Kayess and P. French, above note 26, p. 3.

38 *Ibid.*

39 Convention on Cluster Munitions, above note 3, Art. 2(1).

the MBT's humanitarian disarmament lead, the CCM was driven by civil society and survivor pressure and included victim assistance provisions. At the same time, it modified the content of those provisions based on the human rights principles of the CRPD. In the end, it merged the precedent of its predecessors to ensure a highly inclusive process and strong, detailed and legally binding victim assistance obligations.

Heightened inclusion of civil society and survivors

The Oslo Process that produced the CCM saw a heightened role for civil society and survivors in a disarmament forum. The Cluster Munition Coalition (CMC) was a key player throughout the negotiations of the convention, building support for its humanitarian provisions, and enjoying the direct access to the negotiations that the IDC had secured.⁴⁰ Hundreds of campaigners attended the Oslo Process meetings, and the Coalition was able to participate directly in negotiations.⁴¹ The CMC played an essential role both inside the negotiating room and outside of it. Inside, civil society representatives enjoyed nearly equal speaking rights with States and intervened on substantive proposals. Outside the room, Coalition advocates lobbied diplomats, provided research and materials in support of their proposals, encouraged their governments to participate in conferences and conducted grassroots advocacy.⁴² Although some States called to close parts of the final negotiations to civil society, as in the case of the CRPD, they did not prevail. Ultimately, States voiced appreciation of the civil society's contributions to achievement of the final convention.⁴³

Cluster munition survivors, including the Ban Advocates group coordinated by Handicap International, were particularly active, presenting testimonies and intervening substantively. Spokespersons included Branislav Kapetanović, a former Serbian military deminer, who lost all his limbs during a clearance accident, and Soraj Ghulam Habib, an Afghan boy who was so gravely injured by an unexploded submunition that doctors initially advised his father not to try to save him.⁴⁴ Some commentators have credited the expansion of victim assistance in the CCM to the increased participation of survivors:

40 Markus Reiterer and Tirza Leibowitz, "Article 5: Victim Assistance", in Gro Nystuen and Stuart Casey-Maslen (eds), *The Convention on Cluster Munitions: A Commentary*, Oxford University Press, Oxford, October 2010, p. 328.

41 Bonnie Docherty, "Breaking New Ground: The Convention on Cluster Munitions and the Evolution of International Law", *Human Rights Quarterly*, Vol. 31, No. 4, 2009, p. 941.

42 Human Rights Watch, *Meeting the Challenge: Protecting Civilians through the Convention on Cluster Munitions*, November 2010, pp. 122–4, available at: www.hrw.org/sites/default/files/reports/armsclusters1110webwcover.pdf.

43 See, for example, Closing Statement by the United Kingdom to the Dublin Diplomatic Conference for the Adoption of a Convention on Cluster Munitions, 30 May 2008 (thanking the CMC despite the "vigorous discussions" they had had); Statement by New Zealand to the Convention on Cluster Munitions Signing Conference, Oslo, 3 December 2008 (welcoming the role of civil society and stating, "The constructive relationship we have built demonstrates what is achievable when we work together.").

44 Human Rights Watch, above note 42, p. 123.

A contributing factor to this upward movement was the role that civil society played alongside negotiating States ... The participation of Ban Advocates, campaigning for the ban and for victim assistance from first-hand experience of the devastating effects of cluster munitions, helped bring the issue to the fore and garner almost universal support.⁴⁵

The final text captures the importance of inclusion. The preamble, like that of the MBT, acknowledges the role of civil society and other non-State actors, recognizing the efforts to end civilian suffering “undertaken by the UN, the International Committee of the Red Cross, the Cluster Munition Coalition and numerous other non-governmental organisations around the world”.⁴⁶ The CCM goes beyond the MBT, however, by making inclusion a forward-looking obligation. Mirroring the CRPD’s Article 4, Article 5 of the CCM requires States Parties to “[c]losely consult with and actively involve cluster munition victims and their representative organisations.”⁴⁷

The CCM’s emphasis on non-discrimination bolsters its inclusiveness. The preamble notes that the CRPD requires States Parties to ensure the rights of persons with disabilities “without discrimination of any kind on the basis of disability” and further includes the resolve to “avoid discrimination among victims of various types of weapons”.⁴⁸ Within the text of the CCM, Article 5(2)(e) requires that States Parties “[n]ot discriminate against or among cluster munition victims, or between cluster munition victims and those who have suffered injuries or disabilities from other causes; differences in treatment should be based only on medical, rehabilitative, psychological or socio-economic needs.”⁴⁹

Robust and rights-based victim assistance

The Oslo Process that produced the CCM not only stressed the importance of inclusivity but also dramatically advanced the law of victim assistance. Unlike with the MBT, drafters considered victim assistance an essential element of the convention from the beginning, thanks in large part to the timing and players involved. The final convention codified a detailed obligation that reflected the evolution in MBT policy, the influence of the CRPD, and Oslo Process innovations.

Prioritization of victim assistance. The Oslo Process prioritized victim assistance from the beginning. At its opening conference in 2007, held two months after the adoption of the CRPD, States adopted the Oslo Declaration, committing States to conclude a treaty by the following year that consisted of not only prohibitions but also remedial measures, including victim assistance.⁵⁰ The first discussion text of

45 M. Reiterer and T. Leibowitz, above note 40, p. 330.

46 Convention on Cluster Munitions, above note 3, preamble.

47 *Ibid.*, Art. 5(2)(f).

48 *Ibid.*, preamble.

49 *Ibid.*, Art. 5(2)(e).

50 Oslo Conference on Cluster Munitions, “Declaration”, 22–3 February 2007, available at: www.clusterconvention.org/files/oslo/Oslo-Declaration-final-23-February-2007.pdf.

the treaty produced for the Lima Conference in May 2007 already included an article on victim assistance, which drew on that in the MBT but added human rights language probably influenced by the CRPD.⁵¹ Subsequent conferences, in Vienna (December 2007), Wellington (February 2008) and Dublin (May 2008), expanded and enhanced those provisions significantly and referenced the CRPD and its rights-based framework.⁵²

The timing of the process and the common actors both contributed to the emphasis on victim assistance. The CMC launched its civil society campaign in 2003, as *ad hoc* committee meetings began work on a disability rights convention. The CRPD itself was adopted in December 2006, just two months before the start of the Oslo Process. Energy for a rights-based approach carried over into the cluster munition treaty negotiations.

The presence of many of the same players also elevated the issue of victim assistance. A number of organizations that had advocated for the landmine ban and some who had worked on the CRPD participated in the Oslo Process.⁵³ For example, the Landmine Survivors Network and its co-founder Kenneth Rutherford, who had participated in the Ottawa Process and the CRPD negotiations, led the CMC's work on victim assistance during the Oslo Process.⁵⁴ The Oslo Process's core group of States (Austria, the Holy See, Ireland, Mexico, New Zealand, Norway and Peru) similarly included many of the same States involved in the MBT and the CRPD negotiations.⁵⁵ Mexico, a member of the core group of States advancing the MBT and CCM, also was the State to that introduced the 2001 UN General Assembly resolution creating an *ad hoc* committee to kickstart the CRPD process.⁵⁶ New Zealand Ambassador Don MacKay, who chaired the CRPD working group to negotiate the first draft text, as well as later *ad hoc* committee meetings, chaired and prepared a draft text for the CCM's 2008 Wellington conference.

Influence of the MBT and the Nairobi Action Plan. The final text of the CCM represents a combination of MBT and CRPD precedent and Oslo Process innovation. While the convention dramatically expanded and strengthened the limited obligation

51 M. Reiterer and T. Leibowitz, above note 40, p. 338.

52 B. Docherty, above note 41, pp. 949–52.

53 John Borrie, *Unacceptable Harm: A History of How the Treaty to Ban Cluster Munitions Was Won*, UN Institute for Disarmament Research (UNIDIR), 14 December 2009, p. 52, available at: www.unidir.org/publication/unacceptable-harm-history-how-treaty-ban-cluster-munitions-was-won. Initial organizations included Mines Action Canada, Human Rights Watch, Austrian Aid for Mine Victims, the Belgian and French wings of Handicap International, International Physicians for the Prevention of Nuclear War (Russia), Landmine Action, the Nepalese Campaign to Ban Landmines, Pax Christi Netherlands, the Landmine Struggle Unit, and the Mennonite Central Committee.

54 Bonnie Docherty, "Completing the Package: The Development and Significance of Positive Obligations in Humanitarian Law", in Treasa Dunworth and Anna Hood (eds), *Disarmament Law: Reviewing the Field*, Routledge, Abingdon, 2021, p. 64; R. Kayess and P. French, above note 26.

55 Virgil Wiebe, John Borrie and Declan Smyth, "Introduction", in Gro Nystuen and Stuart Casey-Maslen, above note 40, pp. 18–19.

56 UN General Assembly, Comprehensive and Integral International Convention to Promote and Protect the Rights and Dignity of Persons with Disabilities, UN Doc. A/RES/56/168, 19 December 2001.

in the MBT, its content drew heavily on the non-binding but well-established and detailed norms of the MBT's 2004 Nairobi Action Plan.

First, the CCM creates a framework of shared responsibility. Like the MBT, it requires all States Parties in a position to do so to provide international cooperation and assistance to assist victims. Article 5 of the CCM goes a step further, however, and obliges affected States Parties to take the lead in assisting victims within their territory.⁵⁷ The convention makes this division of responsibility legally binding, but the Nairobi Action Plan had already articulated it. It said, "Keeping this promise [to rehabilitate and reintegrate victims] is a crucial responsibility of all States Parties, *though first and foremost of those whose citizens suffer the tragedy of mine incidents.*"⁵⁸ The action plan then enumerates actions that affected States will take, including providing a range of assistance, adopting legal and policy frameworks, and collecting relevant data.⁵⁹

Second, the CCM follows its predecessors' approach to defining the character of assistance. Article 5(1) says that States Parties must provide "medical care, rehabilitation and psychological support, as well as provide for [victims'] social and economic inclusion".⁶⁰ The MBT contains most of these elements, and the Nairobi Action Plan, in Action 31, adds psychological support to the list.⁶¹ The CCM also follows the action plan in specifying that victim assistance should be "age- and gender-sensitive".⁶²

Third, the cluster munition treaty draws on the Nairobi Action Plan's commitments related to implementation of victim assistance programmes. Both include provisions on collecting data on victims and developing national laws and policies.⁶³ In addition, the novel reporting obligations for victim assistance established in the CCM's Article 7(1)(k) reflect Nairobi Action Plan Action 37, which called for States Parties to "monitor and promote progress in the achievement of victim assistance goals".⁶⁴

Influence of the CRPD. Given that the CRPD's provisions are relevant to victims of landmines and cluster munitions, they significantly influenced the development of the CCM.⁶⁵ According to Kenneth Rutherford, who was involved with the negotiation of all three treaties:

The significant differences between the Ottawa Convention [Mine Ban Treaty] and Convention on Cluster Munitions are due in large part to the existence of the Convention on the Rights of Persons with Disabilities, which represents

57 Convention on Cluster Munitions, above note 3, Art. 5.

58 Nairobi Action Plan, above note 14, para. 5 (emphasis added).

59 *Ibid.*, Actions 29–35.

60 Convention on Cluster Munitions, above note 3, Art. 5(1).

61 Mine Ban Treaty, above note 1; Nairobi Action Plan, above note 14, Action 31.

62 Nairobi Action Plan, above note 14, Action 35; Convention on Cluster Munitions, above note 3, Art. 5(1).

63 Nairobi Action Plan, above note 14, Actions 34 and 35; Convention on Cluster Munitions, above note 3, Arts 5(1) and (2)(b).

64 Nairobi Action Plan, above note 14, Action 37; Convention on Cluster Munitions, above note 3, Art. 7(1)(k).

65 M. Reiterer and T. Leibowitz, above note 40, p. 334.

another dot in the line connecting weapons treaties and human rights. It had a profound effect on the understanding of victim assistance because it outlined a rights-based approach to disability, which provides a much more progressive, holistic view than previously existed.⁶⁶

The Nairobi Action Plan had enumerated many steps of victim assistance and recognized the need to “address the needs and fundamental human rights of mine victims” as one of its actions,⁶⁷ but the CRPD offered a roadmap for binding and more nuanced rights-based victim assistance provisions.

The final text of the CCM, in addition to incorporating provisions from the Nairobi Action Plan, largely reflected the CRPD’s human rights lens. The CCM stresses the importance of the rights-based approach to victim assistance in the preamble with five dedicated paragraphs. The first, for example, expresses States Parties’ determination to “ensure the full realization of the rights of all cluster munition victims and recognis[es] their inherent dignity”.⁶⁸

The CRPD’s influence is also evident in the CCM’s operative provisions. Article 5 of the CCM requires victim assistance to be provided “in accordance with applicable international humanitarian and *human rights law*”;⁶⁹ the latter body of law is an implicit reference to the CRPD.⁷⁰ More specifically, while the MBT and the Nairobi Action Plan call for “socio-economic reintegration”, Article 5 refers to “social and economic inclusion” to reflect the “accepted rights-based terminology used” in the CRPD.⁷¹ Commentators involved in the negotiations explained:

While integration connotes a division between society—the “integrator”—and a survivor whose challenge it is to reintegrate, inclusion lends itself better to the idea that society should be structured in a way which is inclusive of all its members.⁷²

In addition, CCM Article 2(1) defines victim to include those who have suffered not only physical or psychological injury but also “economic loss, social marginalisation or substantial impairment of the realisation of their rights caused by the use of cluster munitions”.⁷³ This broad definition has some similarities to the CRPD’s definition of “discrimination on the basis of disability”, which includes anything that has “the purpose or effect of impairing or nullifying the recognition, enjoyment or exercise, on an equal basis with others, of all human rights”.⁷⁴

66 Kenneth Rutherford, Nerina Čevra and Tracey Begley, “Connecting the Dots: The Ottawa Convention and the CCM”, *The Journal of ERW and Mine Action*, Winter 2008/9, p. 44, available at: <https://commons.lib.jmu.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1560&context=cisr-journal>.

67 Nairobi Action Plan, above note 14, Action 33.

68 Convention on Cluster Munitions, above note 3, preamble.

69 *Ibid.*, Art. 5 (emphasis added).

70 B. Docherty, above note 41, p. 951; Convention on Cluster Munitions, above note 3, Art. 5.

71 M. Reiterer and T. Leibowitz, above note 40, p. 360; Nairobi Action Plan, above note 14, Action 32.

72 M. Reiterer and T. Leibowitz, above note 40, p. 360.

73 Convention on Cluster Munitions, above note 3, Art. 2(1).

74 Convention on the Rights of Persons with Disabilities, above note 2, Art. 2.

CCM Article 5 also drew on the CRPD to strengthen the general principles and institutional framework of victim assistance. As discussed above, it borrows heavily from the CRPD's provisions on inclusion and non-discrimination. On a more practical note, the requirement in CCM Article 5(2)(g) to designate a focal point to coordinate implementation of victim assistance parallels that in CRPD Article 33(1) to appoint a focal point for national implementation in general.⁷⁵

While some CCM provisions may have had sources in both the Nairobi Action Plan and the CRPD, the latter bolstered the case for making them legally binding obligations. For example, the references to gender- and age-sensitive assistance, collecting data and conducting needs assessments probably came more directly from the Nairobi Action Plan, but they also appear and are legally codified in a different context under the CRPD. Several CRPD provisions, including Articles 6 and 7 on the rights of women and children with disabilities, address issues of age and gender sensitivity, and Article 31 deals with statistics and data collection.⁷⁶ This precedent is significant, given that the CCM broke new ground in disarmament law by making these detailed victim assistance provisions binding.⁷⁷

CCM innovations. The CCM text not only effectively merged and adapted the precedent found in the Nairobi Action Plan and the CRPD but also introduced new elements of victim assistance. These innovations included several provisions related to implementation. For example, Article 5(2)(c) obliges affected States Parties to develop national plans with budgets and timelines.⁷⁸ Article 5(2)(d) requires them to “[t]ake steps to mobilise national and international resources.”⁷⁹ Article 5(2)(h) calls for incorporating guidelines and good practices in the area of victim assistance.⁸⁰ These provisions seek to ensure implementation of the newly codified policies and principles for assisting victims.

Implementation

The links among the MBT, CCM and CRPD did not end with their negotiations. The rights set out in the CRPD correspond to elements of disarmament's victim assistance, including medical care and rehabilitation, measures to promote economic and social inclusion, and gender and age sensitivity. The treaties also share steps for implementation, such as collecting data, designating focal points, establishing budgets and national plans, reporting and consulting with

75 Convention on Cluster Munitions, above note 3, Art. 5(2)(g); Convention on the Rights of Persons with Disabilities, above note 2, Art. 33(1).

76 Convention on the Rights of Persons with Disabilities, above note 2, Arts 6, 7 and 31.

77 B. Docherty, above note 41, p. 956.

78 Convention on Cluster Munitions, above note 3, Art. 5(2)(c).

79 *Ibid.*, Art. 5(2)(d).

80 *Ibid.*, Art. 5.

survivors.⁸¹ Most affected States Parties of the landmine and cluster munition treaties have joined the CRPD. All affected MBT States Parties, except Eritrea and Tajikistan, and all affected States Parties under the CCM, except Lebanon, are also States Parties to the CRPD.⁸²

As a result of the overlapping obligations and States Parties, the implementation of these instruments has often been intertwined. It can be difficult to prove definitively the direction of influence, but an examination of MBT and CCM review conference documents and civil society monitors indicates patterns. In general, although work remains to be done, the CRPD has contributed standards for implementation, and the MBT and CCM's victim assistance programmes have advanced the inclusion and rights of persons with disabilities in practice. The treaties' victim assistance and disability rights regimes have reinforced each other's mechanisms for implementation.

Standard setting

The CRPD has influenced the implementation of victim assistance by creating standards for principles and programming to follow, even if they have not always been fully met. While the Nairobi Action Plan had already laid out many relevant concepts, the Final Report of the MBT's 2009 Review Conference in Cartagena, the first review conference after the adoption of the CRPD, credited the CRPD with "provid[ing] a standard by which to measure victim assistance efforts".⁸³ According to the report, the CRPD elaborated on the meaning of inclusivity, "record[ing] what is required to promote the full and effective participation and inclusion of mine survivors in the social, cultural, economic and political life of their communities". The CRPD also offered guidelines for the responsibilities to survivors and their families and for the nature of assistance. It presented "a more systematic, sustainable, gender sensitive and human rights based approach by bringing victim assistance into the broader context of policy and planning for persons with disabilities more generally".⁸⁴

Experts on victim assistance under the CCM expressed similar views of the CRPD. In a 2010 Oxford University Press commentary, an Austrian diplomat and a civil society delegate, both of whom had been involved in the CCM negotiations, described the CRPD as "an especially appropriate framework through which to implement victim assistance".⁸⁵ They noted that the convention "represent[ed] the human rights standard pertaining to persons with disabilities, which include cluster munition survivors, and contain[ed] an 'explicit social development

81 Survivor Corps, *Connecting the Dots: Victim Assistance and Human Rights*, December 2008, p. 31, available at: <https://reliefweb.int/report/world/connecting-dots-victim-assistance-and-human-rights>.

82 United Nations Office of the High Commissioner for Human Rights, "Status of Ratification", available at: <https://indicators.ohchr.org/>.

83 Cartagena Final Report, above note 16, para. 165.

84 *Ibid.*

85 M. Reiterer and T. Leibowitz, above note 40, p. 368.

dimension”.⁸⁶ Although the outcome documents of the CCM’s 2010 First Meeting of States Parties did not address the CRPD’s standards in depth, they are referenced in the convention itself.

In recognition of the CRPD’s standards as well as the need for efficiency, the outcome documents of both the MBT and the CCM called for integrating victim assistance into disability programming. The Final Report of the Cartagena Review Conference explained:

When plans for the disability sector already exist, the focus has been on ensuring that mine survivors have access to the services and benefits enshrined within those plans and that the relevant ministries are aware of their States’ obligations under the Convention.⁸⁷

The CCM’s First Meeting of States Parties in 2010 in Vientiane took a similar approach. Action 23 of the Vientiane Action Plan committed States Parties to either integrate their implementation of victim assistance with existing CRPD coordination mechanisms, or establish a new mechanism involving cluster munition victims and disability rights experts within one year of the treaty’s entry into force.⁸⁸

While there has been less explicit attention to the standards set by the CRPD in recent meetings, there is an ongoing emphasis on coordinating efforts. For example, Action 34 of the 2019 Oslo Action Plan, adopted at the MBT’s Fourth Review Conference, calls on States to address mine victims’ needs “through national policy and legal frameworks relating to disability” and specifies that those frameworks be “in line with the relevant provisions of” the CRPD.⁸⁹ The most recent CCM Action Plan, adopted by States Parties in Lausanne in 2021, commits States Parties to ensure that broader national plans and frameworks addressing disability and human rights “address the needs and rights of cluster munition victims and are in line with the Convention on the Rights of Persons with Disabilities”.⁹⁰ As victim assistance principles and programmes advance, the documents include less rhetoric about the CRPD as the sole bar against which to judge them, but still call for victim assistance to be consistent with the standards of the disability rights convention.

Despite the recognition of the CRPD’s value as a standard for victim assistance, some have argued that victim assistance programmes should do more to

⁸⁶ *Ibid.*

⁸⁷ Cartagena Final Report, above note 16, para. 107.

⁸⁸ Convention on Cluster Munitions, First Meeting of States Parties, Final Document, UN Doc. CCM/MSP/2010/5, 31 January 2010, Action 23, available at: www.clusterconvention.org/vientiane-action-plan/ (Vientiane Action Plan).

⁸⁹ Fourth Review Conference of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, Final Document: Oslo Action Plan, UN Doc. APLC/CONF/2019/5/Add.1, 22 January 2020, Action 34 (Oslo Action Plan).

⁹⁰ Second Review Conference of States Parties to the Conference on Cluster Munitions, Final Report of the Second Review Conference: Lausanne Action Plan, UN Doc. CCM/CONF/2021/6, 6 October 2021, Action 32 (Lausanne Action Plan).

achieve it. The UN Mine Action Service released the first edition of its International Mine Action Standards on victim assistance only in September 2021, and it has been criticized by some from the disability rights community for not adequately reflecting CRPD standards.⁹¹ The UN Special Rapporteur on the Rights of Persons with Disabilities recommended to the UN General Assembly in 2022 that the UN:

Strengthen the capacity of the Mine Action Service ... to better reflect the principles of the Convention on the Rights of Persons with Disabilities in its work on victim assistance, including its work as Chair of the International Mine Action Standards Review Board.⁹²

Janet Lord, a disability rights expert who represented the Landmine Survivors Network during the CPRD negotiations, described several ways in which victim assistance programmes could better reflect the principles of the CRPD. For example, they could more meaningfully include survivors, hire persons with disabilities, improve accessibility and adopt a broader understanding of rehabilitation.⁹³

Practical impacts

When the three treaties were initially examined as a package, commentators focused on the CRPD as a boon to victim assistance. In practice, however, much of the influence has gone the other way. Examples from review conference outcome documents and civil society monitors reveal that actions to fulfil victim assistance under the MBT and CCM have helped advance implementation of many articles of the CRPD. Victim assistance programmes in particular have enhanced the inclusion and the rights of persons with disabilities.

Inclusion

Inclusivity played a major role in the origins of the victim assistance provisions in the MBT and CCM, and it has continued to be a priority in the implementation phase. In this context, States Parties have called for inclusion of all persons with disabilities, not only landmine and cluster munition survivors. The Cartagena Action Plan, for example, explicitly commits States Parties to include persons with disabilities in addition to landmine survivors “in all relevant convention related activities”.⁹⁴ Likewise, CCM States Parties committed in the action plan issued at their first meeting in Vientiane to include cluster munition survivors

91 UN Mine Action Service, “Victim Assistance in Mine Action”, 1st ed., International Mine Action Standard 13.10, September 2021, available at: www.mineactionstandards.org/fileadmin/user_upload/IMAS_13.10_Ed1_04.pdf.

92 UN General Assembly, Report of the Special Rapporteur on the Rights of Persons with Disabilities, Gerard Quinn, UN Doc. A/77/203, 20 July 2022.

93 Interview with Janet E. Lord, above note 13.

94 Second Review Conference of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, Final Report: Cartagena Action Plan, UN Doc. APLC/CONF/2009/9, 17 June 2010, Action 29 (Cartagena Action Plan).

and representatives of disabled persons on their delegations in all activities related to the convention.⁹⁵ At the same meeting, survivors issued a declaration with recommendations that included a call for States to accede to the CRPD and not to discriminate against either cluster munition victims or other persons with disabilities.⁹⁶

States Parties' actions have reflected progress toward implementing these commitments to inclusion. The CCM's First Review Conference in 2015 reported that "all seven States Parties with victim assistance coordination structures in place have involved survivors or their representative organisations in victim assistance or disability coordination mechanisms".⁹⁷ Providing updates on their progress on victim assistance in the 2019 Oslo Review Conference Final Report, Afghanistan, Bosnia and Herzegovina, Cambodia, Colombia, El Salvador, Iraq, Mozambique, Peru, Senegal, Serbia and Sudan reported increased participation of mine survivors and other persons with disabilities in victim assistance and disability programmes.⁹⁸ Such measures help States fulfil their CRPD obligation to "closely consult with and actively involve persons with disabilities, including children with disabilities, through their representative organizations" in law and policy-making.⁹⁹

As part of their efforts to promote inclusion, States have taken steps to raise awareness of issues related to victim assistances and disability rights. Public and expert discussions about implementation of victim assistance have dedicated time and consideration to coordinating efforts with the disability sector and explaining rights provided under the CRPD.¹⁰⁰ Victim assistance workshops held in Managua and Bangkok in 2009 included sessions on the CRPD.¹⁰¹ More recently, the 2019 Oslo Review Conference Final Report noted that a number of national stakeholder dialogues, including in Iraq, South Sudan and Uganda, aimed to "strengthen the national response to victim assistance and raise awareness of the rights of persons with disabilities, including mine survivors".¹⁰² While not specifically required by victim assistance law, these steps accord with Article 8 of the CRPD, which requires States Parties to "adopt immediate, effective and appropriate measures, [*inter alia*], [t]o raise awareness ... regarding persons with

95 Vientiane Action Plan, above note 88, Action 31.

96 Convention on Cluster Munitions, First Meeting of States Parties, Survivors' Declaration, UN Doc. CCM/MSP/2010/MISC.2, 11 November 2010.

97 First Review Conference of States Parties to the Convention on Cluster Munitions, Review of the Vientiane Action Plan, UN Doc. CCM/CONF/2015/3, 12 May 2015, para. 64.

98 Fourth Review Conference of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, Final Document, UN Doc. APLC/CONF/2019/5, 22 January 2020, p. 35, para. 57 (Oslo Final Report).

99 Convention on the Rights of Persons with Disabilities, above note 2, Art. 4(3).

100 Cartagena Final Report, above note 16, paras 110 and 161.

101 The Cartagena Summit on a Mine-Free World, "Managua Programme for Victim Assistance Experts", 24–26 February 2009, available at: www.cartagenasummit.org/regional-workshops/managua-workshop/programme-for-victim-assistance-experts/; The Cartagena Summit on a Mine-Free World, "Bangkok Programme for Victim Assistance Experts", 1–3 April 2009, available at: www.cartagenasummit.org/regional-workshops/bangkok-workshop/programme-for-victim-assistance-experts/.

102 Oslo Final Report, above note 98, para. 61.

disabilities, and to foster respect for the rights and dignity of persons with disabilities”.¹⁰³

Advancement of the rights of persons with disabilities

Implementation of victim assistance obligations have advanced the rights of not only landmine and cluster munition victims but also of other persons with disabilities. Provision of healthcare can benefit anyone who experiences the medical challenges that landmine and cluster munition survivors do. For example, at the 2009 Cartagena Review Conference, Sudan reported that more than twenty-five victim assistance-related projects helped 1500 landmine survivors and persons with disabilities.¹⁰⁴ At the same meeting, Japan stated that it had partnered with Laos to provide, as part of its obligations under the MBT, a wheelchair workshop service that benefitted landmine survivors and other persons with disabilities in need of wheelchairs.¹⁰⁵ The 2021 *Cluster Munition Monitor* reported training programmes for healthcare workers in Chad on rehabilitation and disability, which contributed to the referral of survivors and other persons with disabilities to rehabilitation centres.¹⁰⁶ The ICRC likewise reported to the 2020 CCM Review Conference that it “continues to assist all persons with disabilities, including victims of mines, cluster munitions and explosive remnants of war through its Physical Rehabilitation Programme”.¹⁰⁷ These programmes relate to several rights under the CRPD. They help “ensure personal mobility with the greatest possible independence” (Article 20), promote “enjoyment of the highest attainable standard of health without discrimination on the basis of disability” (Article 25) and strengthen “habilitation and rehabilitation services and programmes” (Article 26).¹⁰⁸

Victim assistance programmes promote socio-economic inclusion, including through vocational and financial assistance programmes that have also served other persons with disabilities. According to the 2021 *Landmine Monitor*, a project led by Humanity & Inclusion in Chad trained mine/explosive remnants-of-war victims and persons with disabilities to “restart income-generating

103 Convention on the Rights of Persons with Disabilities, above note 2, Art. 8(1)(a).

104 The Cartagena Summit on a Mine-Free World: the Second Review Conference of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, “Statement from Sudan”, 30 November 2009, available at: www.cartagenasummit.org/fileadmin/APMBC-RC2/monday/2RC-Item9a-30Nov2009-Sudan.pdf.

105 The Cartagena Summit on a Mine-Free World: The Second Review Conference of the States Parties to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction, “Statement from Japan”, 30 November 2009, available at: www.cartagenasummit.org/fileadmin/APMBC-RC2/monday/2RC-Item9a-30Nov2009-Japan-en.pdf.

106 International Campaign to Ban Landmines–Cluster Munition Coalition, *Cluster Munition Monitor 2021*, September 2021, p. 74, available at: www.the-monitor.org/media/3299952/Cluster-Munition-Monitor-2021_web_Sept2021.pdf.

107 ICRC, “Second Review Conference of the Convention on Cluster Munitions, Geneva, 25–27 November 2020: International Committee of the Red Cross Statement on Victim Assistance”, available at: www.clusterconvention.org/wp-content/uploads/2020/11/CCM-2RC-ICRC-statement-Victim-assistance-updated-version-2-December-2020.pdf.

108 Convention on the Rights of Persons with Disabilities, above note 2, Arts 20, 25 and 26.

activities and to undertake technical and vocational training”.¹⁰⁹ The Democratic Republic of the Congo instituted job training in the coffee industry for mine survivors.¹¹⁰ Such programmes promote the CRPD’s “right of persons of disabilities to work, on an equal basis with others” (Article 17) as well as the right to “adequate standard of living for [persons with disabilities] and their families” (Article 18).¹¹¹

Mechanisms for implementation

Ensuring that the CRPD’s standards are upheld and that victim assistance practice is effective requires sound mechanisms for implementation. In this area, the victim assistance and disability rights regimes have had a largely symbiotic relationship. States have addressed disability concerns as part of their funding for victim assistance under the MBT or CCM; in turn, financial aid granted under the CRPD has recognized the needs of arms victims.¹¹² In addition, the efforts to integrate victim assistance and disability rights programmes at the State level have led to national plans for one that incorporate elements of the other.¹¹³ Finally, at the global level, the disarmament treaties’ robust system of international meetings and regular reporting have provided opportunities to monitor and advance the rights of persons with disabilities, while the CPRD’s treaty body, albeit to a lesser degree, has made recommendations that can inspire benefits for landmine and cluster munition survivors.¹¹⁴ Such ongoing interactions among these three treaties not only enhance implementation but also show their continued relevance as precedent for new instruments.

Lessons learned for the Treaty on the Prohibition of Nuclear Weapons

The TPNW, adopted at the UN in 2017, is the most recent in the line of humanitarian disarmament treaties to include provisions on victim assistance.¹¹⁵

109 International Campaign to Ban Landmines–Cluster Munition Coalition, *Landmine Monitor 2021*, November 2021, p. 82, available at: www.the-monitor.org/media/3318354/Landmine-Monitor-2021-Web.pdf.

110 *Ibid.*

111 Convention on the Rights of Persons with Disabilities, above note 2, Arts 17 and 18.

112 See, for example, Handicap International, *Guide on an Integrated Approach to Victim Assistance: By States For States*, p. 5, available at: www.clusterconvention.org/files/publications/Guidance-on-an-Integrated-Approach-to-Victim-Assistance.pdf; Landmine and Cluster Munition Monitor, *Frameworks for Victim Assistance: Monitor Key Findings and Observations*, December 2013, pp. 15–16, available at: http://the-monitor.org/media/131747/Frameworks_VA-December-2013.pdf.

113 See, for example, Second Review Conference of States Parties to the Convention on Cluster Munitions, Review Document of the Dubrovnik Action Plan, UN Doc. CCM/CONF/2020/13, 1 October 2020, paras 68–9.

114 See, for example, Oslo Final Report, above note 98, p. 59; Landmine and Cluster Munition Monitor, above note 112, p. 16, describing the success of the “Accessible Tumbes” programme in Peru.

115 Treaty on the Prohibition of Nuclear Weapons, above note 4, Arts 6–7.

The TPNW continued the practice of civil society and survivor inclusion and advanced the human rights-based approach to assistance in previous treaties. As States begin to operationalize the TPNW's provisions after its First Meeting of States Parties in June 2022, they can learn lessons from other treaties about the implementation and interpretation of victim assistance obligations and how to adapt them to the nuclear weapons context.

History and content of the TPNW

Inclusion

As was the case with the MBT, the CRPD and the CCM, civil society and affected individuals played a central role in the push for a nuclear weapons ban treaty, its negotiations and its adoption.¹¹⁶ The International Campaign to Abolish Nuclear Weapons (ICAN) brought hundreds of campaigners, including survivors, to the governmental conferences on the humanitarian impacts of nuclear weapons in Oslo, Nayarit and Vienna that preceded the treaty negotiations.¹¹⁷ During the negotiations themselves, civil society participated actively through working papers, statements, side events and lobbying, even though they were excluded from some sessions where the final text was debated.¹¹⁸ The president of the negotiations also organized interactive panels in which civil society experts made formal presentation and fielded questions from diplomats about specific topics.¹¹⁹ ICAN was awarded the Nobel Peace Prize in 2017 for its efforts to achieve the treaty. Setsuko Thurlow, a leader in the campaign and a survivor of the atomic bombing of Hiroshima, accepted the award alongside ICAN Executive Director Beatrice Fihn.

The TPNW itself acknowledges the importance of civil society and victim inclusion in two places. The preamble recognizes the efforts of “the International Red Cross and Red Crescent Movement, other international and regional organizations, non-governmental organizations, religious leaders, parliamentarians, academics and the hibakusha” (victims of nuclear weapons use) in calling for the elimination of nuclear weapons.¹²⁰ In its operative part, the TPNW obliges States Parties to invite “relevant non-governmental organizations” as well as international organizations to attend treaty meetings as observers.¹²¹

116 Rebecca Davis Gibbons, “The Humanitarian Turn in Nuclear Disarmament and the Treaty on the Prohibition of Nuclear Weapons”, *The Nonproliferation Review*, Vol. 25, No. 1–2, 2018.

117 *Ibid.*; see, for example, Karipbek Kuyukov, “Speech by Karipbek Kuyukov, the ATOM Project Ambassador, at the International Conference on the Humanitarian Consequences of Nuclear Weapons”, Oslo, 4–5 March 2013, available at: www.regjeringen.no/globalassets/upload/ud/vedlegg/hum/hum_kuyukov.pdf.

118 Ray Acheson, *Banning the Bomb, Smashing the Patriarchy*, Rowman and Littlefield Publishers, New York, 2021, pp. 223–58. Statements included an indigenous statement: “Indigenous Statement to the U.N. Nuclear Weapons Ban Treaty Negotiations”, UN General Assembly, June 2017, available at: <https://ican.org.au/wp-content/uploads/Indigenous-Statement-June-2017.pdf>.

119 R. Acheson, above note 118, p. 228.

120 Treaty on the Prohibition of Nuclear Weapons, above note 4, preamble.

121 *Ibid.*, Art. 8(5).

Although the treaty does not explicitly address inclusion in its victim assistance provision, it does require assistance to be provided “without discrimination”, which implies an inclusive approach.¹²²

Human rights-based approach

The push for the TPNW followed a revolutionary approach to governing nuclear weapons that sought to respond to the weapons’ humanitarian consequences and was grounded in humanitarian disarmament precedent.¹²³ Unlike with the CCM, victim assistance provisions were not considered at the start of the negotiations. Civil society representatives, who had worked on the landmine and cluster munition treaties, however, advocated for their inclusion, relying on those models to make their case.¹²⁴

The final result, expressed in TPNW Article 6(1), borrows significantly from the CCM, although it does not include as many details of implementation. Article 6(1) obliges States Parties with affected individuals under their jurisdiction to provide “medical care, rehabilitation and psychological support” and “provide for [affected individuals’] social and economic inclusion”.¹²⁵ Assistance must be provided “in accordance with applicable international humanitarian and human rights law” and should be “without discrimination” and “age- and gender-sensitive”.¹²⁶ Article 7, much of which also closely parallels the CCM, spreads the burden of victim assistance. It requires all States Parties “in a position to do so” to “provide technical, material and financial assistance” to States affected by nuclear weapons use and testing.¹²⁷ Article 7(6) obliges States Parties that have used or tested nuclear weapons to provide adequate assistance to affected States Parties.¹²⁸

Lessons learned

The MBT, CRPD and CCM not only influenced the process and provisions of victim assistance under the TPNW but can also inform the implementation and interpretation of the new treaty. TPNW Article 6(1) draws heavily on Article 5(1) of the CCM, making the latter a logical model for moving forward. In addition, Article 6(1) specifies that assistance should be provided “in accordance with

122 *Ibid.*, Art. 6(1).

123 Bonnie Docherty, “A ‘Light for All Humanity’: The Treaty on the Prohibition of Nuclear Weapons and the Progress of Humanitarian Disarmament”, in Joseph A. Camilleri, Michael Hamel-Green and Fumihiko Yoshida (eds), *The 2017 Nuclear Ban Treaty: A New Path to Nuclear Disarmament*, Routledge, Abingdon, 2019, pp. 35–6.

124 Matthew Breay Bolton and Elizabeth Minor, “The Agency of International Humanitarian Disarmament Law: The Case of Advocacy for Positive Obligations in the Treaty on the Prohibition of Nuclear Weapons”, in Matthew Breay Bolton, Sarah Njeri and Taylor Benjamin-Britton (eds), *Global Activism and Humanitarian Disarmament*, Palgrave Macmillan, Cham, 2020.

125 Treaty on the Prohibition of Nuclear Weapons, above note 4, Art. 6(1).

126 *Ibid.*

127 *Ibid.*, Art. 7.

128 *Ibid.*, Art. 7(6).

applicable international humanitarian and human rights law”, which encompasses the CRPD.¹²⁹ Collectively these treaties can guide implementation of two elements of victim assistance – inclusion and an implementation framework – that are not referenced in the TPNW; their value is already evident in the TPNW’s recently adopted first action plan. The treaties can also help interpret components of the TPNW’s obligations that are explicitly articulated.

Implementation

The disarmament and disability treaties set a standard for inclusivity that TPNW States Parties should follow when implementing their victim assistance obligations. Both the CCM and CRPD require States Parties to “closely consult with and actively involve” affected individuals and their representative organizations.¹³⁰ Other stakeholders, including but not limited to civil society and international organizations, should also be included in the victim assistance process. Such meaningful consultation should take place at all stages of the victim assistance process including assessment, service delivery and monitoring. It should further allow affected communities and other stakeholders to have equal speaking rights with States in international treaty meetings, including during the opening, closing and substantive sessions of meetings of States Parties and review conferences, as well as during intersessional meetings. An inclusive approach to victim assistance is consistent with other parts of the TPNW, notably its preamble and Article 8(5) on inviting non-State actors to treaty meetings.¹³¹

The Vienna Action Plan, adopted at the TPNW’s First Meeting of States Parties in June 2022, follows the lead of the earlier treaties with regard to inclusion. The plan, which elaborates on how the TPNW, including its victim assistance obligations, should be implemented, emerged from a process that incorporated the input of States, international organizations and civil society. Drawing on CCM and CRPD language, the Vienna Action Plan commits States Parties to “closely consult with, actively involve, and disseminate information to, affected communities at all stages” of the victim assistance and to uphold the principles of inclusivity, non-discrimination transparency and accessibility.¹³² The action plan thus represents an important first step toward inclusivity in implementation.

The CCM in particular offers guidance for establishing a framework for implementing victim assistance. States Parties to the TPNW can look to the CCM’s Article 5(2) for practical steps for operationalizing victim assistance. For example, States Parties should assess the problem; develop a national plan, with timeline and budget; designate a focal point; and adopt relevant laws and policies.

¹²⁹ *Ibid.*, Art. 6(1).

¹³⁰ Convention on Cluster Munitions, above note 3, Art. 5(2)(f); Convention on the Rights of Persons with Disabilities, above note 2, Art. 4(3).

¹³¹ Treaty on the Prohibition of Nuclear Weapons, above note 4, preamble and Art. 8(5).

¹³² First Meeting of States Parties to the Treaty on the Prohibition of Nuclear Weapons: Vienna Action Plan, UN Doc. TPNW/MSP/2022/6*, 21 July 2022, Actions 19 and 25 (Vienna Action Plan).

The influence of the CCM has already been seen in the TPNW's Vienna Action Plan, which includes commitments on all of these points.¹³³ The next step will be to turn those words on paper into actions on the ground.

Interpretation and adaptation

The earlier treaties also offer lessons for interpreting the TPNW's obligations. The CCM, like the TPNW, describes victim assistance broadly. It requires States Parties to provide "medical care, rehabilitation and psychological support" and measures to promote "social and economic inclusion".¹³⁴ The policies and principles of victim assistance under the CCM, as well as the MBT, which follows the same approach, can, therefore, offer TPNW States Parties models for understanding these terms.

The CRPD can help adapt these models, which were designed for victims of explosive weapons, to those harmed by nuclear weapons. The needs of those affected by nuclear weapons use or testing often differ significantly from victims of landmines and cluster munitions, given the distinct harm caused by radiation exposure and its intergenerational impact. The CRPD's rights apply to a wider group of persons with disabilities and could inform the provision of assistance under the TPNW. For example, States Parties' reports on their efforts to implement the CRPD's Article 25 (health) or Article 26 (habilitation and rehabilitation) may provide recommendations for meeting the health needs of nuclear weapons victims.¹³⁵ In its 2016 CRPD report, Kazakhstan, the site of Soviet nuclear weapons testing and a TPNW State Party, noted its provision of "early testing ... performed for congenital conditions, neonatal surgery and medical care for patients with cancer" and the entitlement of persons with disabilities to "expensive diagnostic examinations", as part of its Article 25 implementation.¹³⁶ While these services are open to all people, many of them, such as regular health screenings and cancer treatments, may be particularly relevant for those affected by nuclear weapons use and testing.

The TPNW's predecessors can influence understanding of how assistance is delivered. Viewing the TPNW's requirement that victim assistance be provided "without discrimination" in light of earlier treaties can have a significant impact on its interpretation. In isolation, that phrase sounds like it refers exclusively to the commonly cited grounds of discrimination, such as race, sex and religion, enumerated in the International Covenant on Civil and Political Rights.¹³⁷ While these grounds are important and applicable, the disarmament and disability treaties offer additional interpretations of the phrase. Between the CCM and the

133 *Ibid.*, Actions 21, 22 and 31.

134 Convention on Cluster Munitions, above note 3, Art. 5(1).

135 Convention on the Rights of Persons with Disabilities, above note 2, Arts 25 and 26.

136 Committee on the Rights of Persons with Disabilities, Initial Report Submitted by Kazakhstan under Article 35 of the Convention, Due in 2017, UN Doc. CRPD/C/KAZ/1, 21 February 2019, p. 33, paras 351 and 353.

137 International Covenant on Civil and Political Rights, New York, 16 December 1966 (entered into force 23 March 1976), Art. 2(1).

CRPD, three other prohibited types of discrimination can be identified: discrimination against victims (i.e. based on their disability or affected status); among victims; or between victims and other persons with disabilities.¹³⁸

The treaties, in particular the CRPD, bolster understanding of how to provide age- and gender-sensitive assistance to nuclear weapons victims. The requirement for such sensitivity is particularly pertinent in the TPNW, given the disproportionate impact of ionizing radiation on women and girls acknowledged within the treaty's preamble. While the CCM includes a similar reference to age- and gender-sensitive assistance, the CRPD has separate articles (6 and 7, respectively) elaborating on the rights for women and children with disabilities.¹³⁹ Under CRPD Article 6, several States have reported establishing targeted programmes for women with disabilities. Laos created the Lao Disabled Women's Development Centre to provide vocational training for women with disabilities, and Austria formed the Health Forum for Girls and Women with Disabilities.¹⁴⁰ Particularly relevant for the TPNW, Kazakhstan has offered longer paid maternity leave for women who live in the nuclear radiation exposure zone (twenty-four weeks instead of eighteen weeks).¹⁴¹ In addition, a number of States have reported disaggregating their data on persons with disabilities by gender and age under CRPD Article 31.¹⁴²

Finally, the disarmament and disability instruments offer lessons on who qualifies for victim assistance. The TPNW's articles on victim assistance and international cooperation and assistance use two phrases to refer to victims of nuclear weapons: "individuals ... who are affected by the use or testing of nuclear weapons" in Article 6(1); and "victims of the use or testing of nuclear weapons or other nuclear explosive devices" in Article 7(4).¹⁴³ The treaty does not elaborate on the meaning of either term, however, in contrast to the CCM and CRPD, which define cluster munition victims and persons with disabilities, respectively. TPNW States Parties could draw from the latter treaties as they consider the scope of victim assistance.

138 Convention on Cluster Munitions, above note 3, Art. 5(2); Convention on the Rights of Persons with Disabilities, above note 2, Arts 2 and 4; Committee on the Rights of Persons with Disabilities, General Comment No. 6 (2018) on Equality and Non-Discrimination, UN Doc. CRPD/C/GC/6, 26 April 2018.

139 See, also, Committee on the Rights of Persons with Disabilities, General Comment No. 3 (2016) on Women and Girls with Disabilities, UN Doc. CRPD/C/GC/3, 25 November 2016.

140 Committee on the Rights of Persons with Disabilities, Initial Report Submitted by the Lao People's Democratic Republic under Article 35 of the Convention, Due in 2011, UN Doc. CRPD/C/LAO/1, 6 October 2017; Committee on the Rights of Persons with Disabilities, Implementation of the Convention on the Rights of Persons with Disabilities: Initial Reports Submitted by States Parties under Article 35 of the Convention: Austria, UN Doc. CRPD/C/AUT/1, 10 October 2011.

141 Committee on the Rights of Persons with Disabilities, above note 136.

142 For example, see Mexico's report, which reported conducting the National Survey of Children and Women of 2015 on women and children with disabilities, or New Zealand's report which also notes its gender- and age-disaggregated data collection. Committee on the Rights of Persons with Disabilities, Combined Second and Third Periodic Reports Submitted by Mexico under Article 35 of the Convention, Due in 2018, UN Doc. CRPD/C/MEX/2-3, 19 July 2018; Committee on the Rights of Persons with Disabilities, Implementation of the Convention on Rights of Persons with Disabilities: Initial Reports Submitted by States Parties under Article 35 of the Convention: New Zealand, UN Doc. CRPD/C/NZL/1, 31 March 2011.

143 Treaty on the Prohibition of Nuclear Weapons, above note 4, Arts 6(1) and 7(4).

In particular, the TPNW could follow its predecessors' rights-based approach, discussed in the first section, to interpreting the term "victim". Understanding victims of nuclear weapons as those whose rights are impaired by the harm caused by the use or testing of nuclear weapons would help overcome some of the challenges posed by the scientific uncertainty associated with a health-based approach. It can be difficult to prove causality when a disease emerges years after exposure and may be multifactorial. In addition, harm from nuclear weapons extends beyond physical health effects. Under a rights-based approach, programmes could also consider providing assistance to affected families and communities as is required by the CCM and is done in practice under the MBT.¹⁴⁴

Conclusion

At a disability rights conference in 2011, Norwegian Minister of Foreign Affairs Jonas Gahr Støre recognized the groundbreaking role of the three treaties discussed in this article. He said, "The major steps forward that were taken through the Mine Ban and Cluster Munitions conventions, as well as the Convention on the Rights of Persons with Disabilities, have created an international norm, making victim assistance a human rights issue." Støre also saw that the instruments' influence could extend beyond their adoption and implementation. Understanding their broader potential, he said, "We should be led by these examples – by these conventions."¹⁴⁵

The MBT, CRPD and CCM have already shaped the content of the TPNW's victim assistance obligation, and they offer valuable lessons for operationalizing it. The TPNW may in turn add to the victim assistance canon, facilitating its application to weapons of mass destruction and toxic remnants of war. Victim assistance evolved over its first decade, and it has demonstrated the ability to continue to do so. In the future, its inclusive, rights-based approach can be further strengthened and adapted to improve protections for those affected by the means or methods of war.

144 Convention on Cluster Munitions, above note 3, Art. 2(1); Nairobi Action Plan, above note 14, para. 5.

145 Jonas Gahr Støre, "Introductory Remarks at 'Reaching the Most Vulnerable'", Conference on Disability in Conflicts and Emergencies, Oslo, 30 May 2011, available at: www.regjeringen.no/no/dokumentarkiv/stoltenberg-ii/ud/tales-og-artikler/2011/introduksjon_vulnerable/id645110/.