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# Investors, international law and controversial weapons



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## Weapon-specific treaties

- Biological & Toxin Weapons Convention 1972
- Convention on Certain Conventional Weapons 1980
  - Protocol III on Incendiary Weapons 1980
  - Protocol IV on Blinding Laser Weapons 1995
- Chemical Weapons Convention 1993
- Ottawa Landmines Convention 1997
- Cluster Munitions Convention 2008

# Nuclear weapons

- Treaties dealing with acquisition, manufacture, possession, testing and deployment
- No comprehensive and universal conventional prohibition on use or threatened use
- Non-Proliferation Treaty 1968
  - recognises certain States as ‘nuclear-weapon States’ but does not legalise possession
  - requires ‘good faith’ negotiation and conclusion of a disarmament treaty

# International humanitarian law (IHL)

- Governs the conduct of armed conflict
- The right to choose methods or means of warfare is not unlimited
- A use of force that is necessary and proportionate under the law of self-defence (or authorised by the UN Security Council) must also comply with IHL
- All the parties to a conflict must respect IHL

## Key principles of IHL

- The principle of distinction: States must never use weapons that cannot distinguish between civilian objects and military targets
- The prohibition against causing unnecessary suffering to combatants
- The prohibition against environmental damage

## IHL principles: legal effect

- ‘to be observed by all States whether or not they have ratified the conventions that contain them, because they constitute intransgressible principles of international customary law’ (ICJ, *Nuclear Weapons Case*, 8 July 1996, para 79)
- Obligations *erga omnes*: owed to and the concern of all States, so all States have a legal interest in protecting the rights involved (ICJ, *Wall Case*, 9 July 2004, paras 155-157)

## New weapons

- Article 36 of Additional Protocol I 1977:

‘In the study, development, acquisition or adoption of a new weapon, means or method of warfare, a High Contracting Party is under an obligation to determine whether its employment would, in some or all circumstances, be prohibited by this Protocol or by any other rule of international law...’

# The Martens Clause

- Article 1(2) of Additional Protocol I 1977:

‘In cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of international law derived from established custom, from the principles of humanity and from dictates of public conscience’

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