

Implementation of Articles 6 and 7 of the TPNW ahead of the First Meeting of States Parties

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1. The TPNW embedded

- (Finally) Ban Treaty as a result of a broad movement focusing on the catastrophic humanitarian consequences of NW use (supported by ICAN, IALANA...)
- Linked to general int. law (like Int. Humanitarian Law [IHL], Human Rights Law [HRL]) and other specific int. law (like NPT, Test Ban, NW-free zones)
- Plus: relevance of customary int. law (“practice accepted as law”) – TPNW itself (possible) expression of customary law (“law-making treaty”)
- ICJ Advisory Opinion 1996: Threat or use of NWs would generally be contrary to the rules of int. law applicable in armed conflict (=fundamental norm with no exceptions, or “loopholes”)

2. Environment and War



Hiroshima after „Little Boy“ atomic bomb explosion on 6.08.1945.

Kuwaiti oil fields set on fire by Iraqi military forces.



2. Environment and War

- General and refreshed international discourse – also in conjunction with environmental protection (as such) and climate change issue (the “missing link”)
- International Law Commission (ILC): Draft principles on the protection of the environment in relation to armed conflict (PERAC)
- Harvard Law School and Conflict and Environment Observatory (CEOBS): Principles for Assisting Victims of Toxic Remnants of War
- November, 6th: UN Day against environmental destruction by war
- To be clear: aim is outlawing not greening the war!...

3. The victim perspective



3. The victim perspective

- World Nuclear Victims Forum, Hiroshima 2015: Declaration (with references to Shimoda Case and ICJ Advisory Opinion) and Draft Elements of a World Charter of Rights (up to compensation)
- Concept of humanitarian disarmament – victim-centered approach and pragmatic instead of “ideal” solutions
- Protection and rights of the most vulnerable (like children, women) – indigenous peoples
- Remains important even if weapons no more used/disappear...

4. A multifaceted legal approach

- Victim and environmental protection are/can be based on four main legal branches of law:
 - Disarmament Law – like TPNW
 - IHL - principle of distinction; rules on civilian and environmental protection
 - HRL – (input/presentation of Daniel Rietiker)
 - Env. Law – (input/presentation of Emilie Gaillard)
- Plus: general legal principles like precautionary principle (take precautions if activity or substance is risky but damage not sure) and others (proportionality etc.)
- Parallel application – not (so much) “lex specialis” rule
- Complex picture – expertise and exchange needed

5. Victim assistance and env. remediation under art. 6

Article 6

Victim assistance and environmental remediation

1. Each State Party shall, with respect to individuals under its jurisdiction who are affected by the use or testing of nuclear weapons, in accordance with applicable international humanitarian and human rights law, adequately provide age- and gender-sensitive assistance, without discrimination, including medical care, rehabilitation and psychological support, as well as provide for their social and economic inclusion.
2. Each State Party, with respect to areas under its jurisdiction or control contaminated as a result of activities related to the testing or use of nuclear weapons or other nuclear explosive devices, shall take necessary and appropriate measures towards the environmental remediation of areas so contaminated.
3. The obligations under paragraphs 1 and 2 above shall be without prejudice to the duties and obligations of any other States under international law or bilateral agreements.

5. Victim assistance and env. remediation under art. 6

- Positive obligations of great importance and practical effect(s)
- Assistance – age-and gender-sensitive; psychological support
- Also quite relevant: aim of social and economic inclusion
- Altogether: proceeding from the (real) needs and rights of victims – so (e.g.) not financial compensation (alone)
- In view of (possible) controversies about the causal link: application of the presumption of causation rule (like assumed illnesses – without necessary prove, or occurrence)

6. Shared responsibility

- Main responsibility: territorial or affected State – in best position
- Thus: effectiveness of TPNW rules even without NWS' joining the treaty
- Art. 6 para.3: without prejudice to obligations of other States under int. law (=TPNW embedded) or bilateral agreements (ex.: 1983 US - Marshall Islands Agreement)
- Art. 7 para. 6: specific responsibility of NW user States – (again) without prejudice to other obligations existing under int. law
- Unique formula – of legal and not only moral nature

7. Cooperation schemes

- Outlined in art. 7 paras. 1-6
- In line with general int. law principle of int. cooperation – especially relevant in the NW context of env. destruction and victim help – affected States (quite often) unable to cope
- Typical features (for humanitarian disarmament): right to seek and receive assistance – assistance by States Parties in a position to do so
- Reference to institutionalized or organized assistance, in particular within the UN and the Red Cross world



8. Implementation

- Most important – for reaching out to victims – with special emphasis on national or domestic sphere – (see) judicial experience in 1st session
- Separate norm in TPNW – art. 5 “National implementation” – open and broadly formulated
- Need to specify – task for (First) Meeting of States Parties – aim of arriving at a fully fledged implementation system, including national Action Plans, supervisory procedures (like reporting) etc.
- Part of consultation process on implementing Articles 6 and 7 lead by Kazakhstan and Kiribati – with some input from our side

Human Rights Council

Complaint Procedure Form

- You are kindly requested to submit your complaint in writing in one of the six official UN languages (Arabic, Chinese, English, French, Russian and Spanish) and to use these languages in any future correspondence;
- Anonymous complaints are not admissible;
- It is recommended that your complaint does not exceed eight pages, excluding enclosures.
- You are kindly requested not to use abusive or insulting language.

I. Information concerning the author (s) of the communication or the alleged victim (s) if other than the author

Individual Group of individuals NGO Other

Last name:

First name(s):

Nationality:

Address for correspondence on this complaint:

Tel and fax: (please indicate country and area code)

E-mail:

Website:

Submitting the complaint:

On the author's own behalf:

On behalf of other persons: (Please specify:)

II. Information on the State concerned

Name of the State concerned and, as applicable, name of public authorities responsible for the alleged violation(s):

III. Facts of the complaint and nature of the alleged violation(s)

The complaint procedure addresses consistent patterns of gross and reliably attested violations of all human rights and all fundamental freedoms occurring in any part of the world and under any circumstances.

Please detail, in chronological order, the facts and circumstances of the alleged violations including dates, places and alleged perpetrators and how you consider that the facts and



9. A plea for (informal) HR procedures

- Availability of electronic files within the complaints system of the UN Human Rights Council – Office of the High Commissioner (OHCHR) and Special Rapporteurs
- For example: used in case of uranium weapons victims in Southern Serbia – as alternative/supplement to court proceedings (more complicated and costly) – challenge of getting feedback from the UN side
- On a more fundamental note: issue of “strategic litigation”
- As a footnote: Marshall Islands case - Fact-finding mission of Special Rapporteur on Toxics (2012) vs. ICJ Case (dismissed 2016)

10. Conclusion and outlook



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- Make use of the great potential of the TPNW (esp. arts. 6 and 7) in relation to victim assistance and environmental remediation - in the context of existing int. law
- Start and further the exchange among lawyers of different branches of law on related issues
- Work on the input of IALANA into the international discourse (against the broader background of “environment and conflict”) – in particular in relation to ongoing and future consultation activities
- Continue the discussion and joint endeavors among civil society factors such as IALANA and ICAN
- Role of media and art