

INTERNATIONAL HUMANITARIAN LAW AND WEAPONS OF MASS DESTRUCTION: THE CASE OF SYRIA

O DIREITO INTERNACIONAL HUMANITÁRIO E AS ARMAS DE DESTRUIÇÃO MASSIVA: O CASO DA SÍRIA

Ana Maria Carvalho Ferreira da Silva Correia
Lieutenant Colonel (Engineering) in the Portuguese Army
Master in Military Science from the Military Academy
Spokesperson for the Chief of the Army General Staff
1149-065 Lisbon, Portugal
silva.amcf@exercito.pt

Abstract

This article on International Humanitarian Law (IHL) and on the use of Weapons of Mass Destruction (WMD) analyses the Syrian conflict as a contemporary war in a post-truth context. To that end, the article explores the concept of IHL using a deductive approach and examines the challenges to its enforcement. The findings showed that IHL is applicable to this international armed conflict, in which there was confirmed use of chemical weapons, and highlighted the relevance of international organizations – such as the United Nations and the Organization for the Prohibition of Chemical Weapons – main entities responsible for enforcing this Law.

Keywords: International Humanitarian Law, Weapons of Mass Destruction, Syria, Chemical Weapons.

Resumo

Este artigo tem como referencial o Direito Internacional Humanitário (DIH) e foca-se no emprego de Armas de Destruição Massiva, procurando analisar o conflito sírio, como uma guerra contemporânea e num contexto da pós-verdade. Para o efeito, recorreu-se a uma abordagem centrada no conceito de DIH e questionaram-se as dificuldades da sua aplicação. Do estudo conclui-se a aplicabilidade do DIH neste conflito armado internacional, com comprovado emprego de armas químicas, bem como a relevância das organizações internacionais, designadamente a Organização das Nações Unidas e a Organização para a Proibição das Armas Químicas, como entidades essenciais para a fundamentação e aplicação deste Direito.

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Palavras-Chave: *Direito Internacional Humanitário, Armas de Destruição Massiva, Armas Químicas, Conflito Armado.*

1. Introduction

March 2020 was the nine-year anniversary of the ongoing conflict in the Syrian Arab Republic (Syria). It began as a simple demonstration but the violence continued to escalate and led to a high number of civilian casualties, the use of unconventional weapons and excessive violence. Human Rights Watch (HRW) reported that by April 2012 the conflict already qualified as an armed conflict due to its prolonged nature, the level of violence, the type of weapons employed and the number of victims. In June 2012, Bashar al-Assad acknowledged that Syria was in a “state of war” (BBC, 2012).

That same month, US President Barack Obama warned the Syrian government that the use of chemical or biological weapons in the conflict would be interpreted as crossing a “red line”, and that such an action would have huge consequences (CNN, 2012). However, the effects of an attack on the population of Zamalka, in Eastern Ghouta, attracted international attention. The victims showed symptoms consistent with chemical contamination: asphyxia, blurred vision, muscle spasms, among other symptoms (HRW, 2013). The red line set by Obama had been crossed. However, despite the International Community (IC) being in a “state of shock”, these actions had no consequences. When Donald Trump’s was inducted as US president, the United States (US) changed its stance on the matter. In April 2017, after another chemical attack south of Idlib, the US led an international coalition to punish the regime. This event effectively internationalised the conflict, not only because global powers were now involved but also because the IC was more mobilised. The use of chemical weapons is banned under international law, and a violation of this principle entails consequences from international organizations. This article addresses the enforcement of International Humanitarian Law (IHL).

The article is divided into four parts: after describing the concepts and methodology, the main sources of IHL are presented, with special focus on those concerning Weapons of Mass Destruction (WMDs). This section is followed by an analysis of the main events in the Syrian conflict from the onset of hostilities (2011) to 2020, also addressing the use of chemical weapons. The fourth part analyses the conflict through the lens of the applicable IHL. The final section contains the findings, which confirm that an international armed conflict marked by post-truth rhetoric is taking place in Syria. Given the presence of competing world powers, one possible solution to address the use of chemical weapons is the application of a “customary” approach to IHL.

2. Conceptual and methodological framework

2.1. State-of-the-art

The literature review included a thesis by Silva (2015) analysing the Syrian conflict from a legal perspective. The study attempted to determine if the foreign military intervention in response to the chemical weapons attack of 21 August 2013 was justified. The conflict was analysed as a domestic armed conflict that resulted from an escalation of the violence that began in 2011. It was only in August 2012 that the Independent International Commission of Inquiry on the Syrian

Arab Republic deemed that IHL was applicable. The study found that any legal and legitimate solution involving the use of force would have to be approved by the United Nations Security Council (UNSC), and that an alternative course of action would likely not involve the use of force.

In their article “A legal ‘Red Line’? Syria and the use of chemical weapons in civil conflict” (2013), Blake and Mahmud analysed the prohibition on the use of chemical weapons in civil conflicts in treaty and customary law and applied this analysis to the Syrian conflict. The authors argue that criminal law and IHL clearly prohibit the use of chemical weapons in international armed conflicts, but that this is less clear in the case of a non-international armed conflict. The analysis of the crimes and mass atrocities committed by the Assad regime and other actors against the population may be enough to justify the military intervention which the US and its allies called for by drawing a “red line”. The same justification does not apply to the use of chemical weapons themselves under international law. Furthermore, the focus on chemical weapons as the sole cause for international action allows States to continue committing mass crimes and atrocities using conventional weapons with impunity, which is what is currently happening in Syria. This article was written in 2013, and its main argument is that the conflict is a domestic conflict. However, more recent developments may justify new interpretations.

Gill’s article (2016) also addresses the classification of the armed conflict taking place within Syria’s borders through the lens of IHL. The author argues that several conflicts are occurring simultaneously and analyses their correlation to other conflicts taking place in neighbouring countries. When classifying the conflict, the author considered the two main views on the role that the Syrian’s government consent played in the military intervention and determined how this affected the way the conflict is characterised. The study findings suggested the presence of several armed conflicts of a non-international nature.

Brooks et al. (2018) analysed the repeated use of chemical weapons in the Syrian conflict as a threat to public health and to the safety of civilians and medical personnel, and as a violation of international law. The findings highlight that the States and organisations involved in the conflict must take concrete measures to ensure the protection of the most vulnerable victims and strengthen international law. These measures aim to enforce IHL.

An article by Naqvi (2017) examined the international community’s responses from the perspective of international law after the use of chemical weapons in the Syrian armed conflict led to widespread condemnation and elicited responses from several international bodies. Naqvi, a PhD in international law and advisor to the UN High Commissioner for Human Rights, analyses the options available to hold accountable those responsible for crimes related to the use of chemical weapons. Naqvi’s bases her arguments on the special status that the IC bestows on crimes related to the use of chemical weapons, stating that this option could have been better explored.

In brief, weapons prohibited by IHL, which do not distinguish between combatants and non-combatants and which cause extreme suffering, have been used in the ongoing armed conflict in Syria. In addition to the use of chemical weapons, the war in Syria has been the scene of mass crimes and violent atrocities against the population. Why have they not been given similar attention by the international media and by political decision makers? The classification of the conflict as non-international may have to be reviewed, despite what some authors have argued. In the face of these blatant violations of IHL, the question arises

as to why there is a reluctance to convict and punish the perpetrators. The next sections of this study will endeavour to answer these questions.

2.2. Analysis model and methodology

This section provides the definitions for the concepts of IHL, WMD, chemical weapons and armed conflict. Swinarski (1988) defines IHL as the

international rules, established by treaties or custom, which are specifically intended to solve humanitarian problems directly arising from international or non-international armed conflicts and which, for humanitarian reasons, limit the right of Parties to a conflict to use the methods and means of warfare of their choice or protect persons and property that are, or may be, affected by conflict.

More succinctly, IHL is the branch of international law that deals with two problems: war (or, in the broader sense, the use of force) and the protection of human rights (Pereira, 2014, pp. 3-5).

WMD are not formally defined in international law. Santos (2015, pp. 37-38) provides a broad definition, as well as a narrow definition subject to different interpretations. In the broad sense, WMDs are any weapons capable of causing a massive number of victims and a massive level of destruction. In the stricter sense, WMD are unconventional weapons such as chemical, biological, radiological and nuclear weapons (CBRN) delivered by ballistic or cruise missiles, specifically intended to cause a high number of casualties and massive physical damage. This level of severity is an essential condition for a weapon to be classified as a WMD. The author complements this approach with a prospective dimension provided by the definition published by the 1948 United Nations Commission on Conventional Weapons, which the United Nations General Assembly (UNGA) reiterated: “Atomic explosive weapons, radioactive material weapons, lethal chemical and biological weapons, and any weapons developed in the future, which might have characteristics comparable in destructive effect to those of the atomic bomb or other weapons mentioned above” (1977).

One of the types of WMD, **chemical weapons**, is particularly relevant to the context of the Syrian conflict. The Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC) defines chemical weapons, together or separately, as:

(a) toxic chemicals and their precursors¹, except where intended for purposes not prohibited under this Convention, as long as the types and quantities are consistent with such purposes; (b) munitions and devices, specifically designed to cause death or other harm through the toxic properties of those toxic chemicals specified in subparagraph (a), which would be released as a result of the employment of such munitions and devices; (c) any equipment specifically designed for use directly in connection with the employment of munitions and devices specified in subparagraph (b) (UN, 1993).

¹ CWC, Article II, No. 1. (https://www.opcw.org/sites/default/files/documents/CWC/CWC_en.pdf) Toxic chemicals are “any chemical which through its chemical action on life processes can cause death, temporary incapacitation or permanent harm to humans or animals. This includes all such chemicals, regardless of their origin or of their method of production, and regardless of whether they are produced in facilities, in munitions or elsewhere. Toxic chemicals include chemical warfare gases and their precursors, antiriot gases and toxic industrial chemicals. CWC, Article II, No. 2. (https://www.opcw.org/sites/default/files/documents/CWC/CWC_en.pdf) A precursor is “any chemical reactant which takes part at any stage in the production by whatever method of a toxic chemical. This includes any key component of a binary or multicomponent chemical system” (UN, 1993).

The Annex to the CWC contains a list of banned chemicals and controlled chemicals subject to strict control. The terms of the CWC specifically prohibit both accidental and / or intentional use of chemicals as a weapon, including as a deterrent.

The concept of **armed conflict** is not formally defined in international law. A popular definition in social sciences is the one proposed by the Uppsala Conflict Data Programme “a state-based armed conflict is a contested incompatibility that concerns government and/ or territory, where the use of armed force between two parties, of which at least one is the government of a state, results in at least 25 battle-related deaths in one calendar. This conceptualisation focuses on declared incompatibilities, allows conflict to be identified / described and views it as instrumental and political, as argued by Clausewitz (war is “the continuation of politics by other means”) (Melander, 2015).

The analysis model (Figure 1) confronts the two conceptual dimensions of IHL (the use of force and the protection of human rights) with the chemical weapons events that occurred in Syria over 9 years, from 2011 to 2020.

		Utilização de armas químicas no conflito sírio	
		Uso da força	Proteção dos direitos humanos
International Humanitarian Law	Uso da força		x
	Proteção dos direitos humanos		x

Figure 1 – Analysis model

The methodology consists of a literature review which included reports of independent inspections conducted by international organizations in Syrian territory, the UNSC and UNGA Resolutions on the Syrian conflict, and databases on armed conflict (Uppsala Database), IHL and human rights (Rule of Law in Armed Conflict - RULAC Database).

3. Contextualisation: WMD in IHL sources

IHL consist of both conventional sources and customary sources. Conventional sources are traditionally divided into the Law of Geneva, which essentially concerns the right of victims to protection, and the Law of The Hague, which concerns the rules of warfare proper. The Law of New York is a later addition to these two streams, which do not have fully defined limits. Customary laws are rules of IHL that have not been codified.

The Law of Geneva refers to a set of treaties that aim to protect the victims of war, one of which is the 1864 Geneva Convention. Even though some of the rules contained within it already existed, the Convention formed the basis for what would become IHL. Later conventions and additional protocols extended the protection granted to injured military personnel to others in similar situations, such as the sick and shipwrecked of the Armed Forces, prisoners of war, civilians, and victims of international and non-international armed conflicts.

The Law of The Hague concerns the conduct of warfare. Its first document, the Petersburg Declaration, was issued in 1868. It was the first formal agreement that banned the use of

certain weapons in war (Pereira, 2014). While Sassòli (2019) does not address the Law of New York, the author stresses the importance of Additional Protocols I and II of 1977 and Additional Protocol III of 2005². The author also highlights the importance to customary law of the procedures contained in military doctrine, which are an important source of official practice, as they contain information on how States restrict the actions of their troops.

The conduct of warfare must follow the principles of (Pereira, 2014, pp. 153-173): (1) humanity, which concerns persons as human beings; (2) distinction, between combatants and non-combatants; (3) necessity, which means “no more than necessary to achieve the purpose”; and (4) proportionality, which demands that the potential harm to civilians be assessed.

The following documents refer to WMD and are included in the Law of The Hague: (1) the Geneva Protocol of 1925, which prohibits the use of asphyxiating, toxic or similar gases, or similar procedures in war; (2) the Nuclear Non-Proliferation Treaty (NPT) of 1968, which focuses on preventing conflict rather than how to conduct it; (3) the 1972 Biological Weapons Convention (BWC), which prohibits the development, production and stockpiling of biological and toxin weapons; and (4) the 1993 CWC, which prohibits the development, production, stockpiling, retention, use or transfer of chemical weapons.

The CWC compels its parties to destroy any existing production facilities and subject themselves to international inspections, to monitor the chemical industry in order to prevent the emergence of new weapons, to provide assistance and protection to other States Parties against chemical threats, and to promote the use of chemistry for peaceful purposes. Thanks to its near universal membership (193 States Parties) and its intrusive inspection mechanisms, the CWC is widely considered one of the most successful disarmament treaties (Brooks et al., 2018).

The Organization for the Prohibition of Chemical Weapons (OPCW) was created to implement the Convention’s provisions. Its mission is to conduct international inspections and facilitate consultation and cooperation between States Parties. The OPCW’s work was recognised with a Nobel Peace Prize in 2013 for “its extensive efforts to eliminate chemical weapons”. The conflict in Syria and the OPCW’s role in the chemical weapons issue played an important part in this award (OPCW, 2013).

Another document that refers to WMD is UNSCR Resolution 1540 (2004), which aims to reduce the threat posed by CBRN weapons and prevent non-state actors from gaining access to those weapons. To do so, its Member States must adopt appropriate laws to prohibit activities related to the proliferation of CBRN weapons, their means of delivery and related materials.

The application of IHL can be analysed from different perspectives. In terms of temporal scope, IHL is applicable from the moment the armed conflict breaks, even if one of the parties does not acknowledge the state of war, and for as long as the conflict lasts. In terms of material scope, IHL is applicable to armed conflicts (international and non-international).

² Protocol I protects victims of international armed conflicts. Protocol II protects victims of non-international armed conflicts. Protocol III introduced an additional emblem to identify medical personnel, units and vehicles.

In terms of geographical scope, IHL is applicable to the entire territory of the State(s) involved in the conflict, regardless of where the fighting is taking place. The personal scope of application may not be as clear. The customary nature of Conventions and Treaties, which is reinforced by Article 1 of the 1949 Geneva Conventions (which removes the imposition of reciprocity when signing Treaties), compels States to comply with IHL, as does the wide acceptance that IHL obligations are owed to the IC as a whole rather than to a particular State (Pereira, 2014, pp. 61-70).

IHL recognises two types of armed conflict: “international armed conflicts” and “non-international armed conflicts” (domestic conflicts). The first international conflicts were, essentially, conflicts between States. Today, however, there is a broader understanding of the concept of international conflict. For example, during the Tadić trial, it was stated that an internal armed conflict “breaking out on the territory of a State, [...] may become international [...] if (i) another State intervenes in that conflict through its troops, or [...] if (ii) some of the participants in the internal armed conflict act on behalf of that other State” (UN, 1999). Vité, the legal advisor to the International Committee of the Red Cross, states that an armed conflict that is geographically limited to the territory of a given State can be considered international if a third State intervenes with its troops in support of rebel forces opposed to government forces (2009, p. 86).

These broader definitions of the concept are not universally accepted. However, the changes in the contexts in which armed conflict occurs and the need to enforce IHL require that the relevant entities closely monitor how events are developing. The website of the Rule of Law in Armed Conflicts Project (2019), an initiative of the Geneva Academy of IHL and Human Rights, lists these contemporary challenges in typifying conflicts. It is not uncommon to find terms such as “transnational armed conflicts” or “extraterritorial armed conflicts” in the literature.

Indeed, it is increasingly common for conflicts to have an international dimension. It is not unheard of for a State to use force against (non-State) armed groups in the territory of another State, nor is foreign intervention in different forms and degrees, including through peacekeeping operations under the auspices of the United Nations or of a regional organization (RULAC, 2019). Despite this contemporary pressure, IHL only codifies the two types of armed conflict mentioned above. The next section will briefly address current conflicts and their main features.

Dinstein’s classic concept of war (2011, p. 15) states that

war is a hostile interaction between two or more states, either in a technical or in a material sense. War in the technical sense is a formal status produced by a declaration of war. War in the material sense is generated by actual use of armed force, [...] on the part of at least one party to the conflict.

Today, this concept is outdated. In García’s contemporary approach (2011), war consists of armed and bloody violence between organized groups, which is generated and develops in a hostile, inherently uncertain and changing environment, and has the apparent goal of gaining or maintaining power”.

One possible categorisation divides war into conventional and irregular wars. The former

are essentially based on the Westphalian model, in which the main actors are States and their troops, while the latter have multiple actors that may not act exclusively on behalf of a State, at least directly. Regular or interstate wars practically ended after the Cold War (Figure 2).

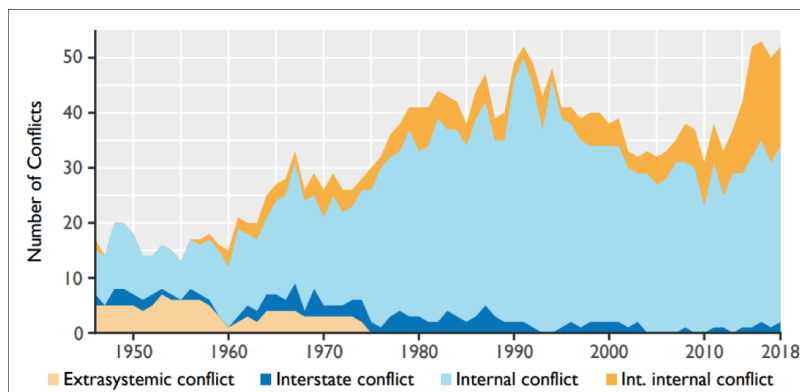


Figure 2 – Number of conflicts by type, 1946-2018

Source: Peace Research Institute Oslo (2019).

In the 1980s and the decades that followed, intrastate wars became more common and began to involve other international actors with military capabilities. Intrastate wars where there is “interference” by these international actors or, indirectly, by State actors, cannot be dealt with as if they were domestic conflicts, in the full sense of the term. Moreover, in light of the resurgence of great powers politics, as stated in the US National Security Strategy (White House, 2017), which describes Russia and China as revisionist powers, it is tempting to predict that this competition will gain an intrastate dimension. Furthermore, it is likely that, in terms of dimensions of interference, any global action will require regional actors. Global actors play a kind of “two-for-one” game, that is, they attempt to gain or consolidate influence on a particular State using other regional and non-State actors as proxies. This continuity between State, global and regional lends an international dimension to conflicts, particularly in the case of regions that are “prisoners of geography”, such as Syria (Marshall, 2016). Therefore, despite some authors stating that most current armed conflicts are “non-international”, they must be analysed on a case-by-case basis.

Another aspect of these new conflicts is the formalisation of war. Both the declaration of war and the formalisation of its end – armistice – have become obsolete. If “formal” wars had objectives that were not always conclusive or even known, and the rules were not always respected, wars that begin with an escalation of violence, in which the State (or States) involved denies that violence and claims to have the situation under control, the truth is contested and a post-truth atmosphere emerges, making it difficult to enforce the rules of IHL.

Today, regular conflicts have given way to conflicts that are global, asymmetric, deterritorialised and prolonged over time. There is a trend towards the “perpetuation” of violence, as Kaldor put it in her analysis of what she describes as “new wars”:

What we face now [...] is not a war like 20th century wars, but what I call a new war, like what we're seeing in Syria or in Libya. [...] they are a kind of anarchic social condition in which literally hundreds of armed groups gain from violence itself rather than from gaining or losing. They gain from violence because it's a way to mobilise political ideologies based on fear. Extremist jihadism, for example. And they gain because they get revenue from looting, from pillage, from smuggling, from taxing humanitarian assistance. [...] These wars tend to persist, as all the parties gain from a situation of violence. [...] Terrorism [...] it's the typical tactic in new wars. [...] Most of the violence is directed against civilians and is usually aimed at forced displacement as a way of gaining political control. That's terrorism. (Visão Global, RTP Play, 2018)

To a certain extent, Kaldor is implicitly referring to a level of foreign interference that is augmented by the effects of globalisation and technology. This leads to hybrid types of warfare (Figure 3), both in terms of actors (state and non-state, military forces, militarised groups, mercenaries and civilians), instruments (conventional, irregular or others), and boundaries, which are increasingly blurred (war and non-war, wartime and peacetime, victims and aggressors, perception and reality, cause and effect, domestic and foreign, etc.).

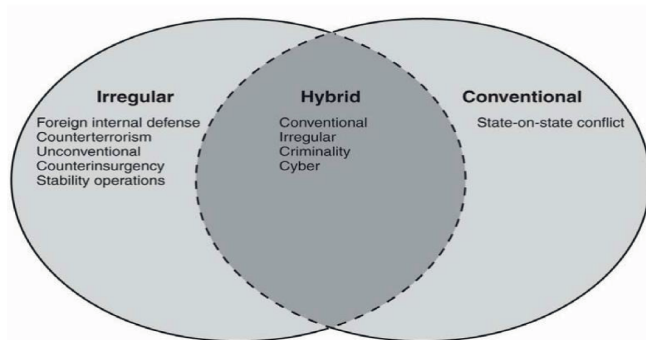


Figure 3 – Hybrid warfare conceptualisation

Source: GAO (2010, p. 16).

It is in this markedly hybrid context that IHL operates today. Having presented the IHL documents relevant to this study and the characteristics of current conflicts, the next section will analyse the use of WMD (specifically chemical weapons) in the Syrian conflict.

4. The use of WMD in the Syrian conflict

4.1. The war in Syria

The conflict in Syria broke out in 2011 during the period of social, political, and revolutionary unrest in the Middle East known as Arab Spring. The demonstrations against the Assad regime began as peaceful protests, to which the Syrian government responded with overwhelming force. The clashes resulted in the deaths of hundreds of protesters and the arrest of thousands of people, many of whom were subjected to brutal torture during detention. The Syrian security forces prevented medical assistance from reaching the injured and imposed sieges on several towns, depriving the population of basic services (HRW, 2011).

The opposition turned into armed resistance. In April 2012, HRW claimed that an armed conflict was taking place in Syria. In May, the International Committee of the Red Cross stated that Syria was engaged in a non-international armed conflict (Blake & Mahmud, 2013). In June, Assad acknowledged that Syria was in a state of war.

The opposition and government forces were responsible for numerous crimes and violations of IHL during the several years of fighting (UNGA, 2013). Multiple entities / actors are involved in this war. Figure 4 shows the international presence in the war. Several State actors are actively engaged in the conflict – Syria, Turkey, Iran, Russia, the US, France and the UK – as well as other States in the region, such as Saudi Arabia, Israel, Qatar, and the remaining 73 States in the US-led coalition to fight the Islamic State of Iraq and Syria (ISIS) (Sulce, 2019).

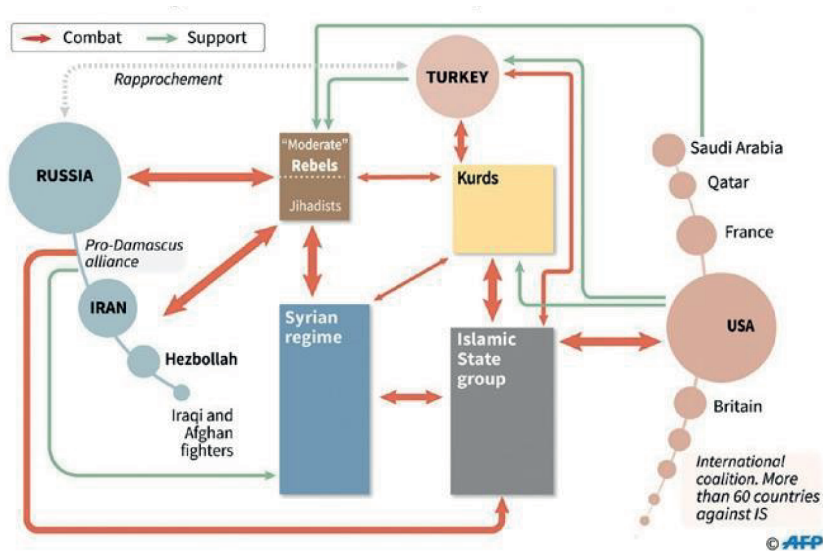


Figure 4 – Relationships between the actors involved in the Syrian conflict (combat and support)
Source: AFP (2018).

Several non-state actors are also involved in the conflict: forces opposed to the government, rebel groups, extremist jihadist groups allegedly linked to Al Qaeda (such as the Al Nusra Front), ISIS, Kurdish militias and political organizations, primarily the Kurdish National Council, the Kurdish Supreme Committee and the main Kurdish armed group, the People’s Protection Units (YPG - Yekîneyên Parastina Gel) (Gill, 2016, pp. 374, 375).

Of the state actors listed above, five States have nuclear capabilities (Syria and Turkey do not have nuclear weapons) and four are permanent members of the UNSC (Russia, the US, France and the UK).

An example of the intricate and complex relationships between these actors is the fact that the Syrian government did not consent to the operations of the US-led coalition on its territory, stating that they were unlawful and a violation of its sovereignty (Steenberghe,

2015). On the other hand, Assad did not actively oppose the airstrikes by the international coalition against ISIS, as they did not target Syrian government forces, facilities or territory held by government forces. The attacks almost exclusively targeted ISIS forces, ISIS-operated oil facilities in occupied territory, or targets in areas where ISIS forces operate.

Turkey, a member of the coalition against ISIS, acts unilaterally in Syrian territory, carrying out combat operations and air and artillery strikes against Syrian Kurdish forces and the territories they occupied. This NATO member considers the YPG an ally of the Kurdistan Workers' Party (PKK), and therefore a threat to Turkey (Sulce, 2019). In contrast, the US has conducted numerous airstrikes in Syria in coordination with the YPG and has helped the armed group retake key cities under ISIS control by providing close air support. Russia, on the other hand, has always supported the Assad regime. In geopolitical terms, it is vital for Russia that Assad holds on to power because through him it has access to the Mediterranean Sea via the Tartus Base, which is currently being expanded (Borshchevskaya, 2019, p. 24). If Assad falls, it would be a defeat for Russia, and the US is well-aware of this. This is yet another reason why this war has become internationalised.

Figure 5 shows the number of deaths caused by the war in Syria between 2011 and 2019. In over 362,000 deaths, more than 4/5 were caused by the actions of the Syrian state. Only about 1/8 had non-state causes. Therefore, in terms of proportion of deaths, this is an asymmetrical war.

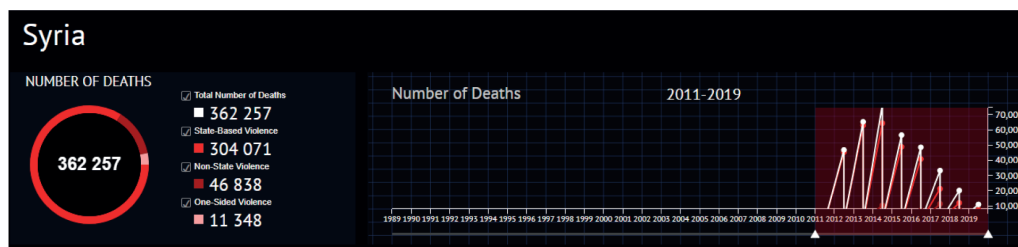


Figure 5 – Number of deaths in the Syrian war from 2011-2019

Source: UCDP (2019).

Having briefly addressed the highly complex nature of the war in Syria, which can be characterised as global, hybrid and “new”, the next section will analyse the threat posed by WMDs and their influence on the conflict.

4.2. WMD in the Syrian war

The second part of this paper presented the main IHL documents, focusing on those that refer to WMD. This section will examine Syria’s international position. With regards to nuclear weapons, Syria is a non-nuclear State Party to the NPT. It has signed a Comprehensive Nuclear Safeguards Agreement with the International Atomic Energy Agency (IAEA) and it has been attempting to expand its nuclear capabilities since the 1980s. In 1991, China helped build Syria’s first research reactor. In 2007, Israel bombed a facility in north-eastern Syria that allegedly housed a plutonium production reactor, which the Syrian government denied.

However, in May 2011, after a three-year investigation, the IAEA concluded that it was “very likely that the building destroyed was a nuclear reactor [...] which should have been declared to the Agency”. In June 2011, the IAEA passed a resolution stating that Syria had failed to meet its Safeguards Agreement obligations and reported the case to the UNSC. Even though the outbreak of the war in 2011 put the nuclear issue on the backburner, it remains on the IAEA’s agenda (NTI, 2018).

With regards to biological weapons, Syria ratified the 1925 Geneva Protocol in 1968. The country has signed, but not ratified, the BWC, and its biological warfare capabilities are allegedly limited (NTI, 2018). In 2014 (after joining the CWC), the Syrian government declared a ricin production facility³ to the OPCW. This production unit known as “al-Maliha” is reportedly located in the greater Damascus area. There are no known reports suggesting the use of biological agents.

As for chemical weapons, in addition to ratifying the 1925 Geneva Protocol, Syria is a CWC State Party and a Member State of the OPCW. When it formally joined the CWC in 2013, Syria requested international assistance to destroy its declared weapons.

By 2013, Syria had one of the most advanced chemical warfare capabilities in the Middle East. According to Diab (1997), Syria’s first chemical weapons were supplied by Egypt before the war against Israel. In 1980, Syria initiated its chemical weapons programme, which included blistering (e.g. mustard), suffocating (e.g. chlorine) and neurotoxic (e.g. VX and sarin) agents⁴ produced in various facilities across the country. In July 2012, it publicly acknowledged that it had chemical weapons, but promised that they would never be used against the Syrian people, only against “external aggression” (Kimball & Davenport, 2020). Although this public statement only confirmed what was already known, it was an official admission that weakened the Syrian government, who had denied owning chemical weapons in 2005, in a report to the Resolution 1540 Committee.

The use of chemical weapons in the Syrian war has been denounced since 2012, when Obama described it as a red line that would justify an intervention. After the attack on Khan al-Sal, the UN Secretary General’s Mechanism for the Alleged Use of Biological and Chemical weapons (UNSGM) was activated at the request of the Syrian government. The UN-led mission, which included representatives from the OPCW and the World Health Organisation, was tasked with investigating the use of chemical weapons in seven of the 16 chemical attacks that had been reported to the UN at that time.

After Syria’s accession to the CWC, a Framework for the Elimination of Syrian Chemical Weapons was set up by the US and Russia (UNSC, 2013). Its mandate ended during the first half of 2014. After it was confirmed that chemical weapons had been used in Ghouta, these two actors hardened their stances: on the one hand, Russia warned that it would block any

³ Ricin is a toxin. Toxins are toxic chemicals of natural origin produced by living beings. Because they are produced by living beings, military doctrine classifies toxins as biological agents. Ricin is included in list 1 of the BWC.

⁴ Chemical warfare agents can be classified as lethal or incapacitating. Lethal chemical agents can be: (1) hematotoxic (which act on the oxygenation of the blood); (2) vesicant (which act on exposed parts of the body, that is, the skin and mucous membranes); (3) neurotoxic (agents that are chemically similar to organophosphorus insecticides, which affect the nervous system and bodily functions such as breathing and muscle coordination); and (4) suffocating (which act on the respiratory system) (NATO, 2018).

UNSC decision that involved the use of force and, on the other, Obama attempted to obtain congressional approval for a military intervention (Obama, 2013). The Framework became a Joint Framework that included the OPCW, the UN and Syria (and other countries that joined through the UN and the OPCW). The attitude of “superiority” by the US and Russia is quite evident here, as is the acceptance with which the measure was met.

If, on the one hand, the conflict in Syria enabled the destruction of Assad’s arsenal and chemical weapons programme, it also showed that the world accepts that some states are more influential than others. The mission was called “OPCW-UN Joint Mission”, and ended in September 2014. In January 2016, it was announced that Syria’s declared chemical weapons arsenal had been completely destroyed (OPCW, 2016)⁵.

The destruction of the Syrian chemical arsenal was based on UNSC Resolution 2118 (2013), which determines that any use of chemical weapons is a threat to international peace and security and a serious violation of international law, and that those responsible shall be held accountable. It then promises to enforce measures under Chapter VII of the UN Charter in case of non-compliance with the resolution. It was to be expected that, thanks to this framework and to the work of the parties involved, any use of chemical weapons would have stopped after the mission ended.

However, reports continued to emerge that these agents were being used, particularly chlorine. Unlike sarin, a neurotoxic agent that has no other use than as a chemical weapon, chlorine⁶ has a variety of applications and is thus subject to strict control. This distinction is important because, under the CWC, Syria is allowed to possess the chemical substance chlorine for the purposes foreseen in the Convention. However, its presence and justification (location, quantities, storage safety requirements, etc.) should not have come as a surprise to the OPCW.

In May 2014, to assess the situation, the OPCW set up a Fact-Finding Mission (FFM) to analyse several instances of alleged chemical weapons use in Syria. According to the OPCW website, the FFM confirmed with a “high degree of confidence” that chlorine and mustard had been used as weapons. The FFM mandate was to assess / confirm the use of chemical weapons, not to identify the source.

Once it had been confirmed “with a high degree of confidence” that chlorine chemical weapons had been used in villages in northern Hama (see Table 1) from April to August 2014, the OPCW had to deal for the first time with the use of chemical weapons on the territory of a Member State of the Organisation (Naqvi, 2017). It decided to extend the mandate of the FFM. From 1 December 2015 to 20 November 2016, the FFM issued 65 reports of attacks (this information is available to the public) and investigated six such attacks (OPCW, 2016).

⁵ OPCW. On 04 September 2014, the Head of the OPCW-UN Joint Mission declared that 96% of declared weapons had been destroyed, and, on 04 January 2016, the OPCW announced that all Syrian chemical weapons had been eliminated.

⁶ Chlorine is on list 2 of the CWC, which includes highly toxic chemicals that can be used as chemical weapons. It also includes its direct precursors and the precursors of chemicals on list 1 (UN, 1993). Some of the chemicals on list 2 are produced industrially for purposes that are not prohibited by the Convention, such as pharmaceuticals, plastics and others (UN, 1993). Sarin is on list 1 of the CWC. List 1 includes highly toxic chemicals and their precursors that have been developed, produced, stored or used as chemical weapons and whose use is restricted to purposes not prohibited under the Convention, such as protection and research (UN, 1993).

Table 1 – Main attacks in the Syrian War in which chemical weapons were allegedly used

Ref ^a	Data do Ataque	Local	Agentes Químicos	ID Respons.
UN Doc. A/68/663-S/2013/735	17-10-2012	Salquin	Unconfirmed	-
UN Doc. A/68/663-S/2013/735	23-12-2012	Al-Bayadah Homs	Sarin	-
UN Doc. A/68/663-S/2013/735	19-03-2013	Khan al-Sal (Aleppo)	Organophosphate chemical	-
UN Doc. A/68/663-S/2013/735	13-04-2013	Sheik Maqsood (Aleppo)	Unconfirmed	-
UN Doc. A/68/663-S/2013/735	29-04-2013	Saraqueb	Sarin	-
UN Doc. A/67/997-S/2013/553	21-08-2013	Moadamiyah; Ein Tarma; Zamalka (Ghouta)	Sarin	-
UN Doc. A/68/663-S/2013/735	22-08-2013	Bahhariyeh	Unconfirmed	-
UN Doc. A/68/663-S/2013/735	24-08-2013	Jobar	Sarin	-
UN Doc. A/68/663-S/2013/735	25-08-2013	Ashrafiah Sahnaya	Organophosphate chemical	-
OPCW Doc. S/1212/2014 OPCW Doc. S/1230/2014 UN Doc. S/2016/888	21 to 24-04-2014 28-08-2014 (total of 17 attacks)	Talmenes; Al Tamanah; Kafr Zita (Hama)	Chlorine	Syria
OPCW Doc. S/1320/2015 UN Doc. S/2016/888	176 01 to 04-09-2015	Marea (Aleppo)	Sulphur mustard	ISIS
OPCW Doc. S/1319/2015 UN Doc. S/2016/888	16-03-2015 to 20-05-2015	Sarmin, Qmenas... (Idlib)	Chlorine	Syria
OPCW Doc. S/1491/2017	15 and 16-09-2016	Um-Housh (Aleppo)	Sulphur mustard	ISIS
OPCW Doc. S/1642/2018	30-10-2016	Al-Hamadaniyah	Unconfirmed	-
OPCW Doc. S/1642/2018	13-11-2016	Karm al-Tarrab	Unconfirmed	-
OPCW Doc. S/1636/2018 OPCW Doc S/1867/2020	24-03-2017	Ltamenah	Sarin	Syria
OPCW Doc. S/1636/2018 OPCW Doc S/1867/2020	25-03-2017	Ltamenah	Chlorine	Syria
OPCW Doc S/1867/2020	30-03-2017	Ltamenah	Sarin	Syria
OPCW Doc. S/1510/2017	04-04-2017	Khan Shaykhun (Idlib)	Sarin	Syria
OPCW Doc. S/1626/2018	04-02-2018	Saraqib (Idlib)	Unconfirmed	-
OPCW Doc. S/1645/2018 OPCW Doc. S/1731/2019 OPCW Doc. EC-90/NAT.41	07-04-2018	Douma	Chlorine Russia claims that there are inaccuracies in the FFM report.	Syria

On 4 April 2017, the announcement that the FFM had confirmed that chemical, sarin or “sarin-like” agents had been used in an attack on Khan Shaykhun, south of Idlib, attracted widespread media outrage. The US president did not hesitate and, three days later, the United States executed a strategic airstrike as part of a three-country coalition: the US, France and the UK, acting outside the UNSC. The Syrian forces were notified in advance of the operation, an airstrike during which 59 Tomahawk cruise missiles were launched from two US Navy ships against the Al Shayrat airfield, from where the attack on Khan Shaykhun was reportedly launched. This military action was immediately condemned by the Kremlin.

Syria and Russia denied any responsibility for the chemical attack and attempted to blame it on rebel forces and fake news fabricated by the US (Sputnik News, 2017). The similarities between the current situation in Syria and the WMD crisis in Iraq in 2003 bring to mind the words of US Secretary of State Colin Powell, who stated that there was “overwhelming evidence of WMD”. This was later found to be false.

In an interview on 13 April 2017, Assad claimed that the chemical attack was “100 percent fabrication” by the US and that the airstrike had not been retaliation for the events of 4 April, but by the West – and especially by the US – as an excuse to attack Syria, using the media and social networks in a first stage, and, afterwards, through military action (Ensor, 2017).

In this speech, alluding to the post-truth era, President Assad calls the facts into question, describing them as “staged” and “propaganda”, using what is remarkably current rhetoric. According to Feitosa (2017), post-truth can be defined as a strategy of discrediting the facts in favour of a personal agenda. The current globalisation environment is also synonymous with “post-truth”. For Feitosa, the idea that “where there are no facts, nothing is true” has evolved into the idea that “where there are no facts, there are too many truths”. In this case, facts do exist. However, these facts do not speak to the credibility of the Syrian government or its allies. Political philosopher Hannah Arendt (1977, p. 243) warned that “when there are too many truths, there is the danger of generalised disbelief in reality. It then becomes easy to discredit the factual truth as just another opinion, often poorly supported, inconsistent or false”. The danger resides in the threat that the truth can be manipulated if the power of a strong narrative is seen as a potentially decisive factor. The stakeholders in this conflict are well-aware of this power.

This was the first time in the Syrian war that the US and its allied States took direct military action against Syrian forces. In military doctrine this is called punishment, one of the coercion strategies of the school of air power⁷.

The findings of the FFM formed the basis for the work of the OPCW-UN Joint Investigative Mechanism (JIM), an independent body established by the UNSC (2015), whose mandate included identifying the perpetrators and / or facilitators of the chemical attacks that had been confirmed by the FFMs. When the JIM’s mandate expired in November 2017, Russia vetoed an extension (Campos, 2017). The JIM’s findings are summarised in Table 1.

OPCW Decision C-SS-4/DEC.3 of 27 June 2018 reported that Syria had used chemical weapons on four occasions (thus failing to honour its commitment of declaring and destroying all such weapons) and that ISIS had also used them on two occasions. For the OPCW, an organization tasked with verifying compliance with the CWC, this data demanded immediate measures, which had to be “unequivocal”. It would be unacceptable to send the message that States were free to “play” the system and benefit from the advantage of owning such weapons. An Investigation and Identification Team (IIT) was set up to determine who was responsible for using chemical weapons in Syria, based on the reports of the FFM and the JIM. In April 2020, the OPCW released the first IIT report, which stated that the Syrian

⁷ In “Bombing to Win: Air Power and Coercion in War” (1996, pp. 55-86), Pape describes the four strategies of the deterrence school: (1) strategic bombing (punishment); (2) denial or bombing of military targets (denial); (3) decapitation (decapitation); and (4) political signaling and game theory (risk).

air force was responsible for the three chemical weapons incidents of March 2017 (Kimball & Davenport, 2020). The OPCW Executive Council acknowledged that Syria possessed chemical weapons and imposed several measures and sanctions on Syria. Figure 6 shows a timeline of the main events where IHL is applicable in the Syrian conflict, especially those which involved the use of chemical weapons.

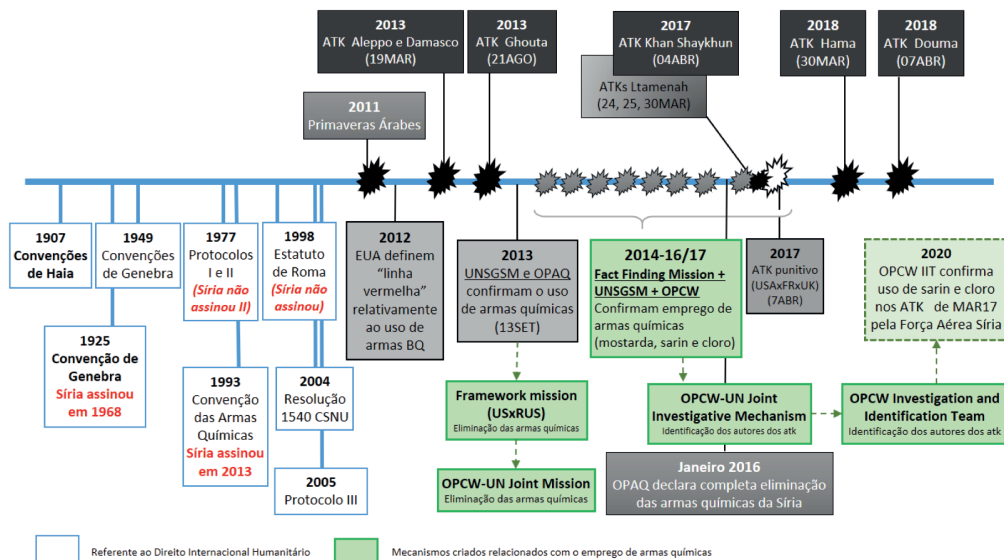


Figure 6 – IHL, chemical weapons and the Syrian armed conflict

Time is another ingredient in this conflict – it is used as a weapon much like rhetoric and [un]truth. A verbal note from Russia to the OPCW (2019) and its Member States calls into question the veracity of the FFM findings regarding the attack of 7 April 2018, which the JIM attributed to the Syrian forces. The arguments presented in the note are highly technical and extremely thorough, raising doubts about the competence of the OPCW experts and renowned laboratories. These actions generate attrition, delay decisions and affect the credibility of the organizations involved.

In fact, Russia had little choice but to adopt a tactic of discrediting the findings, which proved that Syria had not fulfilled its CWC obligations. Russia honoured its commitments and supported its ally.

5. Chemical weapons in the conflict and IHL

How, then, should the Syrian conflict be interpreted in the light of IHL? First, it is necessary to classify the conflict. As mentioned in the literature review, most authors classify it as a non-international armed conflict.

The Rule of Law in Armed Conflicts Project (2019) states that Syria was involved in several armed conflicts: (i) non-international armed conflicts between the Syrian government and numerous rebel groups; (ii) an international armed conflict between Syria and the members

of the international coalition led by the US and Turkey; (iii) the military occupation of parts of northern Syria by Turkey; and (iv) the military occupation of the Golan Heights by Israel.

The events mentioned in the third part of this article are one example of armed violence between States with use of military forces, particularly the response to the chemical weapons attack on Khan Shaykhun, which led to the first direct clash between Assad's forces and the US-France-UK coalition. Moreover, the use of force by the US-led coalition against ISIS on Syrian territory, without the consent of the government, is further proof that an international armed conflict was taking place in Syria, once again "led" by the US. Thus, the current war in Syria can be classified as an international armed conflict.

5.1. Regulating the use of force and protecting human rights

IHL addresses the regulation of the use of force in armed conflicts. In this dimension of the IHL concept, which aims to protect combatants and non-combatants, the limits on the use of force are generally established by the Law of The Hague, complemented by other legal documents. This analysis focuses on the use of chemical weapons. The use of such weapons is prohibited under IHL, the 1925 Geneva Protocol and the 1993 CWC, which Syria signed in 2013. As Syria has not signed Additional Protocol II, nor the Rome Statute, it is worth noting that IHL is also composed of customary sources. Still in regards to the regulation of the use of force, the principles of IHL (humanity, distinction, necessity and proportionality) that were violated in the attacks by Syria and ISIS (Table 1) are applicable.

IHL addresses the protection of human rights in armed conflicts. In this dimension of the IHL concept, which aims to protect the human rights of non-combatants, the limits on the use of force are generally regulated by the Law of Geneva, complemented by other legal documents. Although these limits are defined, contemporary wars increasingly take place in urban areas where it is difficult to distinguish combatants from non-combatants. In the Syrian conflict, human rights were not protected, as there was evidence of the use of neurotoxic, blistering and suffocating chemical agents. These agents' effects on the human organism cause extreme suffering to the victims and, ultimately, death. Chemical weapons are "blind" weapons, that is, they are indiscriminate and their impact cannot be programmed.

In brief, with regards to the two dimensions of IHL (use of force and protection of human rights) and to the use of chemical weapons in the Syrian armed conflict, the above shows that there has been a violation of IHL by a state actor, Syria, and by a non-state actor, ISIS.

5.2. The International Community

How should the attack of 7 April 2017 be interpreted? The response of a significant part of the IC was exclusively intended to punish these actions. The attack only targeted facilities where chemical weapons had allegedly been stored, as well as military facilities from which the aircraft that launched these weapons had taken flight (Gordon, Cooper, & Shear, 2017). The alternative would have been to do nothing. After all, a response through a UNSC resolution would not be possible, as Russia would veto it. In situations where the interests of competing powers are at stake, there is often the risk, and sometimes the need, to act outside the UNSC

and find an alternative way of enforcing IHL. In other words, to do what is ethically right, even if it has not been approved by the established international powers. This is a throwback to the Cold War, when the two powers' conflicting interests cancelled each other out in the UNSC. The strengthened the UNGA, even if it was more of a moral than a coercive reinforcement (coercion is only within the reach of the powers with a seat on the UNSC).

The US had to act in a "customary" manner, through targeted actions such as the airstrike in question. In other words, the US superpower attempted to recover the credibility it had lost in 2013 (with the crossing of the red line) as well as by the shadow of discredit that lingered after the invasion of Iraq (which had been justified by the alleged presence of WMDs that were never found). In other words, the need to regain credibility mobilised the North Americans, but the distrust that resulted from the Iraq intervention split the IC with regards to punishment. This forced the US to be more cautious.

To complicate matters further, disinformation and post-truth make IHL increasingly difficult to apply because they condition the actions of the agents that enforce it (in this case, the US, who acted to punish the perpetrators). Russia uses this post-truth campaign to defend Assad and gain "credit" over the US by ensuring that the 2003 Iraq invasion is not forgotten. In fact, the more fragile Syria is, the more ISIS, the real adversary of the US, is free to act. If Assad wins, the US also gains an edge in the war against ISIS, making it seem that the US is winning the war against the terrorist group.

In brief, the Syrian Government was held accountable and punished for the confirmed use of banned weapons through a coalition of state actors, rather than by enforcing an international resolution, which would have been desirable. All this raises other questions: does an IC that reacts passively to confirmed violations of IHL come out weakened? Or, on the contrary, should firm stances such as the drawing of "red lines" be avoided?

6. Conclusions

This study analysed IHL from the perspective of the Syrian armed conflict as a stage for the operations of state and non-state actors, in which WMD – chemical weapons – were used. This conflict, which can be classified as a hybrid war in a post-truth context, is highly complex and involves global powers that can block the "traditional" means of enforcing IHL, making it necessary to do so in a "customary" manner.

First, the documents that form the basis for IHL were analysed from the perspective of the topic under analysis – the use of chemical weapons in the Syrian war. The war was interpreted according to its markedly contemporary features: global, asymmetric, with the presence of terrorism, deterritorialised (a term taken from the fight against terrorism), prolonged, marked by violence from which some actors benefit, with strong external interference (direct and indirect) which is augmented by globalisation and technology, with the use of both conventional and other weapons (such as WMD). It is a hybrid war or "new war", as Mary Kaldor called it. Another aspect worth noting is its post-truth context, an area where the main actors of this conflict are quite skilled.

The Syrian war is an international armed conflict subject to IHL, in which sarin, chlorine and mustard chemical agents were used on several occasions against combatants and non-

combatants. The analysis focuses on the two dimensions of the IHL concept – regulation of the use of force and protection of human rights. With regard to the use of chemical weapons, it was found that there has been a violation of IHL by a state actor, Syria, and by a non-state actor, ISIS.

This study highlighted the importance of international organizations such as the UN and the OPCW, as they can mobilise experts, build bridges and establish a dialogue, and act in a credible and impartial manner. The fact that this is a contemporary war, set in a post-truth era, with the involvement of world powers with different positions did not make the work of these organizations any easier. The UNSC, for example, has revealed weaknesses during the process. The credibility and impartiality of the organizations and agencies created for the purpose (FFM, JIM and IIT) or related to the process (the UNSGM), have proved crucial to enforce IHL. The difficulties related to [non-]compliance with IHL are, thus, cause for further reflection.

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