

Workshop on using the law to advance the
prohibition and elimination of nuclear weapons

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The International Covenant on Civil and Political Rights is a major human rights treaty with 172 states parties, including every nuclear-armed state except China, and China is a signatory. The Covenant is sometimes grouped with the International Covenant on Economic and Social Rights and the Universal Declaration of Human Rights as the trilogy of major human rights instruments forming the international bill of rights. That was a phrase favored by my mentor, professor and judge Frank Newman.

Article 6(1) of the Covenant on Civil and Political Rights provides: “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.”

The Covenant establishes the United Nations Human Rights Committee, which is one of more than a dozen bodies making up the complex human rights machinery.

In October 2018, the Human Rights Committee adopted [General Comment 36](#) on the right to life set out in Article 6 of the Covenant. The comment has an excellent paragraph, para. 66, on nuclear and other weapons of mass destruction.

Its first sentence states: “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.”

This is a powerful and unambiguous statement. It carries forward the finding of the International Court of Justice that use of nuclear arms is “scarcely reconcilable” with international humanitarian law forbidding the infliction of indiscriminate harm and unnecessary suffering. That finding is contained in the body of the Court’s opinion, but the conclusions of the Court were complex and ambiguous. The Human Rights Committee’s comment suffers from no such ambiguity.

The Human Rights Committee’s statement also parallels the Treaty on the Prohibition of Nuclear Weapons, adopted a year earlier. The TPNW in its preamble refers to human rights law as well as international humanitarian law (IHL). And it says that the states adopting the treaty base themselves on IHL and consider that any use of nuclear arms violate IHL. The preamble also

reaffirms that “any use of nuclear weapons would also be abhorrent to the principles of humanity and the dictates of public conscience.” Those are factors with legal value in international law.

The Human Rights Committee comment is completely consistent with and reinforces the TPNW.

Other notable elements of the Comment include obligations not to acquire, develop, or test nuclear arms and to destroy existing stockpiles. Further:

*States must 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.

This is based on a unanimous conclusion of the International Court of Justice.

*States must 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

This parallels the TPNW provision on victim assistance.

Significance of the General Comment

*Its obligations apply to all states parties. That includes states which are not party to the Non-Proliferation Treaty, India, Israel, Pakistan, North Korea.

* The human rights lens is a simple and powerful way to communicate the unacceptability of nuclear weapons to the public.

* It is a basis for connecting with the large and active human rights groups.

* It is a basis for connecting issues. For example, in the same General Comment, the Committee states an obligation to protect the environment, including the climate, to protect enjoyment of the right to life

LCNP activities

Lawyers Committee on Nuclear Policy and Western States Legal Foundation made a [submission](#) in the process for review of Russia’s report in the Human Rights Committee. The two groups along with Swiss Lawyers for Nuclear Disarmament also made a [submission](#) in the process for review of the United States in the Human Rights Council.

We are also preparing a submission for review of Israel’s report in the Human Rights Committee, which will take place sometime next year. This involves some interesting issues, because Israel does not officially acknowledge having a nuclear arsenal and has no publicly stated doctrine regarding use of nuclear weapons.

I have little expectation that the submissions will immediately trigger assessment of states’ records on nuclear weapons in human rights bodies. This was recently borne out when the Committee did not include nuclear weapons issues in questions it posed to Russia about its report. Nonetheless I believe our submissions will get noticed, by the human rights bodies, responsible officials in the states concerned, UN entities, and other NGOs.