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# THE POLICY OF NON-LETHAL OPTION AND THE PROHIBITION OF CERTAIN CONVENTIONAL WEAPONS IN CONTEMPORARY WARFARE: IMPLICATIONS ON SOCIO-HUMAN DEVELOPMENT IN THE 21<sup>ST</sup> CENTURY GLOBAL POLITICS

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### **ABSTRACT**

The increase in human population, characterized by the pursuit of individual and groups divergent interest, has brought about armed conflicts of all kinds in the 21st century global politics. This singular scenario has necessitated the proliferation of weapons of mass destruction by some nations. The attendant purpose for the production of such weapons, among other factors, could be to launch offensive and defensive attacks on the enemy territories, as the need arises. However, such countries often fail to appreciate the negative implications of possessing and applying such explosives during combat. Hence, this paper sets out to examine "The Policy of Non-Lethal Option and the Prohibition of Certain Conventional Weapons in Contemporary Warfare: Implications on Socio-Human Development In the 21<sup>st</sup> Century Global Politics". In this direction, the following issues were revisited with the intending belief that the use of weapons of mass destruction in armed conflicts would be reduced to the barest minimum. They include:- Development of Non – Lethal Weapons, the Application Of Non-Lethal Weapons In Contemporary Warfare, Implications of the Use of Non-Lethal Weapons in Armed Conflicts: "Taser as a Model", Deaths and injuries related to Taser Use, the 1980 United Nations Convention on Prohibitions or Restrictions of Certain Conventional Weapons Excessively Injurious to Socio-Human Development and Calmative Agents.

### INTRODUCTION

Since 1812 to 2010, there has been the use of conventional and non-lethal weapons that are sophisticatedly injurious to human health. As preponderantly cataclysmic as they are, they have been applied in both international and non-international armed conflicts with the attendant objective of destabilizing the opponents and thereby winning the war. Green, (2008:25) and Musterroom, (2007:36), have argued that the various armed conflicts fought since 1812 to date have obviously witnessed the applications of dangerous weapons. According to them, these weapons have profusely jeopardized the socio-human development, especially in the first (1st) and second (2nd) world wars. Certain international conventions and standards have definitely defined these weapons and at the same time prohibited their use in any form of armed conflicts. Examples of such are the 1949 Geneva Convention, the 1948 United Nations Universal Declaration of Human Rights, the 1977 two additional protocols and the 1980 United Nations Convention on prohibition or restrictions on the use of certain conventional weapons, to mention but a few. For clarity purposes, it should

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be noted that non-lethal weapons are less injurious in nature. Much as some International conventions and standards prohibit the application of conventional weapons in armed conflicts of any form, non-lethal weapons are widely used by combatants during armed conflicts. According to Winifred, (2008:74) non –lethal weapons also known as less-lethal weapons; less-than-lethal weapons; non-deadly weapons; pain-inducing weapons; or more recently, compliance weapons are:

Weapons intended to be less likely to kill or to cause great

Bodily injury to a living target than a conventional weapon.

Non-lethal weapons are used in riot control, prisoner control, crowd control, such as refugee control, non-lethal battle, and self-defense. For instance, this particular type of weapon, was used, among other ones, during the armed conflicts in Afghanistan, Pakistan, Kosovo, Vietnam, Iran, Iraq, Sudan, Liberia, Sierra-Leone, Congo Democratic Republic, to mention but a few. This paper is apt in the light of prevailing proliferation of armed conflicts around the globe of which their nature and character are seemed to be humanly unbearable. Again, the rate at which Iran, North-Korea, Libya, Syria, etc have embarked on the development of weapons of mass destruction, demands ultimate intellectual attention, especially with regards to its implications on socio-human development in the 21<sup>st</sup> Century. Hence, it is the task of this paper to appraise the afore-stated subject matter.

### **Development of Non – Lethal Weapons**

In the past, police (or soldiers) called to a riot were primarily limited to use of bayonet or saber charges, or firing live ammunition at crowds. Less-lethal riot control weapons were developed to fulfill the needs of public authorities to reduce the loss of life in such situations. Before the invention of less-lethal weapons, police officers had few, if there were any nonlethal options for riot control. Common tactics included a slowly-advancing wall of soldiers or officers with batons, or a charge into a riot, using the flats of sabers. Pamella, (2009:374) has it that some successes were made, using shotguns with lower-powered cartridges, "salt shells", and, or ricocheting the shot off of the ground. In the mid 1900's, with the integration of fire-control systems into major cities, police found that the use of high-pressure fire hoses could be effective in dispersing a crowd (the use of water cannons and fire trucks has remained an effective non-lethal tactic to disperse riots). Trained police dogs were also commonly used to scare and disperse rioters and, or apprehend single subjects. In the 1980s, the development of the high-tensile plastics Kevlar and Lexan revolutionized personal armor and led to new tactics for riot squads and other special-purpose teams. Ajayi, (2005:215) maintains that officers could now stand up against violent rioters throwing objects without having to resort to lethal methods to quickly disperse the danger. Coupled with the introduction of effective non-lethal chemical agents such as tear gas and offensive odour canisters, and non-lethal impact rounds such as rubber bullets and "bean bag" flexible baton rounds, riot tactics were modified to rely less on violent response to attacking rioters than on a return to the slowly-advancing wall, with supporting officers firing non-lethal ordinance into the crowd to discourage advance. Police officers on patrol were traditionally armed with a baton and, or pistol, and non-lethal methods of subduing an attacker centered on hand-fighting techniques such as Jujutsu and baton use. In the 1980s and 1990s, officers began deploying non-lethal personal side arms, such as pepper sprays and eventually electroshock weapons such as <u>Tasers</u>, which were developed for use by police and also found a market in self-defense by private citizens. However, these weapons were developed for non-lethal de-escalation of a one-on-one conflict. According to Olugbemi, (2006:39); During the 1990s and early 2000s, interest in various other forms of less-than-lethal weapons has risen, both in military and police contexts.

The interest arose because the use of less-than-lethal weapons may, under international law and treaty, be legal in situations where weapons such as lethal gases are not, as well as further efforts to keep the peace after conflict. In the late 1990s and early 2000s, police began to adopt a new pepper spray delivery system based on the equipment used in paintball. A specialized paintball, called a "pepper ball", is filled with liquid or powdered capsaicin, the active ingredient in pepper spray, and is propelled by compressed gas using a paintball marker similar to those used for the sport, but modified for higher-pressure operation. Fombo, (2004:101) affirms that the capsule breaks open on impact and the capsaicin disperses with similar effect to aerosol pepper spray. In addition, the pain caused by the capsule's impact (a pepper ball's shell is thicker than a standard paintball and is fired at higher velocity) can independently encourage compliance. In 2001, the United States Marine Corps revealed its development of a less-than-lethal energy weapon called the Active Denial System, a focused microwave device said to be capable of heating the outer skin of a target individual or group to approximately 130° Fahrenheit (54° Celsius) in about two seconds, causing intolerable pain. The system is designed to be non-lethal as subjects will try to escape the beam immediately, but the device can produce lasting burns after several seconds' exposure. In 2004, author Jon Ronson revealed a military report titled "Non-Lethal Weapons: Terms and References." There were a total of 21 acoustic weapons listed, in various stages of development, including the Infrasound ("Very low-frequency sound which can travel long distances and easily penetrate most buildings and vehicles...biophysical effects: nausea, loss of bowels, disorientation, vomiting, potential internal organ damage or death may occur. Superior to ultrasound...")

### THE APPLICATION OF NON-LETHAL WEAPONS IN CONTEMPORARY WARFARE

The term 'non-lethal' weapon is becoming more and more common in military circle. According to the **ICRC**, (2002:17):

In theory, these are weapons that are not designed to kill but to incapacitate an opponent for a limited period of time while minimizing fatalities.

Freeman, (2008:24) states: "Commanders and staff officers may be asked for their advice on the use of such weapons or even be involved in the development and procurement of such weapons which include wooden batons or truncheons, rubber or baton rounds, stun grenades, nets, slippery surface and more futuristic weapons acoustic and electro-magnetic pulse weapons. These weapons seem very attractive, but it is humane treatment to put someone out of action temporarily than to kill them with conventional weapons. Closer

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examination reveals however, that the use and development of each proposed "non-lethal" weapon in contemporary warfare, requires serious scrutiny. Some weapons such as blind lasers, incapacitating anti-personnel mines (under the Ottawa treaty) and riot control agents, have already been prohibited under the law of armed conflicts.

According to Machran, (2007:109) the "non-lethal" weapons must comply with the following rules:

- Must not cause unnecessary suffering or superfluous injury;
- Must be capable of being directed against a military objective and must not be used in an indiscriminate manner;
- Must not cause disproportionate incidental damage;
- Must not be prohibited by other specific legal provisions such as the ban on chemical weapons.

In continuation, the development, acquisition or adoption of a new weapon (including "non-lethal" weapons) or a new means or method of warfare, states are under obligation to determine whether the use of that weapon would, in some or all circumstances, be prohibited by the rules of International law, including the rules of the law of armed conflicts, that apply to that state.

### Implications of the Use of Non-Lethal Weapons in Armed Conflicts: "Taser as a Model"

As a consequence, Amnesty International Canada and other civil liberties organizations have argued that a moratorium should be placed on Taser use until research can determine a way for them to be safely used. Amnesty International has documented over two hundred and forty-five (245) deaths that occurred after the use of tasers in armed conflicts. Military sources question whether the taser was the actual cause of death in those cases, as many of the deaths occurred in people with serious medical conditions and, or severe drug intoxication, often to the point of excited delirium. (Amnesty International Reports, 2002:9) Critics of taser use, however, argue that "excited delirium" is not a valid medical term and is not listed in the Diagnostic and Statistical Manual of Mental Disorders. Tasers are often used as an alternative to talking and waiting for a suspect to comply, striking the suspect with a baton or shooting them with firearms. Only the latter, two of which have a much higher chance of serious injury and death than the taser, even using the highest estimates of possible taser-related deaths. Okeke, (2007:28) opines that the term "less-lethal" is being used more frequently when referring to weapons such as tasers because many experts feel that no device meant to subdue a person can be completely safe. The less-lethal category also includes devices such as pepper spray, tear gas, and batons. One problem when comparing the Taser to other forms of force is that no precise statistics are kept in the U.S. on policing related deaths or the use of excessive force. In 2001, the New York Times reported that the U.S. government was unable or unwilling to collect statistics showing the precise number of people killed by the police or the prevalence of the use of excessive force.

### **Deaths and injuries related to Taser Use**

While their intended purpose is to circumvent the use of lethal force such as guns, the actual deployment of Tasers by police in the years since Tasers came into widespread use is claimed to have resulted in more than one hundred and eighty (180) deaths as of 2006. Brown, (2008:93) argues that it is still unclear whether the Taser was directly responsible for the cause of death, but several legislators in the U.S. have filed bills clamping down on them and requesting more studies on their effects. Despite the growing controversy, a study funded by the U.S. Justice Department asserted that the majority of people tasered from July 2005 to June 2007 suffered no injury. A study led by William Bozeman, of the Wake Forest University Baptist Medical Center, of nearly 1,000 persons subjected to Taser use, concluded that 99.7% of the subjects had either minor injuries, such as scrapes and bruises, or none at all; while three persons suffered injuries severe enough to need hospital admission, and two other subjects died. From the foregoing, it has been deduced that non - lethal weapons especially "tasers", inflicts less injury on combatants and other people that might be involved in a given armed conflicts. This is a direct opposite of the conventional weapons, of which effects, when used in both International and non - international armed conflicts are better imagined than described.

## The 1980 United Nations Convention on Prohibitions or Restrictions of Certain Conventional Weapons Excessively Injurious to Socio-Human Development

The issue of restricting the use of specific conventional weapons was the subject of substantive discussion at the ICRC Conference of Government Experts on the use of certain conventional weapons, which met in Lucerne in 1974, and in Lugarno in 1976. At the conclusion of the Geneva Diplomatic Conference in 1977, the conference's Ad hoc committee had reached agreement on specific conventional weapons, and 1977 Geneva Protocol 1 only contains some provisions of a rather general character relating to such weapons. However, on 9 June 1977, the Geneva Diplomatic Conference adopted Resolution 22(IV) which recommended that a separate conference be convened not later than 1979 with a view to reaching agreements on prohibitions or restrictions of the use of specific conventional weapons. In the views of Busuttil (1998:35), on 19 December 1977, the United Nations General Assembly resolved that a UN Conference on specific conventional weapons be convened in 1979. The preparatory sessions for such a conference were held in Geneva in August – September 1978, and March - April 1979 attended by representatives of eighty-five states. The first session of the United Nations Conference on prohibitions or Restrictions of use of certain conventional weapons which may be injurious or to have indiscriminate effects was held in Geneva on 10 – 28 September 1979, attended by representatives of eighty-two states. The second session of the conference was held from 15 September to 10 October 1980 attended by representatives of seventy-six states. In the same vein, Cassese, (1998:12), provides that on 10<sup>th</sup> October 1980, the conference adopted the convention on prohibition or restrictions on the use of certain conventional weapons which may be excessively injurious or to have indiscriminate effects and annexed protocols I, II and III. The convention and the three protocols were then sent to the UN General Assembly which on

12 December 1980 passed a resolution commanding them to all states with a view to achieving the widest possible adherence to these instruments. The convention and protocol are derived from two fundamental customary principles of the laws of war, the right of belligerents to adopt means of warfare is not unlimited; and the use of weapons, projectiles, or material calculated to cause unnecessary suffering is prohibited. Both customary principles had been codified in Article 22 and 23 (e) of the Regulations annexed to 1899 Hague Convention III and 1907 Haque Convention IV. According to Gardam, (1993:25), these customary principles had also been applied to particular weapons in such international agreement of the 1968 St. Petersburg Declaration, the three 1899 Hague Declarations, the 1907 Hague Declaration, some of the 1907 Hague Conventions and the 1925 Geneva Protocol. In addition, the convention and protocols draw on the principle of distinguishing between combatants and civilians. Although, the attempt was made during the 1979-80 conference to formulate limitations on a wide range of conventional weapons used in combat, Condorelli, (1996:61), argues that such efforts had unlimited success. Protocol II on non-detectable fragment completely prohibits the use of certain conventional weapons. However, a majority of states was unwilling to support such a comprehensive prohibition in respect of protocol II (a land-mines and protocol III on incendiary weapons).

### **CALMATIVE AGENTS**

Calmatives agents are defined as chemical or biological agents with sedative, sleep-inducing or similar psychoactive effects. Chemical calmative weapons such as BZ (3 – quinuclidinly benzilate, a compound related to scopolamine) were developed during the cold war. Proponents of calmatives are creating a new and alarming legal ambiguity surrounding their use. The US Department of Defense (DOD) arguments imply the creation of two loopholes in the Chemical Weapons Convention: the possible definition of psychoactive substances as riot control agents (and a distinction between "military operations other than war" (MOOTW) and armed conflicts. In the latter, DOD argues that even toxic chemicals would be of operational utility. In other words, while deploying these agents in the "battle space" is prohibited under the chemical weapons convention, their use on civilian populations during LOOTW if classified as riot control agents, can be acceptable". Davidson, (2007:13), describes from a military perspective in which specific characteristics of such agents have been seen as:

- i. Highly potent and extremely low dose which is effective and logistically feasible.
- ii. Able to produce their effects by altering the higher regulatory activity of the central nervous system.
- iii. of a duration of action lasting hours or days, rather than of a momentary or fleeting action.
- iv. Not seriously dangerous to life, except at doses many times the effective dose.
- v. Not likely to produce permanent injury in concentrations which are military effective.

Contemporary definitions emphasize rapid onset of action and short duration of effects, characteristics which reflect the current preoccupation with counter-terrorism and the associated convergence of military and policing requirements. Generally, for reasons of politics and public relations rather than accuracy, these weapons have also been referred to

as "calmatives" and "advanced riot control agents". Broadly speaking, agents were colloquially divided into "Off the rocker" agents having psychotropic effects and "on the floor" agents causing incapacitation through effects on other physiological processes. "Off the rocker" agents prevailed since the safety margins for other agents, including anesthetics agents, sedatives and opiate analgesics, were not considered sufficiently wide for them to perform as 'safe' military incapacitating agents. This is hardly an academic exercise considering that the pentagon's Joint Non Lethal Weapons Directorate (JNLWD) is carrying out on-going experimentation with what it euphemistically calls "Human Effects Research" to develop an "Advanced Total Body Model (ATBM) for predicting the effects of non-lethal impacts". The JNLWD non-lethal human effects community has begun to increase its focus on improving the characterization and quantification of non-lethal Weapons (NLW) effectiveness. In other words, researchers are attempting to better answer the question of how well the human response relates to desired mission outcomes. This area of research is critical to ensuring that the end user will get reliable, repeatable, and safe results from future non-lethal capabilities.

However, the JNLWD "human effects community" should endeavour to explore the "living laboratory" on display during the October 2002 Moscow Theatre siege. Under "real world" conditions 50 chechen terriorists (some allegedly linked to this Afghan-Arab database of disposable intelligence assets known as al-Daeda) and 129 persons held hostage were killed when Russian OSNAZ Forces pumped an aerosolized fentanyl derivative through the ventilation system. A KGB-developed "physcho-chemical gas" known as koloko- 1 was the suspected calmative used during the "rescue". Kolokol – 1 has been described by medical experts as being one- thousand (1000) times more potent than morphine.

According to the research, when a normal close of fentanyl enters the brain, it is quickly redistributed throughout the body and acts as a short-lived anesthetic. A larger, more concentrated dose however, is not so easily redistributed and remains concentrated in the brain and shuts down normal respiratory functions. This was the mechanism that caused the Moscow deaths; those held hostage were chemically suffocated by their rescuers". Further, the former Soviet Union however, wasn't alone in looking at Fentanyl derivatives as "non-lethal" incapacitating agents. In 1987, the U.S. National Institute of Justice (NIJ) had established a "Less –than – Lethal Technology Program, and awarded its first contract to the U.S. Army's Chemical Research Development and Engineering Centre (CREDEC), rebranded as the Edgewood Chemical Biological Center (ECBC) at the Aberdeen Proving Ground, "for a feasibility assessment of a dart to deliver an incapacitating agent to stop a fleeing suspect", BDRE reports.

Davidson, (2007:52) affirms that, "the requirement for rapid immobilization apparently led to consideration of Fentanyl analogues in particular alfentanil. However, its' low safety margin was a major problem". The prototype delivery system was a failure and NIJ moved on. But "mission creep" being what it is the military, perhaps "inspired" by NIJ's pursuit of incapacitating agents for circular police use, quickly adopted the less-than-lethal" terminology and rekindled its own interest in fielding such weapons.

Through slight—of- hand tricks designed to circumvent the 1993 chemical weapons convention, the pentagon sought to place incapacitating agents in the same category as irritant riot control agents (RCA) such as pepper spray.

However, the British Medical Association (BMA) in its 2007 report, "The Use of Drugs as Weapons" raised serious ethical concerns for healthcare professionals' involvement in what they term "tactical pharmacology" as deployable "non-lethal" weapons. According to Salt, (2005:16): the use of a drug as a method of warfare would constitute a violation of the 1925 Geneva Protocol and the 1993 Chemical Weapons Convention (CWC). Ambiguity in the text of the CWC leaves open the possibility of the use of a drug as a weapon for the purposes of domestic law enforcement including riot There is also the question as to whether some drugs fall within the definition of a biological weapon as defined in the 1972 Biological and Toxin Weapons Convention (BTXIC). It is vital that the International Community makes every effort to ensure that these weapons conventions remain intact. The development and deployment of drugs as weapons for whatever reason risks undermining the norms these conventions represent. Serious questions are raised by the British Medical Association over the state's proposed use of drugs as weapons. Indeed, the use of these agents by military and security forces in the views of Cippman (2006:58) "is simply not feasible without generating a significant mortality among the target population". The BMA concludes, "it is and will continue to be almost impossible to deliver the right agent to the right people in the right dose without exposing the wrong people, or delivering the wrong dose". Over and above, "tactical" considerations, the BMA avers, from an ethical perspective, healthcare professionals need to begin a deeper examination of their roles in relation to such use of biomedical knowledge and medical expertise for hostile purposes. This is, ultimately a matter relating to health because the lives and wellbeing of humans are at stake. Again, as we have seen in the anemic response by many American healthcare professionals to CIA and U.S military torture policies at Guantanamo Bay and transnational "black sites", biomedical knowledge has been perverted for devilish "national security" considerations. Simpson, (2008:94) affirms that some doctors, nurses psychologists, military officers, experts in nuclear politics and "outsourced" contractors like their Argentine and Chilean colleagues during the "dirty war" period of the 1970s and 1908s have been complicit in U.S. War Crimes. This too, seems to be case as pentagon specialists transform drugs into "tactical" weapons. According to Emejuru, (2007:17) and Okonta, (2007:109) by 2000, the Pentagon's JNLWD was pressing for a range of programs to develop new incapacitating agents, rechristened as we have seen, as "nonlethal" weapons. Indeed, Davidson reports that the U.S. Army issued a "solicitation under its' small business, Innovation Research Programme. He opines that program design and testing regimes would lead to the development of an appropriate delivery systems and the consideration of "dual-use" applications of the technology of the military and civilian law enforcement agencies.

Potential military uses, according to the JNLWD solicitation include "meeting US and WATO objectives in peacekeeping missions, crowd control; embassy protection; rescue missions; and counter-terrorism' whereas law enforcement applications cited were "hostage and

barricade situations; crowd control; close proximity encounters, such as domestic disturbances, bar fights and stopped motorists, to halt fleeting felons; and prison riots. In other words, military law enforcement deployments of "calmatives" are envisaged as weapons for social control. Philipson, (2007:81) provides that currently, under development are programs that employ unmanned aerial vehicles (UAV) as a delivery system for calmatives as well as other "non-lethal" weapons. With tens of billions of dollars invested by the pentagon in UAVs since the 1990s, a small, though significant area of interest is the use of UAVs as a "non-lethal" dispersal platform. One 1998 study concluded that a "UAVdispenser system could be used with any UAV with a 40lb or more payload capability". The JNLWD has funded development of an "unmanned platform to "spray liquid payloads" by remote control at the South West Research Institute (SWRI). According to Hamilton (2007:61), Southwest Research Institute Engineers developed a computer controlled unmanned Para foil (VPP) equipped with a payload that dispenses liquid spray while in flight. Developed for the Marine Corps Non-Lethal Directorate, the system is intended to provide non-lethal crowd control options for the US military. The VPP was fitted with a pan-tilt camera to continually locate the impact point of the liquid spray. Using computer-assisted flight modes and the camera image, a remote operator can direct the VPP over a target at low altitude and release the spray.

#### CONCLUSION

The world is fast been heavily characterized by armed conflicts of all kinds. The concomitant consequences of these conflicts are much more serious and humanly unimaginable than ever. The nature and character of these international and non – international armed conflicts often trigger off more jeopardizing circumstances that truncate the socio-economic and human development of the globe. The policy of non – lethal option, viz a viz, the prohibitions of certain conventional weapons in contemporary warfare, appears to be more plausible than the ordinary. However, loss of lives and properties are equally generated from these two enigmas, which pose serious challenges to nation-states of the world. Hence, Emmanuella, (2008:72) and Rossete, (2009:86) opine that:

Unless the United Nations comes out with a more serious measure to regulate the application of certain weapons during armed conflicts, both the non- lethal and conventional weapons will still pose heavy challenge to human existence in terms of any conflict.

Equally, the United Nations should come out with more galvanizing factors that would minimize armed conflicts among member nations. Where it is inevitable to occur, it should be carried out in accordance with the law governing armed conflicts.

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