

## International Law

(September 2020)

The following is an 'aide memoire' timeline of some of the more important International Laws that apply to the use of nuclear weapons. It is not comprehensive and reference should be made to the original documents for complete understanding.

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**1950 The Nuremberg Principles (i.e. the Principles of International Law Recognised in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal)** are formulated by the International Law Commission. **Principle IV** states *'The fact that a person acted pursuant to order of his Government or of a superior does not relieve him from responsibility under international law, provided a moral choice was in fact possible to him.'*

**2004 The Joint Services Manual of The Law of Armed Conflict** (Article 1647.3) states that: *'A serviceman is under a duty not to obey a manifestly unlawful order.'* This is consistent with Article 33 of the Rome Statute of the ICC.

**1949 The Geneva Conventions** includes provision for protection of civilians in time of war.

**1 July 1968** UK signs and then ratifies (1970) The Treaty on the **Non-Proliferation of Nuclear Weapons (NPT)** by which the non-nuclear-weapon states agree never to acquire nuclear weapons and the nuclear-weapon states agree to share the benefits of peaceful nuclear technology and most importantly to pursue in good faith negotiations leading to nuclear disarmament.

**12 December 1977 Additional Protocol 1 to the Geneva Conventions** adds numerous provisions for the protection of civilian populations. The UK signs the Protocol on the understanding that the new rules in it do not apply to nuclear weapons (see 1998 below).

**8 July 1996 The International Court of Justice Advisory Opinion is given** on a question submitted by the UN General Assembly: *'Is the threat or use of nuclear weapons in any circumstance permitted under international law ?'*

**A. Unanimously,**

There is in neither customary nor conventional international law any specific authorization of the threat or use of nuclear weapons.

**B. By eleven votes to three,**

There is in neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such.

IN FAVOUR: President Bedjaoui (**Algeria**); Vice-President Schwebel (**US**); Judges Oda (**Japan**), Guillaume (**France**), Ranjeva (**Madagascar**), Herczegh (**Hungary**), Shi (**China**), Fleischhauer (**Germany**), Vereshchetin (**Russia**), Ferrari Bravo (**Italy**), Higgins (**UK**).

AGAINST: Judges Shahabuddeen (Guyana), Weeramantry (Sri Lanka), Koroma (**Sierra Leone**).

**C. Unanimously,**

A threat or use of force by means of nuclear weapons that is contrary to Article 2, paragraph 4, of the United Nations Charter and that fails to meet all the requirements of Article 51, is unlawful.

**D. Unanimously,**

A threat or use of nuclear weapons should also be compatible with the requirements of the international law applicable in armed conflict, particularly those of the principles and rules of international humanitarian law, as well as with specific obligations under treaties and other undertakings which expressly deal with nuclear weapons.

**E. By seven votes to seven, by the President's casting vote,**

It follows from the above-mentioned requirements 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.

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;

IN FAVOUR: President Bedjaoui ; Judges Ranjeva, Herczegh, Shi, Fleischhauer, Vereshchetin, Ferrari Bravo.

AGAINST: Vice-President Schwebel; Judges Oda, Guillaume, Shahabuddeen, Weeramantry, Koroma, Higgins.

**President's independent Declaration**

*"I cannot sufficiently emphasize that the Court's inability to go beyond this statement of the situation can in no way be interpreted to mean that it is leaving the door ajar to recognition of the legality of the threat or use of nuclear weapons."*

**F. Unanimously,**

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 and effective international control.

**10 September 1996. Comprehensive Nuclear Test Ban Treaty**

**21 January 1998 Additional Protocol I to the Geneva Conventions.** On ratification, the UK confirms its understanding that '*... the rules introduced by the Protocol...do not have any effect on and do not regulate or prohibit the use of nuclear weapons.*'

**Late 1990s UK Government changes its policy on use of nuclear weapons** from Second Strike retaliation for a nuclear strike on UK/NATO to one of deliberate ambiguity in which nothing is defined and so could include First Use against a non-nuclear threat or attack outside of UK/NATO. References to this revised policy include:

- **20 March 2002** The UK Defence Secretary, Geoffrey Hoon, in an interview with the BBC, says the UK is prepared to use nuclear weapons against rogue states such as Iraq if they use *..'weapons of mass destruction..'* i.e. not limited to nuclear weapons.
- **8 May 2015** Government White Paper states that the UK '*will not rule in or out the first use of nuclear weapons*'.
- **12 February 2018** in written response to an enquiry from Cdr R Forsyth '*It is essential ... that we don't define precisely when, how and at what scale we would contemplate employing them.*'

**1 July 2002 The Rome Statute of The International Criminal Court** is ratified by the UK. The Statute provides for a war crime of knowingly causing excessive incidental civilian death, injury or damage in

the course of an international armed conflict, which is an offence under both domestic statute, international treaty and customary law.

**22 February 2017 The UK amends its Optional Clause Declaration by which it accepts the Contentious Jurisdiction of the ICJ.** The revised Declaration includes a reservation excluding from the Court's jurisdiction any cases related to nuclear disarmament and/or nuclear weapons unless the four other Nuclear Non-Proliferation Treaty (NPT) nuclear-weapon States have also accepted the Court's jurisdiction and are party to the proceedings in question.

**7 July 2017 The Treaty on the Prohibition of Nuclear Weapons (TPNW).** 122 non-nuclear member states of the UN General Assembly, frustrated by the lack of progress by the NPT Nuclear Weapon States to reduce their weapon stocks, vote to adopt this treaty. The UK does not sign the Treaty.

As of August 2020, 84 States have signed the Treaty; of which 44 have ratified or acceded out of the 50 required for it to enter into force.