

The Right to Life, the NPT, and Nuclear Arms Racing

Lawyers Committee on Nuclear Policy; Nuclear Age Peace Foundation; Western States Legal Foundation; Swiss Lawyers for Nuclear Disarmament; Japan Association of Lawyers Against Nuclear Arms

Civil Society Presentation to NPT PrepCom, United Nations, New York
1 May 2019

Delivered by Dr. John Burroughs
Executive Director, Lawyers Committee on Nuclear Policy

I will begin on a positive note. On 30 October 2018, the United Nations Human Rights Committee adopted a General Comment on the right to life set out in the International Covenant on Civil and Political Rights.¹ Paragraph 66 of the comment begins: “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.” It also declares that states parties must respect their obligation “to pursue in good faith negotiations in order to achieve the aim of nuclear disarmament under strict and effective international control.”²

The Human Rights Committee is a body established by the International Covenant on Civil and Political Rights. It is composed of independent experts, including several from states possessing nuclear weapons. The Covenant is a major treaty with broad participation. All nuclear-armed states except China are states parties, and China has signed. Its Article 6 guarantees the right to life, the most fundamental human right, from which no derogation is possible, not even in time of war or public emergency.

Together with the adoption in 2017 of the Treaty on the Prohibition of Nuclear Weapons, the comment of the Human Rights Committee represents real progress in the decades-long process of articulation of norms against nuclear arms:

- The comment finds that nuclear threat as well as use is contrary to the right to life, cutting against menacing language like references to infliction of “fire and fury”.
- It reflects the unanimous 1996 holding of the International Court of Justice that there is an obligation to pursue and conclude negotiations on nuclear disarmament.
- It is human-centered and victim-centered,³ not state-centered, in line with the opening of the UN Charter, “We the *peoples* of the United Nations”.
- And like the TPNW the human rights approach carries the potential for extending the demand for abolition of nuclear arms beyond the sphere of so-called “national security” and the narrow discourse of non-proliferation. It can link up with demands for progress on protection of the environment and on sustainable development.

Disturbingly, even ominously, trends are decidedly in the wrong direction when it comes to the policies and practices of nuclear-armed states.

Let me remind you that those trends run contrary to achieving a key NPT objective, cessation of the nuclear arms race *at an early date*. Near-term cessation of the arms race was supposed to lay the groundwork for the elimination of nuclear arms. At the time of negotiation of the NPT, the principal means of cessation were understood as a ban on nuclear testing, a ban on production of fissile materials for nuclear weapons, and agreements on strategic nuclear arms limitation, capping US and Soviet arsenals.⁴

Today, five decades later, a test ban treaty has been negotiated but not brought into force. A fissile materials treaty has yet to be negotiated. And for the first time in three decades, increases in US and Russian strategic arsenals are possible in coming years. The future of New START is uncertain, as is the negotiation of any replacement treaty. Moreover, both countries have massive programs to maintain and upgrade their nuclear arsenals and supporting infrastructures for the foreseeable future.

It must not be overlooked that an important dimension of cessation of the nuclear arms race is ending qualitative improvement of nuclear arms. The test ban treaty, invoked in the NPT preamble, was once understood as the key means for accomplishing this. However, ending testing or suspending it, as by the current moratorium, is not a magic bullet. For one thing, it has little or no bearing on enhancements and innovations as to delivery systems.

But the prominence accorded a test ban treaty in NPT deliberations is not the only signal of the importance of halting qualitative improvement of nuclear arms. The seminal 1978 General Assembly Special Session on Disarmament observed that nuclear disarmament will require urgent negotiation of agreements on an agenda whose first point is “[c]essation of the qualitative improvement and development of nuclear-weapon systems.”⁵ In its Final Document, the 1985 NPT Review Conference urged the commencement of negotiations on that agenda in the Conference on Disarmament.⁶

Most recently, the 2000 and 2010 Review Conferences adopted a commitment to a diminishing role of nuclear weapons in security policies. That commitment implies the non-acquisition of capabilities that support an expanding role.

Yet such acquisition is now in various stages. To name some of the best known systems:

- Russia has announced plans to acquire exotic systems including nuclear-powered underwater drones carrying massive nuclear bombs, nuclear-powered cruise missiles, and multiple warhead missiles with virtually unlimited range, capable of taking unconventional flight paths. The announcement was reminiscent of the early days of the Cold War. Implementation of the plans would be a flagrant escalation of nuclear arms racing.

- Near-term US deployment of a five-kiloton warhead on a submarine-launched missile is characterized as enabling a limited response to a limited Russian first use. However, any acquisition of a capability perceived as more usable amounts to a lowering of the nuclear threshold. And use of a capability does not have to be limited to scenarios invoked to justify its deployment. Also to be noted: the use of the term “low-yield” to describe this weapon obscures the fact that explosion of the warhead would have extremely destructive effects. If used in an urban area, it could kill many tens of thousands of people, not including fallout effects.⁷

There is more in the US and Russian pipelines, such as a stealthier, longer-range air-launched cruise missile the US is now developing to replace the current one.

All the systems I have mentioned and more are said to be required by the logic of nuclear deterrence: be ready to fight so you don’t have to fight. It’s a very risky logic on which to base the survival of nations, and even the future of civilization. And it’s not only risky – it’s morally repugnant and legally indefensible. It is well past time instead to fully accept the logic of the obligations of disarmament rooted in the value of human life.

¹ United Nations Human Rights Committee, General comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life, 30 October 2018, CCPR/C/GC/36, available at https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/1_Global/CCPR_C_GC_36_8785_E.pdf.

² In its entirety, para. 66 reads (footnote references 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.

³ See generally Daniel Rietiker, *Humanization of Arms Control: Paving the Way for a World Free of Nuclear Weapons*, Routledge 2017.

⁴ For history and analysis of the NPT disarmament obligation, see Memorial of Marshall Islands, in *Obligations Concerning Negotiations Relating to Cessation of the Nuclear Arms Race and to Nuclear Disarmament (Marshall Islands v. United Kingdom)*, International Court of Justice, 16 March 2015. The memorial and other case proceedings can be accessed at <https://www.icj-cij.org>.

⁵ Final Document of the Tenth Special Session of the General Assembly, adopted by A/RES/S-10/2, 30 June 1978, without a vote, para. 50. That paragraph provides in full:

50. The achievement of nuclear disarmament will require urgent negotiation of agreements at appropriate stages and with adequate measures of verification satisfactory to the States concerned for:

(a) Cessation of the qualitative improvement and development of nuclear-weapon systems;

(b) Cessation of the production of all types of nuclear weapons and their means of delivery, and of the production of fissionable material for weapons purposes;

(c) A comprehensive, phased programme with agreed time-frames, whenever feasible, for progressive and balanced reduction of stockpiles of nuclear weapons and their means of delivery, leading to their ultimate and complete elimination at the earliest possible time.

Consideration can be given in the course of the negotiations to mutual and agreed limitation or prohibition, without prejudice to the security of any State, of any types of nuclear armaments.

⁶ NPT/CONF.III/64/1, 25 September 1985, Annex I, pp. 11, 13. At p. 11, the 1985 NPT Review Conference sets out para. 50 of the Final Document of 1978 General Assembly Special Session; at p. 13, the Conference “urges the Conference on Disarmament, as appropriate, to proceed to early multilateral negotiations on nuclear disarmament in pursuance of paragraph 50 of the Final Document of the First Special Session of the General Assembly of the United Nations devoted to disarmament.”

⁷ See Testimony of Dr. Bruce G. Blair, House Armed Services Committee Hearing on Outside Perspectives on Nuclear Deterrence Policy and Posture, March 6, 2019, p.2, <https://docs.house.gov/meetings/AS/AS00/20190306/109017/HHRG-116-AS00-Wstate-BlairB-20190306.pdf>. Blair states that “a 5-kiloton weapon like the one being planned would kill 80 thousand people and injure 120 thousand if exploded above the White House right now.” A footnote states: “Estimates based off a burst height of 400 m. Alex Wellerstein, ‘Nukemap,’ accessed February 25, 2019, https://nuclearsecrecy.com/nukemap/?&kt=5&lat=38.89742&lng=-77.0365211&hob_opt=2&hob_psi=5&hob_ft=1312&casualties=1&psi=20,5,1&zm=14.”