

Statement by the International Campaign to Abolish Nuclear Weapons (ICAN) to the 21st session of the Assembly of States Parties to the Rome Statute

The Hague, 5 December 2022

Distinguished delegates,

The use of nuclear weapons would be a war crime.

This might be obvious to some states here, especially those governments that have signed and ratified the Treaty on the Prohibition of Nuclear Weapons – outlawing these weapons of mass destruction.

This might be quite uncomfortable for some states here, especially those of you who rely on nuclear deterrence, also known as being ready to use and participate in the use of nuclear weapons – a war crime – in your security strategies.

But the reality is obvious. Nuclear weapons are designed to cause indiscriminate, catastrophic harm. They are meant to incinerate a city within seconds. They cannot be used without causing grave environmental harm, or causing superfluous injury or unnecessary suffering.

Since the establishment of the ICC, the threat of nuclear weapons has never been this high. With Russia's threats to use nuclear weapons against anyone intervening in the the Ukraine conflict, responses from other governments that imply possible retaliation with nuclear weapons, commentary and analysis examining scenarios in which nuclear weapons might be used, military exercises involving nuclear weapons, and testing by North Korea of nuclear-capable ballistic missiles, the idea of using nuclear weapons is being normalized, and the decades-old taboo against their use is being eroded. We believe that the risk of nuclear conflict is now as high as it has ever been.

Any use of nuclear weapons, however “limited” or “tactical”, would have wide-ranging and catastrophic humanitarian consequences. There is no way to use a nuclear weapon without causing widespread civilian injury, loss of life, and severe environmental damage. A single nuclear detonation would likely kill hundreds of thousands of civilians and injure many more; radioactive fallout could contaminate large areas across multiple countries.

The use of nuclear weapons would be a war crime.

Studies and analyses over many years by UN agencies and the International Committee of the Red Cross have consistently found that there could be no effective humanitarian response following the use of a nuclear weapon. Medical and emergency response capacities would be immediately overwhelmed, exacerbating the already massive number of casualties. Widespread panic would trigger mass movements of people and severe economic and social disruption.

Multiple detonations would be much worse, killing millions of people and injuring tens or hundreds of millions, causing devastating environmental damage, and triggering climate change and global famine. A study published in *Nature Food* in August 2022 found that even a limited, regional nuclear conflict could lead to the deaths of over 2 billion people.

As states are discussing a variety of issues at this Assembly of States Parties, the recent threats of nuclear weapons use make it even more urgent to make it clear that anyone who orders the use of nuclear weapons would be intentionally directing an attack against civilians and civilian infrastructure. That is the purpose of nuclear weapons, it is what they are designed to do.

While the use of nuclear weapons is not explicitly covered by the Rome Statute, in contrast to the other forms of weapons of mass destruction – chemical and biological weapons – the use of either of which is explicitly defined as a war crime by Article 8 (b) (xviii) and (xxvii) respectively.

Nevertheless, given the immense and indiscriminate destructive power of nuclear weapons and their wide-ranging catastrophic humanitarian consequences, use of nuclear weapons would constitute a war crime under several other provisions of Article 8 (b), including those concerning intentionally directing attacks against the civilian population or civilian objects, and intentional attacks that will cause incidental loss of life or injury to civilians or damage to civilian objects or to the natural environment which would be clearly excessive in relation to the military advantage anticipated. In some circumstances, use of nuclear weapons could constitute a crime against humanity as defined in Article 7, as these weapons are designed to intentionally cause great suffering.

Russia's actions have also highlighted another way in which nuclear weapons may be connected with war crimes. Russia has used the threat of use of nuclear weapons as a means to facilitate its illegal aggression against Ukraine and to restrict the range of possible responses from the international community, thereby providing a cover for war crimes and violations of human rights. Any of the world's nine nuclear-armed states could employ a similar strategy at any time.

The international legal regime surrounding weapons of mass destruction has recently changed significantly in ways which states parties to the Rome Statute may wish to consider. With the entry into force on 22 January 2021 of the United Nations Treaty on the Prohibition of Nuclear Weapons (TPNW), nuclear weapons are now comprehensively prohibited under international law, in exactly the same manner that chemical and biological weapons are prohibited by the 1993 Chemical Weapons Convention and the 1972 Biological Weapons Convention respectively. This change has rendered the Rome Statute's different treatment of nuclear weapons anomalous. It has also altered the basis for the ICJ's 1996 conclusion that "There is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such".

We encourage states parties to discuss and consider the appropriate response to these changes, in light of the heightened and urgent risk of nuclear catastrophe that we are facing.