International Law
(compiled by Cdr R Forsyth. RN (Ret’d)

8 August 1945. The Nuremberg Charter is signed between the Hiroshima (6 August) and Nagasaki (9 August) Atom Bombs. Includes:
"The fact that a person who committed an act which constitutes a crime under international law acted as Head of State or responsible government official does not relieve him from responsibility under international law." (Principle III)

British Manual of Military Law states:
“If a person who is bound to obey a duly constituted superior receives an order to do some act which is manifestly illegal, he is bound under a legal duty to refuse to carry out the order.”

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

1 July 1968 UK signs and then ratifies (1970) The UN Treaty on the Non-Proliferation of Nuclear Weapons - colloquially known as The 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 to pursue nuclear disarmament aimed at the ultimate elimination of their nuclear arsenals.

12 December 1977 Additional Protocol 1 to the Geneva Conventions added numerous provisions for the protection of civilian populations (see 1998 below)

8 July 1996 The International Court of Justice Advisory Opinion on a question submitted by the UN Secretary-General
"Is the threat or use of nuclear weapons in any circumstance permitted under international law?"

1996 ICJ Opinions on the UN question “is the threat or use of nuclear weapons in any circumstances 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), Guillame (France), Ranjeva (Madagascar), Herczegh (Hungary), Shi (China), Fleischhauer (Germany), Vereshchietin (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 UK adds a Reservation to Protocol 1 to the Geneva Conventions which states that "... the rules...do not have any effect on and do not regulate or prohibit the use of nuclear weapons."

1 July 2002 The Rome Statute of The International Criminal Court. Ratified by the UK. The statute includes the following:
"For the purpose of this Statute "war crimes" means: Employing weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict…”

There is therefore a new crime, of launching a knowingly disproportionate attack in the course of an international armed conflict, which is an offence under both domestic statute,
international treaty and customary laws, and so is no longer covered by the 1998 nuclear weapons exemption reservation to the earlier Protocol 1 to the GCs.

23rd February 2017, Government announces an amendment to the UK’s Optional Clause Declaration, which accepts the compulsory jurisdiction of the ICJ. It states: *In addition, the revised Declaration also includes a reservation excluding from the Court’s jurisdiction any cases related to nuclear weapons and/or nuclear disarmament unless the other four Nuclear Non-Proliferation Treaty (NPT) nuclear-weapons States also accept the Court’s jurisdiction with respect to the case.*

Late 1990s UK Government changes its policy on use of Nuclear weapons from Second Strike deterrence to being prepared for First Use even for a non-nuclear attack outside the homeland. This has been said several times but notably:

- **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 it will ‘*it will not rule in or out the first use of nuclear weapons*.‘

- **12 February 2018** in response to an enquiry from Cdr R Forsyth ‘*It is essential (however) that we don’t define precisely when, how and at what scale we would contemplate employing them.*’

**7 July 2017  UN TREATY TO PROHIBIT NUCLEAR WEAPONS.** 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, voted to adopt this treaty. The UK has not signed nor intends to sign this Treaty.

The Treaty is negotiated thanks to some excellent campaigning by the lobby groups *International Campaign to Abolish Nuclear Weapons (ICAN).* For their work *ICAN were awarded the 2017 Nobel Peace Prize.* The UK instructed its Ambassador not to attend the ceremony even though the UK is ostensibly committed by the NPT to eliminating all nuclear weapons. Russia did attend.