

UN/ICRC, The Use of Chemical Weapons

A. Security Council Resolution 620 (1988)

[Source: UN Doc. S/RES/620 (August 26, 1988), available online :
[http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/620\(1988\)](http://www.un.org/en/ga/search/view_doc.asp?symbol=S/RES/620(1988)) ^[1]

N.B. As per the disclaimer ^[2], neither the ICRC nor the authors can be identified with the opinions expressed in the Cases and Documents. Some cases even come to solutions that clearly violate IHL. They are nevertheless worthy of discussion, if only to raise a challenge to display more humanity in armed conflicts. **Similarly, in some of the texts used in the case studies, the facts may not always be proven;** nevertheless, they have been selected because they highlight interesting IHL issues and are thus published for didactic purposes.

The Security Council

Recalling its resolution 612 (1988),

Having considered the reports of July 20 and 25 and August 19, 1988 (S/20060 and Add.1, S/20063 and Add.1, S/20134) of the missions dispatched by the Secretary-General to investigate allegations of the use of chemical weapons in the conflict between the Islamic Republic of Iran and Iraq,

Deeply dismayed by the missions' conclusions that there had been continued use of chemical weapons in the conflict between Iran and Iraq and that such use against Iranians had become more intense and frequent,

Profoundly concerned by the danger of possible use of chemical weapons in the future,

Bearing in mind the current negotiations in the Conference on Disarmament on the complete and effective prohibition of the development, production and stockpiling of chemical weapons and on their destruction,

Determined to intensify its efforts to end all use of chemical weapons in violation of international obligations now and in the future,

1. *Condemns resolutely* the use of chemical weapons in the conflict between Iran and Iraq, in violation of obligations under the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed at Geneva on June 17, 1925, and in defiance of its resolution 612 (1988);

2. *Encourages* the Secretary-General to carry out promptly investigations, in response to allegations brought to his attention by any Member State concerning the possible use of chemical and bacteriological (biological) or toxin weapons that may constitute a violation of the 1925 Geneva Protocol or other relevant rules of customary international law, in order to ascertain the facts of the matter, and to report the results;

3. *Calls upon* all States to continue to apply, to establish or to strengthen strict control of the export of chemical products serving for the production of chemical weapons, in particular to parties to a conflict, when it is established or when there is substantial reason to believe that they have used chemical weapons in violation of international obligations;

4. *Decides* to consider immediately, taking into account the investigations of the Secretary-General, appropriate and effective measures in accordance with the Charter of the United Nations, should there be any future use of chemical weapons in violation of international law, wherever and by whomever committed.

B. ICRC Press Release of March 23, 1988

[Source: *ICRC Press Release*, No. 1567, March 23, 1988]

IRAN-IRAK CONFLICT:

THE ICRC CONDEMNS THE USE OF CHEMICAL WEAPONS

Geneva (ICRC) – In a new and tragic escalation of the Iran-Iraq conflict chemical weapons have been used, killing a great number of civilians in the province of Sulaymaniyah.

The use of chemical weapons, whether against military personnel or civilians, is absolutely forbidden by international law and is to be condemned at all times.

The ICRC has therefore once again taken urgent steps to bring to an immediate end the use of chemical weapons. It has also informed the Islamic Republic of Iran of its readiness to provide emergency assistance for the victims.

Discussion

1. a. Is the absolute prohibition by international law of the use of chemical weapons

mentioned above derived from customary international law or purely through conventional law? (The 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases and of Bacteriological Methods of Warfare, [See The Geneva Chemical Weapons Protocol ^[3]], was accepted by Iraq and many other States on condition that they will cease to be bound by it towards any Power not respecting the Protocol.)

b. Does the IHL of international armed conflicts specifically prohibit the use of chemical weapons? Does the IHL of non-international conflicts prohibit their use? (HR, Art. 23(a) ^[4] and (e) ^[4]; P I, Arts 35 ^[5] and 51 ^[6]; CIHL, Rule 74 ^[7]; [See The Geneva Chemical Weapons Protocol ^[3]])

c. Why is the IHL of non-international conflicts so vague regarding prohibited weapons? Is it because customary IHL prohibits such weapons? Or is it because this prohibition can be derived from the Martens Clause? Or does Protocol II expect reference to be made to the IHL of international armed conflicts? To all aspects thereof? If only to some aspects, which ones? (Hague Convention IV, paras 8-9 ^[8]; HR, Art. 23(a) ^[4] and (e) ^[4]; GC I-IV, Arts 63(4) ^[9]/62(4) ^[10]/142(4) ^[11]/158(4) ^[12] respectively; P I, Arts 1(2) ^[13] and 35(2) ^[5]; P II, Preamble, para. 4 ^[14]; CIHL, Rules 70 ^[15]-86 ^[16])

2. If customary and/or conventional IHL prohibits the use of chemical weapons, was the 1993 Chemical Weapons Convention necessary? [See Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction ^[17]] If it was, does it demonstrate that chemical weapons in fact were not prohibited by customary law?

3. Was the statement in the press release correct that the use of chemical weapons was prohibited at all times? Or did many States interpret the prohibition as applying only on a basis of reciprocity? Would this explain the existence of additional treaties expanding

prohibitions beyond the use solely of chemical weapons?

4. Who used chemical weapons in this case? Why does neither the UN nor the ICRC mention who used chemical weapons? Do the UN Security Council Resolution and the ICRC press release indirectly clarify whether it was Iraq or Iran which used chemical weapons? Do the principles of neutrality and impartiality bar the ICRC from directly designating who used chemical weapons?

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[3] <http://www.icrc.org/ihl.nsf/FULL/280>

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[7] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule74

[8]

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[14]

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[15] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule70

[16] https://www.icrc.org/customary-ihl/eng/docs/v1_rul_rule86

[17] <http://www.icrc.org/ihl.nsf/FULL/553>