



Human Rights for Nuclear Disarmament

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For more details on the topic

- Daniel Rietiker, *Humanization of Arms Control – Paving the Way for a World Free of Nuclear Weapons*, Routledge 2017/2018, pp. 173-251;
- Daniel Rietiker, *Indigenous Peoples' Human Right to Water in the Nuclear Age: An Assessment of the Protection under International Law*, in: J.L. Black-Branch and D. Fleck (eds.), *Nuclear Non-Proliferation in International Law*, Vol VI, Asser Press/Springer, 2021, pp. 155-177.

I. Advantages of human rights law

- Application in all circumstances (ICJ 1996 Advisory Opinion, § 25).
- Formulation in terms of individual rights
- Negative and positive obligations
- Institutional dimension
- Particular nature of certain rights (*jus cogens, erga omnes*), and

I. Advantages of human rights law (contin.)

- Focus on particularly vulnerable groups – see also the **Preamble of the TPNW**:
 - *The States Parties to this Treaty (...)*
 - *Cognizant* that the catastrophic consequences of nuclear weapons cannot be adequately addressed, transcend national borders, pose grave implications for human survival, the environment, socioeconomic development, the global economy, food security and the health of current and future generations, and have a **disproportionate impact on women and girls**, including as a result of ionizing radiation (...)

II. The right to life

- For instance, Article 6 ICCPR
- General Comment No. 36 [30 Oct. 2018]:
 - “66. 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. (...)**

II. The right to life (contin.)

- Recent submissions on France by LCNP, SAFNA/SLND, Western States Legal Foundation, JALANA and IALANA (5 May 2021); questions raised:
 - 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? ./.

II. The right to life (contin.)

- What steps will be taken **to refrain from vertical proliferation**—the development and production of nuclear weapons—and to destroy the existing stockpile, in accordance with the right to life?
- What is France's assessment of the issues raised by the report, *Moruroa Files*, concerning the adequacy of France's scheme for **compensation of victims of nuclear explosive testing**?
- What steps will be taken to ensure that adequate **reparation is afforded to victims of nuclear explosive testing**?

III. Economic, social and cultural rights

- The impact of a limited (regional) nuclear war on global development, health and environment.
- **3 types of duties** under economic, social and cultural rights:
 - Duty to « **respect** » human rights (negative duty not to interfere)
 - Duty to « **protect** » human rights (the duty to prevent a violation to occur)
 - Duty to **fulfil** (or facilitate or to provide)

A. Right to the highest standard of health

- For example, Article 12 § 1 ICESCR:

« The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest standard of physical and mental health ».

A. Right to the highest standard of health (contin.)

- General Comment no. 14 on Article 12 ICESCR (right to health) [11 August 2000]:

« States should...refrain from unlawfully polluting air, water and soil, e.g...from **using or testing nuclear**, biological or chemical weapons, if such testing results in the release of substances harmful to human health... »

B. Right to an adequate standard of living, including the right to food and water

- **For example, Article 11 § 1 ICESCR:**

« The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right »

B. Right to an adequate standard of living, including the right to food and water (contin.)

■ The right to food:

- General Comment no. 12 on the right to adequate food [12 May 1999]:

« The human right to adequate food is of crucial importance for the enjoyment of all rights » (par.1)

B. Right to an adequate standard of living, including the right to food and water (contin.)

■ The right to water:

- General Comment no. 15 (Right to water) [20 Jan. 2003]:

« The **continuing contamination**, depletion and unequal distribution of water is exacerbating existing poverty. » (par. 1)

« ...States Parties should ensure that natural water resources are **protected from contamination by harmful substances** ... » (par. 8).

« The water required for each personal or domestic use must be safe, therefore free from micro-organism, chemical substances and **radiological hazards** that constitute a threat to a person's health. » (par. 12 b).

B. Right to an adequate standard of living, including the right to food and water (contin.)

- General Comment no. 15 [Right to water] (contin.):

« The obligation to *respect* requires that States parties refrain from interfering directly or indirectly with the enjoyment of the right to water. The obligation includes, inter alia, ... unlawfully diminishing or polluting water, for example through ... **use and testing of nuclear weapons** » (par. 21).

C. Focus on particularly vulnerable groups: the example of children

■ Childrens' right to life, health and development:

- Article 12 § 2 ICESCR:

« The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

a) the provision for the reduction of the still-birth rate and of infant mortality and for the healthy development of the child »

C. Focus on particularly vulnerable groups: the example of children (contin.)

- **Article 6 CRC (right to life):**

« 1. States Parties recognize that every child has the inherent right to life.

2. States Parties shall ensure to the maximum extent possible the survival and development of the child. »

- **Article 24 § 2 c) CRC (right to health):**

« States Parties shall pursue full implementation of [the right to health] and, in particular, shall take appropriate measures: (...)

c) to combat disease and malnutrition ... through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution. »

C. Focus on particularly vulnerable groups: the example of children (contin.)

- **Article 3 CRC:**

- « Best interest of the child » must be a « primary consideration » in the interpretation and application of the rights enshrined in the CRC.

Final remarks

- More and more evidence for the **increasing relevance of human rights law** for the assessment of the legality of and the fight against nuclear weapons (TPNW, GC 36).
- The **advantages of human rights law** are evident, in particular its **institutional aspect**.
- The **right to life** is the most fundamental human right. It would be massively breached in case of use of nuclear weapons.
- Paragraph 66 of **General Comment no. 36** is a remarkable statement. Together with the TPNW, it puts the States relying on nuclear weapons even more under pressure.
- Such statements and other human rights treaties **have to be used by civil society** in the fight against nuclear weapons. ./.

Final remarks (contin.)

- **Economic, social and cultural rights** have so far been neglected (also in our circles). Even if they are formulated in more vague terms and indirect duties, they might constitute new avenues for the cause of nuclear disarmament.
- Economic, social and cultural rights would be affected worldwide even by a limited (regional) nuclear war.
- It is appropriate to focus on **particularly vulnerable groups** and try out new avenues that exist for their protection (CRC, CEDAW, etc.)