Policies and Politology

Just War Theory v/s Unconventional Weapon
An Analysis from Ethical Moral and Legal Perspective

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Abstract: Just war theory deals with the justification of how and why wars are fought. The justification can be either theoretical or historical. The theoretical aspect is concerned with ethically justifying war and the forms that warfare may or may not take. The historical aspect, or the "just war tradition," deals with the historical body of rules or agreements that have applied in various wars across the ages. For instance, international agreements such as the Geneva and Hague conventions are historical rules aimed at limiting certain kinds of warfare which lawyers may refer to in prosecuting transgressors, but it is the role of ethics to examine these institutional agreements for their philosophical coherence as well as to inquire into whether aspects of the conventions ought to be changed. The just war tradition may also consider the thoughts of various philosophers and lawyers through the ages and examine both their philosophical visions of war's ethical limits (or absence of) and whether their thoughts have contributed to the body of conventions that have evolved to guide war, especially nuclear warfare which is an unconventional weapon. The seriousness of such prohibited weapon was a debatable issue not only in the contemporary law of armed conflict but, also in the ancient law of war. This paper shall try to evaluate the essence of just war theory in a new dimension interlinking it with ethics and moral value to judge the use of unconventional weapon and condemn it as inhuman and against the theory of just war.

Keywords: Jus Naturae; Jus Gentium; Jus ad bellum; Jus in bellow; Jus Post bellum

1. Introduction

War is a phenomenon used to define the state of aggression between two rival groups, but generally which occurs only between political communities, defined as those entities which either are states or intend to become states (Dinstein, 2001, pp. 3-15) (in order to allow for civil war). Classical war is international war, a war between different states, like the two World Wars. From time immemorial human civilization has witnessed different forms of war. Whatever the nature of war is, it

is a brutal and ugly enterprise. Yet it remains central to human history and social change. These two facts together might seem paradoxical and inexplicable, or they might reveal deeply disturbing facets of the human character (notably, a drive for dominance over others). What is certainly true, in any event, is that war and its threat continue to be forces in our lives. Recent events graphically demonstrate this proposition, with the 9-11 attacks, the counter-attack on Afghanistan, the overthrow of Iraq's Saddam Hussein, the Darfur crisis in Sudan, the bombings in Madrid and London, or the on-going "war on terror" more generally. (McNair & Watts, 1996, p. 259) The new generation of 12st century has high hope toward this new millennium; unfortunately this new century has already been savagely scarred with warfare.[1] Today when the nature of war has undergone drastic change with the development of technological weapons of mass destruction aren't we supposed to rely on the principle of just war or on conventional war? Because nuclear weapon is unconditionally an unconventional weapon of mass destruction and its destructive potentiality has been witnessed during the Second World War. War's violent nature, and controversial social effects, raises troubling moral questions for any thoughtful person. Should war be unethical? Will indiscriminate war always be part of human experience? Is war an outcome of unchangeable human nature or, rather, of changeable social practice? Is there a fair and sensible way to wage war, or is it all hopeless, barbaric slaughter? Whether state has absolute right to use the weapon of their choice?

2. Meaning of War, Ethics and its Interdependence to the Origin of Just War

War is defined by several jurists and has more manifold purpose. According to Cicero war is a contention by force. (Lauterpacht, 1952, p. 72) War in turn connects the states through their armed forces but for the purpose of overpowering each other.[2] War in fact is exercised as peremptory right by the state and is closely associated with right of existence but is not an absolutely and unconditional right and is greatly regulated by the rule of ethics. Ethic is the basic foundation of human civilization the law of ethics greatly influence the human conduct no matter whether its right or duty. (Winggins, 2006, p. 66) Ethics also has a strong

[1] W.L. Roberts, Litigation Involving "Termination of War", 43 (Ken, L.J. 195, 209, 1945)
[2] C. Eagleton, Attempt to Define War, 291 (Int. Con. 237, 281 1993).

impression in construction of civilized legal system. It is a source of energy upon which many theory of law are developed and the law of war is greatly influenced by the ethical code. Ethics is a normative discipline, not a descriptive discipline. (Pojman & Fieser, 2008, p. 9) The aim of ethical theory is to give a reasoned account of how we ought to be or act, individually or communally. Ethics is not concerned with describing the sorts of moral view people in fact hold or how they came to hold them. Ethics is concerned with the justification of moral belief. It is concerned with what justifies moral judgments. If there are moral truths, an account of what makes moral truths true, can be given in terms of a theory of value.[1] Another way to put the fundamental ethical issue is asking if there is value to be discovered. The view that ethical truths are grounded in the power or say so of persons is called conventionalism. Conventionalism is the view that there are ethical truths and that these are made true by the will or say so of some person or group of people, for instance under what conditions is a nation morally justified in waging war? How does one measure the justice to war? What are the rules, who has the authority to declare war and when? Do the nations have absolute right of choice of weapon, and can it be used indiscriminately? By what criteria do we evaluate the modern weapon?

As stated above the rule of ethics greatly influences the law of war and most of the theories of law derive its sources from the ethical value. Basically there are two separate theories of law of war that regulate the conduct of war. They are the natural law and the positive law. (Walzer, 2006, p. 53) The contribution of natural law has been unique in the field of the law of war though both the theories have a different standpoint of view on the authority of law. There seem consensus among the two theories on the concept of just war and rely on the principle that the right to wage war includes not just the right cause of war but right conduct of war because war once waged lives behind incalculable damage and is something which cannot be prevented but at the same time the consequence of war can be limited by regulating the means of warfare. (Evans, 2005, p. 15) For instance Article 2(4) of UN Charter refrains the states from making use of force against each other is part of customary principle of law of war and Article 22 of Hague regulation which has passed from customary international law provide that belligerents have no unlimited right to chose the weapon to injury the enemy which is necessarily a positive law having derived its gist from the rule of natural law. A detail enquiry

[1] Ibid supra, pp. 105-110.

into the sources revealed that war should never be unethical and war should necessarily be a justifiable means to justifiable end. An unethical war includes aggressive war, indiscriminate attack, and use of inhuman weapon. Naturally this theory negates the use of nuclear weapon or weapon of mass destruction because war should necessarily be between the combatants and many are innocent and should not result into total destruction of humanity. Further the theory of law of war classify the war into two types just war and unjust war or conventional war and unconventional war. Just war or bellum justum is one which is fought for a reason that is justified, and that carries sufficient moral weight. It must necessarily follow the rule of jus in bellow or right conduct within war which includes the principle of Distinction, proportionality and military necessity. The country that wishes to use military force must demonstrate that there is a just cause to do so. (Walzer, 2005, p. 36) Bellum injustum or unjust war is necessarily an aggressive war and is contrary to the rule of just war. The modern theory of conventional and unconventional war also interprets the philosophy of just and unjust war; however it necessarily distinguishes the war with the use of weapon. (Walzer & Miller, 2007) If one analyze the use of nuclear weapon under the strategy of these theory one would realize that the nuclear war would necessarily be an unjust or unconventional war. Thus the nuclear warfare is fundamental question of inquire under law of war, which requires a detail investigation through reliable sources of law.

3. Theory of Jus Naturae, Jus Gentium and Just War

According to Thomas Aquinas the proper effect of law is to lead its subjects to their proper virtue. (Lisska, 2002, p. 72) Several philosophical documents have attempted to list the premises of natural law, but the concept is somewhat difficult to establish. Since the theory is dependent on beliefs and individual ethical codes, there are nearly always contradictory ideas. However ideological principles of jus naturae or natural law to an extend has modified the individual conduct in civilized society such as to do good, to respect the right of other, to accomplish the legal and moral obligation, render service to mankind so and so, it's quite clear that men is subjected to the law of nature. As men are subject to the law of nature, and as their union in civil society cannot exempt them from obligation of observing those laws, since in that union they remain none the less men, the Nation, (George, 1994, p. 54) whose common will is but the outcome of the united wills of the citizens, remains subject to the laws of nature and is bound to respect them in all its

undertaking. And since right is derived from obligation, as it is just remarked, a Nation has the same rights that nature gives to men for the fulfillment of their duties. (Koetsier, 2003, p. 19)

We must therefore apply to nations the rules of the natural law to discover what are their obligations and their rights; hence the Law of Nations is in its origin merely the Law of Nature applied to Nations. (Grabil, 2006, p. 37) Now the just and reasonable application of a rule requires that the application be made in a manner suited to the nature of the subject; but we must not conclude that the Law of Nations is everywhere and at all points the same as the natural law, except for a difference of subjects, so that no other change need be made than to substitute Nations for individuals. A civil society, or a State, is a very different subject from an individual person, and therefore, by virtue of the natural law, very different obligations and rights belong to it in most cases. The same general rule, when applied to two different subjects, cannot result in similar principles, nor can a particular rule, however just for one subject, be applicable to a second of a totally different nature. Hence there are many cases in which the natural law does not regulate the relations of States as it would with individuals.[1] We must know how to apply it conformably to its subjects; and the art of so applying it, whit a precision founded upon right reason, constitutes of the Law of Nations a distinct science.

This law to which the nation sometime is subject to is called as necessary Law of Nations which results from applying the natural law to Nations. It is necessary, because Nations are absolutely bound to observe it. (Greig, 1976, pp. 888-891) It contains those precepts which the natural dictates to States, and it is no less binding upon them than it is upon individuals. For States are composed of men, their policies are determined by men, and these men are subject to the natural law under whatever capacity they act. This same law is called by Grotius and his followers the internal Law of Nations, in as much as it is binding upon the conscience of Nations. Several writers call it the natural Law of Nations. The natural law of nation (jus naturae) is different from the positive law of nation (jus voluntarium). (Freeman, 2002, p. 65) The basic theory of natural law suggests that it is separate from positive law, and therefore some argue it is not meant to be codified specifically. Often, the basic premise of this theory is reduced to a simple concept:

[1] Fenwick on National Existence comments "Primary right of the state is its integrity and for this reason the science of international law concentrates upon the right of national existence". Fenwick International Law, p. 271-295.

people should strive to be good, and avoid being evil. Every idea past this point, including the definitions of "good" and "evil," is highly debated.

Unlike positive law, which regulates actions, natural law tends to guide concepts of morality. For instance, murder may be considered illegal by positive law, but the idea that murder is morally wrong is a natural law theory. In addition to guiding ethics, Aristotle, Thomas Aquinas and many other philosophers suggest that natural laws are built into the fabric of the universe, and thus guide human concepts of reason and rationality. Natural law, however, is more fundamental. (Gray, 1999, p. 206) Positive law cannot change or abrogate natural law. Positive law is concerned with human activities or behavior that natural law has not ruled on. Positive law, as St. Thomas says, can only add to natural law; it cannot subtract from it. Thus, another way of looking at the division of law into natural law and positive law is to say that positive law is law that is additional to natural law. The resolution of the problem here lies, as is often the case, in a distinction to be made. St. Thomas retains the strict sense of natural law of what we immediately understand about ourselves in the light of our human nature, but makes a distinction within positive law. (Curzon, 1998, p. 250) He points out that there are two ways in which something may be added to what we intuitively, as it were, know should be done. Thus he says: " – something may be derived from the natural law in two ways: first, as a conclusion from premises, secondly, by way of determination of certain generalities. (Gray, 1999, p. 445) The first way is like to that whereby, in sciences, demonstrated conclusions are drawn from the principles. The second mode is like to that whereby, in the arts, general forms are particularized as to details; thus the craftsman needs to determine the general shape of a house to some particular shape."

Positive law, then, taken in the broad sense of what is posited by reason and will over and above what we know naturally, (Patterson, 1999, p. 302) as it were, includes both ius gentium and positive law in the strict sense what is determined by the "art" (political prudence) or even mere will of the civil government. It is only in this narrower area of positive law that something can be wrong simply because it is forbidden. Jus gentium is distinct from natural law, taken in the strict sense of the absolutely first or self-evident principles of morality. But when natural law is taken in a broader sense of what is intrinsically suitable to human nature fully considered (what is within ethico-political science), ius gentium rather belongs to natural law than to positive law. For "the law of nations is indeed in some way natural to man,

in so far as he is a reasonable being, because it is derived from the natural law by way of a conclusion that is not very remote from its premises." (Cosgrove, 1996, p. 105)

The positive law of nation or voluntary law of nation should careful be distinguish from the natural or necessary Law of Nations, without, however, treating them separately. But after having established on each point what the necessary law prescribes, it shall be explained how and why these precepts must be modified by the voluntary law; or, to put it in another way, it shall show how, by reason of the liberty of nations and the rules of their natural society, the external law which they must observe towards one another differs on certain points from the principles of the internal law, which, however, are always binding upon the conscience. As for rights introduced by treaties or by custom, we need not fear that anyone will confuse them with the natural Law of Nations. They form that division of the Law of Nations which writers term the arbitrary law. The three divisions of the Law of Nations, (Sandford Fawcett, 1968, p. 77) the voluntary, the conventional, and the customary law, form together the positive Law of Nations, for they all proceed from the agreement of Nations; the voluntary law from their presumed consent; the conventional law from their express consent; and the customary law from their tacit consent. And since there are no other modes of deducing a law from the agreement of Nations, there are but these three divisions of the positive Law of Nations. In order from the start to lay down broad lines for the distinction rule between the necessary law and the voluntary law we must (Porter, 2005, p. 78) note that since the necessary law is at all times obligatory upon the conscience, a Nation must never lose sight of it when deliberating upon the course it must pursue to fulfill its duty; but when there is question of what it can demand from other States, it must consult the voluntary law, whose rules are devoted to the welfare and advancement of the universal society. (Neff, 2005, p. 21) And that's why the concept of just war is necessarily said to be the part of jus naturae, there always had been great challenge to the natural law jurist to defend just war, since war is a monstrosity about which very little good can be said. It has been the bane of man existence and threatens to be his ultimate undoing. How can we ask just? Of course we can't and it is this misnomer that much ignorant rejection of just war theory is based. Wars are not justified only acts or policies of war are. (Neff, 2005, p. 19) Thus though it sound morally objectionable even to ask if World War II was a just war, it makes perfectly good moral sense to ask if the allied side was behaving in a morally justifiable way in waging it. Was the allied cause just? Yes, most of the world

believes that it was and even those who disagree would admit that it is morally legitimate question open to dispute by reasonable people. It's noteworthy that under natural law only one side cause can be just. For if both side were justified it would imply contradiction in our basic moral principles, or a relativity in them. That is Hitler had his basic principles and Churchill his, who can say which were right? However under positive theory both side may be morally right so long as neither side break the treaty or other formally enacted international rules.

To determine the answer that someone is right and someone is wrong we adopt the consequence of natural law theory. Bothe side cannot wage a war with just ad bellum. Another point of just war which is more controversial is the concept of just. In modern parlance we talk about just institution just policies just procedure as one that are fair or without irrational or arbitrary prejudice perhaps there can be just economical or legal procedure, but waging war as just is quite difficult to be answered to some it may sound strange. Yet the fact is that law of nature lays a appropriate rule to channelize the most monstrosity behavior like war. According to William .B O'Brien "jus ad bellum lay's condition that must be met in order to have permissible recourse to armed coercion". (Voegelin, 1998, p. 134)

Likewise the jus in bellow set out condition for the way armed coercion may permissible be used. Both jus ad bellum and jus in bellow are part of natural law theory that sets out the rules for permissible resort to international coercion and violence, surely less controversial sounding definition of just war. (Dinstein, 2004, p. 225) Just war theory deals with the justification of how and why wars are fought. The justification can be either theoretical or historical. The theoretical aspect is concerned with ethically justifying war and the forms that warfare may or may not take. The historical aspect, or the "just war tradition," deals with the historical body of rules or agreements that have applied in various wars across the ages. (Neff, 2005, p. 34)

For instance, international agreements such as the Geneva and Hague conventions are historical rules aimed at limiting certain kinds of warfare which lawyers may refer to in prosecuting transgressors, but it is the role of ethics to examine these institutional agreements for their philosophical coherence as well as to inquire into whether aspects of the conventions ought to be changed. (Dinstein, 2010, p. 15) The just war tradition may also consider the thoughts of various philosophers and lawyers through the ages and examine both their philosophical visions of war's

ethical limits (or absence of) and whether their thoughts have contributed to the body of conventions that have evolved to guide war and warfare.

4. Just War and Unconventional Weapon

The criteria of just war have been the same under the customary and the contemporary law of war, beyond doubt and debate the matter is always appealing to the civilized state of war. However with the advance technological development there seem rapid development in the means of war fare which if not tackled would defeat the basic principle of just war. The point here is will the war with the unconventional weapon meet the requirement of just war theory. What are the basic elements of just war that delimit the use of unconventional weapon?

Jus ad bellum are a set of criteria that are consulted before engaging in war, or the war is prosecuted in order to determine whether entering into war is justifiable. An international agreement limiting the justifiable reasons for a country to declare war against another is concerned with jus ad bellum. In addition to bilateral non-aggression pacts, the twentieth century saw multilateral treaties defining entirely new restrictions against going to war. (Detter, 1958, p. 87) The three most notable examples are the Kellogg-Briand Pact outlawing war as an instrument of national policy, the London Charter (known also as the Nuremberg Charter) defining "crimes against peace" as one of three major categories of international crime to be prosecuted after World War II, and the United Nations Charter, (Bok)which binds nations to seek resolution of disputes by peaceful means and requires authorization by the United Nations before a nation may initiate any use of force against another, beyond repulsing an immediate armed attack against its sovereign territory. By contrast, agreements defining limits on acceptable conduct while already engaged in war are considered "rules of war" and are referred to as the jus in bellow. Thus the Geneva Conventions are a set of "jus in bellow". (Dulles, 1939, p. 39) Doctrines concerning the protection of civilians in wartime, or the need for "proportionality" when force is used, are addressed to issues of conduct within a war, but the same doctrines can also shed light on the question of when it is lawful (or unlawful) to go to war in the first place.[1]

[1] See Hadley Cantril, "Tension that causes War", (Illinois Press, Urbana); A Common statement and individual paper by Group of social scientist brought together by UNESCO.

The just war theory stipulates three important doctrine under which the war is analyzed as just or unjust, in fact this are three phases of conditions that has to be observed in order to defend the act of war as just. (Coates, 1997, p. 23) They are jus ad bellum, jus in bellow and jus post bellum. Though all these doctrine regulates the behavior of the state at the time of war the application of the rule differ according to the situation. Jus ad bellum is more a technical aspect to be executed previous to war and that's why it is a pre war situation. Jus in bellow should be adhered by the state at the time of war and is more a legal aspect because any breach of the rule in jus ad bellum would give rise to accountability. Jus post bellum deals with remedial paradigm aftermath the war, at this stage any breach of war could be brought within the preview of jus post bellum and that's why the jus post bellum as close nexus with jus in bellum. Jus post bellum refers to justice during the third and final stage of war: that of war termination. It seeks to regulate the ending of wars, and to ease the transition from war back to peace. Hardly one could consider the international law or the conventional law or human right law as the real source of just war theory, in presence of ultimate right of the state to decide the right to wage war and that's most jurist rely on the moral resource of the just war theory. (Tucker, 1960, p. 52) All most all the principles of just war theory have strong foundation of moral and ethical values. The first five principles of just war theory stand out as the technical aspects, if the war has to be a just war, the second principles falling under the criteria is a legal requirement to be accomplished by the state indulging in war which shall also protect the state as a matter of self-defense both in battle field and in trial. The third principles are in the form of remedial aspect were in the state are suppose to undertake to justify the needs of those civilians and belligerents who are not the direct participant to war.

1. Being declared by a proper authority
2. Possessing right intention
3. Having just cause
4. 4. Being a last resort ----------→ JUS AD BELLUM [technical aspect]
5. Having a reasonable chance of success, and the
6. Military necessity
7. Distinction
8. End must be proportionate to the means used --→ JUS IN BELLOW [legal aspect]
9. Innocent must be spared

10. Proportionality and Publicity----→ JUS POST BELLUM [remedial aspect]
11. Rights Vindication
12. Discrimination
13. Punishment
14. Compensation
15. Rehabilitation

Let's examine the essence of the just war theory and find out if the nuclear warfare could appreciate the criteria of this general principle.

1. **Lawful authority**. The first and the foremost criteria ruled out by the jus ad bellum is that the war should be waged by an appropriate authority in order to be just. War is generally organized activity of the state and therefore it is essential that war be undertaken only with the proper authority of the entity that is, under that state's own laws, granted the power to do so. (Risely, 2009, p. 56) This entity might be a Queen or King, a President, or some other leader; or the entity might be some group. It depends upon the structure of the decision-making process in each state. By appropriate authority one mean to that entity which would act reasonably in battlefield and would weigh the significance of rules of battlefield to be accepted and executed. The responsibility is not just to protect the lives of their citizen but also to see that innocent lives of the non combatants are not destroyed. The concepts of just authority also convey another message of imposing or undertaking liability in case of unjust war. (Grotius, 2004, p. 12)

2. **Just Intent**. This requires that the intent of going to war be to promote or secure peace, not merely to obtain revenge, wealth, or personal glory. Just intent is based on natural law and religious and secular values consistent with the Judeo-Christian ethic to "love thy neighbor." [1] The goal must be to do good, not to harm.[2] The firm commitment of a state to abide by all just war criteria evinces an intention to do that which is just.

3. **Just Cause.** The determination of just cause requires the balancing some values but rarely involves invoking esoteric theories of justice. Just cause requires that one must not put trivial preferences, insults to national pride, and even some gross

[1] See Hadley Cantril, "Tension that causes War", (Illinois press, Urbana);A Common statement and individual paper by Group of social scientist brought together by UNESCO.
[2] Just War Theory ,The Internet Encyclopedia of Philosophy" http://en.wikipedia.org/wiki/Just_War, Accessed 2.30, Feb/2/ 2010.

violations of the law of nations above the duty to preserve peace rather than go to war. But, even if a state might be implicated in such things, the purported wrongs could not justify war. Generally, the existence of the state or the lives of its citizens must be at stake. The "cause" would be "just" for us to engage another state in war if agents of that state (acting under color and scope of lawful authority) were to make a substantial attack of some sort which is deliberately designed to destroy or impair our state or significantly injure citizens.[1] Indeed, self-defense is the only just cause for war that is formally recognized in modern international law. It is properly invoked to protect the integrity and fundamental nature of the state or the lives of its citizens when those are clearly threatened or attacked. This right of self-defense has often been construed to include the right to intervene in order to protect one's "neighbor" and the right to punish states that do wrong.

4. **Last Resort.** This is a doctrine close to the legal doctrine of exhaustion of remedies. Did you try everything first? Is the question? If you can permissibly wage war it is only after you have tried everything else that is reasonable. This criterion and the one which follows (reasonable hope of success) are in a real sense subordinate to just intent. After all, if a state undertakes war except as a last resort its intentions are certainly suspect. Basically, (Brough, Lango, & Linden, 2007, p. 34) all states are deemed duty-bound to avoid the consequences of war if it is reasonably possible to do so. Good faith efforts to avoid war must be actively pursued, viz. negotiations should be engaged in, compromises sought, economic sanctions applied, appeals for reason made, cooling off periods taken, and peace-promoting activities by appropriate international bodies utilized in efforts to redress grievances before resort to war is justified.

5. **Having a reasonable chance of success**. A hopeless war is deemed pointless and contrary to common sense and justice. It does not mean, however, that a state and its citizenry need meekly submit to the murderous exercise of raw power. An increase in public support from within and resources of allies might transform a hopeless undertaking into a reasonable one at some point. States are enjoined from going to war without reasonable hope of success because to do so would throw away the lives and resources of its citizens and risk destruction of the state.[2]

[1] Benson, Richard (The Just War Theory: A traditional Catholic moral view), The Tidings (2006).(Showing the Catholic view in three points, including John Paul II's position concerning war)
[2] "A defence of an updated form of just war theory" (Fotion, 2007, p. 67)

6. **Military necessity**. Military necessity requires combat forces to engage in only those acts necessary to accomplish a legitimate military objective. Attacks shall be limited strictly to military objectives. In applying military necessity to targeting, the rule generally means the state may target those facilities, equipment, and forces which, if destroyed, would lead as quickly as possible to the enemy's partial or complete submission but does not include massive attack or bombardment on the civilian or the casualties. (Ramsey, 1969, p. 23) Military necessity also applies to weapons review. AFI 51-402, Weapons Review, requires the Air Force to perform a legal review of all weapons and weapons systems intended to meet a military requirement. These reviews ensure States to comply with its international obligations, especially those relating to the LOAC, and it helps military planners ensure military personnel do not use weapons of mass destruction or weapons systems that violate international law. Illegal arms for combat include poison weapons and expanding hollow point bullets in armed conflict. Even lawful weapons may require some restrictions on their use in particular circumstances to increase compliance with the LOAC.

7. **Distinction**. Distinction means discriminating between lawful combatant targets and noncombatant targets such as civilians, civilian property, POWs, and wounded personnel who are out of combat. The central idea of distinction is to only engage valid military targets. An indiscriminate attack is one that strikes military objectives and civilians or civilian objects without distinction. The rule of distinction is closely associated with the rule of military necessity and reasonable chance of success, the reason is massive and indiscriminate attack however would violate the above two rules and lead to total breach of LOAC even to and extend that the war would be debated as an unjust war. (Heindel, 1918, p. 88) That's why Distinction requires defenders to separate military objects from civilian objects to the maximum extent feasible. Therefore, it would be inappropriate to locate a hospital or POW camp next to an ammunition factory.

8. **Proportionality**. The amount and type of force to be utilized in war should be the minimum necessary to end the war and secure peace. The good results which might be achieved through military action cannot be outweighed by the damage inflicted. For minimally desirable military ends, excessive destruction is not warranted. Undue collateral damage, whether attributable to lack of discrimination or lack of proportionality, might be construed to evince a murderous intent and should be assiduously avoided whenever possible. The jurist of just war theory

strongly recommends that the war (Walzer, 1977, p. 80) waged against the other should be to punish the enemy country and not the total destruction of the country. Thereby the law even in case of self-defense the function would be to preserve or restore the legal status quo and not to take on a remedial or repressive character in order to enforce the legal right. (Walzer, 2004, p. 67)

9. **Innocents to be spared**. This is the most humanistic principle adopted by the just war theory. This is an appealing approach to humanize war. In fact the whole principle of just war theory is revolving around this principle. (Childress, 1978, p. 427) As it is made clear in the introductive part of the chapter that war should necessarily be between the combatants who have the basic intention, idea and purpose of their action and many are innocent, that's why should be spared.

10. **Proportionality and Publicity**. The peace settlement should be measured and reasonable, as well as publicly proclaimed. To make a settlement serve as an instrument of revenge is to make a volatile bed one may be forced to sleep in later. In general, this rules out insistence on unconditional surrender.

11. **Rights Vindication**. The settlement should secure those basic rights whose violation triggered the justified war. The relevant rights include human rights to life and liberty and community entitlements to territory and sovereignty. This is the main substantive goal of any decent settlement, ensuring that the war will actually have an improving affect. Respect for rights, after all, is a foundation of civilization, whether national or international. Vindicating rights, not vindictive revenge, is the order of the day. (O'Donovan, 2003, p. 90)

12. **Discrimination.** Distinction needs to be made between the leaders, the soldiers, and the civilians in the defeated country one is negotiating with. Civilians are entitled to reasonable immunity from punitive post-war measures, this rule out sweeping socio-economic sanctions as part of post-war punishment.

13. **Punishment #1.** When the defeated country has been a blatant, rights-violating aggressor, proportionate punishment must be meted out. The leaders of the regime, in particular, should face fair and public international trials for war crimes.

#2. Soldiers also commit war crimes. Justice after war requires that such soldiers, from all sides to the conflict, likewise be held accountable to investigation and possible trial.

14. **Compensation**. Financial restitution may be mandated, subject to both proportionality and discrimination. A post-war poll tax on civilians is generally impermissible, and there needs to be enough resources left so that the defeated country can begin its own reconstruction. To beggar thy neighbor is to pick future fights.

15. **Rehabilitation**. The post-war environment provides a promising opportunity to reform decrepit institutions in an aggressor regime. Such reforms are permissible but they must be proportional to the degree of depravity in the regime. They may involve: demilitarization and disarmament; police and judicial re-training; human rights education; and even deep structural transformation towards a minimally just society governed by a legitimate regime. This is, obviously, the most controversial aspect of jus post bellum.

The terms of a just peace should satisfy all these requirements. Their needs, in short, to be an ethical "exit strategy" from war, and it deserves at least as much thought and effort as the purely military exit strategy so much on the minds of policy planners and commanding officers.[1]

To imagine the use of unconventional weapon in the light of just war theory would be nonsense, It is quite interesting to notice that even by the standard laid down by St. Augustine, the use of unconventional weapon would not be permissible. It fails to satisfy at least two of his requirement, the prospect of success and proportionality. No nation can succeed in unconventional warfare and the damage inflicted would be out of all proportion to the provocation, even if the provocation were very great. These ancient theological requirements, subject of numerous theological and legal commentaries over the centuries are still invoked in the contemporary discussion of justification for possible superpower conflict.

5. Conclusion

It's quite clear from the above examination that the ancient and medieval law of war emphasizes on the above said principle which is equally applicable to the contemporary law of war. However use of technological weapon of modern era would defeat these basic principles of law of war moreover general principles

[1] Christians and War: Augustine of Hippo and the "Just War Theory", www.ethics/issues .com @2.30 pm, Feb/2/ 2010.

regarding the right to go to war remain the same whether the force to be used is conventional weapons or nuclear weapons. A strict adherence to this principles is required if the war is with new strategical weapon in fact if the states are encouraged to use nuclear weapon the whole doctrinal structure of just war theory collapse, once again war of 21st century would be a barbaric with no ultimate result in favor of any one. The use of unconventional weapon would defeat the basic structure of the general principles embedded under the law of war.

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