

THE USE OF CHEMICAL WEAPONS IN SYRIA CONFLICT: INTERNATIONAL HUMANITARIAN LAW ANALYSIS

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ABSTRACT

Chemical weapons are any chemical agents used to cause intentional death or harm through its toxic character. The impact upon the chemical weapons attack causes not only a physical harm but also psychological consequences and therefore it often causes a greater harm than the impact caused by conventional weapons attack. This research aims to elaborate the international humanitarian legal perspective upon the continued use of chemical weapons in Syria conflict and the obstacles upon the law enforcement of the violations. These issues are solved using normative legal research. The data are collected through statutory approach and case approach. The result of the analysis shows that the parties involved in Syria conflict have violate the principles of international humanitarian law by using chemical weapons in warfare. Moreover, the factor which caused the difficulties in adjudicating the violation is the nature of international law system itself as a soft law which lacks mechanism of compulsive enforcement. It can be concluded that the parties involved in the Syrian civil war have clearly breached the international law. Therefore, it is necessary to implement the more suppressive measure to enforce its regulation in eliminating the chemical weapons.

Key Words: *Chemical Weapons, Security Council, Syria*

I. Preliminary

The use of chemical weapons has become a repeated violation in the Syrian civil war.¹ However, the use of chemical weapons is not limited only to the Syrian conflict because the use of chemical weapons has long been used in warfare before the Syrian war occurred. In 1988, the President of Iraq Saddam Hussein used mustard and *sarin* gas in the war against Iran, and Iraqi Kurds in northern Iraq causing thousands of people killed. The use of chemical agents as a weapon was happened again in 1995, by the Japanese cult member Aum Shinrikyo who used *sarin* gas in a terrorist attack on the Tokyo subway. Thirteen people were killed and over six thousand people injured at that time.

Those phenomena reflected that human life could not be separated from the existence of conflict, or it can be said that war is inevitable. This opinion was reflected in the results of several studies which stated that in humans, there is an instinct to hurt or attack others.² Therefore, war is something familiar to humans in this world that makes war or armed disputes as a form of event that is almost as old as the civilization of life on earth in the history of human life.³ There is also a term

¹ The 7th Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, UNHRC, 12 February 2014, A/HRC/25/65 paras 127 et seq (*sarin*) ; 8th Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 13 August 2014, A/HRC/27/60, paras 115-118 (*chlorine*).

² Ambarwati, et. al, 2009, *Hukum Humaniter Internasional dalam Studi Hubungan Internasional*, Jakarta, Rajawali Press, p. 43.

³ Arlina Permanasari, 1999, *Pengantar Hukum Humaniter*, Jakarta, International Committee of the Red Cross, p. 12.

which stated that "*armed conflict is as old as humankind itself.*"⁴ It means the war was born together with the existence of human, which made war is inevitable until now.

Due to the inevitability of war, legal regulation is made to regulate a war which can be carried out by paying attention to humanitarian principles, namely legal regulations that recently known as International Humanitarian Law.⁵ Humanitarian Law is not only regulating the procedure and tools used in warfare through the Hague Convention, but also regulating the protection of victims of war through the Geneva Convention. Further arrangements are contained in Additional Protocols 1977. Thus, Humanitarian law has several principles in regulating warfare, one of which is humanitarian principles, both of which are contained in the Hague Convention and Geneva Convention.

Warfare is carried out with various purposes and objectives. Among them is with the intention of self-defense to defend life, honor, or defend the nation, also in maintaining the ideology of a nation. Besides that, there were also wars which were carried out to seize, colonize, or controlling the territories of another state because of the interest in the abundance of natural resources owned by the state. The use of weapons in an armed conflict is usually done in order to achieve a victory. Various states in the world are trying to defend themselves from various external attacks by arming themselves and improving the quality of their weapons technology.

⁴ International Committee of the Red Cross, 2010, "War and International Humanitarian Law", published on <https://www.icrc.org/en/doc/war-and-law/overview-war-and-law.htm>, accessed on January 31st, 2019 at 2:42 PM.

⁵ *Ibid.*

Lately, there have been many types of weapons used in warfare, as in the Syrian conflict which has been going on for more than five years. Since 2011, the war began with the presence of parties who were dissatisfied and opposed to the state's government under the leadership of President Bashar al-Assad. The city of Aleppo, Syria's biggest war city, has become the main stage of the conflict between President Bashar al-Assad supported by Iran, Russia and Shiite militant. While the rebels were supported by Suni militant, Turkey, the Gulf countries, and the United States. As a result of the war, the city of Aleppo for several years has been divided into two with government forces in the west and rebel forces in the east. The Syrian conflict is getting worse because of the tendency of the two warring parties to attack each other using chemical weapons with civilian casualties.⁶

In fact on the 25th of August, a United Nations Security Council mandated investigation team (OPCW Joint Investigative Mechanism (JIM)) concluded that both the Assad regime and ISIS had undertaken a chemical attack in Syria in 2014 and 2015.⁷ The use of a chemical weapon is prohibited as a means in armed conflict because the effects of the use are felt inhuman. Someone who is not directly attacked can be a victim of the use of chemical weapons because chemical weapons can attack through several forms, including in the form of liquids or gases. For example, the

⁶ Victor Maulana, 2016, "ISIS Gunakan Senjata Kimia, Lavrov: Ancaman Kian Besar", published on <https://international.sindonews.com/read/1089604/41/isis-gunakan-senjata-kimia-lavrov-ancaman-kian-besar-1456841963>, accessed on February 1st, 2019 at 9:47 AM.

⁷ Anonymous, 2016, "UN Chief Submits Report Related to Use of Chemical Weapons in Syria to the Security Council", 2016, published on <https://news.un.org/en/story/2016/08/537352-un-chief-submits-report-related-use-chemical-weapons-syria-security-council#.V8CdvZOAOk0>, accessed on February 1st, 2019 at 9:56 AM.

effects of *Sarin* causing the sensations of suffocation, respiratory struggles, paralysis,⁸ and retention of frequent occurrence without victims' awareness of what they are being subjected to.

Discussing chemical weapon, we can relate to the International Humanitarian Law which already comprehensively regulate about the use of chemical weapon although in fact, the enforcement of the use of a chemical weapon is still unclear due to many kinds of interests by many parties. Based on the background above, the author would like to analyze the international legal perspective on the use of chemical weapons and find out the factors causing the lack of law enforcement on the use of chemical weapons in the Syrian civil war.

II. Problem Formulation

1. How is the international humanitarian law perspective on the use of chemical weapons in Syria conflict?
2. What are the factors which cause the lack of law enforcement on the use of chemical weapons in Syria conflict?

III. Research Method

A. Type of Research

This research was conducted under normative legal research method which means that this research is in the form of current law inventories by seeking principles or the basic philosophy of the legislation, or research for the legal discovery purpose

⁸ OPCW, "What is a Chemical Weapon?", Fact Sheet No. 4, published on https://www.opcw.org/sites/default/files/documents/Fact_Sheets/English/Fact_Sheet_4_-_CW_types.pdf accessed on February 1st, 2019 at 10:23 AM.

of any particular case.⁹ So, this research was carried out on primary legal materials and secondary legal material as they contained legal rules.¹⁰ The research shows how the legal perspective of the use of chemical weapon in the Syrian civil war through conventions, charter, and other regulations related to humanitarian principles applied. The research also uses statute approach and case approach. The statute approach is conducted by highlighting some regulations related to the issues while the case approach is conducted by reviewing the case related to the issues.¹¹

B. Type of Data

This research used secondary data which the materials consist of primary, secondary, and tertiary legal materials.

1. Primary Legal Materials consist of several regulations and convention, as follows:
 - a. The Geneva Conventions 1949
 - b. The Additional Protocol I
 - c. The Hague Convention IV 1907
 - d. The Chemical Weapon Convention 1993
2. Secondary Legal Materials consist of several documents related to the primary legal materials, such as Books, Scientific Journals or other related legal documents, Trusted sites internets, and Other related non-legal documents.

⁹ Bahder Johan Nasution, 2008, *Metode Penelitian Ilmu Hukum*, Bandung, Mandar Maju, p. 86.

¹⁰ Soejono Soekanto, 2007, *Penelitian Hukum Normatif Suatu Tinjauan Singkat*, Jakarta, Rajagrafindo Persada, p. 62.

¹¹ Peter Mahmud Marzuki, 2011, *Penelitian Hukum*, Jakarta, Kencana Prenada Media Group, p. 24.

3. Tertiary Legal Materials consist of any legal or non-legal material supported the primary and secondary legal materials. Such as Dictionary and Encyclopedia.

C. Method of Collecting Data

Method of collecting data in this research was done through library research by literature learning. The author collects the data in the research by reading, selecting, validating, and analyzing the information related to the thesis topic. After having the information related to the object of the research from the documents such as international legal instrument, book, journal, and other related documents then discussion and analysis were conducted to reach a conclusion.

D. Method of Data Analysis

The data were analyzed systematically through a qualitative juridical approach. Systematically means the research will be done through the evaluation of data related to the issues to be researched. Juridical qualitative means that it would be connected with the principle of law, convention, and other regulation. So the data can be systematic, qualitative, and comprehensive, illustrating the facts that are valid and related to the prevailing law.

IV. Finding and Analysis

A. History of the Involvement of The United Nations Security Council in Prohibiting the Chemical Weapons

The occurrence of World War II in 1939-1945 led to the belief that the protection of international security from warfare could only be carried out by establishing a public organization of states. In 1942, the allied states called it a

United Nations.¹² On April 25th 1945, the United Nations conference on international organizations began in San Francisco, attended by 50 governments and several non-governmental organizations involved in drafting The United Nations Charter. The United Nations was officially formed on October 24th 1945 for the ratification of the charter by five permanent members of the Security Council namely, China, France, Russian Federation, The United Kingdom, and The United States of America.

In solving a dispute, the Security Council usually will issue a decision in the form of an official text made by the Security Council called the United Nations Security Council Resolution. All of the United Nations members, according to the United Nations Charter shall agree to accept and carry out the Security Council's decision.¹³ In carrying out its authority to prevent the threat of international peace, the Security Council is in charge in investigating any kinds of violations that occur against any regulations governing the procedures and provisions for the use of weapons in war, including the use of chemical weapons. The law governing about war is known as humanitarian law, which has three primary legal sources. Specific regulations regarding means and methods of warfare are mainly regulated in the Hague Convention 1899 which was later refined by the Hague Convention 1907. The Hague Convention 1899 contained a Declaration which prohibits the use of bullets or ammunition which exploded, causing the spread of gas which caused a feeling of suffocation due to shortness

¹² The United Nations, "History of the United Nations", published on <https://www.un.org/en/sections/history/history-United-nations/> accessed on July 4th, 2019 at 12:31 AM.

¹³ Article 25 of the United Nations Charter

of breath. This gas is called "Asphyxiating Gases."¹⁴ This Hague Declaration of 1899 is the first international agreement which prohibits the use of chemical weapons.

The massive use of chemical weapons in World War I and World War II emerged despite the implementation of the 1899 and 1907 Hague Convention, therefore, triggered the respond of the international community. In reaction to the widespread use of chemical weapons during World War I, Article 171 of the Versailles Peace Treaty declared that “the use of asphyxiating, poisonous or other gases and all analogous liquids, materials or devices is being prohibited.”¹⁵ Furthermore, as a response of the use of Chlorine, Phosgene, Choking Agents, and Mustard gas, the 1925 Geneva Conference was held and resulting the Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare which commonly known as the 1925 Geneva Protocol.¹⁶ This protocol regulates the prohibition of the use of chemical weapons in international armed conflict.¹⁷

Hence, the 1925 Geneva Protocol has a fundamental weakness because this Protocol is only limited in regulating the use of chemical weapons without addressing the research, development, and stockpiling of the chemical weapons.

¹⁴ The Hague Declaration (IV, 2) of 1899 concerning Asphyxiating Gases.

¹⁵ Andreas Zimmermann and Meltem Şener, 2014, “Chemical Weapons and the International Criminal Court”, *The American Journal of International Law*, Vol. 108, No. 3, United States of America, Cambridge University Press, p. 437.

¹⁶ Michelle Almary, 2018, “The Necessity for a Permanent Disincentive: Examining the Use of Chemical Weapons With a Focus on Syria’s Civil War”, *Southwestern Journal of International Law*, Vol. 24, No. 2, California, Southwestern Law School, p. 307.

¹⁷ Bureau of International Security and Nonproliferation, 1925, Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (Geneva Protocol), published on <https://www.state.gov/t/isn/4784.htm> accessed on May 6th, 2019 at 8:13 PM.

Due to that, many states developed and produced the chemical weapons notwithstanding the enforcement of the 1925 Geneva Protocol.¹⁸ It is proved by the chemical weapons attack in China used by Japan in 1930 and Mustard gas used by Italy against Ethiopia in 1935. England, together with the United States, developed chemical weapons during the cold war, and also the Soviet Union had the facilities in developing the chemical weapons.¹⁹ Further, mustard gas, sarin, and nerve agents also being used by the president of Iraq Saddam Hussein in 1980s during the war against Iran and its Kurdish population in 1991.²⁰

The history of the use of chemical weapons above clearly shows the urgency in implementing the more strict measures to ensure the peace and security of the entire international community. Therefore, a much broader framing was articulated in the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction which has commonly known as The Chemical Weapons Convention. The Chemical Weapons Convention was being enforced in 1997 and not only prohibiting the use of chemical weapons but also the development, production, stockpiled of chemical weapons.

The Chemical Weapon Convention is a set of rules which carried out by the Organization for the Prohibition of Chemical Weapon (OPCW), an

¹⁸ Sean P. Giovanello, 2012, "Riot Control Agents and Chemical Weapons Arms Control in the United States", *Journal of Strategic Security*, Vol. 5, No. 4, United States of America, University of South Florida Board of Trustees, p. 5.

¹⁹ Victoria Utgoff, 1990, *The Challenge of Chemical Weapons: An American Perspective*, New York, St. Martin's Press, p. 42.

²⁰ Norm Dixon, 2004, "How Reagan Armed Saddam with Chemical Weapons", published on <https://www.counterpunch.org/2004/06/17/how-reagan-armed-saddam-with-chemical-weapons/> accessed on July 4th, 2019 at 1:11 AM.

independent organization that is not under the United Nations. The Organization for the Prohibition of Chemical Weapons is responsible for supervising the Chemical Weapon Convention, including the worldwide destruction of chemical weapons. The OPCW and the United Nations formed a legally binding relationship in 2001 and are agreed to cooperate closely concerning their authority and to consult on the concerned matters and their common interests. The organization is authorized to investigate state parties, but in investigating the non-state parties, the OPCW must cooperate with the United Nations Secretary General. If it receives information from a state party regarding any conduct of violations against the Convention, the OPCW will inspect and monitor the activities and facilities of a state party to ensure compliance.

B. The Use of Chemical Weapons in the Syrian Civil War

1. The Syria Conflict and Humanitarian Law Perspective

The war had erupted when Syrian President Bashar Al-Assad reacted to peaceful opposition towards his regime.²¹ On the regime side, the Syrian government has received material and military support from Russia, Iran, and the militant group called Hezbollah, which based in Lebanon.²² While Syrian government were supported by Russia with a high military power.

The armed conflict that occurred in Syria attracted the attention of international organizations, especially those related to human rights, and therefore the United Nations Human Rights Council mandated the

²¹ Michael Becker, 2015, “When Terrorists and Target Governments Cooperate the Case of Syria”, Vienna, *Perspectives on Terrorism*, Vol. 9 No. 1, Terrorism Research Initiative, p. 95.

²² Stacy Meichtry, 2014, “Russian Support of Assad Upends Peace Talks”, available from: <https://www.wsj.com/articles/no-headline-available-1392324287> (accessed May 8th, 2019)

Independent International Commission of Inquiry on the Syrian and Arab Republic to investigate any violations against the international human rights law. Upon the investigation, found a broad violation of human rights which were committed by the Syrian military, pro-government militias and also the security forces.²³



4.1 Protesters in Damascus²⁴

The war became more horrifying when there was an allegation upon the use of prohibited chemical weapons such as Sarin and Chlorine gas. This violation has been confirmed by the United Nations Human Rights Council-mandated Commission of Inquiry on Syria since March 2013 and March

²³ Kelly McEvers, 2011, “Protesters Take to the Streets in Syria”, available from: <https://www.npr.org/2011/04/29/135846442/protesters-take-to-the-streets-in-syria> (accessed May 8th, 2019)

²⁴ Anne Barnard, 2012, “Damascus Puts on Pro-Assad Rally, but Protesters Won’t Be Silence”, published on <https://www.nytimes.com/2012/03/16/world/middleeast/syria-mass-damascus-rally-for-assad.html> accessed on May 22nd, 2019 at 11:40 AM.

2017.²⁵ The first chemical weapons attack reports are noted occurred in many regions of Syria, including Khan Al Asal, Saraqueb, Jobar, and Ghouta.²⁶

As Syria has become the Party to the Geneva Convention 1949, Syria should comply with the regulation contained in the Convention. The Geneva Convention 1949 is a Convention which has the main purpose in regulating war based on the balance between military necessity and humanity and protecting the victims of war both those who no longer involved in the war and those who do not involve in war.²⁷

In line with the main purpose, the Convention regulates the specific prohibitions and restrictions upon the means and methods used in war. One of which is the prohibition in using chemical weapons by all parties involved in warfare. Therefore, the use of chemical weapons in Syria conflict has violated the basic regulation as related to several principles namely:

a. The Principle of Balancing Military Necessity and Humanity

In this principle, the conduct of hostilities which cause death and injury in defeating the enemy is permissible but the humanity principle balancing it with the limitation over the means and method used in the battlefield and require a humane treatment upon victims of war.²⁸ The use of chemical weapons in Syria cannot be categorized as humanely treatment

²⁵ Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 2014, published on https://www.ohchr.org/EN/HRBodies/HRC/RegularSessions/Session25/Documents/A-HRC-25-65_en.doc accessed on May 8th, 2019 at 5:24 PM.

²⁶ Dr. Robert J. Bunker, 2019, *Contemporary Chemical Weapons Use in Syria and Iraq by the Assad Regime and the Islamic State*, United States of America, Strategic Studies Institute (SSI) and U.S. Army War College (USAWC) Press, p. 24.

²⁷ Nils Melzer, 2016, *International Humanitarian Law: a Comprehensive Introduction*, Geneva, International Committee of the Red Cross, p. 17.

²⁸ *Ibid.*

because the effect of these weapons is felt inhuman causing death to the innocent civilians and continuous suffering.

b. The Principle of Distinction

The parties involved in warfare must distinguish between the civilians and the combatants, also between the civilian objects and military objects.²⁹ It means the person who is not actively taking part in the war is protected by IHL and therefore, combatants are prohibited to attack or cause harm to the civilians who do not involve in war. Accordingly, this principle aims to avoid harm over the protected person and objects against any direct attack from the conflict. In the Syria conflict, the use of chemical weapons not only causing harm to the targets of war but also to the innocent civilians because chemical weapons can attack through several forms both liquid and gases. Someone who is not directly attacked can be a victim of the use of chemical weapons.

c. The Principle of Precaution

All parties in warfare must do every possible measure to avoid the harm caused by the hostilities over the protected civilians. Such as choosing the means and methods of warfare in order to prevent the potential harm of the civilians over the attacks carried out by the combatants.³⁰ The use of chemical weapons in Syria conflict has violated this principle since the parties in the conflict intentionally use the chemical weapons without considering the potential impact over the civilians.

²⁹ Ganesh Sitaraman, 2009, “Counterinsurgency, the War on Terror, and the Laws of War”, *Virginia Law Review*, Vol. 95 No. 7, Virginia, Virginia Law Review, p. 1780.

³⁰ Nils Melzer, *Op. Cit*, p. 102.

d. The Principle of Unnecessary Suffering

This principle prohibits the means and methods used in the conduct of hostilities which causing excessive and unnecessary suffering towards both the targets of war and the protected civilians. Thus, the use of chemical weapons in Syria conflict is violating this principle considered by the excessive effect of the chemical agents over the civilians. The impact of chemical weapons is not only weakening the military forces of the enemy but also innocent civilians.

Syria is a state party to the Geneva Convention 1949 and Additional Protocol I, thus, Syria is legally bound by the provisions contained in both Convention and Protocol. Syria has violated the provisions frequently by involving a chemical agent as a means in non-international armed conflict and causing harm to the civilians who are not becoming the targets of war. So, Syria's actions also justified as a violation of international humanitarian law.

2. The Respond of International Community upon the Use of Chemical Weapons in Syria

Responding to the horrific phenomena of Syria conflict, in 2012, President Obama indicated the use of chemical weapons in Syria as crossing a “red line”³¹ and therefore suggesting the United States military to intervene

³¹ Red Line is a phrase used by President Barack Obama in referring the forbidden use of chemical weapon in Syria which also agreed by the majority of states in the world. Michele Richinick, 2013, “Obama: ‘I didn’t set a red line, the world set a red line’”, available from: <http://www.msnbc.com/morning-joe/obama-i-didnt-set-red-line-the-world> (accessed July 4th, 2019)

Syria.³² The issue of Syria crossing a “red line” was proven a year later when the Secretary General received sixteen allegations regarding the use of chemical weapons and the investigation was pursued by the United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic (U.N. Mission). In the end, the U.N. Mission concluded that the parties involved in the Syrian war used chemical weapons repeatedly.

The United States government immediately concluded a military force against the Syrian government but then Russia as the long allied state of Syria suggesting the Syrian government to join the Chemical Weapon Convention.³³ Syria ultimately agreed, and it became the party of Chemical Weapon Convention in September 2013 and enforced in October.³⁴ Then, the United States, together with Russia, agreed to eliminate and destruct all of Syria’s chemical agents. Then, the Security Council issued a resolution which determined that the use of chemical weapons is a threat to international peace and security and therefore needs a full implementation of the Organization for the Prohibition of Chemical Weapons. The resolution further stated “The Security Council specifically prohibited Syria from using, developing, producing, otherwise acquiring, stockpiling, or retaining chemical weapons, or transferring them to other States or non-State actors, and emphasized that no party in Syria should use, develop, produce, acquire, stockpile, retain, or

³² Anne Barnard and Michael R. Gordon, 2017, “Worst Chemical Attack in Years in Syria; U.S. Blames Assad”, available from: <https://www.nytimes.com/2017/04/04/world/middleeast/syria-gas-attack.html> (accessed May 8th, 2019)

³³ Michelle Almary, *Op. Cit*, p. 314.

³⁴ Dr. Robert J. Bunker, *Op. Cit*, p. 6.

transfer such weapons”. In line with the determination by the resolution, in 2014 the Organization for the Prohibition of Chemical Weapon destruct 24 of 27 Syria’s declared production and inventory facilities.

However, there is still a suspicion upon the undeclared chemical agents stockpiled by Syria. This is proven even though the strong international response has been issued, the Independent Inquiry once again found evidence of the use of chemical weapons by the parties involved in the Syrian war.³⁵ Meeting of the United Nations Security Council was held and resulting three drafts of resolution which referring the horrific situation in Syria to the International Criminal Court (ICC) for investigation. The resolution was fell to a double veto by Russia and China.³⁶

International Criminal Court is the first permanent international criminal court which was established by the Rome Statute in 1998 and begins to operate in 2003 in investigating and prosecuting any perpetrators who involved in the most serious international crimes. The use of chemical weapons in warfare is also classified as the most serious international crimes, but the International Criminal Court does not have any jurisdiction to exercise its authority upon Syria case since Syria is not becoming a state party to the Rome Statute. However, ICC would be able to exercise its jurisdiction over Syria under these following reasons:

³⁵ Anonymous, 2015, “Government Attacks on Civilians, Indiscriminate Use of Weapons”, Human Rights Watch, available from: <https://www.hrw.org/world-report/2016/country-chapters/syria> (accessed May 8th, 2019)

³⁶ The United Nations Security Council, 2014, “International Law — The Responsibility to Protect — Draft Security Council Resolution Referring Syrian Conflict to the International Criminal Court Vetoed by Russia and China”, United States, *Harvard Law Review*, Vol. 128 No. 3, The Harvard Law Review Association, p. 1055.

- a. If the government of Syria ratifies the Rome Statute;
- b. If the government of Syria accepts the jurisdiction of the International Criminal Court through a declaration;
- c. If the United Nations Security Council submit the conflict in Syria to the International Criminal Court.³⁷

Regarding the referral by the Security Council upon Syria Case to grant jurisdiction of International Criminal Court has been attempted but again it was blocked by the vetoes of Russia and China as the permanent members of Security Council. Thus, the veto used by Russia and China against the United Nations Security Council has prevented a decision in implementing the use of force to protect the civilians in Syria.

Despite the various mechanism of the United Nations Security Council created to collect evidence, the numerous effort done by OPCW in destructing Syria's declared weapons, and continuous allegations that chemical weapons are being deployed in Syria by all parties involved in the war, there is still no person accountable for the crimes. Furthermore, no prosecutions held for the individuals committing the crimes.

C. Enforcement Mechanism in International Law as a Factor causing the Lack of Law Enforcement in Syria Conflict

The question of whether international law is law has become an old question that still matters. Many objections made by scholars of international law

³⁷ Julia Brooks, *et. al*, 2018, "Responding to Chemical Weapons Violations in Syria: Legal, Health, and Humanitarian Recommendations", published on <https://dash.harvard.edu/handle/1/35014991> accessed on May 28th, 2019 at 10:02 PM.

argue that international law cannot matter in the way it must to be law because it lacks compulsive enforcement mechanisms.

Scholars also made a conception called “Modern State Concept” by taking a modern legal system as an example to be compared with international law. The Modern State conception stated that regimes are a legal system only when they can dominate the use of force in a region and use this power to enforce their rules in that region. In a state, the dominance of this power is found in some interrelated organizations using intimidation and violence to enforce the law, such as the police and prosecution bodies. When compared, international law does not have an institution as mentioned above.

Any violations against the international instrument have commonly occurred. Furthermore, if the violations related to criminal matters, it becomes the authority of the International Criminal Court (ICC), which owned the authority to investigate and prosecute any perpetrators involved in the most serious international crimes. However, since the ICC is a non-governmental organization, it lacks an enforcement body and therefore relies on the cooperation with other international community. Therefore, even though the ICC has not become part of the United Nations organization, the court has agreed to cooperate with the United Nations. Whenever a conflict occurs outside the court’s jurisdiction, the Security Council can refer the situation to the court, granting it a jurisdiction to prosecute

such matter.³⁸ Then, the ICC Prosecutor has the discretion to decide whether to pursue an investigation.

Referring back to the Syrian civil war, even though Syria has ratified several international legal instruments which clearly prohibit the use of chemical weapons, the parties involved in the war are still engaged with the chemical weapons and all of the authorities of the treaties has made an effort in overcoming the violation, but the violation seems unstoppable. So regarding the referral by the Security Council upon the case of Syria to the International Criminal Court might becoming the solution to overcome the violations of chemical weapons. However, the approval by all five permanent members of the Security Council is needed each time the Security Council presented a resolution to refer the case of Syria to the International Criminal Court. Thus, each proposal also has been rejected by Russia and China and the effective role of the Security Council in dealing with international conflicts involving high levels of violence soon dissipated.

V. Conclusion and Recommendation

A. Conclusion

The use of chemical weapons in the Syria conflict has become a violation against international humanitarian law since the use of chemical weapons has been prohibited in basic principles of International Humanitarian Law and several international agreements namely, the 1899 Hague Convention and 1925 Geneva Protocol which declared the prohibition upon the use of any poisonous gas. The

³⁸ International Peace Institute, 2013, “The Relationship between the ICC and the Security Council: Challenges and Opportunities”, New York, International Peace Institute, available from: http://www1.regierung.li/uploads/media/IPI_E-Pub-Relationship_Bet_ICC_and_SC_2_02.pdf (accessed May 25th, 2019)

1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction which is commonly known as the Chemical Weapons Convention clearly controlled the use of chemical weapons itself in the battlefield.

The lack of enforcement mechanism in the international law system is the main factors of the adjudication of the use of chemical weapons in Syria conflict becomes difficult. Besides, Syria is not a State Party to the Rome Statute and therefore the use of chemical weapons in Syria cannot be referred to the ICC jurisdiction.

B. Recommendation

The basic principle of international humanitarian law and a number of Treaties have undoubtedly banned the use of chemical weapons in hostilities but, the more strict measure needs to be taken to stop the violation of chemical weapons used in Syria conflict. The Organization on the Prohibition of Chemical Weapons should be more critical in monitoring and enforce the prohibition of chemical weapons also implement more strict measure to investigate and eliminate the chemical weapons in Syria.

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