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DATE- 07-04-2020

CHEMICAL WEAPONS CONVENTION 1993

“The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction belongs to the category of instruments of international law that prohibit weapons deemed particularly abhorrent. As soon as the First World War was over, chemical and bacteriological methods of warfare were condemned by public opinion, and in the 1925 Geneva Protocol they were prohibited. The adoption of the Convention thus reinforces a basic principle of law relating to the conduct of hostilities whereby the right of the parties to an armed conflict to choose methods or means of warfare is not unlimited. The Convention, which was negotiated in the framework of the Conference on Disarmament, was opened for signature in Paris on 13 January 1993 and entered into force on 29 April 1997. The vast majority of States are now bound by it.”

Objectives of the Convention

On one hand, the aim of the Convention is to exclude the possibility of the use of chemical weapons. Like the 1972 Biological Weapons Convention, it in many ways strengthens the 1925 Geneva Protocol to prohibit the use of warlike, poisonous or other gases and bacterial methods of warfare. Accordingly, apart from not tolerating any reservation (Art. XXII), the Convention extends the prohibition on using chemical weapons for their development, production, stockpiling, retention and transfer, in addition to requiring that they and the facilities where they are produced be destroyed.

On the other hand, since it is based on the idea that achievements in the field of chemistry should be used exclusively for the benefit of mankind, the Convention promotes the development of the chemical industry for purposes not prohibited under its terms and Supervises. It also provides a system of assistance and protection on behalf of states against which chemical warfare has been used or threatened.

Article I of the 1993 Chemical Weapons Convention provides:

1. “Each State Party to this Convention undertakes never under any circumstances:
 - (a) To develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone;
 - (b) To use chemical weapons;
 - (c) To engage in any military preparations to use chemical weapons;
 - (d) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention;
2. Each State Party undertakes to destroy chemical weapons it owns or possesses, or that are located in any place under its jurisdiction or control ...
3. Each State Party undertakes to destroy all chemical weapons it abandoned on the territory of another State Party ...
4. Each State Party undertakes to destroy any chemical weapons production facilities it owns or possesses, or that are located in any place under its jurisdiction or control.”

Rule 74. Chemical Weapons

The use of chemical weapons is prohibited in a series of treaties in international armed conflicts, including the Hague Declaration as well as the Infusing Gases, the Geneva Gas Protocol, the Chemical Weapons Convention and the International Criminal Court. Currently, only 13 states are not party to the Geneva Gas Protocol or the Chemical Weapons Convention. Of these, at least three have made statements to the effect that the use of chemical weapons is unlawful, or they have indicated that they do not own or use them or that they are committed to their elimination. The prohibition is also contained in a number of other instruments.

Many military manuals prohibit the use of chemical weapons. This prohibition is also enshrined in the law of many states. There are several statements and other practices by states in all parts of the world under which the use of chemical weapons is prohibited under customary international law. Most of use since the 1930s either are unsubstantiated or have

been denied; the few confirmed cases have been widely denounced by other States. There has also been national case law to the effect that the use of chemical weapons is prohibited under customary international law.

There is increasing evidence that it may now be illegal to retaliate the use of chemical weapons by another state. The Geneva Gas Protocol still has 21 reservations stating that if the adverse party (and in some cases the party's ally) does not respect the protocol, the ratifying state will no longer consider itself bound by it.

“However, 16 of these States are party to the Chemical Weapons Convention, which prohibits all use and to which no reservations are allowed. This leaves only five States (Angola, Iraq, Israel, Democratic People’s Republic of Korea and Libyan Arab Jamahiriya) which, under treaty law, could avail themselves of their reserved right to retaliate in kind to the first use of chemical weapons. Of these, three (Israel, Democratic People’s Republic of Korea and Libyan Arab Jamahiriya) have asserted that they will never use chemical weapons or are strongly committed to their elimination," It is important that "employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices "is listed in the International Criminal Court statute as a war crime over which the court has jurisdiction, and This is a crime not limited to the first use of such weapons.

The US Naval Handbook implies that for non-parties to the Chemical Weapons Convention, retaliation is lawful, but should be used once it stops, indicating that retaliation has ended. However, in January 1991, both the United States and the United Kingdom stated that they expected Iraq to comply with its obligations under the Geneva Gas Protocol and not to use chemical weapons, even though Iraq had "no first Not used "reservation. The Islamic Republic of Iran stated in 1987 that it had never retaliated against Iraq’s use of chemical weapons, although its position at the time was that the Geneva Gas Protocol had previously restricted use.

In several resolutions between 1986 and 1988, the UN Security Council condemned the use of chemical weapons in the Iran-Iraq War, without any regard to whether the use was a first use or in retaliation.

Non-international armed conflicts

The prohibition of the use of chemical weapons contained in the Chemical Weapons Convention applies in all circumstances, including in non-international armed conflicts. In addition, the prohibition is contained in several other instruments pertaining also to non-international armed conflicts.

Several military manuals which apply or have been applied in non-international armed conflicts restate the prohibition on using chemical weapons. This prohibition is also contained in the legislation of numerous States. Colombia's Constitutional Court has held that the prohibition of the use of chemical weapons in non-international armed conflicts is part of customary international law.

Allegations of use of chemical weapons by the Russian Federation in Chechnya, Sudan against armed opposition groups and Turkey in south-eastern Turkey were denied by the governments concerned. Furthermore, as the International Criminal Tribunal for the former Yugoslavia recalled in the Tadić case in 1995, the international community condemned Iraq's use of chemical weapons against the Kurds. The United Kingdom, for example, stated that this use was a violation of the Geneva Gas Protocol and international humanitarian law.

In the Tadić case referred to above, the International Criminal Tribunal for the former Yugoslavia held that "there undisputedly emerged a general consensus in the international community on the principle that the use of [chemical] weapons is also prohibited in internal armed conflicts".

In a Memorandum on Respect for International Humanitarian Law in Angola in 1994, the ICRC reminded the parties to the conflict that the use of chemical weapons was prohibited, although Angola had not ratified the Chemical Weapons Convention. Practice is in conformity with the rule's applicability in both international and non-international armed conflicts, as States generally do not have a different set of military weapons for international and non-international armed conflicts.

No official contrary practice was found. No State has claimed that chemical weapons may lawfully be used in either international or non-international armed conflicts. On the contrary, there are numerous statements to the effect that chemical weapons must never be used and must be eliminated.

In India

Arms Act (1959) states:

2. Definition and interpretation.

(1) In this Act, unless the context otherwise requires,

(h) “prohibited ammunition” means any ammunition containing or designed or adapted to contain, any noxious liquid, gas or other such thing, and includes rockets, bombs, grenades, shells, missiles, articles designed for torpedo service and submarine mining and such other articles as the Central Government may, by notification in the Official Gazette, specify to be prohibited ammunition;

(i) “prohibited arms” means -

(ii) weapons of any description designed or adapted for the discharge of any noxious liquid, gas or other such thing.

...

7. Prohibition of acquisition or possession, or of manufacture or sale, of prohibited arms or prohibited ammunition.-No person shall-

(a) acquire, have in his possession or carry; or

(b) use, manufacture, sell, transfer, convert, repair, test or prove; or

(c) expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof;

any prohibited arms or prohibited ammunition unless he has been specially authorised by the Central Government in this behalf.

27. Punishment for using arms, etc.

- (2) Whoever uses any prohibited arms or prohibited ammunition in contravention of section 7 shall be punishable with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and shall also be liable to fine.
- (3) Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of section 7 and such use or act results in the death of any other person, shall be punishable with death.

45. Act not to apply in certain cases -Nothing in this Act shall apply to-

- (a) arms or ammunition on board any sea-going vessel or any aircraft and forming part of the ordinary armament or equipment of such vessel or aircraft;
- (b) the acquisition, possession or carrying, the manufacture, repair, conversion, test or proof, the sale or transfer or the import, export or transport of arms or ammunition
- (i) by or under orders of the Central Government, or
- (ii) by a public servant in the course of his duty as such public servant, or
- (iii) by a member of the National Cadet Corps raised and maintained under the

National Cadet Corps Act, 1948 (31 of 1948), or by any officer or enrolled person of the Territorial Army Act, 1948 (56 of 1948), or by any member of any other forces raised and maintained or that may hereafter be raised and maintained under any Central Act, or by any member of such other forces as the Central Government may, by notification in the Official Gazette, specify, in the course of his duty as such member, officer or enrolled person.

Chemical Weapons Convention Act (2000) provides:

(1) No person shall

(a) develop, produce, otherwise acquire, stockpile, retain or use Chemical Weapons, or transfer, directly or indirectly, any Chemical Weapons to any person;

(c) engage in any military preparations to use Chemical Weapons;

(d) assist, encourage or induce, in any manner, any person to engage in

(i) the use of any riot control agent as a method of warfare

(ii) any other activity prohibited to a State Party under the Convention.

It also prohibits the production, acquisition, retaining or use of toxic chemicals or precursors listed in Schedule 1 of the Annex on Chemicals to the Convention.

The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act (2005) states:

4. Definitions. – In this Act, unless the context otherwise requires, –

(c) “chemical weapons” means, –

(i) the toxic chemicals and their precursors, except where intended for –

(a) industrial, agricultural, research, medical, pharmaceutical or other peaceful purposes;

(b) protective purposes, namely those purposes directly related to protection against toxic chemicals and to protection against chemical weapons;

(c) military purposes not connected with the use of chemical weapons and not dependent on the use of the toxic properties of chemicals as a method of warfare; or

(d) law enforcement including domestic riot control purposes;

as long as the types and quantities are consistent with such purposes;

(ii) the munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in sub-clause (i), which would be released as a result of the employment of such munitions and devices; and

(iii) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in sub-clause (ii).

8. Prohibition relating to weapons of mass destruction

(3) No person shall unlawfully manufacture, acquire, possess, develop or transport a biological or chemical weapon or their means of delivery.

(4) No person shall unlawfully transfer, directly or indirectly, to any one biological or chemical weapons.

11. Prohibition on export. – No person shall export any material, equipment or technology knowing that such material, equipment or technology is intended to be used in the design or manufacture of a biological weapon, chemical weapon, nuclear weapon or other nuclear explosive device, or in their missile delivery systems.

India-Pakistan Declaration on Prohibition of Chemical Weapons

The 1992 India-Pakistan Declaration on Prohibition of Chemical Weapons provides that the governments of India and Pakistan undertake never under any circumstances:

- a) to develop, produce or otherwise acquire chemical weapons;
- b) to use chemical weapons;
- c) to assist, encourage or induce, in any way, anyone to engage in development, production, acquisition, stockpiling or use of chemical weapons.

References

1. www.icrc.org
2. www.icrc.org/databaseihl
3. Hague Declaration concerning Asphyxiating Gases(cited in Vol. II, Ch. 24) Geneva Gas Protocol.
4. India- Pakistan declaration on Prohibition of chemical Weapons.