

## Chemical Weapons Violations in Syria's Civil War: an International Law Perspective

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### ABSTRACT

**Kata Kunci:**  
*Chemical Weapons, International Law, Syria Civil War*

The use of chemical weapons in the Syrian civil war is a grave violation of international law, as it violates the prohibition on using chemical weapons under customary international law. The war has erupted since Syrian President Bashar Al-Assad responded violently to the peaceful opposition toward the regime. The Organization for the Prohibition of Chemical Weapons (OPCW) has confirmed two occasions of using chemical weapons in Syria in 2015 and 2016. However, until recently, there were no necessary measures to protect civilians in Syria from using chemical weapons and prevent any future use of Syria's stockpile of chemical weapons. The study aims to analyze the use of chemical weapons in the Syrian civil war, the violation of the CWC in the Syrian civil war, and the legal protection of Syrian civilians. The study used a normative legal research methodology. The data sources in the study were secondary data obtained from the statutory, analytical, legal, conceptual, and fact approaches. The study's result showed that the Syrian government violated the Chemical Weapons Convention of 1993 (CWC) and should respond with the action, categorized as an infringement of the international legal norm.

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### ABSTRAK

**Keywords:**  
*Senjata Kimia, Hukum Internasional,*

*Penggunaan senjata kimia dalam perang saudara Suriah merupakan pelanggaran berat terhadap hukum internasional, karena melanggar larangan penggunaan senjata kimia menurut hukum kebiasaan internasional. Perang telah meletus sejak Presiden Suriah Bashar Al-Assad menanggapi dengan*

Perang Saudara  
Suriah

keras oposisi damai terhadap rezim. Organisasi Pelarangan Senjata Kimia (OPCW) telah mengkonfirmasi dua kali penggunaan senjata kimia di Suriah, pada tahun 2015 dan 2016. Namun, hingga saat ini, tidak ada tindakan yang diperlukan untuk melindungi warga sipil di Suriah dari penggunaan senjata kimia dan mencegahnya di masa depan. Penggunaan persediaan senjata kimia Suriah. Penelitian ini bertujuan untuk menganalisis penggunaan senjata kimia dalam perang sipil Suriah, pelanggaran CWC dalam perang sipil Suriah, dan perlindungan hukum terhadap warga sipil Suriah. Penelitian ini menggunakan metodologi penelitian hukum normatif. Sumber data dalam penelitian ini adalah data sekunder yang diperoleh dari pendekatan perundang-undangan, analitis, hukum, konseptual, dan fakta. Hasil penelitian menunjukkan bahwa pemerintah Suriah melanggar Chemical Weapon Convention of 1993 (CWC) dan harus bertanggungjawab terhadap aksi yang melanggar norma hukum internasional tersebut.

## 1. INTRODUCTION

The Syrian civil war lasted more than eleven years, starting when a protest emerged against President Assad's regime in 2011. The protest escalated into a full-blown war between the government and the rebellion since the regime responded violently to the protest. As the civil war widened, both parties employed a variety of weapons and techniques of warfare to seize control of the government (Gunter, 2014). One of the methods used by the parties in conflict was chemical weapons. The earliest allegation of a chemical-based weapons attack was reported on December 23, 2012. Since then, there have been many reports of the utilization of chemical weapons. The use of chemical weapons was one of the most horrifying occurrences of the conflict due to its inhumane effects. Chemical weapons can cause suffering before death. Chronic neurological damage can torture the victim even after the war has ended (Brooks et al., 2018). Chemical weapons are also easily dispersive since they are usually in the form of gas or liquid. Attacks using chemical weapons can affect both combatants and non-combatants.

The international community created the Chemical Weapons Convention (CWC) to improve the 1925 Geneva Convention. CWC is an international treaty regulating the prohibition of chemical weapons usage in war that is far more complex and updated than the 1925 Geneva Convention. CWC prohibits the use, development, production, stockpiling, and transfer of chemical weapons. CWC mandates that all signatories destroy all chemical weapons and their production facilities subject to international verification, keep an eye on the

chemical industry to stop the development of new weapons, aid and protect other signatory states from chemical threats, and advocate for the safe and beneficial use of a chemical (Zanders, 1996).

CWC's detailed content even monitors non-lethal tear gas and other riot control chemicals, as well as chemical bombs that failed to detonate in war or were carelessly removed from test ranges. It mandates the dismantling or repurposing of facilities formerly used for chemical weapons production and restricts the worldwide trade of chemicals and equipment that might be diverted for military purposes (Koplow, 2012). This Convention prohibits using chemical weapons but does not prohibit using chemicals for peaceful purposes such as agriculture, medicine, pharmaceutical, and other industries, as stated in article 2 CWC. CWC defines chemical weapons as a toxic chemical that is regulated in the schedule 1 annex on the chemical that is weaponized. The CWC may have been the greatest, most comprehensive, and most intricately built international weapons control pact in human history.

The Chemical Weapons Convention established the International Organization for the Prohibition of Chemical Weapons (OPCW) to carry out and enforce the provisions of the CWC. OPCW's goals are to eradicate chemical weapons stocks, guarantee the nonproliferation of such weapons, help governments defend themselves from chemical weapons assaults, and encourage international collaboration in the peaceful use of chemistry. All signing governments agree to provide OPCW inspectors unrestricted access to all locations housing chemical weapons and destroy all stock of chemical weapons (Chin et al., 2022). Sites and victims of alleged chemical weapons attacks are also subjected to testing by the OPCW. As per the Relationship Agreement signed in 2001 between the OPCW and the United Nations (U.N.), the OPCW is required to report its inspections and other operations to the U.N. through the secretary-general's office.

Even though Syria did not ratify the CWC at the beginning of the conflict, Syria became a party to the Convention in September 2013. Governmental and non-governmental international organizations have recorded several instances of using hazardous gases as chemical weapons. The use of chemical weapons was verified by a joint inquiry by the U.N. and the OPCW. These chemical attacks are a violation of the CWC, as stated in Article 1:

*"Each State Party to this Convention never undertakes under any circumstances":*

- a. *To develop, produce, otherwise acquire, stockpile, or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone;*
- b. *To use chemical weapons; To engage in any military preparations to use chemical weapons;*
- c. *To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under this Convention."*

Accordingly, Syria has violated Article 2 of the CWC:

*"Each State Party undertakes to destroy chemical weapons it owns or possesses, or that are located in any place under its jurisdiction or control, in accordance with the provisions of this Convention."*

## 2. RESEARCH METHODS

This normative legal research involved juridical thinking, facts, and information related to the research (Soekanto & Mamuji, 2006). The data collection method in this research was conducted through a literature study and the internet. The data will be analyzed systematically through juridical thinking.

## 3. RESULTS AND DISCUSSION

### 3.1 Overview of the Case

The civil war in Syria, which has lasted for more than eleven years, started when a protest emerged against President Assad's regime in 2011. It is a protest demanding an end to the abuses of power done by President Bashar al-Assad. Protesters called for the end of emergency rule, political changes, and civil rights restoration. The protest itself started peacefully, apart from a few incidents. However, the Syrian government responded to the protest with violence, such as arrests and shootings, resulting in conflict escalation. One incident that escalated the conflict was arresting fourteen school children after they vandalized a wall with the famous slogan: "the people want the downfall of the regime." they were reportedly arrested and then tortured in prison, with one of the kids dead. This incident led to a surge of armed opposition by the rebel groups (Richard, 2014).

The conflict became a war for power between the Syrian government and the anti-government rebel group. The conflict escalated, and the international committee of the Red Cross has already classified it as a full-blown civil war. The conflict has caused suffering to the civilian population trapped and persisted in the conflict zone. The Syrian observatory for human rights reported

that from 2011 until June 1, 2021, there were 606,000 people killed in the Syrian conflict, and that is only the reported case (SOHR, 2021). As the civil war enlarged, in order to win the war, the regime deployed all necessary means, like rocket-propelled grenades, artillery missiles, and long-range ballistic missiles containing chemical substances. The use of chemical weapons was one of the most horrific incidents in the conflict.

Since the beginning of the Syrian civil war in 2011, there have been 85 confirmed chemical weapons attacks. Even though both parties were proven to use chemical weapons, the chemical weapon attacks were made mainly by the Assad regime. The Assad regime is responsible for 98 percent of the chemical attack in Syria, while the rebellion is responsible for only 2 percent of the attack. Some of the chemical used in the attack is sulfur mustard, a blister agent with very high persistence, and sarin gas, a nerve agent with low persistence. Moreover, the most used chemical weapon is chlorine. These chemicals were categorized as toxic chemicals, as stated in the Schedule 1 Annex on Chemicals. Such chemicals are categorized as chemical weapons when used in an attack, as regulated in article 2 of the CWC.

Chlorine is a weak choking agent. Using chlorine agents has multiple advantages over other substances. First, chlorine isn't regulated. Civilians rely on it heavily. For example, pharmaceuticals employ chlorine for antiseptics and medicines. Chlorine is utilized in textile, papermill, and metal processing adhesives. Syria's industrialization makes it easier to create, store, and weaponize chlorine because they already make the gas. Chlorine gas isn't as lethal as sarin, another Syrian weapon. Chlorine's lack of international media attention is another benefit (Geiger, 2017). That is why 95 percent of the chemical attack launched in Syria used chlorine-based weapons. Nerve agent poisoning by chemical weapons such as sarin or chlorine is severe, quick, and potentially lethal, causing horrendous damage and speedy death, especially in children. Nerve agents cause drooling, vomiting, diarrhea, paralysis, and asphyxiation. Whoever survives will undoubtedly have brain damage (Schneider & Lütkefend, 2019).

According to a study from the Syrian American Medical Society (SAMS), chemical exposure has resulted in at least 1,491 fatalities and 14,581 casualties (SAMS, 2016). Chemical weapons have a psychological effect since their use is difficult to substantiate. It causes mass panic when civilians rush to receive medical attention in an already hectic and packed hospital, even though it's a

common illness. The attack using chemical weapons will not only affect the people that get a direct hit. The chemical assault won't just impact those directly struck. Non-combatants sheltering in the bunker from what they believed was a conventional weapons strike would also be affected since chemical weapons in gas form are heavier than air. The toxin will creep into the bunker or basement and harm them. It will discreetly assault defenseless individuals. Chemical attack survivors are more likely to develop PTSD, according to research. PTSD comes after a distressing event. People with PTSD endure traumatic flashbacks even years after the event ([Moradi et al., 2019](#)).

The International Criminal Court (ICC) provides a possible option for seeking individual criminal culpability for chemical weapons usage in Syria. However, Syria is not a State Party to the Rome Statute. Hence there is no clear foundation for the ICC's jurisdiction. ICC could exercise its jurisdiction if Syria ratified the Rome Statute, Syria accepted ICC jurisdiction through declaration, or The Security Council referred the situation in Syria to the ICC. Humanitarian law prohibits attacks against civilians not involved in the conflict, a prohibition enshrined in Common Article 3 of the 1949 Geneva Conventions. Accountability regarding the use of chemical weapons needs to be implemented and resolved because the use of chemical weapons is a war crime and a violation of international humanitarian law. The Security Council, in this case, issued a draft resolution to impose a position against the use of chemical weapons, but Russia and China exercised veto power. The veto was used to overturn a draft Security Council resolution for Syria. So, there is a legal vacuum regarding the form of accountability and its settlement ([Murphy, 2020](#)).

### **3.2 The Violation of the Chemical Weapons Convention in the Syrian Civil War**

The earliest allegation of a chemical weapon attack in Syria was reported on December 23, 2012. On March 19, 2013, the Khan al-Asal incident happened. In this incident, the attack was carried out in the early morning through a barrel bomb containing sarin gas. The bomb was dropped from a helicopter, resulting in 20 fatalities and 124 injuries to soldiers and civilians. The Assad regime carried out these attacks despite denying it and accusing the rebellion of using chemical weapons, despite the fact that the rebellion lacked such advanced technology, particularly in producing and employing sarin gas ([Anderson, 2016](#)).

The next attack was the Saraqueb attack on April 29, 2013. The method and the chemical used in the attacks were the same as in the Khan al-Assad incident. This attack killed one civilian and injured ten. An investigation report shows that a sarin canister was used in this incident ([Nations, 2013](#)). The largest and most horrible chemical attack was the Ghoutta attack on August 21, 2013. Ghouta is the capital city of Damascus. This attack was made to gain the upper hand in a critically important area since the regime struggled to maintain Ghouta. This attack is the largest chemical attack by the Assad regime. The Assad regime launched a missile barrage containing sarin into the rebel-held area. This massive missile barrage's estimated death count range from 281 based on French intelligence up to 1429 based on U.S. intelligence, While the injured are estimated to be in a thousand ([Bunker, 2018](#)).

Following international pressure from the Ghouta assault, Syria decided to join the chemical weapons treaty in September 2013. Syrian chemical weapons sites have been inspected by inspectors from the OPCW in order to verify weapon and equipment inventories, give Syria advice on how to comply with CWC regulations, and start making prepared for the intended destruction and removal operations. The U.N. and OPCW established a Joint Mission in October to carry out and oversee Syria's chemical weapons disarmament ([Trapp, 2017](#)).

Syria reported 41 C.W. stocks and manufacturing sites in 23 different locations. There were 18 C.W. manufacturing facilities, 12 storage facilities, eight mobile filling units, and three additional CW-related facilities. The declared stockpile weighed 1000 tons of category one chemicals listed in Schedule 1 of the CWC. There were additional 290 tons of other chemicals, 1230 empty bombs, and two cylinders that the Syrian government said did not belong to it but may contain chemical agents in the C.W. stockpile. On October 6, 2013, an OPCW-UN team landed in Syria to begin the elimination of Syria's disclosed chemical weapons stocks and installations. On June 23, 2014, the last shipment of Syria's declared chemical weapon stockpile was shipped out of the country.

The post-Ghoutta incident was the Keferzita attack on October 1, 2016. The Syrian regime used chlorine against opposing rebels and civilians. There were two fatalities and 200 casualties. Chlorine barrel bombs were dropped by government helicopters, especially on people. The chemical agents used in the assaults were imported from other countries. The chemical used in this attack

originated from China since, in the canister of the chemical weapon, there's a Norinco branding written, which is a Chinese company. Even though the destruction of Syria's declared chemical weapons and facilities program was already finished on December 9, 2011. In Kallaseh, Aleppo, the regime initiated the attack by dropping a yellow gas cylinder containing chlorine. Over 50 casualties resulted from the attack. The other attacks were reported in Basimah, Damascus, on January 8–9, 2017. The delivery type of the chemical weapons was not specified, but for chlorine-based attacks, barrel bombs and gas cylinders are typically utilized.

The next attack reported was in Khan Sheikhoun on April 3, 2017. These attacks are the second largest chemical weapons attacks carried out by the Assad regime during the conflict. In this incident, a Syrian aircraft dropped a 500 kg bomb containing sarin on rebel-held territory. Sarin is a more lethal chemical than chlorine; this is the first time it has been used since the Ghoutta incident. In this attack, 92 casualties and over 200 casualties were recorded. The latest attack was reported on April 7, 2018, in Douma. There were 40 fatalities and 100 casualties from this attack. The chemical used in this attack is chlorine.

The reported attacks violate Article 1 Paragraph 1b of the CWC. Syria violated Article 1 Paragraph 1 (a) of the CWC to stockpile or retain chemical weapons. Since the declared Syrian chemical weapons were fully destroyed in July 2014, several attacks such as the Kallasesh attack on December 9, 2016, the Basimah attack on January 8-9, 2017, the Khan Sheikoun attack on April 3, 2017, and the Ghoutta attack on April 7, 2018, prove otherwise. It can be argued that Syria also violates Article 3 Paragraph 1 of the CWC, which requires the state to declare its chemical weapons possession. These attacks also violated article 2 of the CWC since Syria didn't destroy its chemical weapons possession.

### **3.3 The Legal Protection of The Civilians in Syria Civil War Under International Law**

The term "international humanitarian law" refers to a body of norms that, for humanitarian reasons, were developed to limit the effects or outcomes of armed conflict. This humanitarian law protects people who are not or is no longer participating and involved in warfighting and limits the means and ways of war. Humanitarian law protects the fundamental human rights of combatants and victims by limiting the use of force. In accordance with these objectives, international humanitarian law is founded on the following



fundamental principles: the principle of humanity (humanity), the principle of necessity (necessity), the principle of proportionality (proportionality), the principle of distinction (distinction), and the principle prohibiting the infliction of excessive suffering. (Prohibition of causing needless suffering), the independence principle between *Ius in Bello* and *Ius Ad Bellum* (Riyanto, 2013). In international humanitarian law, countries that are in armed conflict can distinguish between people who are involved and those who are not involved, such as civilians, and prohibit all means and methods of warfare. As well as international humanitarian law also regulates and provides protection for civilians in wars that result in injury and damage to infrastructure as well as excessive suffering and heavy losses or cause prolonged damage to the environment (Sivakumaran, 2011). Accordingly, International Humanitarian Law prohibits using many weapons, including explosive bullets, biochemical, biological, and nuclear weapons, blinding laser weapons, and antipersonnel mines.

The principle in International Humanitarian Law, which is regulated in the 1949 Geneva Conventions along with additional protocols I, II, III, and IV, are complementary in protecting people who do not take part in combat, such as civilians, medical officers, and religious clergy, injured people, people who experience shipwreck, the sick, and prisoners of war. Protected persons are those who are not allowed to be attacked, who must be protected from being physically abused and treated inhumanely, who are injured or sick and must be gathered and treated, and who must not be killed. Persons who are taken prisoner or detained are subject to stringent rules and regulations, including provisions regarding adequate food and shelter and legal guarantees. Hospitals, museums, and ambulances are examples of protected locations and objects that should not be attacked.

Article 3 of the Geneva Conventions of 1949 provides protection for parties to non-international armed conflicts. Article 3 stipulates that warring parties on the territory of a country are obligated to protect people who are not actively participating in the conflict, including members of the armed forces/combatants who have laid down their weapons and are no longer participating due to illness, injury, detention, or other reasons, or they are prohibited from committing acts of violence against body and soul or punishing them without a legal trial.

On the one hand, the re-conceptuality of the relationship between state sovereignty and human rights is a concept of responsibility to protect in response to political pretexts regarding humanitarian intervention. It explains the importance of adapting the U.N. normative framework to new threats and victims. This re-conceptuality, called responsibility to protect, has concerns about crime or cruelty and the use of large-scale or massive and systematic violence against the population in peace or war situations, such as ethnic annihilation, genocide, war crimes, and inhumane crimes. Simply put, the R2P includes three concurrent and mutually reinforcing responsibilities, or "pillars" (Sihvo, 2014):

- a. Protecting the citizens from crimes against humanity, such as genocide and ethnic cleansing, is the state's main duty;
- b. The remaining duty of the international community is to support states' efforts at the protection;
- c. Should host states blatantly fail to shoulder their protection mission, the international community must take collective action.

A clause of humanitarian law known as The Hague Regulation governs the ways and means of war. The First Peace Conference in 1899, also known as the 1899 Hague Convention, and the Second Peace Conference in 1907, also known as the 1907 Hague Convention, make up the Hague Law. Three conventions and three declarations were produced by the Hague Convention in 1899. There are three conventions:

- a. Convention I on the Peaceful Settlement of International Disputes.
- b. Convention II on the Law and Customs of War on Land.
- c. Convention III concerning the Adaptation of the Principles of the Geneva Convention of August 22, 1864, concerning the Law of War at Sea.

In this Convention, civilians are given legal protection. Neither the Hague Convention of 1899 nor the Hague Convention of 1907 directly protects civilians. The existence of restrictions on the use of dangerous weapons in the body, the prohibition of the use of toxic gases that can cause excessive suffering for victims, restrictions on the use of projectiles and explosives, as well as the existence of separate rules in the conduct of war, are all preventative measures against acts of war that are not subject to human values.

This protection is also emphasized in the Convention's principle, which states: "That the right of a state at war to injure its enemy must be limited by avoiding treatment or the use of methods that cause excessive suffering, both of

which have not been used or are generally considered inhumane" (Suryokumoro & Ikaningtyas, 2020).

This Convention begins with three essential articles that are similar to one another. First, the need for this Convention is accompanied by all circumstances. No country may violate the Convention for national defense purposes, for example. Second, not only does this Convention govern war, but it also governs conflicts between armed groups. Third, signatory countries are required to comply even if their adversaries have not or have not signed the Convention. Another important aspect of this Convention is the obligation of signatory countries to prosecute individuals suspected of violating them under the provisions of international armed conflict.

Through the formulation and subsequent revisions of mandates for U.N. and UN-authorized missions, the U.N. Security Council determines the parameters for discussing Points of Contention (POC). The mandates can indeed be separated into two categories: The first pertains to civilian populations in general, and mandates can either be "active", in which a mission is directly charged or authorized under Chapter VII to use "all necessary means to protect all civilians under imminent threat of physical violence" or "non-active", in which the U.N. Security Council "calls on", urges, or requests conflict parties to refrain from violence against civilians, with no direction for specific POC actions. In an active mandate, a mission is directly charged or authorized to use all necessary means to protect the second aspect of the mandates is connected to particular subsets of the population. In many situations, broad categories of civilians are afforded "declaratory" protection as a result of invoking thematic resolutions passed by the United Nations Security Council. It is beyond a reasonable doubt at this point that The United Nations has institutionalized its normative responsibilities to protect civilians who are in danger during times of armed conflict. Instead, attention has been directed toward when and how the United Nations has made attempts to provide protection (Shesterinina & Job, 2016).

The provisions of the Law of The Hague and the Law of Geneva are not the only ones discussing protecting civilians. Several other provisions also contained about protecting civilians. Articles 3 and 7 of the Universal Declaration of Human Rights (UDHR) in 1948 state:

Article 7

*"Everyone is equal before the law and has the right to equal protection of the law without discrimination. All are entitled to equal protection against any form of discrimination contrary to this declaration and against any incitement to discrimination of this kind."*

#### Article 3

*"Everyone has the right to life, liberty, and security as an individual."*

Protection of the civilian population is a component of Human Rights protection. Understandably, International Humanitarian Law and Human Rights are two distinct areas of International Law, but they share the same objective. International and non-international armed conflicts are governed by international humanitarian law. Human rights establish several guidelines for the balanced growth of individuals in society. The primary objective of both is to safeguard human dignity in all circumstances.

#### 4. CONCLUSION

The Syrian government violated the Chemical Weapons Convention 1993 (CWC). Further, the use of chemical weapons in Syria has violated the Chemical Weapons Convention 1933 (CWC) Article 1 of the CWC. Russia and China exercised Veto power to overturn Syria's draft Security Council resolution. So, there is a legal vacuum regarding the form of accountability and its settlement. This incident threatened the safety of Syria Civilians. Therefore, OPCW has an important role in this case under the auspices of International Law.

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