



RECOMMENDATIONS FOR ELEMENTS OF A TREATY ON THE PROHIBITION OF NUCLEAR WEAPONS TRUST FUND

Response to Working Group Co-Chairs' Survey Questions

June 23, 2024

In April 2024, Kazakhstan and Kiribati, co-chairs of the Treaty on the Prohibition of Nuclear Weapons (TPNW) Working Group on Articles 6 and 7, issued a survey related to the structure of a proposed international trust fund on victim assistance and environmental remediation. Harvard Law School's International Human Rights Clinic (IHRC) welcomes this survey and the working group's efforts to fulfill its mandate from the TPNW's Second Meeting of States Parties. This mandate calls on the working group to submit proposed guidelines for the fund with the aim of "examining the establishment of such a trust fund at the third Meeting of States Parties as a priority."

This submission from IHRC responds to the co-chairs' survey questions. It seeks to inform the working group's discussions and the guidelines for a trust fund that are expected to be developed.

The answers laid out below draw heavily on a more in-depth study published by IHRC in January 2023 entitled "Designing a Trust Fund for the Treaty on the Prohibition of Nuclear Weapons: Precedents and Proposals."¹ The latter proposes recommendations for the design of a trust fund. It also provides a comparative analysis of 10 existing trust funds. That precedent, adapted to the nuclear weapons context, serves as a foundation for the report's proposed elements of a trust fund.

Below are IHRC's answers to Kazakhstan and Kiribati's survey questions. IHRC has included a link to the 2023 report (also available upon request) in the footnotes as well as page numbers for the relevant precedent for each survey answer. It strongly encourages readers to review the precedent as a supplement to this submission

Section I: Eligibility and Grants

- *Who should be eligible to receive funding and grants from the trust fund?*

Given the treaty's relative youth and the absence of many major international donors in its current list of states parties, the trust fund will likely have limited funding available at the outset.

¹ Harvard Law School's International Human Rights Clinic, "Designing a Trust Fund for the Treaty on the Prohibition of Nuclear Weapons: Precedents and Proposals," January 2023, https://humanrightsclinic.law.harvard.edu/wp-content/uploads/2023/01/011323_Trust-Fund-Report-Combined.pdf.

To guide its distribution decisions, the fund's decision-making body could, therefore, choose to prioritize assistance to states parties and organizations with projects in states parties, and consider extending access to the fund to others over time. Such a design would allow access to the fund to remain an incentive to join the TPNW and ensure that funding flows to entities that have demonstrated a firm commitment to the TPNW's objectives in the near term, while enabling the fund to expand to more beneficiaries in the future.

Considering the various models presented by existing trust funds,² and the special needs of the TPNW's positive obligations, a mixed-approach model, i.e., one that makes states parties and non-state actors eligible for grants, would be the most effective design for the treaty's fund. Such a model would permit both states parties and non-state actors, who can advance victim assistance and environmental remediation in different ways, to benefit from the fund's support. States parties bear responsibility for designing and implementing national plans and may be more able to embark upon resource-intensive and longer-term programs. Civil society organizations, organizations representing victims and other non-state entities may be better situated to understand and respond to the needs of affected communities and more equipped with the technical expertise and experience. Widening the pool of possible beneficiaries ensures that the fund's decision-making body can evaluate the strongest array of proposals, presented by entities in the best position to deliver results successfully. The distinctive size, scope, and multidimensional nature of victim assistance and environmental remediation in the context of nuclear weapons use and testing warrants such a flexible approach.

- ***What kinds of projects should be funded?***

Applying the precedent of existing trust funds to the nuclear weapons context suggests that the TPNW trust fund should focus its grants on projects that support capacity building, victim assistance, and environmental remediation.³

First, the TPNW trust fund should invest in capacity building programs that help ensure the treaty's positive obligations can be implemented sustainably and effectively. Grants in this area could, for example, facilitate development of national plans; trainings on relevant topics; workshops at which states, affected communities, international and nongovernmental organizations (NGOs), and independent experts from different spheres share experiences and perspectives; and the provision of key victim assistance or environmental remediation equipment.

Second, the TPNW trust fund should support a range of projects that provide victim assistance to those affected by the use or testing of nuclear weapons. Grants could fund programs for victims that, *inter alia*, improve health care, create employment opportunities, provide access to education, or promote the recognition and implementation of cultural rights.

Third, the TPNW trust fund should finance projects that support different stages of environmental remediation, such as the assessment of areas contaminated by nuclear weapons use or testing; the containment and treatment of radioactive materials; the removal and transport

² Ibid., pp. 11-13.

³ Ibid., pp. 13-16.

of waste; and the construction of safe long-term storage facilities. Risk education and measures to prevent exposure, such as marking and fencing and posting of warnings, are also important.

- ***Should there be restrictions on the length and size of grants?***

The complexity and longevity of the harm that victim assistance and environmental remediation projects seek to address make it important that the trust fund remain flexible regarding the size and length of its grants. Drawing on precedent from some existing trust funds,⁴ the TPNW trust fund could provide for multi-year grants, based on the scope of the project, along with opportunities for renewal or extension in the event of underutilized funds. There is a lack of precedent for continuously financing projects with long time horizons, however, so states parties may need to consider how to maintain support for expected multi-decade projects, including outside of the trust fund context.

Section II: Institutional Framework

- ***Who should be allowed to contribute to the trust fund?***

To maximize the humanitarian objectives of the TPNW, the trust fund should accept contributions from the widest range of actors possible. Drawing on precedent from other trust funds,⁵ the TPNW trust fund should encourage donations from states parties, other states, international organizations, NGOs, the private sector, and individuals.

Given that the TPNW is a humanitarian treaty, widening the donation pool beyond its states parties has significant advantages. While there may be some reluctance to allow states to contribute to a trust fund associated with a treaty to which they are not party, maximizing monetary contributions to increase resources for victim assistance and environmental remediation is crucial. Additionally, permitting states not party to contribute may ultimately promote universalization. As states not party gain exposure to the TPNW and its mission, they may be motivated to join the treaty. Even before they sign or ratify, their engagement with the TPNW in this capacity may increase their alignment with the treaty's objectives.

Regardless, states parties and others committed to the TPNW should retain control of the fund. Non-state actors, notably international organizations, NGOs, the private sector, and individuals, may not be major donors, but their assistance would be welcome.

- ***What should be the composition of the committee that makes decisions regarding the disbursement of funding and grants?***

A trust fund typically empowers a body, such as a board of trustees or selection committee, consisting of states, independent experts, or other entities to make distribution decisions. These bodies are designed to serve the unique needs of each fund.⁶ Given the distinctive expertise

⁴ Ibid., p. 15.

⁵ Ibid., pp. 5-7.

⁶ Ibid., pp. 7-11.

required to provide victim assistance and remediate the environment in the nuclear context, a TPNW trust fund should create a board of trustees or committee comprising a combination of representatives of states parties, representatives of affected communities, and independent experts to make distribution decisions. The board should be diverse in geography and gender.

Creating a board that brings groups together is consistent with the partnership approach that has characterized the TPNW, like all humanitarian disarmament treaties, since its inception. The nature of the treaty provides several reasons for incorporating these particular actors in a decision-making body.

First, including representatives from TPNW states parties would amplify the voices of states that have already committed to the TPNW's cause by joining the treaty. States that have indicated their dedication to the TPNW deserve to contribute to decisions about its future and finances. Empowering states parties to make decisions about fund distribution may also increase overall donations because states may be more willing to contribute if they have a say in how their money is being allocated. It is also sensible to permit states parties to contribute to distribution decisions because states parties should be eligible to receive the fund's grants.

Second, incorporating representatives of communities affected by nuclear weapons use or testing on the TPNW fund's decision-making body would provide several benefits. Affected individuals and communities have a right to be involved in matters that can alter their lives. In addition, they can provide critical expertise, bringing a unique understanding of the effects of nuclear use and testing, victims' needs, and how best to address those needs. Having representatives of affected communities on the board of trustees will also help states parties fulfill Action 25 of the Vienna Action Plan, which notes that victim assistance, environmental remediation, and international cooperation and assistance should be conducted "in coordination with affected communities."⁴⁴ Since, as the TPNW recognizes, nuclear weapons activities have had a disproportionate impact on indigenous people, their inclusion among affected communities is vital, independent of wider inclusion of indigenous nations through any other mechanisms that the fund could develop.⁴⁵ Identification of representatives, as well as addressing administrative concerns such as coverage of expenses to ensure participation, should be done in close consultation with these communities. Given the TPNW's humanitarian purpose and recognition of the "unacceptable suffering of and harm" to victims of nuclear weapon use and testing, the design of the TPNW fund should meaningfully incorporate the views of affected communities.⁴⁶

Finally, independent experts, working in their personal capacity, would bring specific subject-matter knowledge that would complement the perspectives of state party and affected community representatives. For example, lawyers, drawing on precedent from disarmament and other fields, could comment on projects related to the development of national plans, laws, and policies. Health professionals could offer insights on proposals addressing physical, psychological, and psychosocial harm, including that which crosses generations. Nuclear and environmental scientists, such as those from the TPNW's scientific advisory group, could assess the technicalities of environmental remediation projects, including the challenges posed by nuclear harm mitigation and waste management, which can last decades or even centuries. Other experts could complement technical perspectives with valuable knowledge of, among other topics, cultural impacts, socioeconomic inclusion, and risk education. The inclusion of independent

experts and affected communities alongside states parties not only mirrors the distinctly collaborative character of the TPNW but also aligns with recipient eligibility, since non-state actors as well as states parties should be permitted to receive funds. Importantly, the TPNW fund should permit the board's independent experts and affected communities to come from any state, given that many qualified and knowledgeable candidates may reside in states not party to the treaty.

- ***How can we involve affected communities and affected States in the establishment of the trust fund?***

The inclusion of affected communities and affected states in the establishment of the trust fund is crucial. The Vienna Action Plan highlights the importance of this principle in general. It commits states parties, for example, to engage with affected communities (Action 19), uphold the principle of inclusivity (Action 25), and “facilitate the active participation of relevant stakeholders and take into account the different needs of people in affected communities and indigenous people” (Action 41).

With regard to the trust fund, affected communities and affected states should be involved at all states of in the lifecycle of the fund.⁷ As the fund is created, both affected communities and affected states should have ample opportunity to contribute to discussions and to comment on draft proposals for the fund's terms of reference. Their views should be taken into account.

Once the fund is created, affected communities, as well as affected states, should be included in its operation and implementation. For example, as discussed above, these groups should be represented on the board of trustees because they bring distinctive insights on the harm caused by nuclear weapons and how best to address it.⁸

Also as discussed above, recipients of grants should include not only affected states parties but also organizations that represent affected communities.⁹

Finally, reports on the implementation of the trust fund should be made public and accessible to affected communities and affected states. This transparency will allow them to contribute to the monitoring process, ask questions, offer input on suggested reforms, and push for accountability if necessary.

Section III: Reporting, Accountability, and Administrative Matters

- ***What measures should exist to ensure reporting and accountability?***

To guarantee that funds are being used responsibly, many trust funds impose reporting requirements and other accountability measures on grant recipients and/or fund managers.¹⁰

⁷ Ibid., p. 3.

⁸ Ibid., pp. 9-11.

⁹ Ibid., pp. 11-13.

¹⁰ Ibid., pp. 16-18.

Obligating the recipients to report ensures that grantees are using donations in an appropriate manner consistent with the goals of the fund, while obligating fund managers to report guarantees that funds are being allocated in a timely manner to those most in need of assistance. The TPNW trust fund will only have lasting success if funds are used and allocated responsibly. For this reason, the fund should require reports from both the grantees and fund managers that are substantive yet non-burdensome, and transparent.

In order to promote accountability, the TPNW trust fund should require managers and recipients to report in a transparent manner on how funds are being allocated and spent, respectively. Establishing a publicly accessible reporting mechanism is particularly important given that Action 25 of the Vienna Action Plan stipulates that victim assistance, environmental remediation, and international cooperation and assistance should be conducted “in accordance ... with the principles of ... accessibility ... and transparency.”⁸⁶

Building on precedent from existing trust funds, the TPNW should require grantees to submit regular reports, be subject to site visits, and understand that funds may be withheld if used inappropriately. Similarly, fund managers should be required to submit regular, publicly accessible reports detailing how funds are allocated and on what basis. Action 28 of the Vienna Action Plan stresses that reporting on the implementation of Articles 6 and 7 of the TPNW should be non-burdensome.⁸⁷ Drawing on this principle, the trust fund reporting and accountability requirements should aim to limit the burden on fund managers and recipients by setting clear guidelines and only requiring information necessary to guarantee the appropriate use of funds.

Conclusion

The chairs of the Working Group on Articles 6 and 7 posed a few questions that this submission did not address, namely:

- What should the criteria be for receiving funding?
- How should funds be disbursed?
- What mechanism should there be for appeals?
- What administrative structures are necessary?

IHRC has not adequately researched those topics and the related legal precedent, and therefore cannot offer informed answers at this point. The questions are important and worthy of further study, however.