

**RUSSIAN FEDERATION:
THREATS TO USE NUCLEAR WEAPONS
VIOLATE THE RIGHT TO LIFE AND
INTERNATIONAL HUMANITARIAN LAW**

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Founded in 1981, LCNP is a non-profit educational association of lawyers and legal scholars that engages in research and advocacy in support of the global elimination of nuclear weapons and more just a peaceful world through respect for domestic and international law.

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A. Introduction

1. This submission primarily addresses new developments involving the Russian Federation since the last Universal Periodic Review (UPR) cycle, namely its illegal invasion of Ukraine and accompanying threats of use of nuclear weapons. This submission focuses on the Russian Federation's (1) specific violations of the right to life, as codified in the International Covenant on Civil and Political Rights (ICCPR), through recent threats of nuclear use issued from Russian high-level leaders including its head of state; and (2) applicable violations of international humanitarian law through these same threats of nuclear use as well as actual uses of conventional military force by the Russian Federation in the war in Ukraine. Other relevant legal instruments considered include the UN Charter and the Rome Statute.

B. The Right to Life and Threat or Use of Nuclear Weapons

2. In paragraph 66 of General Comment No. 36¹ on the right to life set out in Article 6 of the ICCPR, the United Nations Human Rights Committee found:

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. [264] 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, [265] 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. [266]²

3. Under the ICCPR, Article 4(2), the right to life is non-derogable, to be observed in all circumstances, even in the event of a "public emergency which threatens the life of the nation."

4. The Russian Federation is a state party to the ICCPR and as a result is obligated to implement its provisions in good faith according to Article 26 of the 1969 Vienna Convention on the Law of Treaties (*pacta sunt servanda*). Even if the General Comment is not legally binding as such, it is considered the Committee's authentic interpretation of Article 6 and the relevant practice thereto.

5. In the last Universal Periodic Review (UPR) cycle, one recommendation issued to the Russian Federation, under Theme A22 Cooperation with treaty bodies, called on Russia to "continue to cooperate constructively with all treaty bodies and United Nations mechanisms by participating actively in the work of the Human Rights Council at the United Nations."³ The Russian Federation has not yet implemented this recommendation with respect to the right to life under the ICCPR, as set out below.

C. Russian Threats to Use Nuclear Weapons Violate the Right to Life

6. Russian policy, doctrine, and practice regarding threat or use of nuclear weapons stands in violation of the ICCPR right to life as interpreted by the Human Rights Committee, in particular its finding that threat or use of nuclear weapons is incompatible with respect for the right to life.⁴

7. The official military strategy of the Russian Federation, published in December 2014 and revised in 2021, states that the Russian Federation “shall reserve for itself the right to employ nuclear weapons in response to the use against it and/or its allies of nuclear and other kinds of weapons of mass destruction, as well as in the case of aggression against the Russian Federation with use of conventional weapons when the state’s very existence has been threatened.”⁵ Analysts have commented that statements made by Russian military officials and articles in Russian military journals envisage use of nuclear arms in circumstances going beyond those identified in the military strategy, for example first use of nuclear arms in a regional conflict.⁶

8. On the day of the Russian invasion of Ukraine, 24 February 2022, President Vladimir Putin said: “[F]or those who may be tempted to interfere in these developments from the outside, ... they must know that Russia will respond immediately, and the consequences will be such as you have never seen in your entire history.”⁷ This is a legally cognizable threat, both credible and specific in form.⁸ It expresses a readiness to resort to force should addressee states “interfere” in Russian military operations in Ukraine. Moreover, especially when combined with invocations at other times of Russia’s nuclear weapons capabilities, “consequences ... such as you have never seen” is meant to be understood as a reference to use of nuclear weapons.⁹

9. Subsequent threats issued by representatives of the Russian Federation include, among others: On 23 April 2022, Russian Foreign minister Sergei Lavrov warned of a “real” danger of World War III, with thinly-veiled nuclear threats.¹⁰ On 21 September 2022, President Putin ordered a “partial mobilization” of Russian troops alongside a warning that the Russian Federation would “use all the means at [Russia’s] disposal” in its war against Ukraine.¹¹ Also in September, former President Medvedev asserted a Russian right to use nuclear weapons to defend annexed territories in Ukraine, invoking language in Russia’s nuclear strike doctrine (that “aggression against the Russian Federation with conventional weapons when the very existence of the state is threatened” would justify use of nuclear weapons) and emphasizing that this was “not a bluff.”¹² Medvedev also invoked “nuclear apocalypse,” saying that the US/NATO would not risk that outcome. In January 2023, Chairman of the State Duma of the Federal Assembly of the Russian Federation Vyacheslav Volodin stated that: “If Washington and NATO countries supply weapons that will be used to strike civilian cities and attempt to seize our territories, as they threaten, this will lead to retaliatory measures using more powerful weapons.”¹³ Volodin attempted to diminish Russian responsibility to the norm of non-use of weapons of mass destruction in “local conflicts,” stating that other “states did not face a situation where there was a threat to the security of their citizens and the territorial integrity of the country.” As recently as 21 March 2023, President Putin said, in response to a UK announcement that some ammunition Britain is sending to Ukraine includes depleted uranium: “If all this happens, Russia will have to respond accordingly, given that the West collectively is already beginning to use weapons with a nuclear component.”¹⁴ Russian Defense Minister Sergei Shoigu added that there are “fewer and fewer” steps before a “nuclear collision” between Russia and the West.¹⁵

10. Threats made by President Putin and other Russian officials are violations of the right to life as codified in the ICCPR, because, as the Human Rights Committee found: "*threat* or use of ... 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."¹⁶ Such threats are also illegal under international humanitarian law and the United Nations Charter, as is addressed in the next section.

D. Violations of IHL and the UN Charter Amidst the Invasion of Ukraine

11. Conformity to human rights law requires compliance with applicable international humanitarian law (IHL). Nuclear weapons cannot be used in compliance with the fundamental international humanitarian law principles of distinction, proportionality, and precaution.¹⁷ The basic incompatibility of use of nuclear arms with the principle of distinction is a central point of the 1996 Advisory Opinion of the International Court of Justice.¹⁸ Incompatibility with all three principles was affirmed by the Red Cross/Red Crescent in a 2011 resolution, which "finds it difficult to envisage how any use of nuclear weapons could be compatible" with IHL,¹⁹ and is reflected in the 2017 Treaty on the Prohibition of Nuclear Weapons.

12. Other rules of IHL of particular relevance to nuclear weapons are those specifically regulating damage to the environment and reprisals. Protocol I to the Geneva Conventions, Art. 55, prohibits the use of methods or means of warfare which are intended to or may be expected to cause widespread, long-term, and severe damage to the natural environment. Russia is a party to Protocol I. A response to an illegal attack may be justified as a "reprisal" aimed at deterring further such attacks. It is one claimed basis for the doctrine of retaliatory nuclear deterrence. However, any reprisal must meet basic requirements of necessity and proportionality. Further, under Protocol I, Arts. 51 and 52, a reprisal must not be directed against civilian populations and objects. The prohibition of such reprisals is now generally recognized as customary international law binding all states, not only Russia and other parties to Protocol I but also the United States and other non-parties.²⁰

13. Considering all of the above rules, and taking into account as well the role in international law of "elementary considerations of humanity"²¹ and the "dictates of the public conscience,"²² a "limited" use of one or more nuclear weapons would violate IHL and constitute a war crime. It need hardly be said that a large-scale exchange of nuclear weapons, with explosions potentially in Europe, the United States, and Russia, would be a catastrophe beyond history whose sheer madness, immorality, and illegality would be manifest.

14. Likewise the threat of use of nuclear arms violates the above-mentioned principles and rules of IHL. When threatened force signals the intent to commit an illegal act—here the use of nuclear weapons—should certain conditions be met, the threat itself is illegal. In its Advisory Opinion, the International Court of Justice observed: "If an envisaged use of weapons would not meet the requirements of humanitarian law, a threat to engage in such use would also be contrary to that law."²³

15. President Putin's 24 February 2022 threat was also illegal because it was an element of the unlawful invasion, the use of force against the territorial integrity and independence of a state in violation of Article 2(4) of the UN Charter. The threat seeks to shield unlawful Russian conventional military operations by deterring US and NATO states from a direct military

intervention to assist in Ukraine's lawful self-defense pursuant to Article 51 of the Charter.

16. In addition to unlawful nuclear threats issued by government figures, based on credible reports,²⁴ throughout the war in Ukraine, Russian forces have carried out brutal direct attacks on civilians and also on civilian objects such as apartment buildings, schools, hospitals, and train stations, and have additionally made indiscriminate and disproportionate attacks using explosives with wide-ranging effects in urban areas. Such actions violate IHL governing the conduct of warfare.²⁵ Russia should end and prevent violations of IHL and take on in particular the responsibility to investigate and prosecute war crimes committed by its armed forces, including those committed by civilian and military leaders or accomplices. It should also cooperate with investigations into war crimes committed in the war in Ukraine undertaken by the Office of the Prosecutor of the International Criminal Court, and ratify the Rome Statute.²⁶

17. It is imperative that Russian forces comply with IHL, including by ceasing all threats of IHL violations, above all to limit suffering and devastation, and also, importantly, to make possible a sustainable peace.

E. The Right to Life and the Obligation to Negotiate Nuclear Disarmament

18. The Human Rights Committee's 2018 General Comment, para. 66, affirms that states parties to the ICPPR must "respect their international [obligation] to pursue in good faith negotiations in order to achieve the aim of nuclear disarmament under strict and effective international control."²⁷ This obligation is rooted in General Assembly resolutions going back to the founding of the United Nations,²⁸ the Nuclear Non-Proliferation Treaty (NPT),²⁹ and the International Court of Justice 1996 Advisory Opinion.³⁰

19. The Russian Federation is not in conformity with this obligation. It opposes commencement of global negotiations on the elimination of nuclear weapons. Exemplifying a pattern over many years, in the General Assembly on 7 December 2022 the Russian Federation voted against resolutions calling for commencement of such negotiations, including *Follow-up to the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons* (A/RES/77/57) and *Follow-up to the 2013 high-level meeting of the General Assembly on nuclear disarmament* (A/RES/77/47). The first resolution "[c]alls once again upon all States to immediately engage in multilateral negotiations leading to nuclear disarmament in all its aspects under strict and effective international control, including under the Treaty on the Prohibition of Nuclear Weapons." The second resolution "[c]alls for the urgent commencement of negotiations in the Conference on Disarmament on effective nuclear disarmament measures to achieve the total elimination of nuclear weapons, including, in particular, on a comprehensive convention on nuclear weapons." In 2017, the Russian Federation along with all other nuclear-armed states did not participate in the negotiation of the Treaty on the Prohibition of Nuclear Weapons.

20. Concerning Russia-US arms control measures, following US withdrawal from the Intermediate-Range Nuclear Forces Treaty in August 2018, the main instrument still in effect was New START. Subsequently, while the Russian Federation and the United States extended New START for a five-year period starting in 2021 pursuant to the treaty's terms, Russia has recently "suspended" its participation in the treaty. This has dimmed prospects that the two states with the largest nuclear weapons arsenals by far will be able to negotiate an effective bilateral

follow-on agreement.

21. Russian recalcitrance regarding bilateral negotiation of reductions in US and Russian nuclear arsenals is not new.³¹ Following the conclusion in 2010 of negotiations on New START, which yielded modest reductions in deployed long-range, “strategic” nuclear weapons, the Russian Federation refused engagement on the ambitious follow-on program of bilateral nuclear arms reductions—to include non-strategic nuclear arms and, for the first time, verified dismantlement of warheads—proposed by the United States.³² Moreover, on 1 March 2018 President Vladimir Putin revealed³³ that the Russian Federation has been developing new nuclear weapons delivery systems, among them gliding, maneuverable hypersonic delivery vehicles with a non-ballistic flight path; nuclear-powered cruise missiles that are claimed to have unlimited range; and nuclear-powered “unmanned underwater vehicles” carrying “massive nuclear ordnance” and suitable for attacking “coastal fortifications and infrastructure.”³⁴

22. While the Russian Federation has genuine concerns about how nuclear arms control and disarmament will interact with other factors affecting its security such as missile defenses and non-nuclear “strategic” missiles, over many years it has not displayed, in either UN or bilateral contexts, a determination to fulfill the obligation to negotiate and achieve the global elimination of nuclear weapons. Further, its current reliance on nuclear threats as part of the invasion of Ukraine has both raised the risks of use of nuclear arms and undermined efforts, bilateral and global, to make progress on nuclear arms control and disarmament. Those effects are reinforced by the Russian Federation’s current plan to station tactical nuclear weapons in Belarus, in defiance of the spirit and the letter of the NPT.³⁵

23. The Russian Federation should reverse these trends and demonstrate good faith in pursuit of nuclear disarmament as is required by respect for the right to life, the NPT, and the obligation articulated by the International Court of Justice.

F. Conclusion and Recommendations to the Government of the Russian Federation

24. Nuclear weapons cannot be used in compliance with the law of armed conflict, including international humanitarian law, nor with the right to life, above all because their massive indiscriminate effects make it impossible to distinguish between military targets and civilian populations and infrastructure. The threat of their use is likewise contrary to the right to life and international law. Those truths have most recently been recognized by the Human Rights Committee in its 2018 General Comment, and by the 2017 Treaty on the Prohibition of Nuclear Weapons.

25. Lawyers Committee on Nuclear Policy, Western States Legal Foundation, and IALANA Germany recommend that the Russian Federation take the following actions:

- Cease all threats to use nuclear weapons and refrain from announcing the readiness to use them in a wide range of circumstances;
- Adopt a policy of non-use of nuclear weapons; withdraw current policy and doctrine regarding threat or use of nuclear weapons;
- Ensure compliance with IHL in military operations and investigate and prosecute war crimes committed by its armed forces in Ukraine;
- Reverse course on the announced plan to station nuclear weapons in Belarus;

- End the suspension of New START compliance and engage the United States in good faith negotiations for an effective follow-on agreement; and
- Support and pursue multilateral negotiations to achieve global nuclear disarmament under strict and effective international control.

ENDNOTES

¹ United Nations Human Rights Committee, General Comment No. 36, released 30 October 2018, final edited version CCPR/C/GC/36, 3 November 2019. For commentary, see in particular contributions of Professor Roger Clark and Dr. Daniel Rietiker in *Human Rights Versus Nuclear Weapons: New Dimensions*, LCNP, January 2021.

² CCPR/C/GC/36, ¶66. The relevant footnotes read:

264 See Treaty on the Non-Proliferation of Nuclear Weapons, 1 July 1968, 729 UNTS 161; Comprehensive Test Ban Treaty, 10 Sept. 1996, Treaty on the Prohibition of Nuclear Weapons, 7 July 2017 (not yet in force); Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, 10 April 1972, 1015 UNTS 163; Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, 3 Sept 1992, 1974 UNTS 45.

265 General Comment 14, para. 7. Cf. Legality of the Threat or Use of Nuclear Weapons, 1996 ICJ 226, 267.

266 Concluding Observations: France (2015), para. 21.

³ A/HRC/39/13, 12 June 2018, ¶147.33, recommended by Nicaragua.

⁴ LCNP and WSLF made this case to the Committee in "[Russian Nuclear Weapons Policy and the Right to Life, List of Issues Submission to the United Nations Human Rights Committee During its Periodic Review of the Russian Federation](#)," 1 June 2020.

⁵ *Military Doctrine of the Russian Federation, Approved by Russian Federation President V. Putin*, published by the Russian Presidential Website on December 26, 2014, Section 27, translation via BBC Monitoring, quoted in Hans M. Kristensen and Matt Korda, "Russian nuclear forces, 2020," Nuclear Notebook, Bulletin of the Atomic Scientists, 2020, vol. 76, no. 2, pp. 102-117, at pp. 105, 116. Access at <https://thebulletin.org/2020/03/russian-nuclear-forces-2020/>.

⁶ E.g., Kristensen and Korda, *supra* n. 5, at p. 105; Anya Loukianova Fink and Olga Oliker, "Russia's Nuclear Weapons in a Multipolar World," in Robert Legvold and Christopher F. Chyba, eds., *Meeting the Challenges of a New Nuclear Age*, Daedalus, Journal of the American Academy of Arts & Sciences (Spring 2020), pp. 37-55, at pp. 43-45.

⁷ See "[Putin's Case for War, Annotated](#)," *New York Times*, 24 February 2022.

⁸ On the legal concept of threat, see Ariana Smith, "[Post-1996 Scholarly Interpretations of the Legal Status of Threat of Force](#)," LCNP, December 2018.

⁹ Comparable statements were made in 2017 by US President Donald Trump in relation to the Democratic People's Republic of Korea, as is discussed in a previous submission to the UN Human Rights Council by LCNP, WSLF, and Swiss Lawyers for Nuclear Disarmament, "[United States of America: US Nuclear Weapons Policy Violates the Right to Life](#)," 3 October 2019.

¹⁰ "[Russia's Lavrov Warns of 'Real' Danger of World War III](#)," *Moscow Times*, 25 April 2022.

¹¹ Ishaan Tharoor, "[Russia pushes the panic button and raises risk of nuclear war](#)," *The Washington Post*, 21 September 2022.

¹² Guy Faulconbridge and Caleb Davis, "[Medvedev raises specter of Russian nuclear strike on Ukraine](#)," *Reuters*, 27 September 2022.

¹³ "[Putin ally says new weapons for Kyiv will lead to global catastrophe](#)," *Reuters*, 22 January 2023.

¹⁴ "Russia's Putin blasts UK move to send ammo with depleted uranium to Ukraine," *Reuters*, 21 March 2023.

¹⁵ *Id.*

¹⁶ CCPR/C/GC/36, ¶66, emphasis added.

¹⁷ See generally Charles J. Moxley Jr., John Burroughs, and Jonathan Granoff, *Nuclear Weapons and Compliance with International Humanitarian Law and the Nuclear Non-Proliferation Treaty*, 34 *Fordham Int'l L.J.* 595 (2011).

¹⁸ *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226, ¶ 95 (July 8).

¹⁹ Council of Delegates of the International Red Cross and Red Crescent Movement, Resolution 1, 26 November 2011, Geneva.

²⁰ See Allen Weiner and Scott Sagan, "The Rule of Law and the Role of Strategy in U.S. Nuclear Doctrine," *International Security*, Spring 2021, pp. 153-160.

²¹ *Legality of the Threat or Use of Nuclear Weapons*, *supra* n. 18, ¶ 79.

²² Part of the Martens Clause, most recently codified in Protocol I to the Geneva Conventions, Art. 1(2). See *Legality of the Threat or Use of Nuclear Weapons*, *supra* n. 18, ¶ 78.

²³ *Legality of the Threat or Use of Nuclear Weapons*, *supra* n. 18, ¶ 78. At ¶ 67, the Court stated that "it does not intend to pronounce here upon the practice known as the 'policy of deterrence'." Our view concerning both specific threats and ongoing, general reliance on nuclear weapons is set out in the 2011 Vancouver Declaration: "Threat as well as use of nuclear weapons is barred by law. As the ICJ made clear, it is unlawful to threaten an attack if the attack itself would be unlawful. This rule renders unlawful two types of threat: specific signals of intent to use nuclear weapons if demands, whether lawful or not, are not met; and general policies ('deterrence') declaring a readiness to resort to nuclear weapons when vital interests are at stake. The two types come together in standing doctrines and capabilities of nuclear attack, preemptive or responsive, in rapid reaction to an imminent or actual nuclear attack."

²⁴ See, e.g., materials collected at Ukraine War and Disarmament Resources, including Written Testimony by Bonnie Docherty, Senior Researcher, Arms Division, Human Rights Watch, House Foreign Affairs Committee Subcommittee on Europe, Energy, the Environment and Cyber, posted 16 March 2022.

²⁵ In its resolution adopted on 24 March 2022, A/ES-11/L.2, the General Assembly demanded that Russian and Ukrainian forces comply with IHL.

²⁶ For general analysis of issues relating to the war in Ukraine, including IHL and the conduct of military operations, see "End the War, Stop the War Crimes," Lawyers Committee on Nuclear Policy Statement on the Russian Invasion of Ukraine, 21 April 2022; "A Divided Opposition: The Ukraine War and the Critique of Geopolitical Reason," Western States Legal Foundation Commentary, November 2022.

²⁷ CCPR/C/GC/36, ¶66.

²⁸ See *Legality of the Threat or Use of Nuclear Weapons*, *supra* n. 18, ¶ 101.

²⁹ NPT Article VI requires states parties "to pursue negotiations in good faith on effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament."

³⁰ According to a unanimous conclusion of the International Court of Justice in 1996, cited by the Human Rights Committee's General Comment, states are obligated "to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective

international control.” *Legality of the Threat or Use of Nuclear Weapons*, *supra* n. 18, ¶ 105(2)F.

³¹ See Andrew Lichterman and John Burroughs, “U.S.-Russia Nuclear Arms Racing: Still Crazy After All These Years,” *Truthdig*, 16 March 2018.

³² *Id.*

³³ Presidential Address to the Federal Assembly. See also Lichterman and Burroughs, *supra* n. 31; Kristensen and Korda, *supra* n. 5.

³⁴ Regarding the last system, essentially a nuclear-powered torpedo, Kristensen and Korda, *supra* n. 5 at p. 105, portray it as a weapon aimed at causing terror, citing a Russian government document describing the system as intended to create “areas of wide radioactive contamination that would be unsuitable for military, economic or other activity for long periods of time.” See also Lichterman and Burroughs, *supra* n. 31 (use of the system against a coastal city would be a crime against humanity).

³⁵ See “Nuclear Threats and Nuclear Sharing Versus the Non-Proliferation Regime,” LCNP, 10th NPT Review Conference, 2 August 2022.