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Casey-Maslen, Stuart, Tobias Vestner. 2019. *A Guide to International Disarmament Law*. New York: Routledge, 252.

*A Guide to International Disarmament Law* was written by Stuart Casey-Maslen, professor of International Law at the University of Pretoria in South Africa, and Tobias Vestner, Head of the Security and Law Program at the Geneva Centre for Security Policy (GCSP). The book represents the latest attempt at providing structure and greater clarity to this specific branch of international law, which has so far lacked the appropriate attention of the academic community. In this sense, it could certainly be used as a primer in this field of study and research.

It is noticeable that this work opts right from the start (i.e. its very title) for an approach of granting the concept of disarmament preference to other notions. Namely, the authors argue that the notion of disarmament is wider and that it encapsulates other concepts, such as arms control (taken to mean “the balancing reduction of armed forces”) and non-proliferation (which entails the “limitations on the transfer of weapons”). At the same time, the authors share the opinion that a distinction exists between the concepts of disarmament and arms control, as the latter is based on the presumption that „weapons will – and indeed should – persist as a feature of international relations.” This makes the matter a bit confusing, as disarmament – in its fullest form as “general and complete disarmament” – entails all-out renunciation and destruction of weapons. Nonetheless, this ambiguity in no way influences the quality of discussions that ensued.

It is no secret that the authors aimed at providing information on disarmament treaties through a novel and arguably more refined manner, compared to earlier works in this field, as most of them, including Jozef Goldblat’s seminal work *Arms Control: The New Guide to Negotiations and Agreements*, provide a chronological explanation and overview of the development of arms control and disarmament efforts. Given this book’s

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focus on the law of disarmament (and arms control and non-proliferation), the authors explain in Chapter 2 that the book is structured in accordance with the main themes (or, as the authors call them, “core elements”) of disarmament law. These are the following: stockpile destruction, transfer, production, development, testing, use, victim assistance, information exchange, and transparency and verification.

Following the introductory section of the book, in which, *inter alia*, a brief overview of historical development of disarmament efforts prior to the 1945 establishment of the United Nations (UN) is provided, the authors dedicated the first chapter to tackling international disarmament law *in toto*. Even though the authors take into account all sources of law, including unilateral acts of states, nonetheless primary importance is given to international treaty law, as it is acknowledged that most rules within this branch of law are found in treaties, either bilateral or multilateral. In this sense they reiterate the premise found in the Report of the UN General Assembly’s First Special Session on Disarmament, in which disarmament is treated as reduction of arms and armed forces *by international agreements*. In their survey of other sources of law (international customary law and general principles of law) the authors point out that the rules on disarmament are scarce, that they mostly stem from other principles (rules on armed conflict in case of customary law), and that only a few can be identified. Apart from legally binding agreements, the importance of soft law instruments (e.g. the UN Program of Action on Small Arms and Light Weapons (SALW), and the Organization for Security and Co-operation in Europe (OSCE) Vienna Document) is also mentioned.

In Chapter 3 the authors touch upon (albeit very briefly as this is not the subject matter of the book) the notions of international security, the security dilemma, deterrence and balance of power, which underpin the more theoretical foundations and roots of disarmament and arms control. It is explained that disarmament is an element of both national and international security, as well as human security.

Chapters 4 through 9 explore in greater detail the abovementioned core concepts of international disarmament law (found mostly in international disarmament treaties, but also in politically binding documents).

Chapter 4 discusses the issue of use and threat of use of weapons. The authors underscore that prohibitions contained in disarmament treaties are broader than those established by the law of armed conflict (i.e. international humanitarian law, IHL), as they outlaw the use of specific weapons at all times, not only during armed hostilities. This is precisely why disarmament treaties include an explicit prohibition on use of weapons, even in cases where a prohibition of their use in armed

conflict already exists. The authors note that the transformation of the rule of law of armed conflict into a disarmament treaty was sometimes extremely difficult and laborious (as was the case with the adoption of the Chemical Weapons Convention – CWC), or occurred through numerous phases (an example being the Anti-Personnel Landmines Convention – APLC). There are, of course, exceptions to the above stated rule: namely, the Biological Weapons Convention (BWC), the first convention to ban an entire category of weapons, was adopted without a provision that would prohibit the use of these types of weapons (even though many considered that this prohibition was implied). Another exception are non-proliferation treaties, whose prime objective is to prevent the spread of nuclear weapons, and which do not regulate their use. As a side note, with regard to the topic of use of nuclear weapons, the authors point to the fact that this issue is still unresolved, mostly due to the Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons, rendered by the International Court of Justice (ICJ) in 1996, where it was stated that no comprehensive and universal prohibition of the use of nuclear weapons exists, even though their use would be, generally speaking, contrary to the rules of armed conflict.

The threat of use of weapons, which is seldom mentioned in disarmament treaties, is a peculiar subject in disarmament law. The problem of defining the threat of use in disarmament law stems from the more general failure of international law to reach a consensual definition of the meaning of threat of use of force. Again, the authors place special attention to nuclear weapons. Here, they discuss negative security assurances, which were developed as guarantees that nuclear weapons states would not use or threaten to use nuclear weapons against non-nuclear weapon states.

The rest of Chapter 4 is devoted to exploring the main principles and rules regarding armed conflict (*ius in bello*), such as the rules on distinction and proportionality, which have become parts of customary international law. It is shown how these principles intertwine with disarmament law, as they are applicable to all situations of armed conflict, due to being part of customary law. At the same time, the authors indicate limitations of these principles, as contentions exist regarding their application with regard to certain weapons. The importance of the law on inter-state conflict (*ius ad bellum*) for disarmament law is also discussed, with an argument put forward that these rules are not weapon-specific and do not, *ipso facto*, prohibit any weapon or category of weapons.

The issue of weapons development and testing is considered in Chapter 5. It is asserted that disarmament treaties generally prohibit the development of weapons that are outlawed. While the concept of „development“ is not explicitly defined in treaties, it is taken to entail

all “undertakings by states never in any circumstances to develop the weapon that is prohibited.” Even though all disarmament treaties prohibit development, they differ in the extent to which this prohibition spans. For example, the Convention on Cluster Munitions (CCM) envisages the prohibition of all forms of development of cluster munitions, both direct and indirect, while, on the other hand, the CWC allows for the development of chemicals intended for peaceful purposes. All other treaties fall somewhere between these two.

Understood properly, development entails a range of activities, for instance research and testing, which form integral parts of the concept of development. The authors show that there is a class of treaties that include generic prohibition of testing of weapons, with some of them outlawing testing of all types of weapons, such as the Outer Space Treaty and the Moon Treaty. Others are narrower, in that they are devoted to testing of nuclear weapons, such as the Partial Nuclear-Test-Ban Treaty (PTBT), which prohibits the testing of nuclear weapons in the atmosphere, underwater and in outer space, and the Comprehensive Nuclear-Test-Ban Treaty (CTBT, not yet in force), which introduces a comprehensive prohibition of nuclear weapon testing. The authors point out that the Treaty on the Prohibition of Nuclear Weapons (TPNW) introduces a novelty in disarmament law, as it concurrently bans both the development and testing of nuclear weapons. However, this instrument has not yet entered into force.

Chapter 6 is about transfer. It is a common place for disarmament treaties to contain provisions on the prohibition of transfer of weapons that are within the purview of the respective treaty. Treaties on weapons of mass destruction (WMD) envisage complete prohibitions of transfer of the weapons that they outlaw, with slight exceptions to the general rule (the BWC and the CWC allow transfer of biological agents and toxins and toxic chemicals and their precursors, respectively, provided that they are used for peaceful purposes, and in appropriate quantities and types; furthermore, the CWC permits the transfer of chemical agents intended for law enforcement operations). Such extensive prohibitions are stipulated despite the fact that WMD treaties do not contain explicit definitions of “transfer”. On the other hand, the authors showcase that within the edifice of treaties dedicated to conventional weapons, there usually is a definition of „transfer“, albeit they tend to be rather ambiguous. Here, the authors accord special attention to the Arms Trade Treaty (ATT) regime, which lays out a comprehensive view of transfer, as it involves export, import, transit and transshipment. In addition to its general prohibitions of weapons transfers in cases where they might lead to violations of UN arms embargoes, other relevant international obligations, or breaches of IHL, the ATT framework also envisions an

obligation of assessing exports of weapons, on the basis of their potential to undermine peace and security. Chapter 6 also offers an overview of existing regional regimes that regulate weapons transfers (such as those in Africa and Europe), as well politically binding export systems, such as the Wassenaar Arrangement and the Australia Group.

Chapter 7 is dedicated to the issue of stockpile destruction, which stands at the centre of disarmament treaties, as an obligation corresponding to prohibition of the use, production, retention, and stockpiling of weapons. The authors warn that, as is the case with some other “core concepts”, there is no international treaty-based definition of stockpile or of stockpile destruction. The first thing that should be observed is that the obligation of stockpile destruction is accompanied in every treaty by a deadline for its fulfillment, which is set in years (or months), rather than specifying a particular year by which the obligation is to be met. In the case of the two WMD treaties (BWC and CWC) there is a uniform deadline for stockpile destruction, set up depending on the entry into force of the treaty. On the other hand, disarmament treaties on conventional weapons (APLC and CCM) set deadlines that are „state-specific“, i.e. their commencement depends on a country’s accession to the treaty: the APLC foresees that a state party must destroy its stockpile of anti-personnel landmines within four years of the Treaty entering into force for it, while the CCM specifies an eight year country-specific deadline. The authors detail that the duration of the deadline is not the only point of departure between the two, as the CCM also allows for possible extensions of the deadline, while the APLC does not. In both cases it is permitted to retain a certain number of anti-personnel landmines, and cluster munitions and explosive submunitions respectively, for training purposes.

The second part of the chapter is dedicated to different techniques used for stockpile destruction. The authors underline that with the banning of activities such as dumping munitions and explosives at sea and disposing of them on landfills, the most common means of destruction have become detonation, burning (including closed incineration of chemical toxins), disassembly, crushing, etc.

Chapter 8 discusses the addressing of the effects of weapons, which the authors have broadly divided into four distinctive groups: victim assistance, clearance of munitions, environmental remediation, and international cooperation and assistance. Victim assistance appears as a relatively novel concept in disarmament treaties, as it was introduced in the 1993 CWC. Building upon the contribution of the CWC, which was limited in scope, the APLC and the CCM contained much broader provisions, with the CCM committing states parties to providing age- and gender- sensitive assistance to victims. The necessity of victim assistance is also mentioned in the preamble to the ATT, although

provisions therewith were not incorporated in the operative text of the Treaty. The authors show that these Treaties differ in regard to the definition of victims, with the TPNW referring to victims of both use and testing of nuclear weapons. The authors point out that victim assistance is always weapon-specific, meaning that the type of assistance, ranging from medical aid and rehabilitation, to social and economic integration, depends on the method of harm.

Another point examined by the authors in this chapter is clearing of munitions, which entails the destruction of munitions that have been used. The APLC envisages that the clearance of anti-personnel landmines is to be executed within 10 years, with the possibility for the state party requesting extensions, up to 10 years. Likewise, the CCM contains similar provisions, stipulating the obligation of clearance within 10 years, with the possibility for extension of up to 5 years. On the other hand, WMD treaties do not contain such obligations.

Next in line of examination is environmental remediation, a costly and complex activity, which is necessary in some areas following the disruption caused by the deployment of weapons and explosives. These activities are especially important in those parts of the world that have seen many nuclear tests, such as the Marshall Islands.

Lastly, Chapter 8 explores the possibility of international cooperation and assistance, with the goal of supporting treaty implementation and compliance. The authors single out the ATT, where international assistance encompasses a range of forms of international assistance measures, such as legal and legislative assistance, capacity-building, and stockpile management.

Chapter 9 discusses reporting, verification and compliance. The authors reason that the notion of compliance, understood as observance of the treaty by states parties, stands at the apex, with other concepts, such as verification, reporting obligations, confidence building, and other implementation supporting mechanisms, serving as measures to enhance its promotion. With regard to reporting obligations, the authors point out that the BWC was incomplete, as in many other aspects, due to the absence of provisions regarding reporting obligations, something that was rectified at the first three Review Conferences, which stipulated what issues states parties should report, as a means of advancing confidence building. On the other hand, the CWC envisaged both obligations of submitting an initial declaration upon accession, where a state would report the chemical weapons it possesses, and also annually report to the Technical Secretariat of the Organization for the Prohibition of Chemical Weapons (OPCW) the progress it had achieved in destroying chemical weapons. A similar initial declaration obligation is contained in the TPNW. With regard to the APLC and CCM, the authors acknowledge

that the reporting obligations contained therein are very similar, with provisions regarding cluster munitions being a bit more elaborated. Other than the main disarmament treaties, there are reporting and information exchange mechanisms in other instruments, both legally binding, such as the ATT, and those which are more informal and politically, rather than legally, binding – for example the Wassenaar Arrangement and the Vienna Document of the OSCE.

Another important aspect of compliance enhancement is the establishment of implementation support mechanisms, two of which are particularly common: treaty secretariats or implementation support units (ISU), and meetings of states parties. The most evolved structure was established within the CWC, in the creation of the OPCW, tasked with ensuring the implementation of the CWC, including verification of compliance. The ATT also has its own Secretariat. Unlike the CWC and ATT, other disarmament treaties did not prescribe the establishment of secretariats. Rather, subsequent meetings of states parties reached the decisions on setting up ISUs. Unlike the ISUs established within the APLC and CCM, which are funded by voluntary contributions and located outside the UN building in Geneva, in the case of the BWC regular annual contributions by states parties are used for financing the work of its ISU, which is located within the UN Office for Disarmament Affairs (ODA) on the UN premises in Geneva.

Most disarmament treaties also envisage regular meetings and conferences of states parties, for the purpose of discussion and decision-making. Most treaties foresee regular meetings or conferences of states parties, to be held annually or biannually, as well as review conferences, which are held in certain intervals (four or five years). An exception is the ATT, which regulates the convening of conferences of states parties, with the possibility of holding extraordinary meetings, but not review conferences are envisaged.

Verification is an important aspect of ensuring compliance with treaty obligations, generally speaking, and it is paramount when it comes to disarmament treaties, as these instruments often touch upon the very foundations of a country's national security. However, the authors draw attention to the fact that disarmament treaties vary significantly in terms of how broadly they develop their verification mechanisms.

Verification can be viewed in distinct ways and aspects. Verification (investigation) of alleged use is one. Here, like in other areas, the authors underline the discrepancy between the BWC, which does not envisage any verification mechanism whatsoever (although it does allow referrals of alleged breaches to the UN Security Council – UNSC), and the CWC, with its advanced system of investigations of alleged use of chemical weapons by a state party. The BWC's lack of verification provisions is,

to some extent, remedied by the UN Secretary General's Mechanism (UNSGM), established in the late 1980s, for the investigation of alleged uses of chemical and biological weapons. The same difference between the CWC and the BWC exists also in another aspect of verification – stockpile destruction and non-production. The CWC contains substantive provisions on on-site inspections, which can be routine inspections, in order to verify compliance, and challenge inspections, which are used to check alleged non-compliance. On the other hand, the BWC has no mechanism to verify stockpile destruction, even though there have been proposals for adopting a legally binding verification protocol.

Another important aspect is verification of non-proliferation of nuclear weapons. Verification that non-nuclear states are using nuclear technology only for peaceful purposes is conducted through safeguards agreements, concluded by non-nuclear weapon states with the International Atomic Energy Agency (IAEA). These include provisions for monitoring, evaluation, and on-site inspections, which include routine inspections, ad-hoc inspections, special inspections, and safeguards visits. As an annex to safeguards agreements, states can approve the Additional Protocol, which grants the IAEA supplementary inspection authority. In addition to the IAEA, a verification mechanism is also operated by the Preparatory Commission of the Comprehensive Nuclear-Test-Ban Treaty Organization (CTBTO), for detecting nuclear tests underwater, underground, and in the atmosphere.

Lastly, the authors signal that states parties have at their disposal several options, within disarmament law, to remedy potential non-compliance with treaty provisions. Apart from sanctions, there are also possibilities to refer the matter to the UNGA, UNSC, and of course the ICJ.

The last chapter, on the concept of Demobilization, Disarmament and Reintegration (DDR), also known as „micro-disarmament“, is distinctly different from the previous sections. The DDR is used as a component in managing post-conflict society, mainly through collecting SALWs from former combatants (the disarmament and demobilization part) and offering them viable means of reintegration into society. The authors point out that this concept has no basis in international law, rather that it has been developed through politically binding documents. Nevertheless, it does have points of connections with certain branches of international law, such as human rights law, international criminal law, and the law of armed conflict. The authors identify four generations of DDR. They argue that unlike the first two generations, when DDR was tilted towards stabilizing post-conflict societies, with the aim of supporting peace-building, newer generations of DDR programs have been developed in order to be employed during the conflict, with the goal of achieving peace. The most



recent, fourth generation DDR, which is often incorporated in national counter-terrorism strategies, replaced disarmament and demobilization with disengagement and disassociation (hence, often termed DDRR – Disengagement, Disassociation, Reintegration and Reconciliation), with the primary objective of encouraging desertion from terrorist groups. The authors assert that these changes have resulted in loss of neutrality in DDR approaches and programs.

The last section in the book is devoted to summarizing the most important challenges faced by international disarmament law. As has been the case in the past, disarmament law will have to hurry to „catching up“ with new weapons technologies, especially those that might utilize artificial intelligence. Disarmament treaties will also have to tackle the continuous criticism of consensus-based decision-making. Even though the consensual approach might result in a stalemate (as has been witnessed in some treaty bodies), nonetheless it offers the safest way of achieving universality. It is evident that universality presents a significant challenge in the field of disarmament law, as most disarmament instruments are far from universal (with the exceptions being the BWC and the CWC).

The authors finally conclude that there is a danger that states might turn to concluding bilateral and plurilateral treaties, rather than pooling their efforts in pursuing global disarmament efforts. This might, in turn, impede full and complete implementation of disarmament treaty obligations. Another potential outcome could be the fragmentation of the disarmament treaty law structure. Even though this has continuously been a trait of disarmament law throughout its historical development, nevertheless the authors insist that a degree of coherence between various instruments in this field is critical.