

# Nuclear weapons and human rights law:

## Challenging nuclear weapons (and climate change) policies in UN Human rights bodies following the adoption of General Comment 36

Report by Alyn Ware and Joshua Cooper

### Introduction

On October 30, 2018, the UN Human Rights Committee (HRC) adopted General comment No. 36 on article 6 of the International Covenant on Civil and Political Rights - the right to life - which concludes that:

- *“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.”* (paragraph 66).

The Human Rights Committee also held that *“Environmental degradation, climate change and unsustainable development constitute some of the most pressing and serious threats to the ability of present and future generations to enjoy the right to life.”* (Paragraph 62).

This has opened up the possibility to challenge the policies and practices of the nuclear armed and allied states through the various review processes of government obligations under human rights treaties and other human rights law. If the treaty body concerned takes up key questions (challenges) and recommendations to the countries under review, those countries are required to respond, in order to bring their policies and practices in line with their obligations.

### Submissions to date

Since the adoption of General Comment 36, some Abolition 2000 members/affiliates (primarily been Aotearoa Lawyers for Peace, Basel Peace Office, International Association of Lawyers Against Nuclear Arms, Lawyers Committee on Nuclear Policy Western States Legal Foundation, World Future Council and Youth Fusion) have been making submissions to human rights treaty bodies on policies of nuclear armed and allied states as their turn came up for review. In most cases, national peace organizations of the country under review joined in the submission.

Submissions have been made to the Human Rights Committee which reviews implementation of obligations under the ICCPR, the Committee on the Elimination of Discrimination against Women (CEDAW) which reviews implementation of obligations under the Convention on the Elimination of All Forms of Discrimination against Women, and the Human Rights Council which undertakes the Universal Periodic Review on implementation of all human rights obligations. Submissions have been made regarding the policies and practices of [Canada](#), [Denmark](#), [France](#), [Iceland](#), [Japan](#), [North Korea](#), [Netherlands](#), [Russia](#), [South Korea](#), the [United Kingdom](#) and the [United States](#).

### Policy critiques and recommendations

Most of the submissions focused on nuclear weapons, arguing that the policies of the nuclear armed and allied states are incompatible with the Right to Life, and recommending that the governments adopt no-first-use policies, phase out nuclear deterrence in favour of common security, and commit to a time-bound framework for the elimination of nuclear weapons. In the case of Netherlands, the submitters also addressed climate

change, with discussion of the Urgenda case and recommendation that Netherlands support the initiative to take climate change and human rights to the International Court of Justice to ensure a 'level playing field' with all other countries in implementing obligations to protect the climate for current and future generations.

### Follow-up advocacy and events – enhancing the impact:

By themselves the submissions can highlight and illuminate key issues and concerns. But they are unlikely to have much impact on government policies unless they are accompanied by follow-up advocacy and events.

In the case of Denmark, the organizations making the submission followed up with a presentation to CEDAW in the CEDAW/civil society consultation session and a public event for Danish peace, human rights and disarmament organizations to present the key facts and recommendations from our submission. This helped raise awareness amongst CEDAW, human rights organizations globally and Danish organizations in particular about the issues raised in the submission, including the incompatibility of Danish nuclear policy under NATO and their human rights obligations, and the transgenerational impact of the nuclear bomber crash on women and children in Greenland. However, these issues were still not picked up by CEDAW to present to the Danish government for response.

### UK and Netherlands submissions – a step up in advocacy

In follow-up to the submissions on UK and Netherlands, a small team representing the submitting organizations organized more intensive advocacy during the 50<sup>th</sup> Session of the Human Rights Council (June-July 2022) at the UN in Geneva.

This included preparation of two-sided summaries of the submissions, with the questions and recommendations (see [Questions and Recommendations to Netherlands](#) and [Questions and Recommendations to the UK](#)) which were given to government delegates at the Human Rights Council, and used as an entry-point for raising the issues with them.

The submitting organizations also organised a side event [Nuclear weapons, climate change and human rights: Using international human rights law to address existential threats](#). The event provided an opportunity to go into more depth on the human rights law applicable to nuclear weapons and climate change (in particular the interpretation and legal weight of General Comment 36), the current situation regarding nuclear weapons and climate change policies, and our recommendations to the UK and Netherlands. The participation of the delegate from Netherlands was especially valuable, and the discussion of the Urgenda case and our climate change recommendation was very fruitful, in addition to our discussion on nuclear risk-reduction and disarmament recommendations.

The submitting organizations are planning additional follow-up events and advocacy in the capitals (London and the Hague) and at the next session of the Human Rights Council in September. The Council will adopt its reports on the two countries – with questions and recommendations – in November. There are also plans for follow-up to the Japan and South Korea submissions. The Human Rights Council will adopt the reports on these two countries in February 2023.

For more information see [Nuclear weapons and the UN human rights bodies](#)



In-person side event during the Human Rights Council 41st Session  
Friday July 1 from 13:15 - 14:45  
Montreux Room, CCV, 9-11 Rue de Varembe  
Light lunch (sandwiches, cake and drinks) will be provided

## Nuclear weapons, climate change & human rights

Applying human rights law to  
address existential threats  
to humanity

Implementing General Comment 36 of the  
UN Human Rights Committee with regard  
to nuclear weapons and climate change.

Includes current challenges  
in the Universal Periodic Review  
to policies of the UK and Netherlands.  
Event held under Chatham House Rules.

**Register here**  
(or by email to  
[info@baselpeaceoffice.org](mailto:info@baselpeaceoffice.org))

Contact: +41 788 912 156

**Speakers:**

- Phan van den Biesen. (Netherlands). Attorney at Law, Amsterdam. Co-President, International Association of Lawyers Against Nuclear Arms. Co-Agent and/or member of legal teams for the 1996 International Court of Justice (ICJ) Advisory Opinion on nuclear weapons, Marshall Islands 2016 ICJ Nuclear Weapons Case, and Bosnia's Genocide ICJ case against Serbia.
- Prof Nick Grief. (United Kingdom). Emeritus Professor, Kent Law School. In IALANA's legal team for the 1996 ICJ Advisory Opinion on nuclear weapons and Counsel & Advocate for the Marshall Islands in the 2016 ICJ Nuclear Weapons Case. (online)
- Joshua Cooper (Hawaii, USA). Lecturer at Hawai'i Institute for Human Rights. Host, Cooper Union Think Tech TV show.
- Laia Roxane Guardiola (Switzerland). Research and Teaching Fellow, Institute for International Law and Comparative Constitutional Law at the University of Zurich. Switzerland Representative of World's Youth for Climate Justice.

**Co-Chairs**

- Alyn Ware (Czechia/New Zealand). Aotearoa Lawyers for Peace. World Future Council. Basel Peace Office.
- Gabriela Maier Talic. (Czechia/Croatia). Program Assistant, Youth Fusion - Abolition 2000 Youth Network.

**Cosponsors**

Basel Peace Office, IALANA, World Future Council, World's Youth for Climate Justice, Youth Fusion

Side event organised in Geneva on July 1 to follow-up the  
Netherlands and UK submissions