

New Hope for Nuclear Disarmament or “Much Ado About Nothing?”: Legal Assessment of the New “Treaty on the Prohibition of Nuclear Weapons” and the Joint Statement by the USA, UK, and France Following its Adoption

Daniel Rietiker*

I. INTRODUCTION

Success has become rare in the sensitive field of nuclear arms control. But what happened on 7 July 2017 at the United Nations in New York deserves to be remembered and analyzed because the adoption of a Treaty on the Prohibition of Nuclear Weapons constitutes the end of a nearly 20-year period of stagnation on nuclear arms control. After biological (1972) and chemical weapons (1993), the last category of weapon of mass destruction (WMD) will be banned. However, there is considerable disagreement on the practical impact of the treaty for nuclear arms control, disarmament, and international security. This article contributes to the ongoing debate.

II. THE HUMANITARIAN NATURE AND THE ORIGINS OF THE TREATY

From the author’s point of view, the new treaty is deeply inspired by humanitarian ideals and the conviction that the use of nuclear weapons has disastrous consequences for human beings and the environment. The humanitarian motivation of the treaty derives, *inter alia*, from the detailed preamble that reflects its object and purpose. To give only one example, preambular paragraph 2 reads as follows:

*“The States Parties to this Treaty (...) deeply concerned about the catastrophic humanitarian consequences that would result from any use of nuclear weapons, and recognizing the consequent need to completely eliminate such weapons, which remains the only way to guarantee that nuclear weapons are never used again under any circumstances.”*¹

* Daniel Rietiker holds a PhD from the University of Lausanne and a Master’s in International Relations from the Geneva Graduate Institute of International and Development Studies. He teaches international and human rights law at the University of Lausanne and Suffolk University Law School (Boston MA). In 2014,

The new treaty is the third example of a series of universal “humanitarian” arms control instruments aiming at prohibiting entire categories of weapons, following the 1997 Ottawa Convention on anti-personnel mines (also known as the Mine Ban Treaty) and the 2008 Convention on Cluster Munitions (CCM), or Oslo Convention. After conferences on the humanitarian impact of nuclear weapons held in Oslo, Nayarit, and Vienna, two open-ended working groups (OEWG) were held in 2013 and 2016 to develop proposals to activate multilateral nuclear disarmament negotiations. Because of the latter working group, the United Nations General Assembly (UNGA) adopted, on 27 October 2016, a resolution calling on States to launch negotiations on a treaty banning nuclear weapons in 2017. Those negotiations took place in New York from 27 to 31 March and from 15 June to 7 July 2017.

In general, the structure and many clauses of the new treaty resemble much of its two predecessors. This is the case, for example, regarding the clause on victim assistance and environmental remediation, which will be discussed further below. Moreover, the involvement of civil society as well as victims of the use and testing of nuclear weapons in the preparatory phase and the negotiations towards the treaty are factors that had already led to the successful adoption of the Ottawa and Oslo Conventions.² Whereas the conclusion of the latter treaties has been favored by humanitarian motivations, in particular the numerous innocent victims, including children and women, caused by anti-personnel mines and clusters munitions until very long after the end of the actual combat actions,³ it were in particular the moving testimonies of “hibakusha” — survivors of Hiroshima and Nagasaki — which helped civil society to push forward their goal of the prohibition of nuclear weapons based on humanitarian considerations.⁴ And similarly to the movement against anti-personnel mines which was awarded the Peace Nobel Prize following the adoption of the Ottawa Convention in 1997,⁵ the tireless efforts of the

he conducted research at Harvard Law School that he published in *Humanization of Arms Control: Paving the Way for a World Free of Nuclear Weapons* (2017).

¹ Treaty on the Prohibition of Nuclear Weapons, 7 July 2017 (not yet in force).

² See, for the preparatory history of the Ottawa and Oslo Conventions, Daniel Rietiker, *Humanization of Arms Control, Paving the Way to a World Free of Nuclear Weapons*, 20–27 (2017) and of the new treaty, *id.* at 259–267, and for a comparison, *id.* at 283–284.

³ *Id.* at p. 33.

⁴ See, in this regard, Treaty on the Prohibition of Nuclear Weapons, *supra* note 1, at preambular paragraph 6: “The States Parties to this Treaty (...) mindful of the unacceptable suffering of and harm caused to the victims of the use of nuclear weapons (hibakusha), as well as of those affected by the testing of nuclear weapons.”

⁵ *All Nobel Peace Prizes*, NOBELPRIZE.ORG, https://www.nobelprize.org/nobel_prizes/peace/laureates/ (last visited Dec. 7, 2017).

international coalition in favor of the adoption of the new treaty (International Campaign to Abolish Nuclear Weapons, ICAN) has been recognized with the same award in 2017.⁶

Needless to say, however, that the treaty is not yet legally binding with the adoption by 122 States that voted in its favor on July 7, 2017. From 20 September 2017 on,⁷ it was open for signature to all States. On the same day, the treaty was signed by 53 States and already ratified by 3 States (Guyana, Holy See and Thailand).⁸ It is expected that many States will express their support for the new treaty in the following months and years.⁹ The treaty will formally enter into force 90 days after the 50th instrument of ratification, acceptance, approval, or accession has been deposited.¹⁰ It is only with the entry into force that the obligations and rights flowing from the treaty will be legally binding upon States and—to a certain extent—upon individuals, particularly through criminalization imposed by the treaty.¹¹ It is hard to tell when this number will be reached, but it is likely that the numerous States that have supported the treaty will soon ratify it.

III. POTENTIAL CONTRIBUTION OF THE NEW TREATY ON NUCLEAR ARMS CONTROL

The new treaty is supposed to have an impact in two main ways. First, it will establish a norm prohibiting nuclear weapons and, second, it is expected to be the point of departure towards a world free of nuclear weapons. In addition, an innovative clause on victims' assistance and environmental remediation has been included. These aspects of the treaty will be addressed in the present article. They are followed by some observations on the relationship of the new treaty with existing instruments.

⁶ *Nobel Peace Prize 2017*, INTERNATIONAL CAMPAIGN TO ABOLISH NUCLEAR WEAPONS, <http://www.icanw.org/action/nobel-peace-prize-2017-2/> (last visited Dec. 7, 2017).

⁷ Treaty on the Prohibition of Nuclear Weapons, at Art. 13, *adopted* Jul. 7, 2017, U.N. Doc. A/CONF.229/2017/8, *available at* <http://undocs.org/A/CONF.229/2017/8>.

⁸ *Signature/ratification status of the Treaty on the Prohibition of Nuclear Weapons*, INTERNATIONAL CAMPAIGN TO ABOLISH NUCLEAR WEAPONS, <http://www.icanw.org/status-of-the-treaty-on-the-prohibition-of-nuclear-weapons/> (last visited Dec. 7, 2017).

⁹ Even though the signature by States does not bring the treaty into force, it is the moment where the treaty starts to have certain legal effects; in particular, States that have signed are not supposed to run counter the object and purpose of the treaty. Vienna Convention on the Law of Treaties (VCLT), Art. 18, *adopted* May 23, 1969, 1155 U.N.T.S. 331.

¹⁰ Treaty on the Prohibition of Nuclear Weapons, *supra* note 1, at Art. 14, 15(1).

¹¹ *Id.* at Art. 5(2).

A. PROHIBITION OF NUCLEAR WEAPONS

Regarding the prohibition of nuclear weapons, Article 1 of the new treaty imposes a set of prohibitions with a view of eliminating the entire category of these weapons.¹² From our point of view, the most important is the ban on use. Surprisingly, the use of nuclear weapons has not explicitly been prohibited before, contrary to other, less destructive weapons. It is noteworthy to stress that, in accordance with Article 1, the signatory States agree “never under any circumstances” to engage in the activities prohibited.¹³ In other words, those acts are forbidden not only vis-à-vis other signatory States, but also with respect to non-party States and even non-State actors, such as rebel groups or terrorists. Noteworthy is also letter (g) of Article 1 which prohibits a State allowing any stationing, installation or deployment of any nuclear weapons or other nuclear explosive devices in its territory or at any place under its jurisdiction or control.¹⁴ This clause prohibits, for instance, NATO members to host their allies’ nuclear weapons on their territory.

Article 1 further prohibits threats to use nuclear weapons. Considered together with the ban on possession, this prohibition raises the question whether deterrence-based nuclear policies are prohibited by the new treaty. The negotiations held in New York did not reach a final conclusion on this point but it is undisputed that it was one of the main goals of civil society and States working towards the adoption of the new treaty to delegitimize decades-old policies relying on nuclear weapons.¹⁵

The entry into force of the Treaty is expected to be a truly unique moment in the history of nuclear weapons control because it will be the first time that a universal prohibition of nuclear weapons will be in place and legally binding. But what is probably even more relevant is the fact that a successful treaty might not only bind the ratifying States, but also third-party States by virtue of customary international law because of the

¹² See generally John Burroughs, *Key Issues in Negotiations for a Nuclear Weapons Prohibition Treaty*, 47 *ARMS CONTROL TODAY* (2017), at 6–13, available at <https://www.armscontrol.org/act/2017-06/features/key-issues-negotiations-nuclear-weapons-prohibition-treaty>.

¹³ Treaty on the Prohibition of Nuclear Weapons, *supra* note 1, at Art. 1.

¹⁴ *Id.*

¹⁵ See Chairman Ambassador Whyte’s declaration made during a press conference after the treaty’s adoption: “It is true that there was an important discussion about the inclusion of the issue of threat of use. So, it was finally agreed by the conference that Article 1 should include a prohibition to use or to threaten to use nuclear weapons, in the understanding that the threat of use lies at the heart of deterrence and the current security paradigms that the world started after 1945 when the bomb, the nuclear power, was created,” available at <https://www.youtube.com/watch?v=lwTEX1jixSE>, (time stamp 15:02 onwards).

“fundamentally norm-creating character” of the treaty.¹⁶ Customary law is another source of international law—not less important than treaties—and is defined as “evidence of a general practice accepted as law.”¹⁷ In other words, ratifications by States leading to a (quasi) universal treaty might, as relevant State practice, express a customary rule that also binds States that did not ratify the instrument.

According to the International Court of Justice (ICJ), the “States whose interests are specially affected”¹⁸ must participate in the practice to create such a norm. From our point of view, it would be too easy to argue that the particularly interested States are necessarily the States possessing nuclear weapons. On the contrary, it may be argued that States not possessing nuclear weapons have a particular interest in creating the rule because their populations have been facing the risk and threat of nuclear weapons for decades to date.¹⁹ In addition, it is also interesting to mention that the draft conclusions provisionally adopted by the drafting committee of the International Law Commission (ILA) concerning the identification of customary international law do not refer to the requirement of “States whose interests are specifically affected,”²⁰ contrary to what had initially been proposed by the Special Rapporteur, Michael Wood.²¹

The nuclear-armed States have also not only been completely absent from the negotiations, but certain among them, namely the US, UK and France, even issued a statement on the very day of the adoption of the treaty including the following paragraph:

“France, the United Kingdom and the United States have not taken part in the negotiation of the treaty on the prohibition of nuclear weapons. We do

¹⁶ See North Sea Continental Shelf Cases (*Germany v. Denmark; Germany v. Netherlands*), Judgment, 1969 I.C.J. Rep. 3 (Feb. 20, 1969), § 72; see also Asylum Case (*Colombia v. Peru*), Judgment, 1950 I.C.J. Rep. 6, at 277–78 (Nov. 20, 1950).

¹⁷ Statute of the International Court of Justice, at Art. 38, ¶ 1.

¹⁸ North Sea Continental Shelf Cases, *supra* note 16, at § 74.

¹⁹ See in this sense the dissenting opinion of Judge Shahabuddeen in the 1996 Advisory Opinion of the ICJ on the *Legality of the Threat or Use of Nuclear Weapons*: “Where what is in issue is the lawfulness of the use of a weapon which could annihilate mankind and so destroy all States, the test of which States are specially affected turns not on the ownership of the weapon, but on the consequences of its use. From this point of view, all states are equally affected, for, like the people who inhabit them, they all have an equal right to exist” (ICJ Reports 1996, p. 226, at ¶ 414). See also Maya Brehm, *Whose Security is it Anyway? Towards a Treaty Prohibition of Nuclear Weapons*, EUR. J. INT’L L. BLOG (May 31, 2016), available at <https://www.ejiltalk.org/whose-security-is-it-anyway-towards-a-treaty-prohibition-of-nuclear-weapons/>.

²⁰ See Int’l Law Comm’n Rep. on the Work of its Sixty-Eighth Session, U.N. Doc. A/CN.4/L.872, at Draft Conclusion 8[9] (2016).

²¹ See Int’l Law Comm’n Rep. on the Work of its Sixty-Sixth Session, U.N. Doc. A/CN.4/672, at §§ 54-59 (2014).

not intend to sign, ratify or ever become party to it. Therefore, there will be no change in the legal obligations on our countries with respect to nuclear weapons. For example, we would not accept any claim that this treaty reflects or in any way contributes to the development of customary international law.”²²

It can be suggested that this statement aims at preventing the establishment of a customary rule as so-called “persistent objector.” According to this rule, a State which persistently objects to a rule of customary international law during the formative stages of that rule will not be bound by it when it comes into existence.²³ This rule is not undisputed.²⁴ The ICJ has admitted the concept of persistent objector only rarely, regarding universal customary law in the *Anglo-Norwegian Fisheries case*.²⁵ In this case, the question was whether the Norwegian system of delimiting the baselines of its territorial sea was contrary to international law. The Court concluded that, on the basis of the lack of a sufficient general and uniform practice, there was no rule prohibiting the drawing of straight baselines exceeding 10 miles in length across the mouth of bays, as argued by the United Kingdom. Without explicitly referring to the notion of “persistent objector,” the ICJ went on to hold that even if this 10-mile rule “had acquired the authority of a general rule of international law,” it would “appear to be inapplicable as against Norway inasmuch as she has always opposed any attempt to apply it to the Norwegian coast.”²⁶

In light of this jurisprudence, it is important to stress that a persistent objector cannot hinder a customary norm to be established, but only avoid the application of the norm on its behalf. Moreover, if the rule to be created concerns a peremptory norm of international law (*jus cogens*),²⁷ it is applicable to all States and no State can pretend to be a persistent objector. It is argued here that the use of nuclear weapons can affect such norms and breach fundamental human rights that cannot be derogated from even in situation of emergency, such as the right to life, the prohibition of inhuman and degrading treatment

²² *Joint Press Statement from the Permanent Representatives to the United Nations of the United States, United Kingdom, and France Following the Adoption of a Treaty Banning Nuclear Weapons*, UNITED STATES MISSION TO THE UNITED NATIONS (July 7, 2017), available at <https://usun.state.gov/remarks/7892>.

²³ Olufemi Elias, *Persistent Objector*, Max Planck Encyclopedia of Public International Law, at 1, available at <http://opil.ouplaw.com/view/10.1093/law:epil/9780199231690/law-9780199231690-e1455?prd=EPIL>

²⁴ *Id.*

²⁵ *Anglo-Norwegian Fisheries Case (UK v. Norway)*, Judgment, 1951 I.C.J. Rep. 3, at 131 (Dec. 18, 1951).

²⁶ *Id.*

²⁷ See VCLT, *supra* note 9, at Art. 53, 64.

or the prohibition of genocide.²⁸ The legal effect of the joint statement issued by the USA, UK and France is therefore limited.²⁹

B. NUCLEAR DISARMAMENT

A ban treaty was always considered only a first step towards the end goal of a world free of nuclear weapons.³⁰ Therefore, it is necessary to allow and encourage States possessing nuclear weapons to join the treaty, as reflected in Article 4, entitled “Towards the total elimination of nuclear weapons.”³¹

According to paragraph 1 of Article 4, a State Party that, after 7 July 2017, owned, possessed or controlled nuclear weapons or other nuclear explosive devices but eliminated its nuclear-weapon program and relevant facilities, prior to the treaty’s entry into force, shall cooperate with the international authority in charge of verifying the irreversible elimination of its nuclear-weapon program, with a view of concluding a safeguard agreement with the International Atomic Energy Agency (IAEA).³² According to paragraph 2, a State Party that owns, possesses or controls nuclear weapons when it becomes Party to the treaty shall immediately remove them from operational status and destroy them as soon as possible, but not later than a deadline to be determined by the first meeting of States Parties as described in Article 8, in accordance with a legally binding, time-bound plan for the verified and irreversible elimination of its nuclear-weapon program and related facilities.³³ Such a plan has to be submitted to the States Parties or the mentioned international authority. The State must also conclude a safeguards agreement with the IAEA.³⁴ Finally, paragraph 4 addresses States that have nuclear weapons in their territory that are owned, possessed or controlled by another State.³⁵ Such States must ensure the prompt removal of those weapons.

²⁸ See generally Rietiker, *supra* note 2, at 173–95.

²⁹ In a statement made a few days before the opening for signature of the new treaty (September 20, 2017), the Ministry of Foreign Affairs of the Russian Federation, another nuclear-weapon state (NWS), declared that it would not sign the treaty stressing that it would be contrary to its national interests; see statement (in Russian) in *Kommersant* (Sept. 12, 2017), available at <https://www.kommersant.ru/doc/3409219>.

³⁰ See, e.g., 2016 Open-ended Working Group (OEWG), § 35, available at <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N16/276/39/PDF/N1627639.pdf?OpenElement>.

³¹ Treaty on the Prohibition of Nuclear Weapons, *supra* note 1, at Art. 4.

³² *Id.* at Art. 4(1).

³³ *Id.* at Art. 4(2).

³⁴ *Id.* at Art. 4(3).

³⁵ *Id.* at Art. 4(4).

In light of the statement made jointly by the USA, UK and France, mentioned above, it is not likely that nuclear-weapon states (NWS) will, in the near future, accept such a clause, which they did not agree upon or negotiate. Even though a signatory State is free to ratify treaties as an expression of its sovereignty,³⁶ the situation of nuclear disarmament, characterized by stagnation and unfulfilled promises for decades, is somehow special. Thus, the question of whether this joint statement, considering the total absence of States possessing nuclear weapons in the negotiations, runs counter to their duty to negotiate “in good faith” nuclear disarmament under Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons (NPT), appears almost natural and would deserve being analyzed more in detail. In any event, and insofar as the new treaty can be considered a measure with a view to implementing Article VI NPT, civil society and States Parties to the new treaty that are also Parties to the NPT are expected to make use of the new treaty within the future NPT Review Conferences and their Preparatory Committees.

C. VICTIMS ASSISTANCE AND ENVIRONMENTAL REMEDIATION

The new treaty contains an unexpected clause on victim assistance and environmental remediation. This provision confirms the humanitarian nature and the victim-centered approach of the new treaty and must be read considering the preambular paragraphs.

Under Article 6 §§ 1 and 2, States are obliged to provide to individuals under their jurisdiction who are affected by the use or testing of nuclear weapons age- and gender-sensitive assistance and to provide adequate steps towards environmental remediation.³⁷ Several remarks should be noted about the clause on victim assistance and environmental remediation. First, considering the obvious differences between nuclear weapons and cluster munitions, in particular regarding the nature of the weapons and their impact on enemy combatants and civil populations, it might appear surprising that paragraph 1 on victim assistance has been taken almost unchanged from the Oslo Convention.³⁸ Second, the language of the clause is not limited to future use and testing, but it also covers past use and testing. Third, the primary responsibility for victim assistance and environmental remediation lies with the State on whose territory the use and testing has taken place. This fact is regrettable since many States affected by testing of nuclear weapons might not in a position to fulfill their obligations under Article 6 §§ 1 and 2. The Marshall Islands, for instance, which had been the theater of hundreds of nuclear tests, are hardly

³⁶ See VCLT, *supra* note 9, at Art. 34.

³⁷ Treaty on the Prohibition of Nuclear Weapons, *supra* note 1, at Arts. 6(1), 6(2).

³⁸ Convention on Cluster Munitions (CCM), at Art. 5, *adopted* May 30, 2008, CCM/77.

capable of providing adequate assistance to their victims and guaranteeing environmental remediation.

Nevertheless, paragraph 3 of Article 6 recalls that the obligations of any other State under international law or bilateral agreements shall remain unaffected.³⁹ It tempers somewhat the burden imposed primarily on the territorial States. In other words, and to mention just one example, the new treaty would be without prejudice to the reparation that the USA owes to the Marshall Islands based on the “Compact of Free Association” Agreement between the USA and the Marshall Islands concluded in 1983,⁴⁰ and in particular its subsidiary Section 177 Agreement establishing a \$150 million Nuclear Fund as “a means to address past, present and future consequences of the Nuclear Testing Program.”⁴¹

The burden imposed on the territorial States is furthermore tempered by Article 7 on international cooperation and assistance. Paragraph 6 of Article 7 recalls that a State Party that has used or tested nuclear weapons shall have a responsibility to provide adequate assistance to affected States Parties, for the purpose of victim assistance and environmental remediation “without affecting any other duty or obligation that it may have under international law.”⁴² In other words, a State Party to the new treaty that has used or tested nuclear weapons on the territory of a foreign State remains responsible under international law, in particular regarding the responsibility of States for internationally wrongful acts or for violations of international humanitarian law, human rights law, or environmental law.

D. RELATIONSHIP WITH OTHER AGREEMENTS

Article 18 aims to harmonize the new treaty with existing instruments:

“The implementation of this treaty shall not prejudice obligations undertaken by States Parties with regard to existing international agreements, to which they are party, where those obligations are consistent with the treaty.”⁴³

³⁹ Treaty on the Prohibition of Nuclear Weapons, *supra* note 1, at Art. 6(3).

⁴⁰ The Compact of Free Association, US-Marsh. Is., June 25, 1983, 99 Stat. 1770 (1986). The agreement was amended on April 30, 2003, but Section 177 and its subsidiary agreement remained unchanged.

⁴¹ Agreement between the Government of the United States and the Government of the Marshall Islands for the Implementation of Section 177 of the Compact of Free Association pmb1.

⁴² Treaty on the Prohibition of Nuclear Weapons, *supra* note 1, at Art. 7(6).

⁴³ *Id.* at Art. 18. This clause is inspired the Arms Trade Treaty (ATT), at Art. 26, *adopted* Apr. 2, 2013, A/CONF.217/2013/L.3.

This clause gives priority to the new treaty over existing instruments in case of a conflict. For this reason, and considering the NPT as the cornerstone in the nuclear field, certain delegations were opposed to this clause and thus had difficulties to vote in favor of the treaty altogether.⁴⁴ The solution nevertheless seems compatible with general international law, in particular the principle of “*lex posterior derogat legi anteriori*” enshrined in the VCLT according to which a later treaty in principle prevails over an earlier one.⁴⁵

Potential conflicts might arise, in particular, with the NPT and the Comprehensive Nuclear-Test-Ban Treaty (CTBT).⁴⁶ For example, whereas the Treaty on the Prohibition of Nuclear Weapons broadly prohibits “test[ing]” nuclear weapons⁴⁷ without further defining this expression, the CTBT prohibits “any nuclear weapon test explosion or any other nuclear explosion.”⁴⁸ It may be argued that tests not involving an explosion, such as sub-critical tests and computer-simulated tests, would *a priori* fall under the new treaty but not under the CTBT. It might therefore have been worth defining the most important expressions, as it was the case in earlier treaties.⁴⁹

IV. CONCLUSIONS

The interpretation and implementation of the nuclear ban treaty is likely to lead to some problems due to the lack of definitions and its coexistence with other treaties. It is obvious and justified that a straightforward treaty and a quick success were, considering the decades of stagnation in nuclear disarmament, more important than a treaty with full legal coherence and accuracy.

Our assessment is nevertheless positive: first, the treaty on prohibition of nuclear weapons has a norm-building nature; second, the treaty creates new momentum for disarmament and is likely to put more pressure on NWS and their allies; and third, the very open and participatory process leading to the treaty is also a victory for democracy and equality among States.

After anti-personnel mines and cluster munitions regimes, it is a welcoming fact that nuclear arms control has also taken a human-centered approach, replacing the security

⁴⁴ One example of such a delegation is Switzerland.

⁴⁵ See VCLT, *supra* note 9, at Arts. 30(3), 30(4).

⁴⁶ Comprehensive Nuclear-Test-Ban Treaty (CTBT), *adopted* Sep. 17, 1996, U.N. Doc. A/50/1027.

⁴⁷ Treaty on the Prohibition of Nuclear Weapons, *supra* note 1, at Art. 1(1)(a).

⁴⁸ CTBT, *supra* note 46, at Art. 1(1).

⁴⁹ According to a first assessment by Stuart Maslen, there is no necessary conflict between the new treaty and the NPT (Stuart Maslen, *The Relationship of the 2017 Treaty on the Prohibition of Nuclear Weapons with other Agreements: Ambiguity, Complementarity, or Conflict?* EUR. J. INT’L L. BLOG (2017)).

considerations of certain privileged States, even though the practical relevance and implementation of victim assistance and environmental remediation will largely depend on the good faith of all State Parties.