



THREAT OR USE OF NUCLEAR WEAPONS: VIOLATION OF THE RIGHT TO LIFE

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According to the UN Human Rights Committee's new General Comment No. 36 (2018) on Article 6 of the International Covenant on Civil and Political Rights (ICCPR) on the right to life, adopted on October 30, 2018, the threat or use of nuclear weapons is "incompatible with respect for the right to life" and "may amount to a crime under international law."¹ Paragraph 3 of this General Comment emphasizes that the Right to Life as mentioned in Article 6 of the ICCPR is an entitlement of individuals to be free from acts and omissions that are intended or may be expected to cause their unnatural or premature death, as well as to enjoy a life with dignity". Apart from that, this fundamental human right is also referred to as a "supreme right from which no derogation is permitted even in situations of armed conflict and other public emergencies which threatens the life of the nation." This right is "the prerequisite for the enjoyment of all other human rights".² Article 6 (para1) of the ICCPR states that 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.³

Right to Life

The right to life is often described as "a fundamental human right; a right without which all other rights would be devoid of meaning".⁴ It should be respected under human rights treaties and meaning, as the ICJ had also observed in 1996. This right as recognized by the ICCPR is both a treaty and a customary norm, and at its core may even amount to a pre-emptory norm of international law.

The right to life also has significant procedural elements associated with it. The European Court of Human Rights (ECtHR) has held that this right includes a duty on the State to investigate alleged violations of the right to life: *The obligation to protect the right to life under [Article 2], read in conjunction with the State's general duty under Article 1 of the [European Convention on Human Rights] to 'secure to everyone within their jurisdiction the rights and*

freedoms defined in [the] Convention', requires by implication that there should be some form of effective official investigation when individuals have been killed as a result of the use of force by, inter alia, agents of the State and all States have the fundamental duty to take appropriate steps to protect the right to life and to investigate arbitrary or unlawful killings and punish offenders⁵. The governments of States under this law are required to enact laws that criminalize unlawful killings and that the laws must be supported by law enforcement machinery for the prevention, investigation and punishment of breaches of the criminal law.

The Right to Life is also mentioned in the ICJ 1996 Nuclear Weapons Advisory Opinion, where it was observed that the protection of the ICCPR does not cease in times of war, except by operation of Article 4 of the Covenant whereby certain provisions may be derogated from in a time of national emergency. But respect for the right to life is not, however, such a provision. Accordingly, therefore, the Court has accepted that, in principle, human rights law forms part of the *jus in Bello*⁶, the law applicable in armed conflict. Thus, all the provisions of the ICCPR will potentially apply during armed conflict, subject to the possibility of derogation from full observance of some in a time of grave national emergency.

The General Comment 36

'General Comments of UN human rights bodies are generally considered as authentic interpretations of the relevant treaty provisions and, as a result, of the duties of States Parties deriving from those instruments,' said Dr Daniel Rietiker, President of the Association of Swiss Lawyers for Nuclear Disarmament⁷. 'Under certain circumstances, they might even reflect customary international law or, at least, as State practice, contribute to the establishment of such law. It is noteworthy to mention, in this regard, that all States that are recognized as possessing nuclear weapons under the NPT are Parties to the ICCPR, with the exception of China.'⁸

Following this the Human Rights Committee's General Comment 36 articulated such acts by State Parties to the ICCPR that would violate the Right to Life. It replaced earlier Comments on the Right to Life adopted by the Committee in 1982 and 1984. Apart from concluding that the threat or use of nuclear weapons and any other WMDs is a violation of the Right to Life, guaranteed to any human being, the General Comment also proclaimed on States Parties to the Covenant, an obligation to end the production of WMD, destroy existing stockpiles and provide adequate reparation to victims of their testing or use. The Comment is an important step towards nuclear abolition because of its all-inclusive condemnation on the threat, use, production and possession of nuclear weapons and other WMD, and the States Parties

to the Covenant include most of the nuclear armed States and their allies under extended nuclear deterrence doctrines.

Contributions towards Nuclear Disarmament

Expectedly, there was opposition to the nuclear weapons-related obligations clarified in the new Comment from Governments of nuclear armed states, academics and NGOs . But in spite of that, the General Comment 36 is significant for having created a strong link between human rights law and nuclear non-use and disarmament obligations. For the first time a linkage has been established between the nuclear abolition movement and the human rights movement. It has also highlighted obligations of the nuclear armed and allied States rooted in Article VI of the NPT, UN resolutions and other international law and reinforced the 1996 ICJ Advisory Opinion on the Legality of the Threat and Use of Nuclear Weapons, and strengthened the customary norm applicable to all states against the threat or use of nuclear weapons and the legal obligation to achieve nuclear disarmament.. Apart from that the Comment provides support to humanitarian initiatives relating to WMD and to victim assistance. These aspects are reflected strongly in Article 6 of the Treaty on the Prohibition of Nuclear Weapons, but are absent in the NPT, Chemical Weapons Convention, CTBT and Biological Weapons Convention. Most importantly, this new Comment adds elements of support to the already existing nuclear arms control and disarmament agreements and points

out ways in which these legal mechanisms can be better implemented.

Conclusion

Though the introduction of this 32 page detailed Comment would not immediately impel nuclear weapon states to destroy their stockpiles, but the adoption of such a statement by international legal and human rights bodies would definitely increase pressure on them to strive towards the total devaluation and elimination of nuclear weapons. As we all know, Right to Life provides for living peacefully in an environment that permits a life of dignity and well-being. The General Comment has reinforced this.

(Disclaimer: The views and opinions expressed in this article are those of the author and do not necessarily reflect the position of the Centre for Air Power Studies [CAPS])

Notes

¹ Alyn Ware, UN Human Rights Committee concludes that the threat or use of nuclear weapons violates the right to life. 23 November 2018

² Ibid.

³ ICCPR

⁴ C Heyns. (n.d.). Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions. Human Rights Council.

⁵ The European Convention on Human Rights

⁶ Jus in bello defines standards by which a country can conduct war and the actions during the war should be just and fair.

⁷ Alyn Ware, UN Human Rights Committee concludes that the threat or use of nuclear weapons violates the right to life. 23 November 2018

⁸ Ibid.