

## CHAPTER I

### BACKGROUND

#### A. INTRODUCTION

At least, more than 1,400 civilians were killed by the chemical weapons attack in Syria, which happened during 2011-2013.<sup>1</sup> The conflict has begun when the people of Syria demonstrated the regime of Bashar Al Assad on the leadership of him, to Syria. Assad kills everyone who counters his government. Seen from the number of people who became victims, the case of Syria maybe categorized as a massacre.

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

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<sup>1</sup> *More than 1,400 killed in Syrian Chemical Weapons*, see at: [http://www.washingtonpost.com/world/national-security/nearly-1500-killed-in-syrian-chemical-weapons-attack-us-says/2013/08/30/b2864662-1196-11e3-85b6-d27422650fd5\\_story.html](http://www.washingtonpost.com/world/national-security/nearly-1500-killed-in-syrian-chemical-weapons-attack-us-says/2013/08/30/b2864662-1196-11e3-85b6-d27422650fd5_story.html), accessed on February 24, 2014 at 11.25 am.

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

The use of chemical weapons in armed conflicts or in any other situation is a violation.<sup>3</sup> In addition to the 1993 Chemical Weapons Convention which was created in 1993 in Hague, there is the 1925 Geneva Protocol. The protocol talks about the prohibition of use of chemical and biological weapons in war. Syria is not a state which ratified the 1993 Chemical Weapons Convention. Syria only ratified the 1925 Geneva Protocol.<sup>4</sup> However, the Provision of the 1993 Chemical Weapons Convention has been agreed that it is entering into force since 1998.<sup>5</sup>

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

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

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

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

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

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

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

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

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

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

<sup>9</sup> Ajebe Akame Gilbert, *op.cit*, p. 2.

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

## **B. RESEARCH QUESTION**

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

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

## **C. OBJECTIVE OF RESEARCH**

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

#### **D. BENEFIT OF RESEARCH**

There are some benefits of research, namely:

##### 1. Theoretical Benefit

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

##### 2. Practical Benefit

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

#### **E. OVERVIEW OF THE CHAPTERS**

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

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

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

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

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

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

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

## CHAPTER II

### LITERATURE REVIEW

#### A. International Humanitarian Law

International humanitarian law are divided into two types of the characteristic of armed conflicts, namely international armed conflict and non-international armed conflict. International armed conflict is armed dispute which involve two or more countries by means of war. While, the meaning of non-international armed conflict is armed dispute that occurs in the area or region of a country without any interference of other country by *vis-a-vis*. However, in certain situations, non-international armed conflict could turn into an international armed conflict, which is also called by the internationalized internal armed conflict.<sup>10</sup>

Basically, international humanitarian law is to provide protection. The meaning of protection itself is the protection to the parties involved in the battlefield, the protection is broadly divided into two terms, first, the protection of combatants and status as a prisoner of war, and second, the protection of civilians and protected buildings as schools, hospitals, houses which were forbidden to make them as an attack target.

In the practice, humanitarian law or the law of war embrace several principles that should be implemented in a balanced way in the war, namely:

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<sup>10</sup>Arlina Permanasari, *et.al*, 1999, *Pengantar Hukum Humaniter*, International Committee of the Red Cross, Jakarta.p. 3.



1. Military Necessity Principle

The parties involving in the conflict which are allowed to use force means to defeat the opponents in order to achieve the aims and success in the battle field.

2. Humanity Principle

The parties involving in the disputes are prohibited from using excessive of force that caused injury or excessive suffering.

3. Chivalry Principle

The purpose of this principle is honest help in the war. Use the tools that are not honored, intrigue and betrayal, all prohibited.<sup>11</sup>

War or armed conflict is an act of force to defeat an opponent with forcibly imposed requirements. During the warfare took place, there will be a lot of casualties and damages raising losses caused by the war. It was undertaken the efforts to reduce the harms in battle field by giving birth to the concept of Just War and the concept of Unjust War. International humanitarian law governs when and how the war should be conducted (*jus ad bellum*), and how the war should be performed and the rules about what could and could not be done do during the war (*jus in bello*).

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<sup>11</sup>*Ibid.* p.11.

### **1. *Jus ad Bellum***

*Jus* (or *ius*) *ad bellum* is one of the branches of the international humanitarian law that govern the parties or countries involving in the war and how the war should be conducted in order to create a just war to every party involving in the warfare. The main sources of the modern law of *Just ad Bellum*, come from the Article 2 of United Nations Charter: “All members shall refrain in their international relations from the threat or the use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the purposes of the United Nations”; and in Article 51: “Nothing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a member of the United Nations.”<sup>12</sup>

### **2. *Jus in Bello***

In the event of states turning from the procedures prescribed by international law for the settlement of their disputes by peaceful means, it will occur hostiles. However, there still exist legal regimes which states are required to respect—*jus in bello* is the laws governing about how the states or parties have to conduct after the war itself begin (during the war). These fall into two categories—those relating to the actual conduct of hostilities and those which afford a minimum protection to the individual.<sup>13</sup> In the practice, *Jus in bello* have characteristic to humanize war which gave birth to international humanitarian law.

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<sup>12</sup> Sean D. Murphy, 2012, *Principles of International Law*, Second Edition, Washington D.C.: West. p. 491.

<sup>13</sup> Rebecca MM Wallace and Olga-Martin Ortega, 2013, *International Law*, Seventh Edition, UK: Sweet and Maxwell. p. 324

In order to humanize war, humanitarian law has two branches: first; how to conduct of war and permissible of war (Hague Declaration and Regulations), second; the condition of war victims (Geneva Protocols).<sup>14</sup>

The former is to be found principally in the Hague Convention 1899 and 1907, and it referred to as “The Law of Hague”, while the Four Geneva Convention 1949 and two Additional Protocols adopted in 1977 comprise the latter, and are known as “The Law of Geneva”. However, as noted by the ICJ the two “have become so closely inter-related that they are considered to have gradually formed one single complex system, known today as international humanitarian law.”<sup>15</sup>

## **B. The Methods of Warfare**

The means through which armed conflicts are fought must be lawful means. The warfare is prohibited to use weapons that cause unnecessary suffering or superfluous injury.<sup>16</sup> By using the weapons, there are certain weapons which are prohibited to use indiscriminate weapons, that is, ‘weapons that cannot, because of their design or function, be directed with any degree of certainty at military objectives’.<sup>17</sup>

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<sup>14</sup>Tolib Effendi, 2014, *Hukum Pidana Internasional*, Pustaka Yustisia, Yogyakarta.

<sup>15</sup> *Advisory Opinion on the Legality of the Threat of Use of Nuclear Weapons* I.C.J. Rep. 1996, p. 226

<sup>16</sup> Additional Protocol I, *Article 35*.

<sup>17</sup> Mohammad Naqib Ishan Jan, 2008, *Principle of International Law: A Modern Approach*, First Edition, Malaysia, International Islamic University Press. p. 450.

During the armed conflicts to injure the enemies are not unlimited. Some weapons are specifically prohibited, such as poisons, biological, and bacteriological weapons, gas, and other chemical weapons.<sup>18</sup> The proper targets of armed attack may be military persons (military forces, fighters, spies or mercenaries) and military object (military buildings or buildings used for military purpose, military installations such as barracks and naval bases), but it does not include civilians and civilian installation, or in other words legitimate target include combatants including ‘unlawful combatants’ and military objectives.

The 1949 Geneva Convention I-IV and the 1977 prohibit reprisals against protected person, namely: prisoners of war, the wounded, sick, or shipwrecked, and civilians who find themselves in the hand of enemy.<sup>19</sup> Protocol I, however, has extended the prohibition to civilian person or civilian objects finding themselves on the battlefield.<sup>20</sup>

Every party has their own right to hold the methods of armed conflict, but the methods of warfare are limited. During the warfare, it is prohibited to use certain methods; like ‘denial of quarter’, starvation, rape and perfidy. An order

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<sup>18</sup> See eg. Geneva Protocol for the Prohibition of the use in war of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare (1925); Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and Their Destruction (1972); Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (1993).

<sup>19</sup> See 1949 Geneva Convention I, Art 46; Convention II, Art 47; Convention III, Art 13; Convention IV, Art 33.

<sup>20</sup> See Additional Protocol I, Arts 51 (6), 53 (4), 55 (2) and 56 (4).

that “no quarter” will be given to an enemy population, that is, everyone will be massacred, is clearly unlawful.<sup>21</sup>

A better categorization of war crimes would perhaps consist of considering objective criteria linking similar crimes. For example, it should be possible to list war crimes depending on the subject matter to which they relate. Thus, one could distinguish between various classes of war crimes depending on whether they are intended to deal with (i) attacks against civilians or civilians objects; (ii) unlawful taking of life (murder of civilians, murder of prisoners of war); (iii) unlawful attacks to personal integrity (torture, wounding of civilians or prisoners of war, sexual violence); (iv) limitations of personal freedoms (deportation, slavery, forced labor, forced enlisting, hostage taking); (v) illicit appropriation of property (plunder, appropriation of cultural property); (vi) deportation and forcible transfer person; (vii) violations of rules on means of combat (ordering that no quarter be given, use of human shields, use of prohibited weapons) and (viii) violations of rules on belligerent occupation. A further distinction would of course still need to be made within each category between crimes only applicable to international armed conflict and those applicable to non-international armed conflicts as well (for which the legal regulation is more sparse and rudimentary). Arguably, a scheme along these lines would better allow interprets to understand and apply the rules of war crimes.<sup>22</sup>

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<sup>21</sup> Art 40, *Ibid*, AP I.

<sup>22</sup> Antonio Cassese, *et.al.* 2011, *International Criminal Law: Cases and Commentary*, Oxford University Press, UK. p.121.

On the other side related to the use of the chemical weapons, the Geneva Gas Protocol 1925 prohibited the first use of asphyxiating, poisonous or other gases and bacteriological methods of warfare, and is now generally recognized as representing customary international law. It has been supplemented by Biological Weapons Convention 1972 and the Chemical Weapons Convention 1993. Although they are more in the nature of disarmament treaties, the prohibition on the possession of such weapons means that their use is also banned. They specifically prohibit their use retaliation for an attack using them, so casting doubt on whether this would still be possible under the Gas Protocol, as some parties to it have asserted.<sup>23</sup>

The Chemical weapons using the toxic properties (as opposed to explosive properties) of chemical to produce physical or physiological effects, while biological weapons disseminates infectious diseases or natural toxins. Chemical weapons include chlorine, phosgene, mustard gas and nerve gas (*sarin*). Biological weapons include bacteria (anthrax), viruses (smallpox), or toxins (ricin).<sup>24</sup> The use of chemical weapons and biological weapons in warfare is a serious war crime, in ICC Statute adopted in Rome 1998 did not mention chemical weapon by name. However, Article 8(2) (b) of the Statute dealing with war crimes includes 3 provisions that might be interpreted as applying to chemical weapons. Article 8(2) (b) *xvii* makes it a war crime to employ “poison or poisoned weapons”. Paragraph *xviii* refers to “employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices. Paragraph *xx* makes it a war

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<sup>23</sup> Anthony Aust, *op.cit*, p. 240.

<sup>24</sup> Sean D. Murphy, 2012, *op.cit*, p. 531.

crime to employ “weapons, projectiles and material and methods of warfare which are of a nature to cause superfluous injury or unnecessary suffering or which are inherently indiscriminate in violation of the international law of armed conflict. . . .”<sup>25</sup>

Article 8 of the Rome Statute is one of the most substantial provisions in the Statute, and it is all the more striking when compared with the relatively laconic texts of the Nuremberg Charter and Geneva Convention. To some extent it represents a progressive development over these antecedents, because it expressly covers non-international armed conflicts. Furthermore, several war crimes are defined in considerable detail, focusing attention on their forms and variations.<sup>26</sup>

The international humanitarian law regarding on the methods of war is traditionally divided into two categories: laws governing the state or parties about how to conduct the war before the war begin (*jus ad bellum*), and laws governing about how the states parties have to conduct after the war begins (*jus in bello*), means that this law is governs about how to conduct the war when the war is occur.

### **C. The Chemical Weapons**

Chemical weapons are defined as together or separately, (1) a toxic chemical or its precursor, except when intended for a purpose not prohibited under

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<sup>25</sup> Dapo Akande, *Can the ICC Prosecute for Use of Chemical Weapons in Syria?*, see at: <http://www.ejiltalk.org/can-the-icc-prosecute-for-use-of-chemical-weapons-in-syria/>, accessed on March 10, 2014, at 1.19 am.

<sup>26</sup> William A. Schabas, *An Introduction to International Criminal Court*, United Kingdom, Cambridge University Press, p. 124.

the international Chemical Weapons Convention; (2) ammunition or device specifically designed to cause death or other harm through toxic properties of those chemicals specified in definition 1 above, which would be released as a result of employment of such munitions or device; or any equipments specifically designed for the use directly in connection with the employment of munitions or devices specified in definition 2 above.<sup>27</sup>

Furthermore, Article II Paragraph of 1993 Chemical Weapons Convention explained the chemical weapon and the criteria of chemical weapons which are prohibited to use. In its Article it is said that chemical weapons is any toxic chemicals and their precursors, munitions and devices or equipment in the types and quantities inconsistent with such purposes specifically designed to cause death or other harm through the toxic properties of those toxic chemicals, which would be released as a result of the employment of such munitions and devices, including the old chemicals weapons, abandoned chemical weapons, riot control agent, and its production capacity.

The latest allegation of chemical weapons use in Syria causing thousand casualties shocked the world and prompted reactions from a cross section of the international community. UN Secretary General, Ban Ki Moon, has re-iterated

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<sup>27</sup> Michael Keane, 2005, *Dictionary of Modern Strategy and Tactics*, Annapolis, Naval Institute Press.



that the use of chemical weapons will amount to crimes against humanity and would result to serious consequences for perpetrators.<sup>28</sup>

Responding to the violation committed by Syria, the President of U.S., Barack Obama threw his White House Counsel, Kathryn Ruemmler, who said that if U.S. strike against Syria, it would be lawful, both in International law and domestic law, even if neither the Security Council nor Congress approve it. Even though Mr. Obama in the late of his decision looked for support to his legitimacy, he seeks Congressional concurrence.<sup>29</sup>

The Western States feared about if Assad wins. It would produce significant regional gains for Iran, Russia and Hezbollah. If Syria Free Army and its Nusra Front and Al Qaeda allies win, it is feared that it would give violent extremist forces a base on operation that would be likely to work strongly against Western interest. It would be an obstacle for the Western States with all their reasons to intervene Syria.<sup>30</sup>

Syrian rebels have accused Assad regime of perpetrating a chemical weapons attack on civilians in a village outside Damascus. This attack – which is said to have killed more than 1,300 people, including women and children – was

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<sup>28</sup> UN News Centre, 2013, Use of Chemical Weapons would be ‘Crimes against Humanity’ – Ban, see: <http://www.un.org/apps/news/story.asp?NewsID=45684&Cr=syria&Cr1=>, accessed on March 11, 2014 at: 10.25 am.

<sup>29</sup> New York Times, 2013, Obama Tests Limits of Power in Syrian Conflict, see: [http://www.nytimes.com/2013/09/09/world/middleeast/obama-tests-limits-of-power-in-syrian-conflict.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2013/09/09/world/middleeast/obama-tests-limits-of-power-in-syrian-conflict.html?pagewanted=all&_r=0), accessed on March 12, 2014 at 11.10 am.

<sup>30</sup> Falk Richard, 2013, *Contra Syria Attack*, see at: <http://richardfalk.wordpress.com/2013/08/30/contra-syria-attack/>, accessed on March 12, 2014 at 12.50 pm.

committed as U.N. researchers arrived in the country to investigate the suspected use of chemical weapons.<sup>31</sup>

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<sup>31</sup>Human Right First, *5 Things You Should Know About Chemical Weapons and International Law*, Fact Sheet: August 2013.

## CHAPTER III

### RESEARCH METHOD

#### A. Type of Research

The type of this research is a normative legal research, with a case approach. By using a descriptive method, the research describes how the International Humanitarian Law will be applied during armed conflicts and how the International Humanitarian Law should be applied if war crimes are committed, especially on the use of chemical weapons in Syria.

According to Jacob and Mersky, normative legal research is seeking to find those authorities in the primary sources of the law that are applicable to a particular situation. The search is always first for mandatory primary sources, that are constitutional or statutory provision of the legislature, and court decision of the jurisdiction involved. If these cannot be located then the search focuses on locating persuasive primary authorities that is decisions from courts of other common law jurisdiction. When in the legal search process primary authorities cannot be found, the searcher will seek for secondary authorities.<sup>32</sup>

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<sup>32</sup> Johnny Ibrahim, 2006, "*Teori dan Metodologi Penelitian Hukum Normatif*", Second Edition, Malang, Bayu Media.

## **B. Data**

This research used a material research taken from any literatures consisting of primary, secondary, and tertiary legal materials.

(1) Primary legal material consist of several conventions as follows:

- a. The 1993 Chemical Weapons Convention on Convention on the Prohibition of The Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction;
- b. The 1925 Geneva Protocol for the Prohibition of The Use in War of Asphyxiating, Poisonous or Other Gases, and Bacteriological Methods and Warfare;
- c. The 1972 Biological Weapons Convention;
- d. The 1949 Geneva Convention on the Protection of the Civilians Person in Time of War;
- e. The 1998 Rome Statute of the International Criminal Court.

(2) Secondary material consists of several documents related to the primary legal material such as:

- a. Scientific journals;
- b. Books related to the issue of Humanitarian Law;
- c. Seminars papers related to the issue;
- d. Others related document;
- e. Trusted internetsites.
- f. Other non-legal documents related to this research.

(3) Tertiary legal material:

- a. Dictionary of Modern Strategy and Tactics;
- b. English dictionary.

### **C. Technique of Collecting Data**

The methods of collecting data in this research will be done through library research by literature learning. This method will collect the data by reading, analyses, and finally made the conclusion from related documents namely convention, law books, legal journals, and others relevant to the main problem as the object of this research.

### **D. Analysis**

The data were analyzed systematically through descriptive method. Systematically means the research was analyzed based on international humanitarian law, especially the international treaty and the international customary law. Juridical thinking means it would be connected to the principles of law, conventions, and others related regulations.

**CHAPTER IV**

**THE USE OF CHEMICAL WEAPONS IN SYRIA IN THE  
INTERNATIONAL HUMANITARIAN LAW**

**A. The Use of Chemical Weapons in International Humanitarian Law  
Perspective**

The St. Petersburg Declaration and the 1899 Hague Declarations and Regulations were such early instruments of the prohibition of use of means and methods of warfare which cause superfluous injury and unnecessary suffering. The Geneva Gas Protocol on the prohibition and the use of chemical and biological weapons was originally motivated by its rule. Its reaffirmation in recent treaties, in particular Additional Protocol I, the Convention on Certain Conventional Weapons and its Protocol II and Amended Protocol II, the Ottawa Convention banning anti-personnel landmines and the Statute of the International Criminal Court, indicates that it remains valid. The rule is also included in other instruments.<sup>33</sup>

The international humanitarian law prohibits the use of chemical weapons which caused superfluous injury and unnecessary suffer since the ancient era of warfare. Before World War I in 1899 has been agreed the rule of the use of chemical weapons in warfare by ratified the Hague Convention on the Laws and Customs of War on Land. Then, in the respect of the victims produced by the

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<sup>33</sup>Jean-Marie Henckaerts and Louise Doswald Beck, 2005, *Customary International Humanitarian Law*, Volume: I, Cambridge University Press. p.237.

practice of chemical weapons in the World War I, the world has agreed the 1925 Geneva Protocol on the Prohibition of the Use in Asphyxiating Poisonous, or Other Gases, and of Bacteriological Methods of Warfare. The crime on the use of chemical weapons in the present days has more developed. The 1993 Chemical Weapons Convention is the set of rule that regulated about the provision of the use of chemical weapons in the warfare which are more update and complete rather than 1925 Geneva Protocol. Besides that, the Rome Statute also helps give the guidance of the use of chemical weapons in the warfare, as explained in Article 8 about war crimes.

Based on the 1993 Chemical Weapons Convention, it has clearly mentioned in Article I Paragraph 1 that each State Party to this Convention never undertakes under any circumstances:

1. To develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer directly or indirectly, chemical weapons to anyone;
2. To use chemical weapons;
3. To engage in any military preparations to use chemical weapons;
4. To assist, encourage or induce, in any way, anyone to engage in any activity prohibited to a State Party under the Convention;

In the Article 1 Paragraph (1) above, has mentioned clearly about the prohibition of the use of chemical weapons in any circumstances. Moreover it is causing death or injuries. Then, the problem has arisen when knows that Syria did not ratified the 1993 Chemical Weapons Convention. Syria only ratified the 1925

Geneva Gases Protocol, but, even Syria only ratified the 1925 Geneva Gases Protocol. Its treaty also prohibited the use of asphyxiating, poisonous or other gases, and of all analogous liquids, material or devices. But, it is still prohibited in any situation to use the chemical weapons.

The chemical agents are allowed to be used based on Chemical Weapons Convention during the law enforcement agenda, it is been agreed clearly to use it during domestic riot control agents and the use lethal chemical for executions which allowed by national law. Although domestic law enforcement is beyond the international law's field of direct expertise, medical evidence shows that it is illusory to believe that rapid incapacitation can be achieved without certain level of morality. The pursuit of incapacitating chemicals for law enforcement could lead to their proliferation, to an "arm race" of measure and countermeasure among security forces, criminals and those who commit acts of terror.<sup>34</sup>

The armed conflict in Syria which involves the practice of use of chemical weapons has been categorized as non-international armed conflict, because the conflict happened between the Government of Syria which led by Bashar Al-Assad, as the president against the opposition. In other words, the conflict can be concluded into a civil war. For the respect to non-international armed conflict or civil war, in the early 20th century, the Red Cross had sought to bring such conflicts quickly within the laws of war. However, many argued that non-international armed conflict or civil war in international customary law were outside the scope of the laws of war and within the domestic domain.

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<sup>34</sup> ICRC, 2003, First Special Session of the Conference of the State Parties to Review the Operation of the Chemical Weapons Convention, *Reports and Documents*, Vol. 85, Hague.



On 20 March 2013, in his letter to Secretary-general, the Deputy Prime Minister of Syria reported the alleged use of chemical weapons in Khan Al Asal and Aleppo governorate on 19 March 2013. In a response to the allegation of the use of chemical weapons in Syria, on 21 March 2013, the Secretary-General of United Nations decided to establish the United Nations Mission based on the authority extended to the Secretary-General by the General Assembly and endorsed by the Security Council. While, the purpose of United Nations Missions is to conduct a specialized impartial and independent investigation of the alleged use of chemical weapons in Syria to gather relevant data, to undertake the necessary analyses and to deliver a report to Secretary-General towards the allegations of use of chemical weapons in Syria. On 26 March 2013, Professor Ake Sellstrom (of Sweden) has been appointed by Secretary-General as the Head of the Mission.

The Secretary-General requested the Organization for the Prohibition of Chemical Weapons (OPCW) to investigate and analyze, including to provide some experts to conduct fact-finding activities and in order to provide technical support in assessing public health, clinical, and event-specific health aspects of the alleged use of chemical weapons. The Secretary-General had also requested the World Health Organization (WHO). The other parties requested by Secretary-General to get involved in the investigation are the Government of France and the United Kingdom of Great Britain and Northern Ireland, into the alleged use of

chemical weapons in Khan Al Asal in Aleppo and Otaybah in the vicinity of Damascus on 19 March 2013, as well as in Homs on 23 December 2012.<sup>35</sup>

Based on the conduct of the activities, research on the field and interviews from some witnesses, the United Nations Missions founded several allegations of the use of chemical weapons in 16 locations in Syria, as follows:

1. Khan Al Asal, 19 March 2013

Based on the United Nations report, the allegation on the use of chemical weapons was on 19 March 2013 in Khan Al Asal, Aleppo governorate, the terrorist groups launched their rocket from the Kfar De'il which is 5 kilometers away from Khan Al Asal in Aleppo governate.

2. Otaybah, 19 March 2013

The civilians died and suffered from serious injury by the alleged use of chemical weapon reported by United Nation based on the letter dated 21 March 2013 from Permanent representative of France to the United Kingdom and the Deputy Permanent Representative of United Kingdom of Great Britain and Northern Ireland.

3. Homs, 23 December 2012

The allegations of the use of chemical weapons in Homs on 23 December 2012 was reported by the Permanent Representative of France to United Nations and the Deputy Representative of United Kingdom of Great Britain and Northern Ireland to United Nations by their letter dated on 21 March 2013. The Government of Qatar also reported the alleged use of

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<sup>35</sup> See Final Report of United Nations Missions to Investigate Allegations of the Use of Chemical Wepons in the Syrian Arab Republic.

chemical weapons against civilians in Homs by its letter dated on 22 March 2013.

4. Darayya, 13 March 2013

Based on the report from the Government of the United Kingdom and Northern Ireland on the letter dated 26 March 2013 and the Government of Qatar in its letter dated 22 March, reported the alleged use of chemical weapons against unarmed civilians in Darayya.

5. Adra, 24 March 2013

In Adra, near Damascus, the Government of United Kingdom of Great Britain and Northern Ireland on their letter dated on 23 May 2013 to Secretary-General, alleged the use of chemical weapons in Adra on 24 March 2013.

6. Darayya, 25 April 2013

The report from Secretary-General on 23 May 2013, alleged the use of chemical weapons in Darayya, near Damascus on 25 April 2013 and it was presented to the Head of Mission subsequently.

7. Saraqueb, 29 April 2013

Based on the report, accepted by Secretary-General dated 23 May 2013, alleged the use of chemical weapons at Saraqueb on 29 April 2013. And report from the Government of France to the Secretary-General in 27 June 2013, based on the course of consultation held with the Head of Mission in Paris on 4 June 2013, had indicated the use of Sarin, one of the element of chemical weapons.

8. Salquin, 17 October 2012

Dated 26 March 2013, alleged use of chemical weapons was reported by Government of France at Salquin, near the border of Turkey on 17 October 2012.

9. Sheik Maqsood, 13 April 2013

The Government of Syria has alleged to use of Sarin gases against opposition in an attack on the Aleppo neighborhood of Sheik Maqsood on 13 April 2013. It has reported to the Secretary-General, based on the report from the Government of the United States of America by its letter dated on 14 June 2013.

10. Qasr Abu Samrah, 14 May 2013

Based on the letter from the Government of United States of America to the Secretary-General on 14 June 2013, the Government of Syria had used unspecified chemical weapons against the opposition in attack on Qasr Abu Samrah on 14 May 2013.

11. Adra, 23 May 2013

The Government of Syria was alleged to use unspecified chemical weapons against the opposition in an attack on Adra on 23 May 2013. It is reported by the Government of United States by their letter to the Secretary-General on June 2013.

12. Jobar, 12-14 April 2013

In the course of consultation held with the Head of Mission in Paris on 4 June 2013, the Government of France in its letter to Security-General

reported the allegations of the use of Sarin in Jobar between 12 and 14 April 2013.

13. Ghouta, 21 August 2013

The multiple Members of States reported the alleged the use of chemical weapons in the Ghouta area of Damascus on 21 August 2013, and requested to the Secretary-General to instruct United Nations Missions, then in Damascus, immediately conduct on-site investigation.

14. Bahhariyeh, 22 August 2013

At 21.20 o'clock on 22 August 2013, several soldiers in Bahhariyeh in the Eastern Ghouta region had inhaled poisonous gases and had complained respiratory and other symptoms, as well as itching and redness of the eyes. Eight teen of them had been immediately taken to Martyr Yusuf Al Azmah Military Hospital to receive emergency care. The report has been delivered by the letter from the Government of Syria on 28 August 2013 to the Secretary-General.

15. Jobar, 24 August 2013

The Government of Syria reported by its letter to Secretary-General that at 11.00 on 24 August 2013, a group of soldier had commanded to approached the building near river in Jobar, then they heard muffled sound and smelled o foul and strange odour, whereupon they had experienced severe shortness of breath and blurred vision. The Government further reported that in search in its building has found some materials, equipment's and canisters, based on the analysis from the laboratory

confirmed that one of the of the soil samples taken from that site had been contaminated by Sarin.

16. Ashrafiah Sahnaya, 25 August 2013

The Government of Syria in its letter dated on 28 August 2013 reported to the Secretary-General that at 19.00, cylindrical canisters had been fired using weapons that resembled a catapult at some soldiers in Ashrafiah Sahnaya area in Damascus Rif. It was reported that one of canisters had exploded, emitting a sound of medium loudness. A black, foul-smelling smoke had then appeared, causing blurred vision and severe shortness of breath.

From several allegations of the use of chemical weapons in Syria, the United Nations Missions concluded that chemical weapons have been used in the ongoing conflict between the parties in the Syria, also against civilians, including children, on relatively large scale. During the investigation, the United Nations Missions also conducted fact-finding activities for the most recent allegation, including visiting a military hospital in Damascus where in interviews survivors and other relevant witness; the assessment of the symptoms of survivors; the collection of hair, urine, tissue, and blood samples for subsequent analysis; the collection of environmental samples for subsequent analysis; and/or the documentation of munitions and their sub-components identified by team.

The United Nations Mission decided to investigate further the following allegations of the use of chemical weapons in 7 of the 16 city in Syria that has been reported to the Secretary-General, based on the sufficiency and credibility of

the information from the Member States: Khan Al Asal of 19 March 2013, Sheik Maqsood of 13 April 2013, Saraqueb of 29 April 2013, Ghouta of 21 August 2013, Bahhariyeh of 22 August 2013, Jobar of 24 August 2013, and Ashrafiah Sahnaya of 25 August 2013. While, in the rest of locations that have been alleged, in addition is fore mentioned above, the United Nations Missions did not receive sufficient or credible information in respect of the alleged incidents in Salquin on 17 October 2012, Homs on 23 December 2012, Darayya on 13 March and 25 April 2013, Otaybah on 19 March 2013, Adra on 24 March 2013, Jobar between 12 and 14 April 2013 and Qasr Abu Samrah on May 2013.

The United Nations Mission concluded that from alleged in 16 cities, 7 cities are positively attacked by chemical weapons. Based on the conclusion of their report, as follows:

1. Ghouta, 21 August 2013

In the Ghouta found the evidence which shows that it was contaminated by chemical weapons by impacted and exploded surface-to-surface rockets, capable to carry a chemical payload, found to contain Sarin. On closed to rocket impact sites, in the area where patients were affected, the environment was found to be contaminated by Sarin. The epidemiology of over fifty interviewers given by survivor and health care workers provide ample corroboration of the medical and scientific results. From the blood and urine samples taken from the same patients positive for Sarin and Sarin signatures were found.

2. Khan Al Asal, 19 March 2013

Based on the epidemiology on the same witness statements of medical staff and military personnel participating in the rescue operation and on the documentation from the local health sector provided by Syria, it corroborates the occurrence of a rapid setting mass intoxication by an organophosphorus compound in the morning of the 19 March 2013. From the interviews with secondary exposed survivors symptoms of an organophosphorus intoxication is confirmed. Based on the information report provided by the States Members of United Nations Missions, it is indicated that the chemical weapons were used in Khan Al Asal.

3. Jobar, 24 August 2013

According to the interviews with survivors and clinicians and medical records symptoms of organophosphorus intoxication were confirmed. The blood samples covered by Syrian Government and authenticated by the United Nations Missions using DNA techniques tested positive signatures of Sarin and one of the four blood samples collected from the same patients on 28 September 2013 tested positive for Sarin.

4. Saraqueb, 29 April 2013

The information was collected from the interviews by treating clinicians corroborating the symptoms of organophosphorus intoxication. The other sources were collected from supporting witness statements and medical records substantiating the transfer of a patient from the Shifa Hospital in Saraqueb to a hospital in Turkey. The positive signatures of Sarin



collected from several organs of deceased victim recovered during autopsy performed in the presence of members of United Nations Missions.

5. Ashrafiah Sahnaya, 25 August 2013

The results of the research were collected from the interviews with survivors, medical clinicians and medical records confirmed the symptoms of organophosphorus toxications. Samples of the blood recovered by the Syrian Government on 24 August 2013, authenticated by the United Nations Missions using DNA technique, tested also positive for the signatories of Sarin.

6. Bahhariyeh, 22 August 2013

In the absence of blood samples, the Syrian Government and the United Nations Missions cannot corroborate the allegation that the chemical weapons were used in Bahhariyeh on 22 August 2013. But, from the information collected by interviews with the witnesses, on that day a group of soldiers reportedly fighting from a building in Bahhariyeh. In that fighting they did not see an explosion from the munitions, just release of some blue-colored gas with very bad odour, which was moved to the soldiers direction brought by wind. It caused itching, redness eyes and other symptoms.

7. Sheik Maqsood, 13 April 2013

The United Nations Missions cannot corroborate the allegation that the chemical weapons were used in Sheik Maqsood on 13 April 2013. But, the

United Nations Missions remains deeply concerned that the chemical weapons were used in ongoing conflict between the parties in the Syria, which has added yet another dimension to the continued suffering of the Syrian people. According to the witnesses provided to the United Nations Mission by the UNHCR Commission of Inquiry, the alleged incident affected 12 persons and caused one death. The victims were allegedly transported to the hospital in Afrin for treatment.

The United Nations Missions did not rely on the samples, information and/or investigation reports presented to the United Nations Missions from the external sources, including from the Government of States Members. The United Nations Missions are independent and unambiguous to verify the chain of custody and the credibility of any such information, and the United Nations Missions did not rely on samples, information and/or investigation reports presented to the United Nations Missions by external sources, including by Governments of States Member.

Besides that, there is International Atomic Energy Agency (IAEA) which mission to guide by the interests and needs of Member States, strategic plans and the vision embodied in the IAEA Statute. There are three main areas of work underpin the IAEA's mission: Safety and Security, Science and Technology, and Safeguards and Verification.<sup>36</sup> IAEA has the objective to accelerate and enlarge the contribution of atomic energy to peace, health and prosperity throughout the world. It shall ensure, so far as it is able, that assistance provided by it or at its

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<sup>36</sup> *IAEA Mission and Programmes*, see at: <https://www.iaea.org/about/about-iaea>, accessed on: May 7, 2015 at 01.18a.m.

request or under its supervision or control is not used in such a way as to further any military purpose.<sup>37</sup> The IAEA is an independent intergovernmental, science and technology-based organization, in the United Nations family, that serves as the global focal point for nuclear cooperation. The relationship of IAEA with the UN is regulated by a special agreement in terms of its Statute, the IAEA reports annually to the UN General Assembly and, when appropriate, to the UN Security Council regarding States' non-compliance with safeguards obligations, as well as on matters relating to international peace and security.<sup>38</sup> Based on the IAEA Mission Statement, this organization has several missions to:

1. Assists its Member States, in the context of social and economic goals, in planning for and using nuclear science and technology for various peaceful purposes, including the generation of electricity, and facilitates the transfer of such technology and knowledge in a sustainable manner to developing Member States;
2. Develops nuclear safety standards and, based on these standards, promotes the achievement and maintenance of high levels of safety in applications of nuclear energy, as well as the protection of human health and the environment against ionizing radiation; and
3. Verifies through its inspection system that States comply with their commitments, under the Non-Proliferation Treaty and other non-

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<sup>37</sup> See Art. II, *The Statute of the IAEA*.

<sup>38</sup> *Relationship with the United Nations*, see at: <https://www.iaea.org/about/about-iaea>, accessed on May 7, 2015 at 01.10a.m.

proliferation agreements, to use nuclear material and facilities only for peaceful purposes.<sup>39</sup>

Means that states over the world are allowed to develop the nuclear, chemical, biological or even the other atomic aspects, as long as for peaceful purposes. Moreover, Syria is already ratified the Statute of IAEA since 1963. Syria knows that the use of chemicals for the purpose of military is strictly prohibited, but Syria was breach its rule.

### **B. The Implementation of the Prohibition of Chemical Weapons in Syrian Case**

After the announcement of the President of Syria, Bashar Al-Assad, used the chemical weapons to attack the civilians that killed more than 1,000 people in his country, the worlds' attentions focused on Syria.<sup>40</sup> The use of chemical weapons is prohibited in international and non-international armed conflicts in a series of treaties, including the Hague Declaration concerning Asphyxiating Gases, the Geneva Gas Protocol, the Chemical Weapons Convention, and the Statute of the International Criminal Court.

In the respond to prosecute the commander of the attack which involved the practice of use of chemical weapons in Syria, there is the 1998 Rome Statute. It is the international treaty that bounds every country or person in the world,

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<sup>39</sup> *The IAEA Mission Statement*, see at: <https://www.iaea.org/about/mission>, accessed on May 7, 2105 at 10.56a.m.

<sup>40</sup> *Syria: Bashar al-Assad 'launching chemical weapons attacks with chlorine*, see at: <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/10777059/Syria-Bashar-al-Assad-launching-chemical-weapons-attacks-with-chlorine.html>, accessed on December 10, 2014 at 11.40 pm.

established by the International Criminal Court, a Tribunal with the power to prosecute the individuals for crimes against humanity, genocide and war crimes. The Statute however, does not contain the words ‘chemical weapons’ and ‘biological weapons’. But, the statute has clearly prohibited the war crimes and crimes against humanity. The crime that could be included into Rome Statute must be both serious and of concern to the international community.<sup>41</sup>

Following the response of the use of chemical weapon in Syria, there must be an actor behind the Syria’s conflict. Military army is only as a tool to run the policy to use the prohibited weapons, chemical weapon. The President of Syria, Bashar Al-Assad, as a commander of the attack used chemical weapon against opposition and civilian. He is fully responsible to the loss caused by the chemical weapons attack in Syria. In Part 3 Article 28 (a) of Rome Statute, sets out the rules on the responsibility of commanders and superiors of the military warfare, “A military commander or person effectively acting as a military commander shall be criminally responsible for crimes within the jurisdiction of the Court committed by forces under his or her effective command and control, or effective authority and control as the case may be...”

The applicable penalties for the person accused for war crimes referred to Article 5 of Rome Statute, and Court may impose one of the following penalties, imprisonment or fine, further explained in Article 77, under which the ICC may impose:

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<sup>41</sup> Kara Allen, *et.al*, 2011, *Chemical and Biological Weapons Use in the Rome Statute: A Case for Change*, Vertic.

1. The imprisonment:
  - a. Specified number of years imprisonment, for maximum 30 years of imprisonment, and
  - b. Life time imprisonment for heavy crimes and the individual circumstances of the convicted person.
2. In addition to imprisonment:
  - a. Fine may be imposed under the criteria provided for in the Rules of Procedure and Evidence, and
  - b. Property and assets derived from the crime would be confiscated directly or indirectly, without any prejudice to the rights of bona fide third parties.

After it is explained in the Articles above, Bashar Al Assad should be prosecuted within the crimes he committed by using the chemical weapons. But, reminds that Syria is not the state party of the International Criminal Court, Bashar Al Assad cannot be prosecuted since it known that the International Criminal Court cannot exercise the jurisdiction if a state does not ratified the Rome Statute and non-state party of International Criminal Court. The national court will also have primacy of investigation and prosecution unless that state is unwilling or unable to carry out the investigation or prosecution, the crimes may refer to the ICC's jurisdiction.<sup>42</sup> The President Bashar Al-Assad could only prosecute through international customary law if the chemical weapons attacks in

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<sup>42</sup> John O'Brien, 2001, *International Law*, New York, Routledge Cavendish. p.762

Syria were referred to the Prosecutor by Security Council Referral.<sup>43</sup> Security Council Referral is governed by Article 13(b) of Rome Statute, its jurisdiction accordance with Article 5 if ‘a situation in which one or more of such crimes appears to have been committed is refer to Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations’.<sup>44</sup> Since where the use of chemical weapons causes death or great suffering, a prosecution may be brought to the ICC. An attempt in referral in relation to Syrian civil war more broadly was made in May 2014, when Security Council members China and Russia vetoed the relevant data resolution.<sup>45</sup> In accordance with Article 23 of the Charter of the United nations, Security Council consist of five permanent members which may exercise veto, China, France, Russia, the United Kingdom and the United States, and ten non-permanent members who are elected by General Assembly from among the membership of the organization to two-years terms.<sup>46</sup>

In addition to the fact that the commander has to be prosecuted within the jurisdiction of the Court, the chemical weapons have to be destroyed, based on the 1993 Chemical Weapons Convention, which has been clearly mentioned in Article I Paragraph 2 to 4:

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<sup>43</sup> Sheryn Omeri, 2015, *Chemical Weapons and the ICC*, see at: <http://www.counselmagazine.co.uk/articles/chemical-weapons-and-the-icc>, accessed on: May 2, 2015 at 10.45pm

<sup>44</sup> William A. Schabas, *op.cit.* p.168

<sup>45</sup> *Ibid*, Sheryn Omeri.

<sup>46</sup> *Ibid*. William A. Schabas

- Each State Party undertakes to destroy chemical weapons it owns and/or possesses, or those are located in any place under its jurisdiction or control...
- Each State Party undertakes to destroy all chemical weapons it abandoned on the territory of another State Party...
- Each State Party undertakes to destroy any chemical weapons production facilities it owns and/or possesses, or that are located in any place under its jurisdiction or control.

In order to enforce the law of war crimes, the chemical weapons and chemical agents should be destroyed as stipulated in Article I above whether it is located in any place under its jurisdiction or control, abandoned chemical weapons on the territory of another State Party and its located in any place under the jurisdiction or control including the chemical weapons production facilities it owns and/or possesses. The previous case on the use of chemical weapons is when the Iraq's Government used it in the Gulf War against Iran during the year of 1980s. In the 1991, the UN Security Council was established UNSCOM, a special commission to find and dismantle the Iraq's arsenal.

The U.N. imposed economic sanctions on Iraq that would be enforce until Iraq eliminated all nuclear, biological and chemical weapons capability. The UNSCOM would uncover and destroy Iraq's biological and chemical weapons and ballistic-missile program. It is more successful in its pursuit in Iraq's chemical weapons program because Iraq was more cooperative with its disclosure. The final report notes that a "significant number" of chemical weapons, their



components, and related equipment were destroyed under UNSCOM supervision between 1991 and 1997. Iraq acknowledged that it carried out a large scale chemical weapon program between 1982 and 1990. It claims that more than fifty-percent of its chemical weapons stocks were consumed during the 1980s, and that its majority of its production facilities were destroyed by aerial bombing during the Gulf War. Around 3,859 tons of chemical agents were produced during the entire of the implementation of its chemical weapons program, agents produced in large quantities included mustard, tabun and sarin, and that 3,315 tons of these agents were weaponized. Eighty-percent of the weaponized chemical agents were consumed between 1982 and 1988. In addition, they claim to have unilaterally discarded 130 tons of non-weaponized chemical weapons agents during the 1980s, UNSCOM found that these numbers could not be verified. Iraq claimed that it had 412.5 tons of chemical agents remaining. Four hundred tons were destroyed under UNSCOM supervision: 1.5 tons of the chemical weapons agents XV remains unaccounted for. After the Gulf War , Iraq declared that there remain over 56,000 special munitions which could carry either biological weapons or chemical weapons agents (22,000 filled, 34,000 unfilled), they were either destroyed or converted for conventional weapons purposes.<sup>47</sup>

The Organization of Prohibition of Chemical Weapons (OPCW) also has regulated it in the Verification Annex of the 1993 Chemical Weapons Convention in Paragraph 12 Part IV (A), “The meaning of “Destruction” is a process by which

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<sup>47</sup> Saddam Hussein’s Weapons of Mass Destruction, see at: <http://www.pbs.org/wgbh/pages/frontline/shows/gunning/etc/arsenal.html>, accessed on: May 3, 2015 in 09.50 a.m.

chemicals are converted into an essentially irreversible way to a form unsuitable for production of chemical weapons, and which in an irreversible manner renders munitions and other devices unusable as such". Every state which use or develop the chemical weapons should determine the destruction of chemical weapons and its facilities. The State Party which use the chemical weapons have to be responsible for the destruction of the chemical weapons and the methods and the process of the destruction should be verified under the provision of the Convention.<sup>48</sup>

The United Nations Missions investigated that Syria is alleged to possess 1,300 tons of chemical agents, including Sulphur Mustard (Mustard gas), nerve gas Sarin, VX and their precursor ingredients. The United Nations Missions planned to get rid of them, supervised by the United Nation Security Council and the Organization of Prohibition of Chemical Weapons (OPCW). The planning of the destruction has been scheduled to finish in the end of June 2014. The Russian and US were dealt to eliminate Syria's arsenal which caused hundreds people died by Sarin gas attack in the Ghouta area outside Damascus on 12 August 2013. The chemical agent will be loaded to the US vessel and MV Cape Ray vessel and will be destroyed in international water at Mediterranean Sea.

Syria is responsible to transport the chemical agent from storage to the port in Latakia city, at that port, and all the chemical agents will be loaded to Danish Cargo vessel and taken to Gioia Tauro port in Italy. The first shipment of 16 tons of priority chemicals left Latakia on 7 January 2014 by Danish Cargo

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<sup>48</sup> See *Verification Annex of 1993 Chemical Weapons Convention*, Paragraph 13-14 Part IV (A)

vessel, accompanied by naval escort from Russia, China, Denmark and Norway. Once, at container port of Gioia Tauro, 360 tons of material including sulphur mustard and DF (the precursor of Sarin) will be loaded to MV Cape Ray for additional shipment before eventually setting sail to international water at Mediterranean Sea for neutralization by hydrolysis system, because almost of the Syria's chemical weapons are in liquid form, rather than already placed in bombs or other munitions.

The MV Cape Ray as a neutralizer ship developed in 2013 by a specialist research wing of the US military, it is a former container ship that has been fitted out with two \$5m mobile hydrolysis system. While, during the hydrolysis the chemical agents will be broke down with hot water, further neutralized with sodium hydroxide or caustic soda or lye. Cape Ray can process 25 tones chemical agent per day by two titanium reactors inside the ship, depending on the material being treated. The procedure of neutralization of the chemical agents is expected to take 90 days and generate about 1,5 million gallons (5,7 million liters) of waste. The procedure of the neutralization involving 63 specialists crew worked on the decommissioning of chemical agents, in addition to the ship's normal crew and extra security personnel.

According to OPCW, the effluence of chemical agent after being neutralized is still hazardous, but in the level of toxicity it can be disposed of in normal industries processing and no chemicals will be dumped at Sea. And the hydrolysis effluent of chemical agent from Cape Ray and other chemicals removed from Syria will be destroyed at commercial facilities at the Veolia

facility at Ellesmere Port, Cheshire. Most of the effluent and chemicals agents will be processed at Port Arthur, Texas, at a plant previously used US's destruction of its chemical weapons. Meanwhile, Germany has pledged to incinerate the Sulphur Mustard waste from Cape Ray in the government's facility in Munster, Lower Saxony.<sup>49</sup>

### C. Result and Discussion

The prohibition of the use of chemical weapons has been clearly mentioned in Article 1 of the 1993 Chemical Weapons Convention as the latest and the most update agreement on the prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons, and on Their Destruction. The existence of the 1993 Chemical Weapons Convention is as the complement of the previous agreement of the prohibition on the use of chemical weapons in the warfare, which is the 1925 Geneva Gas Protocol of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare. Besides, the 1998 Rome Statute in Article 8 (b) (*xvii*), (*xviii*) and (*xx*) has also stipulated that the use of such weapons is prohibited.

The president of Syria, Bashar Al Assad, as the actor and the commander shall be punished, as it has stipulated in Part 3 Article 28 (a) of the 1998 Rome Statute. It sets out the rules on the *responsibility of the commander and superiors*, "A military commander or person effectively acting as a military commander shall

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<sup>49</sup> *Destroying Syria's Chemical Weapons*, see at: <http://www.bbc.com/news/world-middle-east-25810934>, on November 29, 2014 at 8.50 pm.

be criminally responsible for crimes within the jurisdiction of the Court committed forces under his or her command and control, or effective authority and control as the case may be...”. Moreover, the penalties of the war crimes as the jurisdiction of the ICC are further explained in the Article 77. The author concluded that the actor or the commander of the practice of use of chemical weapons in Syria, Bashar Al Assad, shall be punished within the jurisdiction of the ICC. And Bashar Al Assad is worth to be punished for the life time imprisonment, as explained in the Article 77 (1) point (b) for his crimes on the use of chemical weapons and causing thousands of people died due to his action. Another opinion of the author is precisely death penalty, because it caused many victims both died and injured and it could not be tolerated.

In the respect to the conflict which is involved the use of chemical weapons in Syria, the chemical weapons and its facilities should be destroyed as mentioned in the Article 1 (2), (3) and (4) of the 1993 Chemical Weapons Convention, no matter it is located in any place under its jurisdiction or control, abandoned chemical weapons on the territory of another State Party and its located in any place under its jurisdiction or control including the chemical weapons production facilities which are owned or possesses.

## CHAPTER V

### CLOSING

#### A. Conclusion

Related to the research question that the author developed in the research on “The Use of Chemical Weapons from International Law Perspective: A Case Study of Syria”, there have to be the conclusions from the research question, which are drawn as follows:

1. The perspective of International Humanitarian Law toward the use of chemical weapons is:

The practice of use of chemical weapons in Syria has violated the 1925 Geneva Protocol on the Prohibition of the Use in Asphyxiating Poisonous, or Other Gases, and Bacteriological Methods of Warfare as the oldest provision governed about the prohibition of the use of chemical weapons; and the 1993 Chemical Weapons Convention on the Prohibition of Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction as the latest and the most update provision about the prohibition of the use of chemical weapons.

2. The implementations of prohibition of chemical weapons in Syrian case, are:
  - a. Based on the Rome Statute, it shows that the practice of the use of chemical weapons in Syria has violated the provision of the Article 8 of about *War Crimes*. Furthermore, the actor or the commander, Bashar Al Assad as the president of Syria shall be fully responsible for the crime, as stipulated in the Article 28 (a) of the Rome Statute about *responsibility of the commander and superior*. The ICC are the Court that has the authority to solve its crime as a Tribunal with the power to prosecute the individuals for crime against humanity, genocide, and war crimes.
  - b. Enacting to the case of the conflict in Syria which has involved the practice of the use of chemical weapons, referred to the Article 28 (a) of the Rome Statute about the *responsibility of the commander and superior*, the actor or the commander of the crime, Bashar Al Asad is worth to be punished. Based on the Article 77 of Rome Statute, the punishment shall be 30 years of maximum imprisonment or life time imprisonment, depending on how heavy the crime is.
  - c. Related to the role of the Syrian president, Bashar Al Assad in the Syria's conflict, as the actor and the commander of its crime, he shall be fully responsible for his action. As the convicted person, Bashar Al Assad shall be punished within the jurisdiction of the

ICC. The life-time imprisonment, as stipulated in the Article 77 (1) point (b) may be imposed to Bashar Al Assad as the worth punishment of his crime to use the chemical weapons during the conflict in his country, Syria. By his command to use the weapons, which resulted thousand people becoming the victims both died and injured.

### **B. Suggestion**

Moreover, another opinion of the author toward the action to the use of chemical weapons during the conflict, the most worth punishment for Bashar Al Assad is precisely death penalty, remembering the people who became the victims of his action are not only the soldiers, but it also covered the innocent people such as women and children.