PREFACE OF THE THESIS

“Technological wizard is not an end in itself. It is desirable only if it makes for human welfare”

Arnold Toynbee

Wonderful is the human mind and wonderful is his invention, perhaps the most interesting thing in him is the scientific spirit, always wonder why, what, or else of things. The quest to investigate the reasons that make things work in the way they do. During his voyage for intellectual quires he accomplished several remarkable projects and one day he gave to the world an unimaginable treasure worth for use. Alas! unknown to the truth that the treasure had the worst possible events left to be witnessed by humankind, it was a weapon possibly invented, for destroying the human race. There has been a mystical understanding of human rationalism. In fact he possesses unmeasured potentiality to create and invent. He can create to give life and distract life; Man makes wonder with his invention. Unfortunately sometime the human experience ditches his conscious in understanding the graveness of the matter. Thus one day he goes beyond the limit of his power and invents the most inconceivable source of energy. This work attempts to describe the fate and plight of humanity, being controlled and governed by the nuclear surmounts. The justifiable philosophy is the necessity on part of states to retain the balance of power on one hand and on the other, the demand of humanity to spare the world and the existing generation from the nuclear disaster.

For over fifty years, legitimacy of nuclear weapons has become one of the most emotionally and intellectually divisive issues in the laws of war. Eminent experts in international law could be found on both sides of the question. Those supporting the lawfulness of nuclear weapons use, argue that such weapons could be used in accordance with the rule of laws of war. For example the United States government, has for thirty years claimed that it recognizes the following legal principles as applying to the use of nuclear weapons: that the right of the parties to a conflict to adopt means of injuring the enemy is not unlimited; that it’s prohibited to launch attacks against the civilian population as such; and must distinguish between persons taking part in hostilities and members of the civilian population to an extend that, the latter be spared as much as possible. Supporters of nuclear weapons argue
that the actual practice of States is a more primary source of international law than theoretical legal principles. They note that the five original nuclear powers (United States, Soviet Union/Russia, United Kingdom, France, and China) have deployed nuclear weapons for decades, and have openly claimed the legal right to use these weapons in self-defense. It has also been pointed out that the 1968 Treaty on the Non-Proliferation of Nuclear Weapons (the NPT) expressly recognizes the legal right of the five original nuclear powers to possess nuclear weapons. Over 187 countries are parties to the NPT.

Those opposing the legitimacy of these weapons include a number of nongovernmental organizations (NGOs), such as the International Committee of the Red Cross (ICRC), which expressed reservations, as well as some governments. They tend to base their arguments on the general humanitarian principles underlying the laws of war. For opponents, the vast destructive power of nuclear weapons makes a mockery on efforts to protect hospitals, the sick and wounded, civilians, and others as required by these humanitarian principles. Civilians must be spared from attack “as much as possible” in a nuclear war, but in practice, they believe, it will be possible to spare very few. The civilian casualties and environmental damage will inevitably be disproportionate to the value of the military targets that nuclear weapons could cause.

In 1994, several NGOs opposed the use of nuclear weapons and convinced most members of the United Nations General Assembly to ask the International Court of Justice at the Hague for an advisory opinion on the legality of nuclear weapons and their use. Under UN Charter, the General Assembly is authorized to request such an opinion from the court on any legal question. (The United States opposed adoption of the resolution but was outvoted.) On July 8, 1996, the World Court, the International Court of Justice at the Hague expressed the need to ban the bomb.

This was in answer to a question certified by the UN General Assembly, "Is the threat or use of nuclear weapons in any circumstance permitted under international law?" The answer was No, nuclear warfare is not permitted. The World Court has jurisdiction to give such answers, and even though the Court has no more battalions than the Pope or the Archbishop of Canterbury, still it is the closest thing we have to a final authority in international law, and it is astonishing how little reaction and comment this ruling has generated.
In 1998, about two years after the ruling, India and Pakistan blasted their way into the nuclear club. A massive diplomatic response is now trying to persuade them to leave peacefully. But the United States and the Russian Federation each have many times the deliverable warheads of all the other nuclear powers joined and presented plans which will allow those two arsenals to continue at homicidal and ecocidal levels into the indefinite future. India and Pakistan can defend themselves as small contributors to the nuclear threat, negligible when compared to the United States and Russia.

Long before the Indian and Pakistani bombs, the two great nuclear arsenals was been questioned by recovering Cold Warriors with impeccable military credentials retired CIA chief Admiral Stansfield Turner, for instance, and retired SAC commander General George Lee Butler. Their old colleagues from the deep bunkers of the Iron Mountain era were finding it necessary to circle wagons and defend MAD, overkill, and the rest of the nuclear status quo. The World Court's ruling shows that law has a role to play in this debate. Some of the discipline necessary to call the world back from its long flirtation with extinction may come from legal reasoning, and may even come from one of the law's most disparaged departments, international law.

However, in view of the current state of international law, and of the elements of fact at its disposal, the Court could not conclude definitely whether the threat or use of nuclear weapons would be lawful or unlawful in an extreme circumstance of self-defense, where in the very survival of a State would be at stake.

The lack of reactions and comments about the ruling are largely due to the Court's own fault. The ruling consists of a formal Dispositif, which seems to say there exist exceptions to the bomb's illegality; a rambling and diffuse "Advisory Opinion" by the Court, which offers little usable analysis of the issues; and fourteen separate opinions, one from each judge, no two concurring one with another. Most of the discussion is hopelessly abstract. As a political rallying point the ruling is unpromising. Clashing viewpoints and differing legal traditions from around the world, which could make the World Court an intellectual clearinghouse for the best hopes of humankind, came together, and a decision were taken to condemn the bomb. But the aspirations of Nuremberg drowned by the confusions of Babel.
The court’s verdict gave a different picture on the complexity involved in interpreting the legitimacy of the weapon. Though the court declared the weapon illegal per se it was in great dilemma to deal with the question of its possible use. This dilemma comes out as a split opinion among the judges of the presiding court. The court could have addressed the matter keeping in view the large humanity than the politicized demand of the nuclear surmount who wanted an exception to use the weapon in the light of deterrence, the court could have gone with the rule of law under international law which clearly prohibits mass violation of human right during war. Instead the court declaring the weapon illegal specified that its use though illegal could be used under exceptional circumstance within the rule of proportionality. In spite considering the nature of the weapon, the court could not decide it’s possible use, neither the criteria whether the threat to use the weapon is illegal, this dilemma of the court to address the problem is due to the complexity involved in the existing law to declare the weapon illegal.

The study therefore, is divided into two sets; the cause of nuclear weapon proliferation and the consequence of nuclear weapon proliferation in order to understand the nature of the problem. Throughout the study the considerations discussed within humanitarian law as well as treaty law shows that the laws have something to say about the sheer mass of the two largest nuclear arsenals, even after their post-Cold War reductions, because no conceivable military or political threat could justify the risks of homicide and ecocide involved. There are several distinct principles at work here, and antecedent to even the simplest attempts at forming international law, when a nuclear arsenal reaches the size that it becomes a threat to the life of the planet itself as well as a threat to the peace, it must acquire yet another type of illegality. The thesis Legal Regime on the Use of nuclear weapon and its impact on humanity is an attempt to trace every bit of international principle exiting to forecast the possible illegality of nuclear weapon use and the consequence of its action in future as illegal under the law.