CHAPTER 8

CONCLUSION FINDINGS AND SUGGESTIONS
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CHAPTER 8

‘I call upon the scientific community in our country, those who gave us nuclear weapons, to turn their great talents now to the cause of mankind and world peace: to give us the means of rendering these nuclear weapons impotent and obsolete.’

(Ronald Regan)

Preliminary

This chapter considers the generic structure of Conclusion of the thesis. The work which began with the purpose of enquiring nuclear weapon use legitimacy, with the parameter of military necessity has revealed out that such use of weapon itself is illegitimate in any circumstance as it fails to prove limited impact with low profile effect on ecology and man. Efficacy of nuclear weapon policy to balance the power between the nuclear surmount also endangers the law of war. It was witnessed in this research that the issue of legalizing commitments to forgo nuclear weapons has been largely ignored. Some important case-specific studies have considered issues relating to nuclear non proliferation and disarmament. The study, made an attempt to address this shortcoming seeks to explain why some states ratify non proliferation treaties and others do not. Some countries refuse to officially join non proliferation treaty even when other countries in the region choose to do so without hesitation. Explaining this type of variation can advance our understanding of international law, since treaties have no legally binding power until states ratify them, the study integrate insights from the literatures on legal commitment and nuclear proliferation to identify the determinants of Ban on specific weapon treaty ratification.

It is argued that variation in the costs and benefits of commitment explains when states enter these treaties. It is witnessed that states are less likely to make commitments when doing so requires significant policy changes, which is consistent with the findings in the extant literature. This means that states are less likely to enter such treaties if they have not already made non-proliferation commitments or if they have incentives to acquire, test, or possess nuclear weapons in the future. It also finds that states are more likely to enter non proliferation treaties when they highly value the negative security assurances provided by the nuclear powers. These assurances are especially important for states that expect to engage in militarized conflict with
the nuclear powers in the future (e.g. the possibility exists for nuclear weapons to be used against them). The research find only limited empirical support for the argument that legal commitments are made to extract normative benefits, although the results indicate that liberalizing states are more likely to enter the treaties. This concluding chapter tends to adopt a problem solution text structure, and in some case, an argument structure.
8.1 Introduction

Legal and moral questions engendered by the threat of massive destruction and injury to the innocent, the environment and future generations continue to loom before us. We are not faced with nuclear policies founded on a strategy of dropping depth charges in mid-ocean or bombs in the desert.\(^1\) Nuclear weapons policy is based on deterrence with its reliance on the horrific destruction of vast numbers of innocent people and the destruction of the environment, rendering the world hostile to generations yet to be blessed with life. Nuclear deterrence theory is based on raising the cost of an adversary’s actions to unacceptably high levels through utilizing the threat of nuclear attack to deter an unwanted action.\(^2\) The moral position of the nuclear weapon states is essentially that the threat to commit an illegal act massive destruction of innocent people is legal because it is so horrible to contemplate that it ensures the peace. Thus the argument is that the threat of committing that which is patently illegal is made legal by its own intrinsic illogic. The reliance on the value of the doctrine of nuclear deterrence impedes progress in moving towards the elimination of nuclear weapons.\(^3\) An unambiguous political commitment by the nuclear weapon states to eliminate nuclear weapons, evidenced by unambiguous immediate pledges never to use them first as well as placing the weapons in a de-alerted posture pending their ultimate elimination, will promptly evidence the good faith efforts by the nuclear weapon states to reduce our collective risks.\(^4\) These steps increase our collective security but are hardly enough to meet the clear decision of the Court and the dictates of reason. Only good faith multilateral negotiations leading to elimination of these devices will bring law, morals, ethics, and reason into coherence.

8.2 Revisiting the Thesis Statement

The thesis Legal Regime on the use of Nuclear Weapon and its impact on humanity- problems and perspective, began with the purpose of analysing the structure of international law in governing the nuclear weapons, categorically

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2 Chuck Hansen has compiled an “Oops List” of nuclear accidents, which is available on the Bulletin of Atomic Scientists’ website at <http://www.bullatomsci.org>.
inquiring the various law applied in interpreting the status of nuclear weapon. As matter of cutesy it would be justifiable to condemn war but at the same time the fact of legitimising the war by law to minimise its impact cannot be discarded. Since the war can never be outlawed for a simple reason that it hinders the ultimate right of existence questioning the authority of the victor and disabusing the right of vanquish. However subsequent technological invasion into the methodology of waging war has ruptured the purpose of law of war, as a well established fact that law of war emphasises to minimise the consequence of war, any state behaviour toward mobilising the use of nuclear weapon would jeopardise the very base of law of war.\(^5\)

When genie was unleashed several important problems emerged, a cluster of problem were encountered, effecting social economic political environmental aspect of the states. The major setback was upon the emerging law of war and global security, because the genie had almost laid an option to misinterpret several principles of law of war and tactical method of war became the norms of nuclear weapon policy.\(^6\)

Further states security system depend much on the nuclear policy wherein theory of deterrence is believed to be paramount saviour for peace, well the deterrence is deteriorating with the possibility of nuclear terrorism, turning out to be a new phenomena of nuclear deterrence.\(^7\)

Nuclear weapons are the most dangerous weapon ever created by man, built to insight fear in the enemy and to defend the borders of a particular state along with their national interests and zones of influence.\(^8\) When nuclear weapons are unleashed against a particular target, it becomes very difficult to achieve a mission without affecting the civilian population in the targeted area.\(^9\) The problem with nuclear weapons is that radiation can travel for thousands of miles and have a very significant humanitarian effect as well as deep ecological effects. Thus, the use of nuclear bunker busters would violate International Law, because it would breach one of the articles

\(^9\) Walker, Paul D. Truman’s Dilemma: Invasion or the Bomb. (Gretna: Pelican Publishing Company, 2003), p56
of the Geneva Convention on the matter of military warfare and treatment of the civilian population. In an advisory opinion of July 8, 1996 the International Court of Justice concluded that principles of humanitarian law do apply to nuclear weapons.  

The opposite conclusion "would be incompatible with the intrinsically humanitarian character of the legal principles in question which permeates the entire law of armed conflict and applies to all forms of warfare and to all kinds of weapons, those of the past, those of the present and those of the future." According to the Court's opinion, any weapon that has the potential to harm must be limited in usage, due to the established practices and treaties of international humanitarian law. Nuclear bunker buster weapons are just another step in the future race of the creation of more powerful weapons in order to effectively protect the interests of the state and its national integrity and sovereignty.

Living in an international community which has a number of nuclear possessing states and a wide range of nuclear capable states, it becomes crucial to control the spread of such weapons, due to the fact that they could get into the hands of terrorists or into the hands of a dictator, whose goal is the elimination of a particular group or a state by any means possible. If the US went ahead with the research of the bunker busters and created such a weapon, it becomes crucial to control and account for each of the weapons, so that they cannot get into the wrong hands. The purpose of NPT should not be underestimated. One of the main reasons for non-nuclear states to sign NPT is that the nuclear states would assist them in exploring nuclear options only for peaceful usage. States now feel immense pressure to acquire nuclear weapons to gain respect, leverage, and power. Thus, the creation of the new type of low-yield weapons would perpetuate the continued flow of nuclear materials, weapons, and blueprints around the globe between the international actors, with the growing concern that states would abandon NPT and other treaties that have limited their behavior since 1968. Thus, it is essential for nuclear bearing states to lead the way in terms of nuclear disarmament and succeed in attempts to construct different types of nuclear weapons that would be tailored to a specific military task.

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11 Threat or Use of Nuclear Weapons, 1996 I.C.J. at 246  
Thus, the goal of the future should be abandonment of nuclear weapons and secession of research in the scope of usage of nuclear material for military purposes. The world is under the threat of the uncontrollable spread of nuclear weapons and nuclear material. Nuclear states, must lead the way in setting expectations for the rest of the world, with the ultimate goal of erasing the words “nuclear weapons” from future history books.

The hypothetical point throughout the enquiry stood that nuclear weapon use cannot be justified under any circumstance. Even the ICJ has emphasised on the issue that the nuclear weapon per se is illegal; however the contradictory opinion among the presided judges and the split decision is evidence enough to show the necessity to have a strong international consensus to outlaw the nuclear weapon. The court could not draw out unanimous opinion on the legality of the use of nuclear weapon due to the fact that changes in the discourse about the regulation for the use of nuclear weapon are due to structural problem of international law\(^\text{14}\) (e.g.; the lack of distinction between the substantive and procedural law aspect of international law).

In response to the insistent urgings of the nuclear weapon states (NWS), the Court rejecting, by 13 votes to 1, including those of all the judges from NWS, the argued that the questions put to it by WHO and the UN General Assembly were essentially political in nature and that an opinion from the Court would interfere with disarmament negotiations and held that the threat and use of nuclear weapons is illegal per se, without specifying the exceptional circumstances, which was essentially the position of the four NWS which participated in the proceeding France, Russia, UK, US and some of their NATO allies. Instead, the Court held that "the threat and use of nuclear weapons would generally be contrary to the rules of international law applicable in armed conflict, and particularly the principles and rules of humanitarian law." The only possible exception to the general rule mentioned by the Court was "an extreme circumstance of self-defense, in which the very survival of a state would be at stake." But as to this "extreme circumstance", the Court could not decide whether the threat and use of nuclear weapons would be lawful or unlawful. In other words, the Court said that threat and use are unlawful, and refused to confine the legality or illegality of threat and use of nuclear weapon in

\(^{14}\text{Supra,11 at 245}\)
the extreme circumstance of self-defense... The Court held *unanimously* that "[t]here exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control.""\(^{15}\)

For some mysterious reason, the Court, which took seven votes on various aspects of the General Assembly question, plus an eighth vote on the admissibility of the WHO question, took a single vote on paragraph 2E, its two-part holding of general illegality and possible "extreme circumstance" exception, thus obscuring the true nature of the vote. The vote on 2E was seven to seven, with the President of the Court, Muhamad Bedjaoui of Algeria, casting the deciding vote under the rules of the Court. But of the seven dissenting judges, three - Shahabuddeen of Guyana, Weeramantry of Sri Lanka and Koroma of Sierra Leone made it clear in their separate opinions that the reason for their dissent was their belief that there could be no exception whatsoever to the principle of general illegality and a fourth, Oda of Japan, based his dissent principally on his view that the Court should not have taken the case at all. Thus the position on general illegality was, in effect, ten to four and the only three judges dissenting from that principle were those elected to the Court from the three Western NWS, Schwebel (US), Guillaume (France) and Higgins (UK). In addition to the majority opinion, which is 37 closely printed pages in length; all fourteen judges filed a total of 230 additional pages of separate opinions. A close reading of these opinions reveals many interesting points which go counter to the "narrow margin" view of the case. Thus Judge Schwebel recognizes the relevance of the Martens clause to nuclear weapons and condemns the use of nuclear weapons and declares it as weapons of mass destruction:"It cannot be accepted that the use of nuclear weapons on a scale which would or could result in the deaths of many millions in indiscriminate inferno and by far-reaching fallout, have pernicious effects in space and time, and render uninhabitable much or all of the earth, could be lawful."\(^{16}\)

Judge Higgins has problems with the Court’s analysis and formulation, particularly the word "generally", but seems to leave open the possibility that a more profound analysis might have led the Court to conclude in favor of illegality in any

\(^{15}\) Id
\(^{16}\) Id
circumstance, stating, *inter alia*, "I share the Court’s view that it has not been persuasively explained in what circumstances it might be essential to use any such weaponry" and "I do not ... exclude the possibility that such a weapon could be unlawful by reference to the humanitarian law, if its use could never comply with its requirements." As befits the first woman judge in the history of the Court, Judge Higgins also said "It may well be asked of a judge whether, in engaging in legal analysis of such concepts as ‘unnecessary suffering’, ‘collateral damage’ and ‘entitlement to self-defense’, one has not lost sight of the real human circumstances involved."17

Those who, unlike Judges Schwebel and Higgins, voted with the majority also had interesting things to say:

President Bedjaoui had this comment on the "exceptional circumstance" clause: "I cannot insist too strongly on the fact that the Court’s inability to go beyond the conclusion it reached cannot in any manner be interpreted as having opened the door to the recognition of the legality of the threat and use of nuclear weapons." He called nuclear weapons "the ultimate evil" and said "By its nature, the nuclear weapon, this blind weapon, destabilizes humanitarian law, the law of discrimination in the use of weapons." And, citing Einstein’s adage that "humanity will get the fate it deserves", he threw out this challenge: "The ultimate aim of every action in the field of nuclear arms will always be nuclear disarmament, an aim which is no longer utopian and which all have a duty to pursue more actively than ever."18

However among the presiding judges the juristic opinion the 88 page dissent of Judge Weeramantry bids fair to become a classic of international law and deserves to be reprinted and widely circulated as the ultimate legal statement on "the ultimate weapon." Replete with citations from the literature and jurisprudence of many cultures, it contains the detailed analysis of the unique and uniquely destructive nature of nuclear weapons which Judge Higgins would have wished to see from the majority. It also deals, patiently and convincingly, with every last argument advanced by the NWS in support of their position, including deterrence, reprisals, internal wars, the doctrine of necessity, "mini-nukes" and the relevance of the NPT and other

18 Id, 45
nuclear weapon treaties to the question before the Court. It is, furthermore, a ringing
affirmation of the role of international law in international affairs and an answer to
the skeptics who dismiss the pronouncements of the Court as "merely advisory" and
"unenforceable." For, as Judge Weeramantry put it, "[a] decision soundly based on
law will carry respect by virtue of its own authority. It will assist in building up a
climate of opinion in which law is respected. It will enhance the authority of the
Court in that it will be seen to be discharging its duty of clarifying and developing the
law, regardless of political considerations." And, while regretting that the Court, in its
Opinion, did not go the last mile toward total, unqualified illegality, Judge
Weeramantry begins his discussion by stating that the Opinion "contains positive
pronouncements of significant value" which "take the law far on the road toward total
prohibition."19

Judge Koroma also allows that "the positive findings" contained in the
Opinion "should be regarded as a step forward in the historic process of imposing
legal restraints in armed conflicts." But he develops, at considerable length, his
reasons for disagreeing with any possible exception to the general principle of
illegality, basing himself in large part on the moving testimony of the effects of
nuclear weapons presented to the Court by the mayors of Hiroshima and Nagasaki.
His conclusion, stated at the outset of his opinion, is that "based on the existing law
and the available evidence ... the use of nuclear weapons in any circumstance would
be unlawful under international law."

It remained for Judge Shahabuddeen to give the most persuasive rebuttal to
the Court’s professed inability to rule on the lawfulness of threat and use in an
extreme circumstance involving the very survival of a state. Citing an Islamic
commentator, Ibn Khaldun, to the effect that laws "are based upon the effort to
preserve civilization", he discusses the well known phenomenon of nuclear escalation
and asks "is there anything in the sovereignty of a State which would entitle it to
embark on a course of action which could effectively wipe out the existence of all
States by ending civilization and annihilating mankind?" In other words, in a
community of equally sovereign nations under law, can recourse to nuclear weapons
in defense of the survival of one State possibly be lawful if it leads, or could lead, to

19 M. V. Ramana, Prisoners of the nuclear dream, (Orient Blackswan, 2003), p45
the destruction of all States, or a number of other States? As an illustration of the richness of thought and comment scattered throughout the principal opinion and the various separate opinions, consider the following footnote by Judge Shahabuddeen:

The dilemma recalls that which confronted the learned judges of Persia when, asked by king Cambyses whether he could marry his sister, they made prudent answer "that though they could discover no law which allowed brother to marry sister, there was undoubtedly a law which permitted the king of Persia to do whatever he pleased." ... So here, an affirmative answer to the General Assembly’s question would mean that, while the Court could discover no law allowing a State to put the planet to death, there is undoubtedly a law which permits a State to accomplish the same result through an exercise of its sovereign powers.

Though there had been disagreement among presided judges on exceptional condition of use of nuclear weapon. The case even then will go down as one of the most important decisions in the history of the Court and of the law of warfare. And it is close to perfect in that it affirms that the threat and use of nuclear weapons are subject to humanitarian law, environmental law and human rights law; that the threat and use of nuclear weapons are generally prohibited under international law, subject to an extremely narrow and highly speculative possible exception; that nuclear deterrence cannot be said to be sanctioned by law and that there is a solemn obligation to conduct and conclude negotiations leading to the complete abolition of nuclear weapons not at some distant date in the next century, but now, before the advent of holocaust by inertia.20

There are approximately 23,300 nuclear weapons in the world today, posing a direct and constant threat to global security and human survival. Thousands are kept on hair-trigger alert ready to be launched within minutes. They divert funds from health care, education and other services. The United States alone spends enough on its nuclear weapons more than $US40 billion a year to end world poverty by 2030.

Unless we get rid of all nuclear weapons, it is likely that they will be used again intentionally or by accident and the effects would be catastrophic. The two nuclear bombs dropped on Japan in 1945 killed hundreds of thousands of innocent

20 Supra, 11 Id
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people. We must not risk nuclear weapons being used again. Today nine countries have nuclear weapons, and five more have US nuclear weapons on their soil. The overwhelming majority of the world’s people and governments want them abolished, and there is a legal obligation to negotiate a ban. ICAN is helping to generate a groundswell of popular support for the abolition of nuclear weapons.\textsuperscript{21}

Landmines, chemical weapons and biological weapons have already been outlawed. It is past time we banned the worst weapons of all. The good news is that it can be done. Nuclear weapons stockpiles have gone from some 70,000 warheads at the height of the Cold War to 23,300. All that is stopping us from eliminating the rest is lack of political will. Today, nearly two decades after the Cold War ended, there are still 23,000 nuclear warheads in the world. They are held by just nine countries; the US, Russia, the UK, France, China, Israel, India, Pakistan and North Korea, worrying more than 2,000 of them are still on hair-triggered alert ready to launch at short notice, 24 hours a day; seven days a week. And these weapons are far more powerful than those that wreaked havoc in Hiroshima and Nagasaki. Every submarine in Britain’s Trident fleet carries up to 48 nuclear warheads, each of which is eight times more powerful than the bomb that destroyed Hiroshima.\textsuperscript{22}

A legitimate question aroused in due course of study that whether controlling the use of nuclear weapon would be a better option to minimise the effect of its use in future, as observed by ICJ 7/7 on various aspect of General assembly question; subsequently it was witnessed that controlling the nuclear weapon use through law (which generally justifies the limited nuclear war tactics) will not directly address the problem, in fact it would be justifiable on the part of the those states to defend their legitimacy under the right of self-defence which indeed is the truth, because the presumption seem to be that, those which are not declared as illegal under law are permitted and are otherwise legal. That should never be an excuse or cause for justification since the greatest challenge before the mankind today is to preserve his race and generation.

\textsuperscript{21} International Camping to abolish nuclear weapon.
\textsuperscript{22} Maddox, Robert James. Weapons for Victory: The Hiroshima Decision Fifty Years Later.(Columbia: University of Missouri Press, 1995), p89
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In the light of this conclusion, it is recommended that bringing it within the regime of law the nuclear weapon should be outlawed as illegal, banned and prohibited.

8.3 Finding

8.3.1 Overview

It is an established truth that the use or threat of use of nuclear weapons is illegal in any circumstances whatsoever. It violates the fundamental principles of international law, and represents the very negation of the humanitarian concerns which underline the structure of humanitarian law. It offends conventional law and, in particular, the Geneva Gas Protocol of 1925, and Article 23(a) of the Hague Regulations of 1907. It contradicts the fundamental principle of the dignity and worth of the human person on which all law depends.23 It endangers the human environment in a manner which threatens the entirety of life on the planet. While it is true that there are no treaties or rule of law which expressly outlawed nuclear weapons by name, there are innumerable principles of international law, and particularly international humanitarian law, which left no doubt regarding the illegality of nuclear weapons.24

Among these principles are the prohibition against causing unnecessary suffering, the principle of proportionality, the principle of discrimination between combatants and civilians, the principle against causing damage to neutral States, the prohibition against causing serious and lasting damage to the environment, the prohibition against genocide, and the basic principles of human rights law.

In addition, there are specific treaty provisions in the Geneva Gas Protocol (1925), and the Hague Regulations (1907) which are applicable to nuclear weapons as they prohibited the use of poisons. Radiation directly fell within this description, and prohibitions against the use of poisons are indeed one of the oldest rules of the laws of war.25

25 Id
Judge Weeramantry’s Opinion also draw attention to the multicultural and ancient origins of the laws of war, referring to the recognition of its basic rules in Hindu, Buddhist, Chinese, Judaic, Islamic, African, and modern European cultural traditions. As such, the humanitarian rules of warfare is not to be regarded as a new sentiment, invented in the nineteenth century, and are slender rooted in universal tradition that they may be lightly overridden.... Judge Weeramantry’s analysis includes philosophical perspectives showing that no credible legal system could contain a rule within itself which rendered legitimate act which could destroy the entire civilization of which that legal system formed a part. Modern juristic discussions showed that a rule of this nature, which form a place in the rules of a suicide club could not be part of any reasonable legal system and international law was pre-eminently such a system. The Opinion concludes with a reference to the appeal in the Russell-Einstein Manifesto to “remember your humanity and forget the rest”, without which the risk arises of universal death. In this context, the Opinion points out that international law is equipped with the necessary array of principles with which to respond, and that international law could contribute significantly towards rolling back the shadow of the mushroom cloud, and heralding the sunshine of the nuclear-free age.

In general the finding indicates that the technological weapon of mass destruction has a unique feature within the mid of controversy the weapon occupies a partial legitimate and partial illegitimate status (though it is witnessed with horrific effect of the bomb on Hiroshima and Nagasaki) this State of uncertainty or perplexity especially as requiring a choice between equally unfavorable options is due to the legal and political justification upon regulating the technological weapon into a permissible mode of use, which obviously have resulted into two arguments (a) the non nuclear countries and humanity in general would interpret that, given the wide range over time and space of their effects, the use of nuclear weapon does violate the already discussed prohibitions against indiscriminate attack. But there are two counter

arguments to this view. The first consider the new development of nuclear weapon in the light of nuclear weapon which do not constitute indiscriminate attack. (b) the second add a further element to the concept of military necessity.

The first counter argument over legitimate use of weapon is that current nuclear weapon technology permits the development of tactical nuclear weapon whose effect can be limited only to military objectives making it possible to wage limited nuclear war without violating the principle of military objective. According to Paul de Visscher who have expressed his agreement with the 1969 institute Edinburg Resolution, “the evolution of turned certain of these nuclear arms into tactical weapon whose precision exceed that of large bombers used during the Second World War or the Vietnam War…. The meaning of the question of the legality of nuclear weapon has changed for it is no longer relates to the intrinsic nature of the weapons, but as is the case for all categories of arms, it concerns the way these weapons may be used, directing them exclusively at military objectives and safeguarding the civilian population. The core of this thinking is that the military effect of tactical nuclear weapon is simply the destruction of military targets.

In this interpretation the consequence of nuclear weapon use are considered to be limitable to immediately apparent military target. No consideration is given to the fact that radiation from the nuclear weapon might spread over time and space beyond the destruction of the site. Nor is there consideration of the fact that long-term effects on human body are far greater and more persistent than on the military target itself. An evaluation of the effects of radiation on human body is imperative. Such evaluation should consider the future of humanity. However, in comparative weighting of military necessity and humanitarian principles by the state agent, this point of view is inevitably left out.

The second counterargument comes from Henry Stimson, Secretary of War under Truman, and the first and only president to use the atom bomb. He wrote “We estimate that if we should force to carry his plan to its conclusion, the major fighting would not end until the latter part of 1946 at the earliest (which) might be expected to

29 Id
30 Supra 26
cost over million casualties to America force alone, by arguing that American soldiers’ lives were saved by the use of the atomic bombs’ the US positioned the bomb as a life saving weapon, and identified military necessity for its use.\textsuperscript{31} Subsequently statement by President Truman justifying the dropping of the bomb also referred to it as having saved the lives of many American soldiers. That was the basis were military necessity was sought.

This expanded military necessity presented the opportunity to use nuclear weapons, an opportunity that was in fact taken. As a result it was seen how unexpectedly vast the effects of radiation are over time and space. The reason for such counterargument in legitimizing the weapon is due to the fact that there is no positive international law regulating the use of nuclear weapon thus making their use or non use as a matter as a matter of state discretion. There is at present no rule of international law expressly prohibiting sates from the use of such weapons and that why its use is permitted as state practice on combatants and other military objective.

\textbf{8.3.2 Final Finding}

Therefore the major findings of the investigation are as follow.

- So far states have adopted two different approaches to the banning of weapons. They have either laid down general principles concerning board and unspecified categories of weapon or they have agreed upon restraints on use of specific weapon. Both the principle of customary and contemporary international law prohibits the use of weapon causing indiscriminate attack.
- It is seen that Art 22 of the Hague regulation which has passed into customary international law provide that belligerents have no unlimited right as a choice of means of injuring the enemy. However the lacuna in the provision is that it does not give any indication about the weapons that are. However it cannot be presumed that international legislators intended to brief down in international treaty a provision devoid of any significance. The interpretative principle of effectiveness (ut res magis valeat quam pereat) must induce us to try to give some meaning to that article. Accordingly Article 22 “imposes on the belligerents the

general obligation to refrain from cruel or treacherous behavior. Neither in the preparatory work nor in the subsequent practice of state is there any evidence corroborating this view. A more correct view seems to be that Article 22 must be constructed to the effect that it rules out any *argumentum e contrario*; it excludes the inference that weapons which are prohibited by Hague Regulation are ipso facto allowed. This interpretation is also supported by some military manual. Such weapons should be banned accordingly, whether or not they are prohibited by other rules of international law.

- Another general principle is the one laid down in Article 23 of the Hague Regulations, whereby “it is particularly forbidden........ to employ arms, projectiles or material apt to cause unnecessary suffering “. This provision aims at turning into an autonomous rule, the rationale behind the specific prohibition of some means of combat (explosive projectiles weighing less than 400 grams dum dum bullets and asphyxiating and deleterious gases). While those specific bans hinged, as it were, on the indication of objectives properties weapon must possess for being prohibited, mentioned is no longer made in Article 23 of these objective properties. The focus is instead on a test (whether or not the injury cause is necessary) for the use of which the Article itself provide no indication whatsoever. Taken on its face value, the provision is couched in such vague and uncertain terms as to be barren of practical effects. Furthermore as demonstrated in chapter 5th neither preparatory work nor the subsequent practice of the state shed any light on the purpose of the rule. Also the way state has attempted to implement Article either in military manual or the few cases where the rule was invoked, shows that no common consent has ever evolved among the states as to the actual normative values of the principle.

- Each sates has interpreted principle in its own way and international disagreement over whether a given weapon fell under the prohibition of the principle, has never resulted in reaching out common view. Therefore it can be inferred that Article 23 as it stand now plays in practice a normative role only in extreme cases. (such as the cases where the cruel character of the weapon is so manifest that nobody would deny it, or where evidence can be produced of gross large-scale violation of the principle)
It stands to reason that Article 23e can also play a role as a moral and political standard by which world public opinion accesses how belligerent states behaves or misbehaves. This meta-legal value of the principle under consideration should not be underestimated, it could turn out to me more than mere legal value, for the impact that public opinion can have through mass media, on government. Furthermore, Article 23e can serve as a very significant source of inspirations in as much as it sets forth one of the general humanitarian grounds on which states should endeavor either to refrain from developing new weapon or ban their use. This is most clearly borne out by stand taken in 1973-1975 both in UN General Assembly and at the Geneva Diplomatic Conference on Humanitarian law of Armed Conflicts, by number of states which agreed that one of the reasons for forbidding through conventional rules new weapon was their causing unnecessary suffering. Even from this point of view, then Article 23e constitutes but a reiteration of what was already spelled out in 1868 St.Petersburg Declarations (which, even in this respect still remain the best illustration of proper and realist approach of the question of the weapons).

The specific ban approach adopted to prohibit the use of specific weapon lays down rules which ban specific weapons by pointing to their objectives features, a high degree of certainty is provided about the kind of weapon which is outlawed. Certain instruments of destruction are proscribed in any circumstance, regardless of the quality and quantity of the medical or relief resources of the belligerents or of the degree of their technological development. The prohibition is capable of providing a safe normative guidance which is effective even though no enforcement authority exists: this is clearly evidence by the fact that the existing prohibitions of specific weapons have been normally respected even though they were at times violated by one of the belligerents. However the drawbacks of this approach are no less apparent than its merits. Specific bans can easily by pass by elaborating new and more sophisticated weapons which, while they are no less cruel than then the proscribed ones, do not fall under the prohibition owing to their new features. It was rightly noted that “since we cannot always predict context and technological change, the effort to ban specific weapons is that the states more likely or capable of dodging the ban are the more industrialized ones, for they possess the technological resources which are needed to manufacture
more sophisticated weaponry. As a result, the gap between technologically developed states and less advanced countries could be widened also in this field.

• Unlike biological and chemical weapon nuclear weapons are not subjected to any general treaty banning their use that does not denote that nuclear weapon are beyond the reach of justice as held in Advisory opinion of nuclear weapon. Given this underlying concept as a starting point it can be said that general prohibition of poison and asphyxiating gases encompasses the specific case of nuclear weapon, especially in light of the Geneva Protocol reference to all analogous liquids, material or device. The court found the thesis to be unpersuasive on the ground that other weapons of mass destruction are declared illegal by specific instrument, each negotiated and adopted in its own context and for its own reason. The court noted that there have been many rounds of negotiations regarding nuclear weapon none of which has generated a comprehensive prohibition resembling the convention on biological and chemical weapons. There are number of treaties prohibiting the deployment of nuclear weapons in designated area their testing even their procession by certain countries establishing nuclear free zones and creating non proliferation obligations. The court concluded that all these treaties may foreshadow a future general prohibition of nuclear weapon but they do not constitute such prohibition by themselves.

• The effect of nuclear weapon cannot be contained within the territories of the belligerents state and therefore necessarily run counter to the principle of neutrality this really puts the law to dilemma; since there is no sufficient basis for determination whether and when clean, smaller low yield tactical nuclear weapon would be legal. The complexity involved to determine is due to the fact that there is neither customary nor conventional international law any comprehensive and universal prohibition of the threat or use of nuclear weapons as such. As such court could not prove or disprove that approach either.

• The judicial determination over the concept of extreme circumstance of self-defense in which the very survival of the state would be at stake seems to be more troublesome, as it is hard to digest. It appears to be utterly inconsistent with the basic tenet that LOIAC (the jus in bello) applies equally to all belligerents states, irrespective of the merits of their cause pursuant to the jus ad bellum. At bottom
the court’s language implies non *liquet* since could not conclude definitely whether the dispute action is lawful or unlawful.

- This is quite surprising, to consider the behavior of states which determined since there was no conventional or customary comprehensive prohibition of the use of nuclear weapon it is permitted. It is ordinarily understood that, if international law does not prohibit certain conduct, that conduct is lawful.

- Perhaps the single most important issue concerning the role of law in arms control is whether parties are more likely to comply with fundamental obligation of binding treaty instruments, than comply with norms they have indicated support for, but to which they are not legally bound. Concluding arms control treaties does not guarantee compliance; this should be obvious for the fact that several important multilateral arms control agreement have been violated. Moreover the violations were not mere paper work, error or delay in implementation but were the violation of the very object and the purpose of the treaty. The adherence is only possible with a proper inspection body.

- The greater concern is over the situation which needs further acceleration to deal with nuclear weapon mess. There is now intense national and international attention to the risks of nuclear terrorism. Nuclear safety should be concern of states possessing nuclear weapon and also ensure the nuclear plant safety.

- There is now intense national and international attention to the risks of nuclear terrorism. The possibilities that al Qaeda might acquire the materials and the knowledge for building nuclear weapons or "dirty bombs" or might attack commercial nuclear-power facilities to trigger a nuclear meltdown are of particular concern. The Nuclear Control Institute has been alerting the public and policymakers to these risks, seeking emergency measures to reduce the vulnerabilities, and monitoring and assessing the responses of industry, governments and international agencies. It is quite not sure that the regulators are adequately protected against attack. It is still not sure whether IAEA has any measures possibly for the nuclear countries against the act of nuclear terrorism and theft of nuclear weapon. This is still a challenging task before the world community calling for their attention over the aspect of such danger.
8.4 Testing of Hypothesis

According to the above finding it can be established beyond doubt that nuclear weapons represent humankind’s ultimate confrontation with the natural environment that sustains us. The purpose of these weapons is wholesale destruction on a massive scale, which affects most forms of life. No other single human creation has such potential for harm. According to the above finding the hypothesis of the research are established as follow:-

Firstly the research began with the working hypothesis that the use of nuclear weapon would jeopardize the systematic principle of law of war with no convergence that it would further create a situation of total destruction of mankind. The devastating impact of nuclear weapon is condemnable and is established conclusion, drawn from the cancer study regarding the amount of exposure, or dose of radiation. The “linear hypothesis” says that the “probability of developing a radiation induced cancer is proportional to the radiation dose;” the chance that a given cancer death is associated with atomic bomb radiation exposure is linearly associated with concentration (“Cancer…”). This hypothesis is supported by data collected in Hiroshima, where, as noted above, radiation had a more definitive effect. Additionally, it appears that the population of survivors afflicted with leukemia increased, despite falling radiation levels (defending the premise of radiation inducing cancer, and not directly causing it). It goes without noting, however, that regardless of the radiation dose or age of the victim when exposed; the overall rate of death among survivors from leukemia was two times as high as it was for those not exposed. Since the suffering caused by the atomic bomb is greater than any other weapon its use would naturally be illegal. The results indicate that the impact of nuclear weapons is more complicated than is conventionally appreciated.

Integrating insights from the literatures on legal commitment and nuclear proliferation, this research argues that variation in the costs and benefits of the treaty’s provisions is important to understanding ratification. This broad assertion leads to several hypotheses that are tested using event history analysis and a sample of nuclear weapon states that are eligible to join in nuclear disarmament race. The results indicate that, expectations of future conflict with the nuclear powers and possibility of anonymous terrorist network in using nuclear weapon would make
states more likely to ratify treaties and factors that might compel states to pursue nuclear weapons such as militarized conflict and the presence of nuclear related resources make states less likely to do so.

Secondly the assumption that where matters of high policy are concern the influence of International law is minimal is true to some extent, with the example of deterrence policy which at a time has been contradicting with the international policy of non-proliferation and disarmament. However deterrence policy was seen deteriorating with the emergency of nuclear terrorism, and breaking the ice between the optimist and pessimistic theory upon nuclear non proliferation. Proliferation pessimists have been unable to challenge the dominant neo optimism that has relegated the debate on how to achieve global nuclear disarmament to the back burner because they accept the premises of proliferation optimism without challenging rational deterrence theory while showing the need to base national and international peace and security on other premises, security without nuclear weapons. As Knopf notes: The organizational and psychological arguments cited by pessimists need not be seen as forming a complete alternative theory to the rational and systemic approaches favored by optimists. In fact, decision-making approaches are often invoked to explain deviations from rational behavior. In short, existing proliferation pessimism is really a theory of why rational deterrence theory could be wrong. Arguably, the only safe way of avoiding the nuclear accidents analyzed by Scott Sagan (a proliferation pessimist) in the Limits of safety is to eliminate nuclear weapons, going beyond rational deterrence theory. In order to supersede the proliferation optimism pessimism debate, U.S scholars and policy-makers must take nuclear disarmament seriously. The reason the NWS are not willing to construct their security and defense strategies on the basis of universal non-proliferation is because they envisage holding on to their nuclear arsenals as a major part before international power . As Frank Blackaby argued in 1996, it is in the best interest of the NWS to move seriously in the direction of full-filling their Article VI NPT obligations. Despite the setbacks suffered by the multilateral nuclear disarmament agenda since the late 1990s, it is still true that the NWS would enhance their security in a world without nuclear weapons. After the signing of the CTBT in 1996 it was possible to envisage a road map leading to a Nuclear Weapons Convention by studying the structural, technical and political requirements of a nuclear weapon free world (the
declared purpose of the NPT) and then taking intermediate steps to achieve that goal, such as a CTBT and an FMCT, a treaty on negative security assurances and a treaty to prevent an arms race in outer space. Approaches favored by optimists. In fact, decision-making approaches are often invoked to explain deviations from rational behavior. In short, existing proliferation pessimism is really a theory of why rational deterrence theory could be wrong.

By analyzing the changes in discourse the research has clearly witnessed the reason for the changes, which is due to the structural problem in international law, e.g., the lack of distinction between the substantial and procedural aspect of international law.

The current research points out that lack of convergence over the final conclusion of illegality is due to the existing controversy between two separate interacting legal systems. The definition of enforcement measure (security system and the right of self-defense in chapter VII of the use of force. Since Art 2(4) prohibits the use of force or threat of force, the threat to use nuclear weapon is also falling under the condemnable act of 2(4). However at the same time chapter VII of the UN Charter specifies a right of self-defense against the act of aggression and justifies the use of force on that basis. The possibility of using nuclear weapon in such context is thus present.

The difference in convergence is also due to the fact that United Nation Charter was drafted without the full recognition of danger posed by the nuclear weapons. The very first recognition adopted by the General Assembly of the United Nations called for the elimination of atomic bomb, with adoption of the Treaty of Non Proliferation, the treaty which upholds the legal political and moral responsibility however does not contain any enforceable time limit. Unless the Treaties’ requirements are recognized as serious and weighty the nuclear disarmament commitment will not be accomplished without greater political pressure. There is inadequate public understanding of the political, scientific, legal, ethical, moral and military dimension of nuclear weapon policy, including preparedness for use.
Fourthly the attempt to enquire the fundamental principle of ethical value adumbrated both under customary and contemporary law of war reveals that nuclear weapon threatens our most precious, civilized values expressed through law. Law is the articulation of values. Values must be based on moral foundations to have credibility. The recognition of the intrinsic sacredness of life and the duty of states and individuals to protect life is a fundamental characteristic of all human civilized values. Such civilized values are expressed in humanitarian law and customs that have an ancient lineage reaching back thousands of years. They were worked out in many civilizations Chinese, Indian, Greek, Roman, Japanese, Islamic, modern European, among others. Humanitarian law is in continuous development and grows as the sufferings of war keep escalating. The fact remains that the existence of nuclear weapons as a class of weapons threatens the whole of civilization. This is not the case with respect to any class or classes of conventional weapons. It cannot be consistent with humanity to permit the existence of a weapon which threatens the very survival of humanity. The threat of global annihilation engendered by the existence of such weapons, and the fear that this will engendered amongst the entire postwar generation, is itself an evil, as much as nuclear war itself. If not always at the forefront of our everyday thinking, the shadow of the mushroom cloud remains in all our minds. It has pervaded our thoughts about the future, about our children, about human nature. And it has pervaded the thoughts of our children themselves, who are deeply anxious about their future in a world where nuclear weapons remain. The convergence of development of global legal regime with nascent pursuit of global ethics may be where we can find the further thinking.

The ethical and moral norms based on wisdom, conscience, and practicalities are universal and have withstood the test of human experience over long periods of time. Many such principles are articulated under the international humanitarian law. One such principle is that of reciprocity. It is often called the Golden Rule: “Treat others as you wish to be treated.” Today nuclear surmount have to regard this golden rule when their survival itself is at stake. States should treat other as they wish to be treated in return.
8.5 Suggestions and Recommendations

In the light of the above conclusion and finding following suggestion and recommendation are given

8.5.1 Suggestions

1. There is a need to reconsider the role of international law from the stand point of nuclear weapon use.

   The present international law on means of warfare no doubt greatly benefits major powers. It includes only a few general principles, which are so vague that they have little value as a yardstick for the assessment of means of warfare. In addition the limited number of specific bans at present in force covers minor weapons or arms (such as bacteriological weapons) which were prohibited because they could also affect the belligerents using them. Instead really important weapon such as nuclear bombs or new conventional weapons do not fall under any prohibitory rule of international law.

   Since the change in discourse about the regulation for the use of nuclear weapon is due to the structure of international law; it appears that the provision of Art 51 of UN Charter under consideration shows features which are open to abuse or lend themselves to interpretation which could go so far as to stultify the significance of the Article. Furthermore in formulating a general assessment of Art 51 it should not be over looked that some state including France stressed at Geneva that the Article could not be interpreted as limiting in any way << a nation right of self-defense >>. This will manifestly restrict to a very great extend the range and the scope of Art. 51

   More over some sates assert that because nuclear weapon can be used in certain circumstance within the right of self-defense the use per se of nuclear weapon is lawful, this assertion results in once more conflating two divergent point of controversy and inviting circular arguments. The legality of the use of nuclear weapon under humanitarian law and the legality in the context of the exercise of self-defense under United Nations Charter should be differentiated as belong to different sub-legal systems.
2. Need for a higher level legal system or single matrix.

Question of nuclear weapon and their use have diametrically opposing significance for nuclear states and the non-nuclear states emphasizes argument based on humanitarian law while the nuclear states place primary importance on the UN Charter based right of self-defense. Both arguments are based on independent legal systems. So a single conclusion will not emerge, such that the use of nuclear weapons is illegal in all cases (irrespective of whether they are used in the exercise of the right of self-defense or not). Given this circumstance what is required is a higher level legal system or single matrix in which both humanitarian law and the UN Charter based self-defense is uniformly positioned and correlated. Not a Jus ad Bellum and Jus in Bello frame but a substantive and procedural law frame can function as a single matrix. A differentiated importance can be placed on the latter half of the paragraph (2) E of dispositif, by understanding the UN based self-defense as a procedure to implement the illegal exercise of force prohibited by Article 2(4) of the UN Charter.

Clearly judgment regarding the use of nuclear weapon requires substantive and procedural law aspect of international law be further distinguished and developed. There is an urgent necessity to bring into effect the substantial and procedural aspect of international law.


Law of war from ancient to modern period though varied at different stanza, had consensus over the issue of just war theory. The difference seen was in formal and informal means of executing the theory. Earlier pattern of just war theory was informal, clustered in religious text and scripture whereas today the theory is reconstructed in conventions and agreements thereby becoming the principle factor of international humanitarian law. Today there is a necessity to subjugate the deterrent use of nuclear weapon under the theory of just war. Certainly, one should truly emphasis the principle theory of just war in nuclear era, that’s why the international humanitarian law seeks to rely on the principal of just war theory and call’s upon to humanize war. Let me put it in this way “almost all the principle Conventions of humanitarian law rely with the theory of just war and recourse the state party to abide to the rule of humanity. Yes, humanity is exactly the principle factor on which the principle of just war theory is developed, because law of humanity is nonetheless the
part of natural law. Take for instance the Conventions and Treaties concluded by the states on chemical, biological or WMD underlines synonymous principle of humanity when it prohibits the states from making use of such weapon. That’s why there seem to be a demand or urgent necessity to reconsider humanity as a source of law of war.

4. There is a need to reconsider law of Armed Conflict

Article 22 of Hague Regulation must be constructed to the effect that it rules out any *argumentum e contrario*; it should exclude the inference that weapons which are not prohibited by the Hague regulations are ipso facto allowed. Such weapons should be banned or prohibited whether or not by other rules of international.

5. There is a need for further development of general principle prohibiting the use of indiscriminate weapon to and an extent to include nuclear weapon with no exception or gap for subjective interpretation.

Geneva Diplomatic Conference has taken very significant step by bringing out general principles prohibiting indiscriminate weapon of choice by adopting Art 35para 3 a provision which prohibits means of ecological warfare which can cause severe damage to the environment, which read as follow:

“It is forbidden to employ methods or means of warfare which are intended or may be expected to cause widespread, long term and severe damage to the natural environment”.

This provision is of necessity rather vague. Especially the time element can itself leads to subjective interpretation. Some light is shed, however by the debates preceding its adoption. As stated in the Report Submitted by Committee III to the Conference.

It was generally agreed that battlefield damage incidental to conventional warfare would not be proscribed, in effect is such damage as would be likely to prejudice over long term the continued survival of the civilian populations or would risk long-term, major health problem for it.

It is to be noted that protection of the natural environment against damage of warfare is also provided in Article 55, which reads to and extend of prohibiting attack against the natural environment by way of reprisal.
Both these Articles can act as set of rules to prohibit the use of nuclear weapon. However in order to make general principle effective there is a need to impose duty on states to verify whether new weapons that have been developed or manufactured are in keeping with international standard. To this end Art 34 (of ICRC proposal new rule) should be implemented.

6. Need to adopt Specific Ban Measures.

Article 34 and 36 of the Geneva Convention declares and imposes obligations on high contracting parties to comply with international standards with the idea of protecting the environment from damage of war. However Art 34 and 36 cannot work independently, (Art 36 actually imposes both duty to set up domestic procedure for exploring the issue of legality of new weapon and duty to concretely use these procedure with respect to each new means of combat. While compliance with the former duty can be made subject to international scrutiny by other controlling states (which could request to be informed about these procedures) implementation of the later duty is left in actual practice to the discretion of contracting states which studies or elaborates a new means of warfare.

Article 36 should be ratified because it not only covers ban on manufacture of dangerous weapon but also their purchase.

In order to make the specific ban effective there is a need to link General principles with the enactment of specific bans. Therefore the best way of supplementing and strengthening the existing general principles consist in linking them with enactment of specific bans. Mere reformulation and expanding of general principle will be of little value without being them implemented through the elaboration of specific bans.

By taking such a stand specific ban can be made indispensable corollary of general principle or to put it differently, the general principles per se can primarily serve as guidelines for outlawing single weapon through specific weapons through specific provision.

Since many modern weapons such as incendiary or anti-personal fragmentation weapon including the nuclear weapon do not fall as of now under the
prohibitory scope of those principles, at the most those general principles could be criteria for enacting new specific prohibition.

7. Neutralizing the law of war

Can it be argued that the tendency of favoring, in this area of law of war, major powers is in the process of being reversed? Small and medium sized states are no doubt stronger now than before, if only because there are very few vocal in international gathering and passionately advocate new and more are sweeping bans. They are however aware that any new treaty in this area would be pointless if it were not endorsed by major military power on their part, still resist any major limitation on their military strength. It will be useful to recall what Telling stated in 1973 by the head of the U.S delegation the Geneva conference Mr. Aldrich; states “which rely more on mass man power for military strength than on fire power and mobility would be likely to see security advantages in prohibiting many weapons”.

However many governments and particularly those of the technologically most advance states hesitates to submit questions of fundamental importance to their national security to negotiations designed to supplement and improve the 1949 Red Cross Conventions.

Faced with these opposition small and medium sized states are necessary compelled to narrow the range of their demands. In addition although states which are depended for their military security on arms supplied by great power are not eager to see possible bans imposed on those very arms they need for their self preservation. Furthermore some third world countries consider that new prohibitions or restrictions on the use of means of combat would only play into the hands of major power for a number of reasons. It is against this general back ground the achievements and the failure of the Geneva conference can be rightly assessed. Undoubtedly it is very significant that the large group of sates have chosen the right approach for making the international law of war less human. In short they have realized that the battles as if were must be fought on several grounds.

What is needed is both to restate and develop prohibitory rules and to enact new bans concerning specific weapons by the same token, it is necessary to set up
supervisory machinery to ensure that such bans are not evaded and further implemented by the state parties to treaty.

8. Establish Rule of law prohibiting the use of nuclear weapon.

The rule of discrimination prohibits the use of weapon that cannot discriminate in their effects between military and non-military targets. It is unlawful to use weapon whose effects cannot be controlled and therefore cannot be directed against a military targets, the effect of nuclear weapon including powerful and prolonged ionizing radiation with its continuing genetic, environmental as well as immediate effect are uncontrollable in space and time. They are not subject to the control of the user and cannot discriminate between the lawful and unlawful targets. The use of nuclear weapon is therefore barred by rule of discrimination. This rule is not subject to any balancing test and applies in every circumstance. As stated by international court of justice in its 1996 advisory opinion ‘state must never use weapon incapable of meeting “fundamental and intransgressible” requirement of discrimination’.

Under rule of necessity a state may only use that degree and kind of force as is necessary to achieve the military objective of the particular strike. Under the rule of proportionality it is prohibited to use a weapon whose potential incidental effects on non-combatant persons or objects or damage to the environment would likely be disproportionate to the value of military advantages anticipated from the attack. If the state cannot control such effect it cannot ensure that collateral effects of the attack will be proportional to the anticipated military advantages or that force applied will be the only necessary to achieve the military objectives. The effect of nuclear weapon being uncontrolled the weapon cannot be employed in compliance with the requirement of necessity and proportionality. If in extraordinary circumstance a contemplated nuclear attack is nonetheless deemed to meet those requirements, it remains barred by the requirement of discrimination.

Reprisal is not a justification for use of nuclear weapons. To be lawful, reprisal must be limited to a level of force necessary to cause the other side to cease its unlawful attack and must be proportional to that attack. Due to their uncontrollability, nuclear weapons are not subjected to limitation to such a level of
force, nor could their effect be limited to what is proportional or necessary, nor could the effect meet the requirements of discrimination.

9. Obligation of Good Faith Negotiation of Nuclear Disarmament

In paragraph 2f of its disposit if the Court unanimously concluded that there exists an obligation to pursue in good faith and bring to conclusion negotiation leading to nuclear disarmament in all its aspects under strict and effective international control. In what may be considered to be an intriguing exercise in the judicial endorsement of a soft international legal obligation, the court drew upon Article VI of the Treaty of Non Proliferation which requires contracting states to negotiate and to negotiate in good faith nuclear disarmament. The fact that 182 states have subscribed to these precise term of the Treaty on the Non Proliferation of Nuclear Weapon helped convince the court that this is the obligation which impress the world community as a whole. According to the Court states are therefore duty bounded in the first instance to pursue negotiation in the first place but in the second, instance are also committed to reaching the universal goal of general and complete disarmament under strict and effective international control.

he NPT obligates the parties to the treaties “to pursue negotiations in good faith on effective measure relating to cessation of nuclear arms race at an early date and to nuclear disarmament” The ICJ unanimously concluded that there exist an obligation to bring to conclusion negotiation leading to nuclear disarmament in all its aspects under strict and effective international control.

10. Policy Imperative

The immense danger of holocaust caused by nuclear weapon makes their continued possession, as well as continued reliance on nuclear deterrence, extremely unwise. To this must be added the risk of the weapon falling into the hands of the terrorists and increasing instability of the non- proliferation regime.

11. Sharpening of scientific conscience.

With the exception of medicine, the scientific enterprise has been largely shielded from having to grapple with matters of conscience. The pursuit of knowledge, irrespective of where it may lead has been considered as a legitimate
goal. At the same time there has been rather a complacent confidence that any question of conscience would be adequately handled by each individual scientist in his or her capacity as a person of conscience and integrity.

Recent developments in many branches have shaken this confidence in the adequacy of individual judgment. Over the past decade, in particular there has been a marked increase in the scientist concern with the issue of conscience.

12. Evolution of codes of ethical conduct for nuclear scientists.

Doctors have the Hippocratic Oath as an ethical code for their profession, but there are many branches of scientific activity which function without any explicit ethical codes whatsoever. This is the case for example with physicist, chemist, botanist and zoologists. Computer scientist, engineers and some other scientist are beginning to evolve codes for themselves. It is time an ethical code emerged for nuclear scientists. There is need for strong moral and political discipline. And it is hoped that the previous discussion will help such code to emerge.

13. Channeling science toward peace.

One of the prime needs of our time is the devising of methods to channel to peaceful use all the enormous scientific and technological talent that is now channeled into the needs of war. Scientists and technologist have not thus far given sufficient active consideration to this important practical means of reducing escalation. It is hoped that clearer knowledge of the issues involved, they will give more consideration for this aspects, which cannot be actively handled without their active co-operation and concern. This is especially important as the extremely sophisticated as the current military hardware and technology makes it much more difficult than ever before to turn swords into ploughshares.

The concentration upon military related aspects has caused an imbalance in the overall advancement of science and technology. Peace related areas are suffering through a challenging through major share or funds into military R&D shortage of funds is causing the U.S to slip from its lead even in the exploration and commercial development of space. According to report released on April 3rd 1986 by Notre dame Universities business higher education forum whose 28 member committee is made up largely of University Presidents and Chairman of major industrial Corporations.
Legal Regime on the Use of Nuclear Weapon and its Impact on humanity

With scientists becoming more aware of the illegality of their work it is hoped that they will give more attention to this redressing imbalance and at the same time help the economy to free itself from the dependence of the military spending. There are great opportunities here for the scientist to contribute not merely to the advancement of scientific knowledge but also to the service of humanity. An example of type of project which might evolve is the Japanese human friendly project also called the human and the earth science programme, initial plan for the project called for an expenditure of between 7.8 billion an 15.6 billion dollars. At the time of writing, Mr Nakasone the Japanese Prime minister was expected to unveil this plan as the Japanese equivalent in terms of out lay to the SDI and the European Community’s Eureka science project it would develop such peaceful advances as intelligent Robert which incorporate aspects of organic locomotion. It would study in much greater depth than ever before the function of the human body and brain and aim at energy conservation and protection of the environment.


Every means of increasing public awareness regarding the nuclear peril is useful. To date there has been no general awareness that a well developed body of international law exists on this matter; instead there is a general sense of powerless and futility concerning feasible form of action, however one must not underestimate strength and resolve of ordinary human being at every level. Once their conscience awakens, once they realize how much is at stake and what they can do about it, their activities can impinge upon state policy and international relations. The ordinary citizens have done this in past and scientist can do no less. The most powerful in this world are but his clients, he must be more conscious of the power he wields. He must also be more conscious of the responsibility that goes with that power.

15. Strengthening the wall of resistance to the use of nuclear weaponry

There is a certain degree of inhibition that naturally attaches to the act of pressing the nuclear button. The survival of humanity may depend on how much that natural inhibition can be strengthened. At the time of Hiroshima, there was a chance for wrong decision to be corrected. There was the need to transport the bomb to its destination by conventional aircraft and there was a time cushion of 5 to 8 hrs before the device was actually dropped. Who ever gave the command could reconsider it and
cancel the command if necessary. Today a Pershing II or an SS2o takes about one minute to cover the distance between the Bonn and Prague. A Pershing takes seven minute to go from Europe to Moscow. That means if the nuclear button is ever pressed, we are irrevocably committed to nuclear war. It is a matter of overriding importance therefore the knowledge that using nuclear weaponry is inherently illegal should increase the inhibition and hesitation about pressing the button.

16. Clarifying the distinction between destruction and war

A war is fought with certain objectives. It is a form of settling dispute. It is a prelude to peace that is to follow; it assumes the continued possibility of co-existence of victor and vanquish. Within that framework international law has worked out a series of percepts and principles. As such the matter of nuclear weapon cannot be conceived within this traditional framework. A nuclear war is not war but sheer destruction; it has not even the shred of rationality and meaning that wars have. It is indeed total destruction. If scientist can realize this it is less likely that they will consent to participate in this totally senseless enterprise.

17. Reliance on existing principle rather than future treaties.

The research suggests that they are a useful tool for arms control and disarmament. There are thousands of pages of international documentation on disarmament and if one were to study this it would be study for lifetime. The problem is that we just do not have kind of time required by these procedures. Nuclear war threatens every moment. If a regulation by treaty is not available we need to fall back on other limb of international law namely regulations in consequence of principles already deeply embedded in international law. We do not need to wait until disarmament is formalized by treaty; there is already sufficient well established body of international law in existence concerning the issue. International law already outlaws weaponry of this nature. All that is needed is for these principles to be fully recognized by nations and individuals and for them to be implemented.

18 Recognizing the Anti nuclear movements.

The anti-nuclear movement is a social movement which operates at the local, national, and international level. Various types of groups have identified themselves with the movement, direct action groups, such as the Clamshell Alliance and Shad
Alliance; environmental groups, such as Friends of the Earth and Greenpeace consumer protection groups, such as Ralph Nader's Critical Mass; professional organizations such as Union of Concerned Scientists and International Physicians for the Prevention of Nuclear War; and political parties such as European Free Alliance. Anti-nuclear groups have undertaken public protests and acts of civil disobedience which have included occupations of nuclear plant sites. Other salient strategies have included lobbying, petitioning government authorities, influencing public policy through referendum campaigns and involvement in elections. Anti-nuclear groups have also tried to influence policy implementation through litigation and by participating in licensing proceedings. Anti-nuclear power organizations have emerged in every country that has had a nuclear power programme. Protest movements against nuclear power first emerged in the USA, at the local level, and spread quickly to Europe and the rest of the world. National nuclear campaigns emerged in the late 1970s. Fuelled by the Three Mile Island accident and the Chernobyl disaster, the anti-nuclear power movement mobilized political and economic forces which for some years "made nuclear energy untenable in many countries". Some of these anti-nuclear power organizations are reported to have developed considerable expertise on nuclear power and energy issues.[ In 1992, the chairman of the Nuclear Regulatory Commission said that "his agency had been pushed in the right direction on safety issues because of the pleas and protests of nuclear watchdog groups.

There is necessity to recognize such anti nuclear movement which disperses information among the world citizens, the global impact of the Fukushima accident is a fundamental shift in public perception with regard to how a nation prioritizes and values its population’s health, safety, security, and natural environment when determining its current and future energy pathways.

Channelization of science for peaceful purpose is a welcoming idea to extend it guarantees the safety of the general public but when the priority of scientific necessity run over the priority of human safety it is objectionable. Through anti-nuclear moment the general public will be able to access the pro and cons of nuclear energy programme.
19. **Promoting the role of international organization for global nuclear disarmament.**

The failure of United Nation to bring about global nuclear disarmament through the power of international law at the very beginning of nuclear armament showed that United Nation was not an independent international organization capable of effectively resolving such world problem. It became clear that United Nation was but another international organization, which could be effective to the extent its member state agreed to provide it with the required legal power and means. Above all lack of organizational dynamism of United Nations and its inability to create and impose an effective and timely international legal regime of global nuclear disarmament resulted in predicament nuclear armament in the post war era. This predicament apparently rendered the new postwar international legal order a new international legal disorder regarding nuclear weapons. To effectively meet the challenges and the danger that will be posed to regional and global peace security in the post cold war era the United Nation must cease to be a bureaucratic and powerless world forum used by the so called great power to serve their unilateral interest. The United Nation must be the center of world power under international law. Moreover United Nation must be empowered with the required legal power and means to carry out peace keeping operation in an effective manner. Additionally the United Nation must be a global institution with power of policy making and law making, with the power of means to enforce the rule of international law. In order to comprehensively address all facets of the consequences of nuclear weapons, the UN Secretary-General should establish a group of governmental experts to study the effects of the production, modernization, and use of nuclear weapons and of potential paths to disarmament. Similar studies were conducted from the 1960s to the 1980s. We also recommend that the UN Environment Programme and the Food and Agriculture Organization conduct substantial research on the ecological and agricultural consequences of nuclear war.

**8.5.2 Recommendations**

Historians, looking back at our time, may be perplexed at humanity’s tepid collective response to nuclear weapons. Of course, if there are future historians, it will be a positive sign, for it will mean that humanity has survived the nuclear threat
that has confronted the world since the onset of the Nuclear Age in the mid-twentieth century.

Nuclear weapons, a human invention, make possible the end of civilization and the human species, along with most other life on the planet. In light of this threat, humanity has done very little to safeguard its future. Why, future historians may ask, has humankind been so slow and ineffective in its response to a threat of this magnitude? By examining this question now, we may encourage greater awareness of the threat and creative initiatives for overcoming the most serious dangers of the Nuclear Age.

While nuclear weapons were created secretly in the US nuclear weapons program, the Manhattan Project, since then the threat has not been hidden, but rather quite open. In his first speech to the public after the use of the atomic bomb to destroy Hiroshima, US president Harry Truman thanked God that the bomb had come to America rather than to its enemies and prayed for divine guidance in its use. Since the use of the bomb and the ending of the Second World War appeared to have a causal relationship, many celebrated the advent and use of nuclear weapons.

Others, grasping the destructive power and potential of nuclear weapons, after hearing of Hiroshima, immediately warned humanity of the peril it now faced. Albert Camus, the great French writer and existentialist, wrote in Resistance: “Before the terrifying prospects now available to humanity, we see even more clearly that peace is the only battle worth waging. This is no longer a prayer but a demand to be made by all peoples to their government a demand to choose definitively between hell and reason.”

Within four years of the first use of nuclear weapons by the United States, the Soviet Union developed nuclear weapons. In less than a decade from the destruction of Hiroshima, both the US and USSR went from fission bombs to fusion bombs, increasing the power of nuclear weapons a thousand-fold. Many scientists warned against the leap to thermonuclear weapons, including J. Robert Oppenheimer, the scientific leader of the Manhattan Project, but their warnings went unheeded.

A seminal warning of scientists, the Russell-Einstein Manifesto, was issued in 1955. It concluded: “There lies before us, if we choose continual progress in
happiness, knowledge, and wisdom. Shall we, instead, choose death, because we cannot forget our quarrels? We appeal as human beings to human beings: Remember your humanity, and forget the rest. If you can do so, the way lies open to a new Paradise; if you cannot, there lies before you the risk of universal death.”

More than 50 years later, we live in a world of nuclear double standards, with one set of rules for the nuclear weapons states and another set of rules for the rest of the world. With the Bush doctrine of preventive war demonstrated against Iraq, it is little wonder that other countries named by him as part of the “Axis of Evil,” North Korea and Iran, would be interested in acquiring nuclear arms. In the case of these countries, the likelihood is that they seek nuclear weapons to deter a pre-emptive US attack against them, and would themselves be deterred from using their weapons by threat of retaliation.

The longer states cling to nuclear deterrence for their security and the more states that acquire nuclear weapons, though, the more likely it is that nuclear weapons or the materials to make them will end up in the hands of terrorist organizations. Such organizations will not be subject to deterrence because they will not be locatable to retaliate against. This means that nuclear weapons will have more value and will be more likely to be used in the hands of terrorists than in the hands of states. This is the paradox of nuclear weapons: In addition to being immoral and illegal, they are more likely to undermine than enhance the security of powerful states.

Most people, including the leaders of the nuclear weapons states, do not appear to understand this, and thus they cling tenaciously to these weapons that may prove to be the source of their own destruction. National leaders of the nuclear weapons states justify these weapons in terms of deterrence, but without being able to articulate who it is that they are deterring. In the end, they rationalize the weapons as necessary in the event that conditions were to change in the future. They fail to grasp that the only safe number of nuclear weapons in the world is zero. And they seem to believe that these weapons enhance their prestige in the world, because they are weapons possessed by powerful and once-powerful nations, including all permanent members of the United Nations Security Council.

The only way in which this situation may change is by education and advocacy within the nuclear weapons states. The United States, as the strongest
nuclear power and as the only country to have used nuclear weapons in warfare, has a special responsibility to lead the way toward a world free of nuclear weapons, but its leadership shows little inclination to do so. The Bush administration has shown contempt for international treaties to control and reduce nuclear arms and to prevent their proliferation. Among these treaties are the Anti-Ballistic Missile Treaty, which it has abrogated; the Comprehensive Test Ban Treaty, which it refuses to submit to the Senate for ratification; and the nuclear Non-Proliferation Treaty, which requires good faith negotiations for nuclear disarmament and is at the heart of preventing the spread of nuclear weapons.

The US is following a breathtakingly hypocritical path with regard to nuclear weapons. It tells other nations not to develop these weapons, but seeks new designs for its own nuclear arsenal to make its weapons more reliable and serve specific functions, such as “bunker-busting.” It threatens sanctions against Iran for its uranium enrichment program, while promoting a nuclear deal with India, known nuclear proliferators, which would provide India with US nuclear technology and allow India to have international safeguards on only some of its nuclear reactors and thereby increase the size of its nuclear arsenal even more rapidly than it is already doing. It threatens North Korea for developing nuclear weapons, but turns a blind eye to Israel’s nuclear arsenal.

Our dilemma today is that there appears to be no way for the vast majority of humanity, which favor a world free of nuclear weapons, to bring pressure to bear on the leadership of the US and other nuclear weapons states to eliminate their nuclear arsenals. Nuclear weapons are cowardly because they kill indiscriminately and from a vast distance, but it is equally true that a significant percentage of humanity lacks the will and courage to confront the leaders of the nuclear weapons states about abolition of these weapons.

The words “nuclear weapons” are flat and dull, and do not convey the horror that is the weapons themselves. People may not act unless they can empathize with the victims and potential victims of these weapons. Perhaps we have become flat and dull people, living only within the bubble of nationalism and losing touch with our humanity. To achieve change, more and more people are going to have to wake up to
the great threats of the Nuclear Age and make the abolition of nuclear weapons a high priority in their lives.

Let me conclude with these Recommendations:

1. **Fulfill Existing Obligations.**

   The nuclear weapons states have made solemn promises to the international community to negotiate in good faith to achieve nuclear disarmament. The United States, Russia, Britain, France and China accepted this obligation when they signed the Non-Proliferation Treaty (NPT), and extended their promises at the 1995 NPT Review and Extension Conference and again at the 2000 NPT Review Conference. India and Pakistan, which are not signatories of the NPT, have committed themselves to abolish their nuclear arsenals if the other nuclear weapons states agree to do so. The only nuclear weapons state that has not made this promise is Israel, and surely it could be convinced to do so if the other nuclear weapons states agreed to the elimination of their nuclear arsenals. The International Court of Justice, the world's highest court, unanimously highlighted the obligation to nuclear disarmament in its 1996 Opinion: "There exists an obligation to pursue in good faith and bring to a conclusion negotiations leading to nuclear disarmament in all its aspects under strict and effective international control." This means an obligation to reduce the world's nuclear arsenals to zero.

2. **Stop Nuclear Weapons Proliferation.**

   The failure of the nuclear weapons states to act to eliminate their nuclear arsenals will likely result in the proliferation of nuclear weapons to other nations. If the nuclear weapons states continue to maintain the position that nuclear weapons preserve their security, it is only reasonable that other nations with less powerful military forces, such as North Korea, will decide that their security should also be maintained by nuclear arsenals. Without substantial progress toward nuclear disarmament, the Non-Proliferation Treaty will be in jeopardy when the parties to the treaty meet for the NPT Review Conference in the year 2005.
3. Prevent Nuclear Terrorism.

The very existence of nuclear weapons and their production endanger our safety because they are susceptible to terrorist exploitation. Nuclear weapons and production sites all over the world are vulnerable to terrorist attack or to theft of weapons or weapons-grade materials. Russia, due to the breakup of the former Soviet Union, has a weakened command and control system, making their substantial arsenal especially vulnerable to terrorists. In addition, nuclear weapons are not helpful in defending against or responding to terrorism because nuclear weapons cannot target a group that is unlocatable.

4. Avoid Nuclear Accidents.

The risk of accidental war through miscommunication, miscalculation or malfunction is especially dangerous given the thousands of nuclear warheads deployed and on high alert status. Given the short time periods available in which to make decisions about whether or not a state is under nuclear attack, and whether to launch a retaliatory response, the risk of miscalculation is high. In addition, the breakup of the former Soviet Union has weakened Russia's early warning system, since many parts of this system were located outside of Russia, and this increases the likelihood of a nuclear accident. Read more about nuclear accidents.

5. Cease the Immorality of Threatening Mass Murder.

It is highly immoral to base the security of a nation on the threat to destroy cities and potentially murder millions of people. This immoral policy is named nuclear deterrence, and it is relied upon by all nuclear weapons states. Nuclear deterrence is a dangerous policy. Its implementation places humanity and most forms of life in jeopardy of annihilation.

6. Reverse Concentration of Power.

Nuclear weapons undermine democracy by giving a few individuals the power to destroy the world as we know it. No one should have this much power. If these individuals make a mistake or misjudgment, everyone in the world will pay for it.
7. Promote Democratic Openness.

Decisions about nuclear weapons have been made largely in secrecy with little involvement from the public. In the United States, for example, nuclear weapons policy is set forth in highly classified documents, which are not made available to the public and come to public attention only by leaks. On this most important of all issues facing humanity, there is no informed consent of the people.

8. Halt the Drain on Resources.

Nuclear weapons have drained resources, including scientific resources, from other more productive uses. A 1998 study by the Brookings Institution found that the United States alone had spent more than $5.5 trillion on nuclear weapons programs between 1940 and 1996. The United States continues to spend some $25-$35 billion annually on research, development and maintenance of its nuclear arsenal. All of these misspent resources represent lost opportunities for improving the health, education and welfare of the people of the world.

9. Heed Warnings by Distinguished Leaders.

Distinguished leaders throughout the world, including generals, admirals, heads of state and government, scientists and Nobel Peace Laureates, have warned of the dangers inherent in relying upon nuclear weapons for security. These warnings have gone unheeded by the leaders of nuclear weapons states. Read more about the Nuclear Age Peace Foundation’s Appeal to End the Nuclear Weapons Threat to Humanity and All Life.

10. Meet Our Responsibility.

We each have a responsibility to our children, grandchildren and future generations to end the threat that nuclear weapons pose to humanity and all life. This is a responsibility unique in human history.

11. Solutions for individual concerned about the threat of nuclear weapon use.

a. Develop an awareness of domestic, as well as international, nuclear weapon issues that have an impact on the community. Visualize how these events might endanger personal security and safety. News reports that have bearing on
Legal Regime on the Use of Nuclear Weapon and its Impact on humanity

nuclear weapon should be considered for example how close we live near to nuclear weapon stockpile? Have our communities developed laws and policies for dealing with the use of “pepper spray” as a personal chemical weapon to deter crime.

b. Find out about the activities of professional groups that work toward solutions in the nuclear weapon arena. Inquire about the membership in group that represent rational view on chemical and nuclear weapon arms for example Clamshell Alliance Shad Alliance, Friends of the Earth, Greenpeace, Union of Concerned Scientists International Physicians for the Prevention of Nuclear War, Committee for Nuclear Responsibility etc; being a political and educational organization it disseminate anti nuclear view and information to public.

c. Find out if local professional societies or national organizations might have an avenue for involvement in nuclear weapon arms area. For example, a local psychological association might sponsor a community lecture by an environmental toxicologist or speaker on terrorism. A law enforcement agency might hold a penal discussion among community leaders on how chemical or terrorist violence might be addressed if it came to their locality.

12. Solution for Law Enforcement Officials and Antiterrorist Agencies

a. Learn more about group behavior in terrorist and lethal violence context, and disseminate this information within the agency. Learn to indentify preparations and baseline phases of a lethal weapon violence sequence and their associated behavior. Develop a file of case example based on potential scenario of possible nuclear weapon misuse by rough groups, with the suggested intervention that might occur at different phase of the sequence.

b. From a chemical weapon intervention team, to similar to a specialist police group, that maintains specialized knowledge and training in this area. Sponsor members of the team to attend conference on the subjects, or to confer across state agencies. Team might consider forming a E-mail network or contacting the Department of Defense for quick response for logical and information support.

c. Maintain enough knowledge of nuclear weapon development to recognize raw material and equipment that might be used to construct chemical weapons.
d. Learns where to acquire chemical defense equipments that could be used in case of emergencies. Contact local National Guards or equipment suppliers for information on access to masks, protective clothing, or other equipment. Offer information to local hospital and medical center administration on where to locate medicines that might be used in emergency situations.

13 Manufacturers and Industry Solution

a. Take the initiative in developing effective chemical taggants that will assist in export monitoring and use rather than waiting for government intervention. Instead of opposing government policies in this area, develop intelligent solution that will be cost-effective within the industry.

b. Stimulate new approach to current issue in global nuclear weapon proliferation, waste management of chemical stockpile and other area of concern. Encourage original thinking and research in these areas. For example taking the help of organization encouraging disarmaments programme like UNDPO

14. Government and international Solutions

To determine the nuclear weapon intentions of terrorist group or rough state, increase effort to collect baseline and group behavioural data that will assist in locating that group within it lethal violence sequence.

a. Encourage ratification of the chemical weapon conventions and convention prohibiting weapon of indiscriminate including treaties of Non Proliferations of nuclear weapon by other countries which have not yet done so. Initiate dialogue with other signatories on their experience in implementing the convention and problems encountered in following through with its expectations

b. Pay head to researches who predict an increase in domestic terrorism. As more incidents occur, terrorist will search for more lethal means of political extortion and news making.

The moral position of the nuclear weapon states is essentially that the threat to commit an illegal act through massive destruction upon innocent people is legal because it is so horrible to contemplate that it ensures the peace. Thus the argument is that the threat of committing that which is patently illegal is made legal by its own intrinsic illogic. The reliance on the value of the doctrine of nuclear deterrence
impedes progress in moving towards the elimination of nuclear weapons. An unambiguous political commitment by the nuclear weapon states to eliminate nuclear weapons, evidenced by unambiguous immediate pledges never to use them first as well as placing the weapons in a de-alerted posture pending their ultimate elimination, will promptly evidence the good faith efforts by the nuclear weapon states to reduce our collective risks. These steps increase our collective security but are hardly enough to meet the clear decision of the Court and the dictates of reason. Only good faith multilateral negotiations leading to elimination of these devices will bring law, morals, ethics, and reason into coherence. Only then will we be able to tell our children that ultimate violence will not bring ultimate security. Ultimate security results from a culture of peace based on law, reason, and values.