



ICRC

Annex – Examples of State Practice on the Prohibitions on the use of Gas, Poison and Expanding Bullets in Non-International Armed Conflicts.

Table of Contents
I. National practice
Constitution
National Legislation
Military Manuals
Case law
Statements
II. International Practice
III. Hague Peace Conference, 1899

I. National Practice

Albania

Legislation

Albania's Penal Code states that:

Breach of rules on poisonous substances

Breaching prescribed rules for keeping, manufacturing, using, storing, transporting or selling poisonous substances with strong effect, constitutes criminal contravention and is punishable by a fine or up to two years of imprisonment.

When the criminal act has led to death, serious harm to the health of people or other serious material consequences, it is punishable by a fine or up to ten years of imprisonment.¹

Algeria

Legislation

Algeria's Penal Code amended by Ordinance no. 95 states that:

Any person who possesses, obtains, carries, markets, imports, exports, manufactures, repairs or utilizes prohibited weapons, ammunition or explosives without authorization from the competent authority shall be punished with time of imprisonment ranging from ten to twenty years and a fine of 500.000 DA to 1.000.000 DA.²

¹ Albania, *Penal Code*, 1995, Article 281.

² Algeria, *Penal Code*, as amended by *Ordinance No. 95.11*, 25 February 1995, Article 87 bis 7.

Algeria's Penal Code states that:

Poisoning is the attempt against the life of a person committed by using substances which can kill more or less promptly, regardless of how these substances have been used or administered or what the consequences may be.³

Andorra

Legislation

Andorra's Penal Code, article 266 states that

(...)

5. Any person using chemical or biological weapons or initiating military preparations for that purpose shall be punished by imprisonment for 15 to 20 years, without prejudice to penalties which may be imposed pursuant to other provisions of the Code. 6. Attempts to commit such offences shall be punishable.⁴

Andorra's Decree on Arms states that:

It is forbidden producing, importing, transferring, keeping, using, selling, buying or promoting of following weapons:

(...)

11a. Perforation ammunition and bullets of hard-core, explosives, incendiaries and expansive, the called "dum-dum" and grenades acting as projectiles of this kind of ammunition.⁵

Argentina

Legislation

The implementing legislation on chemical weapons of Argentina states that:

It shall be punished with imprisonment from five to fifteen years whoever develops, produce, acquire, stockpile, retain, transfers, imports or exports chemical weapons or chemical substances from lists 1, 2 and 3 of the [Chemical Weapons] Convention for any end prohibited by this law or by the Convention. It shall be punished with imprisonment from two to six years whoever starts military preparations for the use of chemical weapons or use as method of warfare riot control agents.⁶

Armenia

Legislation

Armenia's Penal Code states that:

Article 387.

1. Application of methods prohibited by international agreements⁷ in military actions or armed conflicts, is punished with imprisonment for the term of up to 15 years.

2. Application or testing of mass destruction weapons prohibited in international agreements is punished with imprisonment from 10 to 15 years, or to life.⁸

Australia

Legislation

Australia's Chemical Weapons (Prohibition) Act amended on 16 April 2007 states that:

A person must not intentionally:

(...)

(c) use chemical weapons; or

³ *Ibid.*, Article 260.

⁴ Andorra, *Penal Code*, 2005, Article 266.

⁵ Andorra, *Decree on Arms*, 1989, Chapter 1, Section 3, Article 2.

⁶ Argentina, *Ley 26.247. Armas químicas. Implementación de la Convención sobre la prohibición del desarrollo, de la producción, el almacenamiento y el empleo de armas químicas y sobre su destrucción*, 2007, Article 26.

⁷ For a list of treaties to which Armenia is party to, please refer to the ICRC treaties database:

http://www.icrc.org/Web/eng/siteeng0.nsf/html/party_main_treaties.

⁸ Armenia, *Penal Code*, 2003, Article 387.

- (d) engage in any military preparations to use chemical weapons; or
 - (e) assist, encourage or induce, in any way, another person to engage in any activity prohibited to a State Party under the Convention; or
 - (f) use riot control agents as a method of warfare.
- Penalty: Imprisonment for life.⁹

Military Manuals

Australia's Defence Force Manual states that:

The principle of unnecessary suffering forbids the use of means and methods of warfare which are calculated to cause suffering which is excessive in the circumstances.¹⁰

Weapons, projectiles, materials and means of warfare which cause unnecessary suffering are not permissible, that is, when the practical effect is to cause injury or suffering which is out of proportion to the military effectiveness of the weapon projectile, material or means.¹¹

It also states:

401. Weapons, projectiles, materials and means of warfare which cause unnecessary injury or suffering are not permissible, that is, when the practical effect is to cause injury or suffering which is out of proportion to the military effectiveness of the weapon, projectile, material or means. (...)

404. Some weapons and weapons systems are totally prohibited. These blanket prohibitions, which may be traced to treaty or customary international law are justified on the grounds that the subject weapons are either indiscriminate in their effect or cause unnecessary suffering. (...)

405. Weapons Calculated or Modified to Cause Unnecessary Suffering – (...) 'Dum-dum' bullets (those with a hard envelope which do not entirely cover the core or which have been pierced with incisions or which have had their points filed off) come within this category of weapon.

406. Poison – Poison or poisoned weapons are illegal because of their potential to be indiscriminate. (...)

(...)

411. Bacteriological warfare – Bacteriological methods of warfare are prohibited.

412. Chemical weapons – Chemical weapons, which include toxic chemicals and their precursors (those chemicals which can cause death, permanent harm or temporary incapacity to humans or animals) and munitions or devices designed to carry such chemicals, are banned.

(...)

414. Biological Weapons – Nations are prohibited from manufacturing, storing and using biological weapons. Both chemical and biological weapons are prohibited because they cause unnecessary suffering and may affect the civilian population in an indiscriminate fashion.

Use of the following types of weapons is prohibited: ... (c) bullets with a hard envelope which do not entirely cover the core or are pierced with incisions (dum-dum bullets).

(...)

Hollow point weapons are prohibited because they cause gaping wounds which lead to unnecessary suffering.¹²

Austria

Legislation

The Penal Code of Austria states that:

(1) Whoever

1. manufactures, processes, or develops in order to manufacture,
2. imports into Austria, exports from Austria or carries through Austria or
3. acquires, possesses, or abandons or provides to anyone else

an atomic, biological or chemical means of combat designed and appropriate for mass destruction shall be punished with imprisonment for one to ten years.

⁹ Australia, *Chemical Weapons (Prohibition) Act 1994*, Section 12.

¹⁰ Australia, *Defence Force Manual*, 1994, § 207.

¹¹ *Ibid.*, § 401.

¹² *Ibid.*, Chapter 4.

(2) In case the perpetrator knows that the means of combat should reach a region in which a war or an armed conflict has erupted or threatens to erupt imminently, he shall be punished with imprisonment for five to fifteen years; in case he knows, however, that the means of combat should be used, he shall be punished with imprisonment for ten to twenty years or with life imprisonment.¹³

Azerbaijan

Legislation

The Penal Code of the Republic of Azerbaijan states that the "use of methods and means of warfare which can cause serious damage" constitutes a war crime in international and non-international armed conflicts.¹⁴

It also prohibits the

use in armed conflict of weapons, means and methods of warfare prohibited by international treaties¹⁵ of the Azerbaijan Republic.¹⁶

Bangladesh

Legislation

The Chemical Weapons Act states that:

5. (1) No person shall-

- (a) develop, produce, otherwise acquire, or stockpile chemical weapon;
- (b) transfer, directly or indirectly, chemical weapon to any one;
- (c) use chemical weapon;
- (d) engage in any military preparation to use chemical weapon;
- (e) assist, encourage or induce, in any way, any other person to engage in any activity prohibited for the State Party under the Convention;
- (f) use a riot control agent as a method of warfare, willingly or unlawfully.¹⁷

This Act also states that:

A person commits an offence if he contravenes the provision of section 5 and for such offence he shall be liable to be sentenced to imprisonment for a term not exceeding 14 (fourteen) years or to a fine not exceeding 50 (fifty) thousand taka or with both.¹⁸

Belarus

Legislation

The Penal Code of Belarus states that:

production, acquisition, stockpiling, transport, transfer or sale of weapons of mass destruction prohibited by international treaties¹⁹ binding upon the Republic of Belarus, as well as other prohibited means of warfare or of its components, or conducting research with the aim to produce or use these means and its components, shall be punished with restriction of liberty from three to five years or with imprisonment for three to ten years.²⁰

The use of arms of mass destruction prohibited by international treaties binding upon the Republic of Belarus, shall be punished with imprisonment from ten to twenty-five years or life imprisonment or death penalty.²¹

¹³ Austria, *Penal Code*, 1975, Article 177a.

¹⁴ Azerbaijan, *Penal Code*, 1999, Article 116(1).

¹⁵ For a list of treaties to which Azerbaijan is party to, please refer to the ICRC treaties database: http://www.icrc.org/Web/eng/siteeng0.nsf/html/party_main_treaties.

¹⁶ *Ibid.*, Article 390.

¹⁷ Bangladesh, *The Chemical Weapons (Prohibition) Act*, 2006, Article 5.

¹⁸ *Ibid.*, Article 31.

¹⁹ For a list of treaties to which Belarus is party to, please refer to the ICRC treaties database:

http://www.icrc.org/Web/eng/siteeng0.nsf/html/party_main_treaties.

²⁰ Belarus, *Penal Code*, 1999, Article 129.

²¹ *Ibid.*, Article 134.

Article 136 of this Code includes among violations of international humanitarian law:

1) The use of means and methods of war that can be considered to cause excessive traumatic effect or striking without discrimination.

(...)

16) The use in an armed conflict of means and methods of war prohibited by international treaties binding upon the Republic of Belarus, shall be punished with imprisonment from five to twenty years.²²

Military Manual

Belarus' Instruction on the order of application of norms of international humanitarian law in the Armed Forces of the Republic of Belarus and Transport Forces, states that:

Chapter 2. Prohibited Methods and Means of Warfare

9. In order to avoid superfluous suffering and unjustified victims among the civilian population, as well as widespread, long-term and severe damage to the natural environment caused by combat operations, prohibitions and limitations for the warring parties in choosing any methods and means of conducting combat operations have been introduced.

(...)

12. The following shall be prohibited to use in the course of combat operations:

(...)

bullets which expand or flatten easily in the human body, both specially manufactured or modified to cause such an effect later on;
choking poisonous and other such gases, bacteriological means,
poison or poisoned weapons;
bacteriological (biological) and toxin weapons;
environmental modification techniques having widespread, long-lasting or severe effects as the means of destruction, damage or injury;

(...)

bacteriological (biological) and toxin weapons;
chemical weapons including chemicals as well as projectiles for their use;

13. The sides of an internal armed conflict must abide by the prohibitions and restrictions provided in the Convention on certain conventional weapons, which may be deemed to be excessively injurious or to have indiscriminate effects, and in the Protocols to the Convention.

(...)²³

Belgium

Legislation

According to Belgium's *Accord de Coopération* regarding the implementation of the Chemical Weapons Convention,

(...)

§2. It is forbidden to employ chemical weapons;

§3. It is forbidden to engage in preparations to employ chemical weapons;

§4. It is forbidden to import, export or transport chemical weapons through Belgian territory

§5. It is forbidden to help, encourage, incite anyone, in any way, to engage in any of the forbidden activities in §§ 1, 2, 3, and 4 of this article.

§6. Prohibitions detailed in this article shall be punished with imprisonment and fines according to articles 21 to 26 of this Accord de coopération, following competencies of the Federal State and the Regions.²⁴

²² *Ibid.*, Article 136.

²³ Belarus, *Instructions on the order of application of norms of international humanitarian law in the Armed Forces of the Republic of Belarus and the Transport Forces of the Republic of Belarus endorsed by the Decree of the Ministry of Defense of the Republic of Belarus dated May 6, 2009* • 24 (*National Register of Legal Acts of the Republic of Belarus, 2009*, • 146, 8/20969), Chapter 2, Sections 12 and 13.

²⁴ Belgium, *Accord de coopération entre l'Etat fédéral, la Région flamande, la Région wallonne et la Région de Bruxelles-Capitale relatif à l'exécution de la Convention sur l'interdiction de la mise au point, de la fabrication,*

Belgium Penal Code criminalizes violations of the Geneva Conventions, both of its Additional Protocols and to the laws and customs of war applicable to armed conflicts, including: the use of "poison or poisoned weapons" and the use of "bullets which expand or flatten easily in the human body, in particular bullets with a hard envelope which does not entirely cover the core or is pierced with incisions"²⁵

Benin

Military Manual

Benin's Military Manual states that "it is prohibited to resort to weapons or methods of warfare of a nature to cause unnecessary losses or superfluous injury."²⁶

Bosnia and Herzegovina

Legislation

Bosnia and Herzegovina's Penal Code states that:

Article 179

(1) Whoever in time of war or armed conflict orders the violation of laws and practices of warfare, or whoever violates them,

shall be punished by imprisonment for a term not less than ten years or long-term imprisonment.

(2) Violations of laws and practices of warfare referred to in paragraph 1 of this Article shall include:

a) Use of poison gases or other lethal substances or agents with the aim to cause unnecessary suffering; (...)²⁷

Military Manual

Bosnia and Herzegovina's Military Instructions states that "it is prohibited to use weapons or methods of warfare of a nature to cause unnecessary suffering." It also states that "it is prohibited to use ... poisonous gas."²⁸

Bulgaria

Legislation

Bulgaria's Penal Code states that any person who deliberately poisons a water supply will be punished by deprivation of liberty from 2 to 8 years. If this action causes severe bodily harm, the punishment will be 3 to 10 years and if death is caused the punishment will be deprivation of liberty from 10 to 20 years, a life sentence, or a life sentence without possibility of commutation.²⁹

Article 415 provides 10 years imprisonment provision for war crimes and offences against humanity in violation of the rules of international law for waging war for anyone who uses or orders nuclear or chemical weapons. Even if a person only undertakes military preparation for

du stockage et de l'emploi des armes chimiques et sur leur destruction, faite à Paris, le 13 janvier 1993, 2 March 2007, Article 4.

²⁵ Belgium, *Penal Code* (as amended by Law 5 August 2003/32, art. 8; in force since 7 August 2003), Article 136quarter §1, n. 36 and 38.

²⁶ Benin, *Le droit de la guerre, III fascicules*, Forces Armées du Benin, Ministère de la Défense nationale, 1995, Fascicule II, p. 5.

²⁷ Bosnia and Herzegovina, *Penal Code*, 2003, Article 179.

²⁸ Bosnia and Herzegovina, *Instructions on the Implementation of the International Law of War in the Armed Forces of the Republic of Bosnia and Herzegovina*, Official Gazette of ABiH, No. 2/92, 5 December 1992, Item 11, § 1.

²⁹ Bulgaria, *Penal Code*, 1968, with amendments of 2005, Articles 349.

using bacteriological, biological or toxin weapons as a method of warfare (without actually using them), he or she shall be punished by a deprivation of liberty.³⁰

Burkina Faso

Legislation

Burkina Faso's Chemical Weapons Law prohibits:

To develop chemical weapons, to produce them, to stockpile them, to use them, to retain them, to acquire them, to transfer them, to import them, to export them and to commerce or deal with them.³¹

Cambodia

Constitution

The Constitution of Cambodia

prohibits the manufacturing, use and storage of chemical, nuclear and biological weapons.³²

Canada

Legislation

Canada's Biological Weapons Act states:

Prohibition

6. (1) No person shall develop, produce, retain, stockpile, otherwise acquire or possess, use or transfer

(a) any microbial or other biological agent, or any toxin, for any purpose other than prophylactic, protective or other peaceful purposes; or

(b) any weapon, equipment or means of delivery designed to use such an agent or toxin for hostile purposes or in armed conflict.³³

Punishment

14. (1) Every person who contravenes section 6 or 7 is guilty of an indictable offence and liable on conviction to a fine not exceeding \$1,000,000 or to imprisonment for a term not exceeding ten years, or to both.

(2) Every person who contravenes section 13 or 17, subsection 18(2) or section 19 or any provision of the regulations is guilty of an offence punishable on summary conviction and liable on conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding two years, or to both.³⁴

Canada's Chemical Weapons Act states:

No person shall:

(a) develop, produce, otherwise acquire, stockpile or retain a chemical weapon or transfer, directly or indirectly, a chemical weapon to anyone;

(b) use a chemical weapon;

(c) engage in any military preparations to use a chemical weapon;

(d) assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under the Convention.³⁵

³⁰ *Ibid.*, Article 415.

³¹ Burkina Faso, *Loi No. 003-2006/AN portant application de la Convention sur l'interdiction de la mise au point, de la fabrication, du stockage et de l'emploi des armes chimiques et sur leur destruction, adoptée à la Conférence de Genève le 03 septembre 1992*, 14 March 2006, Article 3.

³² Cambodia, *The Constitution of Cambodia*, 1993, Article 54.

³³ Canada, *The Biological and Toxin Weapons Convention Implementation Act*, 2004, Article 6.

³⁴ *Ibid.*, Article 14.

³⁵ Canada, *Chemical Weapons Convention Implementation Act*, 1995, c. 25, Article 6.

Military Manuals

Canada's LOAC Manual (1999) prohibits the use of asphyxiating, poisonous or other gases "at all times and under all circumstances".³⁶ It also bans the use of chemical weapons

which include toxic chemicals and their precursors (those chemicals which can cause death, permanent harm or temporary incapacity to humans or animals) and munitions or devices designed to carry such chemicals.³⁷

It defines "using asphyxiating, poisonous and other gases" as a war crime.³⁸

Canada's LOAC Manual (2001) states in its chapter entitled "Restrictions on the use of weapons":

Poison or poisoned weapons are illegal because of their potential to be indiscriminate. For example, the poisoning or contamination of any source of drinking water is prohibited. Posting a notice that the water has been contaminated or poisoned does not make this practice legal, as both civilians and combatants might drink from that water source and be equally affected.³⁹

In the same chapter, the Manual also prohibits the use of "bullets that have been dipped in poison".⁴⁰

In its chapter on "War crimes, individual criminal liability and command responsibility", the Manual states that "using poison or poisoned weapons" constitutes a war crime.⁴¹

Canada's Code of Conduct (2001) states that the use of chemical weapons is forbidden.⁴² It also states that the use of "bullets designed to expand or flatten easily on contact with the human body (i.e., dum-dum bullets or hollow point bullets)" is forbidden,⁴³ and that

the alteration of ammunition so that it expands or flattens easily when striking the human body is expressly prohibited.⁴⁴

Canada's Code of Conduct (2005) states that the use of "chemical weapons,"⁴⁵ and the use of "poison or poison weapons"⁴⁶ is forbidden. It also states that:

4 The alteration of weapons or ammunition to increase suffering is unlawful and may interfere with the overall military mission. The alteration of ammunition so that it expands or flattens easily when striking the human body is expressly prohibited.

...

10. Use of the following weapons and ammunition is forbidden:

a. bullets designed to expand or flatten easily on contact with the human body (i.e., dum-dum bullets or hollow point bullets).⁴⁷

Colombia

Constitution

Colombia's Constitution prohibits the "manufacture, import, possession and use of ... chemical, and biological ... weapons".⁴⁸

³⁶ Canada, *The Law of Armed Conflict at the Operational and Tactical Level*, Office of the Judge Advocate General, 1999, p. 5-3, § 23.

³⁷ *Ibid.*, § 26.

³⁸ *Ibid.*, pp. 16-3 and 16-4, § 21(h).

³⁹ *Ibid.*, § 512.

⁴⁰ *Ibid.*, § 510.1.c.

⁴¹ *Ibid.*, § 1609.2.a.

⁴² Canada, *Code of Conduct for CF Personnel*, Office of the Judge Advocate General, 4 June 2001, Rule 3, § 10(d).

⁴³ *Ibid.*, Rule 3, § 10(a).

⁴⁴ *Ibid.*, Rule 3, § 4.

⁴⁵ *Ibid.*, Rule 3, § 10(d).

⁴⁶ *Ibid.*, Rule 3, § 10(b).

⁴⁷ *Ibid.*, Rule 3, §§ 4 and 10(a).

Legislation

Colombia's Penal Code criminalizes the use, in armed conflict, of means and methods of war banned by international humanitarian law or that cause unnecessary suffering or loss or superfluous injury.⁴⁹ It also sanctions the following acts:

Any person who imports, traffics in, manufactures, stockpiles, keeps, acquires, steals, uses, or carries chemical, biological or nuclear weapons shall be liable to imprisonment for a period from 96 to 180 days and to a fine from 133.33 to 30.000 minimal-wage days. The penalty shall be increased by half if genetic engineering is used to produce chemical weapons or organisms that could exterminate the human species.⁵⁰

Military Manual

Colombia's Basic Military Manual states that the use of weapons which "cause unnecessary and indiscriminate, extensive, lasting and serious damage to people and the environment" is prohibited. It adds that the use of chemical weapons, as well as their production, possession and importation, is banned.⁵¹ This Manual also prohibits the poisoning of water.⁵²

Case Law

In 1995, in a ruling on the constitutionality of the 1977 Additional Protocol II, Colombia's Constitutional Court stated in relation to the prohibition on the use of weapons of a nature to cause unnecessary suffering or superfluous injury:

Although none of the treaty rules expressly applicable to internal conflicts prohibits indiscriminate attacks or the use of certain weapons, the Taormina Declaration consequently considers that the bans (established partly by customary law and partly by treaty law) on the use of chemical ... weapons ... "dum-dum" bullets ... apply to non-international armed conflicts, not only because they form part of customary international law but also because they evidently derive from the general rule prohibiting attacks against the civilian population.⁵³

In 2000, Colombia's Constitutional Court stated that the prohibition of chemical weapons is applicable also in internal armed conflict, in its judgment about the constitutionality of the approbation law of the Chemical Weapons Convention 1993.⁵⁴ Additionally in 2007, the Colombia's Constitutional Court stated that the prohibition of chemical weapons is also a customary rule applicable in Colombia.⁵⁵

Congo

Legislation

Congo's General Rules of Discipline states that:

Article 32(2) Members of Congo's Military shall not use any mean [of warfare] which cause unnecessary suffering and damage.⁵⁶

⁴⁸ Colombia, *Constitution*, 1991, Article 81.

⁴⁹ Colombia, *Penal Code*, 2000, Article 142.

⁵⁰ Colombia, *Penal Code*, 2000, Article 367.

⁵¹ Colombia, *Basic Derecho Internacional Humanitario – Manual Básico para las Personerías y las Fuerzas Armadas de Colombia*, Ministerio de Defensa Nacional, 1995, pp. 49–50.

⁵² *Ibid.*

⁵³ Colombia, Constitutional Court, *Constitutional Case No. C-225/95*, Judgement, 18 May 1995, § 23.

⁵⁴ Colombia, Constitutional Court, *Sentence C-329/2000, Revision of the Law 599/1999 that approved the Chemical Weapons Convention*, p. 21.

⁵⁵ Colombia, Constitutional Court, *Sentence C-291/2007, Constitutional Case D-6476*, pp. 66-68.

⁵⁶ Congo, *Règlement du service dans l'armée nationale, Décret N° 86/057 du 14 janvier 1986*, Article 32(2).

Costa Rica

Legislation

Costa Rica's Arms and Explosives Act prohibits weapons that produce asphyxiating, poisonous, paralysing, irritating or tear-inducing gases. Some weapons designed to be used in self-defence or to be installed in establishments that require special protection –with due authorization by the Weapons Division of the Ministry of Public Security- are permitted. The Act prohibits the use, production or import of gases for use as weapons, chemical compounds, viruses or toxic or deadly bacteria that cause irreversible physical or mental harm. Toxic gases and bacteriological and similar weapons shall be rendered unusable if confiscated.⁵⁷

Croatia

Legislation

Under Croatia's Penal Code, the manufacture, improvement, production, stockpiling, offering for sale, purchase, interceding in purchasing or sale, possession, transfer, transport, use of, and order to use, chemical weapons are war crimes.⁵⁸

Cuba

Legislation

Cuban legislation on the prohibition relating to chemical weapons states:

No person or corporate body shall

- develop, manufacture or acquire in any other way, own, retain or stockpile chemical weapons. (...)
- use chemical weapons
- initiate military preparation to use chemical weapons
- to help, encourage or induce any one in any way to incur in an activity prohibited by the Chemical Weapons Convention or this Decree-Law.
- to transfer to, or receive from any person of a State non-Party to this Convention the chemical substances that, listed by the Convention, requires an authorization issued by a National Authority.⁵⁹

Cook Islands

Legislation

The Cook Islands Chemical Weapons (Prohibition) Act 2007 section 5 states

Every person commits an offence who –

- (a) develops, produces, otherwise acquires, stockpiles or retains chemical weapons; or
 - (b) transfers directly or indirectly chemical weapons; or
 - (c) uses chemical weapons; or
 - (d) engages in any military preparations to use chemical weapons; or
 - (e) assists, encourages or induces, in any way, any person to engage in any activity prohibited to a State Party under the Convention; or
 - (f) uses a riot control agent as a method of warfare; or
 - (g) engages in any other activity prohibited to a State Party under the Convention, -
- and is guilty of an offence and liable upon conviction to –
- (a) in the cases of an individual, imprisonment for a term not exceeding 10 years or to a fine not exceeding \$1,000,000 or both;
 - (b) in the case of a body corporate, a fine not exceeding \$1,000,000.⁶⁰

⁵⁷ Costa Rica, *Arms and Explosives Act*. No. 7530, 1995, Articles 25, 15 and 83.

⁵⁸ Croatia, *Penal Code*, 1997, Articles 163(1) and (2).

⁵⁹ Cuba, *Decreto-ley No. 202 sobre la prohibición del desarrollo, la producción, el almacenamiento y el empleo de armas químicas y sobre su destrucción*, 1999, Article 26.

⁶⁰ Cook Islands, *Chemical Weapons (Prohibition) Act*, 2007, section 5.

Democratic Republic of the Congo

Military Manual

The Democratic Republic of the Congo's Code of Military Justice as amended punishes

... all poisoning of water or foodstuffs, as well as deposits, spraying or using harmful substances intended to cause death, in time of war or in a region under siege or in state of emergency (...).⁶¹

Czech Republic

Legislation

The Czech Republic's Act on the Prohibition of Chemical Weapons bans the "development, production, use and handling of chemical weapons", as well as the "import of chemical weapons to the Czech Republic or their transit."⁶²

Ecuador

Constitution

Ecuador's Constitution states that:

It is prohibited the manufacturing, import, possession and use of chemical, biological and nuclear weapons (...).⁶³

Legislation

Ecuador's National Civil Police Penal Code states that members of the National Civil Police "who use or order to be used ... asphyxiating or poisonous gases... dum-dum bullets" commit a punishable offence.⁶⁴

Military Manual

Ecuador's Naval Manual states, under the heading "Chemical weapons": "International law, both customary and treaty-based, prohibits taking the initiative to use lethal chemical weapons during armed conflicts." It also provides: "The following acts constitute war crimes: ... use of prohibited weapons or ammunition."⁶⁵ Also, "poisoned projectiles are considered illegal, owing to their alteration, as are any other munitions covered with poison."⁶⁶

Ecuador's Naval Manual also states:

It is a fundamental tenet of the law of armed conflict that the right of nations engaged in armed conflict to choose methods or means of warfare is not unlimited. This rule of law is expressed in the prohibition of the employment of weapons, material, and methods of warfare that are designed to cause superfluous injury or unnecessary suffering.

(...)

Weapons which cause superfluous injury or unnecessary suffering are prohibited because the degree of pain, the severity of the injuries and the certainty of death they entail are clearly out of all proportion with the military advantage to be gained by their use ... Poisoned ammunition and dum-dum bullets belong in this category since the small military advantage that may be derived from their use guarantees death due to poison or the expanding effect of soft-nosed or unjacketed lead bullets.⁶⁷

⁶¹ Democratic Republic of the Congo, *Code of Military Justice as amended*, 1972, Article 170.

⁶² Czech Republic, *Act on the Prohibition of Chemical Weapons*, 1997, Part 2, Article 3.

⁶³ Ecuador, *National Constitution*, 11 August 1998, Article 90.

⁶⁴ Ecuador, *National Civil Police Penal Code*, 1960, Article 117(4).

⁶⁵ Ecuador, *Aspectos Importantes del Derecho Internacional Marítimo que Deben Tener Presente los Comandantes de los Buques*, Academia de Guerra Naval, 1989, § 6.2.5(10).

⁶⁶ *Ibid.*, § 9.1; see also § 9.1.1.

⁶⁷ *Ibid.*

Equatorial Guinea

Legislation

Equatorial Guinea's Penal Code states that:

Article 406: "He is guilty of murder who kills a person displays any of the following circumstances:

(...)

3. Through (...) poison (...).

(...)

Anyone convicted of murder shall be punished with higher imprisonment to death.⁶⁸

Estonia

Legislation

Estonia's Penal Code states:

Use of prohibited weapons

Use of biological, bacteriological or chemical weapons or other weapons of mass destruction, toxic weapons, toxic or asphyxiating gases, booby traps, i.e. explosives disguised as small harmless objects, expanding bullets, weapons injuring by fragments which escape X-rays, or other internationally prohibited weapons, or large-scale use of incendiary weapons under conditions where the military objective cannot be clearly separated from civilian population, civilian objects or the surrounding environment, is punishable by 3 to 12 years' imprisonment.⁶⁹

Ethiopia

Legislation

Ethiopia's Penal Code prohibits "in time of war, armed conflict or occupation" to use, or order to be used, against the enemy any means or method of combat expressly forbidden by Ethiopian law or international conventions⁷⁰ to which Ethiopia is a party."⁷¹

Fiji

Legislation

Fiji's Chemical Weapons Convention Act 2005 provides at section 9:

9. - (1) A person who intentionally or recklessly -

(a) develops, produces, acquires, stockpiles, owns, possesses, or retains chemical weapons or transfers, directly or indirectly, chemical weapons to any other person;

(b) uses chemical weapons;

(c) engages in any military preparations to use chemical weapons;

(d) aids, assists, counsels or procures, in any way, any other person to engage in any activity prohibited too State Party under the Convention;

(e) transfers to or receives from any other person in a State which is not a party to the Convention, any of the toxic chemicals or precursors listed in Schedule 1 or Schedule 2 to the Annex on Chemicals;

(f) transfers any toxic chemical or precursor listed in Schedule 3 to the Annex on Chemicals to a person in a State which is not party to the Convention except any transfer by virtue, of section C of Part VIII of the Verification Annex and with the approval of the Authority;

(g) uses riot control agents as a method of warfare;

(h) without the approval of the Authority, produces, uses or transfers any toxic chemical or precursor listed n Schedule 1 to the Annex on Chemicals;

⁶⁸ Equatorial Guinea, *Penal Code*, 1963, modified in 1967, Article 406.

⁶⁹ Estonia, *Criminal Code*, 2001, Article 103.

⁷⁰ For a list of treaties to which Ethiopia is party to, please refer to the ICRC treaties database: http://www.icrc.org/Web/eng/siteeng0.nsf/html/party_main_treaties.

⁷¹ Ethiopia, *Penal Code* 2005 No. 414 of 2004, Article 276.

- (i) without the approval of the Authority, exports or imports any toxic chemical or precursor listed in Schedules 1, 2, and 3 to the Annex on Chemicals;
- (j) engages in any other activity prohibited to a State Party under the Convention, commits an offence and is liable on conviction to a fine not exceeding \$1,000,000 or to a maximum term of imprisonment for life or both.⁷²

Finland

Legislation

Finland's Penal Code states that:

Section 5 - War crime

(1) A person who in connection with a war or other international or domestic armed conflict or occupation in violation of the Geneva Conventions on the amelioration of the condition of the wounded and sick in armed forces in the field, the amelioration of the condition of wounded, sick and shipwrecked members of armed forces at sea, the treatment of prisoners of war or the protection of civilian persons in time of war (Treaties of Finland 8/1955, Geneva conventions) or the additional Amendment Protocols done in 1977 to the Geneva Conventions, on the protection of victims of international armed conflicts and the protection of victims of non-international armed conflicts (Treaties of Finland 82/1980, I and II protocols) or other rules and customs of international law on war, armed conflict of occupation,

(...)

14) uses poison or a poison weapon, suffocating or poisonous gases or other corresponding substances, weapons, ammunition or materiel that cause excessive injuries or unnecessary suffering, or chemical, biological or other prohibited weapons or ordnance,

shall be sentenced for a war crime to imprisonment for at least one year or for life.

(...)

Section 8 - Breach of the prohibition of chemical weapons

A person, who in breach of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Treaties of Finland 19/1979)

(1) uses chemical weapons in a manner not referred to in sections 5 - 7 of this chapter,

(2) develops, produces, otherwise procures, stockpiles, possesses or transports chemical weapons, or

(3) participates in military preparations for the use of chemical weapons,

shall be sentenced for breach of the prohibition of chemical weapons to imprisonment for at least four months and at most six years.

Section 9 – Breach of the prohibition of biological weapons

A person who

(1) uses a biological or a toxin weapon in a manner not referred to in sections 1 through 3 of this chapter,

(2) unlawfully prepares, transports or delivers a biological weapon or a toxin weapon, or

(3) in violation of an international convention on the development, production and storage of bacteriological (biological) and toxin weapons and on their destruction (Treaties of Finland 15/1975) develops, prepares, otherwise procures, stores or possesses a biological weapon or a toxin weapon or weapons, devices or equipment for the dissemination of a biological weapon or a toxin weapon,

shall be sentenced, unless the same or a more severe penalty for the act has been provided elsewhere in the law, for a breach of the prohibition of biological weapons to imprisonment for at least four months and at most six years.⁷³

⁷² Fiji, *Chemical Weapons Convention Act*, 2005, Section 9.

⁷³ Finland, *Penal Code*, 1995, Sections 5, 8 and 9.

France

Legislation

France's Penal Code states that:

Poisoning is the attempt against the life of another by use or administration of substances likely to cause death.

Poisoning is punished by thirty years' imprisonment.

It is punishable by life imprisonment when committed in any of the circumstances provided for in Articles 221-2, 221-3 and 221-4.⁷⁴

France's Law on the Implementation of the Chemical Weapons Convention prohibits the use of chemical weapons and the development, production, stockpiling, possession, retention, acquisition, assignment, import, export and transfer of such weapons, and selling or trading in them.⁷⁵

France's Defence Code states that:

Article L 2342-4. It is forbidden to use chemical weapons, its stockpiling, possession, retention, acquisition, assignment, import, export and selling or trading in them (...).

Article L2342-57. It is punished with life imprisonment and a fine of 5 500 000 euros:

1.- The use of a chemical weapon

(...).⁷⁶

Military Manuals

France's LOAC Manual prohibits the manufacture, production, acquisition, possession, stockpiling, storing, development, transport, transfer and use of biological weapons.⁷⁷

This Manual has been cited in a Senate report on the implementation of the Rome Statute when it lists banned weapons. The report states:

Prohibited weapons

Because of its inhuman nature or its traumatic effect, but also because they can proceed without discrimination, some weapons are totally forbidden by the law of armed conflicts. These are:

- poison
- chemical weapons
- biological or bacteriological weapons
- dum-dum bullets and other ammunition with expansive head
- (...).⁷⁸

France's Military Discipline Rules forbids to military in combat "the use of any means which cause unnecessary suffering and superfluous injury."⁷⁹

Statements

The French Government strongly condemned the use of chemical weapons by Iraq against its own population.⁸⁰

⁷⁴ France, *Penal Code*, 1994, Article 221-5.

⁷⁵ France, *Law on the Implementation of the Chemical Weapons Convention*, 1998, Article 2.

⁷⁶ France, *Code de la Défense*, as in force in 2010, Articles L 2342-4 and L2342-57.

⁷⁷ France, *Manuel de droit des conflits armés*, Ministère de la Défense, Direction des Affaires Juridiques, Sous-Direction du droit international humanitaire et du droit européen, Bureau du droit des conflits armés, 2001. pp. 22-23.

⁷⁸ France, *Rapport fait au nom de la Commission des Lois constitutionnelles, de législation, du suffrage universel, du Règlement et d'administration générale (1) sur le projet de loi portant adaptation du droit pénal à l'institution de la Cour pénale internationale*, par Patrice Gélard, Sénateur, Annexe au procès-verbal de la séance du 14 mai 2008.

⁷⁹ France, *Instruction No. 52000/DEF/C/5 d'application du règlement de discipline générale dans les armées*, 10 December 1979, Article 9.

⁸⁰ See (1988) *Annuaire français de droit international* (AFDI), pp. 899-900, (1984) AFDI 997-99; as well as (1989) AFDI 889.

Gabon

Legislation

Gabon's Penal Code states that:

Article 226 - Poisoning is the attempt against the life of a person committed by using, substances which can kill more or less promptly, regardless of how these substances have been used or administered or what the consequences are.

Article 227 – Whoever commits (...) poisoning, shall be sentenced to death.⁸¹

Georgia

Legislation

Under Georgia's Penal Code, “the production, acquisition or sale of chemical ... or other kinds of weapon of mass destruction prohibited by an international treaty”⁸² and the “use during hostilities or in armed conflict of such means and materials or weapons of mass destruction which are prohibited by an international treaty” are crimes.⁸³

Germany

Legislation

Germany's Law Introducing the International Crimes Code punishes anyone who, in connection with an international or non-international armed conflict, “employs ... chemical weapons”.⁸⁴

Germany's Law Introducing the International Crimes Code punishes anyone who, in connection with an international or a non-international armed conflict, “employs poison or poisoned weapons”.⁸⁵

Germany's Law Introducing the International Crimes Code punishes anyone who, in connection with an international or non-international armed conflict, “employs bullets which expand or flatten easily in the human body, in particular bullets with a hard envelope which does not entirely cover the core or is pierced with incisions”.⁸⁶

Military Manuals

Germany's Military Manual states: “It is prohibited to employ poison and poisoned weapons.”⁸⁷ It adds: “The prohibition also applies to the toxic contamination of water supply installations and foodstuffs ... for military purposes.”⁸⁸

This Manual also states: “International humanitarian law prohibits the use of a number of means of warfare, which are of a nature to violate the principle of humanity and to cause unnecessary suffering, e.g. ... chemical means of warfare, e.g. poisonous gases.”⁸⁹

⁸¹ Gabon, Penal Code, (Law n. 21/63 of 31 May 1963), Article 226 and 227.

⁸² For a list of treaties to which Georgia is party to, please refer to the ICRC treaties database: http://www.icrc.org/Web/eng/siteeng0.nsf/html/party_main_treaties.

⁸³ Georgia, *Penal Code*, 1999, Articles 406 and 413(c).

⁸⁴ Germany, *Law Introducing the International Crimes Code*, 2002, Article 1, § 12(1)(2).

⁸⁵ *Ibid.*, Article 1, § 12(1)(1).

⁸⁶ *Ibid.*, Article 1, § 12(1)(3).

⁸⁷ Germany, *Humanitarian Law in Armed Conflicts – Manual*, DSK VV207320067, edited by The Federal Ministry of Defence of the Federal Republic of Germany, VR II 3, August 1992, English translation of ZDV 15/2, *Humanitäres Völkerrecht in bewaffneten Konflikten – Handbuch*, August 1992, § 426.

⁸⁸ *Ibid.*, § 434.

⁸⁹ *Ibid.*, § 305.

Furthermore, this Manual also prohibits the use of "bullets which expand or flatten easily in the human body (e.g. dum-dum bullets) ... This applies also to the use of shotguns, since shot causes similar suffering unjustified from the military point of view. It is also prohibited to use projectiles of a nature:

- to burst or deform while penetrating the human body
- to tumble early in the human body; or
- the cause shock waves leading to extensive tissue damage or even lethal shock".⁹⁰

Germany's Soldiers' Manual states that "it is prohibited to use means or methods of warfare which are intended or of a nature to cause superfluous injuries or unnecessary suffering (e.g. dum-dum bullets)."⁹¹ It also provides: "The use of chemical weapons (for example poisonous gas) ... is prohibited."⁹²

Statements

The German Parliament passed a resolution on 27 October 1988 in which it:

Resolutely rejected the view that the use of poison gas was allowed on one's own territory and in clashes akin to civil wars, assertedly because it was not expressly prohibited by the Geneva Protocol of 1925.⁹³

The German Government expressed before the UN General Assembly the concern of his government regarding "reports of the use of chemical weapons against the Kurdish population" and referred to "breaches of the Geneva Protocol of 1925 and other norms of international law."⁹⁴

Greece

Legislation

Greece's Chemical Weapons Convention implementing law prohibits the "development, construction, production, acquisition, possession, storing, maintaining, use and transferring of chemical weapons."⁹⁵

Hungary

Legislation

Hungary's Penal Code as amended, states that:

Use of Weapons Prohibited by International Treaty
Section 160/A

(1) Any person who uses or orders the use of a weapon or instrument of war prohibited by international treaty⁹⁶ in a theatre of military operation or in an occupied territory against the enemy, civilians or prisoners of war commits a felony offence and shall be punishable with imprisonment between ten to fifteen years or life imprisonment.

(2) Any person who makes preparations for the use of a weapon prohibited by international treaty commits a felony offence and shall be punishable with imprisonment of up to five years.

⁹⁰ *Ibid.*, § 407.

⁹¹ Germany, *Soldiers' Manual*, 1991, p. 5.

⁹² *Ibid.*, p. 5.

⁹³ Cfr. 50 *Zeitschrift Für Ausländisches Öffentliches Recht Und Völkerrecht* (1990), at 382-83.

⁹⁴ U.N. GAOR, 1st Comm., 43rd Sess., 31st Mtng., at 16, U.N. Doc. A/C.1/43/PV.31 (1988), summary of statement of 22 November 1988 in Third Committee of the General Assembly.

⁹⁵ Greece, *Law No. 2991 on the Application of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction*, 27 February 2002, Article 4.

⁹⁶ For a list of treaties to which Hungary is party to, please refer to the ICRC treaties database: http://www.icrc.org/Web/eng/siteeng0.nsf/html/party_main_treaties.

(3) For the purposes of Subsections (1)-(2) the following shall be construed as weapons prohibited by international treaty:

a) asphyxiating, poisonous and other gases and bacteriological methods of warfare as set forth in the protocol signed at Geneva on 17 June 1925 on the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, as promulgated by Law-Decree 20 of 1955,

(...)

c) chemical weapons and chemical instruments of war specified in Points 1 and 7 of Article 2 of the convention signed at Paris on 13 January 1993 on the Prohibition of the Development, Production, Stockpiling, Production and Transfer of Chemical Weapons and on their Destruction, as promulgated by Act CIV of 1997,

(...).⁹⁷

India

Legislation

India's Chemical Weapons Act states that:

(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.⁹⁸

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 Chemical Weapons Convention.⁹⁹

Indonesia

Legislation

Indonesia's Law on the Eradication of Terrorism prohibits importing, making, receiving, trying to get, providing or trying to provide, owning, bringing, having, stockpiling, acquiring, hiding, using or exporting biological weapons and sets the penalties at death, or a 3 - 20 year prison.¹⁰⁰

Indonesia's Law on the Use of Chemical Materials as Chemical Weapons states that:

Any person is prohibited from:

a. developing, producing, obtaining, and/or storing chemical weapons;

b. transferring chemical weapons, either directly or indirectly, to anyone;

c. using chemical weapons;

d. involving oneself in a military preparation for the use of chemical weapons; or

e. involving oneself in, assisting in, and/or persuading another person to be involved in, any of the acts prohibited under this Law.¹⁰¹

⁹⁷ Hungary, *Penal Code as amended, 1978, Section 160, § A(3)(a) and (c).*

⁹⁸ India, *Chemical Weapons Acts, 2000, Chapter III, Article 13.*

⁹⁹ *Ibid.*, Article 15.

¹⁰⁰ Indonesia, *Law No. 15/2003 on the Eradication of Criminal Acts of Terrorism, 2003, Articles 9 and 10.*

¹⁰¹ Indonesia, *Law of the Republic of Indonesia No. 9 / 2008 on the use of chemical materials as chemical weapons, 2008, Article 14.*

Ireland

Legislation

Ireland's Chemical Weapons Act 1997 states that:

3. (1) No person shall –

- (a) produce, develop, retain, use or transfer, directly or indirectly to anyone, a chemical weapon or assist another person to produce, develop, retain, use or transfer a chemical weapon,
 - (b) construct, convert, maintain or use any premises or equipment for a purpose referred to in paragraph (a) or assist another person to do any of those things for such a purpose, or
 - (c) engage in preparations of a military nature to use a chemical weapon.¹⁰²
- (...)

(4) A person who contravenes subsection (1) shall be guilty of an offence and shall be liable—

- (a) on summary conviction, to a fine not exceeding £1,500, or to imprisonment for a term not exceeding 12 months, or both, or
- (b) on conviction on indictment, to imprisonment for life or for a lesser term.

Italy

Legislation

Italy's Law of War Decree as amended states: "The use of bacteriological means ... is forbidden in conformity with the international provisions in force."¹⁰³

Italy's Law of War Decree as amended states that: "It is prohibited ... to use poison or poisoned weapons."¹⁰⁴

Italy's Law on the Prohibition of Chemical Weapons states:

Production, transfer or receipt, directly or indirectly, acquisition, import, export, transit, retention and use – with the exception of the cases referred to in comma 2 – of the chemicals listed in Schedule 1 of the Annex on Chemicals to the Convention, as well as of any other chemical product which might be exclusively employed for the production of chemical weapons, are prohibited.¹⁰⁵

Italy's Military Penal Code forbids the use of "means and methods banned by law or by international treaties or in any case, contraries to military honour." This prohibition is applicable in all types of armed conflicts, and is independent from a declaration of war.¹⁰⁶

Italy's draft law on the implementation of the Rome Statute states:

Article 42

1. (...)

2. For the purpose of Sections II [Acts committed against protected persons or objects by the Geneva Conventions of 1949] and III [Offences against the law and customs of armed conflict], armed conflict are international armed conflicts (...) as well as prolonged internal armed conflict between governmental forces and organized armed group. (...)

(...)

Section III - Offences against the law and customs of armed conflict

Article 71.

(Use of prohibited gas, liquids, materials and devices)

Whoever use a gas of nature to cause death or serious damage to health as a result of its asphyxiating or toxic properties, or any other substance, liquid or other material or similar proceedings shall be punished with two to 18 years of imprisonment.

¹⁰² Ireland, *Chemical Weapons Act*, 1997, Article 3.

¹⁰³ Italy, *Law of War Decree as amended*, 1938, Article 51.

¹⁰⁴ *Ibid.*, Article 35(1).

¹⁰⁵ Italy, *Law on the Prohibition of Chemical Weapons*, 1995, Article 3.

¹⁰⁶ Italy, *Military Penal Code of War*, as amended by Law No. 6 of 31 January 2002, Article 174 and 175.

Article 72.

(Use of prohibited munitions)

Whoever, in violation of international law uses munitions which expand or flatten easily in the human body causing superfluous injury or unnecessary suffering, shall be punished with two to 15 years of imprisonment.¹⁰⁷

Military Manuals

Italy's IHL Manual states: "the use of means and methods of warfare of a nature to cause ... superfluous injuries and unnecessary suffering is prohibited."¹⁰⁸ It also states that "the use ... of asphyxiating, toxic or similar gases ... is forbidden in conformity with the international provisions in force,"¹⁰⁹ and that "it is specifically prohibited ... to use bullets which expand or flatten easily in the human body, or bullets which are pierced with incisions."¹¹⁰

Japan

Legislation

Japan's Implementing Law on the Biological Weapons Convention states that:

9. Persons who use biological or toxin weapons and discharge biological agents or toxins filled in the said biological or toxin weapons shall be liable to either imprisonment with labor for an indefinite period or for minimum two years, or maximum fine of ten million yen.

9-2. Persons who endanger human life, body or property by discharging unlawfully biological agents or toxins shall be liable to either imprisonment with labor for maximum ten years or maximum fine of five million yen.

9-3. Other charges and punishments shall be imposed on persons who attempted the crimes.¹¹¹

Kazakhstan

Legislation

Under Kazakhstan's Penal Code, "the production, acquisition, or sale of ... chemical weapons" and "the use of the weapons of mass destruction prohibited by an international treaty"¹¹² to which the Republic of Kazakhstan is a party," are criminal offences.¹¹³

Kenya

Military Manuals

Kenya's LOAC Manual states that "it is prohibited to employ weapons, projectiles and methods of warfare of nature to cause ... superfluous and unnecessary suffering."¹¹⁴ Further, this Manual states that "the use of bullets that expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with

¹⁰⁷ Italy, *Norme per l'adeguamento alle disposizioni dello Statuto Istitutivo della Corte Penale Internazionale*. C. 1439 Melchiorre, C. 1782 Di Pietro, C. 2445 Bernardini e C. 1695 Gozi., proposta di testo unificato del relatore, 2009, Articles 42, 71 and 72.

¹⁰⁸ Italy, *Manuale di diritto umanitario, Introduzione e Volume I, Usi e convenzioni di Guerra*, SMD-G-014, Stato Maggiore della Difesa, I Reparto, Ufficio Addestramento e Regolamenti, Rome, 1991, Vol. I, § 7.

¹⁰⁹ *Ibid.*, § 19.

¹¹⁰ *Ibid.*, § 8(6).

¹¹¹ Japan, *Law on Implementing the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction*, 1982 as amended in 2001, Articles 4, 9 and 10.

¹¹² For a list of treaties to which Kazakhstan is party to, please refer to the ICRC treaties database: http://www.icrc.org/Web/eng/siteeng0.nsf/html/party_main_treaties.

¹¹³ Kazakhstan, *Penal Code*, 1997, Articles 158 and 159(2).

¹¹⁴ Kenya, *Law of Armed Conflict, Military Basic Course (ORS)*, 4 Précis, The School of Military Police, 1997, Précis No. 2, p. 2.

incisions, is prohibited.”¹¹⁵ It also prohibits the use of “asphyxiating, poisonous or other gases, all analogous liquids, materials or devices,”¹¹⁶ and “the use of poison or poisoned weapons.”¹¹⁷

Kiribati

Legislation

Kiribati's Chemical Weapons (Prohibition) Act prohibits the development, production, acquisition, stockpiling, retention and use of chemical weapons, rendering it an offence liable to imprisonment for life or a fine.¹¹⁸

Republic of Korea

Legislation

Korea's Act on the Prohibition of Chemical and Biological Weapons etc., prohibits development, production, acquisition, possession, stockpiling, transfer, transport, or use of biological weapons and agents (for the purpose of developing or producing biological weapons). This law also provides penalties for violations of the law, such as prison sentence of at least five years or a penalty of 100 million KRW (approx. 110,000 USD) for anyone involved in prohibited activities.¹¹⁹

Korea's Act on the Control, etc., of Chemical Weapons states that:

- 1) No person shall develop, produce, stockpile, transfer or use chemical weapons or assist or induce another person to do so.
- 2) No person shall produce, stockpile, transfer or use chemical weapons for the purpose of developing or producing them.¹²⁰

Korea's ICC Act states that:

Article 14 (War crime using forbidden weapon)

1. Any person who uses any of following weapons related to international or non-international armed conflicts shall be subject to punishment of life or no less than 5 years.
 1. Poison(poison) or poisoned weapon(poisoned weapon)
 2. Biological or chemical weapon
 3. Bullets which expand or flatten easily in the human body,
2. Any person who causes damages of other's life, physical health and property shall be under capital punishment, imprisonment for life or imprisonment for no less than 7 years.
3. Any person who attempts a crime in paragraph (1) shall be punished.¹²¹

Lesotho

Legislation

Lesotho's Chemical Weapons Act states that:

5. No person shall,
 - (a) develop, produce, otherwise acquire, stockpile, or retain a chemical weapon, or transfer, directly or indirectly, a chemical weapon to another person;
 - (b) use a chemical weapon;
 - (c) engage in any military preparations to use a chemical weapon;

¹¹⁵ *Ibid.*, Précis No. 3, p. 5.

¹¹⁶ *Ibid.*, p. 6.

¹¹⁷ *Ibid.*

¹¹⁸ Kiribati, *Chemical Weapons (Prohibition) Act 2006*, section 5.

¹¹⁹ Republic of Korea, *Act on the Prohibition of Chemical and Biological Weapons and the Control of the Production, Export, and Import of Specific Chemicals and Biological Agents (CBWPA)*, 2006, Article 4b.

¹²⁰ Republic of Korea, *Act on the Control of the Production, Export, Import of Specific Chemicals for the Prohibition of Chemical Weapons*, 1996, Article 3.

¹²¹ Republic of Korea, *ICC Act*, 2007, Article 14.

(d) assist, encourage, or induce, in any way, any person to engage in an activity prohibited to a State Party under the Convention; or

(e) use a riot control agent as a method of warfare.

(...)

14. (1) A person who contravenes a provision of this Act commits an offence and is liable on conviction to a fine not less than M50,999 or to imprisonment for a period not less than 5 years, or both.

(2) Where an offence under this Act is committed on more than one day, the person who committed the offence is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

(3) A person who commits, outside Lesotho, an act or omission that would, if committed inside Lesotho, be an offence under this Act, shall be deemed to have committed that act or omission in Lesotho.¹²²

Liberia

Legislation

Liberia's Chemical Weapons Act states:

3.1 A person commits an offence who:

(a) develops, produces, otherwise acquires, stockpiles, or retains a chemical weapon;

(b) transfers, directly or indirectly, a chemical weapon to another person;

(c) uses a chemical weapon;

(d) engages in any military preparations to use a chemical weapon;

(e) uses a riot control agent as a method of warfare;

(f) assists, encourages, or induces, in any way;

(g) engages in any activity prohibited to as State Party under the Convention,

(h) assists, encourages, or induces, in any way, a person to engage in any activity prohibited under this Act or by a State Party under the Convention.

8.1 A person, who contravenes the provisions of section 3.1, commits a felony of the first degree and shall be punished upon conviction in accordance with the Penal Law of Liberia.¹²³

Luxembourg

Legislation

Luxembourg's Law on the Approval of the Chemical Weapons Convention states that:

3. It is forbidden to any natural or legal person to:

a. develop, produce or acquire chemical weapons by any other means, stockpile or preserve them in any capacity or for any purpose, or transfer them directly or indirectly to any person;

b. use chemical weapons;

c. undertake any preparatory steps for using chemical weapons;

d. assist, encourage or incite any person by whatever means to undertake any activity prohibited by the Convention and by this law;

e. transfer or receive, subject to the applicable Community provisions, the chemical products defined in Annex 1 to the Convention in circumstances prohibited by the Convention and not authorized by the Licensing Office.

(...)

5. Infringement of these provisions shall be punished with imprisonment from 8 days to 5 years and a fine of 50.000 to 5 million francs. Chemical products shall be confiscated and destroyed to the charge of the convicted person. Destruction of the place of production and store can be ordered. The convicted person shall afford the cost of such an operation.¹²⁴

¹²² Lesotho, *Chemical Weapons Act*, 2005, Articles 5 and 14.

¹²³ Liberia, *Chemical Weapons Act*, 2008, Sections 3.1 and 8.1.

¹²⁴ Luxembourg, *Law on the Approval of the CWC*, 1997, Articles 3 and 5.

Malaysia

Legislation

Malaysia's Chemical Weapons Convention Act states that:

Prohibition

18. (1) No person shall—

- (a) develop, produce, acquire, stockpile or retain any chemical weapon;
- (b) transfer, directly or indirectly, any chemical weapon to another person;
- (c) have in his possession, custody or control any chemical weapon;
- (d) use any chemical weapon;
- (e) engage in any unlawful military preparations to use a chemical weapon; or
- (f) assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under the Convention.

(2) Any person who contravenes subsection (1) commits an offence and shall on conviction be punished with imprisonment for a term not exceeding thirty years or a fine not exceeding one million *ringgit* or both.¹²⁵

Mali

Legislation

Mali's Ordinance implementing the Chemical Weapons Convention prohibits the following acts in regards to chemical weapons:

To develop, produce, acquire by any other means, stockpile, retain or preserve in any capacity or for any purpose, or transfer directly or indirectly chemical weapons to any person;

To use chemical weapons or riot control agents as a method of warfare, to undertake any military preparatory steps for using chemical weapons.

(...)

38. Whoever infringes the provisions found in Articles 7 and 9 (...) shall be punished with imprisonment from 5 to 20 years and with a fine from 500 000 to 5 000 000 F CFA.¹²⁶

Malta

Legislation

Malta's Law on the Prohibition of Chemical Weapons states that:

4. (1) Any person in Malta, or any citizen or permanent resident of Malta, whether in Malta or abroad, who -

- (a) undertakes any activity which is prohibited to a state party under Articles IV and V of the Convention; or
- (b) assists, finances or otherwise takes part in any activity which leads to the production, development, acquisition, stockpiling, retaining, direct or indirect transferring of chemical weapons; or
- (c) uses chemical weapons; or
- (d) engages in military preparations to use chemical weapons; or
- (e) assists, encourages or induces, in any way, anyone to engage in any activity prohibited to a state party under the Convention; or
- (f) uses transfers or receives any chemical product listed in the schedules to the Convention for purposes other than those specified in Articles IV and V of the Convention or in a manner other than that specified in the Convention; or [...]

shall be guilty of an offence against this article, and shall be liable, on conviction, to a fine (*multa*) of not less than ten thousand *liri* and not more than one hundred thousand *liri* or to imprisonment for a term of not less than eighteen months and not more than fifteen years.¹²⁷

¹²⁵ Malaysia, *Chemical Weapons Convention Act*, 2005 Article 18.

¹²⁶ Mali, *Ordonnance No. 07-021 Relative à la mise en oeuvre de la Convention sur l'interdiction de la mise au point, de la fabrication, du stockage et de l'emploi des armes chimiques et sur leur destruction, adoptée à Paris le 13 janvier 1993*, 18 July 2007, Articles 7 and 38.

¹²⁷ Malta, *Ratification of Chemical Weapons Convention Act*, 1997, Article 4.

Mauritius

Legislation

Mauritius' Law on the Prohibition of Chemical Weapons states:

7. Prohibitions

(1) No person shall-

- (a) develop, produce, acquire, stockpile or retain a chemical weapon;
- (b) directly or indirectly transfer or tranship a chemical weapon to any other person;
- (c) use a chemical weapon;
- (d) engage in any military preparation to use a chemical weapon;
- (e) assist, encourage or induce, in any way, a person to engage in any activity prohibited to a State Party under the Convention;
- (f) use a riot control agent as a method of warfare.

(2) No person shall develop, produce, acquire, retain, transfer or use a toxic chemical or its precursor except for purposes not prohibited under the Convention.

(...)

16. Offences and penalties

(1) Any person who -

(...)

(e) contravenes this Act or any regulations made under this Act, shall commit an offence.

(2) Any person convicted of an offence -

(a) under sections 7, 11, 12, 13 and 14, shall be liable to a fine not exceeding one million rupees and to imprisonment which shall not be less than 5 years nor more than 15 years;

(...).¹²⁸

Mexico

Legislation

Mexico's Law on the Prohibition of Chemical Weapons states that:

49. A penalty of fifteen to forty years of prison and a fine from 400 to 1200 days of minimum-wage will be imposed to

Anyone who transfers chemical substances [forbidden by this law because they could be diverted for the production of chemical weapons];

Anyone who produces, acquires, stockpile, transfer or use chemical substances [forbidden by this law because they could be diverted for the production of chemical weapons].¹²⁹

Republic of Moldova

Legislation

The Republic of Moldova's Penal Code punishes the use of chemical and bacteriological weapons:

Article 140. Use, Development, or Acquisition; Processing, Possession, Accumulation or Conservation; Direct or Indirect Transmission, Storage, or Transportation of Weapons of Mass-Destruction

(1) The use, development, or acquisition; the processing, possession, accumulation or conservation; the direct or indirect transmission, storage, or transportation of chemical weapons, biological weapons, nuclear weapons, nuclear explosive devices, or other weapons of mass-destruction that violate provisions of national legislation or of international treaties¹³⁰ to which the Republic of Moldova is a party by a person shall be punished by a fine in the amount of 3000 to 5000 conventional units or by imprisonment for 8 to 12 years, in both cases with (or without) the

¹²⁸ Mauritius, *The Chemical Weapons Convention Act*, 2003, Articles 7 and 16.

¹²⁹ Mexico, *Federal Law on the Control of Chemical Substances which could be diverted for the production of chemical weapons*, 2009, Article 49.

¹³⁰ For a list of treaties to which the republic of Moldova is party to, please refer to the ICRC treaties database: http://www.icrc.org/Web/eng/siteeng0.nsf/html/party_main_treaties.

deprivation of the right to hold certain positions or to practice certain activities for 2 to 5 years, whereas a legal entity shall be punished by a fine in the amount of 5000 to 8000 conventional units with the deprivation of the right to practice certain activities for 2 to 5 years or by its liquidation.

(...)

Article 143. Application of Prohibited Means and Methods of Waging War

(1) The application during an armed conflict or military action of means and methods of waging war prohibited by the international treaties to which the Republic of Moldova is a party shall be punished by imprisonment for 12 to 20 years.

(2) The use of weapons of mass-destruction prohibited by the international treaties to which the Republic of Moldova is a party shall be punished by imprisonment for 16 to 20 years or by life imprisonment.¹³¹

Netherlands

Legislation

The use of biological weapons is prohibited by the provisions of the Netherlands Penal Code relating to the creation of hazards.¹³²

According to the Chemical Weapons Act of the Netherlands, the development, production, acquisition, stockpiling, retaining, transfer and use of chemical weapons is prohibited.¹³³

New Zealand

Legislation

New Zealand's Chemical Weapons Act states:

6 Chemical Weapons

(1) Every person commits an offence who intentionally or recklessly—

(a) Develops, produces, otherwise acquires, stockpiles, or retains chemical weapons; or

(b) Transfers, directly or indirectly, chemical weapons to another person; or

(c) Uses chemical weapons; or

(d) Engages in any military preparations to use chemical weapons; or

(e) Assists, encourages, or induces, in any way, any person to engage in any activity prohibited to a State Party under the Convention,—

and is liable on conviction on indictment to imprisonment for life or a fine not exceeding \$1,000,000.¹³⁴

Nicaragua

Legislation

Nicaragua's Military Penal Code punishes any soldier "who employs or orders the employment of weapons or means and methods of warfare... designed to cause unnecessary suffering or superfluous injury."¹³⁵

Nigeria

Military Manuals

Nigeria's Military Manual states that it is prohibited "to employ weapons which are calculated to cause unnecessary suffering."¹³⁶ The Manual also states that it is prohibited "to employ poison or poisoned weapons."¹³⁷

¹³¹ Republic of Moldova, *Penal Code*, 1999, Article 140 and 143 (as amended by Law No. 277-XVI dated 18.12.2008, in force as of 24.05.2009).

¹³² Netherlands, *Penal Code*, Wetboek van strafrecht, Sections 172, 173, 173a, 173b, 287 and 289.

¹³³ The Netherlands, *Chemical Weapons Act*, 1995, Section 2.

¹³⁴ New Zealand, *Chemical Weapons Act*, 1996, Section 6, article 1.

¹³⁵ Nicaragua, *Military Penal Code*, 1996, Article 51.

Nigeria's Soldiers' Code of Conduct states that it is prohibited "to employ arms, projectiles or materials calculated to cause unnecessary suffering."¹³⁸ Further, it prohibits "to employ poison or poisoned weapons."¹³⁹

Norway

Legislation

The Norwegian Penal Code prohibits and criminalises the manufacture, production, acquisition, possession, stockpiling, development, transport, transfer, and use of biological weapons:

"Any person shall be liable to imprisonment for a term not exceeding 10 years who develops, produces, stores or otherwise obtains or possesses:

- (1) bacteriological or other biological substances or toxins regardless of their origin or method of production, of such a kind and in such quantities that they are not justified for preventive, protective or other peaceful purposes,
- (2) weapons, equipment or means of dissemination made for using such substances or toxins as are mentioned in item 1 for hostile purposes or in armed conflict.

Accomplices shall be liable to the same penalty."¹⁴⁰

Norway's Penal Code also prohibits the use of poison:

§ 153. Any person who adds poison or other such substances to any product intended for general use or sale so that the product cannot be used for the purpose intended without causing a person's death or injuring his health, or who otherwise causes any poisoning that involves general danger to life or health, or is who accessory thereto, shall be liable to imprisonment for a term not exceeding 21 years.

§ 160. Any person who publicly gives or offers instruction in the use of explosives or poison as a means to commit felonies, or who threatens to commit or publicly incites to the commission of felonies by such means, or who is accessory to any such felony, shall be liable to imprisonment for a term not exceeding 10 years.¹⁴¹

Norway's Chemical Weapons Act states that it is "It is prohibited to develop, produce, otherwise acquire, stockpile, transfer, etc., chemical weapons in contravention of the Convention of 13 January 1993 on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction."¹⁴²

Pakistan

Legislation

Pakistan's Chemical Weapons Ordinance states that "no person shall develop, produce, otherwise acquire, stockpile or retain a chemical weapon, or transfer, directly or indirectly, a

¹³⁶ Nigeria, *International Humanitarian Law (IHL)*, Directorate of Legal Services, Nigerian Army, 1994, p. 39-40 § 5(1)(iv).

¹³⁷ *Ibid.*, p. 39, § 5(1)(i).

¹³⁸ Nigeria, *Code of Conduct for Combatants, "The Soldier's Rules"*, Nigerian Army, undated, §12(e)

¹³⁹ *Ibid.*, § 12(a).

¹⁴⁰ Norway, *Penal Code, Act of 22 May 1902 No. 10* as subsequently amended, most recently by *Act of 1 July 1994 No. 50*, Section 147 and 153a.

¹⁴¹ Norway, *Idem.*, §§ 153 and 160.

¹⁴² Norway, *Chemical Weapons Act, 1994*, Article 1.

chemical weapon to anyone, or use a chemical weapon." It punishes such offence with a maximum imprisonment of 25 years.¹⁴³

Palau

Legislation

The Palau National Code prohibits the development, production, acquisition, stockpiling, retention and use of chemical weapons. Such crime is punishable by a maximum of life imprisonment and a fine.¹⁴⁴

Panama

Legislation

Panama's Criminal Code states that:

Whoever uses or orders to use banned means or methods of warfare of nature to cause unnecessary suffering or superfluous, lasting and grave damage to the natural environment, shall be punished with imprisonment from 10 to 15 years. With the same penalty it will be punished whoever develops, produces, stockpiles, transfers or fail to destroy bacteriological, biological toxic, chemical weapons or anti-personnel mines.¹⁴⁵

Panama incorporated the 1993 Chemical Weapons Convention in its entirety into national law in 1998.¹⁴⁶

Paraguay

Constitution

The Paraguayan Constitution prohibits the manufacture, assembly, import, sale, possession or use of biological weapons.¹⁴⁷

Peru

Legislation

Peru's Law on Chemical Weapons prohibits the use of chemical weapons, as well as their development, production, acquisition and delivery, and makes reference to the 1993 Chemical Weapons Convention.

This law incorporates into the Peruvian Penal Code a new article, Article 279-A, which states that:

Whoever produces, develops, commercializes, stockpiles, sells, uses or possess chemical weapons –in breach of the prohibitions established in the Chemical Weapons Convention adopted by the United Nations in 1992- or transfers them to another, or promotes, supports or facilitates these acts, shall be punished with imprisonment of no less than five years and no more than twenty years.¹⁴⁸

¹⁴³ Pakistan, *Ordinance to give effect in Pakistan to the Chemical Weapons Convention (Presidential ordinance)*, 11 October 2000, Article 3.

¹⁴⁴ Palau, *Palau National Code*, 2005, Title 17 Chapter 40 - Prohibitions against Chemical Weapons.

¹⁴⁵ Panama, *Act No.14*, 30 October 1990, Article 440.

¹⁴⁶ Panama, *Chemical Weapons Law*, 1998. Article 1 of this law states: "It is approved, in its entirety, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, which reads: ... (annexed, the text of the Convention.)."

¹⁴⁷ Paraguay, *Paraguayan Constitution*, 1992, Article 8.

¹⁴⁸ Peru, *Law on Chemical Weapons*, 1996, Article 4(b) and 5.

Philippines

Legislation

Philippines' Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity states that:

"Section 4. War Crimes. - For the purpose of this Act, "war crimes" or "crimes against International Humanitarian Law" means:

...

(c) Other serious violations of the laws and customs applicable in armed conflict, within the established framework of international law, namely:

...

(25) Employing means of warfare which are prohibited under international law, such as:

(i) Poison or poisoned weapons;

(ii) Asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;

(iii) Bullets which expand or flatten easily in the human body, such as bullets with hard envelopes which do not entirely cover the core or are pierced with incisions; and

(iv) Weapons, projectiles and material and methods of warfare which are of the nature to cause superfluous injury or unnecessary suffering

Any person found guilty of committing any of the acts specified herein shall suffer the penalty provided under Section 7 of this Act."¹⁴⁹

Comprehensive Agreement on Respect for Human Rights and IHL in the Philippines

In 1998, the Government of the Philippines and the National Democratic Front of the Philippines, including the Communist Party of the Philippines (CPP) and the New People's Army (NPA), signed a Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law:

Recognizing that respect for human rights and international humanitarian law is of crucial importance and urgent necessity in laying the ground for a just and lasting peace,

(...)

Affirming that the principles of human rights and the principles of international humanitarian law are universally applicable,

Acknowledging that the prolonged armed conflict in the Philippines necessitates the application of the principles of human rights and the principles of international humanitarian law,

Reaffirming their continuing commitment to the aforesaid principles and their application,

Part IV - Respect for International Humanitarian Law

Article 4. The principles and standards of international humanitarian law shall likewise apply and protect the rights of persons, entities or objects involved or affected in any of the cases or situations cited hereunder

(...)

4. Civilian population and civilians shall (...) be protected against (...) the use of chemical and biological weapons.¹⁵⁰

¹⁴⁹ Philippines, *Act on Crimes Against International Humanitarian Law, Genocide, and Other Crimes Against Humanity* R.A. 9851, 2009, Section 4.

¹⁵⁰ Comprehensive Agreement on Respect for Human Rights and International Humanitarian Law, 16 March 1998, Part IV, Article 4(4).

Poland

Legislation

Poland's Penal Code punishes

"any person who uses a means of mass destruction prohibited by international law" [and] "any person who, against the prohibition by international law or by the provision of law, produces, stockpiles, acquires, sells, retains, transports or sends means of mass destruction or means of combat, or conducts research aimed at the production or use of such means".¹⁵¹

Poland's Chemical Weapons Act prohibits the use, development, production, manufacturing, processing, consumption or otherwise acquiring, collecting, stockpiling, sale or transfer to anyone of chemical weapons and provides for relevant sentences.¹⁵²

Portugal

Legislation

Portugal's Penal Code states that:

Article 12. War crimes through the use of prohibited means of warfare

1 – Anyone who in the context of an armed conflict of an international nature or an armed conflict of a non-international nature uses weapons, projectiles, materials and methods of combat which because of their nature cause excessive injury or unnecessary suffering or which give rise to indiscriminate effects contrary to international law applicable to armed conflicts shall be punished with the penalty of imprisonment for 10 to 25 years.¹⁵³

This prohibition specifically applies to:

- a) poison or poisonous weapons.
- b) asphyxiating, toxic or similar gases or any similar liquid, material or device,
- c) bullets which readily expand or flatten within the human body, such as bullets with a hard coating which does not wholly cover the interior or includes incisions.
(...)
- e) chemical weapons, contrary to the provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction, ratified by Decree by the President of the Republic no. 25-C/96, of the 23 July.¹⁵⁴

Romania

Legislation

Romania's Law on the Prohibition of Chemical Weapons states that:

- (1) It is prohibited for any person, under any circumstance:
 - (a) to develop, produce, acquire, retain or transfer chemical weapons, directly or indirectly, to other persons;
 - (b) to use chemical weapons;
 - (c) to engage, in any way, in military preparations to use chemical weapons;
 - (d) to assist, encourage or induce, in any way, other persons to engage in an activity prohibited under this Act;

¹⁵¹ Poland, *Penal Code*, 1997, Articles 120 and 121.

¹⁵² Poland, *Law on the implementation of the Convention on the prohibition of the development, production, stockpiling and use of chemical weapons and on their destruction*, 22 June 2001, Article 5.

¹⁵³ Portugal, *Law no. 31/2004* of 22 July, adapting Portuguese criminal legislation to the Statute of the International Criminal Court specifying conduct constituting crimes against international humanitarian law – 17th amendment to the Penal Code, Article 12.

¹⁵⁴ *Ibid.*, Article 12.

(2) Persons means any natural or legal person on the territory of Romania including public authorities.¹⁵⁵

It further provides: "The act of using chemical weapons is considered as a criminal act and is punished."¹⁵⁶

Russian Federation

Legislation

Russian Federation's Penal Code states that:

2. Use of weapons of mass destruction, banned by an international treaty of the Russian Federation, shall be punishable by deprivation of liberty for a term of 10 to 20 years.¹⁵⁷

Military Manuals

Russia's Military Manual states that

9. The following shall be prohibited to use in the course of combat operations:

bullets which expand or flatten easily in the human body, both specially manufactured or modified to cause such an effect later on;

(...)

poison or poisoned weapons;

chemical weapons including chemicals as well as projectiles for their use;

bacteriological (biological) and toxin weapons; (...)¹⁵⁸

Rwanda

Legislation

Rwanda's law repressing the crime of genocide, crimes against humanity and war crimes considers "employing poisoned weapons or other arms designed to cause unnecessary suffering "to be a crime "in armed conflict."¹⁵⁹

Rwanda's Penal Code states that:

Poisoning is the attempt against the life of a person committed by using, substances which can kill more or less promptly, regardless of how these substances have been used or administered or what the consequences are. It entails the death penalty.¹⁶⁰

Saudi Arabia

Legislation

Saudi Arabia's Chemical Weapons Act prohibits the "development, production, use, acquisition, stockpiling, retention, transfer," etc of chemical weapons. Further, it states that

Article 2 - It is prohibited for any person to perform any of the following acts:

(a) Development or production of chemical weapons.

(b) Use of chemical weapons.

(c) Acquisition, stockpiling or retention of chemical weapons.

(d) Transfer of chemical weapons directly or indirectly to any person.

(e) Military preparation to use chemical weapons.

(f) Use of riot control agents as a method of warfare.

Article 17 - Any person violating any of the provisions of Article (2) of this Act shall be subject to a fine of not less than five hundred thousand riyals and not more than one 8 million riyals or

¹⁵⁵ Romania, *Law on the Prohibition of Chemical Weapons*, 1997, Article 3.

¹⁵⁶ *Ibid.*, Article 50(1).

¹⁵⁷ Russian Federation, *Penal Code*, 1996, Article 356(2).

¹⁵⁸ Russia, *Military Manual*, 2001 Section 3, Article 9.

¹⁵⁹ Rwanda, *Law No. 33 bis/2003 repressing the crime of genocide, crimes against humanity and war crimes*, 15 July 2003, Article 10.

¹⁶⁰ Rwanda, *Penal Code*, 1977, Article 315.

imprisonment for a term of not less than five years and not more than twenty years or both, in addition to confiscation of the chemical weapons.¹⁶¹

Senegal

Legislation

Senegal's Chemical Weapons Law prohibits

Use, development, manufacture, acquisition, stockpiling, retaining or direct or indirect transfer of chemical weapons to anybody.

Applicable sanctions range from

- 1) Life sentence of forced labour if the offence was carried out in arrangement with a foreign power; or prison or complementary sentences as follows:
- 2) the prohibition, according to procedures contained in article 34 of the penal, civic, civil and family code;
- 3) the lockout, definitive or temporary, of one or more of the company's establishments used to commit the prohibited activity;
- 4) the exclusion from public markets for as much as five years;
- 5) the seizure of objects or installations used to commit or intended to commit the prohibited activity or the product of it.¹⁶²

Serbia

Legislation

Serbian law on Chemical Weapons states that:

Article 3 - It shall be prohibited under any circumstances in the territory of the Republic of Serbia:

- 1) To develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone;
- 2) To use chemical weapons;
- 3) To engage in any way in any military preparations to use chemical weapons;
- 4) To assist, encourage or induce, in any way, anyone to engage in any activity prohibited under the present Law;
- 5) To use riot control agents as a method of warfare.

Article 45 - A fine of RSD5 150,000 to 3,000,000 shall be imposed on a company or any other legal entity which commits an economic offence by producing or processing, consuming or storing chemicals if:

- 1) it develops, produces, acquires, retains or transfers, directly or indirectly, chemical weapons to any other person, or uses chemical weapons or is otherwise engaged in military preparations for the to use of chemical weapons or otherwise assists, encourages or induces others to participate in the activities prohibited under the present Law or uses riot control agents as a method of warfare (Article 3 of the present Law).
(...).¹⁶³

Serbia's Regulations on implementing the rules of international law of war in armed forces of SFRY states that:

98. Prohibition on the use of poisons. It is prohibited to use poisons or poisonous weapons.
99. Prohibition on the use of poisonous (meaning chemical) and bacteriological (biological) means. It is prohibited to use asphyxiating and poisonous gasses, liquids and similar, as well as bacteriological means.¹⁶⁴

¹⁶¹ Saudi Arabia, *Implementation Act of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction*, 2005, Articles 2 and 17.

¹⁶² Senegal, *Loi N°2006-36 Portant sur l'interdiction de la mise au point, de la fabrication, du stockage et de l'emploi des armes chimiques et sur leur destruction*, 2006, Articles 4-6, 32-34.

¹⁶³ Serbia, *Law on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on their Destructions*, 2009, Articles 3 and 45.

¹⁶⁴ Serbia, *Regulations on implementing the rules of international law of war in armed forces of SFRY*, 1988, Articles 98 and 99.

Serbian Armed Forces' Rules Of Engagement states that:

Article 4.4 - Restrictions on the use of means of warfare and military equipment

82. In accordance with provisions of the International Law of War, Law of Armed Conflict or Humanitarian Law, it is forbidden to use:

- weapons, military equipment and other devices which may be deemed to be excessively injurious and causing unnecessary suffering, which are not in proportion with military goal that is proposed to be achieved;
- means causing widespread and long lasting damage to or preventing the use of natural environment;
- poison or poisonous weapons, nuclear, chemical or biological weapons, ammunition and material (weapons of mass destruction).¹⁶⁵

Singapore

Legislation

Singapore's Chemical Weapons (Prohibition) Act states:

Any person who

- (a) uses a chemical weapon;
- (b) develops or produces a chemical weapon;
- (c) acquires, stockpiles or retains a chemical weapon;
- (d) transfers, directly or indirectly, a chemical weapon to another person;
- (f) knowingly assists, encourages or induces, in any way, another person to engage in any activity prohibited to a State Party under the Convention;

...

shall be guilty of an offence and shall on conviction be punished with

- (i) imprisonment for a term which may extend to life imprisonment, and
- (ii) a fine not exceeding \$1 million.¹⁶⁶

Singapore's Biological Agents and Toxins Act, states that:

Prohibition against use of biological agents for non-peaceful purpose, etc.

5. —(1) No person shall —

- (a) use;
- (b) develop or produce;
- (c) acquire, stockpile, retain or possess; or
- (d) transfer to another person, whether directly or indirectly,

any biological agent for any non-peaceful purpose.

(2) Any person who contravenes subsection (1) —

- (a) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$1 million or to imprisonment for a term which may extend to life imprisonment or to both; and
- (b) may be arrested without warrant by a police officer or an enforcement officer.¹⁶⁷

Slovakia

Legislation

The implementing legislation on biological weapons of Slovakia states that:

(1) It is prohibited to research, develop, produce, stockpile, keep, process, trade in, use, consume, import, export, transport (including transit) or otherwise handle biological weapons or finance such activities.

(2) It is prohibited to research, develop, produce, stockpile, keep, import, export, trade in or use, facilities designed to produce biological weapons and their carriers in other manner, or to design their construction or put such production facilities into operation or finance such activities.¹⁶⁸

¹⁶⁵ Serbia, *Armed Forces' Rules of Engagement*, 2007, Article 4.4 § 82.

¹⁶⁶ Singapore, *Chemical Weapons (Prohibitions) Act*, 2000, Section 8.

¹⁶⁷ Singapore, *Biological Agents and Toxins Act*, 2005, Article 5.

¹⁶⁸ Slovakia, *Law No. 218/2007, on the Prohibition of Biological Weapons*, 2007, Article 3.

Slovakia's Chemical Weapons Act states that:

§ 4 - Prohibition of chemical weapons.

(1) Development, production, stockpiling and use of chemical weapons is hereby prohibited.¹⁶⁹

Slovenia

Legislation

The Slovenian Penal Code states that:

Article 332- Burdening and Destruction of Environment

1) Whoever endangers the life or health of a substantial number of people, or causes, in whole or in part, damage to, or the destruction of the environment, or causes the threat of such damage or destruction ... or by any other general dangerous action releases or introduces dangerous substances or ionizing radiation into the air, soil or water,

...

shall be sentenced to imprisonment for not more than five years.

...

Article 337 - Tainting of Foodstuffs or Fodder

1) Whoever taints foodstuffs with any noxious agent, thereby causing danger to human life or health, shall be punished by imprisonment of up to three years.

...

(3) If the offence under paragraphs 1 or 2 of this Article has as a consequence serious bodily injury to one or more persons, the perpetrator shall be sentenced by imprisonment of up to five years for the offence under paragraph 1, while for the offence under paragraph 2 he shall be punished by imprisonment of up to three years.

(4) If the offence under paragraphs 1 or 2 of this Article has as a consequence the death of one or more persons, the perpetrator shall be punished by imprisonment of one up to twelve years for the offence under paragraph 1, while for the offence under paragraph 2 he shall be punished by imprisonment of one up to eight years.

....¹⁷⁰

Slovenia's Law on control of strategic goods of particular significance to safety/security and health states that:

Article 1 -Purpose and Subject Matter

(1) This Act governs activities pertaining to strategic goods of particular significance to safety/security and health (hereinafter: strategic goods) in accordance with the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction as well as the Council Regulation No 1334/2000 of 22 June 2000 setting up a Community regime for the control of exports of dual-use items and technology.

...

(3) The provisions of this Act shall not apply to nuclear goods as defined by rules on ionising radiation protection and nuclear safety.

Article 2- Definitions

(1) For the purpose of this Act the following definitions shall apply:

¹⁶⁹ Slovakia, *Act No. 129 On Prohibition of Chemical Weapons, and On Changes and Amendments to some Acts*, 1998, Article 4.

¹⁷⁰ Slovenia, *Penal Code*, as amended in 2008, Articles 332 and 337.

...

2. Means of mass destruction:

– strategic substances, irrespective of their origin or method of production, when they are designed to cause disability, injuries and death of people, plants or animals regardless of the magnitude, sort, duration or mechanism of these effects, and irrespective of the reasons, circumstances or method of their application due to these effects.

- strategic equipment when intended for the production and use of strategic substances with the aim of producing effects as referred to in the previous indent, that is irrespective of the function and method of its effects,

– strategic technology directly connected to the development, production and use of strategic substances and strategic equipment as referred to in indents 1 and 2 of this item,

– strategic goods, when intended for use in direct connection with the production and use of strategic substances and strategic equipment as referred to in indents 1 and 2 of this item.

...

Article 6 - Prohibited Strategic Activities

(1) Any development, improvement, production, transit, exchange, extraction, generation and stockpiling, storage, proliferation and use of means of mass destruction shall be prohibited.

(2) Inclusion in any preparations intended for use of means of mass destruction shall be prohibited.

(3) Any encouragement, advisory service, assistance or incitement with regard to any activities as referred to in Paragraphs 1 and 2 of this Article (6) shall be prohibited.

(4) Any re-export or departure of strategic goods as laid down by the Government.¹⁷¹

South Africa

Military Manuals

South Africa's LOAC Manual states that:

Prohibitions on certain types and use of weapons.

As noted earlier, a basic principle of the LOAC is the prevention of unnecessary suffering. The test in relation to a particular weapon is whether the suffering occasioned by its use is needless, superfluous, or grossly disproportionate to the advantage gained.

(i) Weapons which are calculated to cause unnecessary suffering are illegal per se. Such weapons include ... dum-dum bullets.

(ii) (...)

(iii) The use of certain weapons is expressly prohibited by international agreement, treaty or custom (e.g. chemical, poison, biological and toxic weapons).

(iv) (...).¹⁷²

Individual personal liability

While any breach of the law of armed conflict is a war crime, the Geneva Conventions of 1949 define certain offences as 'grave breaches' if they are committed against protected persons or property. (...).¹⁷³

¹⁷¹ Slovenia, *Law on control of strategic goods of particular significance to safety/security and health*, 2006, Articles 1, 2 and 6.

¹⁷² South Africa, *Presentation on the South African Approach to International Humanitarian Law*, Appendix A, Chapter 4: International Humanitarian Law (The Law of Armed Conflict), National Defence Force, 1996, § 34(f).

¹⁷³ South Africa, *Idem.*, pp 12-13.

Spain

Legislation

Spain's Penal Code states that:

Whoever, in time of armed conflict, uses or order to use means and methods of war banned by international humanitarian law or that intended to cause unnecessary suffering or superfluous injury (...) shall be punished with imprisonment from 10 to 15 years, without prejudice to the penalty corresponding to the resulting damages.¹⁷⁴

Military Manuals

Spain's LOAC Manual prohibits the use of asphyxiating or poisonous gases. It reproduces the content of Articles I and IV of the 1993 Chemical Weapons Convention.¹⁷⁵ Further, this Manual also imposes an "absolute prohibition on the use of ... bullets that expand (Dum-Dum) or flatten easily in the human body" in time of war.¹⁷⁶

Sri Lanka

Legislation

Sri Lanka's Chemical Weapons Act prohibits the use, development, acquisition, stockpiling, retention and transfer of chemical weapons and establishes "imprisonment for a period not exceeding twenty years and a fine not exceeding one million rupees" as possible sanctions.¹⁷⁷

Sweden

Legislation

Sweden's Penal Code as amended states:

A person who:

1. develops, produces or by other means acquires, stores or holds chemical weapons or directly or indirectly transfers chemical weapons to another person,
2. uses chemical weapons,
3. participates in military preparations for the use of chemical weapons,

... shall be sentenced, if the act is not regarded as a war crime against international law, for unlawful handling of chemical weapons to [punishment].¹⁷⁸

Switzerland

Legislation

Switzerland's Military Penal Code as amended punishes "whoever will intentionally endanger somebody's life or physical integrity by means of ... toxic gases."¹⁷⁹ It also punishes "anyone who wilfully pollutes drinking water used for persons or cattle with substances harmful to health."¹⁸⁰

Switzerland's Draft Penal Code states that:

Article 264h

It is punished with a minimum three years of imprisonment whoever, in the context of an armed conflict:

- (a) uses poison or poisoned weapons

¹⁷⁴ Spain, *Penal Code - Law (Ley Orgánica) 10/199*, 5 of 23 November 1995, Article 610.

¹⁷⁵ Spain, *Orientaciones. El Derecho de los Conflictos Armados*, Publicación OR7-004, 2 Tomos, aprobado por el Estado Mayor del Ejército, División de Operaciones, 18 March 1996, § 3.2.c.(1) and (2).

¹⁷⁶ *Ibid.*, § 3.2.a.(2).

¹⁷⁷ Sri Lanka, *Chemical Weapons Convention Act No. 58*, 2007, Article 19.

¹⁷⁸ Sweden, *Penal Code as amended*, 1962, Chapter 22, § 6a(1)–(3).

¹⁷⁹ Switzerland, *Military Penal Code as amended*, 1927, Article 162.

¹⁸⁰ *Ibid.*, Article 169(1).

- (b) uses biological or chemical weapons, including gas and toxic or asphyxiating material or liquid.
- (c) uses bullets which expand or flatten easily in the human body,(...)
- (...)

If the act is particularly grave, the judge can impose life imprisonment.¹⁸¹

Tajikistan

Legislation

Tajikistan's Penal Code contains a list of serious violations of international humanitarian law applicable in time of an armed conflict international or non-international, including a prohibition of the "use during the hostilities or in armed conflict of means and materials, prohibited by an international treaty."¹⁸²¹⁸³

The Former Yugoslav Republic of Macedonia

Legislation

The Penal Code punishes to imprisonment of at least one year anyone who, in war or in armed conflict, uses or orders the use of weapons that are prohibited by the rules of international law. It further adds that "[i]f the execution of a criminal offence pursuant to paragraph 1 of this Article causes the death of more persons, the executor of the criminal offence will be punished for at least 5 years to 40 years of imprisonment".¹⁸⁴

The Chemical Weapons Law states:

Article 4. Under this Law, legal and natural persons are prohibited to:

(1) General prohibitions

- develop, produce, otherwise acquire, stockpile or retain chemical weapons;
- transfer, directly or indirectly, chemical weapons, to any legal or natural person;
- use chemical weapons;
- engage in any military preparations to use chemical weapons;
- assist, encourage or induce, in any way, anyone to engage in any activity prohibited under the Convention;
- use riot control agents as a method of warfare;
- engage in any other activities prohibited under the Convention.

Anyone who shall misuse chemical weapons shall be penalized in accordance with the Penal Code.¹⁸⁵

Timor Leste

Legislation

Timor-Leste's Penal Code states that:

Article 127 – War crimes regarding the use of prohibited means of warfare

1. Whoever, in the context of an international armed conflict or an armed conflict not of international character, employs weapons, projectiles and material and methods of warfare which, by their nature cause superfluous injury or unnecessary suffering or which have indiscriminate effects, in violation international law applicable in armed conflict, shall be punished with imprisonment from 12 to 25 years.

¹⁸¹ Switzerland, *Projet de loi fédérale portant modification de lois fédérales en vue de la mise en oeuvre du Statut de Rome de la Cour pénale internationale*, public version for discussion, 2009, Article 264h.

¹⁸² For a list of treaties to which the Tajikistan is party to, please refer to the ICRC treaties database: http://www.icrc.org/Web/eng/siteeng0.nsf/html/party_main_treaties.

¹⁸³ Tajikistan, *Penal Code*, 1998, Article 405.

¹⁸⁴ The Former Yugoslav Republic of Macedonia, *Penal Code of the Federal Republic of Yugoslavia*, 1976, Article 148.

¹⁸⁵ The Former Yugoslav Republic of Macedonia, *Law On the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons*, 2006, Article 4.

2. The previous paragraph shall include, *inter alia*, the use of:
 - a) Poison or poisoned weapons;
 - b) Asphyxiating, poisonous or other or the net, material or similar device;
 - c) Bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions;
(...)
 - e) Chemical weapons;
(...)
3. The weapons, tools and products referred to above are those that are considered as such by international law.¹⁸⁶

Togo

Military Manual

Togo's Military Manual states that "it is prohibited to resort to weapons or methods of warfare of a nature to cause unnecessary losses or superfluous injury."¹⁸⁷

Turkey

Legislation

Turkey's Chemical Weapons Law criminalises the following acts:

- Article 5:
- (1) Whoever develops, produces, otherwise acquires, stockpiles, retains chemical weapons or transfer, directly or indirectly, chemical weapon to anyone shall be sentenced for five to eight years in prison and fifteen thousand days of judicial fine.
 - (2) Whoever uses chemical weapon shall be sentenced for ten to fifteen years in prison and twenty thousand days of judicial fine.¹⁸⁸

Ukraine

Legislation

Ukraine's Penal Code states that:

Article 439. Use of weapons of mass destruction

1. The use of weapons of mass destruction prohibited by international instruments consented to be binding by the Verkhovna Rada [Parliament] of Ukraine,¹⁸⁹ shall be punishable by imprisonment for a term of eight to twelve years.
2. The same act that caused death of people or any other grave consequences, - shall be punishable by imprisonment for a term of eight to fifteen years, or life imprisonment.¹⁹⁰

Military Manual

Ukraine's Manual on the Application of the Rules of International Humanitarian Law in the Armed Forces states:

1.3. Prohibited means and methods of warfare

1.3.1. Prohibitions and limitations on the choice of methods and means of warfare for the belligerents are set forth in order to avoid unnecessary suffering and unjustifiable casualties among civilian population, infliction of severe and long-term damage to the natural environment related to warfare

¹⁸⁶ Timor-Leste, *Penal Code*, 2009, Article 127.

¹⁸⁷ Togo, *Le Droit de la Guerre, III fascicules, Etat-major Général des Forces Armées Togolaises*, Ministère de la Défense nationale, 1996, Fascicule II, p. 5.

¹⁸⁸ Turkey, *Law on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons*, 2006, Article 5.

¹⁸⁹ For a list of treaties to which Ukraine is party to, please refer to the ICRC treaties database:

http://www.icrc.org/Web/eng/siteeng0.nsf/html/party_main_treaties.

¹⁹⁰ Ukraine, *Penal Code*, 2001, Article 439.

(...)

1.3.3. The following means of warfare are prohibited:

- explosive bullets and bullets which expand or flatten easily in the human body (bullets with a hard envelope which does not cover the core entirely or is pierced with incisions);

(...)

- poison, toxic agents and virulent substances;
- bacteriological (biological) and toxin weapons;

(...)¹⁹¹

Uzbekistan

Legislation

Uzbekistan's Penal Code considers a breach of laws and customs of war the "application of weapons prohibited under international law."¹⁹² Anyone found guilty of this act shall be punished with imprisonment from ten to twenty years.¹⁹³ Further, it states:

Development, production, proliferation, purchase, transfer, storage, illegal occupancy and other actions with bacteriological (biological), chemical, and other types of weapons of mass destruction that are prohibited by international treaties to which the Republic of Uzbekistan is a party – shall be punished with imprisonment from five to eight years.

The same acts that have resulted in:

- a) death of a person;
- b) other grave consequences –

shall be punished with imprisonment from eight to fifteen years.¹⁹⁴

United Kingdom

Legislation

The UK Chemical Weapons Act states:

(1) No person shall-

- (a) use a chemical weapon;
- (b) develop or produce a chemical weapon;
- (c) have a chemical weapon in his possession;
- (d) participate in the transfer of a chemical weapon;
- (e) engage in military preparations, or in preparations of a military nature, intending to use a chemical weapon.¹⁹⁵

Military Manuals

The UK LOAC Manual (2004), in its chapter on internal armed conflict, the Manual states that:

Weapons. It is prohibited to use:

- a) weapons of a nature to cause unnecessary suffering or superfluous injury;
 - b) bacteriological weapons;
 - c) chemical weapons, including riot control agents, as a method of warfare
 - d) poison or poisoned weapons
- (...).¹⁹⁶

¹⁹¹ Ukraine, *Manual on the Application of the Rules of International Humanitarian Law in the Armed Forces*, 2004, §1.3.

¹⁹² For a list of treaties to which Uzbekistan is party to, please refer to the ICRC treaties database: http://www.icrc.org/Web/eng/siteeng0.nsf/html/party_main_treaties.

¹⁹³ Uzbekistan, *Penal Code*, as amended by Laws of 29.08.1998 and 29.08.2001, Article 152.

¹⁹⁴ *Ibid*, Article 255 bis.

¹⁹⁵ United Kingdom, *Chemical Weapons Act*, 1996, Section 2(1).

¹⁹⁶ United Kingdom, *The Manual of the Law of Armed Conflict*, Ministry of Defence, 1 July 2004, § 15.28.

Statements

The British Government condemned in 1988 the use by Iraq of chemical weapons against the civilian inhabitants of Halabja and qualified it as

a serious and grave violation of the 1925 Geneva Protocol and international humanitarian law. The U.K. condemns unreservedly this and all other uses of chemical weapons.¹⁹⁷

United States of America

Legislation

The US Chemical Weapons Act states:

It shall be unlawful for any person knowingly

(1) to develop, produce, otherwise acquire, transfer directly or indirectly, receive, stockpile, retain, own, possess, or use, or threaten to use, any chemical weapon; or

(2) to assist or induce, in any way, any person to violate paragraph (1), or to attempt or conspire to violate paragraph (1).

(a) Criminal Penalties. —

(1) In general. — Any person who violates section 229 of this title shall be fined under this title, or imprisoned for any term of years, or both.

(2) Death penalty. — Any person who violates section 229 of this title and by whose action the death of another person is the result shall be punished by death or imprisoned for life.¹⁹⁸

Military Manuals

The US Naval Handbook states:

The United States considers the prohibition against first use of lethal and incapacitating chemical weapons to be part of customary international law and, therefore, binding on all nations whether or not they are parties to the 1925 Gas Protocol ... Consistent with its first-use reservation to the 1925 Gas Protocol, the United States maintained a lethal and incapacitating chemical weapons capability for deterrence and possible retaliatory purposes only. National Command Authorities (NCA) approval was required for retaliatory use of lethal or incapacitating chemical weapons by U.S. forces. Retaliatory use of lethal or incapacitating chemical agents was to be terminated as soon as the enemy use of such agents that prompted the retaliation had ceased and any tactical advantage gained by the enemy through unlawful first use had been redressed. Upon coming into force of the 1993 Chemical Weapons Convention, any use of chemical weapons by a party to that convention, whether or not in retaliation against unlawful first use by another nation, will be prohibited.

[The 1993 Chemical Weapons Convention] will, upon entry into force, prohibit the development, production, stockpiling and use of chemical weapons, and mandate the destruction of chemical weapons and chemical weapons production facilities for all nations that are party to it.¹⁹⁹

Statements

The US State Department stated:

Questions have been raised as to whether the prohibition in the 1925 Geneva Protocol against [chemical weapon] use 'in war' applies to [chemical weapon] use in internal conflicts. However, it is clear that such use against the civilian population would be contrary to the customary international law that is applicable to internal armed conflicts, as well as other international agreements.²⁰⁰

¹⁹⁷ Cited in UK materials on international law (1988) British Yearbook of International Law (BYIL) 579-580. See also (1986) BYIL 632-633, as well as (1990) BYIL 625.

¹⁹⁸ United States of America, *Chemical Weapons Act*, 1998, Section 229.

¹⁹⁹ United States, *The Commander's Handbook on the Law of Naval Operations*, NWP 1-14M/MCWP 5-2.1/COMDTPUB P5800.7, issued by the Department of the Navy, Office of the Chief of Naval Operations and Headquarters, US Marine Corps, and Department of Transportation, US Coast Guard, October 1995 (formerly NWP 9 (Rev. A)/FMFM 1-10, October 1989), §§ 10.3.1.1 and 10.3.1.2.

²⁰⁰ US Department of State, *Press guidance*, 9 September 1988.

In 1988, the US Secretary of State strongly condemned as "completely unacceptable" the use of chemical weapons by Iraq, during in a hearing before the United States Senate Judiciary Committee.²⁰¹ Also in 1988, Ambassador R.W. Murphy, Assistant Secretary for Near Eastern and South Asian Affairs, condemned the use of chemical weapons by Iraq before the Subcommittee on Europe and the Middle East of the House of Representatives Foreign Affairs Committee and qualified its use as "illegal."²⁰²

Venezuela

Constitution

The Venezuelan Constitution prohibits the manufacture, production, acquisition, possession, stockpiling, storing, development, transport, transfer and use of biological weapons.²⁰³

Legislation

Venezuela's Code of Military Justice as amended punishes "those who make use of weapons or means that unnecessarily increase the suffering of the persons attacked."²⁰⁴

Vietnam

Legislation

Vietnam's Penal Code states that:

Those who, in time of war, give the order for or directly undertake the murder of civilians, wounded persons, prisoners of war, the looting of property, the destruction of population quarters, the use of banned war means or methods, and/or commit other acts in serious violation of international laws or international treaties which Vietnam²⁰⁵ has signed or acceded to, shall be sentenced to between ten years and twenty years of imprisonment, life imprisonment or capital punishment.²⁰⁶

Vietnam's Decree on the Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction states that:

Article 3.- Prohibited acts

1. For chemical weapons
 - a. Developing, producing, otherwise acquiring, stockpiling and using chemical weapons;
 - (...)
 - e. Using riot control agents as a method of warfare.
2. For Schedule 1 chemicals ...²⁰⁷

²⁰¹ Hearing on Refugee Consultation with Witness Secretary of State George Shultz, 100th Cong., 2d Sess., (13 September 1988) (Statement of Secretary of State Shultz).

²⁰² US Department of State, *Bulletin*, December 1988, 41, pp. 43-44.

²⁰³ Venezuela, *Constitution of Venezuela*, 1999, Articles 129 and 324.

²⁰⁴ Venezuela, *Code of Military Justice as amended* (1998), Article 474(5).

²⁰⁵ For a list of treaties to which Vietnam is party to, please refer to the ICRC treaties database:

http://www.icrc.org/Web/eng/siteeng0.nsf/html/party_main_treaties.

²⁰⁶ Vietnam, *Penal Code*, 1990, Article 343.

²⁰⁷ Vietnam, *Decree on the Implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction No. 100/2005/Nd-Cp*, 2005, Article 3.

Zambia

Legislation

Zambia Chemical Weapons Act states that:

8. (1) A person shall not ever or under any circumstances —
- (a) develop, produce, otherwise acquire, stockpile or retain a chemical weapon;
 - (b) transfer directly or indirectly, a chemical weapon to any person;
 - (c) use or deal in any manner with a chemical weapon;
 - (d) engage in any military preparations to use chemical weapons;
 - (e) assist, encourage or induce, in any way, a person to engage in any activity prohibited to a State Party under the Convention;
 - (f) use a riot control agent as a method of warfare; or
 - (g) engage in any other activity prohibited to a State Party under the Convention.
- (2) Any person who contravenes subsection (1) commits an offence and shall be liable, on conviction, to imprisonment for a term of not less than twenty years and may be liable to imprisonment for life.²⁰⁸

II. International practice

Andean Community

In 1991, the Presidents of the member countries of the Andean Group (Bolivia, Ecuador, Peru and Venezuela), meeting in the city of Cartagena de Indias, adopted the Declaration on the Renunciation of Weapons of Mass Destruction, which states that:

Standing ready to strengthen the role of the 1967 Treaty for the Prohibition of Nuclear Weapons in Latin America and the Caribbean (Treaty of Tlatelolco) and its protocols, and to extend that ban to all categories of weapons of mass destruction, in order to transform this region into a zone free of such weapons,

(...)

Endorsing the Guadalajara Declaration, which calls for the promotion of conventional disarmament and the banning of weapons of mass destruction and seeks to ensure that measures to control and reduce such weapons do not hinder legitimate access to advanced technologies for peaceful purposes that are essential for the socio-economic development of the peoples of the region,

(...)

Have agreed on the following Declaration:

(...)

§2. They proclaim the commitment of their Governments to renounce the possession, production, development, use, testing and transfer of all weapons of mass destruction, whether nuclear, bacteriological (biological), toxin or chemical weapons, and to refrain from storing, acquiring or holding such categories of weapons, in any circumstances;

§5. They request the countries possessing weapons of mass destruction to undertake not to use such weapons and not to threaten their use against the parties to the present Declaration.²⁰⁹

States Parties to the Biological and Toxin Weapons Convention

In 1996 the States parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, declared:

(...)

²⁰⁸ Zambia, *The Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons Act*, 2007, Article 8.

²⁰⁹ Cartagena Declaration on Renunciation of Weapons of Mass Destruction, 4 December 1991, Preamble and §§ 2 and 5.

Their reaffirmation that under any circumstances the use, development, production and stockpiling of bacteriological (biological) and toxin weapons is effectively prohibited under Article I of the Convention.

Their continued determination, for the sake of mankind, to exclude completely the possibility of the use of bacteriological (biological) agents and toxins as weapons, and their conviction that such use would be repugnant to the conscience of mankind;

(...)

Their recognition that purposes of this Convention include the prohibition of the use of biological weapons as contrary to the purpose of the Convention.

(...)

Article I-1.

(...)

3. The Conference reaffirms that the use by the States Parties, in any way and under any circumstances, of microbial or other biological agents or toxins, that is not consistent with prophylactic, protective or other peaceful purposes, is effectively a violation of Article I of the convention

4. The Conference reaffirms the undertaking in Article I never in any circumstances to develop, produce, stockpile or otherwise acquire or retain weapons, equipment or means of delivery designed to use such agents or toxins for hostile purposes or in armed conflict, in order to exclude completely and forever the possibility of their use.

(...)

Article III-4.

(...)

2. The Conference notes those measures already taken by a number of States Parties in this regard, for example the adoption of penal legislation, and reiterates its call to any State Party that has not yet taken any necessary measures to do so immediately, in accordance with its constitutional processes. Such measures should apply within its territory, under its jurisdiction or under its control anywhere.²¹⁰

Assembly of the League of Nations

The Assembly of the League of Nations in its resolution about the regulation of hostilities during the Spanish Conflict affirmed:

The use of chemical or bacteriological weapons during armed conflict is contrary to international law.²¹¹

Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, 1988

In 2005, States Parties to the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation, adopted the 2005 Amendment Protocols, adding a new Article 3b which states that a person commits an offence within the meaning of the Convention if that person unlawfully and intentionally uses against or on a ship or discharging from a ship any explosive, radioactive material or biological, chemical, nuclear weapon in a manner that causes or is likely to cause death or serious injury or damage.²¹²

European Union

The European Union declared in 1988:

²¹⁰ Final Declaration, Fourth Review Conference the Parties to the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Geneva, 1996, Preamble and Articles I and III.

²¹¹ League of Nations, *Official Journal Spec. Supp.* 183, 1938, pp. 135-36.

²¹² Amendments to the Convention for the Suppression of Unlawful Acts (SUA) Against the Safety of Maritime Navigation, 1988 and its related Protocol, 2005.

Their concern at reports of the alleged use of chemical weapons against the Kurds by the Iraqi authorities. They confirmed their previous positions condemning any use of these weapons and called for respect of international humanitarian law including the Geneva Protocol of 1925.²¹³

International Tribunal for the Former Yugoslavia

The ICTY Statute, adopted by the UN Security Council acting under the authority of Chapter VII of the UN Charter,²¹⁴ states, in its Article 3 on Violations of the laws or customs of war:

The International Tribunal shall have the power to prosecute persons violating the laws or customs of war. Such violations shall include, but not be limited to:

- (a) employment of poisonous weapons or other weapons calculated to cause unnecessary suffering;

This article has been interpreted to apply to non-international armed conflicts by the ICTY Appeals Chamber.²¹⁵

In the same decision, the ICTY Appeals Chamber in 1995 also stated:

There undisputedly emerged a general consensus in international community in the principle that the use of those weapons is also prohibited in internal armed conflicts.²¹⁶

Joint Declaration on the Complete Prohibition of Chemical Weapons

In 1992, the Government of the Islamic Republic of Pakistan and the Government of the Republic of India signed the Joint Declaration on the Complete Prohibition of Chemical Weapons, which states that:

Convinced that a complete and effective prohibition of chemical weapons will contribute to the security of all States;

Reaffirming their respective commitment to the Protocol for Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare, signed in Geneva on 17 June 1925 and recalling the relevant resolutions of the General Assembly upholding the validity of the 1925 Geneva Protocol;

Reiterating the need for the early conclusion within the framework of the Conference on Disarmament of a global convention for the complete and effective prohibition of the development, production, stockpiling and use of chemical weapons and their destruction.

Hereby declare that:

1. They 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.²¹⁷

Mendoza Declaration on Chemical and Biological Weapons

In 1991, the Governments of Argentina, Brazil, and Chile "convinced that a complete ban on chemical and biological weapons will contribute to strengthening the security of all States," declared:

1. Their full commitment not to develop, produce, acquire in any way, stockpile or retain, transfer directly or indirectly, or use chemical or biological weapons.²¹⁸

²¹³ 4 European political co-operation documentation bulletin 92, 1988.

²¹⁴ Adopted 25 May 1993 by Resolution 827, as amended up to 7 July 2009 by resolution 1877.

²¹⁵ Appeals Chamber of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of Former Yugoslavia since 1991 (ICTY) Prosecutor v. Dusko Tadic a/k/a "Dule," Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, 2 October 1995 para. 89.

²¹⁶ *Ibid.*, para. 124.

²¹⁷ Joint Declaration on Complete Prohibition of Chemical Weapons, New Delhi, 19 August 1992, preamble and §1.

²¹⁸ The Joint Declaration on the Complete Prohibition of Chemical and Biological Weapons (The Mendoza Accord), September 5, 1991.

Bolivia, Ecuador, Paraguay, and Uruguay have also signed this agreement.

Turku Declaration on Minimum Humanitarian Standards

The Turku Declaration on Minimum Humanitarian Standards was adopted in 1990 by an expert meeting convened by the Institute for Human Rights, of the Abo Akademi University, in Turku, Finland. Its Article 5.3 states:

Weapons or other material or methods prohibited in international armed conflicts must not be employed in any circumstances.

The Declaration was later adopted by the Conference on Security and Co-Operation in Europe and in 1995 by the United Nations Human Rights Commission.²¹⁹

United Nations General Assembly

The General Assembly condemned Portugal in 1970 and 1971 for the attacks on civilian populations and the use of chemical weapons in the conflicts in Angola, Mozambique and Guinea Bissau.²²⁰

In 2004, the UN General Assembly adopted a resolution on the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, which

Recall[ed] its previous resolutions relating to the complete and effective prohibition of bacteriological (biological) and toxin weapons and to their destruction,

(...)

Welcom[ed] the reaffirmation made in the Final Declaration of the Fourth Review Conference that under all circumstances the use of bacteriological (biological) and toxin weapons and their development, production and stockpiling are effectively prohibited under article I of the Convention.²²¹

Again in 2004, the UN General Assembly adopted a resolution on the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, which

Recall[ed] its previous resolutions relating to the complete and effective prohibition of bacteriological (biological) and toxin weapons and to their destruction,

(...)

Welcom[ed] the reaffirmation made in the Final Declaration of the Fourth Review Conference that under all circumstances the use of bacteriological (biological) and toxin weapons and their development, production and stockpiling are effectively prohibited under article I of the Convention.²²²

In 2006, the UN General Assembly adopted a resolution on the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, which

²¹⁹ Declaration of Minimum Humanitarian Standards, reprinted in Report of the Sub-Commission on Prevention of Discrimination and Protection of Minorities on its Forty-sixth Session, Commission on Human Rights, 51st Sess., Provisional Agenda Item 19, at 4, U.N. Doc. E/CN.4/1995/116 (1995) (Declaration of Turku).

²²⁰ United Nations General Assembly, resolution 2795 (UN.doc a/8549/1971), 1971, paras. 4 and 6; and resolution 2707 (UN.doc a/8187/1970), 1970 para. 9.

²²¹ United Nations General Assembly resolution 58/72 (A/RES/58/72) on the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 2003.

²²² United Nations General Assembly, resolution 59/110 (A/RES/59/110), on the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 2004.

Recall[ed] its previous resolutions relating to the complete and effective prohibition of bacteriological (biological) and toxin weapons and to their destruction,
(...)

Welcom[ed] the reaffirmation made in the Final Declaration of the Fourth Review Conference that under all circumstances the use of bacteriological (biological) and toxin weapons and their development, production and stockpiling are effectively prohibited under article I of the Convention,
(...)

3. Recalls the decision reached at the Fifth Review Conference to discuss and promote common understanding and effective action in 2003 on the two topics of the adoption of necessary national measures to implement the prohibitions set forth in the Convention, including the enactment of penal legislation, and (...); in 2004 on the two topics of enhancing international capabilities for responding to, investigating and mitigating the effects of cases of alleged use of biological or toxin weapons or suspicious outbreaks of disease, (...); and calls upon the States parties to the Convention to participate in its implementation.²²³

United Nations Secretary General

In 1999, the UN Secretary-General, "for the purpose of setting out fundamental principles and rules of international humanitarian law applicable to United Nations forces conducting operations under United Nations command and control," promulgated the fundamental principles and rules of international humanitarian law applicable to UN forces when in situations of armed conflict they are actively engaged therein as combatants. These principles and rules include:

Section 6. Means and methods of combat

6.1 The right of the United Nations force to choose methods and means of combat is not unlimited.

6.2 The United Nations force shall respect the rules prohibiting or restricting the use of certain weapons and methods of combat under the relevant instruments of international humanitarian law. These include, in particular, the prohibition on the use of asphyxiating, poisonous or other gases and biological methods of warfare; bullets which explode, expand or flatten easily in the human body; and certain explosive projectiles. The use of certain conventional weapons, such as non-detectable fragments, anti-personnel mines, booby traps and incendiary weapons, is prohibited.

6.3 The United Nations force is prohibited from employing methods of warfare which may cause superfluous injury or unnecessary suffering, or which are intended, or may be expected to cause, widespread, long-term and severe damage to the natural environment.

6.4 The United Nations force is prohibited from using weapons or methods of combat of a nature to cause unnecessary suffering.

(...).²²⁴

United Nations Security Council

In 2004, the UN Security Council adopted a resolution on the proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, which states that:

Reaffirming that proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constitutes a threat to international peace and security,
(...)

Acting under Chapter VII of the Charter of the United Nations,

1. Decides that all States shall refrain from providing any form of support to non-State actors that attempt to develop, acquire, manufacture, possess,

²²³ United Nations General Assembly, resolution 60/96, (A/RES/60/96), on the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on Their Destruction, 2005.

²²⁴ Observance by United Nations forces of international humanitarian law, United Nations, Secretary-General's Bulletin, ST/SGB/1999/13, 6 August 1999, Section 6.

transport, transfer or use nuclear, chemical or biological weapons and their means of delivery;

2. Decides also that all States, in accordance with their national procedures, shall adopt and enforce appropriate effective laws which prohibit any non-State actor to manufacture, acquire, possess, develop, transport, transfer or use nuclear, chemical or biological weapons and their means of delivery, in particular for terrorist purposes, as well as attempts to engage in any of the foregoing activities, participate in them as an accomplice, assist or finance them;

3. Decides also that all States shall take and enforce effective measures to establish domestic controls to prevent the proliferation of nuclear, chemical, or biological weapons and their means of delivery, including by establishing appropriate controls over related materials (...).²²⁵

In 2006, the Security Council reaffirmed that proliferation of nuclear, chemical and biological weapons, as well as their means of delivery, constitutes a threat to international peace and security and reiterated the need to implement its resolution 1540.²²⁶

III. Hague Peace Conference. Proceedings of the Declaration on the Use of Bullets Which Expand or Flatten Easily in the Human Body of July 29, 1899

The 1899 Hague Peace Conference examined the question of expanding bullets and adopted by a large majority the 1899 Declaration concerning Expanding Bullets. This Declaration prohibits the "use of bullets which expand or flatten easily in the human body, such as bullets with a hard envelope which does not entirely cover the core or is pierced with incisions".

During the debates in commissions and plenary meetings of the Peace Conference, a number of interesting remarks were made by participants as to the reasons motivating States to prohibit the use of expanding bullets and the scope of this prohibition.

The use of expanding bullets were seen to be contrary to "the general principle on this question, well established in Saint Petersburg in 1868, that the use of weapons which unnecessarily aggravate the suffering of men already *hors de combat* or render their death inevitable would exceed what is justified."²²⁷ A delegate explained further "this type of bullet inflicts wounds that are unnecessarily cruel as an incision in the tip allows the lead to escape from the hard jacket on impact and to expand in the body, tearing off strips of flesh. Such an effect goes beyond the objective of a war, which is simply to place a person *hors de combat*."²²⁸

However, another delegate to the Conference raised the issue of the use of such bullets in "wars against savages." He insisted that there was a need for these bullets since there would be "a difference in wars between civilised nations and that against savages." The delegate argued that "if in the first case, a soldier is wounded by a small projectile, he would withdraw to the ambulance; the savage, on the other hand, even if he is wounded two or three times, he

²²⁵ United Nations Security Council, Resolution 1540 (S/RES/1540), 28 April 2004, Preamble and §§1-3.

²²⁶ United Nations Security Council, Resolution 1673 (S/RES/1673), 27 April 2006, Preamble and §1.

²²⁷ Proceedings of the 1899 Hague Peace Conference, Sixth Plenary Session, 21 July 1899, p. 74-statement made by the Capitaine Crozier (United States of America),

²²⁸ *Ibid.*, remarks made by the Colonel Gilinsky (Russia) p. 77-78.

would keep charging," necessitating the use of the dum-dum bullets to stop him.²²⁹ These views were clearly rejected by other delegates who considered that these ideas were "contrary to the humanitarian spirit, which is prevalent at the end of the 19th century. It is not admissible to make a distinction between the savaged enemy and the civilised enemy; they are both men who deserve the same treatment".²³⁰

²²⁹ See Report of the work of the First Sub Commission, *Procès verbal* of the Third Session of the First Commission, 22 June 1899, p.15, statements made by General Sir John Ardagh (United Kingdom), as well as the Proceedings of the 1899 Hague Peace Conference, First Sub-Commission of the First Commission, Third Session, 31 May 1899, p.66, statement of Sir John Ardagh.

²³⁰ Proceedings of the 1899 Hague Peace Conference, First Sub-Commission of the First Commission, Third Session, 31 May 1899, p.66, statement made by M. Raffalovich (Russia). See also Proceedings of the 1899 Hague Peace Conference, Sixth Plenary Session, 21 July 1899, p.78, statement made by the Colonel Gilinsky (Russia).