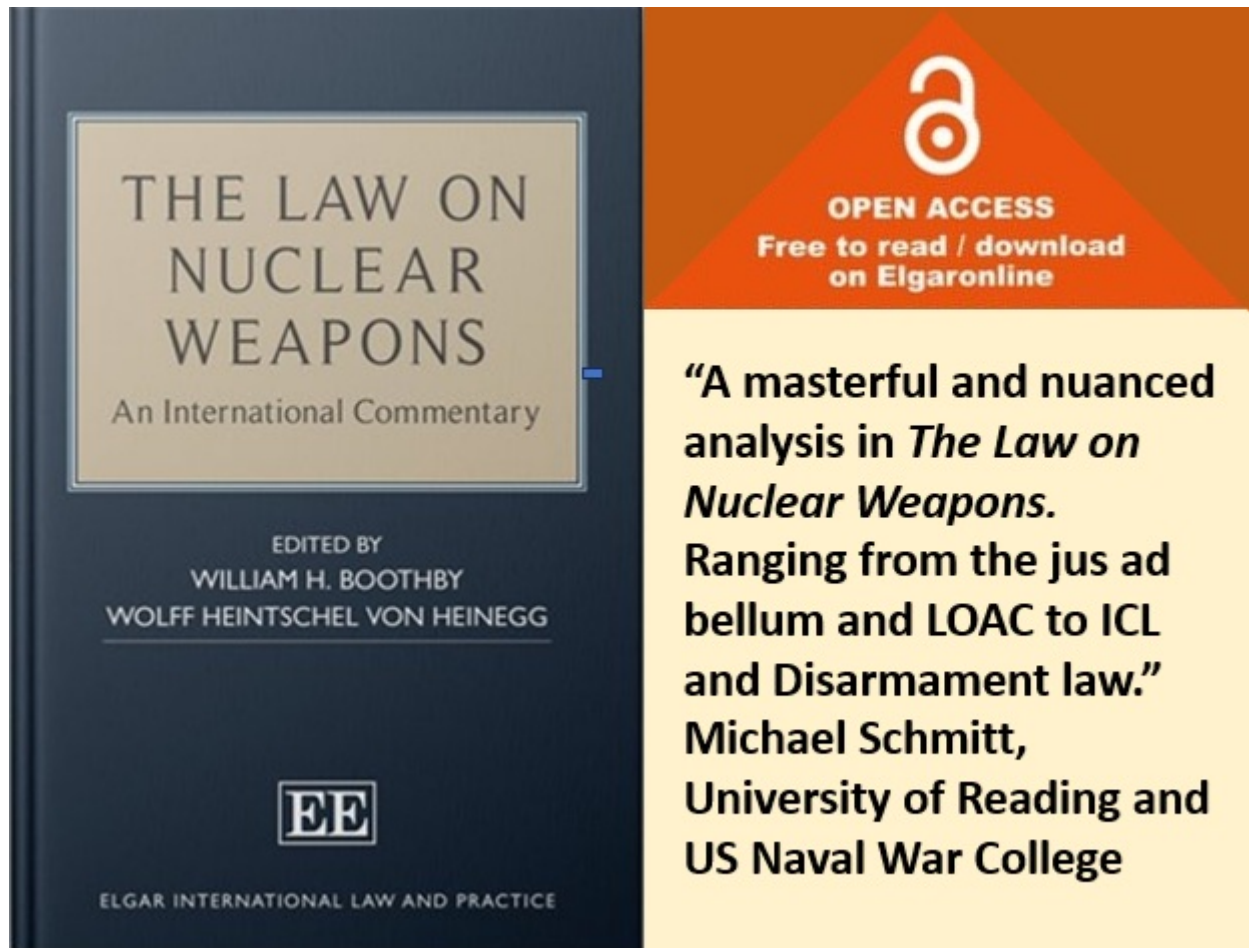




# WHERE WOULD WE BE WITH NUCLEAR WEAPONS WITHOUT INTERNATIONAL LAW?



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**WILLIAM BOOTHBY AND WOLFF HEINTSCHEL VON HEINEGG**

**MAY 26 2025**

## I. INTRODUCTION

In this essay, William Boothby and Wolff Heintschel von Heinegg explain that *The Law on Nuclear Weapons: An International Commentary* (Elgar, 2025) aims “to ensure that all those involved in nuclear weapon operations understand what their responsibilities are under international law. By this means, Nuclear Command, Control and Communications arrangements can be drafted that will seek to ensure that nuclear weapons are only ever used in the most compelling, strictly lawful and truly exceptional circumstances where all other options have proved unsuccessful such that there really is no possible alternative--a truly worthy endeavour, one might suggest.”

The book is available [here](#) (free download)

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The book provides a clear, comprehensive statement of the law on nuclear weapons. It draws on the insight and input of a group of 15 experts from around the world, and in so doing crafts an authoritative text that sets out not only the positions of a number of states but a carefully articulated guide to this complex area of law.

“Boothby and Heintschel von Heinegg deliver a masterful, nuanced analysis in *The Law on Nuclear Weapons*. Ranging from the jus ad bellum and LOAC to ICL and disarmament law, this comprehensive work equips policymakers, legal advisers, and academics to navigate the multifaceted legal challenges of nuclear deterrence and operations in the 21st century.” Michael Schmitt, United States Military Academy at West Point and US Naval War College, USA and University of Reading School of Law, UK.

“*The Law on Nuclear Weapons* cuts across the spectrum of peace and security offering legal certainty at a critical moment in history. The regional diversity of the pool of experts consulted ensures an in-depth and representative interrogation of the law. In my view this is the most important contemporary contribution on nuclear weapons law owing to the rules- based approach which ensures accessibility and attention given to the position of the global south which is often overlooked.” Martha Bradley, University of Johannesburg, South Africa.

“This thought-provoking study will not only help to better understand the significance of nuclear command, control and communications arrangements, it could also assist governments in further developing cooperative and effective measures towards a world without nuclear weapons.” Dieter Fleck, Honorary President, International Society for Military Law and the Law of War.

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## II. NAPSNET SPECIAL REPORT BY WILLIAM BOOTHBY AND WOLFF HEINTSCHEL VON HEINEGG

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It is always difficult to know for sure why politicians and, for that matter, the most senior members of the armed forces, decide strategic issues in the way they do. They may make speeches, publish memoirs, give interviews and publish articles in newspapers, but the thought processes that directed their action, or inaction, tend to remain locked inside their minds and are not readily directly accessible. The tendency rather is to observe events that coincide and to draw conclusions.

In that sense, it's noteworthy that the relative absence of direct armed conflict between nuclear armed States during the last 80 years coincides with the possession by some of them of nuclear weapons during that period, and some kind of causal relationship is assumed to exist, perhaps applying the *post hoc ergo propter hoc* fallacy (that something that comes first explains what follows in time). The reference to 'relative' absence is, of course, deliberate given the significant exceptions that erupted over this period—the long-standing and at times violent dispute between India and Pakistan over Kashmir, as exemplified on 6 May 2025, being a case in point. Supporters of nuclear deterrence readily espouse the notion that relative calm among nuclear-armed States is at least in part due to their possession of nuclear weapons, while nuclear prohibitionists seek to dispute this logic.

What is undeniable is that the law that regulates the resort to the use of force, the key elements of which are to be found in Articles 2 and 51 of the UN Charter, seem to have had a sobering effect on those with the unenviable potential responsibility of deciding whether events demand a nuclear response. Readers surely have noted that nuclear weapons have gained a higher, and rather uncomfortable profile due to relevant statements issued by and on behalf of certain political leaders since the invasion of Ukraine by Russia in 2022.

Notwithstanding many nuclear threat-laden statements and headlines, mercifully the nukes have stayed in their silos. Was it the 'mad-ness of mutual assured destruction', the simple fear that a post-nuclear-war world might not be worth living in, or the proposition agreed in the aftermath of World War II that the threat and use of force are both prohibited that persuaded the pivotal actors not to send the codes to use nuclear weapons?

We argue that the legal rules fashioned following the most awful orgy of multinational bloodletting in World War II weigh more heavily on the minds of the men of power than the rest of us perhaps sometimes imagine. In actuality, powerful leaders may seek to better the lot of their own nations, but they hesitate to do so by breaching international law. Remember how keen Tony Blair was to have supportive legal advice from Lord Goldsmith before joining George W. Bush in the 2003 Iraq invasion.

Legacy lies heavily on the minds of the powerful. A legacy tarnished by an unlawful act that consigns millions to die for whatever reason may not be what these heads of state desire for themselves.

Yes, there may be exceptions to this rule. But there is plenty of contrary evidence to the effect that these are the exceptions to the rule that keep leaders from using nuclear weapons, and give them pause even in dire circumstances from doing so.

Thus, while the joint declaration made by the P-5 States in January 2022<sup>[1]</sup> might be viewed with a degree of scepticism, it surely reflects a deeper understanding that actually influences the actions of these influential individuals. It is, after all, one thing to rattle the sabre and quite another to unsheathe and then use it.

In *Nuclear Weapons Law: Where Are We Now* (Cambridge University Press, 2021, free download available [here](#)) and in *The Law on Nuclear Weapons: An International Commentary* (Elgar, 2025, free download available [here](#)), Professor Heintschel von Heinegg and I present the law relating to the possession and use of nuclear weapons in a clear and accessible way using language that can be understood by all.

The aim in writing and then publishing these two books on an Open Access basis is to ensure that all those involved in nuclear weapon operations understand what their responsibilities are under international law. By this means, Nuclear Command, Control and Communications arrangements can be drafted that will seek to ensure that nuclear weapons are only ever used in the most compelling, strictly lawful and truly exceptional circumstances where all other options have proved unsuccessful such that there really is no possible alternative—a truly worthy endeavour, one might suggest.

International law lies at the very centre of that endeavour. However, we must recall of course that prohibitionist states argue persuasively that any use of nuclear weapons is inherently unlawful.

Getting the international law message out to all those who need to receive it is a task that is both urgently necessary and vitally important. That is the task that *The Law on Nuclear Weapons: An International Commentary* fulfils.

This book reflects the views of a global panel of 15 experts and was edited by two experienced international lawyers. Books of this calibre can influence the views of States and a planned programme of legal education will be designed to reinforce the legal message.

If nuclear war can indeed be prevented by spreading the legal word widely enough—and the authors believe it can—then humanity as a whole will be the beneficiary.

### III. ENDNOTES

[1] See “JOINT STATEMENT Of the Leaders of the Five Nuclear-Weapon States On Preventing Nuclear War and Avoiding Arms Races,” January 3, 2022, at: <https://www.gov.uk/government/publications/joint-statement-on-preventing-nuclear-war-and-avoiding-arms-races>

### IV. NAUTILUS INVITES YOUR RESPONSE

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