

Means and Methods of Warfare: A Brief Study under International Humanitarian Law

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Abstract

War is totally unexpected. But the most unexpected affair is adopting unreasonable means and methods in the warfare i.e., use of mass destructive weapons, such as, biological weapons, chemical weapons and also nuclear weapons. These types of weapons are, in nature, so destructive that they would intrinsically be unable of avoiding destruction unnecessary to military objective. This article shows that there are some lacunas at the international humanitarian law, which usually deal with the laws of war. At the international humanitarian law and any other laws relating to warfare, there is no strong mechanism to prevent the use of mass destructive weapons. There are numerous international conventions and treaties such as Biological Weapons Convention, Chemical Weapons Convention, CTBT and NPT etc., but these types of international instruments cannot compel any particular state to abide by these instruments. In this regard, major international conventions, treaties and customary laws have been carefully examined in this paper. Subsequently, the author tried to determine the illegality of the use of these types of weapons in the light of human rights, international humanitarian law, international environmental law and United Nations Charter. At the end of this paper, it is shown that the use of biological weapons, chemical weapons and nuclear weapons is the gross violation of the basic principles of international humanitarian law and the world community must compel the states, those who possess such kinds of weapons, to destroy them.

Introduction

Every state engaged in hostility is expected to adopt such means and methods of warfare, which are recognized under international humanitarian law (IHL). IHL limits the means and methods of warfare; and covers the conduct of military operation by stating what weapons and military tactics can be used in armed conflict. The only legitimate object during war is to weaken the military forces of the enemy. Civilians can never be the legitimate targets of attack. But, nowadays, we see that many states are using mass destructive weapons having indiscriminate effect. Weapons of mass destruction (WMD) are weapons whose destructive power can result in the deaths of thousands of people with a single use. They include biological weapons, chemical weapons and nuclear weapons. By their very nature, WMD are indiscriminate in their destructive effect; and their use violates two of the basic elements of the laws of war: discrimination (making a distinction between combatants and noncombatants), and proportionality (destructive power must be proportionate to legitimate military objectives and targets).ⁱ

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In World War I, chemical weapons were used for the first instance at the warfare of modern era. The use of chemical agents in that war caused an estimated 1,300,000 casualties, including 90,000 deaths. And we all know that at the end of World War II, two Japanese cities were the victims of nuclear weapons. A sorrowful reality is witnessed in the atomic bombing on both cities where numerous people were killed and among the survivors there are people whose lives are still imperiled owing to radioactive rays, even today.ⁱⁱ The horrific chapter of the use of mass destructive weapons against humanity changed the nature and objective of war. A weapon of war, which results in unnecessary aggravation of suffering, comes to be regarded as contrary to the principles of humanity.ⁱⁱⁱ

The international humanitarian law, in force, does not contain any explicit and strong prohibition against the use of these mass destructive weapons, i.e., biological weapons, chemical weapons and nuclear weapons. Though there are various types of international treaties like Biological Weapons Convention, Chemical Weapons Convention, Nuclear Non-proliferation Treaty (NPT) and Comprehensive Test Ban Treaty (CTBT), but these international instruments totally failed to restrict stockpiling and use of such types of weapons. Now, it is clear that the use of these weapons cannot be judged simply by the existence or lack of any treaty rule specifically prohibiting or restricting their use, rather instead, the legality must be judged in the light of different international treaties and conventions, which limit the use of force in war; the fundamental distinctions between combatants and non-combatants and between military and non-military targets; and the principles of humanity including prohibitions on weapons and tactics that are cruel in their effect and cause unnecessary suffering.^{iv}

Biological Weapons

Biological weapons are toxic materials produced from pathogenic organisms (usually microbes) or artificially manufactured toxic substances that are used to intentionally interfere with the biological processes of a host. These substances work to kill or incapacitate the host. Biological weapons may be used to target living organisms such as human beings, animals or vegetation. They may also be used to contaminate non-living substances such as air, water and soil.

There are a variety of microorganisms that can be used as biological weapons. Agents are commonly chosen because they are highly toxic, easily obtainable and inexpensive to produce, easily transferable from person to person, can be dispersed in aerosol form, or have no known vaccine.^v

Chemical Weapons

About 70 different chemicals have been used or stockpiled as chemical weapons (CW) agents during the 20th century. These chemicals are in liquid, gas or solid form and blister, choke and affect the nerves or blood. Chemical warfare agents are generally classified according to their effect on the organism and can be roughly grouped as: Nerve Agents, Mustard Agents, Hydrogen Cyanide, Tear Gases, Arsines, Psychotomimetic Agents, Toxins and Potential CW Agents.

Under the Chemical Weapons Convention (CWC) chemicals are divided into three groups defining their purpose and treatment, such as:

- Schedule One chemicals are those typically used in weapons, such as, Sarin and Mustard Gas and Tabun.
- Schedule Two chemicals include those that can be used in weapons, such as, amiton and BZ
- Schedule Three chemicals include the least toxic substances that can be used for research and the production of medicine, dyes, textiles etc.

Chemical weapon agents, mainly used against people, are divided into lethal and incapacitating categories. A substance is classified as incapacitating if less than 1/100 of the lethal dose causes incapacitation, e.g., through nausea or visual problems. The limit between lethal and incapacitating substances is not absolute but refers to a statistical average.

Incendiary agents such as Napalm and Phosphorus are not considered to be chemical weapon agents since they achieve their effect mainly through thermal energy. Certain types of smoke ammunition are not classed as a chemical weapon since the poisonous effect is not the reason for their use. Plants, micro-organisms, the produced toxins belong to that class. Pathogenic micro-organisms, mainly viruses and bacteria, are classed as biological weapons. The following are considered as the chemical weapons by the experts:

- Chemicals that blister: Sulphur Mustard, Lewisite, Nitrogen Mustard, Mustard-Lewisite and Phosgene-oxime.
- Chemicals that affect the nerves: Sarin, Soman, Tabun, and Novichole Agents.
- Chemicals that cause choking: Cholrine, Phosgene, Diphosgene and Chloropicrin.
- Chemicals that affect the blood: Herygem, Cynanide and Cynaogen Chlorine.
- Chemicals for riot control: Tear Agent 2 (SN gas), Tear Agent 0 (CS gas) and Psychedelic Agent 3 (BZ).^{vi}

Nuclear Weapons

There are two types of nuclear weapons: bombs and projectiles. Nuclear bombs are commonly divided into two classes: atomic bombs in which the energy is produced by fission of nuclear, and thermo-nuclear bombs (hydrogen bombs or H-bombs) in which it is produced by fusion.^{vii} In the atomic bombs, the explosion and other effects are caused by breaking up of the atoms (fission), while in the hydrogen bombs, the atoms are made to fuse to one another and this also leads to explosion. Atomic bombs make use of the energy released in a fusion chain reaction and the energy released in this reaction is some 180-200 megavolts for each atom, contained in the kinetic energy for the liberated neutrons that accompany the particles, and lastly, the energy of gamma rays emitted.^{viii} Thermo-nuclear bombs depend on the enormous energy released in nuclear fusion reaction. Projectiles mean using atomic projectiles in artillery, such as, missiles that may be fitted with nuclear warheads and nuclear power and may be used in torpedoes, sea mines as well as in arming spacecraft.^{ix} Military experts and many scholars have characterized nuclear weapons, on the basis of its use, as strategic and tactical.^x Strategic weapons includes those whose effects are lasting and cover a large area and which also are, perhaps, used in order to cause psychological effects. These nuclear weapons can also be called weapons of mass destruction and often they are

called blind weapons.^{xi} Tactical nuclear weapons are used in warfare between armed forces and to destroy individual military targets.

Superfluous Injury and Weapons of Mass Destruction

Superfluous injury of unnecessary suffering in the warfare is prohibited by the Declaration of St. Petersburg, 1868, which was the first formal agreement prohibiting the use of certain weapons in warfare causing unnecessary suffering. The Declaration of St. Petersburg lays down two principles- first, military necessity cannot override the laws of war, and second, the warfare is governed by laws of humanity. These principles are reiterated and reaffirmed in the Regulation of the Hague Convention, 1907. The Convention has established the basic balancing principle of the warfare that the right of belligerent to adopt means of injuring is not unlimited.^{xii} The Convention also prohibits the use of weapons, which would cause unnecessary suffering.^{xiii} Although the 1907 Hague Convention appears to demand a subjective test, the authoritative French Text confirms that irrespective of a belligerent's intention, weapons are prohibited if they are apt to cause unnecessary suffering.^{xiv} The prohibition of use of weapons causing unnecessary suffering is also expressively recognized by the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I), June 08, 1977. The Protocol prohibits the use of some sorts of weapons, which may cause superfluous injury or unnecessary suffering in warfare, saying: *"It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering."*^{xv}

Now the question is the determination of the use of particular weapons to cause unnecessary suffering. In the absence of any authoritative definition, it is difficult to use weapons causing unnecessary suffering under certain situation. The Conference of Experts seeking to add to the 1949 Geneva Conventions attempted to set up an equation between degree of injury or suffering inflicted (humanitarian aspect), and the degree of necessity underlying the choice of particular weapon.^{xvi}

Tests of Nuclear Weapons and National Defense

Around the 1970s and 80s, nuclear test was a common phenomenon by the powerful states. Nuclear test emanates radioactive substances, which are very much injurious to health and well being not only of the present generation but also of the generations to come. Australia and New Zealand lodged a complaint in May 1973, in the International Court of Justice (ICJ) about France's plan to conduct nuclear test. Thus the ICJ got an opportunity to give its verdict on the validity of the nuclear test. The ICJ decided on June 22, 1973, by 8 votes to 6, to accede to the New Zealand request, to restrain France from continuing her nuclear tests in the South Pacific pending a full-scale hearing on the dispute. In a ruling on Australian complaint about the planned test, the Court asked France to avoid nuclear test causing the deposit of radio-action fallout on Australian territory. The court observed:

"The government of Australia and France each of them should ensure that no action of any kind is taken which may aggravate or extend the disputes submitted to the Court or projects the right of either party in respect of the carrying out whatever

decisions the court may render in this case, and in particular, the French Government should avoid nuclear test causing the deposit of radio-active fallout on Australian territory."

Thus the ICJ accepted the Australian request and granted injunction restraining France to conduct the planned nuclear test.^{xvii}

It was, however, very unfortunate that the French Government declared that it would not abide by the decision of the Court. The reason explained by the French Foreign Minister was that the Court couldn't rule on matters arising from France's national defense. The contention conflicted with Australian and New Zealand's claim that the test would be harmful by injuring health. The dispute, therefore, raised an important point of international law whether one country, in its defense interests, can harm another or not. The ICJ answered in negative and gave its verdict in favour of Australia and New Zealand. Nevertheless, so far as the legal position is concerned, it appears quite obvious that the use of atomic bombs in aerial warfare as well as conducting nuclear test are flagrant violations of the rules of international law, if they affect adversely other sovereign states.^{xviii}

It may be noted that later on the President of France informed the Court that in future France would not conduct atmospheric nuclear test and confine to underground test only. In view of this, the World Court did not decide the case on merits and the case was dropped.^{xix}

Chernobyl Disaster

On April 26, 1986, a horrific accident at Chernobyl nuclear plant, 50 km. away from Kiev, the capital of Ukraine, caused a wave of shock and fear throughout the world. Due to fire in the Chernobyl nuclear plant, radioactive dust spread more than 1,600 km. Several countries including Poland, Sweden, Norway, Denmark and Finland were adversely affected by the said spread of radioactive dust. Much greater area could have been adversely affected if the direction of the winds had not suddenly turned towards the Soviet Union. On April 29, 1986, Soviet Union announced the happening of the accident at Chernobyl nuclear plant and asked several countries such as West Germany and Sweden to render help to extinguish the fire at that nuclear plant.^{xx} It has been admitted by the Soviet Union that the accident was caused due to "a whole series of gross violations of operating regulations by workers." Whatever be the causes of the accident, its adverse effects have been grave and wide spread.^{xxi}

The Soviet Union declared that 7 persons were killed and 299 persons were admitted to hospitals for radio-action. But according to the scientist of the western countries, the number of persons died in the accident was in thousands. According to an American Détente Official, "a study of the information received from US Spy Satellite, 2000 persons died as a result of the fire in nuclear plant at Chernobyl."^{xxii} According to Dr. John Gofman, a Professor emeritus of medical physics at the University of California, more than one million people throughout the world could develop cancer due to exposure to the radio-active fallout from the Soviet Union's Chernobyl nuclear accident and half of that number would die from it. On account of Chernobyl accident, 9,50,000

persons were removed from the affected area. But 1.5 million including 4,60,000 children remained in the affected area. Even after five years of the accident, problems created by the accident had not been satisfactorily solved. This information was given by the Health Minister of Ukraine on April 11, 1991. On April, 1992, the Ukrainian authorities have finally decided to shut down the Chernobyl nuclear power plant.^{xxiii}

It is well-established rule of international law that a sovereign state may do anything within its territory provided that its adverse effects do not fall upon another sovereign state. International law does not permit any sovereign state to conduct any activity or to do anything within its territory or elsewhere which may adversely affect other states. If any state violates this rule, it will constitute international tort and such a state will be liable to make reparation to the aggrieved states. The above discussion makes it clear that accident and fire at nuclear plant at Chernobyl adversely affected other states. The former Soviet Union was, therefore, clearly liable to make reparation to states which were adversely affected.

Nuclear explosions, accidents etc. adversely affect the environment. It is unfortunate that before accident at Chernobyl nuclear plant on April 26, 1986, sufficient attention was not given to this inadequacy of international law. As a result of the recommendations of the First Review Conference of Non-Proliferation Treaty, 1986, a Convention on the Physical Protection of Nuclear Material was adopted in 1979. Under this Convention, it is the obligation of parties to the Convention to take action to check theft, sabotage etc. of nuclear materials. But the Chernobyl accident proved that there is need to consider this matter seriously.^{xxiv}

Nuclear Weapons and Laws of War

It is well known to us that international law, especially the international humanitarian law, does not expressly prohibit the use of nuclear weapons. In the absence of any specific provision, it does not mean that the use of nuclear weapons is unregulated and therefore permitted as it is established by the Permanent Court of International Justice (PCIJ) in judgment of the *SS Lotus Case* (1927). In the absence of any provision of international law, the use which may be made of a particular weapon will be governed by the ordinary rules and the questions of legality of this in any particular case will, therefore, involve merely the application of recognized principles of international law.^{xxv} Some legal experts have argued that the use of the nuclear weapons is not regulated by pre-existing customary laws or conventions relying on the judgment of PCIJ in the *Lotus Case* that the rules of law binding upon states emanate from their free will expressed in conventions or by usages generally accepted as expressing principles of law.^{xxvi} This argument is not convincing, as the circumstances surrounding the question of legal status of nuclear weapons are different from the *SS Lotus Case*, PCIJ, 1927.^{xxvii}

In view of Nicholas Grief as cited in his article “The Legality of Nuclear Weapons”, the use of nuclear weapons is already prohibited by certain conventional rules, which apply to such weapons by analogy or by implication.^{xxviii} Now, it seems evident that the legality of nuclear weapons can not be judged simply by the existence or lack of any treaty rule specifically prohibiting or

restricting their use, rather instead the legality must be judged in the light of different international treaties and conventions which limit the use of force in war; the fundamental distinctions between combatants and non-combatants and between military and non-military targets and the principles of humanity including prohibitions on weapons and tactics that are cruel in their effects and cause unnecessary suffering.^{xxxix} So it is clear from all discussions that the legality of nuclear weapons would be determined on the basis of principles of humanity resulting from customary international law applicable in armed conflict as codified in different conventions such as the Hague Convention IV Respecting the Laws and Customs of War on Land and the Regulation annexed thereto, of 1907, the Geneva Convention Relating to the Protection of Civilian Persons in Time of War, the Additional Protocol I, to the four Geneva Conventions - 1949, the Convention on the Prevention and Punishment of the Crime of Genocide - 1948, St. Petersburg Declaration - 1864, and 1925 Geneva Gas protocol.^{xxx}

Martens Clause and Mass Destructive Weapons

Martens clause is most important on the issue of the legality of the use of mass destructive weapons in warfare. The clause of the preamble to the Hague Convention, 1907 provided a yardstick for those situations in which there is no specific and strong international conventions to prohibit particular types of weapons or tactics. This clause emphasized:

“Until a more suitable code of the laws of war can be drawn up, the high contracting parties deem it expedient to declare that in cases not covered by rules adopted by them, the inhabitant and belligerents remain under the protection and governance of the general principles of the law of the nations, derived from the usages established among civilized peoples, from the laws of humanity and from the dictates of the public conscience.”^{xxxi}

In its advisory opinion, the ICJ found that the Martens clause was an expression of pre-existing customary law and that its continuing existence and applicability were beyond doubt.^{xxxii} However, in the absence of specific and strong customary or conventional prohibition on the use of mass destructive weapons, the court was not ready to conclude that their use “would necessarily be at variance with the principles and rules of law applicable in armed conflict in any circumstance.”^{xxxiii}

International Humanitarian Law

Also known as the law of war or the law of armed conflict, international humanitarian law is codified in several important multilateral treaties. It consists of rules and regulations, which regulate the conduct of warfare, seeking to strike a balance between the imperatives of war and the humanitarian impulse to moderate its savagery.^{xxxiv} It is pertinent to mention here that numerous multilateral and bilateral treaties already exist which are designed to prohibit the use of mass destructive weapons, to destroy the biological and chemical weapons, to restrict the testing of nuclear weapons, to prohibit the stationing of nuclear weapons, to provide for nuclear weapon-free zones, to limit the scope of nuclear armament and to prevent the outbreak of nuclear war.

These include:

- Biological Weapons Convention, 1975
- Chemical Weapons Convention, 1992
- Treaty on the Non-proliferation of Nuclear Weapons of 1 July, 1968
- Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space, and under Water of 5 August, 1963
- Outer Space Treaty of 27 January, 1967
- Seabed Treaty of 11 February, 1971
- Treaty on the Establishment of a Nuclear Weapon-Free Zone in Southern Pacific Area of 6 August, 1985

It is true that the production and possession of mass destructive weapons are primarily issues of arms control, which does not involve the questions of humanitarian law. However, the possibility of the future use of these types of weapons obviously has an important humanitarian aspect, which makes it impossible to relegate the subject matter to be dealt with according to the usual political calculations of arms control treaties.^{xxxv}

International Human Rights Law

International human rights law prohibits the use of mass destructive weapons by one state against another because such use would violate the rights of mass people both in the target state and in neutral states.^{xxxvi}

Universal Declaration of Human Rights (UDHR), widely recognized as an authoritative statement of customary international law, provides: “*Everyone has the right to life, liberty and security of person.*”^{xxxvii} It further provides: “*Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family...*”^{xxxviii} International Covenant on Civil and Political Rights (ICCPR), a widely ratified treaty, provides: “*Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.*”^{xxxix} The same treaty also provides that the right to life is not among those rights subject to derogation, i.e., non-compliance by a state, in time of public emergency.^{xl} Article 12(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR), another widely ratified treaty, provides: “*The State Parties to the present Covenant recognized the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.*”^{xli}

International Environmental Law

The protection of environment is highly emphasized during wartime by the conventional law. For example, Article 35 (3) of the 1977 Protocol I, relating to armed conflict, states a basic provision that it is prohibited to employ means and methods of warfare which are intended or may be expected, to cause widespread, long-term and severe damage to natural environment. This provision is supplemented by Article 55 (1) of the same Protocol providing specific prohibition of the use of means and methods of warfare, which are intended or may be expected to cause such damage and thereby to prejudice the health or survival of the population. Although there is no explicit reference to any particular weapon and strategy here, if the effects of mass destructive

weapons are reasonably construed, the matter of illegality becomes evident. Because, these types of weapons are manufactured by the poisonous substances. Uranium, which is itself a poisonous substance, is a basic raw material of nuclear weapons. Other ingredients are Neutron and Gamma Rays that constitute radiation, are poisonous within the meaning of that word as used in Article 23 (a) of the Hague Convention, 1907. Exposure to radiation brings about chemical changes both in plant and animal life including human beings.^{xlii} A commentator states:

“The use of nuclear weapons contaminates water and food as well as the soil and the plants that may grow on it. This is not only in the area covered by immediate nuclear radiation, but also much larger unpredictable zone which is affected by the radioactive fall out.”^{xliii}

He further commented:

“If the prohibition on the use of poison is regarded as absolute, irrespective of the area of destruction and the causing of unnecessary suffering, it would appear that all atomic and thermo nuclear devices, whether in conventional weapons or in unconventional weapons, in so far as they result in neutrons, gamma rays and radioactive fall out in large or small quantity would produce contamination of air and earth, and hence run contrary to the recognized laws of war.”^{xliv}

In the light of above mentioned comments, we may come to a conclusion that as the use of mass destructive weapons i.e., biological weapons, chemical weapons and nuclear weapons ultimately affect the natural environment, so, they are illegal. There are several instruments, which suggest that the protection of the environment already belongs to the recognized principles of the laws of armed conflict. This includes the United Nations Convention on the Prohibition of Military or Any other Hostile Use of Environment and Modification Techniques, 1976 and the United Nations Convention on Prohibitions or Restrictions on the use of Certain Conventional Weapons, which may be deemed to be Excessively Injurious, or to Have Indiscriminate Effect, 1980. The preamble to the 1980 Convention recalls that it is prohibited to employ means and methods of warfare, which are intended or may be expected, to cause widespread, long-term and severe damage to the natural environment.^{xlv}

Principle 26 of the Stockholm Declaration, 1972 indicates on awareness of the ecological impact of the use of mass destructive weapons: man and his environment must be spared from the effects of nuclear weapons and all other weapons of mass destruction.^{xlvi} As per Article 19 of ILC (International Law Commission) Draft Articles on State Responsibility, causing serious damage to the environment is regarded as an international crime. It is said in the Resolution 35 of the Advisory Opinion of ICJ, on the legality of the threat or use of nuclear weapon, as:

“The destructive power of nuclear weapon cannot be contained in either space or time. They have the power to destroy all civilization and the entire ecosystem of the planet. The radiation released by a nuclear explosion would affect health, agriculture, natural resources and demography over wide area, ionizing radiation has the potential to damage the future environment, food and marine ecosystem.”^{xlvii}

United Nations Charter

United Nations Charter provides the main rules governing when a state can resort to war, traditionally known as the *jus ad bellum*, as contrasted with the rules governing conduct of warfare, the *Jus in bello*, most importantly, humanitarian law. Essentially they provide that a state may engage in war only in collective or individual self-defense, and then only when the Security Council has not exerted control.^{xlvi}

The Charter states:

“All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations.”^{xlix}

The Charter also states:

“Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security.”^l

International Community and Mass Destructive Weapons

The United Nations General Assembly (UNGA), since 1959, has adopted different resolutions condemning the use of mass destructive weapons. At first in 1959, UNGA adopted resolution for the prohibition of further proliferation of nuclear weapons. Following this effort, opinion grew among the non-nuclear weapon states that the use of nuclear weapons should be forbidden because they were a threat to the survival of mankind.^{li} In UNGA Resolution 1653 in 1961, it is said that the use of mass destructive weapons are to be considered as contrary to the laws of humanity. UNGA Resolution No.2936 of 1972 reflected the international consensus on the permanent prohibition of these types of weapons. Since its inception, the United Nations has continually manifested an awareness that the use of mass destructive weapons could bring about the end of human existence.^{lii} Though the Resolutions of UNGA have no binding force, it is sufficient to influence the international political consensus on the legal prohibition of the use of biological weapons, chemical weapons and nuclear weapons. But the main problem is that nuclear powerful states, considering their own national security policy and strategic interest, are not willing to conclude any treaty on the banning of the use of these weapons. The Geneva Conference of 1968 resolved the illegality of mass destructive weapons; moreover, it felt the need of conclusion of general treaty containing an unconditional prohibition of the use of these weapons.^{liii} They have, in fact, placed their reliance of arguments on the principles enshrined in the Hague Conventions of 1899 and 1907, and general principles laid down in Martens Clause. ICJ Advisory Opinion on the Legality of Threat or Use of Nuclear Weapons, 1997 has expressed the concern of jurists about the use of nuclear weapons. In its Para no. 62, ICJ notes that treaties dealing exclusively with acquisition, manufacture, possession, deployment and testing of nuclear weapons, without specifically addressing their threat or use, certainly point to an increasing concern in the international community with these weapons. The court concludes from this that these treaties, therefore, be foreshadowing a future general prohibition of the use of these weapons. But sarcastically judges of this Court didn't reach any conclusion and give any concrete

verdict. They were divided in their opinion. Besides all these stated earlier, at individual stage, many distinguished text writers and authoritative personage on the law of war have expressed their opinions as to the illegality of the use of mass destructive weapons, such as, Erik Castern, Nagendra Singh, Vonder Heydte, Julias Stone, George Schwarzenberger etc. Despite all these international concern about the use of these weapons, it is regrettable that the states having these types of weapons have reservations for the prohibition of the use of these weapons and all they show as excuse, is their question of national security and sovereignty. Only because of them, despite great many negotiations during last four decades, no agreement was concluded for the prohibition of mass destructive weapons.

Conclusion

Considering above discussion, it can be said that the object of war can not be to destroy the humanity or to destroy the civilization. If any state is compelled to use force or is put to compulsory war it should adopt such means and methods of warfare which are permitted under International Humanitarian Law. The state should use only conventional weapons which can fulfill the purpose of military attack. Weapons of mass destruction, such as, biological weapons, chemical weapons and nuclear weapons are inherently of greater destructive power. The long lasting effect of these types of weapons on the immediate victims and their coming generations are certainly unnecessary to any military objective. The general rules of customary law impose no absolute prohibition on the use of mass destructive weapons, but it is not to say that the use of these weapons is free of all legal limitations. On the other hand, nobody has even claimed seriously that the traditional rules and regulations regarding warfare and weapons have been derogated in relation to the weapons of mass destruction. At the end, we can say that the use of various kinds of mass destructive weapons is a gross violation of international humanitarian law and every state should abide by the rules and regulations of this law.

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- xlviii Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects’ in Adam Roberts and Richard Guelff ed. *Documents on the Laws of War*, 2nd edi. P.469.
- xlvi Op. cit., Nasrullah, P.138
- xlvi Ibid. P.138-139
- xlvi Op. cit., Burroughs, p.38
- xlvi Articles 2(4), United Nations Charter
- ¹ Article 51, Ibid
- ^{li} Brownly, “*Some Legal Aspects of the Use of Nuclear Weapons*”, *International and Comparative Law Quarterly*, vol.14, 1965, p.541
- ^{lii} Ibid.P.578
- ^{liii} Op. cit., Singh, P. 318