



17

Non-Proliferation and Disarmament Law

Yasemin Balci & Sonia Drobysz – VERTIC

Introduction

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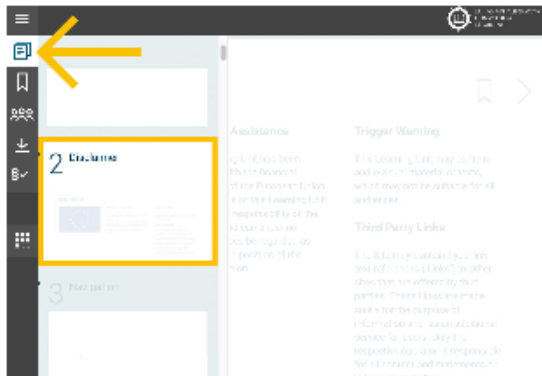
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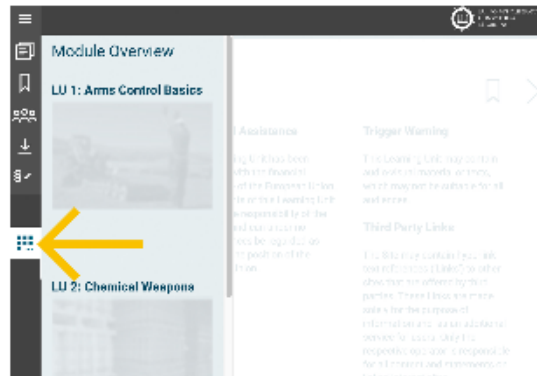
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Introduction

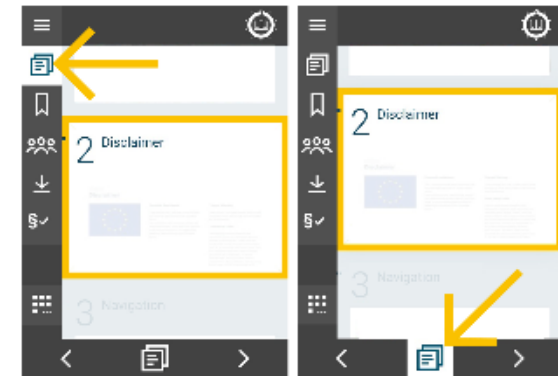
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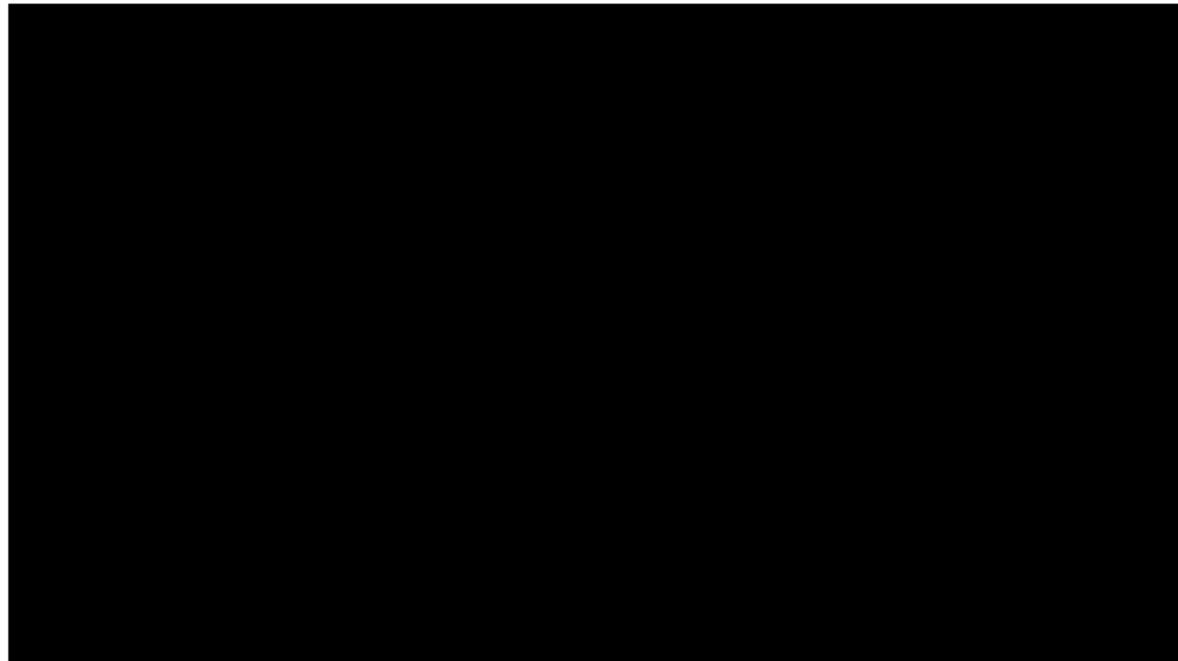
Introduction

A Message from the Authors

A quick video introduction from the home office, as our planned video production was not possible due to Covid-19.

The authors would like to thank Thomas Brown, Associate Legal Officer at VERTIC, for his assistance with the development of this learning unit.

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Introduction

Contents



Chapter I: International Non-Proliferation and Disarmament Law



Chapter I: International Non-Proliferation and Disarmament Law

International Non-Proliferation and Disarmament Law as Part of International Law (I)

What is international law?

International law is the body of norms governing the relations between its subjects. This includes states, first and foremost, but also others, such as international organisations.

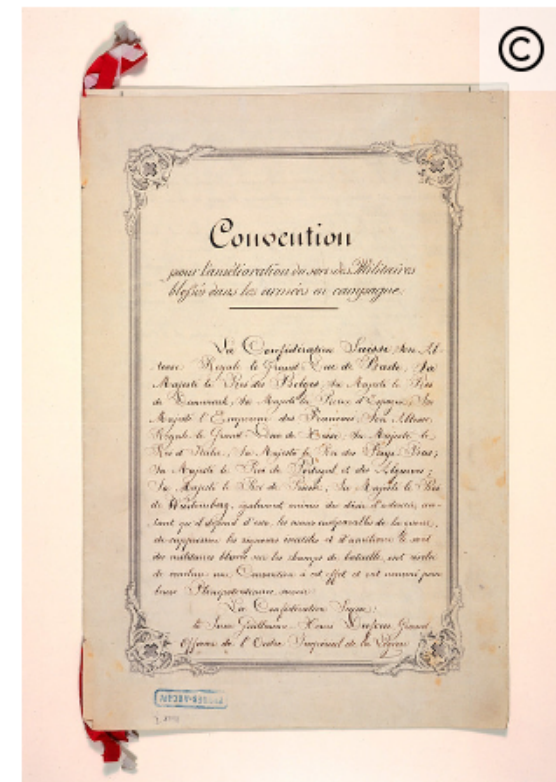
International law regulates different fields of cooperation ranging from terrorism, outer space and global communications to human rights, the environment and non-proliferation and disarmament.

How are international law and non-proliferation and disarmament law related?

International non-proliferation and disarmament law forms part of international law and is one of its many "sub-regimes". The founding and functioning principles of non-proliferation and disarmament law are therefore aligned with those of international law.

This holds true with regard to:

- the sources of international non-proliferation and disarmament law
- its subjects
- its application



Chapter I: International Non-Proliferation and Disarmament Law

International Non-Proliferation and Disarmament Law as Part of International Law (II)

Does international law, and international non-proliferation and disarmament law, really work?

The flaws of international law often show in dramatic and difficult situations such as wars and severe political and social upheaval. These shortcomings receive much attention in the media, causing public opinion to question the usefulness, or sometimes even existence, of international law.

However, as noted by renowned scholar Louis Henkin,

“almost all nations observe almost all principles of international law and almost all of their obligations almost all of the time.”

As the “100 Ways” project described in the next section demonstrates, almost all of the time we may just not be aware of it.

Moreover, even at such challenging times as armed or political conflict, states consistently seek to justify their acts on the basis of international law. This demonstrates that **states consider themselves bound** by the rules they have set, whatever the circumstances. During certain periods of time or certain events, states may deny and defy international law, but this will almost always come at a political or economic cost in their relations with other states.

The “100 Ways” ⁷ project of the American Society of International Law shows that international law is so deeply and comprehensively **ingrained into everyday life** that its existence can be easily overlooked. The project gives a 100 examples of how international law works across eight areas: daily life, leisure, travel, commerce, health and the environment, personal liberty, safety and development,

To give one such **example**, mailing a postcard to any country across the globe is easy, because of the 1964 Constitution of the Universal Postal Union, which sets up a worldwide postal network and ensures that the stamp you bought is recognised for mail delivery by all other states.

As for peace and security, another example is “banning cruel and inhumane weapons such as sarin gas” ([International Law: 100 Ways It Shapes Our Lives ⁷](#)). This is done by a number of treaties including the **1993 Chemical Weapons Convention** and the **1972 Biological and Toxin Weapons Convention**. These treaties form part of international non-proliferation and disarmament law.

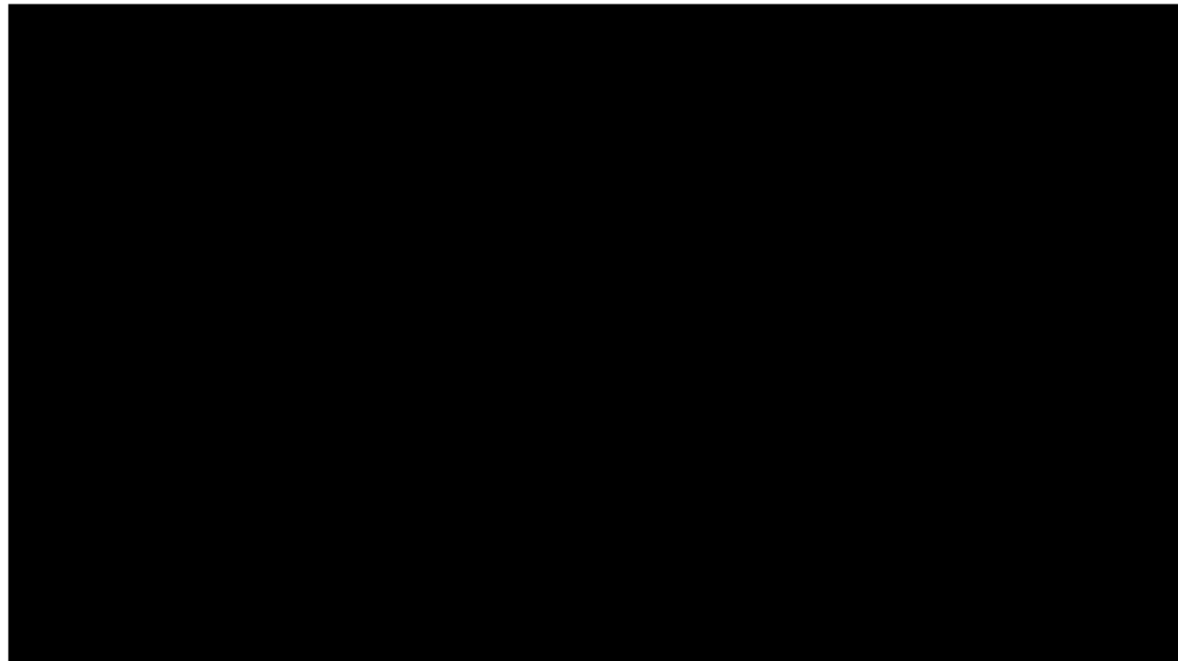
Chapter I: International Non-Proliferation and Disarmament Law

Sources of International Non-Proliferation and Disarmament Law

This video lecture covers the following topics:

- the legally binding sources of international non-proliferation and disarmament law
- the “soft law” sources of international law

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Chapter I: International Non-Proliferation and Disarmament Law

Sources: Legally Binding and Non-Binding Instruments

Binding or "hard law": creates obligations and rights

Treaties

e.g. Chemical Weapons Convention

Custom

e.g. prohibition of use of biological weapons

General principles

e.g. good faith

Judicial decisions and teaching of the most qualified publicists

e.g. International Court of Justice cases

Non-binding or "soft law": gives guidance and recommendations and may be incorporated into legally binding international or national instruments



UN General Assembly resolutions

e.g. Resolution 74/66: Strengthening and developing the system of arms control, disarmament and non-proliferation treaties and agreements

Codes of Conduct, Guidelines

e.g. IAEA Code of Conduct on the Safety and Security of Radioactive Sources

Chapter I: International Non-Proliferation and Disarmament Law

Legally Binding Sources: Examples of Non-Proliferation and Disarmament Treaties

The treaties mentioned on this page aim to prohibit so-called '**weapons of mass destruction:**' biological, chemical, nuclear and radiological weapons. They also aim to control the materials that may be diverted from peaceful activities in science, medicine and industry to make such weapons. They are legally binding on states that have joined them: they create rights and obligations for those states.

**Biological
weapons and
materials**

**Chemical
weapons and
materials**

**Nuclear and
other radioactive
material**

1925 Protocol for the Prohibition of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare

1972 Convention on the prohibition of the development, production and stockpiling of bacteriological (biological) and toxin weapons and on their destruction (BWC)

See also [LU 03: Biological Weapons](#)

Chapter I: International Non-Proliferation and Disarmament Law

Legally Binding Sources: Focus on the Chemical Weapons Convention

The [CWC](#) is an interesting example of a legally binding source of non-proliferation and disarmament law. It prohibits an entire category of weapons. While **toxic chemicals** can be misused to develop these weapons, states have the right to undertake peaceful activities with these chemicals; including for industrial, agricultural, research, medical and pharmaceutical purposes. Moreover, the CWC establishes an international organisation tasked with verifying that chemical weapons have been destroyed and that states' activities with toxic chemicals remain lawful.

You can read more about the CWC's history in our [learning unit on chemical weapons](#)

In comparison, the [BWC](#) also bans a category of weapons and encourages the peaceful uses of **biological agents** and toxins, but it does not create an organisation to verify its application. The [NPT](#) encourages the peaceful uses of **nuclear energy**, but it does not ban nuclear weapons for all states. It delegates verification activities to the [IAEA](#), an organisation that pre-dates the treaty.

The CWC comprises 24 articles and 3 annexes for a total of 165 pages. In comparison, the BWC comprises 15 articles, and the NPT 11.

The CWC includes different categories of provisions:

- **provisions common to most treaties:** preamble, definitions, general obligations, settlement of disputes, amendments, duration and withdrawal, conclusion and entry into force, reservations, depositary ([see Chapter 2](#)) for more information about treaty law)
- **provisions specific to the subject matter:** declarations, chemical weapons, chemical weapons production facilities, activities not prohibited under the convention, economic and technological development, assistance and protection against CW, annexes on verification and confidentiality
- [national implementation](#) **measures**
- **mechanisms** to raise and redress situations **of non-compliance**

Chapter I: International Non-Proliferation and Disarmament Law

Legally Binding Sources: Focus on UNSCR 1540 Decisions

UN Security Council Resolution 1540 was adopted in 2004 and addresses the non-proliferation of nuclear, chemical and biological weapons (as well as their means of delivery) to non-state actors.

UNSCR 1540 was adopted under **Chapter VII of the Charter of the United Nations** which authorises the UN Security Council to take enforcement action with respect to situations it considers threats to the peace, breaches of the peace, and acts of aggression. The proliferation of nuclear, chemical and biological weapons to non-state actors was considered a threat to international peace and security.

UNSCR 1540 is a resolution, not a treaty. However, it includes **legally binding decisions**. This is pursuant to **Article 25 of the UN Charter**, which stipulates that UN members agree to accept and carry out the decisions of the Security Council.

The following are such decisions in UNSCR 1540:

- All States shall **refrain from providing any form of support** to non-state actors that attempt to engage with nuclear, biological and chemical weapons.
- All States shall **adopt and enforce laws** prohibiting any non-state actor to manufacture, acquire, possess, develop, transport, transfer or use these weapons and their means of delivery.
- All States shall **take and enforce measures** to establish domestic controls to prevent the proliferation of these weapons and their means of delivery.

UNSCR 1540 relationship with other non-proliferation and disarmament instruments



"None of the obligations set forth in the resolution shall be interpreted so as to conflict with or alter the rights and obligations of State Parties to the Nuclear Non-Proliferation Treaty, the **Chemical Weapons Convention** and the Biological and Toxin Weapons Convention or alter the responsibilities of the International Atomic Energy Agency or the **Organisation for the Prohibition of Chemical Weapons**"

NPT / IAEA



CWC / OPCW



BWC



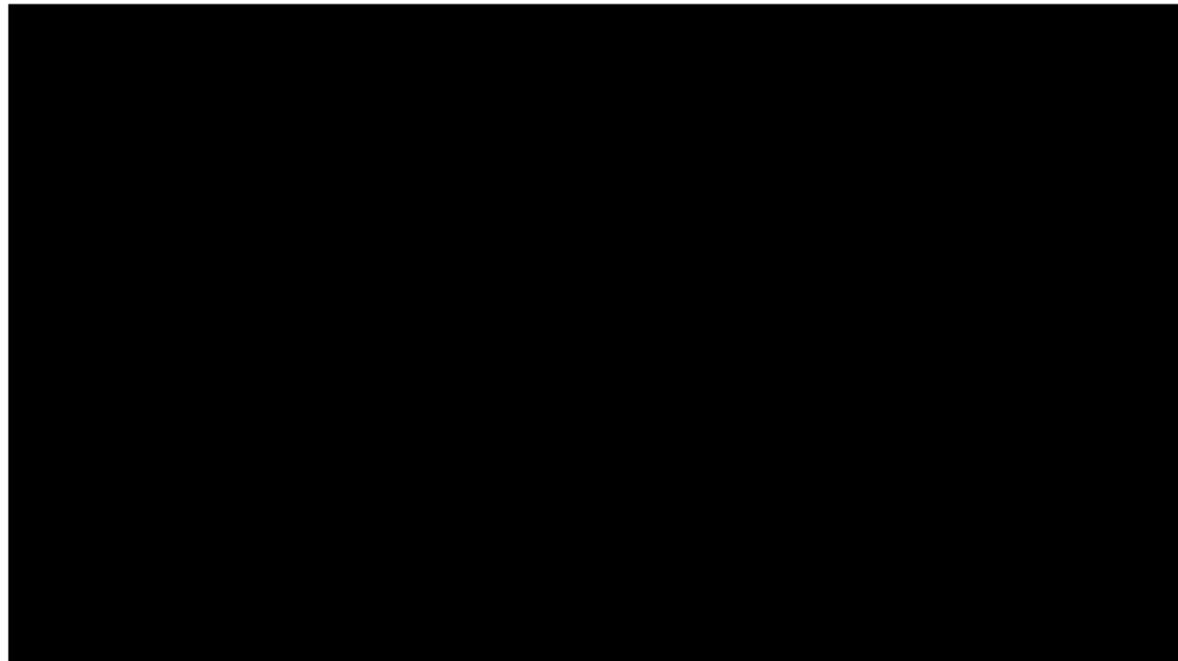
Chapter I: International Non-Proliferation and Disarmament Law

Participants in International Non-Proliferation and Disarmament Law

This video lecture covers the following topic:

- the participants in international non-proliferation and disarmament law: states, international organizations, and individuals

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Chapter I: International Non-Proliferation and Disarmament Law

Participants: Focus on the IAEA

1956 IAEA Statute

The IAEA Statute is the treaty establishing the IAEA. It provides for its objectives, functions, membership, structure and organs, activities, finance, privileges and immunities, and relationship with other organisations.

It was **approved on 23 October 1956** by the Conference on the Statute of the International Atomic Energy Agency, held at the Headquarters of the United Nations.

It came into force on 29 July 1957.

As of April 2021, there were 173 States Parties to the IAEA Statute, or in other terms **171 IAEA Member States**. For more information see also [LU 05: Nuclear Weapons II](#) ⁷.

IAEA functions

According to Article II of its Statute, the IAEA shall promote the **peaceful uses of atomic energy** while making sure it is not used to further any military purposes.

Non-nuclear-weapon States Parties to the Non-Proliferation Treaty (those that have not manufactured and exploded a nuclear weapon or other nuclear explosive device prior to 1 January 1967) have undertaken to conclude so-called “safeguards agreements” with the IAEA, for the exclusive purpose of verification of the fulfilment of their non-proliferation obligations under the treaty with a view to preventing diversion of nuclear energy from peaceful uses to nuclear weapons or other nuclear explosive devices.

NPT safeguards agreements are separate bilateral treaties concluded between NPT States Parties and the IAEA. They provide for the application of measures such as

IAEA as a legal person under international law

The IAEA possesses legal personality. It has the capacity (a) to contract, (b) to acquire and dispose of immovable and movable property and (c) to institute legal proceedings.

It enjoys **privileges and immunities** necessary for the exercise of its functions. This means, for example, that the property and assets of the IAEA cannot be the object of search, requisition, confiscation, expropriation and any other form of interference, whether by executive, administrative, judicial or legislative action. This also means that IAEA staff such as inspectors cannot be arrested or detained while exercising their functions.

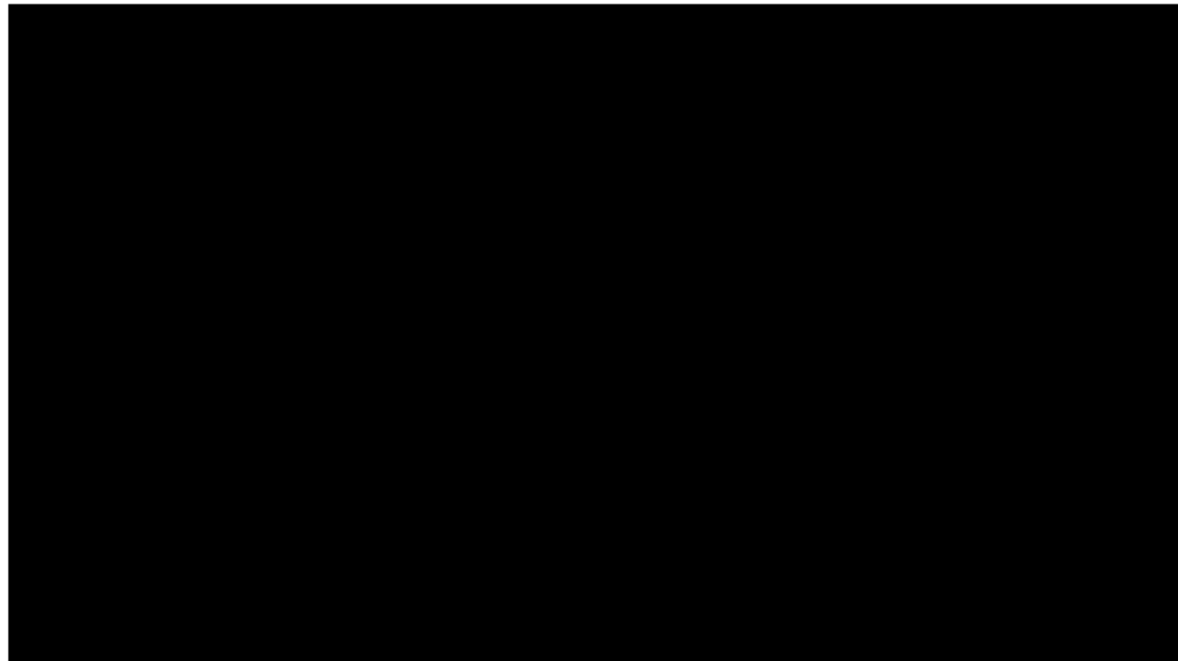
Chapter I: International Non-Proliferation and Disarmament Law

Non-Compliance and Disputes in Non-Proliferation and Disarmament Law

This video lecture covers the following topics:

- reminder of [LU 13: Compliance and Enforcement](#) ↗
- definition of legal dispute
- means to settle legal disputes
- the role of the International Court of Justice

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Chapter I: International Non-Proliferation and Disarmament Law

The International Court of Justice's Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, 8 July 1996 (I)

A divisive advisory opinion

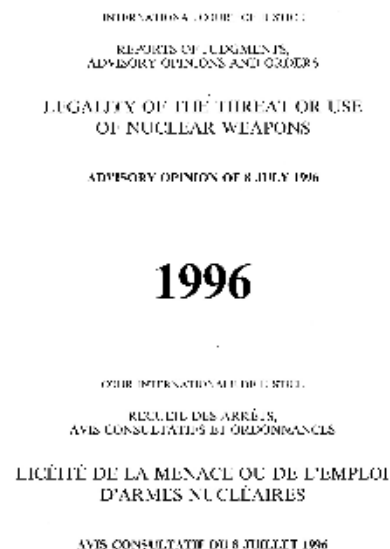
The [ICJ's Advisory Opinion](#) ⁷ on the Legality of the Threat or Use of Nuclear Weapons has received much attention in the international legal, as well as non-proliferation and disarmament communities. The Court's function was not to settle – at least directly – a specific dispute between states, but to offer legal advice on a specific question. Its divisive response was commented on by judges and scholars, but also governments of nuclear and non-nuclear-weapons states. As with other advisory opinions, many of the opinion's passages are given weight as a source of international law.



The institution and question before the Court

In its resolution 49/75K adopted on 15 December 1994, the **UN General Assembly** requested the ICJ urgently to render its advisory opinion on the question: "Is the threat or use of nuclear weapons in any circumstance permitted under international law?"

Resolution 49/75K mentions the UNGA's conviction that the complete elimination of nuclear weapons is the only guarantee against the threat of nuclear war; it also recalls the need to strengthen the rule of law in international relations as well as the recommendation of the UN Secretary General to take advantage of the advisory competence of the ICJ.



Chapter I: International Non-Proliferation and Disarmament Law

The International Court of Justice's Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, 8 July 1996 (II)

The applicable law

According to the Court, the following is the most directly relevant applicable law governing the question of the legality of the threat or use of nuclear weapons:

- law on the use of force, which includes the use of force by states in self-defence (see [Chapter 2](#) for more information)
- law of armed conflict, also known as international humanitarian law (see [Chapter 2](#) for more information)
- treaties on nuclear weapons, including the NPT and regional nuclear weapon free zones treaties (see [Chapter 2](#) for more information on treaty law)

The Court noted the “eminently difficult issues” arising in applying the law to



The ICJ, The Hague

The Court's response

The Court addressed separate aspects of the question leading to its final following response which was adopted by seven votes to seven with the ICJ President's casting vote in favour:

“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; However, in view of the current state of international law, and of the elements of fact at its disposal, the Court cannot conclude definitively whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defence, in which the very survival of a State would be at stake.”

The judges were unanimous in their response that there exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict

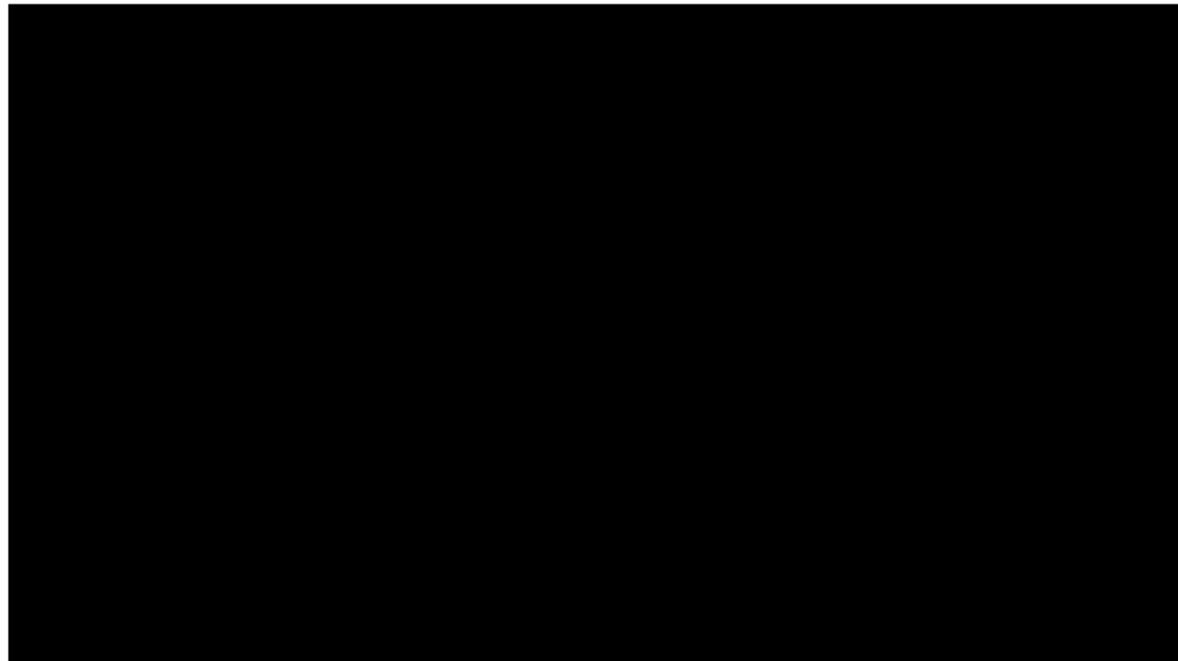
Chapter I: International Non-Proliferation and Disarmament Law

Specificities of International Non-Proliferation and Disarmament Law

This video lecture covers the following topics:

- technical nature of international non-proliferation and disarmament law
- the importance of verification AD
IPZ
- the number of sub-areas of international non-proliferation and disarmament law
- the number of relevant international instruments and institutions

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Chapter II: Related Areas of International Law



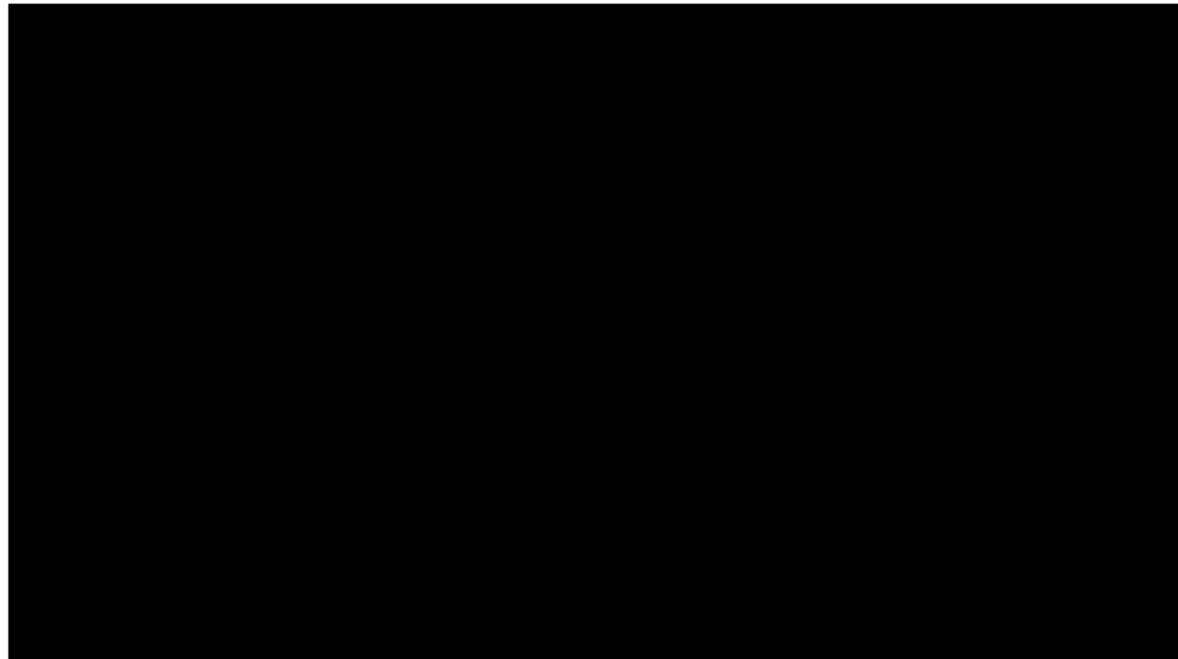
Chapter II: Related Areas of International Law

Introduction to Treaty Law

This video lecture covers international non-proliferation and disarmament law in relation to treaty law, specifically:

- role of the Vienna Convention on the Law of Treaties
- creation of treaties
- joining of treaties
- general principle of international law
Pacta sunt servanda 
- termination of treaties

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Chapter II: Related Areas of International Law

Focus on Treaties I: Joining Treaties

What is a Treaty?

” *an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation*

— Vienna Convention on the Law of Treaties (VCLT), Article 2(1)(a)

To join a multilateral treaty (a treaty that is open to three or more states), a state has to express its ‘consent to be bound’ by that treaty. This usually happens through either ratification or accession procedures:

- 1/ If a state has signed or wishes to sign the treaty while it is open for signature, it will follow the ratification ⁴⁵ procedure (see section 1).
- 2/ If a state has not signed the treaty while it was open for signature, it can join by going through the accession ⁴⁵

1) Consent to be bound by ratification

” *The consent of a state to be bound by a treaty may be expressed by [...] ratification [...].*

— Article 11, VCLT.

Step 1 – Signature: state signs the treaty, often during a ceremony

Step 2 – Domestic approval: state seeks domestic approval for the ratification of the treaty

Step 3 – Deposit of Instrument of Ratification: state deposits its ‘instrument of ratification’, usually a very short, signed document, with the depositary (who is responsible for administering the treaty), which establishes the state’s consent to be bound

2) Consent to be bound by accession

” *The consent of a State to be bound by a treaty may be expressed by [...] accession [...].*

— Article 11, VCLT

This procedure usually applies if a state has not signed a treaty, for example because the timeframe for signature has closed. In that case, ratification is no longer possible, but accession is.

Step 1 – Domestic approval: state seeks domestic approval for accession to the treaty

Step 2 – Deposit of Instrument of Accession: state deposits its ‘instrument of accession,’ usually a very short, signed document, with the depositary (who is responsible for administering the treaty), which establishes the state’s consent to be

Chapter II: Related Areas of International Law

Focus on Treaties II: Pacta sunt servanda

Entry into force

"Entry into force" of a treaty refers to the date on which the **treaty becomes binding** on the states that have expressed their consent to be bound it.

Multilateral treaties commonly require a **certain number** of states to have expressed their consent to be bound for the treaty to enter into force. The Comprehensive Test Ban Treaty, for example, even names the states whose consent to be bound is necessary for the treaty to enter into force (see CTBT, Article XIV, para 1).

Multilateral treaties usually also specify when the treaty shall enter into force for states that express their consent to be bound **after** a treaty has already entered into force (see for example CTBT, Article XIV, para 5).

Pacta sunt servanda (Latin for "agreements must be kept"): every treaty in

Example: Comprehensive Test Ban Treaty

Article XIV: Entry into force

" 1. *This Treaty shall enter into force 180 days after the date of deposit of the instruments of ratification by all States listed in Annex 2 to this Treaty, but in no case earlier than two years after its opening for signature. [...]*

5. *For States whose instruments of ratification or accession are deposited subsequent to the entry into force of this Treaty, it shall enter into force on the 30th day following the date of deposit of their instruments of ratification or accession.*



States who?

States that have signed, but not yet ratified a treaty are often referred to as **Signatory States**. As signatories, these states have the obligation

" to refrain from acts which would defeat the object and purpose of that treaty.

— VCLT, Article 18.

- states that have expressed their consent to be bound (by either ratification or accession) *and* for which the treaty is in force = **States Parties**
- states that have expressed their consent to be bound (by either ratification or accession), whether or not the treaty has entered into force = **Contracting States**

Sometimes multilateral treaties establish international organisations. For example, the Chemical Weapons Convention establishes the Organisation for the Prohibition of Chemical Weapons. States

Chapter II: Related Areas of International Law

Focus on Treaties III: Interpreting and Amending Treaties

General Rule of Interpretation of Treaties (VCLT, Article 31)

Treaties shall be interpreted in **good faith** and in accordance with the **ordinary meaning** of their terms. However, the ordinary meaning will also depend on a treaty's **context** and in light of its **object and purpose**.

Context refers to a treaty's:

- preamble
- annexes
- agreements and instruments made in connection with the conclusion of the treaty

Together with the context, the following shall be taken into account:

- **subsequent agreements and practice** regarding interpretation of the treaty

Supplementary Means of Interpretation of Treaties (VCLT, Article 32)

Supplementary means of interpretation may be used as a recourse to confirm or determine the meaning of terms if the general rule of interpretation in Article 31:

A) Leaves the meaning ambiguous or obscure, or

B) Leads to a manifestly absurd or unreasonable result.

Supplementary means of interpretation include the preparatory works of a treaty (known as *travaux préparatoires*) and the circumstances of the conclusion of a treaty.



Amending Treaties

If states parties wish to alter treaty provisions, they can engage in a process to amend the treaty. In multilateral treaties, this process is usually outlined in one of the final articles of the treaty.

For example, States Parties to the Chemical Weapons Convention agreed to make changes to one of its annexes (amendments to annexes are referred to as 'changes' in the CWC). In November 2019, the Conference of States Parties agreed to add two families of toxic chemicals, known as novichok, to Schedule 1 of the Annex on Chemicals.

The procedure for these changes are outlined in Article XV of the CWC:



1. Any State Party may propose amendments to this Convention. Any State Party may also propose changes

Chapter II: Related Areas of International Law

Focus on Treaties IV: Multilateral Treaty Life-Cycle



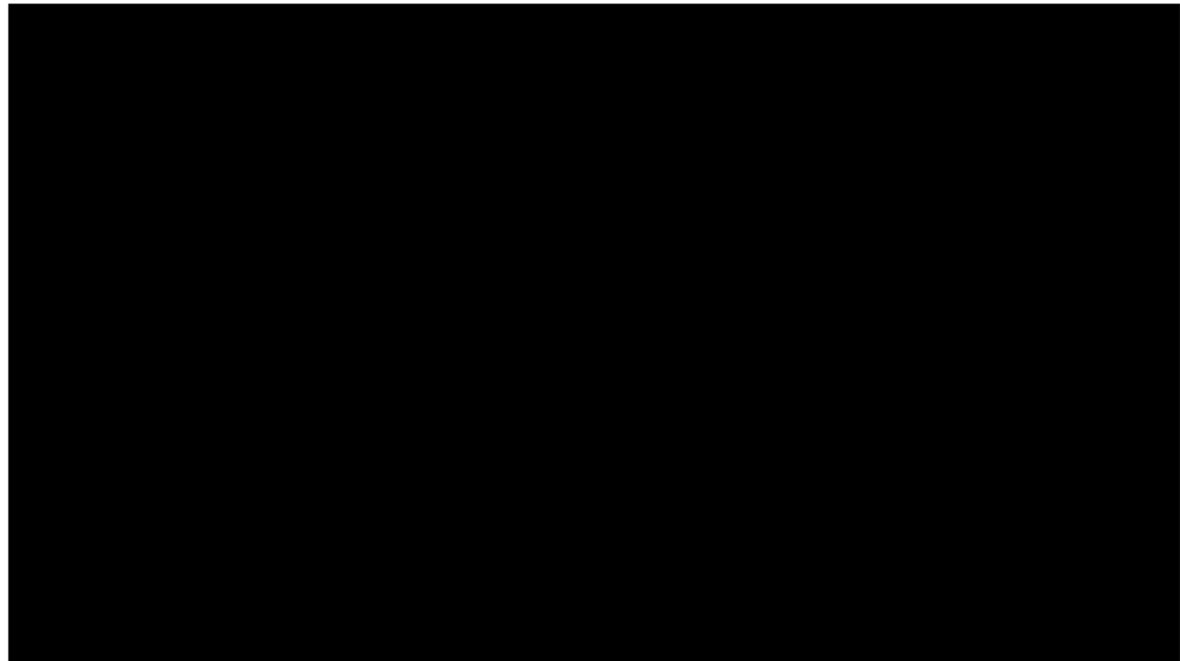
Chapter II: Related Areas of International Law

Law on the Use of Force

This video lecture covers the following topic:

- international non-proliferation and disarmament law in relation to the international law on the use of force

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Chapter II: Related Areas of International Law

Focus on Law on the Use of Force

The use of force by states in international law is governed by both customary and treaty law, with the UN Charter being the most relevant source:

Article 2(4) of the UN Charter **prohibits the threat or use of force:**

“ All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.

Exceptions to this prohibition exist:

*“ Nothing in the present Charter shall impair the inherent right of individual or collective **self-defence** if an **armed attack** occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security [...].*

— Article 51 of the UN Charter.

Chapter VII of the UN Charter provides for enforcement measures that can be taken by the UN Security Council, including the authorisation of the use of force.



United Nations Security Council

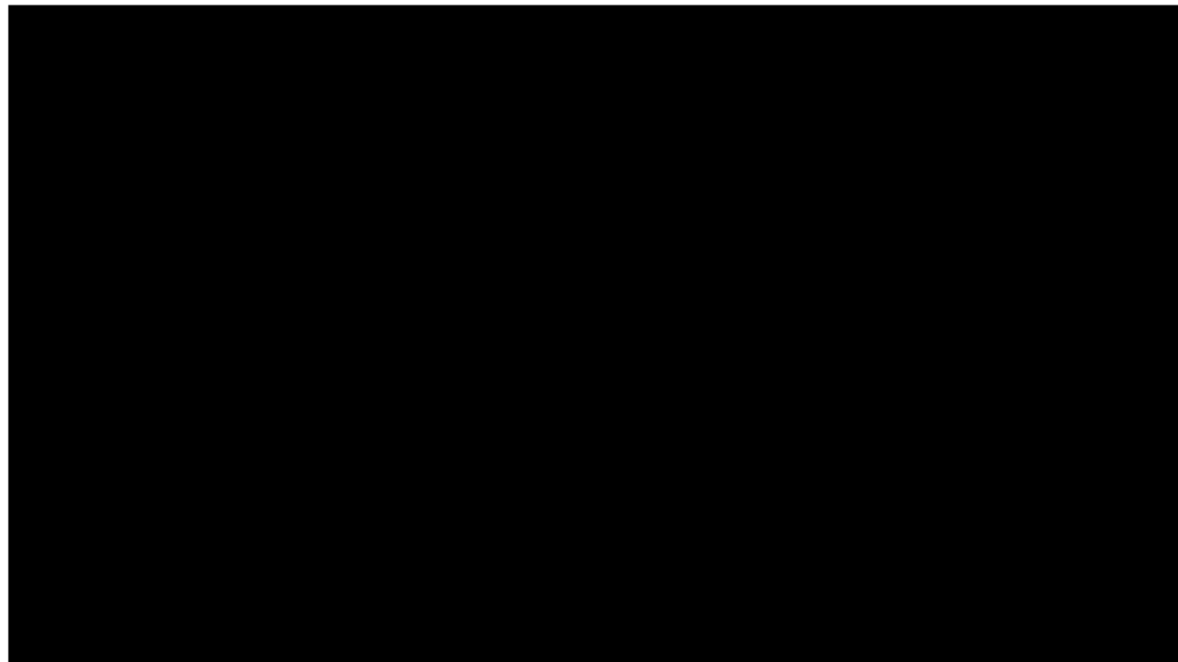
Chapter II: Related Areas of International Law

International Humanitarian, Criminal and Human Rights Law

This video lecture covers international non-proliferation and disarmament law in relation to:

- international humanitarian law
- international criminal law
- international human rights law

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Chapter II: Related Areas of International Law

Focus on International Humanitarian Law

Regardless of whether the use of force was lawful or not, any resulting armed conflict is governed by **international humanitarian law (IHL)**, also known as the **law of armed conflict (LOAC)**.

IHL only applies at the time of an armed conflict, so not during peacetime. It regulates the conduct of armed conflict in order to protect both civilians and combatants. While IHL does not prohibit the use of violence, regulating it provides some relief and protection to all parties involved.

The International Committee of the Red Cross (ICRC) acts as the 'guardian' of IHL. It promotes the development of IHL and its implementation in national law.



International Committee of the Red Cross, Headquarters in Geneva

The **Geneva Conventions** and their Additional Protocols are treaties that form a crucial part of international humanitarian law.

With regard to CBRN materials, Additional Protocol I, for example, generally prohibits attacks on nuclear power stations.

In addition, customary international law provides relevant rules, including the prohibition of the use of chemical and biological weapons in armed conflict.

IHL also consists of principles, such as the principle of distinction between civilians, who are protected from attack, and combatants, who are permitted to directly participate in hostilities and may therefore be attacked.

Chapter II: Related Areas of International Law

Focus on International Criminal Law

The International Criminal Court (ICC)

The [ICC](#) is a permanent international criminal court based in The Hague, the Netherlands. It is established by the **1998 Rome Statute**, which currently has 123 States Parties.



International Criminal Court in The Hague

The Court's Jurisdiction

The Court has jurisdiction over 'the most serious crimes of international concern'. These include:

- the crime of **aggression**: the planning, preparation, initiation or execution of the use of force which constitutes a manifest violation of the UN Charter (see also [page 27](#))
- **war crimes**: grave breaches and other serious violations of IHL (see also [page 29](#))
- **crimes against humanity**: certain acts committed as part of a widespread or systematic attack against a civilian population. Unlike war crimes, crimes against humanity can also be committed during peacetime
- the crime of **genocide**: certain acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group. Like crimes

Amendments

Article 8 of the Rome Statute was amended in 2010 to include the use of poison or poisoned weapons and asphyxiating, poisonous or other gases as war crimes in non-international armed conflict (i.e. an armed conflict between a state and a non-state armed group or between non-state armed groups).

Article 8 was amended again in 2017 to include the **use of biological and toxin weapons** as war crimes both during international and non-international armed conflict.

Chapter II: Related Areas of International Law

Focus on International Human Rights Law

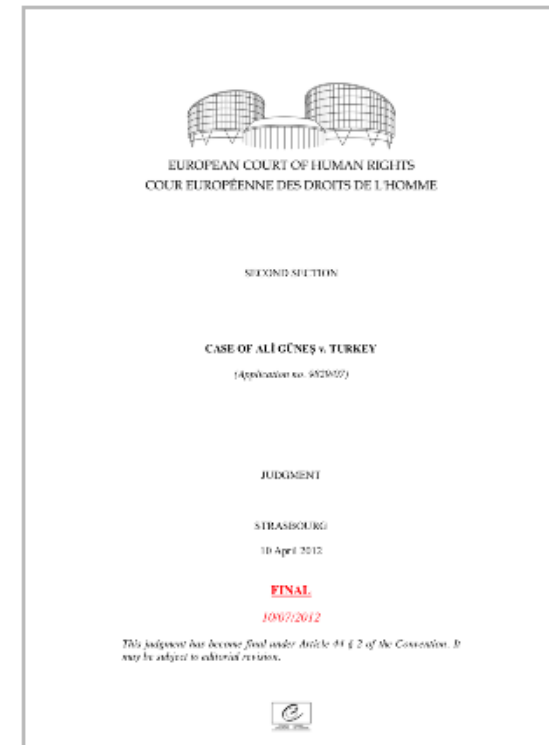
International human rights law IHRL grants **protection to all individuals**. It applies both during peacetime and armed conflict, although during the latter IHL takes precedence.

There are various international and regional treaties that protect and enforce **human rights**, including the European Convention on Human Rights which establishes the European Court of Human Rights ECHR in Strasbourg, France.

An example of the overlap between international human rights law and non-proliferation and disarmament law is the **use of riot control agents**.

While the Chemical Weapons Convention allows for the use of riot control agents for law enforcement purposes, such use is also governed by international human rights law. The ECHR noted this in, among other cases, Ali Güneş v. Turkey .

In this case, the Court held that the use of tear gas on a participant in a protest after his arrest was a violation of his right in **Article 3 of the Convention** to not be subjected to inhuman or degrading treatment.



ECHR Judgment in 2012 in
Ali Güneş v. Turkey

Chapter II: Related Areas of International Law

Quiz

Now it's your turn! Take the following quiz to check what you have learned so far.

If you want, you can also [skip the quiz](#) and move on to the next chapter.



Chapter II: Related Areas of International Law

Quiz

When is a state party to a multilateral treaty that is in force?

1. after it has signed the treaty

2. after it has signed the treaty, but at a date of its choosing

3. after it has submitted its instrument of ratification or accession to the treaty's depositary

4. after its national parliament has approved the treaty

Check answer

Show solution

Reset

Chapter II: Related Areas of International Law

Quiz

If use of force by a state is unlawful, then ...

1. ... the armed conflict that may follow is not governed by IHL.

2. ... the armed conflict that may follow is governed by IHL.

Check answer

Show solution

Reset

Chapter II: Related Areas of International Law

Quiz

International human rights law applies ...

1. ... during peacetime and armed conflict, but IHL takes precedence during an armed conflict. ☐

2. ... during peacetime and armed conflict. ☐

3. ... during peacetime. ☐

4. ... during armed conflict. ☐

Check answer

Show solution

Reset

Chapter II: Related Areas of International Law

Quiz

In the Rome Statute establishing the International Criminal Court, use of biological and toxin weapons is included as which crime?

1. a war crime

☐

2. a crime against humanity

☐

3. aggression

☐

4. genocide

☐

Check answer

Show solution

Reset

Chapter III: National Implementation of Non-Proliferation and Disarmament Law



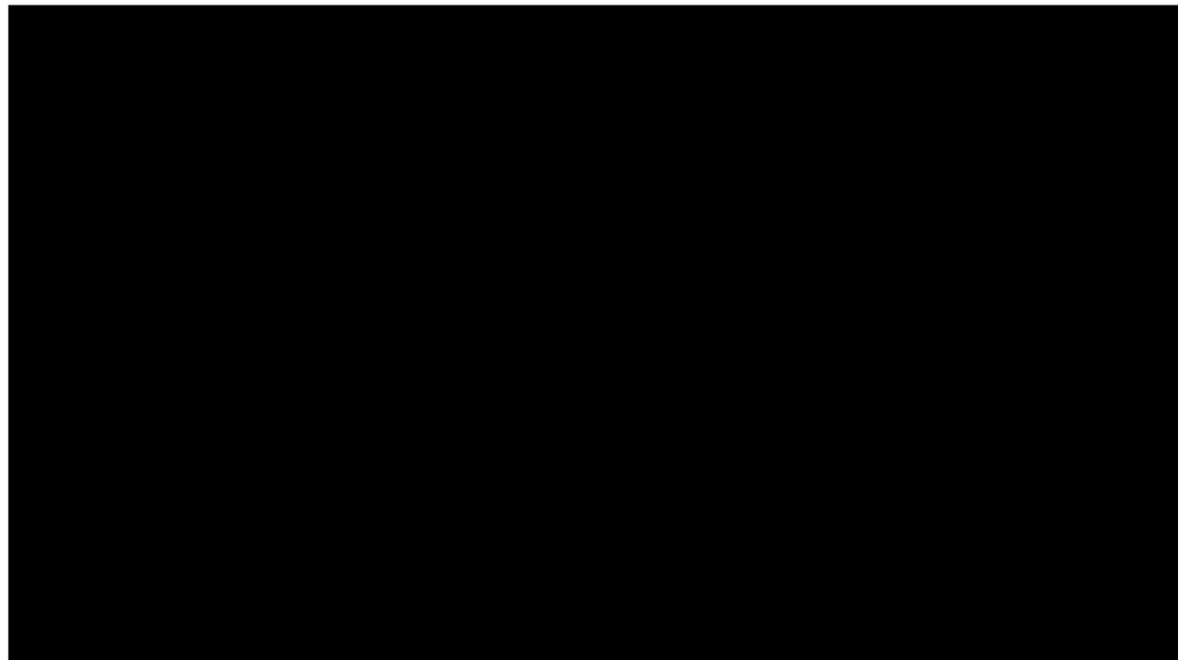
Chapter III: National Implementation of Non-Proliferation and Disarmament Law

National Implementation of Non-Proliferation and Disarmament Law

This video lecture covers the following topics:

- definition of national implementation
- overview of national implementation measures for non-proliferation and disarmament instruments
- status and challenges of national implementation

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Chapter III: National Implementation of Non-Proliferation and Disarmament Law

Implementing the Biological Weapons Convention

According to IV of the Biological and Toxin Weapons Convention, each state party shall take any necessary measures, in accordance with its constitutional process, to prohibit and prevent the development, production, stockpiling, acquisition, retention and use of biological weapons. Let us see how states have been implementing their BWC obligations.

Some states have adopted a BWC implementing act.

- For example, the **United Kingdom** has a Biological Weapons Act ⁷ that focuses on criminal measures to prohibit the development, production, stockpiling, acquisition, possession and transfer of biological weapons.
- The **Czech Republic** has adopted a longer Act on 'Measures Related to Prohibition of Bacteriological (Biological) and Toxin Weapons and on Amendments to Trades Licensing Act' ⁷ ; it covers criminal measures, but also measures to handle biological agents and toxins for peaceful activities in a secure manner.

Some states have adopted specific legislation on biosafety and biosecurity to control peaceful activities with biological agents and toxins that could be diverted to non-peaceful uses.

- **Canada's** Human Pathogens and Toxins Act ⁷ establishes a safety and security regime to protect the health and safety of the public against the risks posed by human biological agents and toxins. As such, it helps prevent the possibility of such agents and toxins being used as biological weapons.

Other states have opted for a "weapons of mass destruction" law including provisions on biological weapons.

- For example, **India** has a Weapons of Mass Destruction law ⁷ to implement the BWC, but also the CWC and nuclear-related obligations.
- **South Africa** also has a Non-Proliferation of Weapons of Mass Destruction Act ⁷ , with separate regulations on nuclear,

Chapter III: National Implementation of Non-Proliferation and Disarmament Law

Drafting Process for Implementing Legislation on Non-Proliferation and Disarmament



Chapter III: National Implementation of Non-Proliferation and Disarmament Law

Available Assistance and Tools to Draft Implementing Legislation

Drafting non-proliferation and disarmament legislation requires technical and legal expertise as well as financial and human resources that not all states may have. There are therefore a number of available tools and programmes to assist those states in developing their legislation.



Legislative Guide to National Implementation of
UN Security Council Resolution 1540 (2004)

Legislative assistance providers

They provide assistance themselves. This is the role of intergovernmental organisations (IOs) and non-governmental organisations (NGOs) within the limits of their specific mandates, budgets and according to their processes – the latter may be more flexible for NGOs.

IAEA [Legislative Assistance and Tools](#)

CTBT [Legal Resources](#)

OPCW [Legislative Assistance and Tools](#)

- [Internship Programme for Legal Drafters and National Authority Representatives](#)
- [National Legislation – Implementation Kit for the Chemical Weapons Convention](#)
- [VERTIC's National Implementation Measures Programme](#)

Legislative assistance brokers

They facilitate assistance provided by others.

- **BWC Implementation Support Unit:** acts as a clearing house for assistance with national implementation.
- **UNSCR 1540 Committee** group of experts: facilitates assistance between states, and between states and international organisations.



Chapter IV: National Enforcement of Non-Proliferation and Disarmament Law



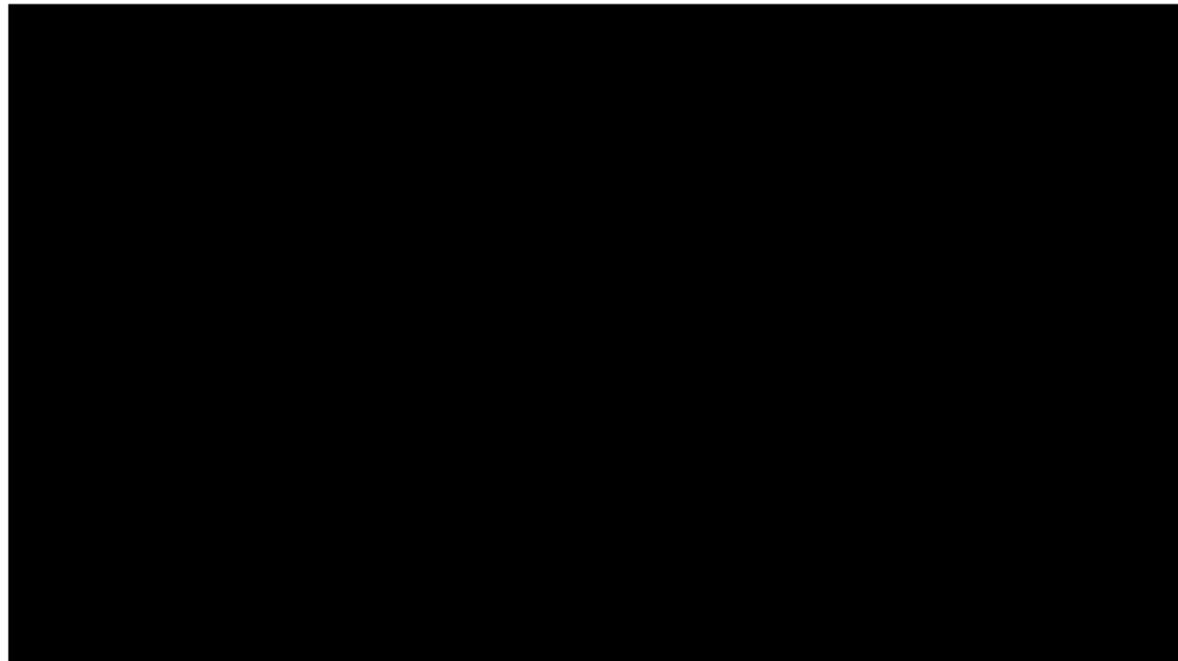
Chapter IV: National Enforcement of Non-Proliferation and Disarmament Law

Overview: National Enforcement of Non-Proliferation and Disarmament Law

This video lecture covers the following topics:

- [national authority](#) AP 07:2
- [national inspections](#) AP 07:2
- [national investigations](#) AP 07:2
- national enforcement in domestic courts

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Chapter IV: National Enforcement of Non-Proliferation and Disarmament Law

National Enforcement of Non-Proliferation and Disarmament Law

National authority

To apply a treaty or multiple treaties at the national level, states often establish **national structures** with such authority. In certain cases, establishment of such a national structure is required by the treaty.

For example, under **Article VII (4) of the Chemical Weapons Convention**, each State Party must designate or establish a National Authority in order to fulfil its obligations under the Convention. Currently 191 (99% of) States Parties, have done so.

Similarly, **nuclear treaties** require the creation of a regulatory body to establish requirements and regulations concerning nuclear energy and/or the handling of radioactive sources.

National inspections

Inspections are a method to verify compliance with obligations.

Apart from **international inspections**, for example by the Organisation for the Prohibition of Chemical Weapons or the International Atomic Energy Agency, states can create a **national inspection system** to monitor and verify compliance with national legislation.



National investigations

As with inspections, investigations can occur at the international and national level.

National law enforcement agencies will be the first to investigate any suspicious activity by individuals, groups or companies in the state's territory or control.

The following are hypothetical examples of situations that require national investigation:

- an individual poisoning another individual
- a group of individuals seeking to create a biological weapon for terrorism purposes
- a company not abiding with rules concerning the transfer of toxic chemicals



Chapter IV: National Enforcement of Non-Proliferation and Disarmament Law

Case Study I: A Criminal Case in the United Kingdom

On 7 November 2014, a graphic designer from London was imprisoned for three years for acquiring the toxin abrin without a lawful justification. Exposure to abrin can be fatal and there is no known antidote.

This marked the first occasion in which a person had been convicted under the **United Kingdom's Biological Weapons Act 1974**. This act implements the Biological and Toxin Weapons Convention in the United Kingdom.

The BWC entered into force on 26 March 1975, which is also when it entered into force for the UK. Together with Russia and the United States, the UK is a Depositary of the Convention.

Since abrin is a toxin (a toxic chemical produced by living organisms) it falls under the Chemical Weapons Convention (CWC) as well. There is therefore some overlap between the BWC and the CWC.



The toxin abrin is found in the seeds of the rosary pea plant, commonly used as beads in rosaries and jewellery.

According to **Section 1(1)(a)** of the United Kingdom's Biological Weapons Act, the acquisition of biological agents and toxins, like abrin, is forbidden if there is no 'justification for prophylactic, protective or other peaceful purposes'.

A UK court established that the graphic designer had purchased the toxin with the intent of primarily using it to poison her mother, or alternatively, to commit suicide after a period of prolonged conflict

Pursuant to Section 1(3) of the Biological Weapons Act, the maximum **penalty** for the offences relating to biological weapons in Section 1(1)(a) is life imprisonment.

In this case, there were **aggravating circumstances** such as the defendant's persistence in obtaining the toxin and the risk she created for third parties.

However, there were also **mitigating circumstances** including her previous good standing and the severe stress she had endured due to abuse by her mother. On balance, the court sentenced the defendant to **three years' imprisonment**.

Abrin is also classified as a 'dangerous substance' in the United Kingdom's **Anti-Terrorism, Crime and Security Act 2001**. Before abrin is kept or used at a premises, its occupier is under an obligation to notify the Secretary of State.

This is in line with the BWC, which requires

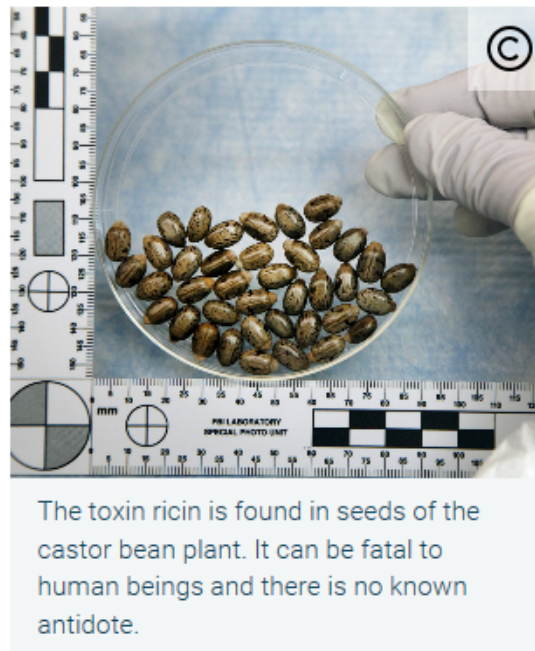
Chapter IV: National Enforcement of Non-Proliferation and Disarmament Law

Case Study II: A Criminal Case in Germany

In February 2019, the German Federal Public Prosecutor charged a couple in connection with **a plot to disseminate the toxin ricin as part of a planned terrorist attack.**

The toxin ricin falls within the scope of both the Biological and Toxin Weapons Convention and the Chemical Weapons Convention. It is included in **Schedule 1 to the Chemical Weapons Convention** and therefore subject to the Organisation for the Prohibition of Chemical Weapons' control measures.

Germany became a State Party to the Biological and Toxin Weapons Convention in 1983. In that year, it also adopted the Law on the BWC. In 1989, it amended its **War Weapons Act** to criminalise activities with biological weapons.



The male defendant was charged, among other offences, with intentionally producing a biological weapon under **section 20 (1) of the War Weapons Act** and the preparation of a serious violent offence endangering the state under **section 89a of the Criminal Code**. The female defendant was charged with supporting these offences.

On 26 March 2020, the Higher Regional Court of Düsseldorf found the male defendant guilty and sentenced him to **10 years' imprisonment**. The Federal Court of Justice rejected his appeal on 10 December 2020.

The female defendant's case was prosecuted separately. She was sentenced to **8 years' imprisonment** on 29 June 2020. Her appeal is underway.

— Source: Couple charged with BW offence in Germany, Thomas Brown, Trust & Verify 164, Summer 2019.

Chapter IV: National Enforcement of Non-Proliferation and Disarmament Law

Case Study III: A Criminal Case in the United States

In October 2018, a political activist and former congressional candidate from Wisconsin, United States was charged with knowingly and unlawfully **attempting to possess radioactive material with intent to cause death or serious bodily injury** under Title 18 of the United States Code, Section 2332i(a)(1) and (3). The maximum penalty is life imprisonment and a fine.

Later another charge was added, namely that the defendant intentionally **attempted, without lawful authority, to receive and possess any nuclear material or nuclear byproduct material** and circumstances had been represented to the defendant to exist, that were likely to cause the death of or serious bodily injury to any person, under Title 18 of the United States Code, Section 831 (a)(1)(B) and (a)(8). The maximum penalty is 20 years of imprisonment and a fine.

The defendant was arrested after he had allegedly been trying to obtain **polonium** on



However, the person delivering the ordered radioactive material was an FBI agent. The defendant was therefore arrested shortly after receipt of the parcel.

The offence in 18 United States Code 2332i(a)(1) and (3) was created to implement the 2005 **International Convention for the Suppression of Acts of Nuclear Terrorism** in national legislation. In particular, Article 2 of the Convention makes it an offence to intentionally and unlawfully possess, or

Similarly, the offence in 18 United States Code 831 was created to implement the 1980 **Convention on the Physical Protection of Nuclear Material**. Article 7 paragraph 1 of this Convention makes, among others, “the intentional commission of an act without lawful authority which constitutes the receipt, possession, use, transfer, alteration, disposal or dispersal of nuclear material and which causes or is likely to cause death or serious injury to any person or substantial damage to property” an offence. In paragraph 2, States Parties are required to establish appropriate penalties for these offences “which take into account their grave nature”.

On 12 February 2020, following a plea agreement in which the first charge was dismissed, the defendant was sentenced for the second charge to **two years’ supervised release and imprisonment for the time served**.

— Source: Former US congressional candidate attempts to buy radioactive substance on the dark web

Chapter IV: National Enforcement of Non-Proliferation and Disarmament Law

Quiz

Now it's your turn! Take the following quiz to check what you have learned so far.

If you want, you can also [skip the quiz](#) and move on to the next chapter.



Chapter IV: National Enforcement of Non-Proliferation and Disarmament Law

Quiz

National inspections are important, because ...

► Hint

1. ... their determinations of non-compliance could be the first step towards a criminal investigation. ☐

2. ... they accompany international inspections to ensure the latter run smoothly. ☐

3. ... they check compliance with international law. ☐

4. ... they check compliance with national law as well as international law to the extent that the latter has been implemented in national legislation. ☐

Check answer

Show solution

Reset

Chapter IV: National Enforcement of Non-Proliferation and Disarmament Law

Quiz

To hold an individual or company criminally liable for possession of a chemical weapon, a prosecutor of a state can bring charges based on:

1. Article VII of the CWC, which mentions penal measures. ☐

2. Article VII of the CWC, which mentions penal measures, provided the state has a monist system. ☐

3. the state's national implementing legislation for the CWC, which includes offences. ☐

4. the state's national implementing legislation for the CWC, provided the state continues to be party to the CWC. ☐

[Check answer](#)[Show solution](#)[Reset](#)

Chapter V: European Non-Proliferation and Disarmament Law



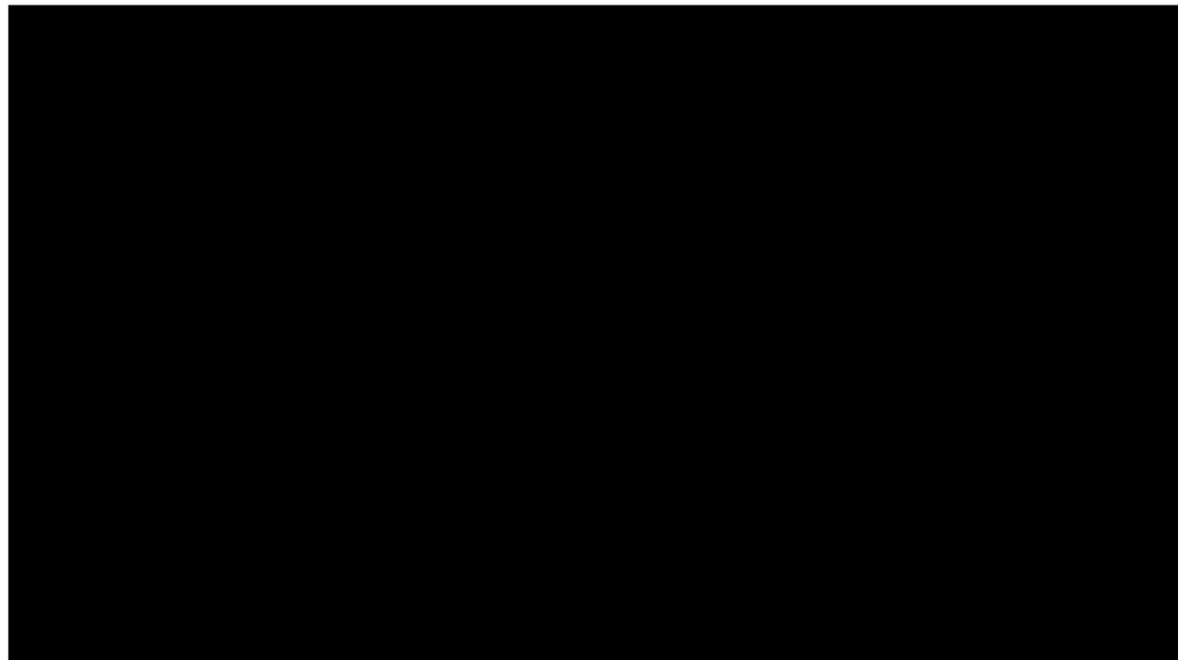
Chapter V: European Non-Proliferation and Disarmament Law

Introduction: European Non-Proliferation and Disarmament Law

This video lecture covers:

- the relationship between international and European non-proliferation and disarmament law
- [EURATOM](#) ^{Art. 100}
- the [EU Regulation](#) ^{Art. 100} on transfer controls of [dual-use items](#) ^{Art. 100}
- the EU's restrictive measures (sanctions)

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Chapter V: European Non-Proliferation and Disarmament Law

Example of EU Law: EU Regulation 428/2009 on Transfer Controls of Dual-Use Items

Items covered

Article 2 (1):

“**Dual-use items** shall mean items, including software and technology, which can be used for both civil and military purposes, and shall include all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices.

Annex I – **List of dual use items:** This list implements internationally agreed dual-use controls including the Wassenaar Arrangement, the Missile Technology Control Regime (MTCR), the Nuclear Suppliers’ Group (NSG), the Australia Group and the Chemical Weapons Convention (CWC).

Article 15 (1):

“

Regime

- authorisation system for exports, transfer, brokering and transit of dual-use items
- customs procedures
- administrative cooperation
- control measures with registers or records



National implementation

Article 24:

“**Each Member State shall take appropriate measures to ensure proper enforcement of all the provisions of this Regulation.** In particular, it shall lay down the penalties applicable to infringements of the provisions of this Regulation or of those adopted for its implementation. Those penalties must be effective, proportionate and dissuasive.

Article 25 (1):

“**Each Member State shall inform the Commission of the laws, regulations and administrative provisions adopted in implementation of this Regulation,** including the measures referred to in Article 24. The Commission shall forward the information to the other

Chapter V: European Non-Proliferation and Disarmament Law

EU Regulation 428/2009: Administrative Law Case in the Netherlands

In 2011, researchers in the Netherlands succeeded in making avian influenza (H5N1), a highly deadly virus, transmissible between mammals.

The researchers were keen to publish their results in a scientific journal. However, according to the Dutch authorities, the researchers had to apply for an export permit before sending their article to the publishers in the United States, as that qualified as the (intangible) transfer of **dual-use technology**.

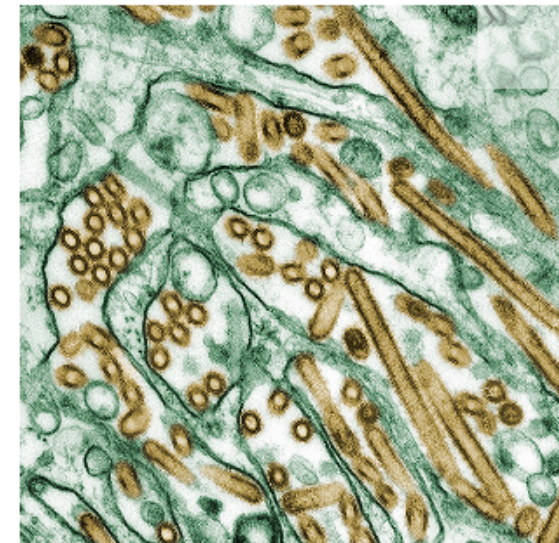
This requirement was based on **European Union Regulation 428/2009** on 'setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items and technology'.

This Regulation requires an **export permit** for exports outside of the EU of dual-use items, including exports of technology.

The Dutch researchers did not agree that they were required to apply for an export permit. They argued that their research was 'basic scientific research'. According to the EU Regulation, there is an exception to the requirement of obtaining an authorisation for export of technology if the information in question is 'basic scientific research'.

However, the **court of first instance** did not agree with the researchers. It stated that the exception in the Regulation had to be interpreted narrowly in light of its non-proliferation aim.

After successfully applying for a permit, the researchers maintained their objection to being required to apply for a permit. However, **the court of appeals** held that the researchers had no litigation interest as they had obtained a permit without any conditions or restrictions, had made use of it, and published their manuscripts in the



Colorised transmission electron micrograph of Avian influenza A H5N1 viruses (seen in gold) grown in MDCK cells (seen in green).

Chapter V: European Non-Proliferation and Disarmament Law

The EU's Restrictive Measures

Restrictive measures , more commonly known as sanctions, are used by the EU as part of its foreign policy.

With regard to non-proliferation and disarmament, restrictive measures by the EU are taken directly in response to non-compliance with non-proliferation obligations, such as the DPRK and Iran. Moreover, the EU has adopted restrictive measures in response to chemical weapons proliferation and their use in Syria and in Salisbury, United Kingdom.

COUNCIL DECISION (CFSP) 2016/849
of 27 May 2016
concerning restrictive measures against the Democratic People's
Republic of Korea and repealing Decision 2013/183/CFSP

[Find the complete document here.](#)

Weapons of mass destruction

DPRK:

- Council Decision (CFSP) 2016/849 of 27 May 2016 concerning restrictive measures against the DPRK
- Council Regulation (EU) 2017/1509 of 30 August 2017 concerning restrictive measures against the DPRK

Iran:

- Suspended since 16 January 2016 in light of the Joint Comprehensive Plan of Action:
Council Decision 2010/413/CFSP of 26 July 2010 concerning restrictive measures against Iran
- Council Regulation (EU) No 267/2012 of 23 March 2012 concerning restrictive measures against Iran

Use of chemical weapons

- Council Decision (CFSP) 2018/1544 of 15 October 2018 concerning restrictive measures against the proliferation and use of chemical weapons (as amended)
- Council Regulation (EU) 2018/1542 of 15 October 2018 concerning restrictive measures against the proliferation and use of chemical weapons

These refer to individuals and entities in **Syria** and **Russia**.

Chapter V: European Non-Proliferation and Disarmament Law

The EU's Restrictive Measures: Criminal Case in Belgium

On 7 February 2019, an Antwerp court convicted three Belgian companies and their two managers for **exports of chemicals to Syria**. These chemicals have civil applications, but can also be used as chemical weapons.

The three companies received **fin**es of €346,443.31, €500,000 and €75,000 respectively. Their two managers were sentenced to **4 and 12 months' imprisonment** and fines of €346,443.31 and €500,000 respectively.

From May 2014 to December 2016 the defendants exported 167,960 kg of **isopropanol** and other chemicals to Syria, worth €346,443.31.

Isopropanol is a precursor to **sarin**, a highly toxic nerve agent. Sarin was used as a weapon in Syria in Ghouta on 21 August 2013, in Khan Shaykhun on 4 April 2017, "very likely" used in Ltamenah on 24 March 2017, and "more than likely" used in

In their declarations to the Belgian customs authorities the defendants did not mention the export licences which have been required for these chemicals since 2012 under **Council Regulation (EU) No 36/2012 of 18 January 2012 concerning restrictive measures in view of the situation in Syria**.

The **court of first instance** established that the defendants had knowingly made incorrect declarations in violation of Article 231 of Belgium's **General Law on Customs and Excise**. The authorities' failure to detect these did not absolve the defendants of their obligation to make correct declarations.

The exports were a **violation of EU Regulation 36/2012 and related Belgian legislation, but not of legislation implementing the Chemical Weapons Convention**. Sarin is a Schedule 1 chemical, the most tightly controlled chemical under the Convention. However, isopropanol does not appear on any of the Convention's schedules. According to chemical weapons expert Jean Pascal Zanders, this is because of the vast scale of isopropanol's use in civilian industries ranging from cosmetics to pharmaceuticals.

In June 2020, the court of appeals upheld the convictions of the three companies and their two managers.

— Source: *Belgian companies convicted of chemicals exports to Syria*, Yasemin Balci, Trust & Verify 163, Spring 2019.



Chapter V: European Non-Proliferation and Disarmament Law

Quiz

Now it's your turn! Take the following quiz to check what you have learned so far.

If you want, you can also [skip the quiz](#) and move on to the next chapter.



Chapter V: European Non-Proliferation and Disarmament Law

Quiz

EU Regulations are ...

- | | |
|---|--------------------------|
| 1. ... legally binding in their entirety to EU Member States. | <input type="checkbox"/> |
| <hr/> | |
| 2. ... legally binding to those to whom they are addressed. | <input type="checkbox"/> |
| <hr/> | |
| 3. ... not legally binding. | <input type="checkbox"/> |

Check answer

Show solution

Reset

Chapter V: European Non-Proliferation and Disarmament Law

Quiz

EU decisions ...

1. ... are not legally binding.

2. ... include parts that are legally binding.

3. ... are legally binding to those to whom they are addressed.

Check answer

Show solution

Reset

Chapter VI: Summary and Further Resources



Summary and Further Resources

Summary

- International non-proliferation and disarmament law **forms part of international law**.
- It is also one of international law's many **sub-regimes**.
- The **founding and functioning principles** of non-proliferation and disarmament law are therefore aligned with those of international law.
- The **sources** (e.g. treaty law, customary law), **participants** (e.g. states, international organisations), **application and enforcement** (e.g. legal disputes regarding non-compliance) of international law apply in the same way to international non-proliferation and disarmament law.
- International non-proliferation and disarmament law is **related to other areas/sub-regimes of international law**.
- **Treaty law** applies to all non-proliferation and disarmament treaties.
- The **law on the use of force** can intersect with international non-proliferation and disarmament law.
- Use of CBRN weapons can amount to a violation of **international humanitarian law** and amount to war crimes under **international criminal law**.
- **International human rights law** will always apply, for example with regard to the fair trial rights of an alleged perpetrator of an offence related to CBRN weapons.
- **National implementation** of international non-proliferation and disarmament law is needed in order to carry out international obligations at the national level.
- Regardless of a state's relationship with international law (i.e. whether it is more monist or dualist), **national legislation** is often required in different areas of national law to be able to give practical effect to a state's international legal commitments on non-proliferation and disarmament.
- **National enforcement** of both international and national non-proliferation and disarmament law involves structures and procedures such as the establishment of **national authorities, national inspections, national investigations by police and court cases**.
- The **EU** has its **own legal order** within international law, and as such has developed relevant **treaties, regulations and decisions** that together form EU law on non-proliferation and disarmament.

Summary and Further Resources

Further Resources

General Resources

- [UNODA / Areas of Work / Weapons of Mass Destruction ↗](#)
- [UNODA Disarmament Treaties Database ↗](#)
- [Biological Weapons Convention, Report on National Implementing Legislation, VERTIC's National Implementation Measures Programme, November 2016. ↗](#)
- [VERTIC's BWC Legislation Database ↗](#)
- [United Nations Audiovisual Library of International Law, Arms Control and Disarmament ↗](#)
- [United Nations Treaty Handbook ↗](#)
- [The ABC of EU Law, Klaus-Dieter Borchardt, 9th January 2018. ↗](#)

Good Reads

- **The Law of Arms Control. International Supervision and Enforcement.**
Guido den Dekker, Martinus Nijhoff Publishers, The Hague, 2001, 404p.
- **Arms Control. The New Guide to Negotiations and Agreements.** Fully revised and updated second edition.
Jozef Goldblat, Sage, 2002, 396p.
- **A Guide to International Disarmament Law.**
Stuart Casey-Maslen, Tobias Vestner, Routledge, 2019, 252p.
- **The Chemical Weapons Convention: A commentary** (Third edition). Edited by Walter Krutzsch, Eric Myjer, and Ralf Trapp, Oxford University Press, 2014.
- **Brownlie's Principles of Public International Law** (8th edition). James Crawford, Oxford University Press, 2018.