

Regulation of Chemical, Biological and Nuclear Weapons Under International Law

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Abstract

The international legal framework that governs the use of chemical, biological, and nuclear weapons, i.e., Weapons of Mass destruction (WMD) in combat, is the subject of this article. The most common types of weapons of mass destruction are biological, chemical, and nuclear ones. International accords aimed at their non-proliferation and disarmament largely regulate the use of these weapons. Important agreements that set up thorough frameworks for regulating these kinds of weapons are the Chemical Weapons Convention (CWC) and the Treaty on the Non-Proliferation of nuclear weapons (NPT). The research underscores that while there are comprehensive legal frameworks governing WMD, significant challenges remain in ensuring compliance with IHL principles. The necessity for ongoing dialogue and adaptation within international law is critical as new forms of warfare emerge. Overall, the legality of WMD under international humanitarian law is heavily scrutinized through the lenses of unnecessary suffering and distinction, emphasizing a need for stringent adherence to these humanitarian principles in all military operations involving such weapons.

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1 Introduction

This article seeks to accomplish several important goals. Its first goal is to examine how well the current international legal frameworks—such as treaties and customary international law—comply with the fundamentals of international humanitarian law (IHL) when it comes to regulating weapons of mass destruction (WMD). The second section concentrates on the concepts of differentiation and needless suffering, assessing how these concepts relate to WMD. Its goal is to ascertain whether, given their indiscriminate nature and capacity for extensive damage, such weapons may ever be allowed under international humanitarian law. Examining the humanitarian ramifications of the use of WMD, how their deployment impacts civilian populations and whether it is consistent with the humanitarian objectives stated by IHL is another purpose. Next, it aims to identify obstacles to WMD compliance with IHL, such as concerns about enforcement, state responsibility, and the efficiency of current legal frameworks in preventing illicit use. Lastly, the goal is to make suggestions for improving the legal frameworks and norms about WMD to address humanitarian issues and improve adherence to IHL principles.

1.1 Weapons of Mass Destruction (WMD) and the theories involved.

The Weapons of Mass Destruction (WMD) include Chemical, Biological and nuclear weapons. There are two basic theories about their control: absolute ban theory and limited use theory (Jha & Ratnabali, [2021](#); Rudin, [2022](#)). The proponents of the former believe that the use of weapons making no distinction between combatants and civilians and causing extreme suffering should be completely outlawed. To the contrary, advocates of limited use theory argue that efforts should be made to prevent their spread instead of imposing complete ban, so that state consensus may gradually evolve as to their complete prohibition (Sitt et al., [2010](#)). As a result, in 2004, the Security Council adopted a binding resolution requiring all UN members to abstain from giving non-state actors any assistance in obtaining, spreading, producing, or transferring these weapons (Citaristi, [2022](#); Musmeci, [2023](#)).

The most significant contribution concerning controlling the use of cruel weaponry has been made by Geneva Conventions of 1949 which lay down a framework to determine legality of the systems and means of combatting (Cassese, [2023](#); Gaeta et al., [2023](#)). Likewise, Hague Conventions 1899 and 1907 give proof of state practice and *opinio juris* regarding the tactics and weapons of war that the international community considers legal (Schmitt & Watts, [2015](#)). Lastly, the International Court of Justice's advisory judgment clarifies whether using nuclear weapons during an armed war is legal. According to these international documents, the rule of thumb to determine legality remains if the weapon in question is incapable of making a distinction, causes unnecessary suffering and/or irreversible damage (Fisher, [2022](#)).

In this paper, at the outset, general guidelines concerning systems and means of warfare will be considered. Secondly customary, conventional and humanitarian rules applicable to the utilization of Chemical and Biological weapons will be analyzed. Thirdly, current status of prohibition on the use of nuclear weapons will be examined in the light of ICJ's advisory opinion and ongoing scholarly discourse. Finally, conclusions will be made with respect to the outcome of the existing framework of regulation.

1.2 Regulation of certain types of weapons- A historical overview

Regulation of chemical, biological, and nuclear weapons has existed since antiquity. For instance, practically every major religion forbids using poison to contaminate the enemy's food and water sources. In a similar vein, it was considered immoral and unethical to send plague victims into enemy territory in order to spread the disease (Green, [2018](#)).

In 1868 at St. Petersburg Russia first attempt was made to prohibit specific types of weapons (International Review of Red Cross, [1868](#)). The declaration following the conference reiterates that the legitimate purpose of war is to incapacitate the enemy, therefore, while disabling the opposing forces should be adequate, using weapons to inflict needless pain or make the adversary's death unavoidable is prohibited by humanitarian law (Dinstein, [2022](#)). Subsequently, the rule against unnecessary suffering was further reinforced by its incorporation in the Hague Conventions of 1899 and 1907. These conventions provide that 'right of belligerents to adopt means of injuring the enemy is not unrestricted (Solf, [2023](#); Wilke & Doughty, [2024](#)). Furthermore, the conventions prohibit an attack on undefended towns and villages. Still and all, the conventions include an 'all participation clause', according to which, the regulations mentioned therein will be in-applicable in a conflict in which any of the combatant state is not a party to the relevant convention (Mar & Win, [2022](#)). In other words, this clause suggests that the regulations are binding only if all participants to a war are parties to the relevant convention (Solf, [2023](#)).

Four historic conventions were ratified in Geneva in 1949 and made applicable to all international armed conflicts (Kwakwa, [2023](#); Nwotite, [2023](#)). As for example, Geneva Convention- IV (GC IV) deals with the protection of civilian population throughout an armed conflict (Aldrich et al., [2010](#)). Interestingly, Common Article 3 of these treaties provides protection to those not participating in hostilities and also extends to non-international armed conflicts occurring on a contracting party's territory (Dinstein, [2022](#); Wuyep & Boyi, [2023](#)). That being said, Geneva conventions excluded the infamous 'all participation clause' and were made applicable even if one of the belligerents was not a party to the applicable convention (Green, [2018](#)).

In 1977, rules of Hague and Geneva conventions were merged into Additional protocol I (AP- I) of the Geneva Conventions 1949 (Mantilla, [2024](#)). The adoption of The Protocol led to establishment of following broad rules of warfare:

Parties do not have a free right to select the means and techniques of conflict; in fact, it is expressly forbidden to employ the following:

1. Indiscriminate in nature and are incapable of making a distinction between civilians and combatants.
2. Which aim to subject warriors to needless agony, the effects of which cannot be controlled within belligerent territory (Fleck & Bothe, [1999](#)).

The aforesaid general rules are supplemented by other specific rules of AP-I, such as:

3. Distinction between defended and undefended area and permissibility of attacks only against military targets in defended area.
4. In case of attacks on defended area, the incidental loss to civilians should not be in excess of military target sought to be achieved.
5. Attacks against dangerous installations, things necessary for survival of civilian population, single area attacks, and attacks against towns, villages and dwelling houses of civilians in defended area are also forbidden (Detter, [1988](#)).

According to the International Court of Justice's (ICJ) 1996 Nuclear Weapons Case Advisory Opinion, customary law has superseded humanitarian law's prohibitions on the use of weapons that are incapable of distinguishing between different types of weapons and inflicting needless suffering on combatants (Akanke, [1998](#)).

a. Prohibition under customary law

The Martens clause named after a Russian diplomat was first inserted in preamble of Hague Peace Conferences of 1899 and 1907 (Ivanenko, [2022](#); Shanks, [2020](#)). It affirms that 'until a complete Code of law of warfare is developed, in cases not regulated by these conventions, The principles of international law, which are derived from usages established between civilized nations from the laws of humanity and public conscience, continue to protect both civilians and belligerents

(Killingsworth, [2023](#); Self, [2023](#)). Later on, the clause was incorporated in the Geneva Conventions of 1949 and Additional Protocol I of 1977 as part of the substantive law. It is a residual or supplementary provision which is applied in the absence of a specific rule. Its object is that civilians and combatants should not be left at the mercy of the military commanders in the absence of a written provision, those impacted by armed conflicts shouldn't ever be totally without safety. Rather, the norms of international law, human rights law, and public morality continue to govern the behavior of belligerents (Ali et al., [2019](#)).

The clause plays an important role in regulation of systems and means of warfare. What it does is to crystalize the fact that where specific rules are silent in matters pertaining to warfare, Humanitarian Law and public opinion shall prevail (Cassese, [2008](#)). Since customary law is supposed to reflect will of the international community, a general dislike for a specific type of weapon can result into development of an absolute prohibition on its use under treaty law. This actually transpired when a general dislike for Chemical and Biological weapons led to adoption of the treaties completely banning their use. However, when the International Court of Justice was approached to provide an advisory opinion on the legality of using or threatening to use nuclear weapons in 1996, the parties cited the Martens clause because no such treaty had been put into effect to forbid the use of nuclear weapons. One argument put out was that, in the absence of an explicit prohibition, nuclear weapons ought to be governed by moral principles and public conscience (Mero, [2000](#)).

b. Prohibition under treaty law

The usage of chemical and biological weapons has been specifically prohibited under treaty law, some of the oft quoted treaties prohibiting these weapons are as under:

i. Geneva Gas Protocol 1925

The use of weapons releasing poisonous gases was first prohibited under the Hague conventions but as those conventions incorporated an all-participation clause, the belligerents in World War-I violated the prohibition at large scale. A major turning point was reached in 1925 when the Geneva Gas Protocol outlawed the employment of biological and chemical weapons in combat. In 1928, the protocol was put into effect. Apart from the employment of bacteriological warfare techniques, it forbids the use of poisonous and suffocating gasses as well as similar liquids, materials, and apparatus (Reutov, [2021](#)).

When the protocol took effect, many states recorded a declaration that they would not be bound by its provisions if the enemy state failed to observe the prohibition, and thereby status of the prohibition was rendered to be that of 'no first use commitment (Goldblat, [1986](#)). That notwithstanding, in World War-II, the protocol was largely observed by the belligerents (except Germany against Jews) even though they had much more sophisticated chemical weapons in their arsenal (Detter, [1988](#)). However, in the decade of 1960-70 Geneva Gas Protocol lost its universal appeal as the prohibition was widely abused by the belligerent states in armed conflicts short of war. For example, the United States used chemical weapons in Vietnam. Likewise, Egypt made use of them in Yemen while Iraq unleashed them against its minority Kurdish population and in the Gulf war (Fawcett, [2023](#); Phillips, [2024](#)).

The breach of the protocol was attributable to a number of factors, including reservations recorded by member states concerning the first use, respecting prohibition only in case of war and not in conflicts other than war and above all, absence of any inspection regime (Green, [2018](#)).

ii. Chemical Weapons Convention (CWC) 1993

In 1993, long drawn efforts of the UN Conference on Disarmament succeeded in evolving consensus over imposing a complete ban on Chemical weapons. As a result, an all-inclusive

convention was adopted namely, The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (hereinafter 1993 Chemical Weapons Convention). The research, manufacture, transport, storage, and use of chemical weapons are all prohibited by the treaty. It also lays out a complex regulatory structure for eliminating the current stockpiles of these weapons. Furthermore, it delineates an all-encompassing inspection protocol to address instances of non-adherence (Dinstein, [2022](#)).

The ban on using chemical weapons now extends beyond enemy combatants and is a component of common law. On the other hand, it is also illegal to use these weapons against civilians and civilian infrastructure. For instance, the Geneva Conventions of 1977's Protocol-I optional states in article 54 that installations and items necessary for the civilian population's survival are likewise shielded against the use of such weapons (Fleck & Bothe, [1999](#)).

iii. The Biological and Toxin Weapons Convention (BTWC) 1972

Although the prohibition contained in Geneva Gas Protocol 1925 was extended to Biological methods of warfare and the prohibition was treated to be part of customary law, still in 1972 the world community felt the need to deal with this category of weapons independent of Chemical weapons (Schindler & Toman, [1973](#)). Consequently, in 1972 a complete prohibition was placed on development, production, stockpiling, acquisition and use of biological and toxin weapons. The convention additionally requires destruction of stockpiles but falls short of establishing a verification regime (Schindler & Toman, [1973](#)). Apart from this, it does not define the term 'Biological weapon.' In spite of these shortcomings, prohibition was largely observed by belligerents in post 1972 conflicts (Schindler & Toman, [1973](#)).

2 Humanitarian Law and its role in evolving prohibition

The rules of International Humanitarian Law (IHL) against use of weapons causing redundant misery and producing indiscriminate and uncontrollable effects played a vital role in evolving consensus with respect to banning Chemical and Biological weapons (Cassese, [2008](#)). It was generally believed that such weapons cause suffering to the combatants in excess of the purpose of attack (Cassese, [2008](#)). Since the purpose was to disable the enemy or to make them incapable of fighting, the injuries, burns, diseases and death caused by such weapons were deemed disproportionate to the military objective sought to be achieved. Furthermore, it was felt that such weapons were incapable of making a discrepancy amongst civilians and combatants and expose civilians to the risk of inhaling hazardous fumes and contacting diseases (McCormack, [1990](#)). It can, therefore, be argued that public abhorrence of the use of such weapons put pressure on individual states to support absolute prohibition at international level against use of such weapons.

The Hague Conventions of 1899 and 1907 could not stop the deployment of chemical weapons in World War I, thus the parties involved first disregarded the explicit ban on their use. Similarly, Iraq extensively violated the Geneva Gas Protocol 1925 between 1960 and 1970 (Israelyan, [2003](#)). However, these violations were attributable mainly to inherent weaknesses of the instruments establishing prohibitions. For example, Hague Conventions failed due to the infamous 'all participation clause' and Geneva Gas Protocol was breached essentially in armed conflicts other than war to which it was not made applicable (McCormack, [1990](#)). That being said, after coming into force of Biological and Toxin Weapons Convention 1972 and Chemical Weapons Convention 1993 either no violation was reported or if reported it was not substantiated by credible evidence (Drobysz, [2020](#); Edwards et al., [2022](#)). For example, in 2002, the United States launched air strikes against the alleged Chemical weapons manufacturing plant of Sudan which was later found to be a pharmaceutical factory. Keeping this in mind, it can be suggested that new prohibitions are more effective as they do not admit of exceptions and set forth broad ranging mechanism for international monitoring (Brownlie, [1980](#)).

2.1 Control of nuclear weapons

Several treaties aimed at controlling the proliferation of nuclear weapon. However, as of today there is no customary or conventional rule barring unequivocally the use of these weapons (Rosas, [2021](#)). In view of this, so far nuclear disarmament efforts have been successful to the extent of restraining their spread, testing, stationing, forestalling the outbreak of nuclear war and establishing nuclear weapons free zones. Some of the major treaties regulating the use of nuclear weapons are listed below, though none of these altogether ban their use (Fleck & Bothe, [1999](#)).

1. Nonproliferation Treaty 1968.
2. Treaty which prohibits trials in atmosphere, Outer Space and Sea Bed 1963.
3. Outer Space Treaty 1967.
4. Sea Bed Treaty 1971.
5. Treaty Prohibiting nuclear weapons in Latin America 1967.
6. Treaty Establishing Nuclear Free Zone in South Pacific Area 1985.
7. Treaty Eliminating Short Range Missiles 1987.
8. Strategic Arms Reduction Treaty 1993.
9. Comprehensive Test Ban Treaty 1989.
10. Anti-Ballistic Missile Treaty 1972.

a) The Shimoda Case:

Nuclear weapons are considered to be most dreadful and lethal instruments of mass destruction ever produced. According to the facts of Shimoda case, the devastation caused by the little atomic bombs detonated on Hiroshima and Nagasaki on August 6 and 9, 1945, was equivalent to that of more than 20,000 conventional bombs (Akimoto, [2020](#); Webster, [2022](#)). Besides annihilating entire civilian population of the two cities, their radioactive fallout had caused death and disease until 20 years after their use. Bearing these facts in mind, the District Court of Tokyo held in Shimoda that 'nuclear weapons are inherently indiscriminate and they aggravate the sufferings of both civilians and combatants and render their death inevitable... [T]hey are incapable of making a distinction between civilians and combatants and their effects cannot be contained within the belligerent territory... [Furthermore], they have the impact of single area bombing even if military target is concentrated in undefended area (Falk, [1965](#)) Although the Court was only determining legitimacy of their use against Hiroshima and Nagasaki, the guidelines set out by it can be used to consider their legitimacy in general (Fleck & Bothe, [1999](#)).

b) Reasons for loose control on the usage of nuclear weapons

Viewpoint of states possessing nuclear weapons:

The view of international community is divided about banning the use of nuclear weapons. States having these weapons are of the view that acquisition of these weapons is necessary for their national security because their possession serves as a deterrence against adventurism and aggression on the part of enemy states (Spulak, [1997](#)). Furthermore, where a belligerent state is aware that the first use of such weapons will be followed by countermeasures of similar nature in self-defense, resulting in Mutually Assured Destruction (MAD), it will stay away from taking such action [20]. They argue further that use of nuclear weapons should not be seen in isolation from other uses of force, and only a general effort to discourage all uses of force can bring about peace and security in the world (Van der Meer, [2016](#)). To authenticate their viewpoint, they rely on article 2 (4) of the United Nations Charter 1945 which imposes a general prohibition on threat or use of force to settle inter-state disputes. According to states having nuclear weapons, article 2 (4) prohibits the use of nuclear weapons in the same manner as ordinary weapons (Van der Meer, [2016](#)). At the same time however, article 51 of the Charter preserves and upholds inherent right of states to use force in self-defense, regardless of the type of weapon to be employed (Detter, [1988](#)).

These states refute the argument that Nuclear weapons should be banned as they violate the laws of warfare by causing indiscriminate effects and unnecessary suffering. To them, modern devices are targeted and precision guided and are capable of making a distinction between civilians and combatants (Spulak, [1997](#)). For instance, they can be used only against combatants in a defended area with nuclear warheads causing minimum possible collateral damage to civilians and civilian infrastructure. From their perspective, such a weapon offers military advantages not extended by other weapons (Spulak, [1997](#)).

In addition to the aforementioned, they argue that the new humanitarian law regulations do not apply to nuclear weapons because, at the time of the Additional Protocol I of 1977's signature, a number of states had expressed reservations about the weapon's control, stating that political agreement would be needed and that the protocol's provisions would not impact the weapon's status (Black-Branch, [2021](#); Evans, [2021](#)). It is important to note that Additional Protocol-I precludes the use of the weapons which can cause permanent and irreversible harm to the environment (Atadjanov, [2022](#)). However, the reservations in question can be said to have softened the impact of this prohibition, at least to the extent of use of nuclear weapons. For instance, the travaux préparatoires of the Protocol –I reveals that the United States and Russia had a tacit understanding from the onset of the negotiations that the limitations and prohibitions would not apply to nuclear weapons (National Security Archive, [2023](#)). Furthermore, the International Committee of Red Cross (ICRC) recognized that there is no ordinary or customary norm of international law that forbids the use of nuclear weapons while drafting the Additional Protocol-I (Akande, [1998](#)).

2.2 Perspective of non-nuclear states:

The non- nuclear states subscribe to the view that prohibition on the use of nuclear weapons has already taken roots under customary law (Vestner, [2022](#)). They naturally fall under the prohibition on the use of chemical and poisonous weapons since they explode and discharge harmful fumes (Vestner, [2022](#)). Furthermore, it is illegal to use chemical and biological weapons due to their indiscriminate nature and tendency to make fighters more miserable. Strangely enough, nuclear weapons are characterized by these two elements. Furthermore, the use of nuclear weapons can be considered prohibited by the Additional Protocol-I, which forbids the use of weapons that cause extensive, long-term harm to the environment since their effects cannot be limited inside belligerent territory (Guna, [2023](#)). The Human Rights Committee of the UN General Assembly held in General Comment No. 24(52) that "provisions in a Human Rights Treaty that represent customary international law may not be the subject of reservations," which is another reason why the non-nuclear states propose that the reservations to Additional Protocol-I may be deemed invalid (Dixon et al., [2011](#)).

The UN General Assembly has also argued that nuclear weapons are inappropriate. The General Assembly resolved by resolution 71/258 to hold a United Nations conference in 2017 with the goal of negotiating a legally enforceable agreement that would forbid nuclear weapons and eventually lead to their complete abolition. Customary law can be argued to be reflected in the ban on the use of these weapons as General Assembly pronouncements embody state practice (Schwebel, [1979](#)). In contrast, even if it is assumed, there are no definitive rules of customary law aimed at proscribing nuclear weapons, use of these weapons is still restricted by International Humanitarian Law (IHL), in particular *jus in bello* part of the IHL, where the rules concern with conduct of belligerents after commencement of hostilities (Green, [2018](#)). The argument that member state reservations have rendered nullified the clear prohibition established by Additional Protocol-I is difficult to sustain given that the effects of nuclear weapons cannot be contained in time or space and can still cause death and disease years after they are used. However, the international community must impose a total ban on the use of these weapons in order to dispel any uncertainty regarding prohibition and to guarantee global peace and security (Akande, [1998](#)).

c) 1996 International Court of Justice Advisory Opinion on the Legality of the Threat or Use of nuclear weapons:

An advisory opinion on the legality of the threat or use of nuclear weapons was issued by the International Court of Justice (ICJ) in 1996. The court ruled that, as nuclear weapons were banned by special instruments approved under extraordinary circumstances, the ban on chemical and biological weapons could not be extended to nuclear weapons (Dinstein, [2022](#)). The provisions of Additional Protocol- I of 1977 with regard to protection of the environment being new and innovative, do not apply to the nuclear weapons as per the understanding reached at the time of signing of the Protocol (Akande, [1998](#)).

The court observed further that keeping in view the inherently indiscriminate nature of nuclear weapons, and their tendency to cause unnecessary suffering along with their uncontrollable fall out, their use appears to be generally in violation of Humanitarian Law (Akande, [1998](#)). However, in extreme necessity of self-defense it cannot say whether their use would be lawful or unlawful. The court argued that article 2(4) of the UN Charter forbids the use of force by any weapon, with article 51's guarantee of the right to self-defense serving as the lone exemption. Having said that, the requirements of need and proportionality must always be met for any self-defense measure, and using nuclear weapons for self-defense is no exception (Akande, [1998](#)). According to Prof. Brownlie, in the light of Advisory opinion of the ICJ, it can be assumed that pre-emptive use of Nuclear weapons alongside their first use is unlawful, whereas retaliatory use of these weapons in response to a prior nuclear attack is lawful, provided it is necessary and proportionate and does not cause unnecessary suffering to the combatants and makes a distinction between civilians and combatants. Moreover, its effects has to be contained within belligerent territory (Brownlie, [1980](#)).

d) Current Status of nuclear weapons:

While it is an established fact that nuclear weapons are inherently more damaging than all existing weapons of mass destruction, state practice shows that they are viewed as restricted rather than prohibited weapons (Vestner, [2022](#)). One reason can be that since nuclear weapon states also happen to be the major players in world politics, they do not want to bring these weapons under international control. From their perspective, this could take out deterrent effect of these weapons, which is vital for their national security (Vestner, [2022](#)).

The argument put up by non-nuclear states is that these weapons are incompatible with human rights, and resolutions passed by the General Assembly support this assertion that these weapons pose a threat to global peace and security (Nakayama, [2024](#)). However, this does not imply that a general disapproval for such weapons has been transformed into *opinio juris*, an essential element of custom. *Opinio Juris* requires that in order for a state practice to become custom, it is imperative that the practice should be observed with the belief that it represents a legal duty (Dahlman, [2012](#)). That said, we are not sure if states are refraining to use nuclear weapons as a legal duty.

Regrettably, the ICJ's advisory opinion in Nuclear Weapons Case 1996 fell short of acknowledging the existence of a complete prohibition. Conversely, the judgement in Nuclear Test Case (Australia v. France) and (New Zealand v. France) 1974 supports the view that states are abstaining to use nuclear weapons with mental belief that this is required by law. Thus, the court remarked that the French Government by its unilateral statements, indicating that it will cease conducting nuclear testing in the atmosphere, has accepted the legal responsibility to be held accountable for its declarations (Dixon et al., [2011](#)).

The consequence of the uncertainty surrounding legal status of the prohibition is that the nuclear weapons states do not consider themselves bound by any type of restrictions placed on their use, testing or stockpiling. For example, France resumed testing nuclear devices in 1990 whereas India and Pakistan carried out their own tit for tat tests in 1998 (Peterke & van Aggelen, [2023](#)).

Considering the foregoing, it can be suggested that a complete ban on nuclear weapons based on their indiscriminate nature and irreversible effects together with a robust inspection regime should prove far more effective as compared with existing half measures aimed at loose restrictions. Since the ICJ has already affirmed that use of nuclear weapons is incompatible with rules of humanitarian law, the proposed absolute interdiction would be nothing but restatement of the existing customary law (Akande, [1998](#)).

3 Conclusions

The international control of weapons of mass destruction is likely to remain elusive in the absence of an absolute prohibition augmented by a dynamic monitoring system. States often abide by an international duty that is upheld by a strong regulatory framework, as would be expected. The positive outcome of prohibition on Chemical and Biological weapons is owed principally to the absolute nature of prohibition and provisions relating to the independent verification regime. By comparison, restriction on proliferation of nuclear weapons leave much to be desired in regard to evolving consensus towards complete ban (Brownlie, [1980](#)). That being said, absolute prohibition should not be allowed to be used as a pretext to influence public opinion to make a case for launching armed attack against a state. For example, in 2003, Until the Security Council authorized the deployment of all necessary means to defend Kuwaiti sovereignty, the United States and the United Kingdom persisted in accusing the state of Iraq of possessing WMDs in national and international venues. Ironically, IAEA officials later acknowledged that the claims that Iraq had massive WMD stockpiles were unfounded and untrue (McGoldrick, [2004](#)). Furthermore, it is imperative that the international bodies tasked with upholding global peace and security do not discriminate when denouncing nations that employ WMDs. For example, despite Iraq's demonstrated use of chemical weapons in the Iran-Iraq War and against its minority Kurdish population, the Security Council was unable to pass a resolution denouncing Iraq directly between 1970 and 1980, while Iraq was an ally of the major powers (McGoldrick, [2004](#)). Paradoxically, in 1990-2000 when Iraq lost the support of major powers, it was repeatedly denounced and censured by the Security Council in its successive resolutions.

In addition to above, it is quite obvious by now that the international community is in agreement with respect to proscribing the use of Chemical and Biological weapons in the warfare, or even in the time of peace. To illustrate, criminal investigations were launched against a Chicago based US scientist Bruce Edward Ivins for mailing letter filled with anthrax to randomly chosen people, killing 5 citizens and injuring 17 others, however, before the charges could be pressed the accused killed himself (Guillemin, [2012](#)). Considering everything mentioned above, it is obvious that these weapons are prohibited due to their indiscriminate character and tendency to cause needless suffering. It is puzzling, however, that the International Court of Justice (ICJ) refrained from expanding the prohibition to include nuclear weapons in its advisory judgment. In addition to the previously indicated negative effects, nuclear weapons have the potential to permanently harm the environment. It appears that the international community failed to come to an agreement on the imposition of an outright prohibition on the use of nuclear weapons in the wake of the nuclear strikes on Hiroshima and Nagasaki and the implementation of AP-I.

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