

CHEMICAL WEAPON USAGE RELATED TO SELF-DEFENSE ARRANGEMENT IN ARTICLE 51 OF THE UNITED NATIONS CHARTER

Rizka Faradilla, Adwani

Faculty of Law, Syiah Kuala University, Indonesia
Jl. Putroe Phang, No. 1, Darussalam, Banda Aceh – 23111
Tel./Fax: +62-651-7552295 e-mail: rizkafaradilla14@gmail.com

ABSTRACT

This paper aims to find out the regulation and the use of chemical weapons as a state's self-defense and to explain why some countries use chemical weapons to defend themselves from attacks by other countries. This study was conducted based on normative legal method. It was found that Article 51 of the United Nations Charter, which regulates self-defense, does not specifically explain the use of permissible weapons in self-defense, so in practice, there are still many countries that use chemical weapons despite their use being forbidden in war (humanitarian law). The United Nations should amend to the contents of the United Nations Charter, especially in Article 51 on Self-defense, in order to add more detailed rules regarding anticipatory actions for self-defense so that no country admits to carrying out armed attacks with the aim of self-defense for their respective interests and harming many parties.

Keywords: The Regulation of Chemical Weapon; Weapon of Mass Destruction; Self-Defense; Article 51 United Nations Charter.

INTRODUCTION

Self-defense or the principle of self-defense is a term in international law that has been in effect for a long time and is part of international practice. The act of self-defense in customary international law first occurred in 1837. At that time, there was a shooting at the ship belonging to the American *Caroline* by the British armed forces, which then set the ship on fire.

Self-defense as a form of exception to the principle of prohibiting the use of violence in international relation is regulated in Article 51 of the United Nations Charter, which recognizes the inherent right, namely the right attached to individuals or collectives to carry out self-defense.¹ In addition, this article provides that there is nothing in the United Nations Charter

¹ Jane Gilliland Dalton, 2005, *The United States National Security Strategy: Yesterday, Today, and Tomorrow*, Naval Justice School, US, page.71

which may prejudice the right of individuals or groups to defend themselves when an armed attack occurs against a member of the United Nations.

The existence of several provisions of international law regarding the exclusion of the use of weapons means that the state is given a chance to use the force of their weapons to carry out armed attacks in terms of self-defense, but the use of weapons in this case must still follow the rules of applicable international humanitarian law. Despite the fact that it has been strictly regulated in various international legal instruments, many countries continue to use sophisticated weapons that do not comply with the rules set by international humanitarian law, including weapons of mass destruction.²

The types of weapons that are being developed include nuclear weapons, biological weapons, and chemical weapons. These various types of weapons have become known as Weapons of Mass Destruction (WMD). The use of weapons of mass destruction in armed conflict is basically a form of grave breach of the laws and customs of war, which can be categorized as war crimes. Arrangements for these various forms of violations are provided by the 1949 Geneva Conventions, the 1977 Additional Protocol, the ICTY Statute, and the 1998 Rome Statute.

Currently, there is no provision stating that it is permissible to use weapons of mass destruction in times of war or conflict. From several pre-existing arrangements, such as the Hague Convention 1899, to be precise, Convention IV, which regulates the laws and customs of war on land. It can be clearly seen that the regulation on the use of weapons during the course of war is contained in Articles 22 and 23 of the Hague Convention.

The use of weapons of mass destruction in armed conflict is basically a form of a grave breach of the laws and customs of war, which can be categorized as war crimes. Arrangements for these various forms of violations can be seen in the arrangements of the 1949 Geneva Conventions, the 1977 Additional Protocol, the ICTY Statute, and the 1998 Rome Statute.

Based on the description above regarding the use of weapons of mass destruction, in this case, especially chemical weapons, which is one of the technological advances currently being developed so rapidly has its own impact on strategy on the battlefield. By finding ultimate weapons such as nuclear, chemical, and biological, the state has the power to pose a threat to

² MY. Aiyub Kadir (2011), The United Nations General Assembly Resolution (UNGAR) as a Source of International Law: Toward a Reformulation of Sources of International Law, *Indonesian Journal of International Law*, Vo. 8.

other countries without having to carry out a fiercer battle and resulting in greater losses. In the end, these weapons can be used as a means of self-defense for the country.

Based on the background above, the author raises 2 main issues that will be discussed in this paper, namely:

1. How does international law regulate the use of chemical weapons, which are a weapon of mass destruction, as a means of self-defense for a country?
2. Why do countries use chemical weapons, which are one type of weapons of mass destruction, to defend themselves from attacks by other countries?

RESEARCH METHODOLOGY

1. Type of Research

This research is a normative research which is also a library research. The data or materials that will be studied in this research are also called primary, secondary, and tertiary legal materials/data. The method used when collecting data in this study was carried out in two ways. In the process of data collection, the data is carried out through library research. This research is carried out by collecting, reading, studying, and analyzing conventions, laws and regulations, textbooks, scientific journals, newspapers, as well as scientific writings and literature, as well as data and articles obtained from the internet related to the issues discussed, then processed using a descriptive-analytical method by studying related international legal instruments and analyzing them qualitatively. The data and information collected in this study were then explained and compiled in written form.

2. Source of Data

- a. Primary or binding legal materials that directly regulate the special and differential treatment of developing countries, international agreements, international customs, general international law principles, and jurisprudence.
- b. Secondary legal materials or legal materials that explain primary legal materials, such as books, journals, articles, and domestic/foreign electronic media data.
- c. Tertiary legal materials are the materials that provide explanations or additional information on primary legal materials and secondary legal materials, such as a dictionary of legal terms, Black's Law Dictionary, Indonesian Language Dictionary, and Encyclopedia.

3. Data Analysis

The data obtained from library research was then processed using descriptive analytical methods by studying related international legal instruments and analyzing them qualitatively. The problems based on data and information that have been collected are then explained and compiled in written form to get a picture that is following the problems in this research.

Result and Discussion

A. Regulation of the Use of Chemical Weapons in Armed Conflict

1. The 1925 Geneva Protocol

Signed in 1925, the Geneva Protocols previously stated the prohibitions contained in the Versailles and Washington pacts.³ With the adoption of this protocol, which prohibits the use of respiratory gases, toxic gases, and other gases, this protocol becomes the Protocol to the General Prohibition of the Use of Chemical Weapons. The shortcoming of this protocol is that it does not deal with the issue of the production, storage, and delivery of these dangerous chemical weapons.

The use of weapons of mass destruction, especially chemical weapons, is a serious violation and includes war crimes and crimes against human rights. Regulation of the use and development of chemical weapons itself has been regulated in the chemical weapons convention of 1993, which in this convention states that the use of chemical weapons, in any case, is prohibited.

Based on several arrangements regarding the use of chemical weapons contained in this Geneva protocol, it can be said that chemical weapons are weapons that are strongly condemned and prohibited from being used in armed conflicts. Although its development and use are prohibited, in practice, it can still be found that some countries still use this weapon even though it has been banned for various reasons. Therefore, the regulation regarding the use of chemical weapons is very important to be implemented in international humanitarian law and applies to the entire international community without any exceptions, so that conflicts that occur do not rule out the existence of humanitarian values and can create peace between disputing countries.

2. Chemical Weapons Convention

In particular, the regulation of chemical weapons is contained in the Chemical Weapons Convention (CWC). This chemical weapons convention was created as a refinement of the

³Jerry D. Gray. *Deadly Mist: Upaya Amerika Merusak Kesehatan Manusia*. Jakarta : Sinergi 2009. page. 27

Geneva Protocol (Geneva Protocol). In this convention, every country that is a party to it prohibits the use of chemical weapons, shipping activities and the production of chemical weapons that are dangerous and very detrimental to the international community and do not provide a sense of security and welfare for the international community.⁴

This convention also established an independent international body known as the Organization for the Prohibition of Chemical Weapons (OPWC), with the mission of implementing and supervising the convention. When the Chemical Weapons Convention comes into force, each treaty party must report to the OPCW all chemical weapons, production facilities, and all their facilities capable of producing chemical weapons; then the parties to the treaty must destroy all these objects without exception.

The use of chemical weapons clearly has a terrifying consequences and must be prohibited. Its killing power can reach a wide area and has the potential to be used to damage regions or countries that have nothing to do with the ongoing conflict. There are four reasons why chemical weapons are intentionally created for war purposes, namely: (1) lethal, (2) injurious, (3) incapacitation, and (4) indirect effect. These four reasons are the reasons why chemical weapons are still used by some countries even though there are regulations that prohibit their use.

As for the various efforts to ban chemical weapons in the global arena, they have finally achieved results. At the initiative of UN member states, they negotiated a network at the UN Arms Conference in order to reach an agreement to prohibit the use, production and stockpiling of chemical weapons. Through this, it can be seen that the response of countries to the regulation of the prohibition of chemical weapons has received a positive response, as indicated by the presence of a lot of support from member countries who actively participate in campaigning for the prohibition of the use of chemical weapons in armed conflict.

B. Overview of the Use of Chemical Weapons in connection with Self-Defense

Chemical weapons are one of the weapons that is prohibited in International Humanitarian Law that cause unnecessary suffering.⁵ Chemical weapons are weapons that utilize

⁴Kevin J. Fitzgerald —The Chemical Weapons Convention: Inadequate Protection From Chemical Warfare dalam: *Suffolk Transnat'l L. Rev.*, 20, page. 436.

⁵ Rina Rusman. 2012, *Hukum Humaniter dalam Studi Hubungan Internasional*. Journal of International Relations, page.41.

the toxic nature of chemical compounds to kill, injure and paralyze the enemy. Around the beginning of 2009, there was a bombing of the Gaza Strip by the Israelis. As a result of these attacks, victims ranged from children, women, men, civilians, and military members. Israel's actions against Palestine have also admitted to using chemical weapons, namely the white phosphorus bomb (White Phosphorus). This white phosphorus bomb is one of the chemical weapons whose use is prohibited under international humanitarian law.

Technological advances that are currently developing so rapidly have their own impact on strategy on the battlefield. The development of this technology also has an impact on the tools used for war, which are becoming increasingly modern and of course, more dangerous and deadly, one of which is called weapons of mass destruction. With the inventions of various tools that are so terrible, it is not surprising that technological developments in weapons of war are often considered the dark side of science and technology that can bring destruction to the world.

However, a number of innovators, such as Alfred Nobel and Robert Boyle chose to see the positive side of this technological development as a weapon of war.⁶ This positive thought is based on the belief that these weapons can eliminate war, or withstand its excessive impact. By discovering ultimate weapons such as nuclear, chemical, and biological states have the power to pose a threat to other countries without having to carry out more intense battles and result in greater losses.

Therefore, an understanding of war strategy is now seen as crucial as a form of anticipation and understanding of the steps that must be taken by the state in dealing with threat situations related to the use of weapons of mass destruction such as nuclear and other weapons of mass destruction. Technological developments that are so extensive create increasingly sophisticated weapon systems, where conventional wars that are slow and protracted can be defeated by war using weapons of mass destruction that are instant and unlimited. War is no longer a matter of achieving absolute victory on the battlefield but rather a matter of how a country can survive through a strategy of deterrence or an antidote to war.

Based on the description above, it can be concluded that technological developments and the era of nuclear weapons of mass destruction have brought several changes in the study of strategy. The deadlock situation faced in the nuclear strategy also indicates that the possession of

⁶ Adam Robert and Richard Guelff. 1982. *Documents on the Laws of War*. Claredon Press. Oxford, New York, page.34.

weapons of mass destruction ultimately results in a dilemma because the use of these weapons alone cannot be carried out without consideration which leads to the view that their possession is useless because they are used as mere "threat" weapons.

In accordance with the concept of deterrence, weapons of mass destruction are only used as a deterrent rather than conventional weapons for two reasons. Ethical reasons why state leaders do not want to be called the destroyers of mankind and pragmatic reasons, namely the impact of using these weapons will be felt by all people.

Chemical weapons are weapons whose effects come from the chemicals contained in these weapons. Chemicals used for weapons are usually toxic chemicals and the like whose purpose is to massively destroy, render the opponent defenseless and can be used as a psychological attack on the enemy.⁷ Chemical weapons technology is relatively cheap when compared to nuclear weapons manufacturing technology; therefore, for developing countries, chemical weapons are considered as deterrent weapons. The use of chemical weapons is hazardous because the effects can quickly kill humans en masse, require special skills in their detection, and special protective clothing and equipment are needed to rescue victims.

As for the effects and impacts caused by chemical weapons, it can be said that this is why countries use chemical weapons in war as a tool against the opposing side. In addition to efficiently immobilizing the enemy, this weapon is also considered more efficient in terms of price and easier to use.

Apart from the cases described previously, the use of chemical weapons has been used since World War I by Germany and also by several other countries in war. Here is a list of countries that use chemical weapons in war.

No.	State	Type of Weapon	War
1.	German	Phosgene, Mustard Gas, Chlorine Gas, Sarin Gas, Tabun and the Napalm Bomb	World War I and II
2.	Yemen	Phosgene, Mustard gas, Boris, and Cyanogen Bromide	Yemeni Civil War

⁷ Anggraini, Pengaturan Hukum Penggunaan Senjata Kimia Dalam Konflik Bersenjata Menurut Hukum Humaniter Internasional, *Lex Crimen* Vol. X/No. 2/Mar/EK/2021.

3.	Iraqi	Tabun, Sarin, Cyclosarin, Mustard Gas and Lumina	Gulf War and Iran-Iraq War
4.	Syrian	Sarin Gas, Mustard Gas and Chlorine	The Syrian Civil War and Syrian Invasion to Ghouta
5.	United States	Herbicide	Vietnam War

Source: <https://www.inews.id/news>.

Although there have been regulations regarding the prohibition of chemical weapons in armed conflicts, in reality, there are still countries that use these weapons under the pretext of self-defense, even though in self-defense, they are not allowed to use prohibited weapons. Chemical weapons are prohibited from being used in war because of the impact that can be caused because they are deemed inhuman. A person not directly exposed to it can become a victim and even cause death.⁸

The use of chemical weapons in warfare is an international war crime. In regulating and imposing sanctions on countries that violate the rules regarding the use of chemical weapons, the international court has four forums that have jurisdiction to try international war crimes, namely the Nurnberg International Court of Justice, ICTR, ICTY, and the ICC.

In particular, the regulation of chemical weapons is contained in the Chemical Weapons Convention (CWC). Please note that the CWC is not a convention that regulates the use of chemical weapons in times of armed conflict, but rather a regulation regarding chemical weapons in general, which means in times of peace or in armed conflict. This can be seen more clearly in its regulation which prohibits a country from developing, producing, obtaining, providing or maintaining chemical weapons or transferring them to anyone, either directly or indirectly. With the birth of the CWC, those relating to the use of chemical weapons are under the authority of the Organization on the Prohibition of Chemical Weapons (OPCW).

Article 51 Self Defense must be interpreted that the use of armed force is limited and must genuinely meet the principles of interest and proportionality because these two principles are closely related to the purpose of Self Defense because wrong Self Defense actions can lead to or even spark a continuous war. In fact, the right to self-defense must go through a mechanism

⁸ Kevin J. Fitzgerald —The Chemical Weapons Convention: Inadequate Protection From Chemical Warfare: *Suffolk Transnat'l L. Rev.*, 20, page. 436.

that takes place within the UN Security Council, which will later issue a recommendation on whether self-defense is necessary.

CONCLUSION

Legal arrangements concerning the prohibition of the use of chemical weapons are contained in the Declaration of St. Petersburg 1868, Brussel Declaration 1874, The Hague Declaration 1899, The Hague Convention IV 1907, Geneva Protocol 1925, Paris Declaration 1989 then the final stage of regulating the use of chemical weapons is more specific in the Chemical Weapons Convention 1993 or Conventions on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction. Although there have been strict prohibitions that the international community has made, and there are a number of countries that have ratified these protocols and conventions on chemical weapons, around the beginning of 2009 there was a bombing of the Gaza Strip by Israel.

Israel has admitted to using chemical weapons type White Phosphorus. In addition to the conflict between Israel and Palestine, there is also a conflict between Iraq and Iran which in the conflict used mustard gas chemical weapons, where this type of chemical weapon is also prohibited in International Humanitarian Law. Article 51 of the United Nations Charter regulates that self-defense is an exception to the use of weapons from article 2 paragraph 4. The United Nations allows a country to act in the context of self-defense individually or collectively is said to be valid only if an armed attack occurs, and the state is obliged to report the use of its force when claims to act as self-defense to the UN Security Council.

The use of chemical weapons in armed conflict by a state is considered to be able to provide effective benefits to that state. Chemical weapons are weapons that are considered relatively cheap when compared to conventional weapons technology and nuclear weapons, even though the use of these weapons can be used by developing countries. The impact of the use of this weapon is basically hazardous and is prohibited internationally, but the effect of this weapon is that it can kill humans, quickly, and is also very difficult to detect, and special equipment is needed to save victims who are exposed to chemicals and make weapons. This is an option to use for self-defense from the opposing party.

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