

# **Crisis in Syria**

## *What will happen next?*

**CRISTINE CHRISTODOULOU<sup>1</sup>**

---

### **THE ATTACKS WHICH SHOCKED THE WORLD**

The ongoing Syrian civil war began in March 2011 and whilst there were continuous armed conflicts between the forces loyal to the Ba'ath government and those seeking to overthrow it, an international input was not required to intervene up until the recent events of August 2013. 21 August 2013 marks a horrific moment in Syria's history. It has been marked as the greatest international outcry and has brought back memories of the Iran-Iraq war in the 1980s. The entire western world was brought to a halt when these events cried out for international humanitarian aid. The western world is faced with the dilemma of whether to intervene through military action or whether they should just stand back and allow Syria to settle its own problems.

However, what exactly took place that day? It all began at night with heavy fighting in rebel held districts of Ghouta; followed by reports of chemical shelling in the Ein Tarma district of Ghouta and then chemical weapons being used in the Zamalka area of Ghouta. As the attacks took place, civilians were left in a chaotic, terrified and confused state of mind. They had been shocked to the core as to who would initiate such an operation. The Syrian government openly blamed the rebels from the start stating that they launched the attack because they were losing the civil war. On the contrary, the US government insisted that the rockets originated only from regime controlled areas and went only to opposition controlled areas. It has been argued that the regime wanted to regain power of the opposition controlled areas and in doing so launched the poisonous rockets under a well planned operation. Due to the level of chemical weapons that were used, the way they were used and their consequent actions, it is suspected that this could only be an indication that it was the regime responsible for these attacks.

---

<sup>1</sup> Cristine Christodoulou completed her undergraduate law degree at the University of Surrey (2010) and furthered her studies with a postgraduate degree at City Law School, City University (2012).

## INTERNATIONAL HUMANITARIAN LAW

The ongoing civil war in Syria has placed International Humanitarian Law (IHL) under a debatable scrutiny.

To begin with, IHL or as it is also known, the law of conflict, is the law that regulates the conduct of armed conflicts. Essentially what IHL seeks to achieve is to limit the aftermath of armed conflict by providing protection to innocent civilians who are not part of the hostilities affecting them. Additionally, it also strives to confine and regulate the means and methods of warfare available to combatants. What is important to note is that IHL comprises a set of rules, established by treaty or custom, applicable in situations of armed conflict and it is inspired by considerations of humanity and the mitigation of human suffering.<sup>2</sup> It is mainly governed by the Geneva Conventions of 1949<sup>3</sup> and their Additional Protocols. This body of international law specifically protects people who are not taking part in the hostilities (civilians, health workers and aid workers) and those who are no longer participating in the hostilities, such as wounded, sick and shipwrecked soldiers and prisoners of war.<sup>4</sup>

Syria is a contracting party and has ratified the Geneva Conventions of 1949 and is therefore entitled to all the help needed if found that there is a non-international armed conflict in accordance with the standard set in Common Article 3 of the Geneva Conventions 1949:

*in the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound.*

The civil war began in 2011 but as the death toll was dangerously increasing by July 2012, the International Committee of the Red Cross (ICRC) finally declared that there was *indeed* a non-international armed conflict.

What needs to be verified is the benchmark at which a conflict can be classified as non-international in nature. Due to the vague definition of armed conflict, the potency of the IHL has precariously weakened and has undermined its position as an authoritative accreditation of law. The International Law Association at The Hague Conference (2010) for the 'Final Report on the Meaning of Armed Conflict in International Law' confirms that at least two characteristics are found with respect to all armed conflict:

- (1) *The existence of organised armed group; and*
- (2) *Engaged in fighting of some intensity.*<sup>5</sup>

---

<sup>2</sup> GSDRC, 'Applied Knowledge Services', <<http://www.gsdr.org/go/topic-guides/international-legal-frameworks-for-humanitarian-action/concepts/-principles-and-legal-provisions/overview-of-international-humanitarian-law>> accessed 16 June 2013

<sup>3</sup> Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field (Adopted 12 August 1949, Entry into Force 21 October 1950) 75 UNTS 31

<sup>4</sup> ICRC, Geneva Conventions, <<http://www.icrc.org/eng/war-and-law/treaties-customary-law/geneva-conventions/index.jsp>> accessed 16 June 2013

<sup>5</sup> International Law Association, The Hague Conference (2010), <<http://www.google.co.uk/url?sa=t&rct=j&q=&esrc=s&frm=1&source=web&cd=1&ved=oCCoQFjAA>>

Point 1 is reflected in the fact that the formation of the rebel groups within Syria evidently proved that there is an organisational structure from the rebel's side whilst the opposing side of President Bashar Assad's military trained army provided them with sufficient abilities to form organised groups. Point 2 is reflected and recognised in the extreme violence and the continuous casualties documented intensely by the media.

It had more or less taken a year to categorise the conflict, and the consequences which followed indicated that there would be no means of legal protection for the innocent civilians during that time and the unnecessary delay only caused more damage and bloodshed. On the one hand there is the argument that the indefinite explanation of armed conflict surely caused delays and confusion which could not have been dealt with unless a valid definition was presented. On the other hand however, what is most unacceptable is the fact that Common Article 3 of the Geneva Conventions 1949 required a whole year to be successfully enforced in order to internationally recognise that there was a civil war in Syria – even though the media coverage persistently showed acts of violence, increasing numbers of dead civilians and the chaos which prevailed in the areas in conflict.

Establishing this international recognition means that the innocent civilians must be treated humanely and that rescue was on its way. Several organisations have contributed various levels of aid; such as the Islamic Relief supplying 30 hospitals and sending large amounts of medical and food parcels, the US Agency for International Development and others more.

#### **MILITARY INTERVENTION: LEGAL OR NOT?**

Stripped from all of its political complexities, the chemical attacks in Syria can be described as a series of atrocities against the human kind. Regardless of the political situation of the country, the civilians should not be the unfair casualties of the consequences created by other powerful figureheads. Under Customary IHL, Rule 156 states the following:

*Violations of international humanitarian law constitute war crimes*

These war crimes have not gone unnoticed and there have been threats from nations worldwide with the US being the major advocate of military intervention. A UN 38-page report confirmed and gave clear evidence: that there was indeed the use of poison gas from rockets on the 21 August which were fired from the direction of areas held by government forces. The report insists that it does not want to point out the culprit but evidence shows that the chemicals were fired by areas controlled by

the Syrian regime. Many nations have difference of opinions with the US, UK and France believing that the only forces that could bring forward such a heavy scaled attack is the Syrian regime whilst Russia has unwaveringly refused to believe that the Syrian regime is to blame but claims that the rebels are responsible for this. *The bottom line is the unmistakable use of chemical weapons.*

Using chemical weapons is in obvious violation of Customary IHL. Under Rule 74 of Customary IHL; *'the use of chemical weapons is prohibited'*. It is to be noted that State practice establishes this rule as a *norm* of customary international law applicable in both international and non-international armed conflicts.

The core treaties that exist concerning chemical weapons are:

- (1) The Geneva Protocol of 1925<sup>6</sup>
- (2) The Biological Weapons Convention of 1972<sup>7</sup> and
- (3) The Chemical Weapons Convention of 1993.<sup>8</sup>

However, Syria is not a signatory state to any of these treaties which therefore means that they are not in principle breaking the law, just a norm. If Syria were a party to the treaties, a UN Security Council approval would need to be obtained in order to form the legal basis of a military intervention. This process requires in-depth investigation, solid evidence and most importantly time. The US though, intends to take immediate action.

For a military intervention to be legal, there are two main avenues which may be taken:

- (1) Invoking under Article 51 of the UN Charter<sup>9</sup> the principle of self-defence:

*Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.*

If the chemicals attacks were not launched against the US but to Syrian civilians, how can Article 51 be invoked? It is a feeble and impossible argument but if the US would turn to Turkey and Israel, which have been

---

<sup>6</sup> Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or other Gases, and of Bacteriological Methods of Warfare, (Adopted 17 June 1925, Entry into Force 8 February 1958)

<sup>7</sup> The Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, (Adopted 10 April 1972, Entry into Force March 26 1975) BTWC

<sup>8</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Adopted 3 September 1992, Entry into Force 30 November 1992) CWC

<sup>9</sup> Charter of the UN, (Adopted 26 June 1945, Entered into Force 24 October 1945) 1 UNTS XVI, Article 51

recently attacked by Syria, and use that as a source of self-defence then a military intervention, would be found legal.

1) Using Article 39-42 of the UN Charter<sup>10</sup> to determine *the existence of any threat to the peace* in order to gain Security Council permission and *to call upon the parties concerned to comply with such provisional measures as it deems necessary or desirable*.

Due to the fact the Russia and China have vetoed non-military sanctions against Syria; the success rate of this happening is very unlikely. Both countries have made it clear that they do not agree with military intervention and it is presumed that they will also not agree to vote for military intervention.

From all the discussions and news travelling around, it was heavily believed that the US would intervene without the support of a UN Security Council Resolution.

However, it is important to remember to respect state sovereignty and to be aware of its concept; that every sovereign state possesses the same legal rights as any other sovereign state at international law. State sovereignty is probably the most important legal concept in international politics where powerful states have long been capable of taking advantage and violating the sovereignty of others. Nevertheless, the principle has tolerated with today's political platform and it still continues to be the definition of fundamental legal and moral prominence of political agents.

The US may justify a military intervention in that the chemical attacks having killed mass innocent civilians in Syria, constitute an unforgivable act of war crime. The US will justify this action by using humanitarian intervention and the Responsibility to Protect (R2P). R2P is a UN initiative set up in 2005 and focuses on preventing and bringing to an end four crimes: genocide, war crimes, crimes against humanity and ethnic cleansing. R2P is not to be mistaken as a law, but a *norm* within the international community which provides a structure for implementing tools that already exist: mediation, early warning mechanisms, economic sanctioning and Chapter VII of the UN Charter powers. What seems to be relevant in the case of Syria is that there has been a series of war crimes committed with innocent civilians suffering as a result.

However, *R2P or not to R2P* has been a controversial matter over the past years with many arguing that it undermines state sovereignty. What actions should be taken in order to protect the innocent civilians suffering within their country's borders? It is evident that there are no set rules to guide such actions as was seen in Somalia, Bosnia, Rwanda and Kosovo in the 1990s. Is there truly a right to intervention and if there is, under whose authority is best allocated to and when would the best time be? Without a doubt, these questions will continue to cause grave disagreement within the international community. What must be highlighted and reinforced is the concept that all sovereign states have equal responsibilities and rights which would preserve the sovereign state institution as a focal point to marshal cooperation and distribute rewards to those who help and to dole out retribution to those who aid the covert threat.<sup>11</sup>

---

<sup>10</sup> Ibid, Articles 39-42

<sup>11</sup> Thomas H Lee, "International Law, International Relations Theory and Preemptive War: the Vitality of Sovereign Equality Today" [2004] L&CP 147, 166

In conclusion, would a US military intervention help the situation in Syria or provoke it even more? Nevertheless, there is a predominate feeling that if a military intervention were to take place – relentless criticism would follow because the US does not have the right to intervene another state's sovereignty regardless of what its intentions are. However, if a military intervention were *not* to take place – again, relentless criticism would follow because the idea of leaving mass innocent civilians to the fate of whoever executed these attacks is truly immoral and unjust. Is this a losing battle?

### **THE PURSUIT OF PEACE**

The problem is that due to lack of evidence it is difficult to know what is going on inside the Syrian regime. Rumours have been circulating saying that the President's brother Maher al-Assad ordered the attack whilst another is that a local commander surpassed his orders by using chemicals. Yet another rumour emerges that this was a premeditated ruse by an insider to undermine the president. To speculate who used the chemicals is hard; it is no longer apparent who executed such an operation.

However, it is clear that Syrian civilians will be paying the price of dying horribly from these poisonous attacks. What these attacks magnify is the importance of understanding what truly happened and who is behind it in order to prevent it from happening again. Justice ought to be done and not just seen and uncovering those who are responsible in order to prevent it from happening should be the ultimate goal.