

WHEN THE PIGEONS REFUSE TO FLY: LEGAL PERSPECTIVES ON THE DEPLOYMENT OF CHEMICAL WEAPONS IN SYRIA

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ABSTRACT

In recent times, several hostilities have taken place all over the world. However, these hostilities have been non-international in character and outlook, with the attendant gory effects more pronounced in the 20th and 21st Century warfare. The type of weaponry engaged in such hostilities have been in the spotlight in International Humanitarian Law (IHL). The deployment of chemical weapons in the Syrian war and its adverse effect on the civilian population have become a global concern. The effectiveness of the Convention on the Prohibition of the Development and Production, Stockpiling and use of Chemical Weapons and on their Destruction, and other legal instruments relating to the protection of victims of Non-International Armed Conflicts, have been questioned. Although, scholars had in times past advocated for the restriction and prohibition of the use of chemical weapons in armed conflicts, the Syrian situation has again exposed the need to devote urgent attention to providing more effective sanctions for perpetrators of this heinous crime. This paper seeks to explore the legal implications of the deployment of Chemical Weapons in Syria, by canvassing arguments for more concerted efforts to guard against the use of Chemical Weapons in armed conflicts and ensure more adequate protection for civilians. This will give effect to and promote the core values of IHL.

Keywords: Chemical Weapons, non-international armed conflict, Syria, International Humanitarian Law.

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Introduction

It is trite that the principles of International Humanitarian Law (IHL) seeks to limit the adverse effect of armed conflicts. It restricts the form of weapons deployed in warfare and protects persons not involved in hostilities and those no longer involved in hostilities. IHL is thus referred to as 'the law of war' or 'the law of armed conflict'.² Though, its objectives appear to be well established, the forms and dimensions of warfare has evolved over time, with non-state actors gradually developing superior weapons in armed conflicts. These weapons have been largely responsible for violence against non-combatants and amounts to a violation of the rules of IHL.³ State actors are also involved in these violations in their quest to procure superior weaponry needed to protect their national sovereignty and territorial peace.

The quest for superior weapons has been a prominent feature in non-international armed conflicts (NIACs) in recent times.⁴ Great diversity exist in human character, temperament and mind, thus the acquisition of superior weapons and its use in armed conflict differs in outlook and approach. The protection of combatants and non-combatants, and restriction of the form of weaponry deployed in warfare, is part of the objectives of IHL. This objective, is expressed in treaties, conventions as well as additional protocols. The need for restriction on weaponry has been an agitation as early as the 18th century.⁵ Advancements in science and technology and the quest for inventions have propelled further development in the manufacture of weapons of war. Biological, nuclear and chemical weapons (CWs) have emerged as choice weapons of warfare in contemporary times. A major challenge facing the implementation of IHL is the enforcement of the restriction on the deployment of indiscriminate weapons in armed conflict.⁶ There seems to be no end in sight to armed conflicts, as warfare remains a major part of human existence. The law of armed conflict affirms that

²See ICRC, "Advisory Service on International Humanitarian Law" <https://www.icrc.org/en/doc/assets/files/other/what_is_ihl.pdf> accessed January 14, 2021.

³Claudia Hofmann and Ulrich Schneckener 'Engaging non-state armed actors in state and peace-building: options and strategies' (2011) 93 (883) *International Review of the Red Cross* 1, 2

⁴Charles L. Cantrell, "Humanitarian Law in Armed Conflict: The Third Diplomatic Conference" (1977) 3 (2) *Marquette Law Review* 3(2) (1973) 1, 2.

⁵The 1868 St Petersburg Declaration prohibits the use of explosive projectile that weighs less than 400 g. the Declaration was concerned that the use of such explosive substance is capable of causing high number of deaths among disabled men at the war front.

⁶Yves Sandoz, 'ICRC involvement in banning or restricting the use of certain weapons, a paper presentation at the 17th annual seminar for diplomats on international humanitarian law' United Nations and New York University School of Law, 9 February, 2000

hostilities in human affairs is inevitable, hence the existence of various means of warfare.⁷ In NIACs, civilians are categorised as persons who are not members of a State military or other organised armed forces and thus enjoy protection, unless they are actively involved in hostilities.⁸ Furthermore, IHL's fundamental objective is the protection of civilians from the deployment of CWs in hostilities.

Historically, societal perspective of the breach of international law is based on the 'horrific' effect of deployment of CWs.⁹ Apart from emotional and psychological effect faced by victims of exposure to CWs, the gory side effects of exposure to CW is unimaginable and inflicts greater harm than conventional weapons.¹⁰ However, despite the enactment of treaties and establishment of tribunals, deployment of CWs still persist. Effective sanctions are lacking and the use of CWs continues to threaten global peace and security.¹¹

The Syrian conflict began as a protest before escalating to a full-blown civil war which appears to be an offshoot of the Arab Spring uprising. In March, 2011, Syrians started a protest in Daraa against President Bashar Al- Assad's regime, alleging corruption, lack of political freedom and unemployment as part of the reasons for the protest. However, things got worse when the Assad led government tried to crush the dissent by force, with stiff resistance from Syria's civilian population.¹² Mass protests against the government increased nationwide due to the forceful response by the government to the demonstrators. By July, 2011, opposition to the regime gradually started taking up arms, and compromised Syrian military officers formed the 'Free Syrian Army' (FSA) and

⁷ Yves Sandoz note 5.

⁸ See International Committee of the Red Cross, 'Interpretative Guidance on the Notion of Direct Participation in Hostilities under International Humanitarian Law' <<http://www.icrc.org/eng/war-and-law/contemporary-challenges-for-ihl/participationhostilities/index.jsp>> accessed January 20, 2021.

⁹ See U.N. SCOR, 72d Sess., 7893d mtg. at 2, 13, 15-16, U.N. Doc. S/PV.7893 (Feb. 28, 2017); Jillian Blake and Aqsa Mahmud, 'A Legal 'Red Line'? Syria and the Use of Chemical Weapons in Civil Conflict' (2013) 61 UCLA L. REV. 244, 246

¹⁰ O.C. Eneh and F.I. Ogbuefi-Chima, "Chemical Weapons: Man-Made Destroyers of Life" *Journal of Applied Science & Development* (2014) 5, 6.

¹¹ Michele Kelemen, 'Civilians Pay the Price As Syrian Conflict Grows More Violent, NPR', <<http://www.npr.org/2016/09/06/492857910/civilians-pay-the-price-as-syrian-conflict-grows-more-violent>> accessed January 14, 2021.

¹² See BBC NEWS, 'Why Is There a War in Syria' BBC News, 7 September 2018, <<https://www.bbc.com/news/world-middle-east-35806229>>, accessed January 20, 2021.

joined the opposition, with the aim of toppling the government.¹³ There have been a lot of deaths and destruction of properties in the eight years of civil war and the toll is still rising. The horrific effect of the deployment of CWs by State armed forces and non-state actors is unimaginable. The war has taken various forms and there is urgent need to ensure the prohibition of such deadly weapons and stricter punitive sanctions for those who deploy such weapons.

This article sets out to give a legal analysis of the use of chemical weapons in Syria, while highlighting the legal prohibition of same under existing international treaties. It is important to note that by the rules IHL and International Criminal Law, the use of CWs in armed conflicts is outlawed. However, the same is not obtainable in non-international armed conflicts, hence, the need for legal reforms to fill this gap in all forms of armed conflicts be it international or NIACs. The question whether the use of CWs in Syria does not in itself amount to crossing a legal red line, which justified the military intervention by the United State and allied forces is one that is subject to debate.¹⁴ What appears to be clear and without doubt is that the use of CWs is a determining factor validating the existence of a humanitarian crisis in Syria. This makes the call for a firm and urgent international intervention very crucial.

Deployment of Chemical Weapons in the Syrian Armed Conflict

The Syrian armed conflict started as a peaceful protest but later evolved to a full-blown war with gory adverse effects.¹⁵ The tension which started in Tunisia had huge influence on the situation in other countries of North Africa and the Middle East. The aftermath of uprisings in each nation proceeded in various ways and with diverse effects.¹⁶

¹³ See Al Jazeera news 'Syria's Civil War Explained from the Beginning' Al Jazeera, 14 April 2018, <<https://www.aljazeera.com/news/2016/05/syria-civil-war-explained-160505084119966.html>> accessed January 20, 2021.

¹⁴ Julia Brooks, Timothy B. Erickson et al, "Responding to chemical weapons violations in Syria: legal, health, and humanitarian recommendations", *Journal of conflict and health*, Vol. 12, No. 12 2018 <<https://conflictandhealth.biomedcentral.com/track/pdf/10.1186/s13031-018-0143-3.pdf>> accessed November 8, 2021

¹⁵ Lucy Rodgers, David Gritten, James Offer and Patrick Asare, "Conflict Background", BBC News, 09 October 2015, cited in Sajid Karim and Md. Nazmul Islam, *Syrian Crisis: Geopolitics and Implications*, Biiss Journal, Vol. 37, NO. 2, APRIL 2016: 107-132, <https://www.researchgate.net/publication/317692563_Syrian_Crisis_Geopolitics_and_Implications> accessed 21 November, 2020.

¹⁶ Marian ZUBER and Samuel Sahel MOUSSA, Arab Spring as A Background of Civil War in Syria, *International Conference Knowledge-Based Organization* Vol. XXIV No 1

The wave of Arab unrest that started with the Tunisian revolution in December 2010, reached Syria in March 2011, when citizens of the city of Deraa gathered to demand the release of fourteen school children who were arrested and reportedly tortured after writing on a wall, the well-known slogan of the mass uprisings in Tunisia and Egypt: "The people want the downfall of the regime." Government's harsh response made the conflict to spread across the country within a very short time. The conflict was initially described as a struggle between President Assad regime and opposition forces, seeking to create a democratic Syria; but over the time, the situation became far more complex and murkier.¹⁷

The civil war in Syria began in March 2011, when President Bashar Al-Assad launched an offensive attack against peaceful opposition protesters by engaging the use disproportionate force. This led to the surge of armed opposition by rebel groups. Consequently, there arose the emergence of extremist groups such as the Islamic State of Iraq and Syria ISIS¹⁸, whose aim was to seize territory in Syria.¹⁹ The War in Syria which started as a protest against the Assad regime however escalated into a protracted civil war. The conflict in Syria was subsequently classified as a full-blown war by the International Committee of the Red Cross (ICRC) in its statement through its

2018, <https://www.researchgate.net/publication/326653652_Arab_Spring_as_a_Background_of_Civil_War_in_Syria> accessed 21 November, 2020

¹⁷ Ted Galen Carpenter, "Tangled Web: The Syrian Civil War and Its Implication", *Mediterranean Quarterly*, Vol. 24, No. 01, Winter 2013.

¹⁸ Christopher M. Blanchard and Carla E. Humud, 'The Islamic State and U.S Policy', ISIS as The Islamic State (aka the Islamic State of Iraq and the Levant, ISIL/ISIS, or the Arabic acronym *Da'esh*) is a transnational Sunni Islamist Insurgent and terrorist group that controlled large areas of Iraq and Syria from 2014 through 2017. The group attracted a network of global supporters and its leader, Abu, Bakr al Baghdadi, received pledges of affiliation from groups in several other countries. A series of terrorist attacks attributed to the group or individuals it has inspired have claimed hundreds of lives on four continents since November, 2015, including in the United States. 'Congressional Research Service 7-5700' (R43612), <www.Crs.gov> accessed February 20, 2021.

¹⁹ See John B. Bellinger, "Make ISIS Leaders Face Justice", *New York Times* (Apr. 2, 2015), <<https://www.nytimes.com/2015/04/03/opinion/make-isis-leaders-face-justice.html>; Kelemen >, accessed January 18, 2021, see also, Jared Malsin, "Assad's Regime is Still Using Chemical Weapons in Syria", *New York Times* (Sept. 14, 2016), <<http://time.com/4492670/syria-chemical-weapon-aleppo-assad-regime>; Robins-Early > accessed January 24, 2021, Lucy Rodgers et al, "Syria: The Story of the Conflict" War crimes and crimes against humanity are being committed across the board by all parties, BBC News Report (March 11, 2016), <<http://www.bbc.com/news/world-middle-east-26116868>> accessed January 18, 2021. United Nations commission of inquiry has evidence that all parties to the conflict have committed war crimes such as murder, torture, rape and enforced disappearances.

spokesman Hicham Hassan on Sunday 15 July 2012.²⁰ The implication of this is that IHL principles have become applicable throughout the country. As the war gradually developed, it took both non-international and international dimensions with parties deploying various means and methods of warfare in the quest to overpower each other. The Syrian government was actively engaged in warfare with the Free Syrian Army²¹ and other opposition forces.²²

In a bid to quash the opposition, and determined to suppress the revolution, the regime deployed all means at its disposal to rain death and destruction upon the Syrian people. It deployed rocket-propelled grenades, artillery shells, and long-range ballistic missiles carrying chemical and functional projectiles. The use of CWs has arguably been one of the most serious disasters in the ongoing conflict.²³ Attacks against armed opposition and the civil society were carried out by the Assad forces.²⁴ In December 2012, the Syrian regime shelled the residential areas in Homs City.²⁵ The attack marked the first

²⁰ Temitayo Famutimi, "Syrian Conflict now a civil war- ICRC", The Punch Newspaper, July 16, 2012 Vol. 17 NO. 20, 185) 74

²¹ The FSA has remained a brand name only. Meanwhile, there are also independent military alliances, which according to reports are different in outlook and conduct from other moderate groups to other groups with extremist tendencies. A major difference between the self-identified FSA and the independent groups have not, however, significantly hindered their cooperation as they have continued to cooperate operationally to achieve their common objectives. U.N. Gen. Assembly, Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, ¶ 25, U.N. Doc. A/HRC/22/59 (Feb. 5, 2013); see also Guide to the Syrian Opposition, BBC News, <<http://www.bbc.co.uk/news/world-middle-east-15798218>> accessed January 20, 2021.

²² Zachary Laub & Jonathan Masters, "Syria's Crisis and the Global Response, Council on Foreign Relations" (Sept. 11, 2013), <<http://www.cfr.org/syria/syrias-crisis-global-response/p28402>> accessed January 20, 2021.

²³ Abdul Wahab, "Chemical Weapons in Syria: A Record of Facts, Evidence and Silence" 11, 220 (2018) available at <[cite_title](#)> accessed January 20, 2021.

²⁴ The nature of these weapons can be summarized as follows: Weapons of mass destruction, providing the regime with a high capability to destroy structures, kill people, and cause great physical and psychological damage. Weapons of terror, sowing fear and panic among the civilian population by targeting their places of residence. This would greatly deter the enemies of the regime, on the one hand, while driving a wedge between the fighting groups and the nascent civil society by sowing discontent among the ranks of the revolution, on the other. An extra bargaining chip at the regional and international levels; Assad has long threatened to attack the region as a whole if the security of his regime is challenged by international powers.

²⁵ See Homs: Syrian revolution's fallen 'capital', BBC News 9 December 2015, <<https://www.bbc.com/news/world-middle-east-15625642>> accessed February 20, 2021. Homs has long been of geographic, strategic and economic importance. It is situated at the centre of a fertile agricultural region along the Orontes river valley at the eastern end of the Homs Gap - the only natural gateway from Syria's Mediterranean coast to the interior. It is also roughly halfway between Damascus and Aleppo, and close to Lebanon. Anti-government protests erupted in Homs within weeks of them beginning in the southern city of Deraa in mid-March 2011. By the end of April, thousands of Homs residents were taking part in demonstrations despite a brutal crackdown by security forces and pro-Assad militiamen that left dozens of people dead.

recorded instance of the use of chemical ballistic missiles by the regime. Such violations have been ongoing; the regime has since carried out dozens of military operations using internationally-banned chemical substances. The Human Rights Watch report documented 85 such horrific incidents, which have claimed the lives of thousands of civilians in flagrant violation of international law.²⁶ The CWs that were used by the Syrian regime are banned by multiple international conventions under any circumstances.²⁷

Although, there have been many chemical attacks in Syria²⁸, unfortunately, only three have been confirmed by the international community: the attack near Aleppo; the attack near Damascus in March 2018; and the attack on Homs in December 2012. The armed opposition groups and the regime both accused each other of using chemical weapons in all three instances, preliminary evidence however strongly suggests Assad's involvement. There has been wide spread condemnation of the deployment of CWs in Syria by World leaders and indeed the global community. It has been described as 'crossing a legal red line,' by President Barack Obama²⁹ who stated that the US military will respond accordingly.³⁰ The report of the Independent Inquiry, discovered evidence substantiating the commission of crimes against humanity, like murder and torture, alongside other war crimes by Government forces. These have been described as gross violation of IHL and indeed international human rights law.³¹

Violation of International Law and Treaties

The reports on the war in Syria revealed that there have been chemical attacks carried out using phosphorous bombs, vacuum bombs, and other poisonous gases, especially cyanide, unknown yellow dust materials, fissile and incendiary bombs. Chemical bombs were used in the countryside of Aleppo, Idlib countryside, Raqqa countryside, Damascus

²⁶ See Syria: Stop Shelling of Residential Areas, Human Rights Watch, February 9, 2012 <hrw.org/news/2012/02/09/syria-stop-shelling-residential-areas> accessed February 20, 2021.

²⁷See Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (hereinafter Chemical Weapons Convention or 'CWC'), art. 1(1), <<https://www.opcw.org/chemical-weapons-convention/articles/article-i-general-obligations>>, accessed February 25, 2021.

²⁸ See Arms Control Association, Timeline of Syrian Chemical Weapons Activity, 2012 18, <<https://www.armscontrol.org/factsheets/Timeline-of-Syrian-Chemical-WeaponsActivity>> accessed February 13, 2021.

²⁹ Barack Obama is the 44th democratically elected President of the United States of America.

³⁰ Glenn Kessler, "President Obama and the 'Red Line' on Syria's Chemical Weapons," Washington Post (Sept. 6, 2013), <https://www.washingtonpost.com/news/fact-checker/wp/2013/09/06/president-obama-and-the-red-line-on-syrias-chemical-weapons/?utm_term=.0ef064c6dfe> accessed February 15, 2021.

³¹ See U.N. Gen. Assembly, Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, at Summary, U.N. Doc. A/HRC/21/50 (Aug. 16, 2012).

countryside, and Homs. In addition, it was reported that the Syrian regime might have used a substance known as Element 15 hallucinogenic material-maybe its phosphorus, most recently in Aleppo.³² The Syrian Regime and the armed opposition are both accusing each other for the use of CWs. What is certain however, is that the international law principles were violated. International law prohibits any use of CW during hostilities as a weapon of war.³³ It also bans acts of military nature against civilians during armed conflicts.³⁴

The United Nations (UN) through the office of the Secretary-General conducted an investigation on the alleged use of CWs in Syria. This led to the establishment of the UN mission to investigate allegations of CW deployment in Syria, through the support of the Organisation for Prohibition of Chemical Weapons (OPCW) and the World Health Organization (WHO). Furthermore, France and the United Kingdom both carried out a joint investigation of the CWs attacks in Khan Al-Asal and Otaybah in Damascus and in Homs in 2013 and 2012 respectively.³⁵ The continued use of CWs in Syria led to the establishment of a Fact-Finding Mission (FFM) to ascertain the facts of deployment of CWs in Syria by the Director-General of the OPCW. The UN Security Council, in 2015 took further steps, by establishing the OPCW UN Joint Investigative Mechanism (JIM), with the mandate of ascertaining those responsible for the deployment of CWs confirmed by the FFM.³⁶

In addition, the European Union and the United States became committed to ensuring that those involved in the use of chemical attacks in Syria are appropriately sanctioned. Consequently, US and its allies took military intervention by launching airstrikes against Syria due to the use of CWs during hostilities which is a violation of IHL.³⁷ Although this

³² See Facts and Evidence of Chemical Weapons in Syria, Orient News, April 17, 2013, <<http://www.orient-news.net/ar/news/show/3010>> accessed February 13, 2021.

³³ See Article 1 of the Chemical Weapons Convention Prohibits the development, production, stockpiling or retention chemical weapons, and also the transfer either directly or indirectly, chemical weapons to anyone. It also prohibits the use of chemical weapons in any military preparations and actions, it further forbids the use chemical weapons and riot control agents as a method of warfare

³⁴ See Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War.

³⁵ Yasmin Naqvi, 'Crossing the Red Line: The Use of Chemical Weapons in Syria and What Should Happen Now' (2019) 99 *International Review of the Red Cross*, 959

³⁶ See United Nations Security Council Resolution. 2235, 7 August 2015.

³⁷ Dan Lamothe, Missy Ryan and Thomas Gibbons Neff, "U.S. Strikes Syrian Military Airfield in First Direct Assault on Bashar al Assad's Government", Washington Post, 6 April 2017, available at < <https://tinyurl>.

action has been criticised, the US and its allies consistently maintained that the airstrikes were carried out to prevent further deployment of CW in Syria. While some scholars have argued that the airstrikes were a violation of Syria's territorial integrity and sovereignty under international law,³⁸ others have argued that it was done based on urgent humanitarian necessity, which is a cardinal principle of international humanitarian law.³⁹ It should be noted however that the Chemical Weapons Convention (CWC) does not provide for unilateral use of force in response to a breach of the Convention. As some analysts have noted, if such provision is contained in the Convention, then the United Kingdom's justification for airstrikes which it described as - the "humanitarian use of force" - also fails. It relied on three prongs. First, is that there must be "convincing evidence, generally accepted by the international community as a whole" of extreme humanitarian distress. Second, it must also be "objectively clear" that there is no practicable alternative to the use of force if lives are to be saved. Lastly, the use of force must be necessary and proportionate to the aim of relief of humanitarian suffering and must be strictly limited in time and in scope to this aim.⁴⁰

The US and its allies failed to obtain the approval of the UN Security Council before launching the attacks. One argument in support of the airstrikes is the persistent engagement of CWs in Syria and the loss of lives and its adverse effect on the environment.⁴¹ Arguments that were further canvassed for the attacks were that it was specifically targeted at sites where CWs were supposedly stored, which is aimed at preventing future deployment of CWs in Syria.⁴² It should be noted that Russia

com/ydbet8wg> accessed November 25, 2019, Helene Cooper, Thomas Gibbons Neff and Ben Hubbard, "U.S., Britain and France Strike Syria over Suspected Chemical Weapons Attack," *The New York Times*, 13 April 2018, <www.nytimes.com/2018/04/13/world/middleeast/trump-strikes-syria-attack.html> accessed February 25, 2021.

³⁸ Article 2(4) of the United Nations Charter clearly states that "All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state." There are only two limited circumstances when a state can lawfully use force: (1) with the permission of the UN Security Council or (2) in self-defence. In this case, the attack on Syria does not fit either circumstance.

³⁹ Dr William Partlett, "Does it Matter That Strikes Against Syria Violate International Law" (2018) <<https://pursuit.unimelb.edu.au/articles/does-it-matter-that-strikes-against-syria-violate-international-law>> accessed May 20, 2021

⁴⁰ *Ibid.*

⁴¹ See United Nations Press Release of the Security Council SC/14479, 29 March 2021, Security Council, As Hunger, Malnutrition Rise in Syria, Security Council Must Ensure Border Crossing Remains Open, Aid Flows to Millions, Humanitarian Affairs Chief Stresses, <<https://www.un.org/press/en/2021/sc14479.doc.htm>> accessed November 8, 2021

⁴² Yasmin Naqvi, "Crossing the red line: The use of chemical weapons in Syria and what should happen now", *International Review of the Red Cross* (2017), 99 (3), 959-993 <https://internationalreview.icrc.org/sites/default/files/906_7.pdf> accessed November 7, 2021

opposed the airstrikes by the US and its allies and moved for condemnation and rejection of same by the UN Security Council on the premise that there was no concrete evidence of the existence of CWs at the sites attacked.⁴³

Sanctions for Violations of IHL Rules

The form of warfare in recent times appears to be more of NIACs in outlook and character, and the need to limit and restrict the use of indiscriminate weapons is a major militating against the enforcement and implementation of IHL principles.⁴⁴ There have been a myriad of IHL violations committed during the hostilities in Syria. The UN Special Envoy for Syria estimated that 400,000 people had been killed during hostilities by May 2016.⁴⁵ The large number of casualties reported was due to incidents of indiscriminate and disproportionate attacks, bombardment of schools and medical facilities.⁴⁶ There were reports of other terrible atrocities, like systematic rape, torture, persecution and inhumane treatment of people, committed during hostilities, and have been widely documented.⁴⁷ The war has led to a humanitarian crisis needing urgent global attention. According to reports, about 13.5 million people are in need of urgent humanitarian aid, with over 5 million refugees and 6 million internally displaced people. Furthermore, about 4.5 million people are reported to be trapped in besieged areas.⁴⁸

⁴³See United Nations Meetings and Press Release for the 8233rd Meeting of the Security Council SC/13296, 14 April 2018, Following Air Strikes against Suspected Chemical Weapons Sites in Syria, Security Council Rejects Proposal to Condemn Aggression <<https://www.un.org/press/en/2018/sc13296.doc.htm>> accessed June 20, 2021

⁴⁴ Yves Sandoz, 'ICRC involvement in banning or restricting the use of certain weapons', a paper presentation at the 17th annual seminar for diplomats on international humanitarian law, United Nations and New York University School of Law, 9 February, 2000

⁴⁵ See Syria Death Toll: UN Envoy Estimates 400,000 Killed, Al Jazeera, 23 April 2016, <[www.aljazeera.com/news/2016/04/staffan de mistura 400,000 killed syria civil war 160423055735629.html](http://www.aljazeera.com/news/2016/04/staffan-de-mistura-400-000-killed-syria-civil-war-160423055735629.html)> accessed April 15, 2021.

⁴⁶ See the UN Independent International Commission of Inquiry on the Syrian Arab Republic (CoI) has documented serious violations of human rights and international humanitarian law committed in Syria since 2011. See the more than twenty reports <www.ohchr.org/EN/HRBodies/HRC/IICT/Syria/Pages/Documentation.aspx> accessed December 20, 2020 For detailed analysis of which international crimes may have been committed, see Beth Van Schaak, 'Mapping War Crimes in Syria', International Legal Studies, Vol. 92, No. 1, 2016, <<http://stockton.usnwc.edu/ils/vol92/iss1/9/>> accessed May 20, 2021.

⁴⁷ See, for example, Amnesty International, Syria: 'It Breaks the Human: Torture, Disease and Death in Syria's Prisons', 18 August 2017, <www.amnesty.org/en/documents/mde24/4508/2016/en/> accessed March 20, 2020.

⁴⁸ See UN Office for the Coordination of Humanitarian Affairs, 'About the Crisis in Syria', <<http://www.unocha.org/syrian-arab-republic/syria-country-profile/about-crisis>> accessed 20 December, 2020. See also Report of the Office of the UN High Commissioner for Refugees, 'Syria Regional Refugee Response', <<http://data.unhcr.org/syrian-refugees/regional.php>> accessed March 20, 2021.

Although, less than 2,000 casualties have been reported due to the deployment of CWs, this is a far cry from the total number of actual casualties.⁴⁹

The major drawback in the imposition of sanctions against Syria's deployment of CWs is the fact that, the Geneva Protocol of 1925 is only applicable to international armed conflicts. Although, Syria is a party to the Protocol, it will not be applicable to Syria in this case because the armed conflict is non-international in nature.⁵⁰ It is trite that sanctions can only be made based on the applicable law in each circumstance. The CWC⁵¹ is the applicable law for issuing sanctions against Syria. However, the CWC will only apply to States who are party to it. Syria as a country became a party in 2013. Thus, the agreement between the U.S and Russia to dismantle Syria's CWs programme,⁵² was aimed at ensuring that the Syrian government signs the CWC, and initiate the destruction of the country's CWs programme.⁵³

It was expected that upon ratification of the CWC by Syria, both production and deployment of CWs would end. A mechanism was put in place to create a timeline for destruction of Syria's CW materials and it was agreed that on-site inspections are to be carried out to ensure compliance by the Syrian government. The procedure

⁴⁹ Colum Lynch, "To Assuage Russia, Obama Administration Backed Off Syria Chemical Weapons Plan," *Foreign Policy*, 19 May 2017, Indeed, the number of Syrians killed by chemical weapons more than nearly 1,500 by the end of 2015, according to the Syrian American Medical Society amounts to only a fraction of the country's dead, <<http://foreignpolicy.com/2017/05/19/to-assuage-russia-obama-administration-backed-off-syria-chemical-weapons-plan/>> accessed May 21, 2021.

⁵⁰ In a statement released on 17 July 2012, the International Committee of the Red Cross (ICRC) expressly described the violence in Syria as constituting a 'non-international armed conflict'. ICRC, 'Syria: ICRC and Syrian Arab Red Crescent Maintain Aid Effort amid Increased Fighting', Operational Update, 17 July 2012, <[www.icrc.org/eng/resources/documents/update/2012/syria update 2012 07 17.htm](http://www.icrc.org/eng/resources/documents/update/2012/syria%20update%202012%2007%2017.htm)>, accessed May 20, 2021. The Col. concluded in its third report of 15 August 2012 that the intensity and duration of the conflict, combined with the increased organizational capabilities of anti-government armed groups, had met the legal threshold for a non-international armed conflict: UN Doc. A/HRC/21/50, para. 12.

⁵¹ Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (hereinafter Chemical Weapons Convention or CWC).

⁵² See Press Release, U.S. Department of State Office of the Spokesperson, Framework for Elimination of Syrian Chemical Weapons, Sept. 14, 2013, <<http://www.state.gov/r/pa/prs/ps/2013/09/2013091414247.htm>> accessed May 22, 2021.

⁵³ America, Russia and Syria, The weakened West: The deal over Syria 'chemical weapons marks a low for those who cherish freedom, *The Economist*, Sept. 21, 2013, <<http://www.economist.com/news/leaders/21586565-deal-over-syrias-chemical-weapons-marks-low-those-who-cherish-freedom-weakened-west>>, accessed May 22, 2021, See also "Assad: Syria needs one year to destroy chemical weapons," *BBC News*, Sept. 19, 2013, available at <www.bbc.co.uk/news/world-middle-east-24155674>, accessed May 22, 2020. See also "UN confirms Syria's Assad signed chemical weapons decree," *Al Jazeera America*, Sep. 11, 2013, <<http://america.aljazeera.com/articles/2013/9/11/syria-political-stalematelooms.html>>, accessed May 25, 2021.

formulated by the UN Security Council validating the decision of the OPCW was the adoption of a resolution.⁵⁴ Subsequently, the Security Council affirmed the deployment of CWs in Syria and directed a full implementation of the OPCW by the adoption of Resolution 2118.⁵⁵ The Resolution was aimed at prohibiting the Syrian regime from further use, production and acquisition, stockpiling, or retention chemical weapons. It was also aimed at ensuring that CWs are not transferred to non-State actors, and no party to the conflict in Syria use, develop, produce, acquire, or transfer such weapons.⁵⁶ However, an independent inquiry report also found evidence confirming the deployment of CWs severally by parties in the Syrian conflict, despite strong global response.⁵⁷ The Syrian Regime and the armed opposition both deployed CWs in Syria.

In 2015, the UN Security Council engaged the OPCW-U.N. The Joint Investigative Mechanism (JIM) was saddled with the task of identifying the parties involved in the use of toxic chemicals as weapons in Syria.⁵⁸ According to the report by the JIM, substantial evidence revealed the deployment of chlorine gas twice by the Syrian Air force, and by

⁵⁴ David Martin, "The Chemical Weapons Convention: Hollow Idealism or Capable Mechanism? The Syrian Intervention as a Test Case" (2015), *37 Loy. L.A. INTL. & COMP. L. REV.* 31, 34 (The United States and the Russian Federation commit to work together towards prompt adoption of a Security Council resolution that reinforces the decision of the OPCW Executive Council. This resolution will also contain steps to ensure its verification and effective implementation and will request that the Secretary-General, in consultation with OPCW, submit recommendations to the Security Council on an expedited basis regarding the role of the United Nations in eliminating the Syrian chemical weapons programme. The United States and the Russian Federation concur that the Security Council resolution should provide for review, on a regular basis, of the implementation in Syria of the decision of the Executive Council of OPCW, and in the event of non-compliance, including unauthorized transfer, or any use of chemical weapons by anyone in Syria, the Security Council should impose measures under Chapter VII of the Charter of the United Nations.")

⁵⁵ See Press Release, Security Council, Security Council Requires Scheduled Destruction of Syria's Chemical Weapons, Unanimously Adopting Resolution 2118 (2013), U.N. Press Release SC/11135 (Sept. 27, 2013).

⁵⁶ *Ibid.*

⁵⁷ Syria: Events of 2015, Human Rights Watch, < <https://www.hrw.org/world-report/2016/country-chapters/Syria> >, accessed May 22, 2021. (Despite its accession to the Chemical Weapons Convention in 2014, the Syrian government used toxic chemicals in several barrel bomb attacks in Idlib governorate in March, April, and May. While Human Rights Watch was unable to conclusively determine the toxic chemicals used, the distinct smell of chlorine reported by rescue workers and doctors indicate that it was probably used.)

⁵⁸ Press Release, United Nations, Security Council Considers Fourth Report by Joint Investigative Mechanism, U.N. Press Release DC/3668 (Oct. 27, 2016), <<https://www.un.org/press/en/2016/dc3668.doc.htm>> (accessed June 13, 2021). See also Press Release, United Nations, Joint Investigative Mechanism Presents Its Third Report to Security Council, U.N. Press Release DC/3651 (Aug. 30, 2016), <<https://www.un.org/press/en/2016/dc3651.doc.htm>>, accessed June 13, 2021. See also Security Council Resolution 2235, & 5 (Aug. 7, 2015).

ISIS on another occasion,⁵⁹ involving deployment of sulfur-mustard gas.⁶⁰ The OPCW removed all and destroyed most of Syria's 'declared' CWs by 2015, in accordance to the framework initiated.⁶¹ The JIM discovered that parties to the conflict on different occasions further deployed chlorine during hostilities, despite the alleged destruction of Syria's declared CWs.⁶² In August of 2016, more substantial evidence of CWs deployed by the Syrian government and ISIS was discovered by the JIM. In 2016, the 'International, Impartial and Independent Mechanism' was established by the UN General Assembly.⁶³

In July 2017, it was reported that Syrian government forces deployed CWs like chlorine in Ayn Tarma, Zamalka, and Damascus.⁶⁴ Furthermore, chemical attack occurred in Harastra. In November 2017, evidence revealed that Syrian State forces deployed organo-phosphorous pesticide.⁶⁵ Despite all efforts by the UN, the OPCW and indeed the International Community, there have been continuous use of CWs in Syria since 2013,⁶⁶ notwithstanding the investigation, inspections and destruction of 'declared'

⁵⁹ Christopher M. Blanchard and Carla E. Humud, note 13.

⁶⁰ *Ibid.*

⁶¹ See Ellesmere Port Facility Completes Destruction of Its Consignment of Syrian Chemicals; Almost Three Quarters of Syria's Entire Stockpile Now Destroyed, Organisation for Prohibition Chemical Weapons (Aug. 7, 2014), <<https://www.opcw.org/news/article/ellesmere-port-facility-completes-destruction-of-its-consignment-of-syrian-chemicals-almost-three-q/>> accessed June 22, 2021. See also OPCW: All Category I Chemicals Declared by Syria Now Destroyed, Organisation for Prohibition Chemical Weapons (Aug. 28, 2014), <<https://www.opcw.org/news/article/opcw-all-category-1-chemicals-declared-by-syria-now-destroyed/>>, accessed June 22, 2021. See also OPCW Confirms Progress in Eliminating Syria's Chemical Weapons, Organisation for Prohibition Chemical Weapons (Apr. 20, 2014), <<https://www.opcw.org/news/article/opcw-confirms-progress-in-eliminating-syrias-chemical-weapons/>>, accessed June 22, 2021. OPCW Maritime Operation Completes Deliveries of Syrian Chemicals to Commercial Destruction Facilities, Organisation for Prohibition Chemical Weapons (July 24, 2014), <<https://www.opcw.org/news/article/opcw-maritime-operation-completes-deliveries-of-syrian-chemicals-to-commercial-destruction-facili-tie/>>, accessed June 22, 2021. See also OPCW-UN Joint Mission: Total chemical material removed and destroyed raised to 92.5%, Organisation for Prohibition Chemical Weapons (Apr. 24, 2014), <<https://www.opcw.org/news/article/opcw-un-joint-mission-total-chemical-material-removed-and-destroyed-raised-to-92-5/>>, accessed June 20, 2021.

⁶² See U.N. Press Release, DC/3651, U.N. Secretary-General, Letter dated 24 August 2016 from the Secretary-General addressed to the President of the Security Council, 26, U.N. Doc. S/2016/738 (Aug. 24, 2016) (chlorine was not part of the Framework because it is an industrial chemical, but its use as a poison gas would violate the CWC).

⁶³ *Ibid.*

⁶⁴ See Report of the Independent International Commission of Inquiry on the Syrian Arab Republic of the Human Rights Council on Its Thirty-Seventh Session, U.N. Doc. A/HRC/37/72, annex II, 1 13 (Feb. 1, 2018).

⁶⁵ *Ibid.*

⁶⁶ See Timeline of Syrian chemical weapons activity, 2012-2017 (June 2017) Arms Control Association, <www.armscontrol.org> accessed June 27, 2021.

CWs by the UN-OPCW and WHO joint team.⁶⁷ It is evident that the Syrian government was not sincere with the OPCW inspection team and is not willing to comply with the provisions of the CWC despite ratifying same in 2013. It thus appears that the existing international legal framework has not adequately provided for an enhanced method of controlling both the production and use of CWs, particularly punitive sanctions.

Review of Sanctions for Violators of IHL

As discussed above, despite the public outcry and condemnation of the deployment of CW in Syria and the disarmament efforts of the UN in Syria, the use of CW did not stop after the investigation, inspection and destruction of revealed CWs by the UN-OPCW joint team. It appears the response by the Security Council and the OPCW against the continuous use of CWs in Syria has not yielded much results with no collective punitive measures taken. The existing enforcement regime within the CWC has not been effective. What appears to be the strongest response so far by the US and its allies have been described as a violation of international law.⁶⁸ The Syrian situation revealed the challenge for disarmament in IHL and the inadequacies of existing humanitarian law treaties.⁶⁹ The CWC's present compliance regime, cannot deal with the gross violation and breach that exists. All forms of adjudicative and diplomatic response have failed, hence recourse to force, though illegal under international law.⁷⁰ All existing provisions of CWC and indeed the UN and OPCW has not yielded the desired result. More appalling is the deceit exhibited by the Syrian regime to the inspection team, on the supposed total destruction of all its CW materials.⁷¹

⁶⁷ There was a widely reported large-scale use of chemical weapons by the Syrian regime in the Khan Shaykhun area of southern Idlib in April 2017 and concluded that "a large number of people, some of whom died, were exposed to sarin or a sarin-like substance. This incident which reportedly resulted in over eighty deaths and 300 wounded, including many children.

⁶⁸ The use of force in international relations is restricted by the 1945 Charter of the United Nations, article 2(4).

⁶⁹ ICRC Report on International Humanitarian Law and The Challenges of Contemporary Armed Conflicts, Recommitting to Protection in Armed Conflict on The 70th Anniversary Of The Geneva Conventions, <https://reliefweb.int/sites/reliefweb.int/files/resources/4427_002_IHL-Challenges-Contemporary-Armed-Conflicts_WEB_7.pdf> accessed November 8, 2021

⁷⁰ Eki Yemisi Omorogbe, "The Crisis of International Criminal Law in Africa: A Regional Regime in Response? Netherlands International Law Review (2019) 66:287–311, <<https://link.springer.com/content/pdf/10.1007/s40802-019-00143-5.pdf>> accessed November 8, 2021

⁷¹ Peter van Ham, Sico van der Meer, Malik Ellahi, "Chemical Weapons Challenges Ahead: The Past and Future of the OPCW With a Case Study on Syria" Clingendael Report October 2017 <https://www.clingendael.org/sites/default/files/2017-10/Clingendael_Report_Chemical_Weapons_Challenges_Ahead_2017.pdf> accessed November 5, 2021

The height of deployment of CWs by Syria was the Shan Khayhun Sarin attack of April, 2017.⁷² The US carried out a missile strike following the Shan Khayhun Sarin attack, and extended existing sanctions in Syria.⁷³ The airstrikes by the US have been described as a violation of international law, hence, the urgent need to examine and amend the existing legal framework of the CWC, to review the existing sanctions for use of CWs.⁷⁴ There is need to ensure tougher punitive measures in cases of breach of CWC.⁷⁵ Furthermore, there are agitations for an enhanced mechanism that will facilitate compliance with the CWC, by advancing a diplomatic initiative through an amendment of the treaty. It is believed that the restriction of the use of CWs will be achieved. It will also improve State accountability in cases of breach and enhance the success of the treaty. It is imperative to consider non-state parties to the CWC and the non-applicability of the Convention in cases of breach through the production and deployment of CWs. The current legal regime should be amended.

Conclusion

The global response to deployment of CWs has largely been restricted to warnings, and sanctions for both parties against the deployment of CW. The airstrike by the US on the continued deployment of CWs in Syria is considered illegal under international law but seems to be a more definitive approach to the issue. Whereas, Russia and China both insist on accusing the opposition forces of deploying chemical weapons, other members of the UN Security Council have focused more on the ability of the Syrian government,

⁷² The use of Sarin gas is an explicit breach of the CWC. It is listed in schedule one of the Convention as a toxic chemical and serves no other use besides causing death.

⁷³ See United States Treasury 'Treasury Sanctions 271 Syrian Scientific Studies and Research Centre Staff in Response to Sarin Attack on Khan Sheikhoun' (24 April 2017) US Department of the Treasury, <www.treasury.gov>, accessed June 22, 2021.

⁷⁴ The obligation and enforcement process for the CWC regime can be summarised as follows:

The use of chemical weapons, in any circumstances, is banned. The OPCW has enforcement mechanisms available to it, but these are of a limited scope targeted towards managing situations before they escalate, via a tiered system of incentives and recommendations.

Ultimately, binding enforcement action falls to the United Nations Security Council.

⁷⁵ Creating defined obligations for member state is only half of the CWC's function. It also creates a breach management process. This is managed in multiple ways throughout the CWC, culminating in art XII. It is a light-handed regime with only recommendatory powers until the Security Council is notified of a breach. The breach management process begins with avenues for consultation and discussion. These include the obligation to provide the OPCW information on national implementation measures, to allow early avoidance of non-compliance; the Technical Secretariat's engagement with state parties to consult on destruction plans; and consultation by the Executive Council to "provide for the opportunity to convince the state that it should remedy a situation of non-compliance.

its possession, storage, and deployment of CW.⁷⁶ There is need for the UN to make concerted efforts as a response to the production and deployment of CWs.

While noting the efforts of the UN Security Council and OPCW on the destruction of the 'declared' CWs by the Syrian regime, the continuous deployment of CW with no prosecution yet to be achieved and numerous lives lost remains undesirable.⁷⁷ The war in Syria is heading towards the ninth year with no prosecution yet. Syrian civilians who had been killed, injured and forced out their homes are also yet to get justice. Furthermore, France in collaboration with thirty other countries and international organisations, facilitated the establishments of the 'International Partnership against Impunity for the use of CWs.'⁷⁸ It identified users of CW and used public shame as a means of deterrence, by publishing their names online. This was to ensure that they become accountable for the crimes committed in the nearest future.⁷⁹ Although, individual sanctions have been imposed on Syria by other countries⁸⁰, the deterrent effect of such sanctions is in doubt. The perpetrators of chemical attacks are of the opinion that, there is no likelihood of trial for crimes committed during hostilities or sanctions imposed in the nearest future.⁸¹

It may be argued that the CWC has never been applied in a civil war, neither has it been enacted as domestic law, hence the reason for Syria's non-performance of its treaty obligations. Furthermore, the disarmament process was delayed due to the fact that not all CW sites could be accessed due to the on-going hostilities. It is believed that the Syrian government deliberately omitted some CW sites during the inspection and

⁷⁶ Remarks by Ambassador Richard Mills, U.S. Deputy Representative to the United Nations at the UN Security Council Briefing on Chemical Weapons in Syria New York, October 4, 2021, <<https://usun.usmission.gov/remarks-at-a-un-security-council-briefing-on-chemical-weapons-in-syria-5/>> accessed November 8, 2021

⁷⁷ Peter Van Harn et al., Clingendael, "Chemical Weapons Challenges Ahead: The Past and Future Of Ti-If OPCW With A Case Study On Syria" (2017) <<https://www.opcw.org/news/article/opcw-fact-finding-mission-in-syria-continues-investigations-into-allegations-of-chemical-weapons-use/>>, accessed June 25, 2021.

⁷⁸ See IPAICW, "International Partnership against Impunity for the use of Chemical Weapons, No Impunity Chemical Weapons," <<https://www.noimpunitychemicalweapons.org/en-.html>>, accessed June 18, 2021.

⁷⁹ Gregory D. Koblenz, 'No Impunity: Will the Newest International Effort to Stop Chemical Attacks in Syria Succeed?, War on Rocks' <<https://warontherocks.com/2018/03/noimpunity-will-newest-international-effort-stop-chemical-attacks-syria-succeed/>>, accessed June 25, 2021.

⁸⁰ See Media Release: "Sanctions Targeting Syria's Chemical Weapons Program, Minister for Foreign Affairs," <<https://foreignminister.gov.au/releases/Pages/2017/jbmr20170824.aspx?w=tblCaGpkPX%2FISOK%2Bg9ZKEg%3D%3D>>, accessed June 25, 2021. Australia has sanctioned 40 individuals and 14 entities linked to the Syrian regime's chemical weapons program. These individuals and entities are now subject to targeted financial sanctions, with individuals also subject to travel bans.

⁸¹ See U.N. Press Release note 55

destruction of CW materials in Syria, hence the continuous use of CWs after the visit of the UN-OPCW and WHO joint team.⁸²

One primary responsibility of the UN Security Council is having a rapid and binding response to threats against global peace and security, without encroaching on territorial sovereignty of states. As a result, compliance regimes like the CWC's encounter difficulty when faced with serious situations. A major obstacle with the compliance mechanism of the CWC, is that its enforcement power lies with the Security Council.⁸³

It is recommended that member states who have acceded to the CWC can propose an optional protocol to the treaty which would cure the obvious inadequacies contained therein particularly as it relates to the deployment of CWs in hostilities and the need to distinguish between what amounts to a minor breach and a fundamental breach. It is also suggested that the deployment of CWs be referred by the UN Security Council to the International Criminal Court (ICC) for prosecution, through an amendment of the Rome Statute to incorporate and categorise deployment of CW as a war crime. In the alternative, it has further been suggested that an *ad hoc* international criminal tribunal be created by the UN, to prosecute those who deployed CWs in Syria. This is not strange as this was the case in Yugoslavia and Rwanda, where tribunals were specifically set up to prosecute war crimes and genocide. It would bring about collective punitive measures to the deployment of CWs in armed conflicts and serve as a deterrent. There is need to enlarge the scope of the investigation team of the UN and OPCW to go beyond the 'declared' sites of CW materials released by the country who had breached the CWC. This will guide against cases of deceit and incomplete declaration of such sites by the Country.

The underlying objective of the CWC amongst others is the prevention of production and use of chemical weapons. Where its use and production cannot be prevented from ever occurring, it is structured to provide voluntary remedy. It is evident that the existing legal framework for CWC and OPCW cannot effectively ban the use of CW

⁸² See UN Press Release, United Nations Security Council 8872nd Meeting, Syria's Declaration of Compliance Still Not in Accordance with Chemical Weapons Convention, Senior Disarmament Official Tells Security Council, SC/14653 4 October 2021, <<https://www.un.org/press/en/2021/sc14653.doc.htm>> accessed November 6, 2021

⁸³ See UN Press Release of the Security Council 8849th Meeting SC/14621 of 2nd September, 2021 Remaining Inconsistencies, Assessment Delays Due to COVID Holding Up Verification of Syria Chemical Weapons Disarmament, High Representative Tells Security Council, <<https://reliefweb.int/report/syrian-arab-republic/remaining-inconsistencies-assessment-delays-due-covid-holding>> accessed November 6, 2021

despite the existing mechanisms put in place. The Syrian situation has revealed the shortcomings contained therein. As stated earlier, the use of force as a restrictive measure or means of sanction as exemplified by the airstrikes carried out by the US in Syria is not a legally acceptable solution, hence, the need for a review of the CWC. There is need for collective effort in dealing with cases of breach and violation of the CWC and not an individual nation resorting to force. More attention should also be accorded to the use of CWs by non-state actors and how to effectively curtail such use.

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