



# **PUBLIC INTERNATIONAL LAW**

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# DISARMAMENT


- Disarmament in the broad sense means the total abolition of armaments of all types – conventional as well as nuclear.
- It is different from regulation of armaments which means reduction and restriction of armaments.
- The desire for the total ban on armaments has been expressed time and again since the beginning of the 20th century, but its intensity began to grow only after the Second World War.


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- With the use of atom bombs in Hiroshima and Nagasaki, the question of disarmament assumed new dimensions.
  - The problem of disarmament is not only legal but is also economic, political, military and technical. Its legal aspect became significant with the efforts of the United Nations for the formulation of comprehensive international conventions.

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- One of the main purposes behind the establishment of the UN was the maintenance of peace and security.
  - It advocates disarmament as one of the ways of achieving its goals.
  - Article 11 of the UN Charter entrusts the General Assembly to consider the general principles governing disarmament and regulation of armaments and to make recommendations in this regard to members or the SC or both.


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- Article 26 makes the Security Council responsible for plans to be submitted to the members and establish a system for the reduction of armaments.
  - Article 47 refers to the functions of the Military Staff Committee, which is to assist and advise the Security Council's military requirements including the regulation of armaments and possibly disarmament.

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- The above provisions do not confer final authority of the UN.
  - It cannot impose the rule of disarmament on states and the provisions of disarmament are too weak.
  - Further, it is possible to achieve armament faster than disarmament.
  - The UN Charter does not define the term “disarmament”.

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- The process of disarmament is not consistent with the UN Charter.
  - However, some weapons have been banned outright such as banning the testing of nuclear weapons, restrictions on armaments, chemical weapons treaty, poly weapons etc. while some are on the agenda such as nuclear weapons and land mines.


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- These provisions have been interpreted by jurists differently.
  - Some are of the view that the UN Charter does not confer authority on the UN to impose upon its members a system for disarmament or even regulation of armaments.
  - The UN has assigned the matter of disarmament to the General Assembly.





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- It approved its Resolution I(I) in 1946 which included among its goals, “the elimination of the national armaments of atomic weapons and all other major weapons adaptable to mass destruction.


# Disarmament Efforts made by Institutional Machinery


- In 1946 the Atomic Energy Commission was established by the General Assembly for submission of proposals to the Security Council regarding the peaceful use of atomic energy and for the elimination of atomic and other weapons of mass destruction.


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- In 1947 the Commission for Conventional Armaments was established by the Security Council to consider measures for the reduction of armaments and armed forces, together with an effective system of guarantee.

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- In 1952 both the Commissions were dissolved and were replaced by the Disarmament Commission, established by the General Assembly.
  - It consisted of the members of the Security Council and Canada.
  - Their purpose was to prepare proposals for the regulation, limitation and balanced reduction in stages of all armed forces and all armaments.


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- In 1957 and 1958, the Commission was enlarged; the latter included all member states of the UN.
  - However, after this, only 2 sessions were held in 1960 and 1965.
  - Efforts were continuously made by the General Assembly towards general and complete disarmament from time to time.

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- Disarmament matters were soon given a new impetus within the bilateral talks of states. Changes were seen in the disarmament machinery.
  - In 1959, the Ten-Nation Committee on Disarmament was established.
  - In 1962, the Eighteen-Nation Committee on Disarmament was established.

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- In 1969, they changed the name to Conference of the Committee on Disarmament (CCD). Membership extended to 26 and then 30.
  - In 1979, Conference of the Committee on Disarmament became the Committee on Disarmament and finally in 1983 became the Conference on Disarmament.


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- It was to define its own rules of procedure and develop its own agenda, taking into account the recommendations of the General Assembly. The Secretary-General of the Conference was appointed by the Secretary-General of the UN.
  - In 1984, the Conference on Disarmament established 4 Ad hoc Committees formerly called working groups.



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- In 1988, the Conference on Disarmament established 5 Ad hoc Committees to continue to work on banning chemical and radiological weapons, preventing the arms race in outer space, comprehensive programme on disarmament, effective arrangements against the threat or use of nuclear weapons, etc.
  - In 1993, a Convention was concluded on the banning of chemical weapons through a multilateral treaty prohibiting the development, production and stockpiling of radiological weapons.

# Efforts of the General Assembly

- The General Assembly convened 3 Special Sessions on Disarmament making continuous efforts in relation to disarmament.
- **The First Special Session, 1978:**
- A Final Document consisting of an Introduction, a Declaration, and Programme for Action and recommendations concerning disarmament negotiations and machinery for the same was adopted.


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- This was to be achieved by the Disarmament Commission which constituted all the members of the UN.
  - It was a deliberative body subsidiary to the General Assembly.


# The Second Special Session, 1982:

- The session was mainly about discussions related the Final Document made under the 1st session.
- Consensus could not be reached on the acceptance of the draft comprehensive programme of disarmament and thus the members solemnly committed to it all of the State Members of the UN.

# The Third Special Session, 1988:

- To develop a complete program of action concerning nuclear and conventional disarmament various tasks were undertaken.
- It was to review and appraise the current international situation thereby achieve progress in the disarmament field.


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- However, no consensus could be reached on the following matters, bringing an end to the arms race in outer space; creating a relationship between disarmament and development; Creating nuclear-weapon-free zones and zones of peace and acquisition of nuclear capability by South Africa and Israel.


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- The session was widely viewed as a success even though no consensus could be reached by the parties. This was because it exhibited the interest of various states in the matter.
  - The General Assembly is still determined to make progress in the field of disarmament in spite of the limited success of the 3 Special Sessions. In 1990, it adopted the 7 paragraph Declaration of the 1990's as the Third Disarmament Decade.


# Notable Treaties in the field of Disarmament

- **Partial Test Ban Treaty, 1963 [PTBT]**
- The Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space, and under Water is commonly known as PTBT which was signed in Moscow in 1963.




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- The treaties provided that all parties to the treaty were to prohibit, prevent and not to carry out any nuclear weapon test explosion or any other nuclear explosion at any place under its jurisdiction or control.
  - This treaty did not prohibit nuclear tests underground.


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- It was proposed to convert this treaty into a comprehensive test ban treaty and to this effect, an Amendment Conference was held in 1991.
  - The conference failed to reach a unanimous conclusion, however, some aspects of comprehensive test ban especially those with regard to sanctions against non-compliance were acknowledged.


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- The treaty thus could not achieve a comprehensive test ban and thus decided to wait for a more appropriate time after achieving progress with respect to the same.

# Nuclear Non-Proliferation Treaty, 1968 [NPT]

- There are 2 kinds of states involved in this – Nuclear Weapon States and Non-Nuclear Weapon States,
- There exist some obligations on the Nuclear Weapon States. They undertake –

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- a). Not to transfer any nuclear weapons or explosive devices. They will also not transfer any control over such weapons or devices directly or indirectly.
  - b). Not to assist, encourage or indulge manufacture or production or acquiring of nuclear weapons.


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- **The Non-Nuclear Weapon States undertake – a). Not to receive any nuclear weapons or other devices or control over them. B). Not to produce, manufacture or acquire such nuclear weapons or devices.**


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- The parties to the Treaty undertake to facilitate and participate in the exchange of equipment, materials and scientific information for the purpose of peaceful uses of nuclear energy.


# Purpose:


- The treaty provides for prevention of proliferation of nuclear weapons and devices.
- It ensures peaceful means nuclear activities.
- It promotes peaceful uses of nuclear energy.
- It also encourages and promotes nuclear disarmament.



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- The main problem with NPT is that the Nuclear Weapon States are under no obligation to commit themselves to total nuclear disarmament.
  - Even though the treaty has to be reviewed every 5 years, no final declaration has been adopted as yet as the Nuclear Weapon States has not given any commitment.
  - In 1995, this treaty was extended for an unlimited period.

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- This was done firstly, to receive universal adherence to the treaty, secondly, to prevent any nuclear warfare and thirdly for the systematic elimination of armaments.
  - In 2000, all the states came together and demanded a definite plan of action from the US and other Nuclear Weapon States.

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- One of the main criticisms of this treaty is that it is inequitable and discriminatory as the Non-Nuclear Weapon States could not acquire, manufacture or receive any such weapon from any other state.


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- The result was that even though the treaty provided for non-proliferation, it resulted in the horizontal and vertical proliferation of nuclear weapons. India did not become a party to this treaty as it had a limited and restricted approach.


# Convention on Biological Weapons, 1972

- This convention prohibits production, acquisition, retention and stockpiling of biological agents and toxins. If there is non-compliance by one state party, other state parties can approach the SC which will take necessary measures.

# Convention on Chemical Weapons, 1993

- Each state party undertakes – never under any circumstances, to develop, produce, acquire, stockpile or retain chemical weapons or to transfer them directly or indirectly to any other state.
- They are never to use chemical weapons, never to encourage military preparations to use chemical weapons.


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- These states are never to assist, encourage or induce in any way activities prohibited under this convention.
  - A state not in compliance with the convention shall be required to take remedial action and will be subject to several penalties including sanctions.


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- This treaty has been criticized on the ground that it is not global and it is not verifiable and thus may not work.
  - Nuclear Weapon Free-zone Treaties like the Antarctic Treaty, Outer Space Treaty, Sea bed Treaty as well as the Moon Agreement are agreements where all nuclear acts are prohibited.





# Bilateral Treaties on Disarmament


- Bilateral Agreements are sometimes more successful than multilateral agreements. In 1963, an MOU was established between USSR and USA to facilitate a disarmament process.
- A direct link was established between Moscow and Washington known as the 'hotline' or 'hotlink'.

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- Subsequently in 1971, the Satellite Commission was established between USSR & USA followed by high-speed satellite transmission i.e. to transmit graphs, texts, materials, etc.
  - Then in order to prevent a nuclear war, there was an agreement called the Nuclear Accident Agreement which provided certain safeguards or measures in case of unauthorized use of nuclear weapons or nuclear accidents.

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- Then in 1972, a treaty was established between USSR and USA called the **Anti-Ballistic Missile System or ABM Treaty**. This was for the employment, development, and testing of ABM systems.

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- In 1974, USA and USSR entered into another agreement known as the Threshold Test Ban Treaty which prevented them from conducting any underground tests.

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- And in 1979, **SALT Treaty (Strategic Armed Limitation Treaty)** was entered into which aimed at reducing existing stockpile or armaments and improving on it.

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- This treaty was violated on many accounts by USA and USSR as their domestic laws do not provide for this treaty even though this treaty is of much significance.
  - Moscow Treaty of 2002 – USA and USSR agreed to reduce long-range missiles by 2012.

Thank You!