

Canada'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 Canada

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Summary

The civil society organizations making this submission contend that the position and actions of the government of Canada with regard to its reliance on the policy and practice of nuclear deterrence are not in conformity with the ICCPR right to life as interpreted by the Committee in General Comment 36 of October 30, 2018.

This includes national policy and practice, as well Canada's membership of the North Atlantic Treaty Organization (NATO) and their support of, and adherence to, NATO policy and practice regarding the threat or use of nuclear weapons and the obligation to achieve nuclear disarmament.

In this, Canada is not alone. However, the fact that every other NATO member state is also acting in violation of the ICCPR with respect to their nuclear weapons policies does not relieve Canada of its responsibilities. The civil society organizations making this submission are making similar submissions with regard to other NATO member countries, and also in relation to the policies and practices of the nuclear armed countries.

There are some policy moves of the government of Canada in the right direction that could be expanded in order for the government to conform to the right to life with respect to protection of this right from the threat or use of nuclear weapons.

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1. 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.” Canada 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.

2. 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

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.

3. National policy and practice of Canada

The Government of Canada demonstrates its continuing engagement in the threat to use nuclear weapons, and its disregard of nuclear disarmament obligations, through:

- a) national policy documents;
- b) votes in international bodies including the United Nations;
- c) rejection of the Treaty on the Prohibition of Nuclear Weapons;
- d) membership of NATO and engagement in NATO nuclear policy and practice (see section 4).

3.1 National policy documents

The primary defence document of Canada is *Canada's Defence Policy: Strong, Secure, Engaged*,³ released by the government in 2017. The document affirms the important role and obligations of Canada as a member of the North Atlantic Treaty Organization (NATO), highlights the importance of 'deterrence' in order to address 'major power competition' and notes that deterrence includes 'conventional and nuclear capabilities.'

NATO membership requires agreement to the NATO Strategic Concept, the current version of which explicitly includes support for nuclear deterrence, and in particular the extended nuclear deterrence provided by US nuclear weapons.⁴ (See Section 4, Policy and practice as a member of NATO). The USA has made it clear that their plans and preparations to defend allies including Canada involve the threat of use of nuclear weapons and the option to deploy and use nuclear weapons in defence of their allies.⁵

The continued support by the government of Canada for nuclear deterrence, and in particular for extended nuclear deterrence 'protection' from the USA, is a violation of Canada's responsibilities under the ICCPR to protect the right to life.

3.2 Votes in the United Nations

The Government of Canada demonstrates its support for the threat or use of nuclear weapons by either abstaining or 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*,⁶ Resolution A/75/75 entitled *Convention on the Prohibition of the Use of Nuclear Weapons*⁷ 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*.⁸

The continued support of Canada in the United Nations for the threat of use and possible use of nuclear weapons is indicative of a disregard of Canada for their responsibilities under the ICCPR to reject the threat or use of nuclear weapons in order to protect the right to life..

³ *Canada's Defence Policy: Strong, Secure, Engaged*, 2017. <http://dgpaapp.forces.gc.ca/en/canada-defence-policy/docs/canada-defence-policy-report.pdf>

⁴ See, for example, Para 18 of the 2010 NATO Strategic Concept which notes that: "The supreme guarantee of the security of the Allies is provided by the strategic nuclear forces of the Alliance, particularly those of the United States." https://www.nato.int/strategic-concept/pdf/Strat_Concept_web_en.pdf

⁵ See, for example, the [US Nuclear Posture Review 2018](#), pp 17, 22, 23, 34

⁶ 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/399DRI.pdf>.

⁷ 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/400DRII.pdf>

⁸ 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>.

“ We are further strengthening our ability to deter and defend with an appropriate mix of nuclear, conventional, and missile defence capabilities, which we continue to adapt. As long as nuclear weapons exist, NATO will remain a nuclear alliance.”

NATO Leaders Meeting, London, 3-4 December 2019.¹⁵

The policy is operationalized through: a) NATO’s Nuclear Planning Group, b) production and deployment of nuclear weapons by three of the NATO members (France, UK and USA), c) individual security agreements between the USA and NATO member countries involving extended nuclear deterrence, and d) some of NATO countries participating in nuclear-sharing arrangements where-by they host USA nuclear weapons and develop military capacity and preparations for their potential use.

NATO policy for use of nuclear weapons is based on the doctrine and practice of ‘flexible response’. This includes maintaining an option to use nuclear weapons in a range of security situations, including the **first-use of nuclear weapons** in response to a conventional attack or imminent attack, threat of attack from nuclear weapons or threat of attack with other weapons of mass destruction.

NATO has accepted the NPT Article VI obligation to achieve the global elimination of nuclear weapons, and has committed to ‘*the goal of creating the conditions for a world without nuclear weapons*’ but has done little to implement this obligation.

4.2. Canada’s participation in NATO nuclear policy and practice

As a full member of NATO, Canada supports and subscribes to NATO’s nuclear policy including endorsement of NATO Strategic Concept and NATO Summit declarations.

In addition, Canada is a member of NATO’s Nuclear Planning Group, in which it participates in NATO plans and operations to threaten the use of nuclear weapons and to prepare for their possible use.

“The Nuclear Planning Group acts as the senior body on nuclear matters in the Alliance and discusses specific policy issues associated with nuclear forces. (...) Irrespective of whether or not they have nuclear weapons, all Allies are members of the NPG with the exception of France, which has decided not to participate.”

NATO Nuclear Planning Group¹⁶

4.3. Initiating a nuclear war: Canada and the option of first-use of nuclear weapons

The Government of Canada, and the NATO alliance, continue to maintain policies for the use of nuclear weapons to address a wide range of security situations relating to threats from nuclear, chemical, biological and conventional weapons. This includes the option to initiate a nuclear weapons conflict through the first-use of nuclear weapons.

The Hon Lloyd Axworthy, during his term as Foreign Minister of Canada (1996-2000), expressed support for a **no-first-use policy** for Canada and NATO¹⁷, but this was not confirmed as policy by Canada, nor promoted by Canada to NATO allies since Mr Axworthy’s term.

Two of the nuclear armed States (India and China) have adopted no-first-use (NFU) policies. The current US Administration is considering the possibility of adopting a NFU policy. President Biden has expressed

¹⁵ London Declaration, Issued by the Heads of State and Government participating in the meeting of the North Atlantic Council in London 3-4 December 2019. https://www.nato.int/cps/en/natohq/official_texts_171584.htm?selectedLocale=en

¹⁶ Nuclear Planning Group, NATO, https://www.nato.int/cps/en/natolive/topics_50069.htm

¹⁷ See [Germany Raises No-First-Use Issue at NATO Meeting, Arms Control Today](#), 1999. See also *NATO and the Bomb*, McGill-Queen's University Press 2001, where Erika Simpson reports that Canada Foreign Minister Lloyd Axworthy raised the issue of no-first-use at NATO headquarters in 1999.

support¹⁸, and NFU resolutions were recently introduced in the US Senate and House of Representatives.¹⁹ However, support from the President does not necessarily mean that this will become policy. President Obama tried at least twice in his presidency to adopt NFU or sole purpose policies but was unsuccessful.²⁰

Indeed, the possibility for the US to adopt an NFU policy is severely **hampered, , by NATO members and other US allies** which have argued successfully that they require a US first-use option in order to defend themselves from threats from conventional, biological and chemical weapons (in addition to nuclear threats).²¹

Canada and other NATO countries should support the adoption of NFU policies by the USA, and also by the other nuclear armed states who have not already done so.

4.4 Conclusion

Canada's support for and participation in NATO policy and practice of threat to use nuclear weapons, and in preparations by NATO to potentially use nuclear weapons including the option to initiate a nuclear war, are violations of Canada's responsibilities under the ICCPR to protect the right to life.

5. Canada's positive policy moves

The Government of Canada has made some positive steps to prevent the actual use of nuclear weapons and contribute to the achievement of a nuclear-weapon-free world. These include the removal of all US nuclear weapons hosted by Canada by 1984²², promotion of a human security focused foreign policy since 1996²³, adoption of feminist principles in foreign policy in 2017²⁴, participating in the *International Partnership for Nuclear Disarmament Verification*²⁵, advancing incremental nuclear disarmament measures at the Nuclear Non-Proliferation Treaty Review Conferences especially in 2000 and 2010²⁶, and participating in the Stockholm Initiative from 2018.

However, so long as Canada continues to engage in the threat to use nuclear weapons, and rejects initiatives to prohibit and eliminate the weapons, these initiatives cannot be seen as good faith measures to protect the Right to Life as enshrined in the ICCPR.

6. Canadian parliament call for government action

The Canadian parliament has demonstrated greater accountability to the legal obligations to prevent nuclear war, advance nuclear disarmament and protect the Right to Life than has the Canadian government.

¹⁸ See [President Biden Says He Supports a No First Use Policy: Let's Hold Him to That](#), Union of Concerned Scientists, and [Mission Possible: Revisiting the o First Use of the Nuclear Weapon](#), Carlo Trezza, European Leadership Network, April 6, 2021.

¹⁹ See, *No-First-Use Act, 117th US Congress First Session*, <https://adamsmith.house.gov/cache/files/e/5/e58528a5-908a-4312-85a0-66c3cc7ef630/31D081012955976B3EABD23847BA64EF.smitwa-001-xmInofirstuse.pdf>

²⁰ See ['No First Use' Nuclear Policy Proposal Assailed by U.S. Cabinet Officials, Allies](#), Wall Street Journal, August 12, 2016,

²¹ See ['No First Use' Nuclear Policy Proposal Assailed by U.S. Cabinet Officials, Allies](#), Wall Street Journal, August 12, 2016,

²² See Nuclear Threat Initiative, *Canada Weapons of Mass Destruction Review*, <https://www.nti.org/learn/countries/canada/>

²³ See [HUMAN SECURITY AND CANADIAN FOREIGN POLICY: THE NEW FACE OF CANADIAN INTERNATIONALISM](#), by Melissa J. DeJong, University of Western Ontario, 2006

²⁴ "Address by Minister Freeland on Canada's Foreign Policy Priorities" (speech, Ottawa, 6 June 2017), Government of Canada, https://www.canada.ca/en/global-affairs/news/2017/06/address_by_ministerfreelandoncanadasforeignpolicypriorities.html

²⁵ See *International Partnership for Nuclear Disarmament Verification* <https://www.ipndv.org/>

²⁶ See [Canada and the Non-Proliferation Treaty](#), Government of Canada

The Canadian Senate, for example, unanimously adopted a motion in June 2010 calling on Canada to “to engage in negotiations for a nuclear weapons convention as proposed by the United Nations Secretary-General... support the initiatives for nuclear disarmament of President Obama of the United States of America... and deploy a major world-wide Canadian diplomatic initiative in support of preventing nuclear proliferation and increasing the rate of nuclear disarmament.”²⁷ The House of Commons adopted a similar motion unanimously in December 2010.²⁸

Subsequently in 2018, the House Standing Committee on National Defence published a unanimous report²⁹ on Canada and NATO, which contained a recommendation explicitly calling for Canada to initiate a discussion within NATO on creating the conditions for a world without nuclear weapons.

The Government of Canada should implement these unanimous calls from the Canadian parliament to take action to protect the Right to Life by advancing a concerted diplomatic initiative for the prohibition and phased elimination of nuclear weapons.

7. Recommendations

We recommend that the Government of Canada:

- Welcomes the *Treaty on the Prohibition of Nuclear Weapons* and participate in the First Conference of States Parties as an observer country;
- Initiates a diplomatic initiative to engage nuclear armed and allied states in negotiating a nuclear weapons convention or package of agreements for the global prohibition and phased elimination of nuclear weapons under strict and effective verification and compliance;
- Announces support for the adoption of no-first-use policies by all nuclear armed states;
- Proposes 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;
- Reaffirms the Reagan-Gorbachev dictum that ‘*a nuclear war cannot be won and must never be fought*’, and proposes 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 Nations initiatives for nuclear disarmament.

www.facebook.com/nzpeacelaw www.ialana.info www.unfoldzero.org alyn@lcnp.org

²⁷ [Motion to Recognize the Danger Posed by the Proliferation of Nuclear Materials and Technology to Peace and Security](#), Adopted by the Senate of Canada on June 10, 2010.

²⁸ [Motion of Bill Siksay on Nuclear Non-Proliferation](#). Also accessible at Hansard debates, Dec 7, 2010 <https://www.ourcommons.ca/DocumentViewer/en/40-3/house/sitting-112/hansard>

²⁹ *CANADA AND NATO: AN ALLIANCE FORGED IN STRENGTH AND RELIABILITY*, Report of the Standing Committee on National Defence. JUNE 2018, 42nd PARLIAMENT, 1st SESSION. <https://www.ourcommons.ca/Content/Committee/421/NDDN/Reports/RP9972815/nddnrp10/nddnrp10-e.pdf>

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.

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Canadian Voice of Women for Peace

Canadian Voice of Women for Peace (VOW) was founded in 1960 as a feminist group committed to the abolition of nuclear weapons. Over the years, VOW has undertaken many initiatives in the pursuit of peace moving from an initial emphasis on nuclear disarmament to the abolition of war and the promotion of non-violent means of conflict resolution and social justice in a sustainable world. An accredited NGO to the United Nations, affiliated to the Department of Public Information (DPI) and the Economic and Social Council (ECOSOC), VOW was the Canadian lead group for peace at the Fourth World Conference on Women in Beijing. Members have been active in follow-up activities, including writing the chapter, "Women and Peace" in Take Action for Equality, Development and Peace. We have been attending the Commission on the Status of Women for many years and were part of the international lobby which succeeded in the adoption in 2000 of the landmark Security Council Resolution 1325 on Women, Peace and Security. It reaffirms the important role of women in conflict prevention, management, conflict resolution and sustainable peace. Governments are obliged to implement this with plans of action. Only about 73 of 193 have. Canada is among them.

<https://vowpeace.org> info@vowpeace.org www.facebook.com/VOWPeac

Religions for Peace Canada

Religions for Peace Canada is the Canadian affiliate of Religions for Peace, an international coalition of representatives from the world's religions dedicated to promoting peace. Founded in 1970, Religions for Peace's global movement is distinguished by its global leadership, Interreligious Councils, and interfaith women and youth networks which are working at local, national, and regional levels as changemakers. The organization is comprised of over 90 national and 6 regional Interreligious Councils, which collectively engage millions of faith-based people from all traditions, in key challenges for humanity, including peace, human rights, the climate, poverty alleviation and sustainable development. Religions for Peace Canada is a member of the Canadian Interfaith Conversation and the Canadian Network for the Abolition of Nuclear Weapons

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World Federalist Movement Canada

World Federalist Movement (WFM) Canada is the Canadian affiliate of the World Federalist Movement, which was established in 1937 to advance global governance and law as the alternative to war. World Federalists support the application of the principles of federalism to world affairs, in order that global governance becomes more equitable, just and democratically accountable. World Federalist Movement Canada was established in 1951 with the coming together of world federalist groups in Montreal, Ottawa, Toronto, Winnipeg and Saskatoon to form a national body. Our programs cover Peace and Security, Global Democratization, Responsibility to Protect and Global Governance Reforms.

www.wfmcanda.org ferguswatt@worldfederalistscanada.org www.facebook.com/WorldFederalistMovementCanada

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 www.instagram.com/youthfusion2000/