

# Cyber Insurance: What Coverage in Case of an Alleged Act of War?

Lessons from the Mondelez v. Zurich case

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# Mondelez v. Zurich – the Case





# Key Issues of the Mondelez Case



1. Attribution of the cyber attack



2. Interpretation of the war exclusion in a cyber context



# Useful legal frameworks for examining the case

## 1. Contract law: the force majeure exemption





# Useful legal frameworks for examining the case

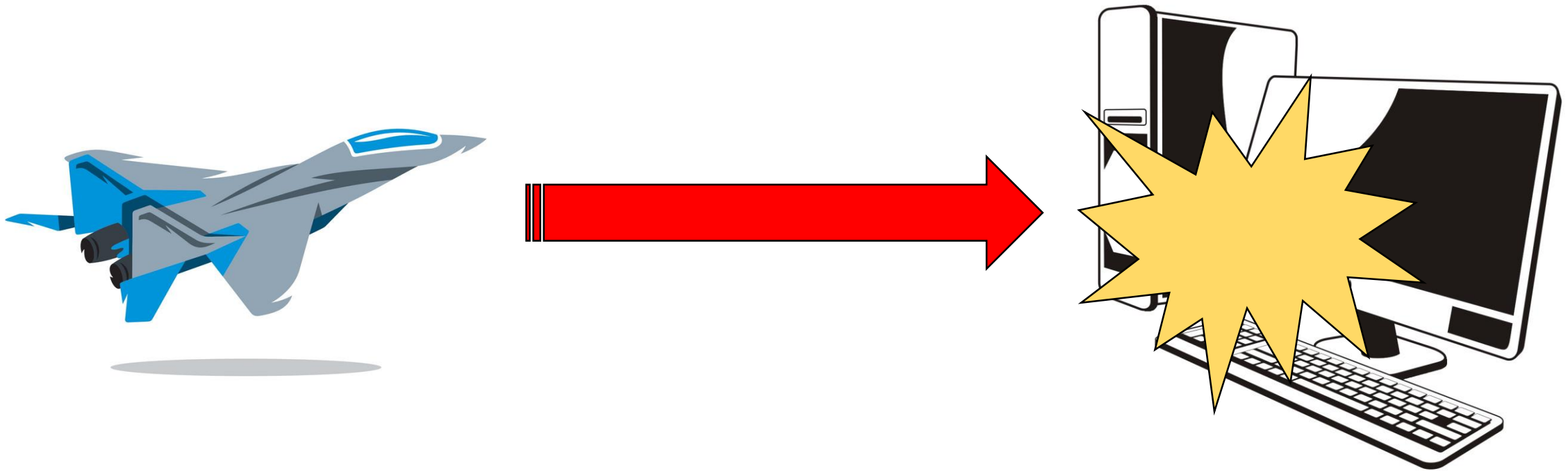
## 1. Contract law: the force majeure exemption



- Zurich's « war exclusion » is NOT a force majeure clause; but
- Principles under the force majeure doctrine can still guide us

# Useful legal frameworks for examining the case

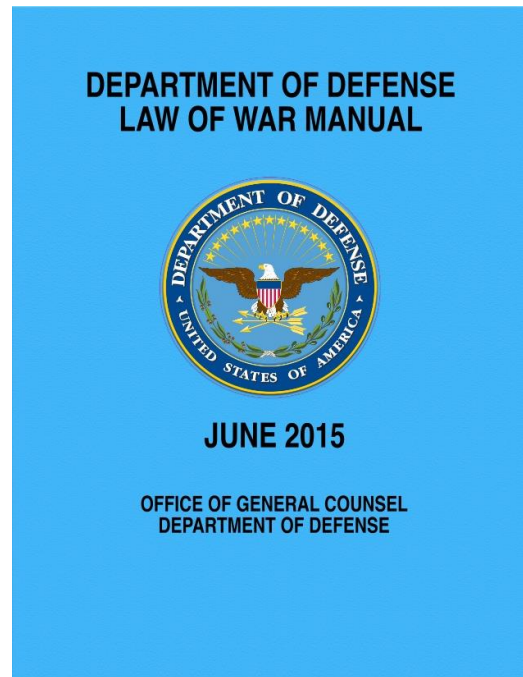
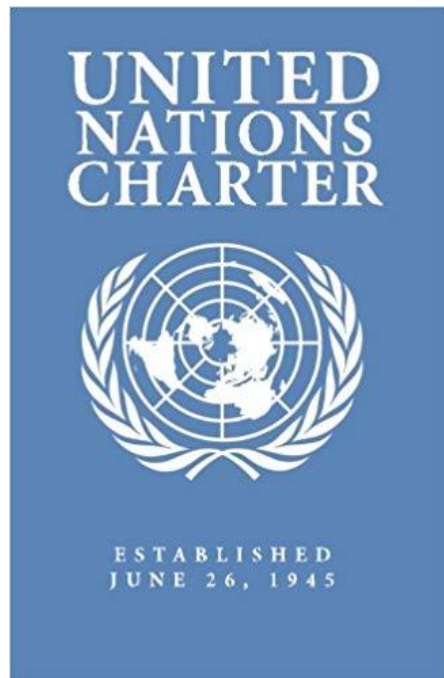
## 2. Public international law: the law of armed conflict





# Useful legal frameworks for examining the case

## 2. Public international law: the law of armed conflict



Council of the  
European Union

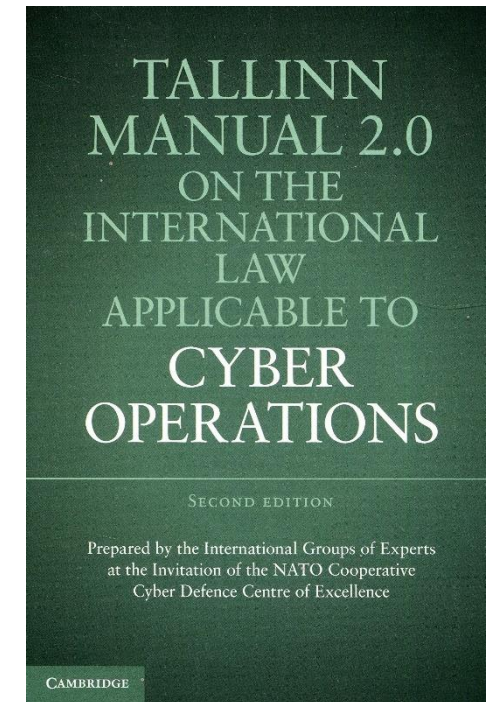
Brussels, 19 June 2017  
(OR. en)

10474/17

CYBER 98  
RELEX 554  
POLMIL 77  
CFSP/PESC 557

### OUTCOME OF PROCEEDINGS

From:	General Secretariat of the Council
On:	19 June 2017
To:	Delegations
No. prev. doc.:	9916/17
Subject:	Council Conclusions on a Framework for a Joint EU Diplomatic Response to Malicious Cyber Activities ("Cyber Diplomacy Toolbox"), 19 June 2017



# Useful legal frameworks for examining the case

## 2. Public international law: the law of armed conflict



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How to qualify the NotPetya attack under the law of international armed conflict principles?



# Useful legal frameworks for examining the case

## 3. A potential « Digital Geneva Convention »?

A Digital Geneva Convention

1. No targeting of tech companies, private sector, or critical infrastructure	2. Assist private sector efforts to detect, contain, respond to, and recover from events	3. Report vulnerabilities to vendors rather than to stockpile, sell or exploit them
4. Exercise restraint in developing cyber weapons and ensure that any developed are limited, precise, and not reusable	5. Commit to nonproliferation activities to cyberweapons	6. Limit offensive operation to avoid a mass event



# Potential Impact of the Mondelez Case & Advice

- For businesses:
  - Review insurance policies;
  - Consider specific cyber insurance coverage.
- For insurance companies:
  - Review war exclusion clauses;
  - Improve data for quantifying exposure;
  - Incentivize cyber risk mitigation by clients.
- For all:
  - Implement strong cybersecurity measures and cyber risk management policies!





# Thank You! ... Questions?

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