

CHAPTER I

BACKGROUND

A. INTRODUCTION

At least, more than 1,400 civilians were killed by the chemical weapons attack in Syria, which happened during 2011-2013.¹ The conflict has begun when the people of Syria demonstrated the regime of Bashar Al Assad on the leadership of him, to Syria. Assad kills everyone who counters his government. Seen from the number of people who became victims, the case of Syria may be categorized as a massacre.

Since the world has agreed that the chemical weapons are prohibited to be used during warfare, it is produced the law of the use of chemical weapons, named by the 1993 Chemical Weapons Convention. The convention talks further and completely about the prohibition of the use of chemical weapons, the development, production, stockpiling and use of chemical weapons and on their destruction.²

¹ *More than 1,400 killed in Syrian Chemical Weapons*, see at: http://www.washingtonpost.com/world/national-security/nearly-1500-killed-in-syrian-chemical-weapons-attack-us-says/2013/08/30/b2864662-1196-11e3-85b6-d27422650fd5_story.html, accessed on February 24, 2014 at 11.25 am.

² Abdul Ghafur Hamid, 2011, *Public International Law: A Practical Approach*, Third Edition, Sweet & Maxwell Asia, p. 466.

The use of chemical weapons in armed conflicts or in any other situation is a violation.³ In addition to the 1993 Chemical Weapons Convention which was created in 1993 in Hague, there is the 1925 Geneva Protocol. The protocol talks about the prohibition of use of chemical and biological weapons in war. Syria is not a state which ratified the 1993 Chemical Weapons Convention. Syria only ratified the 1925 Geneva Protocol.⁴ However, the Provision of the 1993 Chemical Weapons Convention has been agreed that it is entering into force since 1998.⁵

In order to follow the purpose of prohibiting the use of chemical weapons, the 1993 Chemical Weapons Convention has played a crucial role since entering into force in 1998 by eliminating the existing chemical weapons stocks and its production facilities. By the step, the Convention has increased the public confidence that other toxic weapons are not diverted for prohibited purposes. Since the Convention has been agreed in the world, it prohibits the whole category of Weapons of Mass Destruction (WMD) including chemical weapons. Moreover, it established a permanent implementation structure of Organization for Prohibition of Chemical Weapons (OPCW) and its sophisticated verification instruments.⁶

While the 1925 Geneva Protocol stated: "Whereas the use in war of asphyxiating, poisonous or other gases, and of all analogous liquids materials or

³ Ajebe Akame Gilbert, 2014, *Chemical Weapons Use in Syria: Implications for International Law*, ed. April 2014, *Social Science Research Network*, Frankfurt, Europa Universität Viadrina Frankfurt (Oder).

⁴ Women's International League for Peace and Freedom (WILPF); *Syria, Chemical Weapons, and Avoiding Military Intervention*, Consultative Status with UN ECOSOC, UNCTAD and UNESCO; Special Consultative Relations with FAO, ILO, and UNICEF; Statement released on August 2013.

⁵ Leah Lietman, 2005, *A Question of Chemistry: Controlling the Spread and Use of Chemical Weapons*, *Harvard International Review*, America.

⁶ International Institute of Humanitarian Law and Italian Ministry of Foreign Affairs, 2007, *Current Challenges, Effective Responses: The Proliferation of Weapons of Mass Destruction and International Humanitarian Law*.

devices, has been justly condemned by the general opinion of the civilized world; and whereas the prohibition of such use has been declared in Treaties to which the majority of Powers of the world are Parties; and to the end that this prohibition shall be universally accepted as a part of International Law, binding alike the conscience and the practice of nations.”⁷

The issue of use of chemical weapons has been and continues to be a major cause for concern in the Syrian conflict. There has been a global outcry over the continuous use of chemical weapons, with the government and the opposition accusing each other of using chemical agents. The international community has been divided over who is to blame for such wanton acts. There have been several allegations of chemical weapons use, but the first to raise a lot of dust was the allegation of use of Scud Missiles in Khan al-Asal on March 19, 2013. There were speculation that the Syrian Government used the weapons; an allegation rejected by the government and Russia and later by United Nations (UN). The Chairman of the UN Human Rights Investigation Committed on Syria, Paulo Pinheiro, said that they cannot decide who has used the chemical weapons or chemical agents.⁸ He argued that according to UN rules, the UN can only pass judgment based on evidence collected by UN inspectors not with the allegation provided by US, UK and France.⁹

⁷ Anthony Aust, 2010, *Handbook of International Law*, Second Edition, Cambridge: Cambridge University Press, p. 240.

⁸ The Times of Israel: *Russia Rejects Chemical Arms Evidence*, see at: <http://www.timesofisrael.com/officials-russia-rejects-chemical-arms-evidence/> accessed on 6 March 2014, at: 2.50pm.

⁹ Ajebe Akame Gilbert, *op.cit*, p. 2.

Based on the background above, it is interesting to study more about the use of chemical weapons from international humanitarian law perspective. Syria would be a focus of the study relating to the issue.

B. RESEARCH QUESTION

Based on the background, it can be formulated the research questions are as follows:

1. How is the use of chemical weapons in International Humanitarian Law perspective?
2. How is the implementation of prohibition of chemical weapons in Syrian case?

C. OBJECTIVE OF RESEARCH

1. To understand or to conduct a library research on the use of chemical weapons and to get the perspective point of the chemical weapons attack in the scope of International Humanitarian Law. It learns more about the reasons of the prohibition of chemical weapon in international community.
2. To analyze the issue of the use of chemical weapons in Syrian conflict and explore the implementation of prohibition of the use of chemical weapons during armed conflict in International Law on the 1993 Chemical Weapons Convention toward the practice of use of chemical weapons.

D. BENEFIT OF RESEARCH

There are some benefits of research, namely:

1. Theoretical Benefit

The research regarding on this case will add the reference collection and also know deeply about the perspective of International Humanitarian Law regarding on the use of chemical weapons in Syrian Arab Republic. The research will also give more understanding on the use of Chemical Weapons.

2. Practical Benefit

The research will give the benefit on more understanding about war crimes which concern about the use of chemical weapons and to know deeper about the practice of using 1993 Chemical Weapons Convention in Syrian Arab Republic. In addition, the research will provide understanding more on why the chemical weapon is prohibited during armed conflict.

E. OVERVIEW OF THE CHAPTERS

This research consists of five chapters, namely Chapter I: Introduction. Chapter II: Literature Review. Chapter III: Research Methods. Chapter IV: Result and Discussion, and lastly, Chapter V: Conclusion and Suggestion.

The aims of this research are to learn more about the perspective of international humanitarian law towards the use of chemical weapons in Syria and also describe why its attack were prohibited to be used in warfare. Besides, this research will elaborate the topic systematically by dividing it into five chapters

The first is Chapter I, consisting of Introduction, will elaborate general matter, such as background, Research question, research objective, research benefits, and overview of the chapter. The background contains the history of the topic which is the chemical weapons attack in Syria. The problem which author focus on is the perspective of international humanitarian law regarding on the attack against the opposition which involved the practice of use of chemical weapons in Syria.

The second is Chapter II, Literature Review, in which author will elaborate each variable on this undergraduate thesis; the international humanitarian law and its definition including *jus ad bellum* and *jus in bello*. Moreover, it will elaborate more about how to conduct of the war based on international law, the definition of chemical weapons and the reactions of international forum toward the practice of use of chemical weapons in Syria.

The third is Chapter III, Research Methodology, here author will show the research method used on this undergraduate thesis. The type of research, legal material, method of collecting data and method of data analysis are discussed in this chapter.

The fourth is Chapter IV, Research and Analysis, this chapter elaborates the case with the normative legal research, with case approach. The focus of this research is on the Syria's chemical weapon attack. This chapter will describe more about how the implementation of the international humanitarian law towards the war of use of chemical weapons in warfare, especially in Syria, and its responsibilities towards the party and the head of commander.

The last is Chapter V, Closing. Contain of the conclusions and the suggestion from the author toward all of the result of the research.