

# State Responsibility for the Use of Chemical Weapons during War From Environmental Law and Humanitarian Law (Case Study on the Use of Chemical Weapons in the Nagorno-Karabakh War in 2020)

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**Abstract.** The historical evolution of chemical warfare traces back to ancient times when swords and bows were the primary tools of conflict. In the 21st century, the Nagorno-Karabakh war between Azerbaijan and Armenia marked a contemporary instance of chemical weapons use in warfare. This study explores the diverse nature of chemical weapons' utilization and emphasizes their detrimental impact on both human populations and the environment. The regulatory framework governing the use of chemical weapons is rooted in international agreements such as the 1907 Hague Convention and the 1976 Geneva Convention. The responsibility for the consequences of war, encompassing both humanitarian and environmental ramifications, is typically assigned to the defeated party, providing a mechanism for waiving such accountability. Utilizing a normative legal research approach with a sculptural perspective, this study delves into humanitarian law and international environmental law. The findings reveal indications of violations during the 2020 Nagorno-Karabakh War concerning international agreements within these legal frameworks. These breaches resulted in significant damage to the Nagorno-Karabakh region, necessitating both sides to confront the repercussions of their actions as part of their shared responsibility. The study underscores the importance of upholding international norms to mitigate the impact of armed conflicts on both human well-being and the environment.

**Keywords:** Chemical Weapons, Humanitarian Law, International Environmental Law, State Responsibility.

## 1 Introduction

Since the beginning of human civilization, the world's nations, as part of the international community, have formed separate units under certain conditions and situations. These separate units build their strengths to demonstrate hegemony over their forces. This display of power sometimes leads to conflict and can further lead to war between nations or countries. This continued even into today's modern century when technological advances have occurred worldwide. These technological advances have become a means for power to compete between nations and countries.

Talking about war/armed conflict, there are two crucial matters regulated by the humanitarian law regime: the means and methods as contained in the 1899 and 1907 Hague Conventions. Violations of these two matters and/or wrong only in an armed conflict will result in the birth

of the concept of individual responsibility and command. In a conflict, it is possible for a country not only to use bullets and explosives but weapons of mass destruction containing chemical substances.

This research focuses on the armed conflict in the case study of the Azerbaijan and Armenia Wars, which attracted international attention because it was claimed that both sides used chemical weapons in this conflict which had an impact on environmental damage and resulted in casualties.

## **2 Method**

This study uses normative-juridical research with a statute approach carried out by examining all international laws and regulations in reviewing the articles in conventions and international legal instruments related to the use of chemical weapons in the conflict in the Nagorno-Karabakh War.

## **3 Research and Discussion**

### **3.1 Legal Examination of White Phosphorus Deployment in the Nagorno-Karabakh Conflict: A Juridical Analysis under International Law**

This study investigates accusations against Azerbaijan for the alleged use of white phosphorus, containing hazardous chemicals, during the 2020 Nagorno-Karabakh war. The deployment of mini bombs with white phosphorus raises concerns due to potential bodily harm and environmental devastation. The international prohibition on the use of chemical weapons stems from their severe and lasting effects, including permanent disability, cancer, and extensive environmental damage.

International legal conventions, such as the Geneva Gas Protocol of 1925, explicitly address the prohibition of using asphyxiating, poisonous gases, and analogous materials in warfare. The protocol condemns such actions based on the consensus of the civilized world, emphasizing the necessity for universal acceptance as part of binding International Law. The study delves into the legal intricacies surrounding the use of white phosphorus bombs, shedding light on their severe consequences and the international legal framework aimed at preventing their deployment in armed conflicts.

The concerned states, not yet parties to the existing agreement prohibiting such usage, hereby affirm their acceptance of this prohibition. They mutually consent to expand this prohibition to encompass cultural methods of warfare and pledge to be mutually bound by the terms outlined in this declaration.

The introductory section of the 1972 Convention on the Prohibition of the Development, Production, and Stockpiling of Bacteriological (Biological) and Toxin Weapons and Destruction expresses a shared conviction among the participating states. This conviction underscores the critical importance and pressing necessity of eliminating from the state arsenal perilous weapons of mass destruction employing chemical or bacteriological (biological) agents. Acknowledging that a consensus on prohibiting bacteriological (biological) weapons and poisons could serve as an initial step toward establishing a comprehensive agreement encompassing effective measures to prevent the development, production, and stockpiling of

chemical weapons, the participating states declare their dedication to ongoing negotiations aimed at attaining this overarching objective.

Article 1, paragraph (1) of Protocol III of the 1980 Conventional Weapons states that:

*“Incendiary weapon” is defined as any munition or weapon primarily created to ignite objects or inflict burn injuries on individuals by generating flame, heat, or a combination of both. This effect is achieved through a chemical reaction of a substance delivered onto the designated target.*

Letter a then clarifies what is meant by incendiary weapons are;

“Incendiary weapons can take the form of, for example, flame throwers, fougasses, shells, rockets, grenades, mines, bombs and other containers of incendiary substances”

### **3.2 National Accountability in the Deployment of White Phosphorus during the Nagorno-Karabakh Conflict**

Article 22 of the 1907 Den Haag Convention states that "The rights of the less fortunate to adopt means of injuring the enemy is not unlimited" (the use of tools and methods of warfare by the disputing parties in an armed conflict is not unlimited), in other words, limited. This limitation is intended to reduce unnecessary suffering from using force in an armed conflict. The 1907 Den Haag Convention in Article 27, paragraphs 1, 2, and 4 also mandates that the disputing parties are prohibited from using poison/deadly weapons, killing/wounding heinously, and The prohibition on the use of white phosphorus is implicitly indicated in Article 8, paragraph (2)b of the Rome Statute, specifically in points xvii and xviii. Point xvii explicitly addresses the prohibition of using poison or poisoned weapons, while point xviii further clarifies the prohibition by encompassing suffocating, poisonous gases, and similar substances. Point xx reaffirms this prohibition, emphasizing the illegality of using weapons, projectiles, materials, and methods of warfare that can cause substantial losses, unnecessary suffering, or are essentially indiscriminate.

The responsibility of Azerbaijan or Armenia in this matter can be attributed to the respective countries, as articulated in Article 3 of the 1907 Hague Convention. This provision stipulates that a belligerent violating the provisions of the Hague Regulations must, when necessary, provide reparations. The belligerent is obligated to take responsibility for all actions conducted by its armed forces during the armed conflict. This legal framework underscores the accountability of the involved states for any breaches of international law committed by their military personnel.

The international mechanism that can be used to meet the responsibilities of the countries involved is through international courts, ad hoc international courts and permanent international courts. An ad hoc court is a temporary court formed to deal with specific cases within a specific period. Several ad hoc courts have been formed, such as; International Criminal Tribunal for the Former Yugoslavia (ICTY) and International Criminal Tribunal for Rwanda (ICTR). In addition, a permanent international court, namely the International Criminal Court (ICC), has been established.

This conflict can be reached with the International Criminal Court or ICC. ICC. The ICC can be done if a country (ICC participating country/country that recognizes the ICC's jurisdiction)

submits its case to the ICC for judgment. The ICC will conduct trials against individual legal subjects (not states), both civil and military.

#### **4 Conclusion**

The analysis of the 2020 Nagorno-Karabakh conflict indicates a breach of international agreements governing the use of chemical weapons in warfare. Armenia's accusation against Azerbaijan for employing white phosphorus bombs during the conflict constitutes a violation of key provisions in international humanitarian law. This includes the principles outlined in the preamble of the 1925 Geneva Gas Protocol, the 1972 Biological Weapons Convention, which fundamentally proscribes the use of biological and toxic weapons like white phosphorus in armed conflicts.

Furthermore, the prohibition against the use of weapons akin to white phosphorus is reiterated in several international agreements, including the 1993 Chemical Weapons Convention, the 1907 Hague Convention, and the 1980 Conventional Weapons Convention. The breach of these conventions during the Nagorno-Karabakh conflict underscores the significance of upholding international norms and regulations related to the use of chemical weapons in order to prevent humanitarian and environmental harm during armed conflicts.

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