

France's nuclear weapons policies and the Right to Life

(Article 6 of the International Covenant on Civil and Political Rights)

List of Issues Submission to the United Nations Human Rights
Committee During its Periodic Review of France

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Appendix: About the submitting organizations

1. Summary

The civil society organizations making this submission contend that the position and actions of the government of France with regard to its nuclear weapons policy are in violation of the obligations of France under the International Covenant on Civil and Political Rights (ICCPR) to protect the Right to Life as outlined in Article VI of the ICCPR and interpreted by the Committee in General Comment 36 of October 30, 2018.

This includes the production, testing, deployment, threat to use and preparations by France to use nuclear weapons, as well as the opposition of France to nuclear disarmament initiatives and processes.

In this, France is not alone. Eight other states produce and possess nuclear weapons. However, this fact does not relieve France of its responsibilities. In addition, the civil society organizations making this submission are making similar submissions with regard to the policies and practices of the other nuclear-armed countries.

The organizations making this submission understand that there are security issues that play a role in the nuclear weapons policy and practice of France. These security issues are taken into consideration in order to ensure that the recommendations we make to France, in order to comply with Article VI of the ICCPR, are realistic and able to be implemented.

The organizations making this submission also wish to offer their support to the submission made by Lawyers' Committee on Nuclear Policy (LCNP), Western States Legal Foundation (WSLF), International Association of Lawyers Against Nuclear Arms (IALANA) and Association of Swiss Lawyers for Nuclear Disarmament (SAFNA).

2. Nuclear weapons and the Right to Life

In paragraph 66 of General Comment No. 36 on the right to life set out in Article 6 of the International Covenant on Civil and Political Rights (ICCPR), the United Nations Human Rights Committee stated:

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.

This paragraph complements and updates *CCPR General Comment No. 14: Article 6 (Right to Life) Nuclear Weapons and the Right to Life*, adopted by the Human Rights Committee on 9 November 1984.¹

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.” France 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.

3. International humanitarian law and the law of peace and security

The obligations under *international human rights law* to not threaten or use nuclear weapons and to pursue comprehensive nuclear disarmament, are reinforced by the *international law applicable to armed conflict*, which includes international humanitarian law (*jus in bello*) and the laws of peace and security (*jus ad bellum*) in particular Article 2 of the UN Charter.

The International Court of Justice in 1996 affirmed that this body of law, and additional elements of customary international law, renders the threat or use of nuclear weapons generally illegal and requires the pursuit and conclusion of nuclear disarmament in all its aspects under strict and effective international control. Since 1996, the UN General Assembly has called on UN member states to implement these obligations by negotiating a nuclear weapons convention – an international treaty to prohibit and eliminate nuclear weapons.²

4. National law

The preamble to the French Constitution holds that: “*The French people solemnly proclaim their attachment to the Rights of Man and the principles of national sovereignty as defined by the Declaration*

¹ See *CCPR General Comment No. 14: Article 6 (Right to Life) Nuclear Weapons and the Right to Life*. Adopted at the Twenty-third Session of the Human Rights Committee on 9 November 1984. <https://www.refworld.org/docid/453883f911.html>

² See, for example, [A/RES/70/56](#), *Follow-up to the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons*, adopted by the UNGA on Dec 7, 2015.

of 1789, confirmed and complemented by the Preamble to the Constitution of 1946, and to the rights and duties as defined in the Charter for the Environment of 2004.”³

The explosive testing of nuclear weapons, undertaken by France in Algeria and Te Ao Maohi (French Polynesia) has created catastrophic health and environmental consequences in a manner inconsistent with the Charter of the Environment and the French Constitution.⁴ Any use of nuclear weapons during armed conflict, would also generate catastrophic health and environmental consequences, as confirmed by the States Parties to the Nuclear Non-Proliferation Treaty, including France, in 2010.⁵

In addition, the Constitution holds that ‘*A declaration of war must be authorized by Parliament.*’ French nuclear planning, in violation of this constitutional provision, provides for the direct authorisation by the President of the use of nuclear weapons, including their possible first-use, in a range of security scenarios without first requiring a declaration of war from the parliament.

Finally, Article 223-1 of the Penal Code of France holds that “*The fact of directly exposing others to an immediate risk of death or injury likely to cause mutilation or permanent disability through the manifestly deliberate violation of a particular **obligation of prudence or safety** imposed by law or regulation is punishable...*” The French nuclear doctrine of threatening to use nuclear weapons, in violation of international law as affirmed by the International Court of Justice and the UN Human Rights Committee, is in our opinion in violation of Article 223-1 of the Penal Code.

5. National policy and practice

5.1 Development, production and possession of nuclear weapons

France possesses approximately 300 nuclear warheads which it deploys on two nuclear weapons delivery systems: submarine-launched ballistic missiles and air-launched cruise missiles.⁶

France plans to continue producing and deploying nuclear weapons into the indefinite future. In February 2021, France announced plans to develop third-generation submarines to continue deploying nuclear weapons at least until 2090, i.e almost a century after France acceded to the Treaty on the Non-Proliferation of Nuclear Weapons obligating all States Parties to negotiate “*effective measures relating to cessation of the nuclear arms race at an early date and to nuclear disarmament*”.⁷

The annual budget for this nuclear weapons modernisation and development programme is 5 billion euros.⁸

³ Constitution of the Fifth Republic

⁴ *The Moruroa Files* indicate that approximately 110,000 people were infected by the radioactive fallout from the French nuclear testing program at Moruroa, French Polynesia. <https://moruroa-files.org/en/investigation/moruroa-files>. See also ‘*France has underestimated impact of nuclear tests in French Polynesia, research finds*,’ The Guardian, March 9, 2021. <https://www.theguardian.com/world/2021/mar/09/france-has-underestimated-impact-of-nuclear-tests-in-french-polynesia-research-finds>.

⁵ The States Parties to the NPT unanimously adopted a final document in 2010 which included the paragraph: §80. “*The Conference (...) notes with concern that the total estimated number of nuclear weapons deployed and stockpiled still amounts to several thousands. The Conference expresses its deep concern at the continued risk for humanity represented by the possibility that these weapons could be used and the **catastrophic humanitarian consequences** that would result from the use of nuclear weapons.*”

⁶ *French Nuclear Deterrence Policy, Forces, And Future: A Handbook*, Recherches & Documents N°4/2020, Bruno Tertrais Deputy director, Fondation pour la recherche stratégique, February 2020 <https://www.frstrategie.org/sites/default/files/documents/publications/recherches-et-documents/2020/202004.pdf>

⁷ France Minister for the Armed Forces, Florence Parly, in announcing the submarine plan, noted that “*...these will sail until 2090. In other words, the last sailors who will patrol on board the third generation SSBNs are not born yet.*” See “[France Launches Third Generation SSBN Program – SNLE 3G](#),” NavalNews, 21 February 2021

⁸ *French Nuclear Deterrence Policy, Forces, And Future: A Handbook*, Recherches & Documents N°4/2020, Bruno Tertrais Deputy director, Fondation pour la recherche stratégique, February 2020 <https://www.frstrategie.org/sites/default/files/documents/publications/recherches-et-documents/2020/202004.pdf>

5.2 Testing of nuclear weapons

General Comment No. 36, para. 66, states that ICCPR states parties are obligated “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.”

France is failing to adequately implement these obligations.

We refer to the submission of LCNP, WSLF, IALANA and SAFNA which notes that: The Human Rights Committee has in the past raised with France the issue of compensation to people impacted by their nuclear testing programme, and that the responses of France have been woefully insufficient. This point is amplified by the report released earlier this year, *Moruroa Files*.⁹

5.3 Nuclear doctrine: Threat or use of nuclear weapons

France’s defence doctrine ascribes a wide range of roles to its nuclear forces. The 2013 Defence White Paper, for example, holds that ‘*Nuclear deterrence aims to protect us from any aggression against our vital interests emanating from a State, wherever it may come from and whatever form it may take.*’¹⁰ This indicates a readiness to threaten and use nuclear weapons in a variety of conflict and security scenarios, including the option of first-use of nuclear weapons as a response to a non-nuclear attack.

This doctrine is reinforced by public statements of French leaders. President Emmanuel Macron, for example, asserted in February 2020 that: “*Should the leader of any state underestimate France’s deep-rooted attachment to its freedom and consider threatening our vital interests, whatever they may be, that leader must realize that our nuclear forces are capable of inflicting absolutely unacceptable damages upon that State’s centres of power: its political, economic and military nerve centres.*”¹¹

The government of France demonstrates its support for the threat or use of nuclear weapons by voting against a number of UN General resolutions which affirm the catastrophic humanitarian consequences and the illegality of threat or use of nuclear weapons.

In 2020, these included Resolution A/75/39 entitled *Humanitarian consequences of nuclear weapons*,¹² Resolution A/75/75 entitled *Convention on the Prohibition of the Use of Nuclear Weapons*¹³ and Resolution A/75/66 entitled *Follow-up to the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons*.¹⁴

5.4 Opposition to nuclear disarmament

France is a member of the Nuclear Non-Proliferation Treaty under which it has accepted an obligation 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...*”¹⁵

⁹ Disclose, Princeton University’s Program on Science and Global Security, and Interprt, [Moruroa Files: Investigation into French nuclear tests in the Pacific](#), 2021.

¹⁰ *White Paper, Defence and National Security*, Ministry of Defence, 2013. Accessible at <https://otan.delegfrance.org/White-Paper-on-Defence-and-National-Security>.

¹¹ “[Speech of the President of the Republic on the Defense and Deterrence Strategy](#),” *Élysée*, 7 February 2020.

¹² A/75/39: *Humanitarian consequences of nuclear weapons*. Text at <https://undocs.org/en/A/RES/75/39> Voting record at <https://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com20/votes-ga/399DR1.pdf>.

¹³ A/75/75: *Convention on the Prohibition of the Use of Nuclear Weapons*, Text at <https://undocs.org/en/A/RES/75/75>. Voting at <https://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com20/votes-ga/400DR11.pdf>

¹⁴ A/75/66 entitled *Follow-up to the advisory opinion of the International Court of Justice on the legality of the threat or use of nuclear weapons*. Text at <https://undocs.org/en/A/RES/75/66>. Voting at <https://reachingcriticalwill.org/images/documents/Disarmament-fora/1com/1com20/votes-ga/399DRXXIX.pdf>.

¹⁵ Nuclear Non-Proliferation Treaty, Article VI, <https://treaties.unoda.org/treaty/npt>

As indicated above (section 2) this obligation has been re-affirmed and strengthened by the International Court of Justice in 1996 and the UN Human Rights Committee in 2018. Yet, France takes little or no action to implement this obligation. Instead, France continues to produce and deploy nuclear weapons, and to oppose multilateral initiatives for nuclear disarmament including the *Treaty on the Prohibition of Nuclear Weapons*¹⁶ and the proposal for a nuclear weapons convention.¹⁷

6. Conclusion

France is violating its obligations to protect the Right to Life under the ICCPR by its:

- a) development, testing, production and maintenance of nuclear weapons;
- b) deployment, threat to use and preparations to use nuclear weapons in a wide range of security scenarios, including the option to use nuclear weapons first in an armed conflict;
- c) failure to provide adequate reparations to people impacted by French nuclear tests;
- d) opposition to initiatives and processes for multilateral nuclear disarmament.

7. Recommendations

We recommend that France:

- Enter into strategic dialogue with the other four nuclear armed members of the NPT with a view to advancing joint nuclear disarmament commitments and initiatives at the next NPT Review Conference scheduled for August 2021;
- Initiate a dialogue amongst all nuclear-armed States in the UN Conference on Disarmament engage on the necessary elements for a nuclear weapons convention or package of agreements for the global prohibition and phased elimination of nuclear weapons, taking into consideration the security requirements of all;
- Adopt a France national policy never to be the first to use nuclear weapons, and call on all other nuclear armed states to adopt a similar policy;
- Propose to the next NATO Summit adoption of a policy of *No-First-Use of nuclear weapons* and a goal for NATO to eliminate nuclear deterrence from its security policy within 10 years;
- Reaffirm the Reagan-Gorbachev dictum that *'a nuclear war cannot be won and must never be fought'*, and propose that the 2021 Review Conference of States Parties to the Non-Proliferation Treaty (NPT) also adopt this dictum along with supportive policy measures, such as No-First-Use and a commitment to achieve the global prohibition and elimination of nuclear weapons no later than 2045, the 75th anniversary of the NPT and the 100th anniversary of the United Nations.

About the submitting organizations:

Aotearoa Lawyers for Peace:

Aotearoa Lawyers for Peace (ALP) is an organization of lawyers and law students from Aotearoa (New Zealand) working to abolish nuclear weapons, increase respect for international law and abolish war. ALP is the New Zealand affiliate of the International Association of Lawyers Against Nuclear Arms, and is a founding partner of UNFOLD ZERO, which promotes United

¹⁶ See <https://treaties.unoda.org/treaty/98>

¹⁷ UN Secretary-General Ban Ki-Moon, in his Five-Point Proposal for Nuclear Disarmament, called for states to negotiate a Nuclear Weapons Convention that would provide for the complete prohibition and elimination of nuclear weapons over a phased period with strict and effective verification and enforcement. He also circulated a Model Nuclear Weapons Convention as a guide to such negotiations. The proposal was supported in principle in the 2010 NPT Final Document and is also supported by successive UN General Assembly Resolutions. See <https://www.unfoldzero.org/unsgr-five-point-plan/>.

Nations initiatives for nuclear disarmament.

www.facebook.com/nzpeaceclaw www.ialana.info www.unfoldzero.org

Basel Peace Office:

Basel Peace Office is a coalition established by five Swiss and four international organizations to advance the peace and security of a nuclear-weapon-free world. Basel Peace Office makes connections between inter-related issues - including peace, the climate, nuclear disarmament, human rights and sustainable development - and builds cooperation amongst key constituencies including mayors, parliamentarians, religious leaders, academics, youth/students, women, lawyers, medical professionals, government officials and UN entities.

Basel Peace Office is a member of the EU Non-proliferation Consortium. The partner organizations are the Basel-Stadt Canton (a member of Mayors for Peace), Global Security Institute, International Physicians for the Prevention of Nuclear War Switzerland, Middle Powers Initiative, Parliamentarians for Nuclear Non-proliferation and Disarmament, Schweizer Anwälte für Nukleare Abrüstung (the Association of Swiss Lawyers for Nuclear Disarmament), Swisspeace, University of Basel Sociology Seminary of the Department of Social Sciences and the World Future Council.

www.baselpeaceoffice.org www.facebook.com/BaselPeaceOffice

Initiatives pour le Désarmement Nucléaire

Initiatives pour le Désarmement Nucléaire (IDN) works for the progressive and balanced elimination of nuclear weapons from the planet, to help build a more secure world. Its action is part of a more general reflection on the strategic challenges of the beginning of the 21st century and on France's ability to ensure its territorial security while continuing to influence the course of the world. To do this, the association carries out several actions: Inform: IDN disseminates the most comprehensive information possible on the role and dangers of nuclear weapons in the new state of the world (book, film, comic strip, website, conferences, etc.); Bring together those who share our objectives (activists, decision-makers, intermediary bodies); Organize broad support and participate in campaigns, in conjunction with associations involved in nuclear disarmament, in France and abroad (European Leadership Network, Nuclear Threat Initiative, Pugwash, etc.). Develop concrete proposals for all aspects of the nuclear disarmament process.

www.idn-france.org www.facebook.com/initiatives.desarmement.nucleaire

World Future Council

The World Future Council (WFC) was established to promote effective policies to ensure a peaceful and sustainable future. WFC consists of 50 eminent global change-makers from governments, parliaments, civil society, academia, the arts and business who have already successfully created change. They are supported by a staff of experts that work with the concillors to identify, develop, highlight and spreading effective, future-just solutions for current challenges humanity is facing.

www.worldfuturecouncil.org www.facebook.com/wfc.goodpolicies

Youth Fusion

Youth Fusion is a world-wide networking platform for young individuals and organizations in the field of nuclear disarmament, risk-reduction and non-proliferation. Youth Fusion focuses on youth action and intergenerational dialogue, building on the links between disarmament, peace, climate action, human rights, sustainable development and building back better from the pandemic. Youth Fusion serves as the youth section of Abolition 2000, the global civil society network to eliminate nuclear weapons.

www.youth-fusion.org www.facebook.com/Youth4Abolition