
WAR CRIMES AND THEIR PROSECUTION UNDER INTERNATIONAL LAW: A CASE STUDY OF THE SYRIAN CIVIL WAR

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ABSTRACT

The Syrian Civil War, with its origins in 2011, has generated global attention for its loss of humanitarian life, its egregious human suffering, gross violations of international humanitarian law, and systemic war crimes committed by both state and non-state actors. There have been numerous forms of war crimes during the conflict - indiscriminate bombings of civilian populations, proxy sieges, mass forced displacement of civilians, torture, extrajudicial killings, and the use of chemical weapons. Despite the numerous incidences of atrocities and egregious violations of international law being documented and condemned, accountability for war crimes has been legally and politically difficult.

This paper outlines the types and scope of war crimes in the Syrian conflict within the framework of international law. It identifies key legal regimes for prosecution—the Geneva Conventions, the Rome Statute, and customary international law—and examines avenues for accountability, including the International Criminal Court (ICC), national courts exercising universal jurisdiction, and ad hoc mechanisms like the UN's Commission of Inquiry on Syria (COI) and the International, Impartial and Independent Mechanism (IIIM).

The article contains a significant legal analysis of the issues and obstacles challenge these institutions and the wider international community in effectively responding to Syria's humanitarian disaster. These issues are exacerbated by the political deadlock in the context of the Security Council, which is caused primarily by veto actions or inaction; the limitations of existing international courts; and the importance of state sovereignty. The article finishes with a series of actionable recommendations that would improve accountability and justice in scenarios similar to that seen in Syria, which include Security Council reform; the effectuation of universal jurisdiction; the establishment of hybrid courts; and stronger evidence collection retention efforts. These reforms are necessary, not only for accountability for Syria but also for the credibility of international

humanitarian law and the broader global commitment to human rights and the rule of law.

Keywords: Syrian Civil War, War crimes, Geneva Conventions, Rome Statute, ICC, Universal jurisdiction, IIM, Accountability, Humanitarian law, Rule of law.

OBJECTIVE

The research will mainly focus on the following aims:

1. To identify and document the main war crimes that were perpetrated during the Syrian Civil War including, chemical weapons, attack on civilians, torture, and sieges.
2. To consider the international legal framework, including the conventions and treaties and customary norms, with respect to the definition and prosecution of war crimes.
3. To evaluate the international legal and institutional mechanisms (for example international criminal court (ICC) decisions, United Nations (UN) agencies, or even the legal systems of various countries) to determine whether they have been effective as mechanisms to ensure accountability for war crimes, as well as what obstacles were faced.
4. To consider barriers to prosecutions and justice, such as political interests, gaps in law, and implementation.
5. To make recommendations as to what international humanitarian law may need to improve and what international accountability mechanisms may need to be strengthened.

As a result of addressing these aims, the paper will contribute to the increasing discussion regarding the limitations of international law generally in relation to the issue of international accountability in complex protracted armed conflicts such as the case of Syria.

INTRODUCTION

The Syrian Civil War, which started in 2011 with the brutal suppression of unarmed protests by the Assad regime, has become one of the deadliest and most complicated of the 21st

century¹. What began as a national rebellion quickly changed to encompass a multifaceted civil war, embedding various elements of armed resistance within multiple factions to create a new multilateral conflict involving ISIS and other groups, Kurdish militia, and state and local actors like Russia, Iran, Turkey and the United States.² As the violence in Syria escalated, the civilian population paid the highest price. Residential neighbourhoods were bombed with barrel bombs and artillery³; schools and hospitals were targeted; and humanitarian aid was blocked or weaponised⁴; and millions of civilians were tortured, disappeared or held without charges. Additionally, the use of chemical weapons by the government of Syria, in Ghouta or Khan Shaykhun specifically, shocked the world onto an awareness of the extent of the moral failure of the state's violence, was obviously a breach of international legal norms⁵.

The civil war in Syria continues to involve serious violations of international humanitarian and human rights laws, as well as noting broad based war crimes legal mechanisms documented by the relevant UN agencies and other observers. However, those charged with violations are claiming impunity. Attempts to refer Syria to the ICC have been blocked by Russian and Chinese vetoes in the UN Security Council, further illustrating the political paralysis that undermines international law and empowers those responsible for violations. The issues of incomplete, flawed, or lack of evidentiary documentation persist. In addition, while the opposition is divided and there has been a rise in foreign of foreign fighters, loyalties have shifted on the ground, making it difficult to attribute specific crimes to identifiable perpetrators⁶. There are also independent investigator obstacles that limit the accessibility of Syrian territory to collect evidence. Even where mechanisms such as the International, Impartial and Independent Mechanism (IIIM) and the United Nations Commission of Inquiry (COI) have collected a great amount of documentation, the absence of a permanent, international structure where these crimes can be prosecuted limits application of case law⁷.

The analysis in this paper provides a legal analysis of the Syrian Civil War from the perspective of international law, addressing the relevant frameworks of law, accountability mechanisms, and their effectiveness. Syria can be used as an illustration of systematic challenges to the

¹ <https://www.hrw.org/world-report/2012/country-chapters/syria>

² <https://www.ohchr.org/en/documents/country-reports/ahrc4977-report-independent-international-commission-inquiry-syrian-arab>

³ <https://www.amnesty.org/en/latest/news/2015/05/syria-barrel-bombs-and-brutality>

⁴ <https://www.msf.org/syria-government-blocks-humanitarian-access>

⁵ <https://undocs.org/S/2016/738>

⁶ <https://www.hrw.org/news/2015/03/02/syria-armed-groups-using-tactics-repression>

⁷ <https://www.coalitionfortheicc.org/syria>

prosecution of war crimes as an opportunity to propose reforms that improve international criminal justice.

APPLICABLE LEGAL PROVISIONS

The prosecution of war crimes in the Syrian Civil War would be subject to many and overlapping legal instruments, such as treaty law, customary international law, and individual accountability mechanisms. The most relevant to the war crimes committed in the context of the Syrian Civil War are as follows:

1. Geneva Conventions of 1949 and Additional Protocols

Syria is party to all four Geneva Conventions⁸. The nature of the conflict is mostly non-international in character, with the Syrian state and many non-state actors. Thus, **Common Article 3 and Additional Protocol II** are of particular relevance.

- **Common Article 3:** Applies to non-international armed conflicts, excludes acts of violence to life and person, and prohibits murder, torture, and cruel treatment, acts of hostage taking, and outrages upon personal dignity⁹.
- **Additional Protocol II:** Provides protection for persons and objects not participating in hostilities and specifically prohibits and regulates the "treatment" of detainees, civilians, and cultural property¹⁰.

2. Rome Statute of the International Criminal Court (1998)

While Syria is not presently a State Party to the Rome Statute¹¹, the statute is still the international benchmark for the definition of war crimes, and its provisions can be used through:

- **UNSC referral** (which has been repeatedly blocked),
- **Or universal jurisdiction by other states.**

⁸ <https://ihl-databases.icrc.org/en/ihl-treaties/gc-1949-syria>

⁹ <https://ihl-databases.icrc.org/en/ihl-treaties/gc-1949-3/article-3>

¹⁰ <https://ihl-databases.icrc.org/en/ihl-treaties/apii-1977>

¹¹ <https://asp.icc-cpi.int/states-parties>

To reiterate, Article 8 of the Rome Statute criminalizes acts including:

- Intentionally directing attacks against civilians,
- Attacks on humanitarian personnel,
- Use of chemical weapons,
- Torture and inhuman treatment,
- Conscription of children under the age of 15.

3. Customary International Humanitarian Law (IHL)

Many principles of IHL are **binding regardless of treaty ratification**. These include:

- The prohibition of indiscriminate and disproportionate attacks¹²,
- The obligation to distinguish between civilians and combatants,
- The duty to provide humane treatment to detainees.

4. United Nations Security Council Resolutions

- **Resolution 2139 (2014)**: Demanded an end to indiscriminate aerial bombardment and humanitarian access¹³.
- **Resolution 2118 (2013)**: Addressed the destruction of Syria's chemical weapons¹⁴.

Despite these, attempts to refer Syria to the ICC (e.g., in 2014) were vetoed by Russia and China, blocking legal action at the highest level.

5. Chemical Weapons Convention (CWC), 1993

Syria joined the CWC in 2013 under international pressure after the Ghouta chemical attack¹⁵.

¹² <https://ihl-databases.icrc.org/en/customary-ihl/v1>

¹³ [https://undocs.org/S/RES/2139\(2014\)](https://undocs.org/S/RES/2139(2014))

¹⁴ [https://undocs.org/S/RES/2118\(2013\)](https://undocs.org/S/RES/2118(2013))

¹⁵ <https://www.opcw.org/media-centre/news/2013/09/syria-submits-accession-documents-join-chemical-weapons-convention>

Nevertheless, it has been repeatedly accused of violating its obligations under the CWC, most notably in the 2017 Khan Shaykhun attack.

CRITICAL LEGAL ANALYSIS

1. Legal Framework vs. Political Paralysis

The Syrian Civil War has highlighted the limits of international law in providing accountability in wartime. While there is an established legal framework found in International Humanitarian Law and International Criminal Law, implementation is hindered by political considerations. The International Criminal Court (ICC) is unable to act because Syria is not a State Party to the Rome Statute and the Security Council (to whom the court relies on for referrals) is being blocked by Russian and Chinese vetoes. The Syrian Civil War illustrates that competing political interests ultimately supersede legal obligations, and that as a result the ICC becomes a somewhat institutionally hollow organization and impunity becomes ingrained in a culture that compromises the establishment of integrity with respect to international accountability and justice.

2. Alternative Mechanisms and Their Limits

Recognizing the constraints of traditional mechanisms, the international community has sought alternatives. The UN's Commission of Inquiry on Syria (COI), which started in 2011, has reported considerable and widespread abuses but lacks prosecutorial authority¹⁶. The establishment of the International, Impartial and Independent Mechanism (IIIM) in 2016 offered a modestly positive step forward because the IIIM involved retaining evidence and aiding in prosecutions, but the IIIM cannot lay charges or prosecute offenders themselves¹⁷. National courts in countries such as Germany, have used universal jurisdiction, which enabled them to prosecute individuals in the landmark Koblenz trial. However, these represent limited initiatives and only relate to lower-level offenders¹⁸.

3. Legal Gaps and Enforcement Challenges

Sovereignty vs. Accountability: One of the most persistent challenges in prosecuting war

¹⁶ <https://www.ohchr.org/en/hr-bodies/hrc/iici-syria/index>

¹⁷ <https://undocs.org/A/RES/71/248>

¹⁸ <https://www.ccchr.eu/en/case/first-trial-worldwide-on-torture-in-syria/>

crimes in Syria is the conflict between state sovereignty and the demands of international justice. The Syrian regime's refusal to cooperate with international investigations, and its protection by powerful allies, demonstrates how sovereignty can shield violators from accountability.

Access to Crime Scenes: The ongoing conflict, security risks, and denial of access to affected areas severely restrict independent verification. This hampers evidence collection, delays proceedings, and compromises witness protection. The lack of real-time, on-the-ground access affects the quality and admissibility of evidence in legal proceedings.

Non-State Actors: Armed groups such as ISIS, Hay'at Tahrir al-Sham (HTS), and other militias have committed atrocities including mass executions, sexual violence, and targeting of civilians. However, international law lacks a comprehensive and uniform framework to prosecute these non-state actors. While individuals can be prosecuted under ICL, institutional mechanisms to consistently address crimes by insurgent or terrorist groups remain fragmented.

Victim Participation: International mechanisms often provide limited roles for victims, reducing their agency in the pursuit of justice. Affected populations rarely have direct access to proceedings, and reparative or restorative justice measures are minimal. This gap contributes to a sense of injustice and exclusion among survivors.

4. Implications for International Law

Syria is not just a humanitarian crisis but a test of international law's credibility. Failure to prosecute war crimes risks normalizing impunity and weakening the deterrent power of IHL and ICL. The Syrian case shows how realpolitik can undermine international justice, exposing the need for reforms to make it more independent, resilient, and universally applied¹⁹.

RECOMMENDATIONS

In order to restore faith in international law and ensure accountability for Syria's victims, the following steps must be taken:

1. **Reform UN Security Council Veto Power:** Restrict the veto over mass atrocities by

¹⁹ <https://www.ibanet.org/article/7BB22C43-9F3E-4F76-9E77-9D5C45D73E69>

supporting initiatives like the Code of Conduct regarding Security Council action against genocide, crimes against humanity or war crimes and the Responsibility Not to Veto initiative. These initiatives call upon the permanent members of the Security Council to voluntarily refrain from using their veto in cases involving mass atrocities. Establishing these norms as a permanent part of the UN may help prevent geopolitical paralysis and facilitate timely responses to the most egregious crimes. Member states should encourage the P5 to mutually embrace and commit to these norms²⁰.

2. **Expand Universal Jurisdiction:** Encourage more states to enact and implement universal jurisdiction statutes that allow their national courts to prosecute individuals accused of international crimes regardless of where the crimes occurred or the nationality of the perpetrator. Support must also be extended to build the capacity of domestic legal systems—through training, resource allocation, and technical assistance—to investigate and adjudicate complex war crimes cases effectively. Greater cooperation among states in evidence-sharing and extradition processes is essential to enhancing the reach and impact of these efforts²¹.
3. **Establish a Hybrid Tribunal:** In instances where political barriers impede ICC engagement, an ad hoc or hybrid tribunal may offer a more practical solution. Potentially following models such as the Special Tribunal for Lebanon or the Extraordinary Chambers in the Courts of Cambodia, a tribunal for Syria would offer an amalgamation of international and domestic bodies that would provide legal accountability combined with regional legitimacy²². It would allow for greater participation by Syrian lawyers and civil society and would provide space for local justice while maintaining international standards.
4. **Support the IIIM:** The International, Impartial and Independent Mechanism (IIIM) must receive sustained political and financial support to fulfill its mandate effectively. This includes ensuring that its collected evidence is fully accessible and admissible in both international and national proceedings. Furthermore, states should be encouraged to incorporate IIIM findings into their prosecutorial strategies and strengthen

²⁰ <https://www.globalr2p.org/resources/code-of-conduct-regarding-security-council-action-on-atrocity-crimes/>

²¹ <https://www.hrw.org/news/2020/12/17/universal-jurisdiction-questions-and-answers>

²² <https://www.ictj.org/publication/hybrid-courts-lessons-learned>

cooperation between the IIIM and domestic jurisdictions pursuing cases under universal jurisdiction.

5. **Victim-Centred Approaches:** The voices and needs of victims should be prioritized in any justice process, including their roles in the design and implementation of justice processes, access to reparations—including financial compensation, psychosocial support, and symbolic reparations such as acknowledgments or public apologies—and participation in justice processes. In some instances, truth commissions can provide an important space for documenting experiences, recording collective memory, and allowing for reconciliation while simultaneously making some of the wrongdoers accountable. A central tenet of any justice process is ensuring victims are treated with dignity, and there is meaningful engagement with the victim's experience including redress.²³

CONCLUSION

The Syrian Civil War crystalizes the perpetual discrepancy between international legal principles and practical enforcement. While there are existing legal norms that prohibit war crimes, the international community's responses have been inconsistent and largely ineffective as a result of political gridlock and institutional limitations. The repeated failures of the UN Security Council - mostly because of the use of veto power by permanent members of the Council - has exposed the limits of reliance on political bodies to provide neutral assessments of legal norms. Yet, developments through universal jurisdiction and investigative bodies like the IIIM show that justice can still be realized, albeit it may be delayed. Initiatives like these have demonstrated that alternate mechanisms of accountability can produce meaningful results, even when full international agreement may not be available. The prosecution of mid-level perpetrators by domestic courts does provide some reason for hope, although there is no substitute for a comprehensive, international response.

The global legal profession must take real steps for meaningful reform to ensure international law is a genuine deterrent for impunity. Key priorities include reducing veto power for mass atrocity, enhancing evidentiary compilation, and supporting hybrid tribunals. Any justice for

²³ <https://www.ictj.org/publication/victims-participation-and-reparation-transitional-justice-processes>

Syria must be real, victim-centered, and more than symbolic, to re-invigorate faith in international law, to avoid a failure of international law.