

Russian Nuclear Weapons Policy and the Right to Life

List of Issues Submission to the United Nations Human
Rights Committee During its Periodic Review of the
Russian Federation

129th SESSION OF THE UNITED NATIONS
HUMAN RIGHTS COMMITTEE,
29 JUNE TO 30 JULY 2020

Submitted 1 June 2020 by:

LAWYERS COMMITTEE ON NUCLEAR POLICY

www.lcnp.org; johnburroughs@lcnp.org
220 E. 49th St., New York, NY 10017 USA
+1 (212) 818-1861

Founded in 1981, LCNP is a nonprofit educational association of lawyers and legal scholars that engages in research and advocacy in support of the global elimination of nuclear weapons and a more just and peaceful world through respect for domestic and international law. LCNP serves as the United Nations office of the International Association of Lawyers Against Nuclear Arms.

WESTERN STATES LEGAL FOUNDATION

www.wslfweb.org
655 13th Street, Suite 201, Oakland, CA 94612 USA

Founded in 1982, WSLF is a nonprofit organization that seeks to abolish nuclear weapons as an essential step in making possible a more secure, just, and environmentally sustainable world. Grounded in commitments to nonviolence and international law, WSLF provides independent information and analysis to a wide range of audiences. WSLF is an affiliate of the International Association of Lawyers Against Nuclear Arms.

1. In paragraph 66 of General Comment No. 36¹ on the right to life set out in Article 6 of the International Covenant on Civil and Political Rights (ICCPR), the United Nations Human Rights Committee stated (endnotes omitted):

The threat or use of weapons of mass destruction, in particular nuclear weapons, which are indiscriminate in effect and are of a nature to cause destruction of human life on a catastrophic scale, is incompatible with respect for the right to life and may amount to a crime under international law. States parties must take all necessary measures to stop the proliferation of weapons of mass destruction, including measures to prevent their acquisition by non-state actors, to refrain from developing, producing, testing, acquiring, stockpiling, selling, transferring and using them, to destroy existing stockpiles, and to take adequate measures of protection against accidental use, all in accordance with their international obligations. They must also respect their international obligations to pursue in good faith negotiations in order to achieve the aim of nuclear disarmament under strict and effective international control and to afford adequate reparation to victims whose right to life has been or is being adversely affected by the testing or use of weapons of mass destruction, in accordance with principles of international responsibility.

2. Under the ICCPR, Article 4(2), the right to life is non-derogable, to be observed in all circumstances, even in the event of a “public emergency which threatens the life of the nation.” The Russian Federation is a state party to the ICCPR and as a result is obligated to implement its provisions in good faith according to Article 26 of the 1969 Vienna Convention on the Law of Treaties (*pacta sunt servanda*). Even if the General Comment is not legally binding as such, it is considered the Committee’s authentic interpretation of Article 6 and the relevant practice thereto.

A. Threat or Use of Nuclear Weapons

3. Russian policy and doctrine regarding threat or use of nuclear weapons is not in conformity with the ICCPR right to life as interpreted by the Committee, in particular its finding that threat or use of nuclear weapons is incompatible with respect for the right to life. In this the Russian Federation is not alone; the same can be said of all other nuclear-armed states. The civil society groups making the present submission have made similar comments regarding US policy and doctrine in a submission to the current United Nations Human Rights Council Universal Periodic Review of the United States of America.²

4. The official military strategy of the Russian Federation, published in December 2014, states that the Russian Federation “shall reserve for itself the right to employ nuclear weapons in response to the use against it and/or its allies of nuclear and other kinds of weapons of mass destruction, as well as in the case of aggression against the Russian Federation with use of conventional weapons when the state’s very existence has been threatened.”³ Analysts have commented that statements made by Russian military officials and articles in Russian military

journals envisage use of nuclear arms in circumstances going beyond those identified in the military strategy, for example first use of nuclear arms in a regional conflict.⁴

5. The truth is that nuclear weapons cannot be used in compliance with the law of armed conflict, including international humanitarian law, nor with the right to life, above all because their massive indiscriminate effects make it impossible to distinguish between military targets and civilian populations and infrastructure. That includes a circumstance of response to a prior nuclear attack. That truth was recognized by the Committee in its General Comment. It was also recognized by the Treaty on the Prohibition of Nuclear Weapons adopted at the United Nations by 122 states on 7 July 2017 (not yet entered into force).⁵ The treaty's preamble reaffirms the need for all states to comply with applicable international law, including international humanitarian law and international human rights law. It recites rules and principles of international humanitarian law, and states: "Considering that any use of nuclear weapons would be contrary to the rules of international law applicable in armed conflict, in particular the principles and rules of international humanitarian law." The preamble further reaffirms that "any use of nuclear weapons would also be abhorrent to the principles of humanity and the dictates of public conscience" – factors with legal as well as moral value.

6. The deployment of nuclear weapons coupled with declared policies that the weapons may be used in certain circumstances impedes the full exercise of the right of life. As Australian Foreign Minister Gareth Evans stated in his argument to the International Court of Justice in the 1995 nuclear weapons Advisory Opinion proceedings: "The threat of global annihilation engendered by the existence of such weapons, and the fear that this has engendered amongst the entire post-war generation, is itself an evil, as much as nuclear war itself. If not always at the forefront of our everyday thinking, the shadow of the mushroom cloud remains in all our minds."⁶ Referring to the threat to the right to life posed by the designing, testing, manufacture, possession and deployment of nuclear weapons, the Committee in a 1984 General Comment observed that "the very existence and gravity of this threat generates a climate of suspicion and fear between States, which is in itself antagonistic to the promotion of universal respect for and observance of human rights and fundamental freedoms...."⁷ Unfortunately that observation is as true today as it was in 1984. Moreover, the Russian Federation has in recent years worsened the climate of suspicion and fear with its pronouncements and disclosures about new nuclear weapons delivery systems, discussed below.

B. The Obligation to Negotiate to Achieve Nuclear Disarmament

7. The General Comment, para. 66, quoted above, states that states parties to the ICPPR must respect their international obligation "to pursue in good faith negotiations in order to achieve the aim of nuclear disarmament under strict and effective international control." An endnote to the comment cites "Human Rights Committee, General Comment No. 14, para. 7; Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion of 8 July 1996 of the International Court of Justice."⁸

8. Russian policy is not in conformity with that obligation. The Russian Federation opposes commencement of global negotiations on the elimination of nuclear weapons. Exemplifying a

pattern over many years, in the United Nations General Assembly on 12 December 2019 the Russian Federation voted against resolutions calling for commencement of such negotiations, including *Follow-up to the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons* (A/RES/74/59) and *Follow-up to the 2013 high-level meeting of the General Assembly on nuclear disarmament* (A/RES/74/54). The first resolution “[c]alls once again upon all States to immediately engage in multilateral negotiations leading to nuclear disarmament in all its aspects under strict and effective international control, including under the Treaty on the Prohibition of Nuclear Weapons”. The second resolution “[c]alls for the urgent commencement of negotiations in the Conference on Disarmament on effective nuclear disarmament measures to achieve the total elimination of nuclear weapons, including, in particular, on a comprehensive convention on nuclear weapons.” The Russian Federation additionally voted against resolutions expressing moral and ethical as well as legal imperatives for non-use of nuclear weapons and for nuclear disarmament, *Humanitarian consequences of nuclear weapons* (A/RES/74/42) and *Ethical imperatives for a nuclear-weapon-free world* (A/RES/74/47). In 2017, the Russian Federation along with all other nuclear-armed states did not participate in the negotiation of the Treaty on the Prohibition of Nuclear Weapons. On the positive side, the Russian Federation signed the Comprehensive Nuclear-Test-Ban Treaty in 1996 and ratified it in 2000; the treaty has not yet entered into force.

9. Concerning US-Russian bilateral arms control measures, the Russian Federation states that it is ready to extend New START for a five-year period starting in 2021 pursuant to the treaty’s terms.⁹ Beyond that, Foreign Minister Sergei Lavrov stated in 2019:

[P]rogress in nuclear arms reductions can no longer be sustained in the bilateral Russia-U.S. format. It is time that we seriously reflect on how to launch a multilateral process on nuclear arms control based on the principle of common and indivisible security. There is no point in approaching nuclear disarmament in isolation from a combination of factors that negatively impact strategic stability.¹⁰

The use of the term “multilateral” here refers to multiple nuclear-armed states.¹¹ Factors affecting strategic stability are non-nuclear military capabilities including missile defenses and precision-strike conventionally-armed missiles.¹²

10. Russian pessimism about the possibility of bilateral negotiation of deep reductions in US and Russian nuclear arsenals is not new.¹³ Following the conclusion in 2010 of negotiations on New START, which yielded modest reductions in deployed long-range, “strategic” nuclear weapons, the Russian Federation refused engagement on the ambitious follow-on program of bilateral nuclear arms reductions—to include non-strategic nuclear arms and, for the first time, verified dismantlement of warheads—proposed by the United States.¹⁴ Moreover, on 1 March 2018 President Vladimir Putin revealed¹⁵ that the Russian Federation has been developing new, even exotic, nuclear weapons delivery systems, among them gliding, maneuverable hypersonic delivery vehicles with a non-ballistic flight path; nuclear-powered cruise missiles that are claimed to have unlimited range; and nuclear-powered “unmanned underwater vehicles” carrying “massive nuclear ordnance” and suitable for attacking “coastal fortifications and infrastructure”.¹⁶

11. While the Russian Federation has genuine concerns about how nuclear arms control and disarmament will interact with other factors affecting its security, it has not displayed, in either UN or bilateral contexts, a determination to fulfill the obligation to negotiate and achieve the global elimination of nuclear weapons.

C. The Least Diversion of Resources

12. In para. 26 of General Comment 36, the Committee observed: “The duty to protect life also implies that States parties should take appropriate measures to address the general conditions in society that may give rise to direct threats to life or prevent individuals from enjoying their right to life with dignity.” Among those general conditions are “degradation of the environment,” “the prevalence of life-threatening diseases, such as AIDS, tuberculosis and malaria,” and “widespread hunger and malnutrition and extreme poverty and homelessness.”

13. Action to alleviate such conditions requires resources, as the present Covid-19 pandemic has demonstrated all too well. UN Secretary-General António Guterres has called for a global ceasefire so that humanity can defeat its common enemy, the virus.¹⁷ Similarly, the vast human and financial investment in nuclear arms can and should be devoted to public health, reducing inequality and poverty, protecting the climate and the environment, and other beneficial ends. A recent report of the International Campaign to Abolish Nuclear Weapons estimates that in 2019, the world’s nine nuclear-armed countries spent \$72.9 billion USD on nuclear weapons; Russia’s share was \$8.5 billion.¹⁸

14. As the Nuclear Non-Proliferation Treaty recalls in its preamble, under the United Nations Charter the “establishment and maintenance of international peace and security are to be promoted with the least diversion for armaments of the world’s human and economic resources.” Ending the diversion of resources to nuclear arms would greatly promote the protection of life in accordance with Article 6 of the ICCPR.

D. Suggested Questions and Recommendations

15. The civil society organizations making this submission suggest that the Committee pose the following questions to the Russian Federation as part of the list of issues:

- What steps will be taken to bring policy and doctrine regarding threat or use of nuclear weapons into conformity with the right to life?
- What steps will be taken to fulfill the international obligation to pursue in good faith negotiations in order to achieve the aim of nuclear disarmament under strict and effective international control?
- What steps have been and will be taken to afford adequate reparation to victims whose right to life has been or is being adversely affected by the testing or use of weapons of mass destruction?

16. The civil society organizations making this submission suggest that after the review the Committee adopt the following recommendations:

- The Russian Federation should withdraw its current policy and doctrine regarding threat or use of nuclear weapons; further, it should adopt a policy and doctrine of non-threat and non-use of nuclear weapons.
- The Russian Federation should support the immediate commencement of negotiations to achieve nuclear disarmament under strict and effective international control.

¹ CCPR/C/GC/36, 3 September 2019. For commentary, see Dr. Daniel Rietiker, “The Right to Life and Nuclear Weapons,” Side-Event, NPT PrepCom, United Nations, New York City, 1 May 2019, <http://lcn.org/RietikerMay12019.pdf>; Professor Roger Clark, “The Human Rights Committee, the Right to Life and Nuclear Weapons: The Committee’s General Comment No. 36 on Article 6 of the Covenant on Civil and Political Rights,” Public Event, Baha’i UN Office, New York City, 10 December 2018, <http://lcn.org/RogerClarkRighttoLifeNuclearWeapons.pdf>.

² “United States of America: US Nuclear Weapons Policy Violates the Right to Life,” Lawyers Committee on Nuclear Policy, Western States Legal Foundation, and Swiss Lawyers for Nuclear Disarmament, Submission for the UN Human Rights Council Universal Periodic Review, 36th Session of the UPR Working Group, April – May 2020, submitted 3 October 2019, www.lcn.org/USUPRLCNP.pdf.

³ *Military Doctrine of the Russian Federation, Approved by Russian Federation President V. Putin*, published by the Russian Presidential Website on December 26, 2014, Section 27, translation via BBC Monitoring, quoted in Hans M. Kristensen and Matt Korda, “Russian nuclear forces, 2020,” Nuclear Notebook, Bulletin of the Atomic Scientists, 2020, vol. 76, no. 2, pp. 102-117, at pp. 105, 116. Access at <https://thebulletin.org/2020/03/russian-nuclear-forces-2020/>.

⁴ E.g., Kristensen and Korda, *supra* n. 3, at p. 105; Anya Loukianova Fink and Olga Oliker, “Russia’s Nuclear Weapons in a Multipolar World,” in Robert Legvold and Christopher F. Chyba, eds., *Meeting the Challenges of a New Nuclear Age*, Daedalus, Journal of the American Academy of Arts & Sciences (Spring 2020), pp. 37-55, at pp. 43-45. Kristensen and Korda write: “Russian officials have made many statements about nuclear weapons that appear to go beyond the published doctrine, threatening to potentially use them in situations that do not meet the conditions described. For example, officials explicitly threatened to use nuclear weapons against ballistic missile defense facilities, and in regional scenarios that do not threaten Russia’s survival or involve attacks with weapons of mass destruction [citation omitted]. ¶ Moreover, the fact that Russian military planners are pursuing a broad range of existing and new versions of nuclear weapons suggests that the real doctrine goes beyond basic deterrence and toward regional war-fighting strategies, or even weapons aimed at causing terror.”

⁵ A/CONF.229/2017/8, 7 July 2017.

⁶ Verbatim Record, Public Sitting, *Legality of the Use by a State of Nuclear Weapons in Armed Conflict and Legality of the Threat or Use of Nuclear Weapons*, 30 October 1995, p. 42.

⁷ General Comment no. 14, Right to Life, Nuclear Weapons and the Right to Life, 9 November 1984, para. 5.

⁸ In the cited Advisory Opinion, in a unanimous conclusion the International Court of Justice held: “There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.” Para. 105(2)F.

⁹ Statement by H.E. Mr. Sergey Lavrov, Minister of Foreign Affairs of the Russian Federation, at the Conference on Disarmament, Geneva, February 25, 2020, https://www.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/4058832.

¹⁰ Statement by H.E. Mr. Sergey Lavrov, Minister of Foreign Affairs of the Russian Federation, at the Plenary Session of the Conference on Disarmament, Geneva, March 20, 2019, unofficial translation, <https://russiaeu.ru/en/news/statement-sergey-lavrov-conference-disarmament-geneva>.

¹¹ Thus in a recent interview, Russian Ambassador to the United States Anatoly Antonov said: “We have said more than once that, with the signing of New START, any possibilities for further reduction and limitation of strategic offensive arms on a bilateral basis are virtually exhausted and that further progress in this area will require involvement of other states with military nuclear capabilities. However, we do not understand why some of our U.S. colleagues talk exclusively about China. Let’s also involve NATO members possessing nuclear weapons, Great Britain and France.” Also to be noted is that Ambassador Antonov nonetheless did not exclude further US-Russian negotiations, saying that “[t]here is no doubt that the Russian-U.S. bilateral arms control agenda remains relevant.” “Russia’s View on Nuclear Arms Control: An Interview With Ambassador Anatoly Antonov,” Arms Control Today (April 2020), <https://www.armscontrol.org/act/2020-04/interviews/russias-view-nuclear-arms-control-interview-ambassador-anatoly-antonov>.

¹² See, e.g., “Russia’s View on Nuclear Arms Control,” *supra* n. 11; Nuclear disarmament: Working paper submitted by the Russian Federation, Preparatory Committee for the 2020 Review Conference of the Parties to the Treaty on the Non-Proliferation of Nuclear Weapons, 15 March 2019, NPT/CONF.2020/PC.III/WP.6, <https://reachingcriticalwill.org/images/documents/Disarmament-fora/npt/prepcom19/documents/WP6.pdf>.

¹³ Andrew Lichterman and John Burroughs, “U.S.-Russia Nuclear Arms Racing: Still Crazy After All These Years,” Truthdig, March 16, 2018, <https://www.truthdig.com/articles/u-s-russia-nuclear-arms-racing-still-crazy-after-all-these-years/>.

¹⁴ *Id.*

¹⁵ Presidential Address to the Federal Assembly, <http://en.kremlin.ru/events/president/news/56957>. See also Lichterman and Burroughs, *supra* n. 13; Kristensen and Korda, *supra* n. 3.

¹⁶ Regarding the last system, essentially a nuclear-powered torpedo, Kristensen and Korda, *supra* n. 3 at p. 105, portray it as a weapon aimed at causing terror, citing a Russian government document describing the system as intended to create “areas of wide radioactive contamination that would be unsuitable for military, economic or other activity for long periods of time.” See also Lichterman and Burroughs, *supra* n. 13 (use of the system against a coastal city would be a crime against humanity).

¹⁷ Secretary-General’s Appeal for Global Ceasefire, 23 March 2020, <https://www.un.org/sg/en/content/sg/statement/2020-03-23/secretary-generals-appeal-for-global-ceasefire>.

¹⁸ International Campaign to Abolish Nuclear Weapons, *Enough is Enough: Global Nuclear Weapons Spending* (May 2020), primary author: Alicia Sanders-Zakre, www.icanw.org/report_73_billion_nuclear_weapons_spending_2020.