

LEARN ABOUT NUCLEAR WEAPONS

A crash course in international law

International law regulates the relations among states in times of peace as well as war. International law applies whether a state is democratic or totalitarian. Dictatorships, such as former Nazi Germany and today's North Korea are bound by international law. Unlike national jurisdiction, international law often lacks control mechanisms and sanctions to guarantee states' observance. Control mechanisms and sanctions are usually spelled out in treaties.

International law consists of both customary law and treaty law. Customary law is binding on all States, whether or not they have signed a certain treaty. Treaty law is based on conventions (i.e. treaties each state has signed and ratified).

The increasing importance of international law

Regarding nuclear weapons, both customary and treaty law are important. Disarmament treaties aim at protecting states and preventing armed conflicts. When war breaks out, certain laws of war apply, aiming at keeping the war as humane as possible. These rules are created to protect individuals – both combatants and civilians — and fall under the concept of humanitarian law. There is an obvious connection between humanitarian law and disarmament law. The International Mine Ban Treaty, for example, bans the use of landmines, as these weapons are considered inhumane.

As a result of globalization, the importance of international law has increased in the past years. International law covers a growing number of areas (e.g., different environmental conventions and the Convention on the Rights of the Child. This has sometimes led to controversy about the appropriate balance between international norms and the freedom of action of sovereign states.

Nuclear weapons – how are they regulated?

No international convention explicitly bans possession, manufacture, and use of nuclear weapons. Such conventions exist for chemical and biological weapons. The issue of the illegality of nuclear weapons, despite the lack of a convention, was considered by the International Court of Justice (ICJ) in an advisory opinion in 1996. You can read more about this ICJ advisory opinion later in this chapter.

In this chapter you will find information about most of the conventions that apply to nuclear weapons and about the negotiations leading up to today's regulations. As you will see, the conventions vary in their degree of detail. Different treaties have different effects. In some cases the conventions totally lack control mechanisms, as is the case with the Strategic Offensive Reductions Treaty (SORT) of 2002. States can also withdraw from treaties. The US has withdrawn from the 1972 ABM Treaty, which aimed at preventing development of missile shields.

Using international law

International law can be used in two different ways. First, both states and the general public can call attention to an infringement of international law. A problem, however, can be the lack of available sanctions in cases where international law is breached. Even when the international community clearly identifies that the government of a country is violating international law in the way it treats its citizens, for example, enforcing the norms can be difficult. Second, through the accumulation of conventions, international law can be used as a peace making instrument. Banning and abolishing nuclear weapons is not juridical or technical problem; there is an obvious lack of political will within the nuclear weapons states to strengthen international law in a peace building effort.

The ICJ advisory opinion

On 8 July 1996 the International Court of Justice in The Hague published its advisory opinion about the legality of use of nuclear weapons. The ICJ had been asked by the UN General Assembly whether the use of nuclear weapons violates international law.

Indiscriminate violence

The ICJ responded that in most cases the threat or use of nuclear weapons does violate international law. Nuclear weapons are illegal because they cannot distinguish between soldiers and civilians. A nuclear attack will cause indiscriminate violence, killing both civilians and soldiers.

Nuclear weapons are illegal because they cause unnecessary suffering. According to international law, warring parties may only use as much force as is needed to render the enemy harmless. This is called the principle of proportionality. States outside the armed conflict must also not be affected by the use of violence. Nuclear weapons inevitably cause far more destruction and much greater harm than allowed under the principle of proportionality. Moreover, states that are not parties to the conflict will be severely harmed, through the radioactive fallout that spreads over large areas following a nuclear explosion.

The right to self defense

International law prohibits states from using violence against other states. This is why it is illegal to start a war. There is an exception from the prohibition of states using violence: if a state has been attacked by another state. In a situation like that the country under attack has the right to use violence in self-defense. The question was whether a state can use nuclear weapons in self-defense even if the use of nuclear weapons is illegal in most cases. The Court was unable to reach a conclusion about the legality of the use of nuclear weapons in extreme situations when a country's existence is threatened. The ICJ stated, however, that "the threat or use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and in particular the principles and rules of humanitarian law".

An obligation to disarm

The ICJ further stated in its advisory opinion that all States have an obligation to complete the task of nuclear disarmament. The Court referred to the part of the NPT that deals with nuclear disarmament. According to Article VI of the NPT, all member states are obliged to negotiate nuclear disarmament. This obligation also contains an obligation to reach a particular goal, namely disarmament of nuclear weapons.