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THE RIGHTS OF THE CHILD IN THE SYRIAN ARAB REPUBLIC

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INTRODUCTION

This paper provides the reader with an overall view of the situation of the rights of the child in the Syrian Arab Republic. After six years from the outbreak of the civil war in Syria, which broke out following the arrest, detention and torture of a group of Syrian children, the people of Syria are still facing the largest humanitarian crisis in the world. In a country that has proclaimed the state of emergency in 2011, just at the beginning of the war, systematic violations of human rights law have become normality. Children, the category of persons that should be most safeguarded according to International Law, are the ones paying the heaviest price in this conflict.

According to UNICEF (United Nations International Children's Emergency Fund), the United Nation's specialised agency for the protection of children and their rights, "Nearly 6 million children now depend on humanitarian assistance, with almost half forced to flee their homes"¹. Those who fled are living as refugees in neighbouring countries like Egypt, Iraq, Jordan, Lebanon and Turkey. As a result, these children and their families have lost their right to Syrian citizenship and all the rights and the legal protection that deriving from it. According to Save the Children, one of the most active international non-governmental organizations that promotes children's rights, provides relief and supports children in developing countries, in Syria, two out of three children suffer a war related loss, lost a loved one, had their house bombed or suffered injuries of various kind. Fifty percent of Syrian children are no longer in school and lack a proper education. Moreover, one child out of four is at risk of severe mental health disorders, the main cause of which being the constant exposition to bombing and shelling across the whole country². Being aware of the critical situation that Syrian children have been forced to experience is of paramount importance for whoever believes in the vital importance and integrity of human rights. Awareness is the first step towards action; if, as a democratic society governed by the rule of law, we want to contrast the unlawful and immoral actions pursued by the servants and supporters of dictatorships, we have to be well aware about those actions. If we want to relieve the suffering inflicted to innocents, and especially to children, we cannot assume that just because a State has ratified an international convention on Human Rights, it will consequently respect it. We need to understand reality as brutal as it is, and acknowledge that there are States, like the Syrian Arab Republic, that systematically violate the most fundamental norms of international, humanitarian and human rights law.

¹ UNICEF, *Syrian Crisis. Reaching #ChildrenUnderAttack*, n.d., available *online*.

² SAVE THE CHILDREN, *Syria's Children Are Living a Nightmare*, n.d., available *online*.

This last statement leads us to introduce the structure of the present dissertation. The first chapter, will consist of an analysis of the most important sources of law related to the rights of the child, such as the “Declaration on the Rights of the Child” and the “UN Convention on the Rights of the Child”, inclusive of its three Optional Protocols; the focus will be put on the provisions that are considered to have the most relevance for the purpose of our research. This chapter will also cover the treaty body that monitors the implementation of the Convention on the Rights of the Child (from now on often referred to with its acronym “CRC”), namely, the Committee on the Rights of the Child, and will be concluded with an excursus on the objections to the idea of the universal character of Human Rights in respect of the Convention, eventually linking such argument with the actual reservations to the CRC made by Islamic States.

The second chapter is an attempt to bring the reader into the actual reality that Syrian children have always faced. This chapter deals with the traditional attitudes that the Syria State and Syrian parents have towards (their) children, with the way they are treated, or mistreated, both in the domestic context by their families and in the public sphere by the Government. Particular attention is paid to the issues of Syrian children’s health, juvenile justice and the presence of discriminatory provisions in Syrian national legislation. After each account of the Syrian Government’s performance with respect to a specific field or subject of which it is in charge will be given, a prospect of the Articles of the CRC which have been systematically violated by such Government will be provided. Basically, this method covers first “how things go” in Syria, and then “how things *should* go” according to the Convention on the Rights of the Child.

The aim of the third and last chapter is to highlight some of the most remarkable structural (i.e. repeated) violations of the CRC, committed by the Syrian State, from the beginning of the Syrian civil war until present. The chapter will start with an overview of the war and the different factors that triggered it; then, it will go over the above-mentioned structural violations of the CRC. Particular attention will be paid to Syria’s use of chemical weapons during the war, and a case study on the debated Khan Shaykhun chemical attack will be addressed. The dissertation will be concluded by discussing the immunity from prosecution to Syrian security and intelligence agencies responsible for Human Rights violations, and the reactions of the international community, especially of the United Nations to such systematic violations.

CHAPTER 1: THE CONVENTION ON THE RIGHTS OF THE CHILD

1.1 From moral authority to binding force, the drafting of the Convention on the Rights of the Child

One of the first and most important official documents promoting the rights of the child, which later became the first source of international law entirely related to children's rights, was the *Declaration of the Rights of the Child*, also known as *Declaration of Geneva*. It was originally drafted in 1923 by Eglantyne Jebb, a British social reformer and founder of the Save the Children organization, which is still active across the entire world. In 1923, Jebb headed to Geneva, to attend a meeting of the International Union, with a plan for a Children's Charter. Jebb drafted a brief and concise text, which stated the rights, that according to her, had to be recognized universally and without discrimination to all children, and which advocated the duty of the International Community to put children's rights at the top of their agenda. On 26 September of the following year the document was endorsed by the League of Nations' General Assembly³, making it the first human rights documents approved by an inter-governmental organization, 24 years before the official approval of the most famous *Universal Declaration of Human Rights*⁴. The original text of the document contained 5 basic principles⁵:

1. The child must be given the means requisite for its normal development, both materially and spiritually;
2. The child that is hungry must be fed; the child that is sick must be nursed; the child that is backward must be helped; the delinquent child must be reclaimed; and the orphan and the waif must be sheltered and succoured;
3. The child must be the first to receive relief in times of distress;
4. The child must be put in a position to earn a livelihood, and must be protected against every form of exploitation;
5. The child must be brought up in the consciousness that its talents must be devoted to the service of fellow men.

³ League of Nations, *Geneva Declaration of the Rights of the Child of 1924*, adopted 26 September 1924.

⁴ T. BUCK, *International Child Law*, Routledge, 2014.

⁵ League of Nations, *Geneva Declaration of the Rights of the Child of 1924*, adopted 26 September 1924.

The *Declaration* was reaffirmed by the League of Nations in 1934. On 20 November 1959, the text of the document was modified, expanded and officially adopted by the United Nations⁶; this date has been adopted as the Universal Children's Day. Once again, this document did not have any international legal binding force, but the unanimity of the General Assembly in the decision to endorse it gave it strong moral authority.

The main difference that can be perceived by comparing the two texts is that in the one drafted by the UN in 1959, the child emerges as an "active participant in the enjoyment of human rights and freedoms"⁷, differently from the 1924 version, which pictures the child more as a "passive recipient of international humanitarian aid"⁸. The text of the *Declaration of the Rights of the Child* endorsed by the UN in 1959 consist of 10 principles; for the purpose of the present paper, the principles considered to have the most relevance are principles 6, 7, 8, 9 and 10⁹:

"Principle 6

The child, for the full and harmonious development of his personality, needs love and understanding. He shall, wherever possible, grow up in the care and under the responsibility of his parents, and, in any case, in an atmosphere of affection and of moral and material security; a child of tender years shall not, save in exceptional circumstances, be separated from his mother. Society and the public authorities shall have the duty to extend particular care to children without a family and to those without adequate means of support. Payment of State and other assistance towards the maintenance of children of large families is desirable.

Principle 7

The child is entitled to receive education, which shall be free and compulsory, at least in the elementary stages. He shall be given an education which will promote his general culture and enable him, on a basis of equal opportunity, to develop his abilities, his individual judgement, and his sense of moral and social responsibility, and to become a useful member of society.

The best interests of the child shall be the guiding principle of those responsible for his education and guidance; that responsibility lies in the first place with his parents.

The child shall have full opportunity for play and recreation, which should be directed to the same purposes as education; society and the public authorities shall endeavor to promote the enjoyment of this right.

⁶ United Nations General Assembly Resolution 1386 (XIV) of 20 November 1959.

⁷ T. BUCK, *International Child Law*, Routledge, 2014, p. 48.

⁸ T. BUCK, *op. cit.*, p. 48.

⁹ UN General Assembly Resolution 1386 (XIV) of 20 November 1959.

Principle 8

The child shall in all circumstances be among the first to receive protection and relief

Principle 9

The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form.

The child shall not be admitted to employment before an appropriate minimum age; he shall in no case be caused or permitted to engage in any occupation or employment which would prejudice his health or education, or interfere with his physical, mental or moral development.

Principle 10

The child shall be protected from practices which may foster racial, religious and any other form of discrimination. He shall be brought up in a spirit of understanding, tolerance, friendship among peoples, peace and universal brotherhood, and in full consciousness that his energy and talents should be devoted to the service of his fellow men.”

Although the *Declaration of the Rights of the Child* was finally endorsed by the UN and accepted by a large number of states, the shared opinion in the international community was to avoid the creation of a *binding* treaty on the subject of children’s rights. Nevertheless, in 1978, Poland went ahead proposing a draft text for an actual Convention on the Rights of the Child, meant as a treaty of binding nature. However, the text submitted by the Polish was seen by many State parties as a mere replication of the already existing *Declaration of the Rights of the Child* of 1959, and its wording as too vague for a text intended to be legally binding on states. In 1979, the United Nations took the initiative; the General Assembly proclaimed that year as the “International Year of the Child”, and the United Nations Commission on Human Rights (UNCHR), the functional commission which was later replaced by the United Nations Human Rights Council in 2006, formed an open-ended working group in order to create an actual Convention on the Rights of the Child by reviewing and drawing upon the Polish text. The group was open-ended because besides the 43 States that were represented in the UNCHR at that time (not all the UN member states), it was decided to allow also other intergovernmental organizations, non-governmental organizations and other non-represented UN member states to participate and contribute in the drafting process¹⁰. The NGO representatives who were included had in practice no absolute right to speak, but rarely

¹⁰ T. BUCK, *International Child Law*, Routledge, 2014.

were their requests to take the floor refused¹¹. Thus, we could say that the *Convention* was created by a collective effort performed by a multitude of governmental and non-governmental bodies with a shared interest and a shared target, legitimating the protection of the rights of the child. NGO's contributions were particularly remarkable; in fact, the action and range of activity of the participant NGOs was considered to include directly subjects dealt in no less than 13 articles of the *Convention* and indirectly, but still importantly, subjects dealt in a further similar number of articles¹². Among the most important international organizations that took part in the *Convention's* drafting process were instead the Office of the United Nations High Commissioner for Refugees (UNHCR), the International Labour Organization (ILO), the United Nations Children's Fund (UNICEF) and the World Health Organization (WHO)¹³. Obviously, it would be unrealistic to say that every actor or every category of actors gave the same contribution to the drafting process. In fact, some criticism arose about the *Convention on the Rights of the Child* (which from now on will be sometimes abbreviated with its acronym "CRC") being a "Northern-oriented" document, because of the active involvement and over-representation of industrialized countries during the drafting. However, especially in the last years before the *Convention* was adopted, active contributions by some developing States, southern States and States with Islamic Law certainly became more remarkable¹⁴. The final text was finally adopted by the working group in December 1988, then it was transmitted to the General Assembly for approval, it was unanimously adopted by the latter on 20 November 1989, opened for signature to all UN member States on 26 January 1990, and it entered into force on 2 September 1990¹⁵. In order to encourage as many states as possible to ratify the emerging treaty, the working group decided to adopt a method of consensus working, meaning that no votes were taken during the course of the drafting process. This choice was definitely a success, on the first day in which the CRC was opened for signature approximately 61 member states signed. That is something very unusual for an international treaty with binding force. Today, the *Convention* has reached almost global ratification, it has 196 state parties, missing only the ratification the United States¹⁶. Two elements that certainly contributed to the emergence of children's issues as a priority in the international agenda are the movement for children rights, which developed during the 1990's, and the child survival campaign resulting in the *World Summit*

¹¹ S. DETRICK, *A Commentary on the United Nations Convention on the Rights of the Child*, Martinus Nijhoff Publishers, 1999.

¹² T. BUCK, *International Child Law*, Routledge, 2014.

¹³ Office of the United Nations High Commissioner for Human Rights, *Fact Sheet No.10 (Rev.1). The Rights of the Child*.

¹⁴ N. CANTWELL, *The Origins, Development, and Significance of the United Nations Convention on the Rights of the Child*, in N. CANTWELL, S. DETRICK, J. E. DOEK, *The United Nations Convention on the Rights of the Child: A Guide to the "Travaux Préparatoires"*, Martinus Nijhoff Publishers, 1992.

¹⁵ T. BUCK, *International Child Law*, Routledge, 2014.

¹⁶ T. BUCK, *International Child Law*, Routledge, 2014.

for Children in 1990, held at the United Nations headquarters in New York. The *Summit*, which involved 71 heads of state and 88 senior officials, resulted in the drafting and adoption of a *Declaration on the Survival, Protection and Development of Children* and a *Plan of Action for Implementing the Declaration in the 1990s*. The latter texts set a number of targets and goals aimed at improving the survival of children and their opportunities for positive growth and development, such as “the reduction of infant and under-five mortality, the reduction of maternal mortality, the reduction of severe and moderate malnutrition among under-five children, universal access to safe drinking water, greater food supply and sanitary means of sewage disposal, universal access to basic education, the completion of primary education, the reduction of adult illiteracy rate and the improved protection of children in difficult circumstances”¹⁷. As Detrick, one of the scholars who provided a thorough analysis of each of the substantive articles of the *Convention*, concludes: “While the Convention on the Rights of the Child may not be the last – or complete – word on children’s rights, it is the first universal instrument of a legally binding nature to comprehensively address those rights”¹⁸. One of the main elements that gives significance to the *Convention on the Rights of the Child*, from a juridical point of view, is that the latter is the first *right-based* international treaty specifically aimed at safeguarding the position of children. The CRC contains both “first generation rights”, i.e. civil and political rights and “second generation rights”, i.e. social, economic and cultural rights. “[It] is a good example of the “globalization” process, the worldwide convergence of normative legal standards”¹⁹.

1.2 The Committee on the Rights of the Child

We can refer to United Nations committees as *treaty bodies* when their primary function, and the main reason for which they were created, is to monitor the implementation of particular United Nations treaties by States which ratified the treaties in question. The Committee on the Rights of the Child is the treaty body that was created under article 43 of the *Convention on the Rights of the Child*, in order to monitor the implementation of the latter.

“Article 43.1

¹⁷ T. BUCK, *op. cit.*, p. 49.

¹⁸ S. DETRICK, *A Commentary on the United Nations Convention on the Rights of the Child*, Martinus Nijhoff Publishers, 1999, p. 271.

¹⁹ T. BUCK, *International Child Law*, Routledge, 2014, p. 47.

For the purpose of examining the progress made by States Parties in achieving the realization of the obligations undertaken in the present Convention, there shall be established a Committee on the Rights of the Child, which shall carry out the functions hereinafter provided”²⁰.

1.2.1 Functions of the Committee

The functions of the Committee on the rights of the Child are laid down under articles 44 and 45 of the CRC. As we have already said above, the main, macro-function of the Committee is to monitor the implementation of the CRC, but in which way? Article 44.1 states that:

“States Parties undertake to submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have adopted which give effect to the rights recognized herein and on the progress made on the enjoyment of those rights

(a) Within two years of the entry into force of the Convention for the State Party concerned;

(b) Thereafter every five years”²¹.

Thus, the Committee is the body which is responsible for the examination of the reports submitted by State parties. Reports are meant to highlight the steps which State parties have undertaken to put the *Convention* into effect and they should illustrate the progress in the enjoyment of children’s rights in the territories of the State, as well as the factors and difficulties encountered by the State in the implementation of the Convention, and the “implementation priorities” and “specific goals for the future”. Moreover, after having reviewed each report, the Committee addresses its concerns and recommendations to the State party, formulating a so-called *Concluding Observation*, a statement which will subsequently have to be transmitted to the General Assembly, together with the comments or replies from the State Party concerned, if there are any. Concluding Observations are meant to be not only public, but publicized in the State Party concerned, in order to foster national debate on the issues isolated by the Committee on the Rights of the Child. In any case, Governments are expected to implement the recommendations contained in *Concluding Observations* addressed to them²². Another important function of the Committee is to analyze and interpret the content of human rights provisions, formulating the so-called *General Comments*. Furthermore, the Committee organizes days of “general discussion” on thematic (human rights) issues, in which both United Nations bodies, and State delegations, and non-governmental organizations are invited to participate. Examples of subjects of general discussion are: economic

²⁰ *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531.

²¹ *ibidem*.

²² Office of the United Nations High Commissioner for Human Rights, *Fact Sheet No.10 (Rev.1). The Rights of the Child*.

exploitation of children, the rights of the child in the family context, the rights of the girl child, juvenile justice and more²³. Since under International Law, and in particular under the network of United Nations mechanisms, also individuals are able to complain about or report human rights violations related to their persons, the *Committee* may consider individual communications alleging violations of the *Convention on the Rights of the Child* or its two first Optional Protocols on the sale of children, child prostitution and child pornography (OPSC), and on the involvement of children in armed conflict (OPAC) by State parties to the Third Optional Protocol on a communications procedure (OP3-CRC). Moreover, the Committee may carry out inquiries into allegations of grave or systematic violations of rights under the *Convention* and its two optional protocols²⁴. The Committee meets at the United Nations Centre for Human Rights in Geneva. Generally, it holds three sessions a year, each session being of four weeks duration. The last week is reserved for preparation of the next session. Prior to each session, a working group of the Committee meets in order to carry out a preliminary examination of reports received by State parties, considering also information provided by other human rights treaty bodies. After having examined a specific report, the working group formulates a “list of issues”, which gives the *Committee on the Rights of the Child* a preliminary indication of the issues that should be considered to be priorities for discussion, the list is sent to the Government concerned with an invitation to participate in a forthcoming plenary session of the Committee at which its report will be considered. The Government is invited to respond to the issues in writing, before the session²⁵.

1.2.2 Composition of the Committee

The *Committee on the Rights of the Child* is composed of 18 independent experts. The members of the Committee are persons of high moral character and recognized competence in the field of Human Rights. They represent a variety of professional backgrounds, including human rights and international law, juvenile justice, social work, medicine, journalism and governmental and non-governmental work. Members of the Committee are elected by State parties to the *Convention*, from among their nationals, for a term of four years, and may be re-elected if nominated²⁶.

1.3 Optional Protocol on the Involvement of Children in Armed Conflict

The *Optional Protocol on the Involvement of Children in Armed Conflict* (OPAC) is one of the three additional Protocols to the *Convention on the Rights of the Child*. These Protocols are

²³ *ibidem*.

²⁴ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *Committee On The Rights Of The Child. Monitoring children's rights*, available *online*.

²⁵ Office of the United Nations High Commissioner for Human Rights, *Fact Sheet No.10 (Rev.1). The Rights of the Child*.

²⁶ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *Committee on the Rights of the Child. Membership*, available *online*.

“optional” due to the fact that realistically, not all States will want to bind themselves to additional International Law norms besides those already agreed upon and stated in the CRC²⁷. OPAC is aimed at protecting children living in war-torn societies from the physical and psychological harms that they might suffer arising from these circumstances. It was conceived to be a more focused legal framework (in relation to the CRC) regarding the association of children with armed forces and groups²⁸. In 1994, The United Nations Commission on Human Rights set up a working group in order to draft the *Protocol*, after six years of discussion and negotiation the working group finally reached agreement and came up with a final text, which was officially adopted on 25 May 2000 and entered into force on 12 February 2002. The changing nature of modern warfare, and the growing easy availability of small arms and light weapons has turned children into precious resources and additional combatants for state, and especially non-state armed actors, leading to the recruitment of thousands of child-soldiers. Today, children as young as eight years of age are torn away from their families and exposed to the horrors and violence of armed warfare and guerrillas. Often, these children are kidnapped directly from the streets by paramilitary groups in search for new recruits. Sometimes instead, children living in conditions of extreme poverty, lack of opportunities, or simply motivated by ideological attraction and propaganda join voluntarily armed forces. Some children are also sent directly from their families in order to find a basic source of income or to defend their communities. The child-soldiers are used by paramilitary groups in a variety of ways: they might be put on the frontline as direct combatants or they might carry out support functions such as messengers, spies, cooks etc. Female children, besides being employed as soldiers, are often subjected to rape and sexual violence²⁹. The *Optional Protocol on the Involvement of Children in Armed Conflict* was devised to address these particular issues, but it is not the first legally binding document with such purpose. The prior standard and legal framework concerning the involvement of children in armed conflicts was set out by the *Geneva Conventions* (GC) of 1949 and their *Additional Protocols* (AP) of 1977 applying both to international and internal armed conflicts³⁰. Moreover, article 38 of the *Convention on the Rights of the Child* already stated³¹:

1. “States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.

²⁷ T. BUCK, *International Criminalisation and Child Welfare Protection: the Optional Protocol to the Convention on the Rights of the Child*, in *Children and Society*, 2008, n. 22.

²⁸ R. COOMARASWAMY, *The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict - Towards Universal Ratification*, in *International Journal of Children's Rights*, 2010, n.18.

²⁹ R. COOMARASWAMY, *The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict - Towards Universal Ratification*, in *International Journal of Children's Rights*, 2010, n.18.

³⁰ R. COOMARASWAMY, *op. cit.*

³¹ *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531.

2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.
4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict”.

Both the latter provision and Article 77 of the *Additional Protocol I* of the *Geneva Conventions* sets the minimum age for recruitment and direct participation in hostilities at 15 years old, although Art. 38 CRC states that in recruiting children between fifteen and eighteen years old, priority should be given to the oldest. Considerable criticism arose about the latter article, since it does not introduce any improvement to the already existing International Law on child recruitment i.e. *Geneva Conventions*. On the contrary, Art. 38 CRC seems like a step back from the already existing standard, since it only prohibits *direct* participation of children under fifteen in armed conflicts, while the AP II to the *Geneva Conventions* already offered protection against *indirect* participation during internal strife. This criticisms and inconsistencies are the main reasons why the OPAC was drafted³². The main innovation that came with the *Optional Protocol on the Involvement of Children in Armed Conflict* is the raising of the minimum age for compulsory recruitment and participation in hostilities from fifteen to eighteen years old, as stated in the first article of the *Protocol*:

“States Parties shall take all feasible measures to ensure that members of their armed forces who have not attained the age of 18 years do not take a direct part in hostilities”³³. Nevertheless, the latter article does not encompass indirect participation of children in armed conflicts. Also in Article 2, which demands that “persons who have not attained the age of eighteen years are not compulsorily recruited into their armed forces”³⁴ voluntary recruiting below the age of eighteen is still permitted. However, Article 3 contains sort of a legal loophole to the last provisions which have just been discussed, as it urges State parties to raise the minimum age of voluntary recruitment to eighteen years old, by depositing a binding declaration specifying this minimum age, thus

³² R. COOMARASWAMY, *The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict - Towards Universal Ratification*, in *International Journal of Children's Rights*, 2010, n.18.

³³ *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, adopted 25 May 2000, United Nations Treaty Series, vol. 2173, no. 27531, Art. 1.

³⁴ *Ibidem*.

conforming to a common “straight eighteen” ban for both direct and indirect involvement in armed conflicts. Furthermore, Art. 3 binds States to put safeguards in place in order to ensure that voluntary recruitment is *genuinely* voluntary, that such recruitment is done with the informed consent of the child’s parents or legal guardians, that the child is fully informed of the duties involved in such military service, and that he or she provides reliable proof of age prior to acceptance into national military service. In any case, today some States have adopted the “straight eighteen” standard prohibiting both compulsory and voluntary recruitment under eighteen years of age, but many others continue to allow voluntary enlistment under eighteen as long as the conditions outlined in the Protocol are met. One of the few exceptions to the prohibition of the participation of children in armed conflict, granted by the *Optional Protocol*, is applied to military schools. On this matter, Article 4 clarifies that this and any exception to the *Protocol* may be granted only, in some definite cases to state-actors, and by no means to “Armed groups that are distinct from the armed forces of a State”³⁵. Article 5 states that States are free to bind themselves to standards on the recruitment and use of children in armed conflict that provide greater protection for children's rights than the one established by the OPAC. Finally, articles 6 and 7 call upon States to cooperate, through technical assistance and financial support in order to actually implement the norms set out in the *Protocol*³⁶.

1.3.1 Ratification of the Optional protocol by UN member states

The *Optional Protocol on the Involvement of Children in Armed Conflict* has not yet reached universal ratification. As of today, 166 States are parties to the *Protocol*, 13 States have signed it but not ratified it, and 18 States have taken no action with respect to the latter, including Democratic people’s republic of Korea (North Korea), United Arab Emirates and Mauritania³⁷. In 1997, the United Nations Secretary-General appointed a Special Representative for Children and Armed Conflicts (SRSG), with a mandate to promote the rights, protection and well-being of children during every phase of armed conflicts. From a collective effort of the Office of the above-mentioned Special Representative, UNICEF and the Office of the United Nations High Commissioner for Human Rights, a two-year global campaign called “Zero Under Eighteen” was launched, with the aim to promote universal ratification of the OPAC by the tenth anniversary of its entry into force, thus by 2012; clearly this objective is still to be achieved. The campaign mainly

³⁵ *Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict*, adopted 25 May 2000, United Nations Treaty Series, vol. 2173, no. 27531, Art. 4.

³⁶ R. COOMARASWAMY, *The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict - Towards Universal Ratification*, in *International Journal of Children's Rights*, 2010, n.18.

³⁷ Data on ratification of 18 international human rights treaties are available online, provided by the website of the Office of the United Nations High Commissioner for Human Rights.

focused on encouraging States that were not yet party to the Protocol to sign and ratify, and to deposit their binding declaration establishing eighteen years as the minimum age for voluntary enlistment in the Armed Forces also. Additionally, the campaign urged also States that had already ratified the Protocol, but had not adopted the “straight eighteen” standard on voluntary recruitment, to change their position and deposit their binding declaration³⁸. Limited financial budgets, human resources and technical capacities constrain often small States from ratifying and fully implementing the Protocol. Moreover, the implementing process of some norms of the CRC, due to these administrative and logistic processes, the reporting obligations in particular, are expensive and time-consuming undertakings³⁹.

1.4 Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography

The *Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography* (OPSC) is another additional Protocol to the *Convention on the Rights of the Child*, having as overall aims to strengthen international criminalization of commercial sexual exploitation of children (CSEC) and to provide welfare protection for children victims of these crimes. Nevertheless, as Buck argues, some criticism has been raised by legal experts, claiming that “The content of OPSC itself has emerged more as an instrument of international criminalisation as its central thrust rather than a comprehensive package of welfare protection”⁴⁰. The *Protocol* was opened for signature in May 2000, it came into force on 18 January 2002. As of today, 173 States are party to it, 9 States have signed but not ratified it and 16 States have taken no action with respect to the latter⁴¹. During the first decade of the 2000’s, the international community has progressively put at the center of its agenda the issues related to the trafficking of children, child prostitution and child pornography, activities which are often related to organized crime. Already in 1990, increasing concerns about the growing practice of sex tourism led to the appointment of a Special Rapporteur on the sale of children, child prostitution and child pornography by the UN Commission on Human Rights, the main tasks of whom being to visit a number of countries, provide recommendations about the implementation of the OPSC to the Governments and eventually report to the Economic and Social Council of the Human Rights Council. Prior to the CRC and the OPSC, other international legal instruments were created in order to provide protection from CSEC, such as the ILO Convention 182 (Worst Forms of Child Labour Convention) in 1999 and the UN’s Protocol to Prevent,

³⁸ R. COOMARASWAMY, *The Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict - Towards Universal Ratification*, in *International Journal of Children's Rights*, 2010, n.18.

³⁹ R. COOMARASWAMY, *op. cit.*

⁴⁰ T. BUCK, *International Criminalisation and Child Welfare Protection: the Optional Protocol to the Convention on the Rights of the Child*, in *Children and Society*, 2008, n. 22, p. 176.

⁴¹ Data on ratification of 18 international human rights treaties are available online, provided by the website of the Office of the United Nations High Commissioner for Human Rights.

Suppress and Punish Trafficking in Persons, Especially Women and Children in 2000⁴². The key provision in this *Optional Protocol* is Article 1, which contains the basic duty for State parties to prohibit the sale of children, child prostitution and child pornography. Article 2 instead, defines these practices as follows:

“a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes”⁴³.

Article 3 established the minimum duty for State parties to ensure that commercial sexual exploitation of children in general, and other specific criminal acts affecting the well-being of children are fully prosecuted under criminal or penal law. Some important examples are the offering, delivering or accepting, by whatever means, a child for the purpose of:

- a. sexual exploitation of the child;
- b. transfer of organs of the child for profit; and
- c. engagement of the child in forced labour;

The *Protocol* encompasses both compulsory and discretionary duties on State parties to take appropriate measures to prosecute the above-mentioned criminal acts. According to Article 4, the duties are mandatory when the offences are committed within the State’s territory, and discretionary when the alleged offender is a National of (or has his/her habitual residence in) that State or when the victim is a national of that State. Under Article 5, extraditable offences are defined to include the offences established under the OP. Article 6 and 7 respectively establish a duty of mutual State party assistance with respect to investigations of such criminal or extraditable proceedings, and a duty to provide for the seizure and confiscation of goods, assets, etc. used to commit offences covered by the *Protocol*. While the OPSC articles that have just been discussed are focused on the strengthening of the international criminalization of CSEC, the articles 8-11 are based on the

⁴² T. BUCK, *International Criminalisation and Child Welfare Protection: the Optional Protocol to the Convention on the Rights of the Child*, in *Children and Society*, 2008, n. 22.

⁴³ *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, adopted 25 May 2000, United Nations Treaty Series, vol. 2173, no. 27531, Art. 2.

welfare protection of child victims, establishing duties to protect the rights and interests of child victims at all stages of the criminal justice process (Article 8), to support laws, social policies and programmes to prevent the Protocol offences and promote public awareness (Article 9) and to take all necessary measures in order to strengthen international cooperation (Article 10). For what concerns the OPSC's reporting duties, State parties are required to submit an initial comprehensive report within two years from the entry into force of the *Protocol* in their legal system. Subsequently, States must include any information relevant to the OPSC in their five-yearly report to the Committee on the Rights of the Child required by the CRC. State that are Parties to the OPSC, but have not ratified the CRC, or are not Parties to the latter (for example the USA) must submit a report in any case every five years.

1.5 Optional Protocol on a Communications Procedure

The *Optional Protocol on a Communication Procedure* (OP3-CRC) is the third additional protocol to the *Convention on the Rights of the Child*. It provides the Committee on the Rights of the Child with individual and interstate complaint mechanisms, and an inquiry procedure regarding “grave and systematic violations”, which may be applied on States parties to the *Convention* to contest their policies and practices, when they are believed to be violating one or more provisions contained in the CRC or in the first two Optional Protocols; in practice, when a child's right has been violated⁴⁴. However, the *Protocol's* complaint mechanisms may be activated only when domestic remedies have been exhausted, that is, when a State Party's national legal system has not been able to provide a remedy for the violation⁴⁵. The *Protocol* was opened for signature on 19 December 2011, and it entered into force on 14 April 2014. As of today, 34 UN member States are parties to the Protocol, 25 States have signed it but not ratified it, and 139 States have taken no action with respect to OP3-CRC⁴⁶. The *Protocol* envisaged a new range of procedures for remedies and securing compliance with the CRC and its first two Optional Protocols (OPAC and OPSC). The substantial aim behind its drafting was to secure a proper communication procedure under the CRC, since the latter was the only core international human rights treaty that did not have one. OP3-CRC adopts the general format and style of existing UN human rights treaty communication procedures⁴⁷. The preamble reaffirms that Op3-CRC would reflect the general principles of

⁴⁴ T. BUCK, M. WABWILE, *The Potential and Promise of Communications Procedures under the Third Protocol to the Convention on the Rights of the Child*, in *International Human Rights Law Review*, 2013, n. 2.

⁴⁵ INTERNATIONAL COALITION FOR THE OPCRC ON A COMMUNICATION PROCEDURE, *What is the OP3 CRC?*, 2017, available *online*.

⁴⁶ Data on ratification of 18 international human rights treaties are available online, provided by the website of the Office of the United Nations High Commissioner for Human Rights.

⁴⁷ T. BUCK, M. WABWILE, *The Potential and Promise of Communications Procedures under the Third Protocol to the Convention on the Rights of the Child*, in *International Human Rights Law Review*, 2013, n. 2.

children's rights proclaimed in the CRC and its protocols. Moreover, it clarifies that its purpose is to reinforce and complement, and not to replace or duplicate the functions and the provisions set out by other human rights and specialized institutions mandate to promote and protect the rights of the child at a national level⁴⁸. Art. 1 declares the Committee's competence under OP3-CRC. It specifically excludes this competence with respect to a State party to the *Protocol's* violation of rights set forth in a legal instrument to which that State is *not* a party. Moreover, the article specifies that the Committee cannot receive communications concerning violations of a child's rights by a State that is not party to OP3-CRC⁴⁹. Art. 3 empowers the Committee to create and adopt rules of procedure for the functions of the *Protocol*. Art. 4 is related to protective measures; it urges State parties to take all appropriate steps to ensure that individuals under their jurisdiction are not at risk, or harmed, in consequence of, or in the process of utilizing the communication procedures set out in the *Protocol*, or while cooperating with the *Committee on the Rights of the Child*. Furthermore, the second part of this article sets out the important "confidentiality principle", which recurs several times in the *Protocol's* text. The latter asserts that the identity of the children submitting communications to the *Committee* shall be kept anonymous and not be publicized, unless with the children's or their legal guardian's express consent. However, the identity of the individual submitting communications would be revealed to the State party, for the purposes of the communication, but this shall happen "confidentially". OP3-CRC encompasses two types of communication procedures; Art. 5-11 concern the "*individual complaints procedure*" while Art. 12 relates to "*inter-state communication procedures*". Art. 5 is the individual complaints procedure's key explaining provision, stating that "communications may be submitted by or on behalf of an individual or group of individuals", hence a child, a group of children, or their representatives, "within the jurisdiction of a State party, claiming to be victims of a violation by that State party of any of the rights"⁵⁰ set out in the CRC and/or in either or both of the two substantive protocols. Additionally, the submission of the complaint must be with the consent of the individual(s) claiming to be victim(s) "unless the author can justify acting on their behalf without such consent"⁵¹. An important inadmissibility rule set out in Art. 7 asserts that the Committee shall consider a communication inadmissible when "all available domestic remedies have not been exhausted.", unless "the application of the remedies is unreasonably prolonged or unlikely to bring

⁴⁸ *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*, adopted 19 December 2011 by UN General Assembly Resolution 66/138.

⁴⁹ T. BUCK, M. WABWILE, *The Potential and Promise of Communications Procedures under the Third Protocol to the Convention on the Rights of the Child*, in *International Human Rights Law Review*, 2013, n. 2.

⁵⁰ *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*, adopted 19 December 2011 by UN General Assembly Resolution 66/138, Art. 5.

⁵¹ *ibidem*.

effective relief”⁵². Under Art. 8, if the Committee acknowledges the communication as admissible, it shall then bring it “confidentially” to the attention of the State party concerned as soon as possible, which will have in turn to submit “written explanations or statements clarifying the matter and the remedy, if any, that it may have provided”⁵³. Its response must be made “as soon as possible and within six months”. Art. 9-11 contain additional procedural provisions for individual complaints. Art. 12 is the only provision concerning the “inter-state communication procedure”. The latter may be activated when a State party claims that another State party is not fulfilling its obligations under the *Convention* or two substantive protocols. However, States ratifying OP3-CRC do not automatically commit themselves to the inter-state communications procedure. In order for a State party to the *Protocol* to formally acknowledge the Committee’s authority to receive inter-state communications, the signing of a separate *opt-in declaration* is needed. Furthermore, both the petitioner and respondent States must have made such declarations. This mechanism has never been used in practice. The Committee’s modus operandi with respect to inter-state communication provides that the latter produces a draft agreement containing a proposed resolution of the contested issue(s), and delivers it to the State parties concerned. This draft agreement is meant to be the initiative for inter-state mediation. Under OP3-CRC the Committee is not empowered to adjudicate inter-State communications, although it does have the authority to make rules of procedure⁵⁴. Art. 13 establishes an “inquiry procedure” whereby the Committee is entitled to investigate on “grave and systematic violations by a State party” of the rights set forth in the *Convention* and the two protocols. Upon the receipt of “reliable information” relating to the latter violations, the Committee may start a five-step process entailing:

1. a request to the State party which committed the alleged violations to submit observations and cooperate with the Committee;
2. investigation of the case by one or more members of the Committee and preparation of a report thereon;
3. transmission of the findings of investigation, comments and recommendations to the State party concerned;
4. submission of observations on the Committee's findings and recommendations by the State party within six months; and

⁵² *Optional Protocol to the Convention on the Rights of the Child on a communications procedure*, adopted 19 December 2011 by UN General Assembly Resolution 66/138, Art. 7.

⁵³ *ivi*, Art. 8.

⁵⁴ T. BUCK, M. WABWILE, *The Potential and Promise of Communications Procedures under the Third Protocol to the Convention on the Rights of the Child*, in *International Human Rights Law Review*, 2013, n. 2.

5. follow-up actions by the Committee⁵⁵.

The follow-up actions may consist in:

- a request to the State party to include a summary of the results of its inquiry proceedings in its biennial reports to the General Assembly (Articles 13(6) and 16);
- after the expiry of six months, an invitation to the State party to inform the Committee on the measures taken and envisaged in response to the inquiry (Article 14(1)); and
- an invitation to the State party to include further information about any measures taken in response to the inquiry in its regular periodical reports to the Committee (Article 12(2)).

The main innovation of the above-mentioned inquiry procedure is that there is no restriction on who may bring the “reliable information” necessary to start the investigation to the attention of the Committee. This opens the way to any international actor, especially to NGOs, to submit complaints, reports and other communications concerning “grave or systematic violations” of children's rights, with the only requirement being the reliability of the information provided, which is ascertained by the Committee itself. Although the inquiry procedure does not require the identification of individual victims, in cases in which the latter does happen, the confidentiality principle applies, as for the individual complaints and inter-state communication procedures. Unlike the first two communication procedures, which are mainly based on the office-based examination of State party reports, the inquiry procedure necessitates a more complicated organization, travel and field work. This is the reason why the inquiry is unlikely to be initiated frequently, due to resource constraints⁵⁶. In conclusion, OP 3-CRC contains a provision on international assistance and co-operation and some standard treaty provisions (Articles 15-24).

1.6 Objections to the idea of universal Human Rights in respect of the Convention

The *Convention on the Rights of the Child* established itself as the central international instrument on children's rights, laying down common standards, while at the same time taking account of the different cultural, social, economic and political realities of individual States so that each State may seek its own means to ensure and implement the rights of the child intended as human rights common to all persons. As we have already seen, the CRC is a good example of the globalization process from the point of view of jurisprudence, a process that implies the worldwide convergence of normative legal standards into core principles and values⁵⁷. The question is, where did these core principles come from? Or more specifically, from which legal tradition among the variety that are

⁵⁵ T. BUCK, M. WABWILE, *op. cit.*

⁵⁶ T. BUCK, M. WABWILE, *The Potential and Promise of Communications Procedures under the Third Protocol to the Convention on the Rights of the Child*, in *International Human Rights Law Review*, 2013, n. 2.

⁵⁷ T. BUCK, *International Child Law*, Routledge, 2014.

present in different geographical regions, such as western, Asian, Islamic law etc.? Critiques based on Cultural Relativism have argued that the principles and values at the basis of human rights come from an essentially western tradition, and consequently, they promote liberal and individualistic social preferences over more “collective” forms of social organization, more common to countries in the eastern part of the world⁵⁸. Hence, although the *Convention on the Rights of the Child* reached almost universal ratification, and there is near-unanimous consent on the values enshrined in the *Convention* and on the feasibility of the objectives set forth by the latter, some States continue to justify their reluctance to implement certain provisions contained in the CRC, as in other human rights treaties, with Cultural Relativistic arguments.

1.6.1 Universalist versus Relativist approach

The debate about the ideological conflict between Universalism and Cultural Relativism started from the very inception of the concept of human rights, shortly after the end of WWII and in connection to the drafting of the *Universal Declaration of Human Rights*. The Universalist school of thought believes that each human being possesses certain inalienable rights simply because he or she is a human, regardless the national background, religious or political views, gender or age. Whereas, Cultural Relativists hold that human values vary a great deal according to different cultural perspectives, and that (human) rights vary accordingly, since rights constitute the expression of the values shared by a community.

1.6.2 Reservations to the CRC by Islamic States and incompatibility with Islamic law

Based on Cultural Relativistic Arguments, and on the incompatibility of some principles and institutions with the *Shariah*, several Islamic States notified reservations to a number of articles of the *Convention on the Rights of the Child*. Algeria for example, made reservations to Art. 13, Art. 14 par. 1 and 2, to Art. 16 and Art. 17, which respectively relate to freedom of expression, freedom of thought, conscience and religion, unlawful interference with the child’s privacy, home and correspondence, and access to appropriate information from national and international sources. The Algerian Government claimed that the above-mentioned provisions did not comply with the basic foundations of the Algerian legal system, in particular for what concerns the Algerian *Constitution*, which provides that Islam is the State’s religion and with the *Family Code* which stipulates that a child’s education is to take place in accordance with the religion of its father. These Algerian national law provision do not tie in very well with the principles of freedom of thought, conscience and religion enshrined in the CRC. Moreover, even in the Algerian *Penal Code* and *Information Code*, a number of provisions are present that run counter to Art. 13, 16 and 17 CRC. According to

⁵⁸ M. GRODIN, *Health and Human Rights in a Changing World*, Routledge, 2013, III ed.

Algerian national law, information and publications, specifically those directed towards children, should be restricted for reasons of public order, public decency and Islamic morality⁵⁹. For the same reasons as Algeria, also the Syrian Arab Republic made a reservation to Art.14 CRC, but limiting the latter to the principle freedom of religion, and excluding, thus granting, freedom of conscience and of thought⁶⁰. Some other representative CRC provisions, which serve as good examples to show how *Shariah's* principles can be incompatible with certain human rights, are Art. 20 and Art. 21, regarding the institution of adoption. Both Syria, Jordan and Egypt made reservations to these two articles, arguing that the institution of adoption is incompatible with and not entailed by Islamic precepts. Nevertheless, both Egypt and Syria withdrew their reservations to Art. 20 and 21, respectively in 2003 and 2012⁶¹. This fact demonstrates that the more liberal Muslim States are reconsidering their reservations, and can serve as an example, and encourage the more rigid-minded Islamic States to withdraw their reservations as well⁶².

⁵⁹ United Nations Treaty Collection, Status of Treaties. Declarations and Reservations, available *online*.

⁶⁰ United Nations Treaty Collection, Status of Treaties. Declarations and Reservations, available *online*.

⁶¹ United Nations Treaty Collection, Status of Treaties. Declarations and Reservations, available *online*.

⁶² N. ABIAD, *Sharia, Muslim States and International Human Rights Treaty Obligations: A Comparative Study*, British Institute for International & Comparative Law, 2008.

CHAPTER 2: FOCUS ON SYRIA: THE RIGHTS OF THE CHILD IN THE SYRIAN ARAB REPUBLIC

2.1 Traditional attitudes towards children in the Syrian society

Since the outburst of the civil war in Syria in 2011, the role of children in Syrian society obviously changed, as it is usual when war hits a country. When the horrors of war affect a population, all members of this population have to adapt, to adjust their character, their habits and their behavior to the war, even children, if they want to survive. In Syria, some children have been forced to become child soldiers, some had to leave their house, their city and the life to which they have always been used by fleeing to neighboring countries, or become internally displaced. In many cases, Syrian children have been pushed into the workforce and forced to become breadwinners in their families, due to their fathers' deaths or simply to the poverty brought by the war. In practice, Syrian children have lost their role in society, and the prerogative of living their childhood since 2011. However, in this chapter we want to argue that the role of the child and the attitudes that the Syrian government, and Syrian parents have towards their children, was in any case very different from the one to which we are used in western countries, even before the civil war. The attitude towards children, the way in which they are treated, the laws which regulate matters affecting them, have often gone against international and human rights law, producing several structural violations, that is, repeated violations of an international law provision, which we will analyze in the present chapter. Probably, the first remarkable, and unfair characteristic of Syrian culture dealing with children, is the different attitude perceived towards boys and towards girls. This difference is reflected in a large number of aspects and characteristics of Syrian society, and as it is well known, women are disadvantaged from a legal point of view, from their childhood to their adulthood and old age, having certainly less rights than men, and boys. The *Personal Status Code*, the main Syrian source of law governing procedures and individual rights on issues such as marriage, divorce, inheritance, and custody, sets a disparity between the minimum age for marriage for boys (18) and for girls (17). Moreover, depending on the judge's discretion, the *Code* authorizes even earlier marriages. If the child or the children in question are considered willing parties to the marriage, and "physically mature", the judge may lower the minimum age for marriage to 15 years for boys and to 13 years for girls, prior to the child's father or grandfather's consent⁶³. This judge's prerogative, is further worsened by the fact that marriages in Syria, as in many other Arab countries, are traditionally arranged by the parents. This makes the possibility of the judge considering two children of an age lower than 18 or

⁶³ Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Syrian Arab Republic of the UN Committee on the Rights of the Child of 9 February 2012, CRC/C/SYR/CO/3-4.

17 “willing parties to the marriage” very questionable. In its 2012 concluding observation on the Syrian Arab Republic, the Committee on the Rights of the Child claimed that the general principle of the best interest of the child, contained in Art. 3 of the *Convention on the Rights of the Child*, stating that: “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”⁶⁴ was never incorporated in all legislation concerning children⁶⁵. Furthermore, the trend in Syrian society has always been, and continues to be to limit the respect for their views, if not to have absolutely no respect for them, especially within the families and schools⁶⁶. This goes against the “right of the child to be heard” enshrined in Art. 12.2 of the CRC, stating that “the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law”⁶⁷. Children’s rights to freedom of expression, association and peaceful assembly have dangerously been infringed by the Syrian government, going against Art. 13 and Art. 15 of the CRC. Moreover, children’s access to appropriate information is often limited in Syria, due to scarcity or unavailability of books and newspapers for children⁶⁸. The censorship imposed on the media, as well as literary and artistic works, by the Syrian government, violates Art. 17 CRC, stating that: “States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health”⁶⁹. For what concerns the family environment which Syrian children have to live in, the latter shows considerable disparities in the role of the father and the one of the mother, disparities which the child will perceive since his birth, and that will certainly affect his mindset during the process of growth and maturing. One of the most important disparities in the roles of parents, with respect to the child’s interest, relates to the possibility of divorce. When this happens, according to the *Personal Status Code*, mothers can

⁶⁴ *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531, Art. 3.

⁶⁵ Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Syrian Arab Republic of the UN Committee on the Rights of the Child of 9 February 2012, CRC/C/SYR/CO/3-4.

⁶⁶ *ibidem*.

⁶⁷ *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531, Art. 12.

⁶⁸ Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Syrian Arab Republic of the UN Committee on the Rights of the Child of 9 February 2012, CRC/C/SYR/CO/3-4.

⁶⁹ *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531, Art. 17.

retain custody of their sons only up to the age of 13 and of their daughters up to the age of 15. Moreover, in return for maintenance permission, a mother has an obligation to obey to her former husband, and in case she wants to travel outside the country with her children, she must seek the approval of the children's father or the child's paternal relatives in the father's absence⁷⁰. This Syrian law provision shows a great disparity between the father's and the mother's responsibilities towards their children, and also a difference in the responsibilities towards boys and girls. In doing so, violates Art. 5 CRC, stating that "States Parties shall respect the responsibilities, rights and duties of parents"⁷¹ or legal guardians; and Art. 18 CRC, stating that "States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child"⁷².

2.2 Domestic violence towards children

The safety of the Syrian family environment was also questioned by the Committee on the Rights of the Child in its 2011 concluding observations. The Committee argued that there are no specific provisions in domestic legislation that criminalize domestic violence, and that the Syrian government has not taken any concrete measures to combat widespread abuse and neglect within the family⁷³. Since, according to Art.27 CRC "States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development"⁷⁴, if the parents, legal guardians, or any person who has the primary responsibility to secure the above-mentioned standard of living for the child does not comply with this obligation, it is the responsibility of the government to intervene by taking "all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child"⁷⁵ (Art. 19.1 CRC). If the government believes that the family environment of the child in question is not suitable and/or it is dangerous for the latter, it will have to adopt protective measures, such as the enactment of social programmes for the child's recover; the start of

⁷⁰ Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Syrian Arab Republic of the UN Committee on the Rights of the Child of 9 February 2012, CRC/C/SYR/CO/3-4.

⁷¹ *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531, Art. 5.

⁷² *ivi*, Art. 18.

⁷³ Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Syrian Arab Republic of the UN Committee on the Rights of the Child of 9 February 2012, CRC/C/SYR/CO/3-4.

⁷⁴ *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531, Art. 27.

⁷⁵ *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531, Art. 19.

investigation on the case, and, if appropriate, of judicial prosecution of the person in charge for the child's maltreatment (Art.19.2 CRC); the forced separation of the child from its parents/legal guardians, and family environment in general, bearing in mind that "A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State"⁷⁶ (Art. 20.1 CRC). Finally, the State must provide the child in question with alternative care by arranging adoption or placement of the child in suitable institutions (Art. 20.2, 20.3 CRC).

2.3 Segregation of orphans and absence of community-based alternatives

The alternative care that has just been mentioned at the end of the previous paragraph is however not well managed by the Syrian government. When a child has to be separated from their parents, community-based alternatives are usually very limited, and institutionalization is therefore frequently used. Furthermore, the personnel in the few alternative care institutions is not well trained and not adequately monitored by the competent Ministries of Labour and Social Affairs. This is proved by the many cases of children placed in orphanages who have been subject to negligence, isolation and other forms of ill-treatment⁷⁷. Moreover, another disparity which has been fostered, rather than condemned by the Syrian government, is the segregation of orphans of known parents and those of unknown parents in separate institutional care facilities⁷⁸, as if they belonged to two different social classes. All the above-mentioned Syrian government's behaviors and defects are to be considered violations of Art. 21 CRC which states that "States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration"⁷⁹.

2.4 Children health

Regarding the access to public health services in Syria, the disparities highlighted by the Committee on the Rights of the Child in its 2012 concluding observation are mainly of a geographical character. This condition of geographical disparity has resulted in considerable variations in children's health status depending on the regions where they live, meaning that children living in remote areas are obviously the most disadvantaged, encountering serious difficulties in accessing

⁷⁶ *ivi*, Art. 20.

⁷⁷ Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Syrian Arab Republic of the UN Committee on the Rights of the Child of 9 February 2012, CRC/C/SYR/CO/3-4.

⁷⁸ *ibidem*.

⁷⁹ *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531, Art. 21.

public, but also private health services when they are in need of the latter⁸⁰. Moreover, it is important to underline that the per capita total expenditure on health has been decreasing, and that the proportion of gross domestic product devoted to health does not exceed 3.2 percent anyway, according to the 2014 survey performed by the World Health Organization⁸¹. The number of hospitals dedicated to children is insufficient; looking at health statistics regarding the Syrian State, it is easy to notice that a high proportion of children are severely stunted, with a percentage of 28% according to UNICEF and the “Family Health Survey of the Arab Republic of Syria” of 2009⁸²; and that breastfeeding rates are at a very low level; according to UNICEF, early initiation of breastfeeding (within one hour of birth) is at 46%, the exclusive breastfeeding rate is at 43% and the continued breastfeeding rate at one year is at 56%⁸³. For what concerns adolescent health, The Committee claims that in Syria, the availability of youth-friendly reproductive health services is unsatisfactory and limited. Moreover, knowledge among adolescents about reproductive health, sexually transmitted diseases, including HIV/AIDS, and the health consequences of tobacco, alcohol and drugs consumption is inadequate⁸⁴. All the above-mentioned Syrian government’s shortcomings and inadequate management of sanitary standards, practices and structures are structural violations of several articles of the *Convention on the Rights of the Child*, including Art. 6, requiring State parties to recognize every child’s right to life, and to ensure to the maximum extent possible their survival and development; Art. 18.3, demanding State parties to grant children of working parents the benefit of child-care services and facilities for which they are eligible; Art. 24, under which State parties commit to diminish infant and child mortality, to combat disease and malnutrition, to ensure appropriate pre-natal and post-natal health care for mothers, to spread information and educate all segments of society to the benefits of good nutrition, hygiene, environmental sanitation and the advantages of breastfeeding, and more generally to the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health; Art. 26 declaring the rights of every child to benefit from social security; and finally Art. 27, calling for the parents to take the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child’s development, and calling on State parties to assist the parents in this task, in case of need, by

⁸⁰ Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Syrian Arab Republic of the UN Committee on the Rights of the Child of 9 February 2012, CRC/C/SYR/CO/3-4.

⁸¹ Data on global health expenditure are available online, provided by the website of the World Health Organization.

⁸² Data on family health in the Syrian Arab Republic are available online, provided by the website of UNICEF.

⁸³ Data on family health in the Syrian Arab Republic are available online, provided by the website of UNICEF.

⁸⁴ Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Syrian Arab Republic of the UN Committee on the Rights of the Child of 9 February 2012, CRC/C/SYR/CO/3-4.

providing material assistance and support programmes, particularly with regard to nutrition, clothing and housing⁸⁵.

2.5 Education

For what concerns education in the Syrian state, there are a number of important issues to discuss also regarding this important, if not fundamental field, which has the biggest impact on the future of a State, since as we all know, the prosperity and well-being of a society largely depends on the character and competence of the people who will take up leading roles in that society, and the character and competence of those people, largely depends on the education system that trained them. The issue of the restricted access to appropriate information for children and the censorship imposed on the media, as well as literary and artistic works, by the Syrian government has already been discussed in paragraph 2.1, as a structural violation of Art. 17 CRC. This alone is a huge limitation to children mental development and an obstacle to their path towards maturity. Apart from this, more problems regarding the Syrian education system are the increasing high school dropout and repetition rates, with girls being much more likely to drop out of school than boys, a tendency which is notably related to early and forced marriages and the required participation of girls in family work. Corporal punishment and psychological violence are quite a common tool for childhood discipline, and the main reason for this is that teachers and administrators are not sufficiently trained in the use of alternative forms of discipline. Furthermore, stateless Kurdish children have been facing difficulties enrolling in secondary schools and universities and are often not able to obtain inclusive education in case of disability. Generally speaking, finally, the quality and relevance of school curricula in Syria is quite low⁸⁶. All the above-mentioned Syrian State's defects represent structural violations of Art. 28 CRC, which concerns the right of the child to education, in particular of the points calling on State parties to make primary education compulsory and available free to all, to make higher education accessible, to take measures to encourage regular attendance at schools and the reduction of drop-out rates and to take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity; of Art. 29 which sets the general principle towards which children's education shall be directed, such as development of the child's personality, development of respect for human rights, development of respect for the child's parents, his or her own cultural identity, language and values, preparation of the child for responsible life in a free society and respect for the natural environment;

⁸⁵ *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531.

⁸⁶ Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Syrian Arab Republic of the UN Committee on the Rights of the Child of 9 February 2012, CRC/C/SYR/CO/3-4.

finally also a violation of Art. 31 which dictates that States parties shall respect and promote the right of the child to participate fully in cultural and artistic life⁸⁷.

2.6 Child labour

Aside from the economic crisis and financial disadvantages brought by the civil war, it was the poor management of and deterioration of natural resources belonging to the Syrian State that contributed greatly to an increasing prevalence of poverty in the Syrian society, and to a progressively decreasing quality of the Syrian standard of living. The latter is characterized by strong regional disparities, with children and families living in arid regions, nomad children, and children living in slums being the most disadvantaged, also due to their constant exposition to poor quality of air and contaminated drinking water⁸⁸. Due to this prevalence of poverty, especially in rural areas, the phenomenon of child labour has become increasingly common in Syria, taking out children from schools and forcing them to engage in work activities instead, often performed in dangerous conditions⁸⁹. Art.32 CRC prescribes that: “States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development”; also, according to this article, State parties shall “provide for a minimum age or minimum ages for admission to employment”, for “appropriate regulation of the hours and conditions of employment” and for “appropriate penalties or other sanctions to ensure the effective enforcement of the present article”⁹⁰. Notwithstanding this important provision of the *Convention on the Rights of the Child*, which the Syrian Arab Republic signed in 1990 and ratified in 1993, child labour in Syria continues to be a deplorable reality. Children from 15 years of age are allowed to perform hazardous work; children working in family businesses and in the agricultural sector are not protected by labour legislations, and are therefore often exposed to exploitation and denial of their right to education; furthermore, despite legislation prohibiting hiring of children as domestics, Syrian girls, as well as girls from South-East Asia and East Africa reportedly work as domestic servants, at times in slavery-like conditions, and are exposed to all forms of abuse, including sexual violence⁹¹. The capacity of the Syrian government, and in particular of the Syrian

⁸⁷ *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531.

⁸⁸ Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Syrian Arab Republic of the UN Committee on the Rights of the Child of 9 February 2012, CRC/C/SYR/CO/3-4.

⁸⁹ *ibidem*.

⁹⁰ *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531, Art. 32.

⁹¹ Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Syrian Arab Republic of the UN Committee on the Rights of the Child of 9 February 2012, CRC/C/SYR/CO/3-4.

labour inspectorate to enforce the legislation and to effectively monitor the respect of its labour laws remains weak⁹², falling short of complying with the duty of the State agreed upon under Art. 36 CRC, that is, to “protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare”⁹³.

2.7 Sexual exploitation

Due to the large number of children in street situations, the issue of sexual exploitation of children has become increasingly more serious. It is shocking to know that until 3 January 2011, rapists who married their victims were exempted of any punishment. Fortunately, the latter provision was repealed by Legislative Decree No. 1 of 3 January 2011 of article 508 of the Syrian Penal Code, and now the minimum term of imprisonment for sexually exploiting children is of 12 years⁹⁴. Nevertheless, there are still a large number of issues regarding sexual exploitation of children in Syria, especially girl children. Since the start of the war in Iraq in 2003, an increasing number of Iraqi girls fled to Syria, and has been forced into prostitution in order to provide for their personal and family's survival. As a result of the war in Iraq, the number of prostitutes and brothels in Syria multiplied and the functioning and diffusion of sex tourism in the State improved considerably, making Syria a growing destination for child sex tourism⁹⁵. The above-mentioned issues concerning sexual exploitation of children in the territory of the Syrian State are structural violations of Art.34 CRC, urging State parties to “protect the child from all forms of sexual exploitation and sexual abuse” and to take measures to prevent the “protect the child from all forms of sexual exploitation and sexual abuse”, the “exploitative use of children in prostitution or other unlawful sexual practices” and the “exploitative use of children in pornographic performances and materials”⁹⁶. Regarding the specific case of Iraqi refugee girls forced into prostitution, the Syrian State violated Art. 22 CRC, stating that a child who is seeking refugee status shall receive appropriate protection and humanitarian assistance by the State party to which the child fled⁹⁷.

2.8 Human trafficking of children

The Syrian State ratified the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* in 2013. Despite this, Syria has made

⁹² *ibidem*.

⁹³ *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531, Art. 36.

⁹⁴ Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Syrian Arab Republic of the UN Committee on the Rights of the Child of 9 February 2012, CRC/C/SYR/CO/3-4.

⁹⁵ N. HASSAN, *50,000 Iraqi refugees forced into prostitution*, Independent, 23 June 2007, available *online*.

⁹⁶ *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531, Art. 34.

⁹⁷ *ivi*, Art. 22.

limited progress with respect to the actual implementation of the Protocol. According to the last Committee on the Rights of the Child's 2012 concluding observations about the Syrian Arab Republic, its legislation still lacks a clear definition of human trafficking, and also clear procedures for the identification, interview and referral of child victims of trafficking; a specific provision criminalizing the sale of children and child pornography, in conformity with the provisions of the relevant Optional Protocol, is absent in domestic legislation; the persistent practice of temporary marriages, involving girls as young as 12 years who are given in marriage in exchange for money may and shall be considered, for all intents and purposes, as human trafficking of children; the efforts of the State party to investigate and punish trafficking offenses, to inform the public about the practice of human trafficking and to provide anti-trafficking training to law enforcement officials were limited and unsatisfactory; finally, cases of child victims of trafficking being charged with prostitution and sent to juvenile detention facilities or back to the country where they were trafficked from were reported⁹⁸. For what concerns the issues that have just been analyzed, a structural violation of article 35 CRC is easily discernible; the article in question states that: "States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form"⁹⁹. Furthermore, as it was already being argued at the beginning of this paragraph, the Syrian state has been structurally violating a large number of articles present in the *Optional Protocol on the sale of children, child prostitution and child pornography*, from the very first, generally prohibiting the sale of children, child prostitution and child pornography, to Art. 3, which calls on States to ensure that human trafficking offences are at least covered in their criminal or penal law, and many more OPSC provisions, also in an indirect way¹⁰⁰.

2.9 Juvenile justice

2.9.1 The criminal responsibility of the child in Syria

The juvenile justice system in Syria is regulated by the Law 18 of 1974 *Juvenile Delinquents Act*. Any offence or misdemeanor committed by a person under 18 years of age, that is, by a child, pertains to the jurisdiction of juvenile courts. There are both part-time and full-time district juvenile courts, moreover, a special division of the Court of Cassation is dedicated to juvenile cases. Contrary to the general legal principle stipulating that trials are to be open to the public,

⁹⁸ Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Syrian Arab Republic of the UN Committee on the Rights of the Child of 9 February 2012, CRC/C/SYR/CO/3-4.

⁹⁹ *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531, Art. 35.

¹⁰⁰ *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*, adopted 25 May 2000, United Nations Treaty Series, vol. 2173, no. 27531.

proceedings against juvenile offenders are conducted *in camera*, in order to maintain the child's anonymity and prevent their future to be endangered in any manner. The degree to which children are exposed to the justice system in Syria changes, or increases three times; therefore, we can divide childhood from a legal point of view into three stages: children below ten years of age bear no criminal responsibility whatsoever (before Legislative Decree No. 52 of 2003, children could have criminal responsibility from the age of seven); from the age of 10 to 15, children may be prosecuted for felonies or misdemeanors, but only reform measures may be imposed on them; juvenile offenders over the age of 15 are still not subject to the same sanctions as adults are, in particular, they are immune from the most extreme ones, such as life imprisonment and death penalty¹⁰¹. The issue about Syrian juvenile justice system is that the age in which a child acquires criminal responsibility (ten years) is well below internationally accepted standards. In its 2012 concluding observations about Syria, the Committee on the Rights of the Child recommended to the State party to raise the minimum age of criminal responsibility, specifying that the latter should in no case set below the age of 12 years¹⁰².

2.9.2 The conditions of detention of children

Whenever children are, for some reason forcibly put in detention facilities, the separation between them and the adult offenders is not always guaranteed. Moreover, cases of children being ill-treated by the police and exposed to rape and other forms of sexual abuse while in rehabilitation institutes are commonly reported. In detention, children also witness violent torture and death¹⁰³. The presence of children was documented in Military Security Branch 235, known as the Palestine Branch, and in the Air Force Intelligence Branch in Mezzeh military airport (Damascus), detention facilities in which torture is systematically employed¹⁰⁴. In detaining children and exposing them to ill-treatment and torture in detention facilities, Syrian authorities, including the military, security and intelligence agencies have violated articles 37 and 40 of the *Convention of the Rights of the Child*. According to Art. 37 “no child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment”, “no child shall be deprived of his or her liberty unlawfully or arbitrarily”, the arrest and detention of a child should be used as a measure of last resort, and for the shortest possible period of time, and “every child deprived of liberty shall be separated from

¹⁰¹ CHILD RIGHTS INTERNATIONAL NETWORK, *Access to justice for children: Syrian Arab Republic*, 2015.

¹⁰² Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Syrian Arab Republic of the UN Committee on the Rights of the Child of 9 February 2012, CRC/C/SYR/CO/3-4.

¹⁰³ *ibidem*.

¹⁰⁴ FRANCE DIPLOMATIE, *Torture in the detention centres of the Syrian Regime (1st, october, 2015)*, 2015, available online.

adults”¹⁰⁵. Art. 40 CRC instead, dictates the right of every child who is accused of or recognized as having infringed the law, to be treated in a human manner, in conformity with the child dignity and taking into account the child’s age¹⁰⁶.

2.10 Personal Status Code

2.10.1 Discriminatory provisions

As we already mentioned in paragraph 2.1, the *Personal Status Code* is the main Syrian source of law governing procedures and individual rights on issues such as marriage, divorce, inheritance, and custody. It is sufficient to randomly browse through the *Code* to find a large number of discriminatory provisions, especially directed towards girls and women. The societal discrimination against girls, and the stereotyping of gender roles in Syria, as in many more Arab countries, has reflected itself into the State’s jurisprudence, creating an actual legally approved gender discrimination. In paragraph 2.1 we have already discussed the disparity in the minimum age for marriage for boys (18) and for girls (17) which may be lowered by a judge respectively to 15 and 13. In addition, it is possible to mention a large variety of examples of discriminatory provisions, such as Art. 48.2 of Syrian Personal Status Law, stipulating that Muslim women are not allowed to marry non-Muslims, but Muslim men are allowed to marry non-Muslims; or Divorce Art. 91, which gives the one-sided and unconditional right of repudiation only to the husband; or, as a last example, taken from Syrian Nationality Law (Law No 276 of 1969), in order to show that the *Personal Status Code* is not the only discriminatory source of law: a woman married to a foreigner retains her nationality, and cannot pass her nationality on to her husband. Also, Art. 3 of Syrian Nationality Law dictates that only Syrian fathers can pass their nationality on to their children¹⁰⁷. Kurds are probably the most disadvantage ethnic group with respect to Syrian Nationality Law. A large share of the population living in northern Syria is composed by Kurdish people, therefore, especially in this part of the country there is a high percentage of marriages between Kurdish (also Syrian-born) people and “pure” Syrians. For this reason, and in light of the discriminatory provision that has just been discussed (Art. 3 of Syrian Nationality Law), when a stateless Kurdish man, known as *maktoumeen* (meaning “unregistered”), marries a Syrian woman, their children will not

¹⁰⁵ *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531, Art. 37.

¹⁰⁶ *ivi*, Art. 40.

¹⁰⁷ G. TABET, *Women In Personal Status Laws: Iraq, Jordan, Lebanon, Palestine, Syria*, SHS Papers in Women’s Studies/ Gender Research, No. 4, UNESCO, July 2005.

be able to acquire Syrian nationality from their mothers, and will be classified as stateless, or *maktoumeen* as well as their fathers¹⁰⁸.

2.10.2 Children born out of wedlock

The issues that parents encounter in Syria, unless at least the father is Muslim and holds Syrian nationality, start from the moment of the child's birth registration. According to the Syrian *Personal Status Code*, the marriage of a Muslim woman with a non-Muslim man is not considered as valid, and, as a result, children born within such a marriage are not always recognized, nor registered. For this reason, children born out of wedlock cannot be affiliated to their fathers, and are rarely recognized by them; a situation which often leads to their abandonment and subsequent institutionalization. In the case in which a mother wants to register her child born out of wedlock, or even born of rape or incest, she will have to request a police report in order to initiate an investigation into the circumstances of the conception of the child. Furthermore, birth registration remains problematic for children born in families living in remote areas¹⁰⁹. All the discriminatory provisions present in Syrian main sources of law, such as the *Personal Status Code* and Syrian Nationality Law, run counter Art. 2 of the *Convention on the Rights of the Child*, which calls on States Parties to respect and ensure the rights set forth in the *Convention* to "each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status"¹¹⁰. All the law provisions that prevent children born out of wedlock, or of rape or incest, or generally children of Syrian mothers from obtaining Syrian nationality, may be considered as structural violations of Art. 8 CRC, calling for the respect of the right of the child to preserve his or her identity, including nationality¹¹¹. Whereas the provisions hindering birth registration for any of the reasons that have just been listed, or for any motivation whatsoever, violate Art. 7 CRC, which stipulates that "The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents"¹¹²; the latter obligations are particularly important where the child would otherwise be stateless.

¹⁰⁸ A. SEN, *Lacking a nationality, some refugees from Syria face acute risks*, in *unhcr.org*, 20 December 2013, available online.

¹⁰⁹ Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Syrian Arab Republic of the UN Committee on the Rights of the Child of 9 February 2012, CRC/C/SYR/CO/3-4.

¹¹⁰ *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531, Art. 2.

¹¹¹ *ivi*, Art. 8.

¹¹² *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531, Art. 7.

CHAPTER 3: THE CIVIL WAR IN SYRIA AND HOW IT AFFECTED SYRIAN CHILDREN

3.1 The civil war in Syria

The Syrian civil war is the deadliest conflict the 21st century has witnessed thus far. By the end of 2014, the UN estimated that the conflict had caused the deaths of 250,000 people. According to various activist groups the death toll varies between 312,000 and 470,000 casualties. While on 23 April 2016, the United Nations and Arab League Envoy to Syria put out a personal (not officially declared by the UN) estimate of 400,000 people that had died in the war¹¹³. The conflict also caused a massive population displacement. The dynamics and the nature of this conflict are quite complicated, due to the large number of State and non-State actors that became involved in it during its development, in a time span going from 2011 to now.

3.1.1 Causes of the war

By analysing the contemporary history of Syria and the main political, economic and social issues that the country has been facing it seems reasonable to state that there are several factors that combined and created a situation of deep social unrest, leading to the outbreak of the current crisis. One of the main causes of the war lies in the Syrian social background. The country is characterized by strong religious, ethnic and tribal diversity. The main religious minorities are Alawis (the Syrian leader Bashar al-Assad's religious group), Druzes, Isma'ilis, and the Greek Orthodox Christians; while the main ethnic minorities consist of Kurds, Armenians, Turcomans, and Circassians¹¹⁴. It would be reductive to assert that this is simply another conflict between the ruling minority (Alawis) and the Sunni majority, but sectarianism is certainly an important destabilizing factor in the Middle East and in Syria in particular; indeed, the Syrian regime has mobilized political support through sectarianism, by calling itself a protector of the Syrian minorities against the Sunni majority¹¹⁵. The Syrian civil uprisings that started the war were also certainly inspired by the Arab Spring, a series of democratic protests that started in Tunisia and spread among Middle Eastern countries. These protests were the result of popular discontent in the Arab world, relating to poverty, lack of economic opportunities, and repressive and disliked regimes, all elements that are certainly present in Syria as well¹¹⁶. Moreover, some scholars argue that the colonial and imperial dominance of western states in Syria, particularly of France, is another factor that fostered

¹¹³ AL JAZEERA, *Syria's civil war explained*, 14 December 2016, available online.

¹¹⁴ N. VAN DAM, *The Struggle for Power in Syria: Politics and Society under Assad and the Ba'th Party*, I.B. Tauris, 1996.

¹¹⁵ A. MALANTOWICZ, *Civil War in Syria and the 'New Wars' Debate*, Amsterdam Law Forum. VU University Amsterdam, 2013.

¹¹⁶ P. JONES, *The Arab Spring: Opportunities and Implications*, 2012, in *International Journal*, vol. 67, pp. 447–463.

instability in the country¹¹⁷. The current crisis in Syria was shaped by the multitude of elements analysed above, notwithstanding that these were only the most remarkable ones.

3.2 The arrest, detention and torture of Syrian children as the event that triggered the Syrian civil war

Besides all the destabilizing factors that have been analysed in the previous paragraph, analysts identify the very outburst of the civil war with one horrible event, the arrest, detention and torture of a group of children aged between 9 and 15 years old, who, influenced by their families' opinions and by the media showing Arab Spring democratic protests, wrote the popular revolution slogan: "The people want the fall of the regime"¹¹⁸ on their school wall in the city of Dara'a, referring to the oppressive Syrian government. Demonstrations broke out asking for the immediate release of the children, and the police responded by shooting 4 people dead in Dara'a. The brutality of the government forces triggered the indignation of the people of Syria, and protests and riots began to spread all around the country¹¹⁹. The abuse of authority committed by the Syrian police and the Syrian Government in arresting and detaining a group of children for simply writing a slogan on a wall, constitutes a violation of the children's freedom of expression, association and peaceful assembly, which are covered by Art. 13 and Art. 15 CRC; and a violation of Art. 37 (b) CRC, which stipulates that "The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time"¹²⁰. Furthermore, the absolutely unlawful and deplorable practice of torturing children has continued to be employed by the Syrian armed forces, even after the shocking case of those who had been arrested in connection with the uprisings, becoming a structural violation of Art. 37(a) CRC, which dictates that "No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment"¹²¹. Since 2011, a large number of Syrian children have been arbitrarily arrested during the course of the civil war, and many have died in detention as a result of torture and mutilation¹²². Children, some as young as 13, reported to *Human Rights Watch* that officers kept them in solitary confinement, severely beat and electrocuted them, burned them with cigarettes, and left them to dangle from metal handcuffs for hours at a time, centimetres above the

¹¹⁷ S. MOCK, A. OBEIDI, J. ZELEZNIKOW, *A Brief Outline of the Israel–Palestinian Conflict*, 2014, in *Group Decision and Negotiation*, vol. 23, pp. 1245-1262.

¹¹⁸ L. SINJAB, *Middle East unrest: Silence broken in Syria*, BBC News, 19 March 2011, available *online*.

¹¹⁹ C. M. BALTES, *Causes and Consequences of the Syrian Civil War*, 2016, available *online*.

¹²⁰ *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531, Art. 37(b).

¹²¹ *ivi*, Art. 37(a).

¹²² Consideration of reports submitted by States parties under article 44 of the Convention: Convention on the Rights of the Child: concluding observations: Syrian Arab Republic of the UN Committee on the Rights of the Child of 9 February 2012, CRC/C/SYR/CO/3-4.

floor. Detention facilities where children were reportedly being tortured include: the military security detention center in Homs, the military security detention center in Tartous, the Balooneh detention center in Homs, the Palestine detention center in Damascus, and the 291 detention center in Damascus. All children interviewed by *Human Rights Watch* said that they received inadequate food and water in detention, and most received no medical treatment for torture-inflicted injuries¹²³.

3.3 Structural violations of the CRC during the civil war

The most remarkable structural violations of the *Convention on the Rights of the Child* committed by the Syrian Arab Republic from the very beginning of the civil war, namely the ill-treatment, arbitrary arrest, detention and killing of children by means of torture and mutilation have already been examined in the previous paragraph, since they were connected to the outbreak of the war. In this paragraph, a few more representative cases of structural, i.e. repeated violations of the CRC by the Syrian Government, which, we want to recall, is party to the latter, will be discussed.

3.3.1 Attacks to education

Since the beginning of the civil war, Syrian Government forces attacked schools in numerous locations, according to the *Global Coalition to Protect Education from Attack*, already by early 2013, up to 1,000 schools had allegedly been used as detention or torture centres and 2,445 were reported damaged or destroyed, although it is not known how many were targeted¹²⁴. Education was gravely hit by the war, according to the data gathered by the *UNESCO Institute for Statistics*, the number of children out of school in 2009 amounts to 21.678, while in 2013, due to the effects of the war, approximatively 562.763 children did not attend school¹²⁵. A similar trend affected adolescents, of whom 265.254 were out of school in 2009, compared to some 979.378 in 2013¹²⁶. Apart from the many forced displacements of children and entire families, caused by repeated bombings and fighting, one of the main reasons why children and adolescents stopped attending school, is that parents no longer allowed them to go to school. Syrian parents began to believe that schools were no longer a safe place to stay for their children as the first violent uprisings occurred. Syrian Police officers started to visit schools in order to question children about their alleged involvement in protests and the painting of more revolutionary slogans against the Government; during the questioning children were mistreated and hit by soldiers, and if the children failed to convince the soldiers, they were arbitrarily arrested and forcibly brought to detention centres, in

¹²³ HUMAN RIGHTS WATCH, *Syria: Stop Torture of Children. Security Forces Detain Juveniles, Occupy Schools*, 3 February 2012, available *online*.

¹²⁴ GLOBAL COALITION TO PROTECT EDUCATION FROM ATTACK, *Country profiles. Syria*, n.d., available *online*.

¹²⁵ Data on participation in education in the Syrian Arab Republic are available online, provided by the website of the UNESCO Institute for Statistics.

¹²⁶ Data on participation in education in the Syrian Arab Republic are available online, provided by the website of the UNESCO Institute for Statistics.

which they were subjects to tortures of various types¹²⁷. The right of the child to education, even in case of war, is safeguarded by Art. 28 CRC, which compels States Parties to “recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular”¹²⁸.

3.3.2 Children shot in their homes

Through a series of interviews to army defectors, doctors, injured children, and through Syrian activists’ reports, *Human Rights Watch* discovered, already in 2012, dozens of cases in which children have been killed by sniper fire or shelling from government armed forces in residential areas. In areas controlled by rebel forces, or in those in which riots and protests were being planned, children have been targeted as adults, and arbitrarily shot by government security forces, both in the streets and, most shamefully, inside their homes¹²⁹. *Human Rights Watch* interviewed a 17-years-old girl named Fatima, who was shot in the back in the courtyard of her family home in Quseir in early October 2011. In her interview, she said: “It was about 10:30 at night. I was going to the bathroom when I heard gunfire. There were shots from all directions. We live in a traditional house [where the bathroom is outside], there are no high walls. Suddenly, I found myself on the floor, I just felt that I was on the floor but I couldn’t feel anything”¹³⁰. A doctor who treated Fatima, who was also interviewed by *Human Rights Watch*, said that as a result of the gunshot wound, Fatima suffered a spinal injury and was paralyzed from the waist down¹³¹.

3.3.3 Use of chemical weapons by the Syrian Government

Between March 2013 and March 2017, the *Independent International Commission of Inquiry on the Syrian Arab Republic*, created by the UN Human Rights Council on 22 August 2011 in order to investigate on possible war crimes perpetrated by the parties to the conflict, documented 25 incidents of chemical weapons use in the Syrian Arab Republic, of which 20 were attributable to government forces and used primarily against civilians. In opposition-held areas in the provinces of Idlib, Hamah, Damascus, and in the eastern Ghouta region, Syrian forces used weaponized chlorine multiple times¹³².

¹²⁷ HUMAN RIGHTS WATCH, *Syria: Stop Torture of Children. Security Forces Detain Juveniles, Occupy Schools*, 3 February 2012, available [online](#).

¹²⁸ *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531, Art. 28.

¹²⁹ HUMAN RIGHTS WATCH, *Syria: Stop Torture of Children. Security Forces Detain Juveniles, Occupy Schools*, 3 February 2012, available [online](#).

¹³⁰ *ibidem*.

¹³¹ *ibidem*.

¹³² Human rights situations that require the Council’s attention. Report of the Independent International Commission of Inquiry on the Syrian Arab Republic of 8 August 2017, A/HRC/36/55.

3.3.3.1 Khan Shaykhun chemical attack

The gravest allegation of the use of chemical weapons by Syrian forces during the course of the civil war was in Khan Shaykhun, a town within the southern Idlib Governorate of northwestern Syria. In the early morning of 4 April 2017, public reports emerged claiming that air strikes had released sarin gas in the town, approximately around 6.45 a.m.¹³³. Sarin gas is a synthetic, odourless liquid nerve agent which can be dispersed in air, and can contaminate humans both externally (skin, hair, clothing), and internally, being absorbed via inhalation and via the skin. Symptom of exposure to this agent include miosis (extreme contraction of the pupils), and in severe cases cramps, muscular contraction, seizures, severe pain, and severe respiratory distress; the cause of death is asphyxiation by blockage of the lung muscles as well as the respiratory centre in the central nervous system¹³⁴. According to the Independent International Commission of Inquiry on the Syrian Arab Republic's report, the chemical bomb that was dropped on Khan Shaykhun, and the exposure to the sarin gas released by the latter, killed at least 83 persons, including 28 children and 23 women, and injured another 293 persons, including 103 children¹³⁵. At the time of the use of chemical weapons in Khan Shaykhun, Syrian and Russian forces were conducting an aerial campaign in northern Hamah and southern Idlib against the rebel armed groups of Hay'at Tahrir al-Sham and various others belonging to the Free Syrian Army. When they were questioned, Russian and Syrian officials denied that Syrian forces had used chemical weapons, explaining that air strikes conducted by Syrian forces at 11.30 a.m. that day had struck a terrorist chemical weapons depot¹³⁶. However, in order to establish the facts surrounding the allegations of the responsibility of the Syrian Government and armed forces in Khan Shaykhun's chemical attack, the Independent International Commission of Inquiry on the Syrian Arab Republic conducted 43 interviews with eyewitnesses, victims, first responders and medical workers. It also collected satellite imagery, photographs of bomb remnants, early warning reports and videos of the area allegedly affected by the air strikes¹³⁷. The Russian and Syrian Governments' version does not correspond to the evidence found by the Commission. Interviewees and early warning reports indicate that a Sukhoi 22 (Su-22) aircraft conducted four air strikes in Khan Shaykhun at around 6.45 a.m. The Commission claims that only Syrian forces operate such aircraft. By evidence of some eyewitnesses' interviews, and of photographs of weapon remnants, the Commission identified three conventional bombs and one

¹³³ Human rights situations that require the Council's attention. Report of the Independent International Commission of Inquiry on the Syrian Arab Republic of 8 August 2017, A/HRC/36/55.

¹³⁴ *ibidem*.

¹³⁵ *ibidem*.

¹³⁶ *ibidem*.

¹³⁷ *ibidem*.

chemical bomb, of a type manufactured in the former Soviet Union¹³⁸. Interviewees denied the presence of a weapons depot near the impact point of the chemical bomb, and furthermore, the scenario suggested by Syrian and Russian officials is not consistent with the timing of the appearance of victims around the area targeted and hit by the air strike. The alleged Syrian and Russian air strike against the rebel armed groups controlling the Idlib Province, which would have hit the alleged terrorist chemical weapons depot, was declared to have occurred at 11.30 a.m., while the first victims of sarin gas' exposure were found right after the chemical bomb had been released, around 7.00 a.m.¹³⁹. By killing 28 children and injuring 103 only in the case of the Khan Shaykhun attack, and having largely increased the children death toll with other 19 chemical weapons incidents attributable to it, the Syrian Government indirectly violated most Articles of the *Convention on the Rights of the Child*, considering that there exists no article concerning a prohibition on the use of chemical weapons, but for example, there exists an Article that compels State parties to ensure children in their jurisdiction the highest attainable standard of health (Art. 24.1 CRC¹⁴⁰), and this is far from what the Syrian Government did, in authorizing a chemical weapons air strike on a civilian inhabited area. Just to cite another example of an indirect violation of the CRC with respect to the Khan Shaykhun chemical attack, after the latter, five schools were forced to shut down in the town, namely Ahmel Talhan, Farouk al-Kang, Salh al-Dawadi, Adnan al-Malkwa and Tusuremm schools¹⁴¹. This constitutes a violation of children's right to education, covered by Art. 28 CRC¹⁴². What the Syrian Government directly violated, with the support of the Russian Government, is the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction* and *Security Council resolution 2118* (2013), not to mention that using chemical weapons and indiscriminately attacking civilian inhabited areas are war crimes¹⁴³.

3.4 Immunity from prosecution to security and intelligence agencies responsible for Human Rights violations

In Syria, all the violations of the rights of the children and of Human Rights in general, committed by those who should safeguard these rights the most, and ensure that they are respected, namely the

¹³⁸ *ibidem*.

¹³⁹ Human rights situations that require the Council's attention. Report of the Independent International Commission of Inquiry on the Syrian Arab Republic of 8 August 2017, A/HRC/36/55.

¹⁴⁰ *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531, Art. 24.1.

¹⁴¹ Human rights situations that require the Council's attention. Report of the Independent International Commission of Inquiry on the Syrian Arab Republic of 8 August 2017, A/HRC/36/55.

¹⁴² *Convention on the Rights of the Child*, adopted 20 November 1989, United Nations Treaty Series, vol. 1577, no. 27531, Art. 28.

¹⁴³ Human rights situations that require the Council's attention. Report of the Independent International Commission of Inquiry on the Syrian Arab Republic of 8 August 2017, A/HRC/36/55.

intelligence agencies and the security forces, continue to occur without any punishment for the perpetrators. This is due to *Legislative Decrees 14/1969* and *69/2008* of Syrian National Law, which grant immunity from prosecution respectively to members of General Intelligence Department and to all the other members of the security apparatus. There are even more conditions that contribute to the impunity of the violations in question; while the Syrian Constitution guarantees the independence of judges, membership in the Baath party (the governing party) is a precondition for accessing judicial and prosecutor positions. The President presides over the Higher Council of the Judiciary, which administers the judicial system. He also sits on the Supreme Constitutional Court and appoints its other four members. Therefore, it seems reasonable to state that judicial and executive powers in the Syrian Arab Republic are not completely separated, and this increases the Government's power and prerogatives considerably¹⁴⁴.

3.4.1 Legislative Decree 14/1969

On 15 January 1969, Legislative Decree 14 was issued, establishing the General Intelligence Administration. Article 16 of the decree states, "No legal action may be taken against any employee of the [General Intelligence] department for crimes committed while carrying out their designated duties or in the course of performing such duties except by an order issued by the director"¹⁴⁵. This Decree gives Syrian Intelligence members the prerogative to use all means at their disposal, including the employment of torture, in order to gather information or make suspects confess. The incompatibility of this law with the Syrian Constitution is rather evident, since the latter bans torture in Art. 53 Par. 2¹⁴⁶. Legislative Decree 14/1969 further violates the rights of citizens to lodge a complaint, since no legal petition can be submitted against any member of the General Intelligence Department. The law is also incompatible with *Legislative Decree 39/2004*, in which Syria ratified the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*¹⁴⁷. Although Article 4 of the *Convention* obliges States Parties to take all measures to criminalise acts of torture in their criminal codes¹⁴⁸, it is noticeable here that in Syria, perpetrators of acts of torture and other severe human rights violations are instead protected by law.

¹⁴⁴ Report of the Independent International Commission of Inquiry on the Syrian Arab Republic of 23 November 2011, A/HRC/S-17/2/Add.1.

¹⁴⁵ Alternative Report to the Syrian Government's Initial Report on Measures taken to Fulfil its Commitments under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Damascus Center for Human Rights Studies, n.d.

¹⁴⁶ Constitution of the Syrian Arab Republic, adopted 27 February 2012, Art. 53 Par. 2.

¹⁴⁷ *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, adopted 10 December 1984, United Nations Treaty Series, vol. 1465, p. 85.

¹⁴⁸ *ibidem*.

3.4.2 Legislative Decree 69/2008

While members of the General Intelligence Department have enjoyed immunity from prosecution for a long time, with the issuance of *Legislative Decree 69/2008* all members of the security apparatus, from intelligence agencies, to judicial and customs police are secure from legal prosecution. The Decree in question was issued by President Bashar al-Assad on 30 September 2008, amending the Syrian *Military Penal Code*¹⁴⁹. The law delegated the right to issue an arrest order for members of the police, political security, and customs to the General Command of the Army and Armed Forces, although administratively these personnel are subordinate to the Ministry of Interior, not the armed forces¹⁵⁰. Article 1, Par. B of the Decree states: “Arrest orders for non-commissioned officers, members of the internal security forces, personnel with the Political Security Division, and members of the customs police shall be issued by the General Command of the Army and Armed Forces, in accordance with the provisions of Article 53 of the Military Penal Code”¹⁵¹. Furthermore, under this law, no lawsuit may be filed before regular courts against members of the police, customs police, or Political Security, including of course, ones related to the torture and assault of citizens. Such lawsuits require prior permission of the army commander, and shall be addressed to the military judiciary from the day in which Legislative Decree 69/2008 came into force, as Art. 2 of the latter Decree dictates: “Suits filed before the regular judiciary in connection with Article 1 shall be referred to the military judiciary”¹⁵².

3.5 Reactions of the International Community

3.5.1 The Inquiry of the UN Human Rights Council

Since the beginning of the civil war in Syria, the United Nations High Commissioner for Human Rights and the United Nations Secretary-General have called for a prompt, independent, effective and transparent investigation into the human rights abuses committed by the Syrian State since March 2011. For this reason, the *Independent International Commission of Inquiry on the Syrian Arab Republic* was established on 22 August 2011 by the Human Rights Council through *Resolution S-17/1*¹⁵³ adopted at its 17th special session. The *Commission's* mandate encompasses the investigation of all alleged violations of international human rights law since March 2011 in the

¹⁴⁹ Alternative Report to the Syrian Government's Initial Report on Measures taken to Fulfil its Commitments under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Damascus Center for Human Rights Studies, n.d.

¹⁵⁰ *ibidem*.

¹⁵¹ Alternative Report to the Syrian Government's Initial Report on Measures taken to Fulfil its Commitments under the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of the Damascus Center for Human Rights Studies, n.d.

¹⁵² *ibidem*.

¹⁵³ Resolution on the Situation of human rights in the Syrian Arab Republic of the UN Human Rights Council, adopted 22 August 2011, S-17/1.

Syrian Arab Republic, the establishment of the facts and circumstances that may amount to such violations, and the identification of those responsible for them, ensuring that they are held accountable for the crimes they have committed. Since beginning its work, the *Commission* has produced over 20 reports, and numerous periodic updates, exposing human rights violations committed throughout the country based on the examination of photographs, video recordings, satellite imagery, forensic and medical, reports from Governments and non-Governmental sources, academic analyses and United Nations reports. The *Commission's* main source of evidence however are interviews with direct witnesses and victims of human rights violations; the Commission has conducted over 5.500 interviews thus far, involving people in camps and hospitals in countries neighbouring Syria as well as by telephone and Skype inside the Country, since the Syrian Government has yet to allow the *Commission* to undertake direct investigations inside the country. The Human Rights Council has repeatedly extended the Commission's mandate since its creation, most recently until 31 March 2018¹⁵⁴. More recently, the Human Rights Council decided to establish a complementary body to the Independent International Commission of Inquiry on the Syrian Arab Republic, namely, the *International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Those Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011*, to which we will refer from now on as the "*Mechanism*". The *Mechanism* was established by United Nations General Assembly resolution 71/248 of 11 January 2017¹⁵⁵ with a mandate to "collect, consolidate, preserve and analyse evidence of violations of international humanitarian law and human rights violations and abuses and to prepare files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes, in accordance with international law"¹⁵⁶. The Independent International Commission of Inquiry on the Syrian Arab Republic, and the *Mechanism* were designed to cooperate and be complementary, but the mandates and operations of these two bodies are clearly distinct from each other. While the *Commission* has the primary functions of directly collecting information, report on broad patterns of violations and make recommendations, notably to Member States, with the aim of making its work visible and publicly reported, the *Mechanism* will primarily build on the information collected by

¹⁵⁴ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *Independent International Commission of Inquiry on the Syrian Arab Republic. About the Commission of Inquiry*, n.d., available online.

¹⁵⁵ Resolution on the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 of the UN General Assembly, adopted 21 December 2016, A/RES/71/248.

¹⁵⁶ *ibidem*.

others, especially the Commission, and it is not expected to publicly report on its substantive work. Its primary role will be to consolidate and analyse evidence, and establish files to assist courts¹⁵⁷.

3.5.2 The six points proposal

The United Nations and the Arab League, among other supranational organizations, have been attempting to bring the Syrian conflict to an end, with all the human rights violations it has generated, by organizing peace conferences and mediate among the parties. According to the UN, the only solution to the crisis is to start an inclusive and Syrian-led political process oriented towards the creation of a credible, inclusive and non-sectarian government, the drafting of a new constitution, and free and fair elections in which all Syrians are eligible to participate¹⁵⁸. Joint Special Envoy to Syria of the United Nations and the League of Arab States Kofi Annan devised a six points proposal¹⁵⁹ as a diplomatic solution for the conflict. The proposal asked for commitment to work with the Envoy through the appointment of an empowered interlocutor for all the parties involved in the conflict, cessation of the fighting and of armed violence in all its forms by all the parties, grant of timely provision of humanitarian assistance to all areas affected by the fighting, release of arbitrarily detained persons, freedom of movement throughout the country for journalists, and finally respect of freedom of association and the right to demonstrate peacefully. It seems rather obvious to say that few of these requests have been satisfied.

¹⁵⁷ OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, *International, Impartial and Independent Mechanism on international crimes committed in the Syrian Arab Republic. 34th session of the Human Rights Council. Remarks by Zeid Ra'ad Al Hussein, United Nations High Commissioner for Human Rights, 27 February 2017*, available *online*.

¹⁵⁸ Resolution of the UN General Assembly, adopted 18 December 2015, S/RES/2254.

¹⁵⁹ Six-Point Proposal of the Joint Special Envoy of the United Nations and the League of Arab States of 14 April 2012, as annexed to Security Council resolution 2042 of 14 April 2012.

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RIASSUNTO IN ITALIANO DELL'ELABORATO FINALE "THE RIGHTS OF THE CHILD IN THE SYRIAN ARAB REPUBLIC"

Attraverso il presente elaborato finale si intende fornire un quadro complessivo della situazione dei diritti del fanciullo nella Repubblica Araba di Siria. Dopo sei anni dallo scoppio della Guerra Civile Siriana, gli abitanti dello Stato mediorientale, ad oggi, affrontano una delle più gravi crisi umanitarie al mondo. In Siria, attualmente, vige uno stato di emergenza, proclamato nel 2011, ovvero all'inizio della guerra nella quale le violazioni sistematiche dei Diritti Umani sono diventate oramai all'ordine del giorno. I bambini, ovverosia la categoria di persone che dovrebbe essere la più tutelata secondo il Diritto Internazionale stanno, inoltre, pagando il prezzo più alto in questo conflitto.

I dati sulla crisi siriana raccolti da diverse Organizzazioni Internazionali e Non Governative delineano un quadro approssimativo di sei milioni di bambini che dipendono da assistenza umanitaria, metà dei quali sono stati costretti ad abbandonare le proprie case, diventando di conseguenza sfollati all'interno del proprio territorio di appartenenza, o rifugiati nei Paesi vicini come Egitto, Iraq, Giordania, Libano e Turchia, e acquisendo, conseguentemente, in questo ultimo caso, la condizione di apolidia la quale ha come conseguenza precipua per costoro quella di non essere cittadini di alcuno Stato, perdendo, insieme al diritto di cittadinanza, la protezione legale derivante da quest'ultimo.

La presente trattazione è divisa in tre capitoli, il primo consiste in un'analisi delle più importanti fonti del Diritto relative ai diritti del fanciullo, ovvero la "Convenzione ONU sui diritti dell'infanzia e dell'adolescenza" e il documento dal quale essa è stata derivata: la "Dichiarazione dei diritti del fanciullo". Quest'ultima, redatta nel 1923 da Eglantyne Jebb, fondatrice dell'Organizzazione Non Governativa Save the Children, fu la prima fonte del Diritto Internazionale interamente dedicata ai diritti del fanciullo. Il 26 Settembre dell'anno seguente il documento fu approvato dall'Assemblea Generale della Società delle Nazioni, divenendo così la prima dichiarazione relativa ai Diritti Umani sostenuta da un'Organizzazione Sovranazionale. Il 20 Novembre del 1959, il testo del documento fu modificato, ampliato, e adottato ufficialmente dall'Organizzazione delle Nazioni Unite (ONU). Tale documento non era di carattere giuridicamente vincolante, ciononostante, essendo stato approvato all'unanimità dall'Assemblea Generale dell'ONU, fu connotato da una forte autorità morale.

Nel 1979, la Commissione sui Diritti Umani delle Nazioni Unite (sostituita nel 2006 dal Consiglio per i Diritti Umani delle Nazioni Unite), formò un gruppo di lavoro aperto al fine di redigere un'effettiva Convenzione sui diritti dell'infanzia e dell'adolescenza, questa volta di carattere

giuridicamente vincolante. Il gruppo di lavoro era “aperto” poiché, oltre ai 43 Stati allora rappresentati in seno alla Commissione sui Diritti Umani, furono autorizzate a partecipare al processo di stesura anche alcune Organizzazioni Intergovernative, Organizzazioni Non Governative, e altri Stati membri delle Nazioni Unite che non erano, tuttavia, rappresentati all’interno della Commissione sui Diritti Umani.

La versione finale della *Convenzione sui diritti dell’infanzia e dell’adolescenza* fu adottata all’unanimità dall’Assemblea Generale delle Nazioni Unite il 20 Novembre 1989 ed entrò in vigore il 2 Settembre 1990. Ad oggi, la *Convenzione*, è stata ratificata pressoché da quasi tutti gli stati membri dell’ONU, con la sola ratifica mancante degli Stati Uniti che sono però firmatari.

Il primo capitolo prosegue con un’analisi dell’organo previsto dalla *Convenzione sui diritti dell’infanzia e dell’adolescenza* per il controllo dell’adempimento della stessa, il Comitato dei Diritti del Fanciullo. Vengono inoltre discusse la composizione del suddetto organo e le sue funzioni delle quali, tra le più importanti, figura l’analisi dei rapporti stilati dagli Stati parti della *Convenzione*. Tali rapporti hanno la funzione di evidenziare le misure che gli Stati aderenti hanno attuato al fine di applicare la *Convenzione*, e dovrebbero inoltre indicare il progresso nel godimento dei diritti del fanciullo all’interno del territorio di ogni singolo Stato. Il Comitato dei Diritti del Fanciullo svolge inoltre la funzione di indirizzare individualmente le proprie preoccupazioni e raccomandazioni agli Stati parti, attraverso la formulazione di *Osservazioni Conclusive*; interpretare il contenuto di norme in materia di Diritti Umani, formulando i cosiddetti *Commenti Generali*; organizzare giorni di “discussione generale” su questioni relative ai diritti del fanciullo.

In questo primo capitolo, vengono trattati, inoltre, i tre Protocolli Opzionali della *Convenzione sui diritti dell’infanzia e dell’adolescenza*. Il primo, entrato in vigore il 12 Febbraio del 2002, è il *Protocollo opzionale concernente il coinvolgimento dei bambini nei conflitti armati*, finalizzato a proteggere i bambini che vivono in società afflitte dalla guerra, dai danni fisici e psicologici che potrebbero subire in virtù di tali circostanze. Il suddetto Protocollo rivolge particolare attenzione al fenomeno dei bambini-soldato, ovvero dei fanciulli che, sin dall’età di otto anni, vengono strappati alle loro famiglie ed esposti alla violenza e alla brutalità della guerriglia armata. L’innovazione principale apportata dal Protocollo consiste nell’innalzamento, dai quindici ai diciotto anni, dell’età minima necessaria per essere reclutati forzatamente e per la partecipazione diretta alle ostilità.

Il secondo Protocollo Opzionale della *Convenzione* è quello concernente “*la vendita, la prostituzione e la pornografia rappresentante bambini*”, entrato in vigore il 18 Gennaio 2002. La finalità di quest’ultimo è quella di rafforzare il perseguimento, a livello internazionale, dello sfruttamento sessuale del fanciullo, il trasferimento degli organi dello stesso a fini economici e il

coinvolgimento del fanciullo in rapporti di lavoro forzato, con un ulteriore obiettivo che è quello di fornire una forma di protezione sociale ai bambini vittime di tali abusi.

Il *Protocollo opzionale sulla procedura di reclamo*, l'ultimo dei tre, è entrato in vigore il 14 Aprile 2014. In esso sono contenute le norme regolanti le procedure di reclamo *individuale, inter-statale*, e la *procedura d'inchiesta per gravi o sistematiche violazioni*. La procedura di reclamo *individuale* presuppone che un individuo o un gruppo di individui (quindi un bambino, un gruppo di bambini o coloro che li rappresentano), ricadente nella giurisdizione di uno Stato parte, il quale o i quali sostengono di essere stati vittima di una violazione della *Convenzione sui diritti dell'infanzia e dell'adolescenza*, o di uno dei due Protocolli Opzionali ad essa relativi, possa presentarne comunicazione al Comitato dei diritti del Fanciullo, che adotterà conseguentemente tutte le misure necessarie, a condizione che i rimedi nazionali siano stati esperiti. Per quanto concerne la procedura di reclamo *inter-statale*, questa viene attivata quando uno Stato parte sostiene che un altro Stato non abbia rispettato i propri doveri sanciti dalla *Convenzione* o dai relativi Protocolli Opzionali. Secondo la *procedura d'inchiesta per gravi o sistematiche violazioni*, il Comitato dei diritti del Fanciullo, una volta pervenute informazioni, da esso ritenute affidabili, è autorizzato a investigare su gravi o sistematiche violazioni dei diritti e doveri contenuti nella *Convenzione stessa* e relativi Protocolli Opzionali, commesse da uno Stato parte.

Il primo capitolo del presente elaborato finale si conclude con una digressione sulle obiezioni all'idea del carattere universale dei Diritti Umani, sebbene sempre in relazione alla *Convenzione*. In questo excursus, viene discusso come alcuni Stati, in particolare quelli le cui fonti del diritto siano legate o si rifacciano completamente alla *Shariah* (la legge Islamica), utilizzino cause di incompatibilità con la stessa, o semplicemente argomentazioni basate sul relativismo culturale, al fine di giustificare la loro ritrosia a recepire alcune norme contenute nella *Convenzione*, come in altri trattati sui Diritti Umani. Particolare attenzione è rivolta alla differenza tra l'approccio Universalistico e quello Relativista ai Diritti Umani, chiarificando che, mentre la scuola di pensiero Universalistica sostiene che ogni essere umano posseda alcuni diritti inalienabili semplicemente grazie alla sua condizione di essere umano, indipendentemente dalla sua nazionalità, religione, età, dal suo orientamento politico o dal suo genere, l'approccio Relativista presuppone che i valori varino a seconda delle diverse prospettive culturali proprie di comunità sociali specifiche, e che la percezione dei Diritti (Umani) vari conseguentemente. La digressione si conclude con un'analisi delle riserve espresse nei confronti della *Convenzione* da parte di un numero di Stati governati (anche in parte) dalla legge Islamica, quali Siria, Algeria, Giordania e Egitto, con particolare

attenzione a quelle avanzate dalla Siria, relative al principio di libertà di religione, e alla pratica dell'adozione, successivamente in parte ritirate.

Il secondo capitolo della presente dissertazione consiste in un tentativo di mostrare al lettore la realtà effettiva con la quale i bambini Siriani sono sempre stati costretti a convivere durante il regime degli Assad. Esso rappresenta il corpo dell'elaborato finale, trattando specificamente le violazioni strutturali, ossia ripetute nel tempo, dei diritti del fanciullo commesse dal governo della Repubblica Araba di Siria. Il presente capitolo è stato strutturato in maniera tale che dopo ogni resoconto su un'azione illecita perseguita dal Governo Siriano, o sul mancato adempimento di un obbligo o sull'inottemperanza di un dovere prescritto dalla *Convenzione sui diritti dell'infanzia e dell'adolescenza*, il corrispondente articolo appartenente a tale *Convenzione* venga menzionato.

Il capitolo si apre con una discussione generale sul trattamento e la considerazione riservata ai minori Siriani in una varietà di ambiti, sia nel contesto domestico da parte dei genitori, sia all'interno della sfera pubblica da parte del Governo. Tali trattamenti, consuetudini, e leggi regolanti questioni relative ai bambini in Siria, si sono spesso contrapposte alle norme del Diritto Internazionale e ai Diritti Umani, costituendo violazioni strutturali non solo della *Convenzione*, ma anche di altri codici e importanti fonti del Diritto.

Importanti esempi delle suddette violazioni strutturali della *Convenzione* commesse dal Governo Siriano riguardano il rispetto limitato o quasi assente verso le opinioni dei bambini, ovvero principi sostanziali come quello dell'"interesse fondamentale del fanciullo" (affermato nell'Art. 3 della *Convenzione*), mai incorporati nella legislazione locale relativa ai diritti dei minori; i sempre più frequenti abusi e la negligenza delle famiglie verso i propri figli, permessi dall'assenza di norme specifiche volte a criminalizzare la violenza domestica nella legislazione nazionale; il maltrattamento, l'isolamento e la negligenza verso i bambini negli orfanotrofi, e tra questi ultimi, l'allontanamento dei figli di genitori ignoti in istituti separati.

Per quanto concerne la salute dei minori, l'accesso ai servizi di sanità pubblica è caratterizzato da una forte disparità di carattere geografico, che vede molto svantaggiati i bambini che vivono in aree del Paese remote o rurali; inoltre, il numero di ospedali pediatrici nel territorio siriano è insufficiente, la disponibilità di servizi sanitari dedicati alla salute riproduttiva degli adolescenti è molto limitata, la conoscenza degli stessi adolescenti riguardo alle malattie sessualmente trasmissibili e le conseguenze relative al consumo di tabacco, alcool e droghe sono inadeguate; tutto questo è testimoniato dall'alta percentuale di bambini affetti da rachitismo e disturbi della crescita presenti nel Paese (28% secondo i dati di UNICEF), e dalle basse percentuali di allattamento al seno (43% secondo UNICEF).

Nell'ambito dell'istruzione, le violazioni più gravi riguardano l'accesso limitato ad informazioni appropriate dirette ai minori, insieme alla censura, spesso imposta ai mass media e nei confronti di opere artistiche e letterarie; Il sistema scolastico siriano, inoltre, utilizza dei piani di studi di qualità e rilevanza scadente, e presenta degli alti tassi di non ammissione alla classe superiore e di abbandono scolastico per quanto riguarda le scuole secondarie. Anche in questo ambito si ripresenta la disparità di genere propria della cultura Arabo-Islamica, considerato che le ragazze hanno una tendenza maggiore ad abbandonare la scuola rispetto ai ragazzi, a causa dei matrimoni combinati e celebrati in età precoce, oppure dei loro obblighi di svolgere le faccende di casa per la loro famiglia.

Il crescente tasso di povertà ha fatto sì che il lavoro minorile diventasse un fenomeno sempre più comune nel Paese. Anche in questo ambito, il Governo Siriano ha senza dubbio violato strutturalmente la *Convenzione sui diritti dell'infanzia e dell'adolescenza*, considerato che, secondo la legislazione nazionale, ai minori di età superiore ai quindici anni è permesso abbandonare la scuola per dedicarsi ad attività lavorative, spesso in condizioni pericolose. I minori che lavorano nel campo dell'agricoltura o in attività commerciali a gestione familiare non sono protetti dalla legislazione sul lavoro. Inoltre, malgrado l'esistenza di leggi nazionali volte a proibire l'assunzione di minori in qualità di collaboratori domestici, un gran numero di ragazze siriane vengono assunte per svolgere tali funzioni, a volte in condizioni di semi-schiavitù, e sono spesso esposte a diverse forme di abuso, compresa la violenza sessuale.

Progressi limitati sono stati compiuti nell'applicazione del *Protocollo opzionale concernente la vendita, la prostituzione e la pornografia rappresentante bambini*, in particolare in merito alla tratta e alla vendita dei minori, considerato l'elevato numero di casi di bambine dell'età di dodici anni, concesse in matrimonio in cambio di una remunerazione.

Per quanto riguarda il sistema giudiziario minorile Siriano, la problematica più grave ad esso relativa consiste nel fatto che l'età nella quale un minore acquisisce legalmente la responsabilità penale per le proprie azioni, ossia dieci anni, è notevolmente inferiore a quella prevista dalle norme riconosciute a livello internazionale, ossia dodici anni nei casi più estremi. Inoltre, la separazione tra adulti e bambini nelle carceri non è sempre garantita e questi ultimi, in condizione di detenzione, sono spesso vittime di maltrattamenti e abusi sessuali da parte del personale vigilante; sono stati registrati anche diversi casi di bambini torturati e uccisi dalle forze di polizia in diversi istituti di detenzione.

Il secondo capitolo si conclude con un'analisi di alcune norme discriminatorie contenute nelle principali fonti del Diritto Siriano, focalizzandosi principalmente sul *Personal Status Code*, un codice finalizzato a regolare situazioni giuridiche riguardanti questioni quali il matrimonio, il

divorzio, la successione ereditaria e la custodia dei minori. Particolare attenzione è rivolta verso le problematiche legali relative ai minori nati al di fuori del matrimonio, o spesso nati dal matrimonio di una donna Musulmana con un uomo non-Musulmano, che secondo la legge Siriana non può essere considerato valido. Di conseguenza, tali minori vengono raramente riconosciuti dai loro padri, e sono destinati ad essere abbandonati, o trasferiti in un orfanotrofio.

Il terzo e ultimo capitolo della presente trattazione è finalizzato a rimarcare alcune tra le più gravi violazioni strutturali della *Convenzione sui diritti dell'infanzia e dell'adolescenza* e generalmente del Diritto Internazionale, commesse dalla Repubblica Araba di Siria, dall'inizio della guerra civile fino ad oggi. Allo scopo di contestualizzare tali violazioni, all'inizio del capitolo viene fornito un quadro generale della guerra civile e dei diversi fattori che hanno contribuito al suo scoppio, identificati principalmente nel settarismo (data la forte diversità religiosa, etnica e tribale presente nella società siriana), nell'ispirazione tratta dal movimento della Primavera Araba, nell'opprimente dominio coloniale in Siria da parte degli stati occidentali, in particolare della Francia. Si sostiene che la causa primaria che abbia dato origine alla guerra civile, tuttavia, risieda nel tragico evento che nel 2011 ha visto un gruppo di bambini tra i nove e i quindici anni venire arrestati, detenuti e torturati dalle forze di polizia siriane, le quali avevano scoperto che i minori avevano scritto uno slogan rivoluzionario contro il Governo di Damasco sul muro della loro scuola nella città di Dara'a. Questo evento segnò l'inizio di un periodo di proteste e rivolte popolari contro il Governo, che vennero soppresse brutalmente dalle forze di polizia, ottenendo come risultato solamente lo scatenarsi di ulteriori violenze da entrambe le parti.

Dopo questa contestualizzazione, il capitolo prosegue con l'analisi delle violazioni strutturali commesse dal Governo Siriano durante la guerra civile, e secondo la stessa struttura del secondo capitolo, dopo ogni resoconto di una violazione, la corrispondente norma violata viene menzionata. Durante la guerra, è stato violato il diritto allo studio dei minori siriani, considerato che, dal 2013, più di 1000 scuole sono state utilizzate dalle forze armate come centri di detenzione e tortura e più di 2500 sono state registrate come danneggiate o distrutte. Il numero di minori che hanno abbandonato la scuola è cresciuto esponenzialmente, da 21.678 nel 2009 a 562.763 nel 2013; inoltre, molti genitori non permettono più ai loro figli di frequentare le scuole, non più considerate posti sicuri per i bambini. Numerosi sono stati i casi di bambini uccisi arbitrariamente dalle forze di sicurezza del Governo, sia nelle strade sia all'interno delle proprie abitazioni.

In seguito, particolare attenzione è dedicata all'utilizzo di armi chimiche durante il conflitto da parte del Governo Siriano, pur avendo sottoscritto la *Convenzione sulla proibizione dello sviluppo, produzione, immagazzinaggio ed uso di armi chimiche e sulla loro distruzione* del 2013; viene

affrontato un case study sull'utilizzo di armi chimiche nel recente attacco aereo di Khan Shaykhun che ha visto, secondo quanto concluso dalla *Commissione d'inchiesta internazionale indipendente sulla Repubblica Araba di Siria*, 83 persone uccise, tra le quali 28 bambini e 23 donne, e 293 persone ferite, tra le quali 103 erano bambini, il 4 Aprile 2017. Secondo la Commissione d'inchiesta l'attacco sarebbe avvenuto per mano delle forze armate del Governo Siriano, con l'appoggio di quelle del Governo Russo.

Il paragrafo successivo tratta dell'immunità legale goduta dalle agenzie di intelligence e dalle forze di sicurezza, le quali, ancorché responsabili di terribili violazioni dei Diritti Umani, non possono essere processate per le azioni compiute durante l'adempimento dei loro compiti, come stipulato dai *Decreti Legislativi 14/1969 e 69/2008* della legislazione siriana.

Il capitolo si conclude con una sezione dedicata alle reazioni della comunità internazionale durante la guerra, focalizzandosi sulle inchieste portate avanti dal Consiglio per i Diritti Umani dell'ONU, attraverso i due organi da esso creati, la precedentemente citata *Commissione d'inchiesta internazionale indipendente sulla Repubblica Araba di Siria* e il suo organo complementare, il *Meccanismo internazionale, imparziale e indipendente per assistere nell'investigazione e azione legale verso i responsabili dei crimini più gravi secondo il Diritto Internazionale commessi nella Repubblica Araba di Siria da Marzo 2011*.

Inoltre, come viene discusso nel paragrafo finale della trattazione, l'inviato speciale delle Nazioni Unite e della Lega degli stati Arabi Kofi Annan, aveva cercato di raggiungere una soluzione diplomatica al conflitto, ideando una proposta costituita da sei punti chiave, tra i quali figuravano la cessazione delle violenze e delle ostilità, richiesta a entrambe le parti; il permesso di effettuare interventi umanitari a favore di tutti coloro che ne avessero bisogno nel territorio Siriano; il rilascio delle persone arbitrariamente detenute e il riconoscimento di varie libertà, da quella di espressione, a quella di associarsi e manifestare pacificamente. Ovviamente, quasi nessuna di queste richieste è stata accordata dalle parti in conflitto.