

CHAPTER TWO

LITERATURE REVIEW

A. Chemical Weapons

Chemical Weapons can be defined as a chemical used to cause intentional death or harm through its toxic properties. Munitions, devices, or any other equipment which specially designed to weaponize toxic chemicals also fall under the definition of chemical weapons.¹⁵ The effect caused by most chemical agents is commonly in the form of suffocation or damage to the respiratory system.¹⁶ The use of chemical weapons is different from conventional weapons because of the effects caused by chemical weapons, not because of their explosive power.

The first use of a large amount of chemical warfare was started from World War I, when all significant hostile attempted in using *chlorine* gas, mustard agents, and *phosgene*, resulting on the death of an approximated thousands of army. In 1988, Iraqi leader Saddam Hussein used mustard gas and other types of nerve agents against the Kurdish rebels and Iranian ground forces, resulting in the death of thousands of people.¹⁷

¹⁵ OPCW, “What is a Chemical Weapons?”, published on <https://www.opcw.org/our-work/what-chemical-weapon> accessed on February 6th, 2019 at 3:36 PM.

¹⁶ *Ibid.*

¹⁷ Mark Heinrich, 2013, “Timeline: Chemical Weapons Attacks” published on <https://www.reuters.com/article/us-syria-crisis-chemical-attacks-timelin/timeline-chemical-weapons-attacks-idUSBRE97L0RI20130822> accessed on February 10th, 2019 at 7:24 PM.

The substances which cause most of chemical-weapons harms and deaths during World War I are as follows¹⁸:

1. Chlorine gas, which produces a greenish-yellow fog that smells of bleach and immediately irritates the eyes, nose, lungs, and throat to anyone who is affected. It could cause death by asphyxiation at high enough doses.
2. Phosgene, which usually smells like moldy grass is also irritative but six times more deadly than chlorine gas. Phosgene is also a much covert weapons due to its colorless form, and at the beginning, the soldiers did not realize that they had received a fatal dose. After several days, victims' lungs would fill with fluid, and they would slowly suffocate in a painful death. Although the Germans were the first in using phosgene on the battlefield, it became the primary chemical weapons of the Germany allies. Phosgene causes 85% of deaths in World War I by chemical weapons.
3. Mustard gas, usually called as King of the Battle Gases due to its effect which also could cause a painful death. However, the effects of Mustard gas are not immediate. It has a particular smell; some say it reeks of garlic, gasoline, or a rubber. A few hours after exposure, a victim's eyes will turn red, started to be watery, and become increasingly painful, some victims suffering temporary blindness. Even worse, the skin of the victim might begin to blister, especially in

¹⁸ Sarah Everts, 2015, "A brief History of Chemical War", published on <https://www.sciencehistory.org/distillations/magazine/a-brief-history-of-chemical-war> accessed on February 10th, 2019 at 5:10 PM.

moist areas, such as the armpits and genitals. Mustard gas could also contaminate land where it is used. Mustard gas caused the highest number of victims by chemical weapons, but it caused few immediate deaths because the open air of the battlefield kept the effect below the deadly impact.

The health impacts upon the exposure of chemical weapons are serious because it causing a horrible damage and immediate death, especially for children. For example, the victims who exposed by nerve agents are likely to struggle from vomiting and diarrhea, followed by asphyxiation and paralysis. For those who are survived from death might suffer from long-term sensory damage. Furthermore, the impact of chemical weapons is more dangerous for civilians who are defending themselves below ground from the attack of conventional weapons, because gas agents can transform basements or bomb shelters into a death trap for the civilians.¹⁹

The chemical weapons used in armed conflict are strictly and explicitly prohibited under international law because it will cause serious harm to the health of civilians. Using chemical weapons are prohibited for all parties involved in warfare in any situations or circumstances, both in international and non-international armed conflict against innocent noncombatants or even combatants involved in the war. Chemical

¹⁹ Krista Hesse, 2017, "Illegal weapons: A global guide", published on <https://www.irinnews.org/analysis/2017/04/03/illegal-weapons-global-guide> accessed on February 10th, 2019 at 7:48 PM.

weapons are also prohibited for being used in retaliation for a previous attack of chemical weapons. These prohibitions were dated back to the late 19th century²⁰ and were most articulated and developed in the 1993 Chemical Weapons Convention (CWC), which is enforced in 1997. CWC prohibits not only the use but also the development, production, stockpiling, and transfer of chemical weapons.

Furthermore, the Convention established the Organisation for the Prohibition of Chemical Weapons (OPCW) for the Convention implementation.²¹ Under the Chemical Weapons Convention, all state parties must:

- a. Destroy all existing chemical weapons and production facilities under international verification;
- b. Monitor the chemical industry to prevent the emergence of new weapons;
- c. Provide assistance and protection to States Parties against chemical threats; and
- d. Enforce a peaceful use of chemistry.

The CWC is recently becoming one of the most successful disarmament treaties specifically concerning chemical weapons considered by its near universal membership with 193 states as a party to the convention at present and its forcible verification mechanisms.

²⁰ Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. Geneva, June 17th, 1925, published on <https://ihl-databases.icrc.org/ihl/INTRO/280?OpenDocument> accessed on February 10th, 2019 at 8:21 PM.

²¹ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction. Paris, January 13th 1993, published on <https://www.opcw.org/chemical-weapons-convention/articles/articlei-general-obligations/> accessed on February 10th, 2019 at 8:28 PM.

B. Armed Conflict

Originally, the law of international armed conflict was applied only to war which occurred between two or more different States.²² However, this theory has been changed since the Geneva Conventions of 1949 differentiate the law of international and non-international armed conflicts then further confirmed by the Additional Protocols I and II to the Geneva Conventions in 1977. The Geneva Conventions of 1949, along with the Hague Conventions contain the rules relating to the conduct of hostilities and the protection of those who do not take part or those who no longer take part in warfare.²³

a. International Armed Conflict

Common Article 2 of the Geneva Convention of 1949 stated that:

*“all cases of declared war or of any armed conflict that may arise between two or more high contracting parties, even if the state of war is not recognized, the convention shall also apply to all cases of partial or total occupation of the territory of a high contracting party even if the said occupation meets with no armed resistance”.*²⁴

This sentence means that the occurrence of international armed conflict is precise that it would be a conflict occurred between the legal armed forces of two different states. The second armed conflict recognized by international humanitarian law is a new phenomenon known as 'an

²² Jeffrey A. Friedman, 2015, “Using Power Laws to Estimate Conflict Size”, United States, *The Journal of Conflict Resolutions*, Vol. 59 No. 7, Sage Publications Inc., p. 1217.

²³ Dapo Akande, 2012, “Classification of Armed Conflicts: Relevant Legal Concepts”, Oxford, *Oxford Legal Studies Research Paper*, No. 50, University of Oxford, p. 4.

²⁴ Article 2 of the Geneva Convention 1949.

internationalized armed conflict'. A situation can be categorized as an internationalized armed conflict when there is a conflict between two different parties fighting within a boundary of a state but supported by other two different states.

b. Non-International Armed Conflict

Non-international armed conflicts, also known as internal armed conflicts, which represent the majority occurrence of armed conflicts in the world.²⁵ The non-international armed conflict occurs within the territory of a State and consists of conflicts between a State and opposing group or between two different opposing groups that do not operate under the authority of the state.²⁶ However, the occurrence of any internal disturbances such as riots, civil conflicts, or other similar acts cannot be categorized as non-international armed conflict.²⁷

Moreover, the treaty rules applicable on the non-international armed conflict is limited, as they are restricted to Common Article 3, provisions of the Additional Protocol II and Article 8(2)(c) and (e) of the ICC Statute. The definition of Non-international armed conflicts is stated in common article 3 of the Geneva Convention “*armed conflicts*

²⁵ Sandesh Sivakumaran, 2011, “Re-envisaging the International Law of Internal Armed Conflicts”, Florence, *The European Journal of International Law*, Vol. 22 No. 1, European University Institute, p. 219.

²⁶ Dieter Fleck (ed), 2008, *The Handbook of International Humanitarian Law*, Oxford, Oxford University Press, p. 605.

²⁷ Michael N. Schmitt, Charles H.B. Garraway and Yoram Dinstein, 2006, *The Manual on the Law of Non International Armed Conflict With Commentary*, Sanremo, International Institute of Humanitarian Law, p. 2.

that are non-international in nature occurring in one of the High contracting parties.”²⁸ This means that the nature of the parties involved are non-governmental. However, common article 3 also states that the non-international armed conflict does not apply for other forms of violence such as riots, isolated and sporadic acts of violence.

From the abstract definition above, it is difficult to make a clear distinction between a disturbing situation and armed conflict. Therefore to classify situations as an armed conflict can be determined from the political will of the state. To be classified as a non-international armed conflict, a situation has to fulfill two elements:

1. The battle has to reach a certain minimum level of intensity and form a collective character; and
2. There are levels of organization of the parties.²⁹

C. International Humanitarian Law

“International Humanitarian Law applicable in armed conflicts.”

It defined international rules established by treaty or custom specifically intended to solve any humanitarian problems that arise directly from the occurrence of international or non-international armed conflicts. Under the humanitarian reasons, these rules aim to limit the right of the parties involved in warfare to choose their methods and means of warfare in order to protect persons and property that are affected by the conflict. The words

²⁸ Article 3 of the Geneva Convention of 1949.

²⁹ Sylvain Vite, 2009, “Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations”, Geneva, *International Review of the Red Cross*, Vol. 91 No. 873, International Committee of the Red Cross, p. 75.

“international humanitarian law applicable in armed conflict” is often abbreviated to International Humanitarian Law or Humanitarian Law.³⁰ Though the military tends to prefer the expressions “Laws of Armed Conflicts” (LOAC) or “Laws of War” these two expressions commonly be understood as a synonymous of International Humanitarian Law.

The conception of International humanitarian law can be traced to the Battle of Solferino, a terrible conflict in 1859 occurred between French and Austrian forces that took place in northern Italy. There was a witness in that slaughter, a businessman from Geneva named Henry Dunant who was surprised by the miserable situation of the victims left on the battlefields. After that, Dunant immediately decided to gather and care the victims with help from the civilians.

Back in Geneva, Dunant published a short book in 1862 entitled *A Memory of Solferino* which described the horror of the battle:

*“When the sun came up on the twenty-fifth June 1859 it disclosed the most dreadful sights imaginable. Bodies of men and horses covered the battlefield: corpses were strewn over roads, ditches, ravines, thickets, and fields...”*³¹

In his book, Dunant tried to oppose the horror of the battle and suggest several possible measures to improve the circumstances of the victims. He

³⁰ Jean Pictet, 1987, *Commentary on the Additional Protocols of June 8th 1977*, Geneva, International Committee of the Red Cross, Martinus Nijhoff Publishers, p. 27.

³¹ Henry Dunant, 1986, *A Memory of Solferino*, Geneva, International Committee of the Red Cross p. 41.

presented three necessary proposals to reduce the suffering of the victims of war as follows:³²

- a. Establish a voluntary society which existed in every state that would prepare themselves to serve as auxiliaries to the military medical services in time of peace.
- b. States which adopt an international treaty guaranteeing legal protection for military hospitals and medical personnel.
- c. The international sign of approval and protection of medical and medical facilities.

At that time, there was a welfare association in Geneva called “The Society for the Public Good,” and Dunant’s book caught the attention of the President of the welfare association, Gustave Moynier. Then he invited the community member to submit Dunant's suggestion, and members of the union accepted it hereinafter created a special committee called as “International Standing Committee for Aid to Wounded Soldiers” which later called as The International Committee of the Red Cross.³³ In 1863, the Committee held a meeting with military and medical experts in Geneva to discuss the possibility of implementing the proposal submitted by Dunant.

The meeting was followed by a diplomatic conference in 1864 which was attended by 16 state representatives adopting the “Geneva

³² Antoine A. Bouvier, 2012, *International Humanitarian Law and the Law of Armed Conflict*, United States of America, Peace Operations Training Institute, p. 14.

³³ *Ibid.* p. 15

Convention of 22nd August 1864 for the Amelioration of the Condition of the Wounded in Armies in the Field” as a result of the conference. It was the first international Treaty concerning armed conflict which opens to universal ratification with binding effects upon states that accept it.³⁴

The rules and principles of International Humanitarian Law are not just moral or philosophical regulations. It is a legal rule. Therefore, there are consequences of these rules, such as an imposed legal freedom and responsibility on parties involved in the conflict. For states that have accepted the International Humanitarian Law agreement bound by the rules. This means that the individual who violates the agreement contained in IHL will be imposed an individual criminal responsibility.

³⁴ *Ibid.*