In *Disarmament Under International Law*, John Kierulf presents a timely and thorough description of the international legal architecture on disarmament, arms control, and the nonproliferation of conventional and unconventional weapons. It is timely because many difficult issues of arms control and disarmament to which Kierulf alludes have become more urgent as North Korea continues to test nuclear weapons and ballistic missiles, as the United States and other nuclear-weapon states have begun to modernize their arsenals, and as the Syrian government continues to use chemical weapons against rebel factions in their six-year long civil war. It thoroughly covers the origins and current status of the key international agreements regulating conventional and unconventional weapons. Kierulf intends this volume to contribute to the fields of international security and international law, and in this regard I expect students of international security to come away less impressed than students of international law. Nevertheless, the book is an important contribution to the recent and current history of international disarmament law and thus a valuable resource for students of international law and security.

The book’s descriptive and explanatory efforts are strong. Its four parts are sequenced nicely and the appendices offer a handy list of key disarmament, arms control, and nonproliferation agreements. In the first part, Kierulf effectively traces the history of disarmament and arms control agreements from the late nineteenth century through the contemporary period. In the second part, he describes the major agreements which regulate nuclear weapons, other weapons of mass destruction, heavy and light conventional weapons, and how these weapons are traded among states. For those unfamiliar with the field of international law, he discusses clearly the fundamentals of treaty interpretation in light of the 1969 Vienna Convention on the Law of Treaties, the distinctions between the law of war (*jus ad bellum*) and international humanitarian law (*jus in bello*), and the limits of international law in a system of sovereign states which are not legally bound to agreements they have not joined. Indeed, he points out that several arms control regimes are limited by their lack of universality—that is, important states have not joined these regimes. One of these is the Missile Technology Control Regime (MTCR), which aims to regulate the transfer of missiles and related equipment, materials, and technology essential for the delivery of nuclear weapons. Unfortunately, the MTCR’s membership is limited mostly to Western countries and does not include several countries of concern, such as Iran and Syria. Similarly, the
Nuclear Nonproliferation Treaty (NPT) regime is limited by the absence of India, Pakistan, Israel, and North Korea, and the Comprehensive Nuclear Test Ban Treaty is limited by the absence of eight states, including the United States, China, India, North Korea, Egypt, Israel, Iran, and Pakistan. Overall, it is fair to say that Kierulf’s main concern is the status and progress of international legal efforts to realize nuclear disarmament. Indeed, the chapter on the regulation of nuclear weapons is the longest, at seventy-one pages, while the next longest chapter is twenty-five pages. Additionally, the epilogue is focused on arguments in favor of nuclear disarmament and against continued reliance on nuclear deterrence, and almost 40 percent of the bibliography consists of sources dealing with nuclear disarmament or arms control. Even his discussions of conventional weapons agreements and their successes and weaknesses seem to have the pall of nuclear weapons lurking in the background.

All of this means that the book is comprehensive and its major parts are organized well. And although each chapter is organized fairly well, the alternation between sections describing various international agreements and sections offering commentary can sometimes feel choppy. Still, Kierulf advances a number of good arguments in most of the sections labeled “comments.” Since my research specialization is at the intersection of international security and international ethics, I assume that Kierulf’s arguments would win high marks from students of international law. Accordingly, three arguments stand out as worthy of a critical examination insofar as the book aims (at least in part) to contribute to the international security studies literature.

First, in chapter 1, Kierulf contends that economic and social well-being are predicated on a stable international security environment, which cannot be realized without binding rules of international law on conventional and unconventional weapons. Put slightly differently, Kierulf believes that international law is a necessary condition of international security. On this claim, he should receive accolades from liberal institutionalists and many constructivists, such as Robert Keohane and Friedrich Kratochwil, and he will face objections from realists such as John Mearsheimer.[1] Kierulf also claims that “disarmament measures must always serve national security interests”; otherwise they “cannot be expected to be implemented” (p. 17). Yet, Kierulf fears that international lawlessness and strife are the only plausible outcomes if security relationships are built on power structures. He concludes that international peace and security “should be based on legally binding treaties and not be dependent upon power structures” (pp. 17-18).

As I see it, the core problem in this argument is that the success of international law cannot avoid its dependence on power structures, namely the ability of some states to compel other recalcitrant states to comply with their international legal commitments. As Kierulf admits, this is exactly the problem the international community has faced since 1995 over the nuclear-weapon states’ recalcitrance about acting on their disarmament obligations in the Nuclear Nonproliferation Treaty. The non-nuclear-weapon states do not have the capabilities to compel compliance with these disarmament obligations. An uncomfortable truth follows: given international anarchy, national interest as defined by power is the guiding foreign policy principle when it comes to questions of negotiating, joining, adhering to, or remaining within a treaty regime.[2] The missing premise in Kierulf’s argument concerns the steps which must be taken to forge a collective or common interest among antagonistic states such that security dilemmas are effectively mitigated, which then makes it possible for states to act reliably on their international legal obligations. Without this premise, Kierulf’s conclusion that security and peace should be based on law and not power is hastily drawn and it therefore exhibits a logical
fallacy—that is, not only does “is” not entail “ought,” but “is” also does not entail “ought not.”

Second, in chapter 12, Kierulf contends that the United States is hostage to “gun madness,” and he supports this contention by citing the litany of mass shootings Americans have suffered since the early 1990s, their high rates of gun-related homicide and injuries, and the extraordinary power the National Rifle Association has in domestic US politics. He acknowledges the 2008 *Heller* decision of the Supreme Court of the United States (SCOTUS) concerning the US Constitution’s Second Amendment, which affirms the right of private persons to own weapons for self-defense. Kierulf criticizes the SCOTUS justices who voted in favor of this right to bear arms (a majority), for not properly considering the dissenting opinions of the minority. By this objection, it is not clear if Kierulf believes that the Court’s majority had committed some legal breach. Kierulf then concludes that the US Congress would not violate *Heller* if it banned “particularly dangerous automatic weapons” and introduce stricter controls on high capacity magazines and on the ability of former felons and the mentally ill to purchase guns (p. 189).

I see two problems with this argument, even for readers who agree with Kierulf’s views on US gun culture. First: the US Congress banned “particularly dangerous automatic weapons” in 1934 and such regulations were updated in 1986.[3] Many gun control advocates often conflate automatic and semi-automatic weapons, and with some audiences this conflation dissuades further consideration of the merits of gun control. Perhaps Kierulf intends to say “ban particularly dangerous semi-automatic weapons and high-capacity magazines.” If so, he owes the reader an account of semi-automatic weapons which are particularly dangerous as opposed to those which are not. Second, in the wake of the 2012 Sandy Hook school shooting in Newton, Connecticut, the United States experienced a vigorous debate over the mentally ill and their access to guns. According to many experts, the argument for increased gun restrictions on this population is based mostly on anecdotal evidence and not on a sufficient amount of hard data. Many psychologists remarked that mental illness is not a reliable predictor of future violent behavior.[4] If these experts are right, then Kierulf’s prescription is not warranted. The upshot is that, all things considered, inaccuracies or conflations (automatic vs semi-automatic weapons) or even inadequately supported claims (mentally ill people must not have access to guns) which do not bother committed gun control advocates can work against the political effort to persuade the uncommitted or those with an opposing view to acknowledge the merit of disarmament, arms control, or nonproliferation arguments on small arms and light weapons.

Finally, the epilogue relates arguments in support of the larger contention that nuclear weapons must be abolished. Kierulf advances a series of points which are now familiar to anyone following the debate on nuclear abolition, including but not limited to: international tensions are increasing and especially between the great powers, negotiations on new nuclear reductions and disarmament have stalled, the possibility of nuclear weapons or their materials and technologies falling into the hands of terrorist organizations remains remote but frighteningly real, and there have been at least five instances where luck deterred nuclear war even though serious mistakes were made by one or both sides. Given the recalcitrance of the United States, Russia, and the other nuclear-weapon states to abide by NPT disarmament obligations or the corresponding political demands expressed by a large number of United Nations General Assembly resolutions (see chapter 5), Kierulf concludes that the only “possible way” to promote an effective nuclear abolition is through “increased engagement and pressure from civil society organizations and the public in general” (p. 238). On his view, an informed public
voting for legislative and executive level candidates who support nuclear abolition is now the only means by which countries will ultimately conform to legal and political disarmament commitments.

Kierulf’s argument is correct that informed publics and abolitionist global civil society organizations are crucial to the success of an irreversible nuclear disarmament.[5] But nuclear abolition requires more than sustained and organized public pressure. International security scholars would maintain that nuclear abolition also requires an acknowledgment of states’ security dilemmas and a corresponding reduction of their uncertainties concerning the key geopolitical conflicts of interest which motivate a resort to arms to begin with. Accordingly, it requires national leadership which embraces an empathetic approach in dealing with rivals without permitting their postures to appear weak or unnecessarily vulnerable. In short, nuclear abolition also requires diplomatic skill so that rival states can understand how to harmonize national interest with legal obligation. Reminding states of their legal obligations is necessary, but on its own it is not sufficient for the political task of shepherding states into becoming good global citizens.

Notes


[3]. “Machine Guns and 50-Caliber: Summary of Federal Law,” Law Center to Prevent Gun Vio-


If there is additional discussion of this review, you may access it through the network, at
https://networks.h-net.org/h-diplo


URL: https://www.h-net.org/reviews/showrev.php?id=48792

This work is licensed under a Creative Commons Attribution-Noncommercial-No Derivative Works 3.0 United States License.