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The Syrian Civil War,
Foreign Involvement and Violations of
International Humanitarian Law

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The Syrian Arab Republic, its history and the path towards the civil war

1.1 History of the country

The Syrian Arab Republic is a country situated in the Middle East region, bordering with Turkey, Iraq, Jordan, Israel, Lebanon and having access to the Mediterranean Sea to the west. The region of Syria is mother to the oldest human civilizations, and prior to that, it has been inhabited by the ancestors of the human kind like the Neanderthals. Throughout the centuries, the region has been under the rule of the main hegemonic civilizations among which the Egyptians, the Persians, the Greeks and the Romans. In 64 BC, at the end of the Third Mithridatic War, the region became a province of the Roman Empire and remained one of the most important districts of the subsequent Byzantine Empire¹. With the defeat of the latter, the region was ruled by various Islamic groups until it was conquered by the Ottoman Empire in 1516 and stayed under its control until 1918, date of the defeat of the Empire in the aftermath of the First World War. As a result of the secret Sykes-Picot Agreement of 1916 between France and the United Kingdom, the two countries appropriated themselves with the territories of the just defeated Ottoman Empire. In 1922, a mandate of the League of Nations over Syria and Lebanon formalized France's rule in the regions. The mandate had the purpose of creating an administrating power in the region to help the area develop and start the path towards self-governance. The French administration partly fulfilled the development goal by carrying out constructive work in the region with the building of roads, town planning and the encouragement of agriculture. However, the road towards self-governance presented itself as more difficult to achieve than expected due to diverging conceptions of the French and the Syrians on the implementation of the plans. Following the first Franco-Syrian crisis in 1925 which evolved into the two-day bombardment of Damascus by the French forces, a troubled period of conciliation between the two parties began. In 1928 a Constituent Assembly was elected to draft a Constitution. Following the draft of the latter, first negotiations for a Franco-Syrian treaty took place with an unsuccessful outcome. In 1936 more successful negotiations led to the signing of a treaty which provided for Syrian independence with retained France's position for guidance and assistance and the presence of two French military bases. The treaty was eventually ratified by the newly-established Syrian government, nevertheless, France revealed no intention to move towards the ratification. France's withholding of ratification led to the dismantling of the Syrian government

¹HISTORY.COM EDITORS, *Syria*, in *History*, July 10 2017, available at www.history.com.

and the suspension of the desired Constitution. In 1940, following the Nazi invasion of France, Syria came under control of the Vichy Republic. The following year, the Free French and the British forces invaded the country in order to oust the French. This would eventually happen in July of 1941 when, after the occupation of Damascus, the Free French and British forces took control. The territory was still recognized to be under French influence on condition that future independence of the country would be sought. During the following years, disagreement rose about the transfer of power from the French administration to the Syrian government elected in 1943. The disagreement escalated into a crisis that led to a new bombardment of Damascus by the French. Following this escalation of violence, long negotiations between the parties were brought in the UN Security Council in which it was agreed upon French and British withdrawal from both Syria and Lebanon. The withdrawal was finalized in April 1946 with Syria becoming an independent republic after having become a founder member of the Arab League and of the United Nations².

Since the independence as a parliamentary republic, the country encountered many obstacles and drawbacks on the path towards development. One fundamental issue was the internal division of the country among religious and ethnic groups and social classes which held diverging interests and opinions. During the years subsequent to the independence, the desired transition from a traditional to a modern society was stalled by the practice of nepotism and corruption which poisoned the political leadership of the country in the hands of the landowners and, increasingly, the army. Right after the creation of the State of Israel by the United Nations in 1948, Syria took part to the Arab-Israeli conflict which opposed the presence of the newly-created State in the region. The participation to the conflict absorbed tremendous amounts of human and economic resources, and the political scrutiny that was to be directed towards internal issues became redirected to the area of defense slowing down the process towards development. The defeat of the Arab world in the conflict against Israel had heavy repercussions on the political balance of the country, the population was deeply dissatisfied with the regime which it blamed for the defeat in the war. Consequently, a long period of political instability plagued the country. On March 30, 1949, a coup d'état led by colonel Husnī al-Za'īm overthrew the incumbent leadership. This was the first of a long series of coup d'états which would try to seize the power for more than two decades until Hāfiz al-Asad, with one last coup, gained the power and held onto it for thirty years until its death. During the years of the coups, political life was deeply fragmented as political groups clashed with each other divided by nationalist and pro-Western ideologies. In 1955, following the elections of a

²C. J. GADD, H.H. SCULLARD *et al.*, *Syria*, in *Encyclopædia Britannica*, February 13 2019, available at www.britannica.com.

nationalist government, the process of unification with Egypt started first with the stipulation of a defensive pact in October 1955 and with economic union in September 1957. Eventually, on February 1, 1958, Egypt and Syria united as administrative regions of the United Arab Republic under the rule of Gamāl‘ Abd al-NāṣirḤusayn, President of the Republic of Egypt, known as Nasser in the Western world. The Union, however, did not survive long as the subordinate position of Syria soon started to emerge and the country became gradually excluded by the political administration of the Republic. Furthermore, the Republic’s policies were inducing an economic crisis in Syria due to the agricultural reform and the nationalization of some Syrian companies. On September 28, 1961, only three years after unification, with a coup, the country went back to be a sovereign state. Two years later, in March 1963, young military officials of Ba’athist affiliation overthrew the regime and took the power. The Arab Ba’ath Party was founded in Damascus in 1947 mainly by Sunni and the Greek-orthodox Christians of the urban bourgeoisie. The main aims of the party were to achieve independence and freedom of the Arab countries which would need to unite their resources in order to achieve these goals. Following the coup, which came to be known as the “Ba’athist Revolution” there was a shift in the political power which fell in the hands of the lower-middle class and progressivist parties, away from the landowners. However, the military character of political power was still predominant. During 1966, the party acquired a more nationalist outlook, still ideologically pursuing Arab unification but giving priority to the domestic sphere. Its main objectives became the consolidation of the Syrian State and an economic system founded on Marxist ideology. The rise of this new political perspective gave life to deep internal gaps inside the party which was divided between the old Ba’ath and the new, socialist, pro-Soviet one which opposed each other for years deteriorating an already fragile equilibrium, which had already been endangered by the Arab loss in the Six-Day War in June 1967. Further internal clashes within the Ba’ath weakened its structure giving general Ḥāfiz al-Asad the opportunity to use the army to take action and ascend to power in November 1970. In 1971, he became the first Alawite president of the country, his rise to power marked the beginning of a new political era in which the leadership was consolidated in the hands of one man and the military, mainly Alawites. With the creation of the Nationalist Progressive Front, a coalition of nationalist and anti-imperialist parties which accept the leading role of the Ba’athist party, Assad created a counterbalance to the Sunni majority which would allow him to stay in power for three decades. During his rule, he dug the country out of its isolation in foreign affairs by turning Syria into one of the most influential countries in the Middle East, establishing closer ties with the major powers of the international scene. He maintained a good relationship with the USSR and at the same time opened towards the West and the conservative Arab countries. Following the collapse of the USSR, the country needed to improve his relationship

with other foreign powers, having lost its most influential ally. Therefore, the government enlarged its scope of allies to Western Europe and the USA by taking part in the American invasion of Iraq during the First Gulf War of 1990-1991. The military support given to the USA significantly improved Syrian relationship with the West and the moderate Arab countries. On June 10, 2000, after thirty years of rule, President Assad died of heart attack and was succeeded by his second born son Bashār al-Asad who took on the role of President of the Republic, Commander in Chief of the Syrian Armed Forces and Secretary of the Syrian Ba'ath Party³.

Bashār al-Asad, incumbent President of the Republic of Syria, a young man who had completed his higher education in the United Kingdom, incarnated the people's prospect of a new era in which the country would progress towards a more developed society. People's hopes lied into a government which would give greater voice to political opposition, larger recognition to civil and political rights, and which would actively fight against the deep-rooted corruption and nepotism of the political elite. The presidential career of Assad sailed exactly towards that direction. However, as years passed, contradictions between the promises and the actions of the Presidents would bring the people back to the reality of still being a very retrograde country. The biggest obstacle to the new president was the implementation of measures essential to reach the much-needed development. The change from an obsolete society to a more modern one required a slow and gradual transition in order to avoid reactions of the conservative groups such as the Muslim Brotherhood and the army which had been a constant presence into the political life of the country. Assad's first years of rule were characterized by increasing freedom of expression and association, the release of many political prisoners, better relationship with the Kurds which asked to be recognized as citizens and gain back their confiscated IDs. The new government maintained a certain degree of openness to the international sphere with the entry of Syria in the UN Security Council as a non-permanent member for the years 2002-2003 and with a governmental decree which allowed the import of foreign movies in the country. However, the initial progress in international politics was stalled by mounting hostility of the USA which started carrying out a policy of isolation of Syria through economic sanctions prompted by the accuse of aiding terrorist organizations and Iraqi rebels. After initial improvements, the image of the new president as the reformer of the country did not reflect the actual situation anymore. Human rights violation persisted with increasing incarcerations of pro-democracy and human rights activists and with the violent repression of protests. An atmosphere of discontent still pervaded a society in which popular protests denounced the still-in-force martial

³M. GALLETI, *Storia della Siria Contemporanea*, Milano, 2013.

law, the high number of political prisoners, the widespread corruption and the lack of freedom. Internal tension started to build up further as the demographic situation of the country worsened due to excessive population growth and to the incoming of more than a million refugees from Iraq looking for shelter in neighboring Syria. The country's infrastructures could not bear the overpopulation and the increasing demand of goods and services worsened the economic situation by increasing inflation. Furthermore, the violent repression of protests, a terrorist attack in Damascus in 2008, the unfulfilled promises of Assad to recognize the citizenship of the Kurds, the incarceration of leaders of the Kurd Party, the censorship and the strict control of the media would become pieces added to a house of cards which was about to crumble. In the World Report 2010, when describing the human right situation in Syria, Human Rights Watch wrote "Syria's poor human rights situation deteriorated further in 2009, as the authorities arrested political and human rights activists, censored websites, detained bloggers, and imposed travel bans. No political parties are licensed. Emergency rule, imposed in 1963, remains in effect and Syria's multiple security agencies continue to detain people without arrest warrants (...) Syria's repressive policies toward its Kurdish minority continue. Security agencies prevented political and cultural gatherings, and regularly detain and try Kurdish activists demanding increased political rights and recognition of Kurdish culture"⁴.

⁴HUMAN RIGHTS WATCH, *World Report 2010*, 2010, p. 55.

1.2 The spread of the Arab Spring and the escalation of protests into a war

At the end of 2010, in the MENA region, a wave of anti-government and pro-democratic protests, starting from Tunisia, spread across the countries of the region. Demonstrators everywhere advocated for the fall of nepotistic regimes, the respect for human rights and political freedoms and for higher standards of living. Substantial aid was given to the revolutionaries by the use of social media which helped spreading their messages not only within their countries but also internationally, creating a domino effect throughout the neighboring states. The first wave of protest sparked in Tunisia on December 18, 2010 when street vendor and activist, Mohamed Bouazizi, set himself on fire as a protest against the harassment received by police officers who aimed at shutting down his business. This man's immolation catalyzed the so-called "Jasmine Revolution" against the then-incumbent President Zine al-Abidine Ben Ali who, after a month of protests, fled to Saudi Arabia stepping down after 23 years of rule⁵. The wave of uprisings spread with different degrees of intensity in almost all Arab-speaking countries, the ones which underwent major uprisings and had to bear their deteriorating consequences are Egypt, Libya, Yemen and Syria. In January 2011, millions of protestors filled the streets advocating for the overthrow of the President Hosni Mubarak. Soon, the demonstrations turned into violent clashes with the security forces which resulted in hundreds of casualties and thousands of injured. After weeks of mass protests, Mubarak agreed to step down leaving the leadership to the Supreme Council of the Arab Forces, Egypt's armed forces which had played a decisive role in ousting the President⁶. However, with the incumbent military regime, violence in the country persisted as protesters accused the Supreme Council of the Armed Forces of continuing the authoritarian practices of the former regime. Demonstrators also advocated against the Council's attempt to establish supra-constitutional principles entitling it with a permanent role in the government, control over military budgets and with the power to propose and veto legislation regarding military and security issues⁷. At the end of 2011, Parliamentary elections were held in the country yielding the rise to power to the Freedom and Justice Party belonging to the Muslim Brotherhood, a Sunni Islamist organization recognized as a terrorist organization by some states such as USA and Russia. In 2012, Presidential elections took

⁵E. BLAKEMORE, *What was the Arab Spring and how did it spread?*, in *National Geographic*, March 29 2019, available at www.nationalgeographic.com.

⁶THE EDITORS OF ENCYCLOPAEDIA BRITANNICA, *Arab Spring*, in *Encyclopaedia Britannica*, January 14 2015, available at www.britannica.com.

⁷THE EDITORS OF ENCYCLOPAEDIA BRITANNICA, *Egypt Uprising of 2011*, in *Encyclopaedia Britannica*, January 8 2019.

place in the country, yielding as winner the head of the Freedom and Justice Party, Mohammed Morsi. Morsi's rule did not last long as protestors, in June 2013, demanded for him to step down. Following his refusal, the President was overthrown during the following month with a coup of the armed forces led by Abd al-Fattah al-Sisi and the leadership of the country was taken over by an interim government led by Adly Mansour. During 2014 new Presidential election Al-Sisi was elected President of the Arab Republic of Egypt bringing the country back under a military regime. Under his rule the country is again facing oppression of political opposition and freedoms, police violence, unlawful incarcerations and a troubled economy.

The protests sparked by the Arab Spring approached Yemen in 2011. Yemeni protestors, led by a coalition of Yemeni opposition groups, manifested in the capital city of Sana'a and other cities in the country to call for President Ali Abdullah Saleh to step down. As the protests persisted for months due to Saleh's refusal to leave office, clashes with the security forces resulted in several casualties. In April of the same year, the Gulf Cooperation Council proposed a plan to remove Saleh from office and to begin transition to a new government in exchange for a guarantee of immunity from prosecution for the president, his officials and his family⁸. While at first Saleh leaned towards accepting the plan, he later refused prompting further turmoil in the streets. After the explosion of a bomb in the presidential palace, Saleh was transported to Saudi Arabia for medical treatment leaving the vice-president Abdrabbuh Mansur Hadi in charge. A few months after the incident, in November, the president agreed to step down and transferred power to Hadi which became President of the Republic in the elections of February 2012. Mr. Hadi's government was weakened by terrorist attacks, food insecurity, separatist movements, continuing loyalty to Saleh of the security personnel, unemployment and corruption⁹. Taking advantage of the government weakness, the Houthi movement, an anti-governmental movement of predominantly Zaidi Shia Muslims, took control of the northern area of the Saada province. The group gained support in the following years with more people becoming cynical about political transition and giving support to the Houthis which overtook the capital in early 2015. From that point on, the Houthis and the security forces still loyal to the former president began their attempts to take over the country, forcing Mr. Hadi to flee to Saudi Arabia. The country, is now torn by a civil war which has brought foreign military involvement, with Iran supporting the anti-governmental groups and a coalition of Saudi Arabia and other Sunni countries fighting of the side of the Hadi's government. Living conditions of Yemeni

⁸THE EDITORS OF ENCYCLOPAEDIA BRITANNICA, *Yemen Uprising of 2011-12*, in *Encyclopaedia Britannica*, January 20 2019.

⁹ BBC, *Yemen crisis: Why is there a war?*, in *BBC News*, March 21 2019, available at www.bbc.com.

people are decreasing steeply as the conflict persists. Thousands of civilians have been killed with unlawful weapons, the situation is aggravated by a deadly famine and the blast of a cholera epidemic.

Libya is among those countries which are still suffering the consequences of the revolution of 2011. The protests escalated into two rounds of brutal civil war which have caused one of the biggest humanitarian crises of the century. Anti-governmental rallies began on February 11, 2011 in Benghazi following the arrest of Fethi Tarbel, a human rights lawyer. Protestors called for the then-incumbent president Muammar Gaddafi to step down. With the spread of the protests to the Libyan capital Tripoli, protestors were met by governmental lethal retaliation. In protest against Gaddafi's violence, high-level officials, including the Libyan ambassador at the United Nations resigned from office condemning the regime's actions. The UN Security Council unanimously approved sanctions against Gaddafi's regime by freezing the dictator's family assets, by imposing a travel ban and an arm embargo against the country. This move by the United Nations was later followed by sanctions from the US and the EU. The latter, in March called for the dictator to step down from office, but the international community still remained divided on military intervention. Meanwhile, local rebel groups established the Transitional National Council (TNC) which would take the military leadership, represent the opposition, provide services in rebel areas and guide the country's future transition towards democracy. A pronouncement by international community finally came when the UN Security Council imposed a no-fly zone on the country and authorized military intervention issuing the United Nations Security Council Resolution 1973 adopted on March 17, 2011. After the Resolution, NATO intervened and took command of the military operations. On September 15, the UN General Assembly recognized the TNC as the representative of the country to the UN, giving it international legitimacy. In the August of the same year, the rebels advanced towards the capital taking control of some areas of Tripoli and forcing the dictator to flee. Gaddafi was eventually killed by the rebels on October 20, 2011 in the town of Surt¹⁰. However, what had seemed to be the beginning of a new era of freedom for the Libyan people would eventually mark the beginning of a second round of bloody civil war. The TNC struggled to establish a functional government with many militia groups refusing to disarm and accept it as an interim government. The new conflict developed among the government elected in 2014, the rival Islamist government of the General National Congress and militant Islamist groups such as Al-Qaeda and ISIS with the aim of enlarging their territorial domain. The political instability and the continuous fight which has been

¹⁰THE EDITORS OF ENCYCLOPAEDIA BRITANNICA, *Libya Revolt of 2011*, in *Encyclopaedia Britannica*, February 8 2019.

going on since 2011 have prompted one of the biggest humanitarian crises of the time with massive flows of migration towards Europe and thousands of deaths at sea. The hopes of the Libyan people for a new era of development and freedom are getting blurred as they try to survive in a situation where living conditions are worse than what they were before they started the insurgency. “A lot of people tell you it was better under Gaddafi, that the revolution was a mistake. What they mean is, things are worse now than they were then (...) In the past, we would have a party for the anniversary of the revolution, but not this time” says Ashraf Abdul-Wahab, a Libyan journalist who fought alongside the rebels, in an interview with “The Guardian”¹¹.

The pro-democratic protests that had ousted dictatorial regimes in the neighboring countries, spread to Syria with anti-regime demonstration in the beginning of 2011. The uprising began following the arrest and torture of teen-agers who had written anti-governmental slogans on a school wall. On March 15, 2011 the first protests took place in the city of Dar’a and from there it expanded across the country. Protestors were met by violent repression by security forces which caused greater unrest to demand for Bashar al-Assad’s resignation. First, as a means of self-defense rebels took up the arms to resist the fire open by the security forces on the crowds. By April, the government started military operations in Dar’ā, Bāniyās, and Homs, with the aim of shutting down presumed anti-governmental centers surrounding the areas and cutting off electricity and communications. Such violent repression by government forces backfired in creating greater armed resistance and self-defense soon turned into an armed offense to oust the governmental forces from rebel zones. The uprisings escalated into a brutal civil war in 2012 which soon abandoned the original two-sided setting with the formation of numerous fighting parties and a complicated intertwining of alliances. The conflict has prompted one of the worst humanitarian crises of our time with more than 5.6 million refugees fled to other countries and 6.6 million being internally displaced¹². The Syrian Observatory for Human Rights documented 371.222 victims caused in the eight years of violence. Among those, estimated 112.623 are civilian casualties of which about 21.000 children and 13.000 women. However, due to the extreme secrecy on the number of victims by the warring parties, the number is estimated to be 100.000 more than the documented deaths. To this number, the Syrian Observatory for Human Rights has declared not to have included the 88.000 tortured and killed in the regime’s

¹¹C. STEPHEN, *Libya’s Arab spring: the revolution that ate its children*, in *The Guardian*, February 16 2015, available at www.theguardian.com.

¹²2018 USA FOR UNHCR, *Syria Refugee Crisis Explained*, in *USA for UNHRC*, March 2019, available at www.unrefugees.org.

detention camps and the nearly 11.200 abducted by Islamic factions such as ISIS and Tahrir al-Sham Front. As a whole, the number of estimated casualties on the 8 of conflict is 570.000¹³.

1.3 Developments of the war

The Syrian Civil War is one of the most complex conflict of the 21st century. What has begun as a street demonstration against a despotic government, escalated in a bloody interplay of sectarian divisions, foreign superpowers, regional powers, jihadist and ethnic minority's geopolitical ambitions. Even though dozens of independent armed groups are fighting this war, it is possible to group these scattered factions into two main fronts, the regime and the opposition. The regime front is composed of the governmental forces of the Syrian Arab Republic led by President Bashar al-Assad. There are three main bodies of armed forces which are kept under strict government control and highly loyal to the regime. This three bodies, "The Syrian Army", "The National Defense Force" and "The Republican Guard", are the ones carrying out the violence on behalf of the government. The regime is militarily backed by Russia, Iran and Hezbollah, a Lebanese Shia Islamist political party and military group, long-standing ally of the Ba'ath Syrian government and considered as a terrorist organization by several countries and regional organizations such as the USA, the EU, the UK, Israel and the Arab League¹⁴. Hezbollah is backing the government in order to safeguard its strategic relationship with Assad's regime. Being Syria a fundamental transit route for Lebanese arms, a change of regime would put at risk Hezbollah's strategic interests on arms control. The opposition is far more scattered than the regime forces as it is mainly an umbrella term which incorporates a variety of armed factions whose involvement is due to diverging ideological goals. The opposition, in turn, can be subdivided into three broad categories. The first broad category consists of the rebel front which established the Syrian National Coalition (SNC) in Doha, Qatar, in November 2012. The SNC is a coalition gathering several opposition groups and it is recognized as the legitimate representative of the people of Syria by the "Friends of Syria Group", a diplomatic group formed by the USA, the United Kingdom, Germany, Italy, France, Egypt, Qatar, Jordan, Turkey, Saudi Arabia and the United Arab Emirates. The organization is jointly working to solve the Syrian crisis outside of the UN framework in response to the inability to intervene through

¹³SYRIAN OBSERVATORY FOR HUMAN RIGHTS, *More than 570 thousand people were killed on the Syrian territory within 8 years of revolution demanding freedom, democracy, justice, and equality*, March 15 2019, available at www.syriaahr.com.

¹⁴M. SALEM, A. ALSHARIF, A. ROCHE, *Arab League labels Hezbollah terrorist organization*, in *Reuters*, March 11 2016, available at www.reuters.com.

the United Nations due to Russia's and China's veto to UN Security Council's resolutions for intervention in Syria¹⁵. The Free Syrian Army (FSA) is the principal army leading the opposition groups. It was created in July 2012 by defectors of the Syrian Army and civilian rebels. Being the FSA composed of several different factions, and having its headquarter in Istanbul, Turkey, communication and coordination issues rose along with internal rivalries. Therefore, in September 2012, the main commanders of the opposition groups created the Supreme Military Command with the aim of better coordinating the units fighting on the ground. In May 2018, the groups fighting under the FSA gathered in forming the National Front of Liberation¹⁶. This wing of the opposition is mainly backed by the United States and Turkey. A second group of the opposition is the Kurdish ethnic minority. The Kurds are the biggest ethnic minority of the country, being them 10% of the population, and they are mainly concentrated in the "Autonomous Administration of North and East Syria" also referred to as Rojava, an autonomous region at the Turkish border, inhabited by several ethnic minorities and which gained de facto autonomy in 2012 during the ongoing civil war. Kurds militias currently control one quarter of the country of Syria, "the largest chunk of territory still outside the control of President Bashar al-Assad"¹⁷. Kurdish forces are coordinated by three main bodies, the Syrian Democratic Forces (SDF), militarily led by the People's Protection Units (YPG), the National Coordination Committee for Democratic Change, and the Kurdish National Council (KNC). Kurds have formally been neutral during the conflict as they aim to achieve a decentralization of power which would guarantee them more autonomy, the elimination of discrimination such as the prohibition of Kurdish language and the establishment of Kurdish schools, and the constitutional recognition of Kurdish national identity. At the beginning of the conflict, the Kurds have been accused of fighting on the government's side since the government had left them a certain level of autonomy. However, later in the conflict, the Kurds joined the FSA in the fight for Aleppo against ISIS, an evidence that the militias are mainly interested in the protection of their territory¹⁸. Being the Kurds mainly engaged in a fight against the Islamic State, they are militarily backed by the US-led coalition whose main interest is preventing the Islamic State from prevailing. However, Kurdish forces fear Turkey's intervention against their expansion,

¹⁵XINHUA, *Friends of Syria recognizes opposition coalition as legitimate representative of Syrian people*, in *WebCite*, December 12 2012, available at www.webcitation.org.

¹⁶SYRIA CALL, *Many factions in the province of Idlib are moving to merge under the name "National Liberation Front"*, May 11 2018, available at www.nedaa-sy.com.

¹⁷T. PERRY, A. MACSWAN, *Where do the Kurds fit into Syria's war?*, in *Reuters*, January 3 2019, available at www.reuters.com.

¹⁸M. PILLON, *The Syrian Conflict*, 2014, p. 14-16.

indeed “Turkey has already mounted two cross-border offensives in northern Syria as part of its efforts to counter the YPG”¹⁹. Turkey has a Kurdish minority amounting to 15-20% of the population. The country’s hostility towards the Syrian Kurds is driven by the fear of a Kurdish insurgency that could destabilize Turkey’s political situation, therefore Turkish government perceives Syrian Kurds as a threat to national security. A third fundamental actor opposing the government are the Islamist militias which aim at overthrowing the regime in order to establish a new Islamic society. A major Islamist coalition, the Syrian Islamic Front (IF) was founded in November 2013 and its main goal is overthrowing the regime to create a state working under the Sharia law. The Syrian Revolutionaries Front (SRF), founded in December 2013, is a less extremist coalition backed by Saudi Arabia and it is loyal to the FSA and the SMC, therefore helping them against al-Qaeda and the Islamic State.²⁰ The most extremist and tamed factions, indeed, are the Hay’at Tahrir al-Sham and the Islamic State. These two groups which have a common derivation, are also fighting each other to single-handedly reach the leadership of the country. The former is a coalition of five Islamist groups accused of working under Al-Qaeda due to its Al-Qaeda-linked faction, the former al-Nusra Front. The al-Nusra Front, founded in January 2012, was the official branch of the terrorist organization Al-Qaeda in Syria and it has been denoted has a terrorist organization by the UN, the USA, the United Kingdom and Saudi Arabia.²¹ The Islamic State is a jihadist militant group whose origin can be traced back to the US-led invasion of Iraq in 2003. In 2004, Abu Musab al-Zarqawi pledged allegiance to Osama Bin Laden and set up AQI, a branch of Al-Qaeda in Iraq. In 2006, following his death, AQI broadened into the Islamic State in Iraq (ISI) whose leader became Abu Bakr al-Baghdadi. With the burst of the Syrian Civil War, the organization decided to step in the country to fight against Assad’s regime forming the al-Nusra Front. In April 2013, Baghdadi as leader of the organization merged the Iraqi and the Syrian branches of the organization creating the “Islamic State of Iraq and Syria”. The creation of this new faction led to the parting of al-Nusra whose leaders did not agree on Baghdadi’s move. Despite the intervention in Syria, the organization continued its fight in Iraq. At the beginning of June 2014, ISIS defeated the Iraqi Army in the city of Mosul and gained control of the area, then expanding to other towns and cities aiming at gaining control of Baghdad. With the capture of Mosul, ISIS announced the creation of a caliphate and acquired the name of “Islamic State”²². Following the

¹⁹T. PERRY, A. MACSWAN, *op.cit.*

²⁰M. PILLON, *The Syrian Conflict*, 2014, p. 13.

²¹*Ibid*, p. 14.

²² BBC, *What is 'Islamic State'?*, in *BBC News*, December 2 2015.

conquest of Mosul in Iraq and Raqqa in Syria, the Islamic State had had stable hold on a large portion of territory to be defined as a “*de facto* regime” having its own governmental structure and armed forces²³.

The violent repression of protests using tanks, jets and artilleries on the rebels, prompted the necessity to coordinate operations on the ground. Therefore, revolutionary Councils were formed in the cities to provide further support to the revolutionaries and, rapidly after, opposition groups gathered under the Syrian National Council which would represent the opposition internationally. In February 2012, a constitutional referendum was held foreseeing a constitutional amendment that would establish a multiparty system by removing the reference to the Ba’ath Party as the leader. The constitutional reform also introduced a seven-year presidential term and provided for the possibility of competition among different candidates for presidential elections. However, these constitutional modifications never acquired a *de facto* value as President Assad’s repression of political opposition continued. After more than a year of violence, following the spreading of the fight outside the area of Idlib, Homs and Hama, the International Committee of the Red Cross (ICRC), in July 2012 declared the country of Syria to be officially in a civil war²⁴. The civil war has soon moved to the international level following the involvement of Russia, Iran, Turkey, the USA and the Sunni Arab nations. The country has transformed into a stage of overlapping fights and alliances where a civil war is fought between government forces and rebel groups, the former backed by Russia, Iran and Hezbollah and the latter aided by the USA, Turkey and the Sunni Arab states. The American intervention in 2014, however has been mainly targeted at defeating IS. The various warring parties, however, have found each other a common ground in the fight against a common enemy, IS, which is intensively fought by the Kurds and the rebels along with their international supporters, being at the same time contrasted by governmental forces and their allies as well. In the fight against IS, the dynamics linking the several factions become even more tangled. While the Americans are supporting the rebels financially and by providing arms and some training, they are physically involved in the fight against IS in a close collaboration with the Kurds, main opponents to the jihadist group. With the help of American airstrikes, the Kurds have further expanded their domain along the Turkish border, reducing IS’s control over the area. However, despite Turkey being a major US ally, the American military support to the Kurds has generated tensions between the two foreign powers given Turkey’s interests to prevent the Kurds from gaining

²³N. RONZITTI, E. SCISO, *I conflitti in Siria e Libia. Possibili equilibri e le sfide al diritto internazionale*, Torino, 2018, p. 43.

²⁴BBC, *Syria in civil war, Red Cross says*, in *BBC News*, July 15 2012.

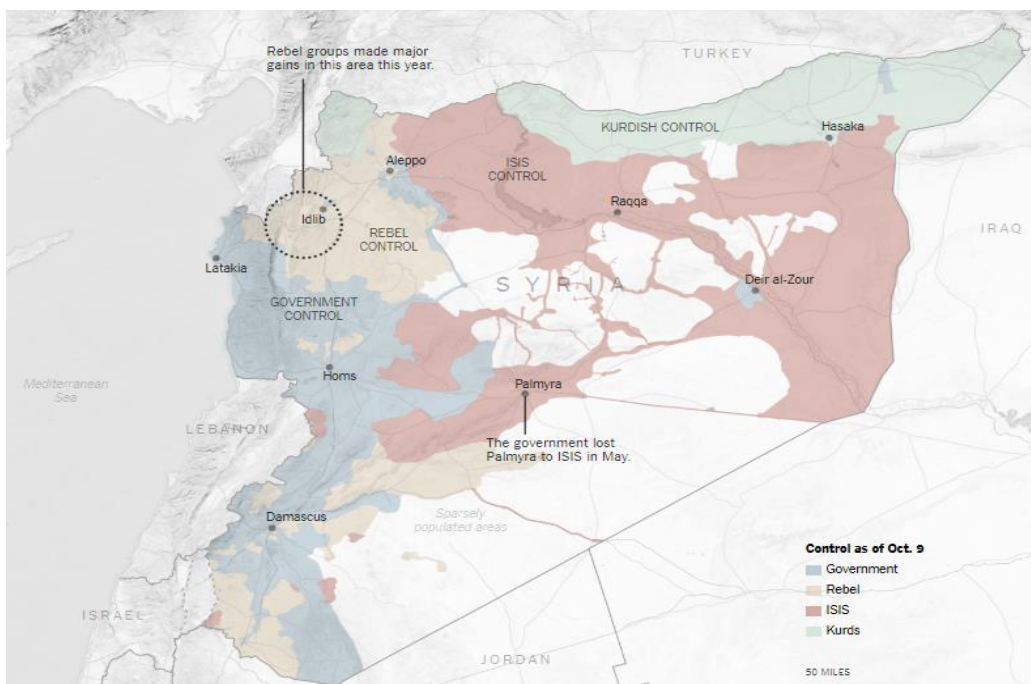
power and its attempt to thwart Kurdish separatists. Indeed, Turkish forces have crossed the border to launch attacks to the YPG in order to stop their expansion while carrying out an internal conflict with the Kurdish minority sparked by the government denial to Kurds' request to send aid to the Syrian Kurdish militants against IS. In the first years of the war, every faction was holding a substantial part of the Syrian territory, making it very hard to predict an end to the conflict and a potential winner. Most important, in 2015, only a year after the proclamation of the Caliphate, the Islamic State had dangerously gained control of large portions of the country by taking over the cities of Raqqa and Palmyra. The group's expansion deeply concerned the warring factions and the international community that what had previously seemed a utopian extremist dream of an Islamic State, could eventually become true. However, at this date, the Kurdish forces aided by the American intervention have eradicated IS from the territories which it previously controlled. IS began its military descent after the SDF took over the city of Raqqa, which had been the jihadist group's capital in the country. Being left with few control over sporadic territory in March 2019, on the 23rd of the same month, the US-backed SDF have announced the defeat of IS with the destruction of its last stronghold in the village of Baghouz ²⁵. With the fall of IS in March, American troops are starting their withdrawal from the war zones as American president Donald Trump had announced last December. However, contrary to the president's hopes of withdrawing all of 2.000 troops, roughly half of the troops is leaving the country in the event of a possible ISIS resurgence and because of the climate of instability which pervades the border area in which Turkish forces are opposing the Kurds. Meanwhile, the political alignment of the international community has steered away from the idea of overthrowing Assad and more towards finding a compromise in order to end the bloodshed. The regime is clearly having the upper hand over the rebels which maintain their power primarily in the Idlib province, while the rest of the country is largely under government control and Kurdish forces. The Idlib province is the last rebel stronghold in the country. The area is currently the stage of what might be the final phase of the civil war. The province's borders are surrounded by regime's forces backed by Russian airpower and the Turkish army and determined to penetrate the borders to put an end to the conflict. However, this would not be possible without a bloodshed being the province a shelter to an "estimated 2.5 to 3.3 million civilians, most of whom are internally displaced from other regions of Syria" writes the CSIS²⁶. The people of the province, therefore, are now trapped in an area surrounded by the violent regime forces with no possibility to escape. In fact, Turkey is possible the only way out for refugees, however the country is not

²⁵F. NAJJAR, *ISIL defeated in final Syria victory, SDF*, in *Aljazeera*, March 23 2019, available at www.aljazeera.com.

²⁶M.B. MAEKUSEN, *Idlib Province and the Future of Instability in Syria*, in *Center for Strategic & International Studies*, September 21 2018, available at www.longwarjournal.org.

allowing passage through its borders. It has been estimated that the militants in Idlib amount to 70,000 mainly Turkish-backed NLF but also Islamist extremists of Hayat Tahrir al-Sham which has given no sign of surrender, claiming to be willing to fight until the end²⁷. In September of 2018, Turkey called for a ceasefire in order to avoid what could turn into the bloodiest offensive of the war. After an initial rejection of the proposed truce by Russia and Iran, on September 17, 2018, a diplomatic meeting was held in Sochi between Russia's President Vladimir Putin and Turkish President Recep Tayyip Erdoğan, to set up a buffer zone between the Syrian army and the opposition. The ongoing plan provides for the withdrawal of heavy weaponry from the 15-20 km buffer zone and for the retreat of the jihadist groups nestled in the opposition enclave. However, Tahrir al-Sham, main jihadist group in the enclave has yet to comment on the ongoing agreement while in practice the regime forces and the opposition are still launching deadly military offensives. In the following illustrations, it is possible to analyze the changing power dynamics from 2015 to 2019, just before the Islamic State's fall.

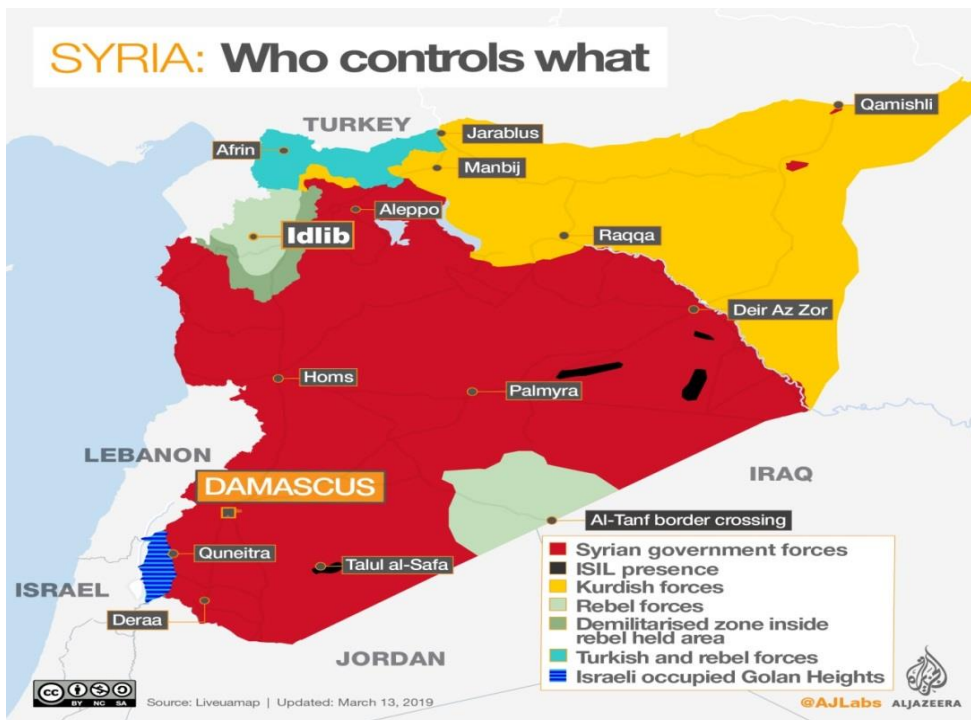
Figure 1, Faction's control over Syrian territory in 2015²⁸.



²⁷ T. JOSCELYN, *Al Qaeda and allies announce 'new entity' in Syria*, FDD's LONG WAR JOURNAL, 2017, available at www.longwarjournal.org.

²⁸ Image retrieved from: S. PEÇANHA, S. ALMUKHTAR, K.K.R. LAI, *Untangling the Overlapping Conflicts in the Syrian War*, in *The New York Times*, October 18 2015, available at www.nytimes.com.

Figure 2, Faction's control over Syrian territory in 2019²⁹.



²⁹ Image retrieved from: A. CHUGHTAI, *Syria's war: Who controls what?*, in *Aljazeera*, March 13 2019, available at www.aljazeera.com.

Foreign involvement in the war and the legal basis for third parties' intervention

1.4 Syrian Civil War as a proxy war among foreign forces

Since the first upheavals and the following outburst of the civil war, the warring factions have fought on their own for a brief period. Foreign involvement by regional and global powers has significantly modified the war equilibria and has created a web of overlapping interests and rivalries. Assad's regime forces have soon found support from Iran and Lebanese Hezbollah in 2013. However, the main turning point in the war came in 2015 with Russia's decision to militarily join the conflict. Russian intervention has become a decisive factor in shaping the outcomes of the war, its support for government forces arrived just in time to avoid its imminent collapse under rebel offenses. Since then, with the Federation occupying a frontline position, the regime has had the opportunity to recover and resume its fierce fight against the opposition. The latter has in turn received substantial aid by foreign countries such as the US, Turkey and the Sunni Arab nations, mainly Saudi Arabia, Qatar and the United Arab Emirates. Foreign countries' support to the warring parties also reflects their strategic interests in the region. Even though, Russia's official justification for intervention is to counteract IS, its efforts are mainly directed towards keeping alive its closer ally in the region as a means towards consolidation of its influence in the Middle East. Most importantly, the Federation is using its military airstrikes as part of a bigger strategy to reaffirm the country's leading role as a military power on the post- Cold War global stage. Iran's involvement in the conflict can be traced back to the Sunni/Shia religious divisions peculiar of the geopolitical chessboard of the Middle East. Syria is a divided country on the matter, having a Sunni population led by an Alawi government. It is in Iran's political interest to assure its influence on the government to create a safe access to the Mediterranean in the stretch of land that starting from Iran, it extends throughout Iraq, Syria and Lebanon therefore securing the country's outlet to the sea. Saudi Arabia, being an old regional rival, is interested in assuring its predominance in the region over that of Iran. US has condemned Assad's regime since the beginning of the uprising, calling for it to step down. However, US involvement in the war has been prompted by wider political goals such as that of contrasting Iran in its expansion in the Middle East. By defeating Assad's regime, Iranian and Hezbollah's influence would be deeply weakened. Moreover, given the climate of political instability in the region and the expansion of jihadist groups, the US has treated the use of chemical weapons as a national security matter, being afraid of the devices falling into the wrong hands. The current pattern of alliances in the civil war, in addition to countries' individualist goals,

can be traced back to rivalries enshrined in their history. Exemplar, indeed, are the cases of Iran and Saudi Arabia and the US and the Russian Federation which share a history of decades of troubled international relations.

Saudi Arabia and Iran are the biggest countries in the Middle East. Tension sparked by the longing of regional dominance has been exacerbated by deep religious divergence. Being Saudi Arabia a Sunni Muslim Country and Iran a Shia Muslim country, these two execute the role of leading powers of the two main factions in the Islamic world. The Iranian Islamic Revolution of 1979 has been considered as a turning point in the power game between the two regional powers. Before the Revolution, Saudi Arabia was regarded as the unchallenged leader of the Islamic world, being host of the two holiest sites of Islam, the mosques of Mecca and Medina. The Islamic Revolution posed a challenge to this traditional power skew. The Revolution against the pro-Western monarchy brought as an outcome the creation of an anti-Western Islamic Republic, a theocracy ruled by Islamic laws under the guide of Grand Ayatollah Ruhollah Khomeini, with the hegemonic intent to spread this form of government in the Middle East region. The power concentration began to skew more towards Iran following the US invasion of Iraq in 2003 to depose its president, Saddam Hussein. Saddam Hussein's Iraq did not entertain peaceful relations with neighboring Iran. Because of the unrest that pervaded the neighboring country during the Iranian Revolution, in 1980, Saddam, with support from Saudi Arabia, afraid of a future Shia supremacy in the country, launched an offensive triggering a war between the two neighboring countries. The fall of Saddam Hussein caused a shift in Iranian-Iraqi relations leading to a deeper influence of Iran on the country to the detriment of Saudi hegemony. Saudi Arabia, being the most powerful American ally in the Middle East, has been along with Israel the strongest opponents to the 2015 nuclear deal between Iran, the P5+1 and the EU, by claiming that the deal was not restrictive enough to prevent the country from building the nuclear bomb. The outburst of the Arab Spring in the region presented itself as an opportunity for the two countries to play out their rivalry on the geopolitical arena. Both countries decided to take the field in Syria and Yemen, avoiding facing each other directly while getting engaged into proxy wars. The participation to these conflicts backing opposite factions is feeding the tension running between the two powers. Iran, as it currently seems, is having the upper hand over Saudi Arabia in the proxy war carried out in Syria as the Iran-backed regime of Assad is clearly prevailing over the Saudi-backed rebels. Considering a possible loss in Syria, Saudi Arabia has been accused of trying to jeopardize Iranian influence on Lebanon. In 2017, Lebanese Prime Minister Saad Hariri, suddenly resigned from office in a television statement broadcast from Saudi Arabia. The Prime Minister mentioned the extension of Iranian influence in the country through Hezbollah and he claimed that he was afraid for his own life. The PM statement prompted doubts

about abduction and coercion from Saudi authorities. Lebanese Hezbollah, a powerful Shia political party and military group, as Iranian ally and major force in the country, represents an obstacle to Saudi's political aims. Therefore, after the Hariri incident, Saudi Arabia is suspected of plotting the destabilization of the party in order to exert its influence over the country at the expenses of Iran³⁰.

Another historical rivalry has been playing out in the Syrian Civil War, that of the United States and the Russian Federation. As it is common knowledge nowadays, the US and the USSR were the two Great powers that in the Cold War years put the world in danger of a nuclear war. It is no surprise that even if the Cold War is over and the USSR has fallen, high tension between the US and the USSR's successor, the Russian Federation, are still perceivable. After the fall of the USSR and the birth of the Federation, US-Russian relation met a period of stability. One of the first steps towards the detriment of the relations between the US and the newly-born, post-USSR Russia was the NATO bombing of Yugoslavia in 1999 during the Kosovo War, an action carried out without UN authorization due to the opposition to intervention of China and Russia in the Security Council, prompting accusations of aggression and breach of International Law from the FRY. Russia has increasingly undertaken an image of dangerous military and political power in the international landscape with the Russia-Georgia war of 2008 and Russian attempt to steer the political position of neighbouring countries such as Ukraine and Belarus through Gazprom. Current rivalry between the two superpowers has largely spiraled subsequent to the 2014 Russian Annexation of Crimea. This move on behalf of the Federation is a clear breach of Art. 2 paragraph 4 of the UN Charter, constituting an act of aggression³¹. The annexation of Crimea has bolstered a mechanism of sanctions towards Russia from the US, the EU and other countries, and Russian retaliation through the application of sanctions itself. President Obama's response to Russia's actions has been that of downgrading the country as a mere regional power afraid of losing the coercive influence of the former USSR, rather than a dangerous global power³². The two superpowers have both a strategic interest in exerting their influence in the African continent. Russia's is trying to assure its predominance by becoming a major arms supplier to the African countries, however, being second to the US in the field. The US has also established through the years a net of American military

³⁰ J. MARCUS, *Why Saudi Arabia and Iran are bitter rivals*, in *BBC News*, November 18 2017, available at www.bbc.com.

³¹ Art. 2, par. 4, UN Charter.

³² J. BORGER, *Barack Obama: Russia is a regional power showing weakness over Ukraine*, in *The Guardian*, March 25 2014, available at www.theguardian.com.

bases everywhere in the continent but Egypt with the United States Africa Command (AFRICOM) created in 2007, during the Bush administration to oversee American military and security interests in the continent³³. Recent developments in the past years have contributed to damaging the two countries' relations. In 2013, Edward Snowden, a CIA contractor, committed whistle blowing activities by releasing classified information and then fled the country. Russia's decision to give Snowden political asylum and the decision taken in 2017 to prolong its asylum until 2020 have been perceived by the US as an affront to the country.³⁴ The two powers found each other on conflicting sides in other fields such as space technology, which would jeopardize American drone usage, and nuclear control³⁵. In 2019, indeed, Mr. Trump's administration announced that it was going to suspend a major nuclear arms control treaty, the Intermediate-range Nuclear Forces Treaty, following years of accusation by the US of the Russia violating the treaty. American withdrawal from the accord has rekindled the decades-old hostilities. The Russian government has accused the Trump administration of looking for excuses to end the agreement and pushing Russia to suspend the accord in turn and start developing nuclear weapons that would be banned by the treaty³⁶. US-Russia relations have been heavily affected by the countries' military involvement in Syria. While both countries have claimed that their priority is the fight against terrorist organization in the country, both powers represents strategic leverages for the warring fronts. However, the countries' support for opposing factions has contributed to stretching the cleavage that has for decades strained their relations. The American government has been calling upon Assad to step down since the beginning of the war. Therefore, Russia's military involvement in Assad's favor, a government which is daily violating International Humanitarian Law with the use of prohibited weapons and attacks against civilians, has turned Russia's intention of fighting terrorism into a mission creep, bringing greater turbulence on the superpowers' arena. The Syrian government has made use of chemical weapons multiple times, trespassing President Obama's so-called "red line" which would have triggered American intervention. While the Obama administration's aim of Syrian intervention was the defeat of IS, with the change in presidency and the rise of Donald Trump, in 2017, the US

³³ AMERICAN. GOV ARCHIVE, *U.S. Creating New Africa Command To Coordinate Military Efforts*, February 6 2007, available at web.archive.org.

³⁴ R. OLIPHANT, *Russia extends Edward Snowden's asylum 'until 2020'*, in *The Telegraph*, January 18 2017, available at www.telegraph.co.uk.

³⁵ C. KUBE, *Report: Space will likely be a battlefield in any U.S. conflict with China, Russia*, in *NBC News*, February 12 2019, available at www.nbcnews.com.

³⁶ A. ROTH, *Russia follows US in suspending nuclear deal*, in *The Guardian*, February 2 2019, available at www.theguardian.com.

started carrying out airstrikes targeted at government forces and its allies³⁷. The airstrikes have had a serious impact on US relations with Russia which decided in turn to suspend “an agreement to share information about air operations over the country, devised to avoid accidental conflict”, having defined US actions as a violation of that agreement signed in 2015³⁸. Therefore, while it was Trump’s political objective to heal the wounded relations with its greatest rival, the Syrian war dynamics seems to have operated in the opposite direction. In response to Trump’s decision of launching missiles in retaliation of the chemical weapons usage by the regime, Russia’s incumbent Prime Minister, Dmitry Medvedev declared the two superpowers’ ties ruined.

1.5 The UN collective security system, the efforts of the Organization and the challenges to conflict resolution

The United Nations is an intergovernmental organization formed by 193 sovereign states, founded in 1945, at the end of the Second World War, with the objective of promoting international cooperation and maintaining international security. The functioning and structure of the organization is steered by its founding document, The Charter of the United Nations. The Charter was signed on June 26, 1945, in San Francisco, and came into force on October 24 of the same year. The Charter defines the principles on which the organization is based on, its structure and its functioning and it represents an overarching source of International Law, as confirmed in Art. 103 of the Charter which entails that obligations arising under the Charter shall prevail over obligations under other treaties. The UN is composed of six main organs whose structure and tasks are defined in Chapter III of the Charter. The six main organs, listed in Art. 7 of Chapter II are: the General Assembly, composed by all of the member states of the organization, is the representative body; the Security Council, composed of 15 members among which 5, the USA, the UK, France, Russia and China, are permanent members and exercise veto power, is the executive body, its decisions are binding and needed to be complied with by the member states. The Council is the organ entitled to act for the maintenance of international security. the Economic and Social Council, composed of 54 members elected by the General Assembly, overviews economic, social and environmental issues and overlooks the implementation of agreed development goals; the Trusteeship Council was the

³⁷ M. R. GORDON, H. COOPER, M. D. SHEAR, *Dozens of U.S. Missiles Hit Air Base in Syria*, in *The New York Times*, April 6 2017, available at www.nytimes.com.

³⁸ P. BAKER, N. MACFARUHAR, M.R. GORDON, *Syria Strike Puts U.S. Relationship With Russia at Risk*, in *The New York Times*, April 7 2017, available at www.nytimes.com.

body in charge of the administration of UN Trust Territories, its activity, however, has been suspended in 1994 when the last UN Trustee, Palau, achieved self-governance; the Secretariat, headed by the Secretary-General, is composed of the UN staff operating in UN duty stations and peacekeeping forces; the International Court of Justice is the judicial organ, its main task is the settlement of international disputes and breaches of International Law³⁹. One of the main purposes of the United Nations is the maintenance of peace and security in the world. To achieve this aim, the organization has devised a collective security system designed to intervene in cases of threats to peace, breaches of peace and acts of aggression by a member state. As stated in Art. 39, Chapter VII of the UN Charter, the collective security system is steered by the UN Security Council, the only body authorized to determine the existence of a threat, a breach to peace or an act of aggression, and to take decisions to protect the maintenance of peace. After having analyzed and assessed the situation, the Security Council may decide to act in various way depending on the nature of the event. Art. 40 to Art. 42 of Chapter VII outline the possible lines of action that the Security Council is allowed to take after having determined the nature of the situation. Before addressing sanctions or forcible measures, the Council shall apply provisional measures to avoid an aggravation of the situation and call upon the concerned parties to comply with these measures.⁴⁰ Art. 41 provides for the application of sanctions, that countries party to the organization are called upon to apply against the involved states⁴¹. When the application of sanctions against the involved parties is deemed inefficient, the UN Charter provides for the use of forcible measure in Art. 42. In this case, states are called upon to render their military resources available to the organization which lacks a military force of its own. A decision by the Council to militarily intervene does not impose positive obligations on the member states as interventions can only be recommended or authorized, Council's decisions are only binding upon the state at fault. However, even if Council's decisions do not entail positive obligation, negative obligations are binding on all member states in conformance with Art. 2, paragraph 5 of the Charter. An example of negative measure is the flight ban over Libya imposed by the Security Council in 2011. Council's authorization to intervene with forcible measures must be taken as a result of a voting process among the Council's members. As laid down in Art.27, Chapter V, each member of the Council has a vote and any decision on procedural matters shall be taken only following a qualified majority of 9 out of 15 members⁴². A

³⁹ UNITED NATIONS, *Main Organs*, available at www.un.org.

⁴⁰ Art. 40, UN Charter.

⁴¹ Art.41, UN Charter.

⁴² Art. 27, UN Charter.

very controversial feature of the United Nations is the distribution of power among the member states. Having been the organization set up in the aftermath of the Second world War, the distribution of powers has been dictated by the outcome of the war. In the Security Council voting procedure, the five permanent members enjoy veto power, which means that Council's decision often reflect geopolitical predominance, preventing the international community to take action. An exemplar case of inability of UN action due to Security Council members vetoing proposed resolutions, is indeed the case of Syria. As mentioned above, the Russian Federation is the Syrian regime's strongest ally, therefore several resolutions targeted against Assad's regime have been continuously vetoed by the Federation.

Since the outburst of the war, the UN has repeatedly engaged its efforts into trying to settle the Syrian crisis. The organization has started close cooperation with the Arab League since the Arab uprisings, having it been, particularly in Syria, involved as a mediating party. In 2012, the UN and the Arab League worked jointly to appoint former UN Secretary-General, Kofi Annan, as Joint Special Envoy of the United Nations and the Arab League for Syria⁴³. In March of the same year, Annan devised a six-point plan to reach a ceasefire and bring an end to human rights abuses and the rising death toll. The Six-point plan envisaged the initiation of a "Syrian-led political process to address the legitimate aspirations and concerns of the Syrian people"⁴⁴; a commitment to reach a ceasefire by all parties under effective supervision of the United Nations; a call upon all parties to cease usage of heavy weaponry and to retreat military forces from civilian areas; the provision of humanitarian assistance to all areas affected by the fighting and the establishment of a daily two-hour humanitarian pause among the parties; the setting up of a process for tracing detention centers and accelerating the release of arbitrarily detained persons; the insurance of freedom of movement for journalists throughout the country; the restoration of freedom of association and peaceful demonstration. In order to discuss concrete intervention in Syria, on June 30, 2012, in Geneva, Annan convened the Action Group of Syria, formed by the foreign ministers of the permanent members of the Security Council, the High Representative of the European Union for Foreign Affairs and Security Policy, the Secretary General of the United Nations and the Arab League, and the foreign ministers of Turkey, Iraq, Kuwait and Qatar⁴⁵. In the Final Communiqué of the Action

⁴³ SECURITY COUNCIL REPORT, *Briefing on Cooperation between the UN and the League of the Arab States*, 31 July 2017, available at www.securitycouncilreport.org

⁴⁴ Resolution S/RES/2042(2012) of the UN Security Council of 14 April 2012.

⁴⁵ KOFI ANNAN FOUNDATION, *Joint Special Envoy for Syria announces meeting of the Action Group for Syria*, in *Kofi Annan Foundation*, June 27 2012, available at www.kofiannanfoundation.org.

Group for Syria, the members agreed on joint action to prompt a Syrian-led political process to prevent further militarization of the conflict and promote parties' cohesion in light of Annan's Six-point plan⁴⁶. In order to monitor the implementation of the plan, with Resolution 2043 of April 21, 2012, the Security Council established the United Nations Supervision Mission in Syria (UNSMS) for a 90-day period. However, the mission's objective resulted to be harder to achieve, leading to an extension of 30 days⁴⁷. Moreover, failed implementation by the Syrian government and a decision stalemate in the Security Council failed to put an end to the hostilities which escalated again determining the failure of the plan and the end of the UNSMS mandate without completion of the envisaged points. The plan unveiled deep cleavages among members of the Council as each power siding with the warring parties, accepted its implementation only considering their interests, a change of government for the US and its protection according to Russia. When a draft resolution meant to implement the plan was brought to the Council for voting, two permanent members, Russia and China exercised their veto power preventing the plan from coming into action. Given the inability to fully implement the points, in August 2012, Annan announced his resignation from the role of Special Envoy handing it over to Lakhdar Brahimi. In a press conference at the UN, the former Secretary-General greatly blamed the "finger pointing and name calling in the Security Council" which highlight the diverging interests of the parties not willing to reach an agreement and stop the bloodshed⁴⁸. In 2013, a first agreement came in the Security Council on a resolution to require Syria to destroy its chemical weapons arsenal. After almost two years of inability to act, Russia and the US met in the middle following alleged Syrian regime's use of sarin gas in Eastern Ghouta causing around 1,400 casualties. Following the then-incumbent president Barack Obama's accusation of having crossed a red line, Russia, along with the US, urged the regime to comply. Council's vote came in the aftermath of a session of the Executive Council of the Organization for the Prohibition of Chemical Weapons (OPCW) which urged the Syrian Arab Republic and all the parties to the conflict to become member of the convention so as to have a legal mandate to start examinations in the country^{49,50}. After the failure of the first Geneva Conference, many other peace

⁴⁶ Annex to the letter of the Secretary-General of the United Nations to the General Assembly and the Security Council, 30 June 2012, doc. Final communiqué of the Action Group for Syria.

⁴⁷ UNITED NATIONS, *Monitoring a cessation of armed violence in all forms*, in *UNMSIS*, 2012, available at peacekeeping.un.org.

⁴⁸ BBC, *Kofi Annan quits UN Syria role*, in *BBC News*, August 2 2012.

⁴⁹ N. PATON WALSH, E. LABOTT, *Security Council OKs Syria resolution, warns of consequences*, in *CNN News*, September 28 2013, available at edition.cnn.com.

⁵⁰ ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS, *Syria's Accession to Chemical Weapons Convention Enters into Force*, October 14 2013, available at www.opcw.org.

conferences were held, none yielding a satisfying result which would bring the international community close to the resolution of the conflict. In January 2014, the then-incumbent Special Envoy, Lakhdar Brahimi convened a second peace conference in Montreux and Geneva to discuss the Geneva Communiqué issued by the precedent conference, to bring together representatives of the Syrian regime and the opposition to reach an agreement on the establishment of a transitional government. Several rounds of negotiations and talks were held during the days of the conference and later in February. However, the multiple negotiations did not yield any settlement, causing hostilities to continue ferociously. In November 2015, a new conference was held under the auspices of the International Syria Support Group (ISSG), an association formed by “the Arab League, China, Egypt, the EU, France, Germany, Iran, Iraq, Italy, Jordan, Lebanon, Oman, Qatar, Russia, Saudi Arabia, Turkey, United Arab Emirates, the United Kingdom, the United Nations, and the United States to discuss how to accelerate an end to the Syrian conflict⁵¹. Even though Annan’s plan had not entered into force, all subsequent international meetings would use the Geneva Communiqué aimed at implementing the plan as a reference point for building the discussions. Under the auspices of the UN, another conference was held in Geneva where the ISSG, steered by the US and the Russian Federation, stipulated an agreement to set up a ceasefire taskforce and a cession of hostilities on February 27, 2016, for all the parties committed to the agreement, therefore excluding IS and the al-Nusra Front⁵². In December 2015, the UN Security Council unanimously adopted Resolution 2254 for the implementation of a Syrian-led political transition towards the end of the conflict, expressing support for free and fair elections in the country to be held within 18 months under UN supervision⁵³. The Council Resolution became the backbone of new round of peace talk meetings among Russia, Turkey and Iran beginning in Astana in 2017 in which the countries agreed that a solution by military means was not going to be possible therefore relying on the political process outlined in the resolution. Current UN action for a peace settlement in Syria is being steered by incumbent Special Envoy, Geir Pedersen, who, basing his actions on Security Council Resolution 2254 which envisages a road map towards Syrian reconstruction, is advocating for the opening of dialogue with regime and opposition forces. His main aim is to eventually reach

⁵¹ EEAS PRESS TEAM, *Statement of the International Syria Support Group*, in *European Union External Action*, November 14 2015, available at eeas.europa.eu.

⁵² U.S. DEPARTMENT OF STATE, *Joint Statement of the United States and the Russian Federation, as Co-Chairs of the ISSG, on Cessation of Hostilities in Syria*, February 22 2016, available at web.archive.org.

⁵³ Resolution S/RES/2254(2015) of the UN Security Council of 18 December 2015.

the creation of a constitutional committee charged with the draft of a new constitution, task already envisaged by previous Special Envoy, Staffan de Mistura⁵⁴.

1.6 Intervention of third states in domestic affairs

The main purpose of the UN is the maintenance of peaceful relations among members. To this purpose, the UN Charter prohibits the use of force as stated in Art.2 paragraph 4 “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”. However, the prohibition is not absolute as the Charter provides exception to the above-mentioned provision. Chapter VII of the UN Charter provides for two exceptions to the prohibition of the use of force. The first exception, contained in Art. 42, provides for the use of force following a decision by the Security Council, in case that non forcible measures proved to be inefficient. The second exception, laid in Art. 51, provides for the use of force as a means of individual or collective self-defense, provided that actions taken by the state be communicated to the Security Council and would not interfere with the Council authority and responsibility. Furthermore, as laid down in Art. 20 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts of the International Law Commission 2001, military intervention by a State on the territory of another State, is allowed under the condition of consent of the state concerned which would preclude the wrongfulness of the act⁵⁵. An additional and very controversial reason that could justify military intervention, is the humanitarian intervention. Under the Responsibility to Protect Doctrine, or R2P, states have the responsibility to protect individuals within their boundaries. In the case of failure of fulfilment of their duty, other states are entitled to step in. However, the UN Charter does not provide for such a type of intervention which poses both legal and moral problems. Generally, this kind of intervention is subordinate to the authorization of the Security Council which would render the act legal.

⁵⁴ A. VOHRA, *Breakthrough reached on negotiating Syria's new constitution*, in *TRT WORLD*, April 12 2019, available at www.trtworld.com.

⁵⁵ Art. 20, Draft Articles on Responsibility of States for Internationally Wrongful Acts of the ILC of 2001.

1.6.1 USA military intervention

“The future of Syria must be determined by its people, but President Bashar al-Assad is standing in their way. His calls for dialogue and reform have rung hollow while he is imprisoning, torturing, and slaughtering his own people. We have consistently said that President Assad must lead a democratic transition or get out of the way. He has not led. For the sake of the Syrian people, the time has come for President Assad to step aside”. With these words, in August 2011, President Barack Obama made the world acknowledge the US position on the Syrian crisis by calling for President Bashar al-Assad to step down from office. Since the beginning of violence in the country, the US has condemned regime actions, maintaining a distanced but observing position. Intervention in the conflict has been deeply debated during the years following the outburst of the revolution due to divergence among the President, the Congress and the public opinion. The years, following the outburst have been punctuated by Obama’s evolving position on a possible intervention in Syria. In 2012, the President held a speech sustaining the decision of not getting militarily involved in the conflict. American hesitation regarding military intervention in Syria can be explained by the very controversial involvement in the US in several country’s political process. The 2003 Iraq invasion in the most criticized American intervention of the century, and intervention in Afghanistan and Libya have brought heavy critics to the American government. However, in the same address, the President addressed a warning to the Syrian leader by establishing a “red line” which, if trespassed, would trigger American action. The red line mentioned by the president referred to the use chemical and biological weapons defined by Obama as an issue more extended than one country, as a threat to US allies in the region and a threat to US security stating “we cannot have a situation where chemical or biological weapons are falling into the hands of the wrong people”⁵⁶. On August 21 2013, a regime chemical attack on Eastern Ghouta by the regime killed 1,400 people through the use of deadly sarin gas. The event triggered international debate about a possible intervention, particularly among the US, France and the UK⁵⁷. In Obama’s presidential discourse in September 2013, the president stated “I have resisted calls for military action, because we cannot resolve someone else’s civil war through force, particularly after a decade of war in Iraq and Afghanistan. The situation profoundly changed, though, on August 21, when Assad’s government gassed to death

⁵⁶ TELEGRAPH MEDIA GROUP LIMITED 2019, *Syria: chemical weapons are a ‘red line’, UN President Barack Obama warns Bashar al-Assad*, in *The Telegraph*, August 21 2012, available at www.telegraph.co.uk.

⁵⁷THE ECONOMIST NEWSPAPER LIMITED 2019, *If this isn’t a red line, what is?*, in *The Economist*, August 21 2013, available at www.economist.com.

over a thousand people”⁵⁸. Mr. Obama referred again to the event as a danger to American security claiming that failure to stop Assad from using chemical weapons would result into an increase of use of those weapons by dictatorial regimes, endangering the international community with the risk of a drawback to chemical warfare. In the Presidential address, Obama declared its decision to respond to Syria’s regime with targeted military strikes as a deterrence for a new use of chemical weapons, affirming also his decision to appeal to Congress for a democratic decision. However, Obama’s will to intervene in 2013 was never fulfilled as the Congress did not vote in favor of the bill authorizing US intervention. September 2014 was a turning point for American military plans with the proclamation of the Islamic State and its expansion in Syria. The president announced its decision to take military intervention by leading an international coalition in Syria and Iraq to carry on airstrikes against IS, on the basis that the latter constituted a threat to international security⁵⁹. In January, 20, 2017, Donald Trump won the Presidency of the United States. Along with the shift of the presidency, American targets in Syria underwent a shift too. Only a few months after his rise to the presidency, Mr. Trump announced to have authorized missile strikes on Syrian regime forces bases in response to a chemical attack which provoked the deaths of more than 80 civilians. In 2018 again, the US, jointly with the UK and France, launched missiles attacks against regime targets following another deadly chemical attack on Douma.

The military intervention of the US-led coalition against IS has raised doubts on the conformity to international laws. Several justifications could be provided as an explanation to American intervention in Syria. A main justification, utilized by the US-led coalition in light of military intervention, was based on Art. 51 of the UN Charter. The article, included in Chapter VII of the document, allows for the use of violence in cases of individual or collective self-defense by claiming the right of a Member State to defend itself if an armed attack occurs, this, through a notification to the Security Council and without compromising its authority and responsibility⁶⁰. Indeed, following the formalities of Art.51 and by declaring the existence of an armed attack on its soil, the state of Iraq has requested international assistance in the counteracting of the Islamic State. Collective self-defense, however, has been invoked by Iraq to combat IS, a non-state actor. Having the jihadist group expanded in large portions of Syrian territory, military intervention was going to

⁵⁸ THE WASHINGTON POST, *Obama’s full speech on Syria*, in *The Washington Post*, September 11 2013, available at www.washingtonpost.com.

⁵⁹ D. ROBERTS, S. ACKERMAN, *Barack Obama authorizes air strikes against Isis militants in Syria*, in *The Guardian*, September 11 2014, available at www.theguardian.com.

⁶⁰ Art. 51, UN Charter.

target Syrian soil as well. When a state takes military action against a state which has not requested its intervention, the intervening state must show that the party concerned has proved to be “unwilling or unable “to address the threat⁶¹. Moreover, in order for actions of self-defense to be lawful, it is necessary that the conditions of necessity and proportionality are met. In the letter notifying the Security Council of initiation of military action in Iraq and Syria by the US, UN American Ambassador Samantha J. Power, declared that “Iraq has made clear that it is facing a serious threat of continuing attacks from ISIL coming out of safe havens in Syria. These safe havens are used by ISIL for training, planning, financing, and carrying out attacks across Iraqi borders and against Iraq’ s people (...) The Syrian regime has shown that it cannot and will not confront these safe- havens effectively itself. Accordingly, the United States has initiated necessary and proportionate military actions in Syria in order to eliminate the ongoing ISIL threat to Iraq”⁶². American intervention, however, has expanded its target range directing military action not only towards the Islamic States but also towards Assad ‘s regime. US intervention against the Syrian government has been justified in light of the attacks carried out by regime forces through the use of chemical weapons. In a public statement delivered from the White House by President Obama, the President described the use of chemical weapons as a threat to US national security. “It’s important for us to recognize that when over 1,000 people are killed, including hundreds of innocent children, through the use of a weapon that 98 or 99 percent of humanity says should not be used even in war, and there is no action, then we’re sending a signal that that international norm doesn’t mean much. And that is a danger to our national security”⁶³. However, the strongest legal basis for intervention against the regime rests on the use of chemical weapons as a breach of a *jus cogens* norm. *Jus cogens*, or peremptory norms of general international law, which present an example of possible interference with the principle of state sovereignty, are defined as “certain fundamental, overriding principles of international law” and have *erga omnes* effect ⁶⁴. As listed in Art.53 of the Vienna Convention on the Law of Treaties of 1969, “A treaty is void if, at the time of its conclusion, it conflicts with a peremptory norm of general international law. For the purposes of the present Convention, a peremptory norm of general international law is a norm accepted and recognized by the international community of States as a whole as a norm from which no derogation is permitted

⁶¹ G. CANTWELL, *The ETF and the legality of the U.S. Intervention in Syria under International Law*, in *Lawfare*, March 28 2016, available at www.lawfareblog.com.

⁶² Letter dated 23 September 2014 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General of 23 September 2014, S/2014/695.

⁶³ J. GOLDBERG, *The Obama Doctrine*, in *The Atlantic*, April 2016, available at www.theatlantic.com.

⁶⁴ CORNELL UNIVERSITY, *Jus cogens*, in *Legal Information Institute*, available at www.law.cornell.edu.

and which can be modified only by a subsequent norm of general international law having the same character”⁶⁵. American intervention has been justified in light of Art. 54 *juncto* Art. 48 of the Draft Articles on Responsibility of States for Internationally Wrongful Acts, drafted by the International Law Commission in 2001, which deal with treaties protecting *erga omnes* obligations. In cases of breaches, treaty partners can invoke the wrongful act and possibly operate by adopting countermeasures⁶⁶. The United States have first invoked the responsibility of the Syrian government for the breach of an obligation owed to the international community as whole, as provided for by Art. 48, Chapter I, Part Three of the same document. Finally, adoption of countermeasures finds legal justification under Part Three, Chapter II of the of the above-mentioned document. Art.54 provides for the undertaking by another State of lawful measures against the State breaching the international obligation to ensure the cessation of the breach⁶⁷.

1.6.2 Russian military intervention

Russian military intervention in Syria seemingly follows a clearer line than that of the US. The Russian government has stepped in the country following Assad’s government’s official invitation to initiate military intervention, in accordance with Art. 20 of the Articles of Responsibility of States of the International Law Commission of 2001. While the country was already supplying the regime forces with equipment, after the latter’s request to intervene, the Federation started carrying out airstrikes against the SNC and the jihadist groups in September 2015. Nevertheless, the legality of Russia’s intervention is not as clear as it seems at first. A main doubt on legality is raised by the nature of the party which has emitted the invitation. The government of a state is entitled to perform this act under international law. However, problems of legitimacy of the government can rise in some cases as explained in the commentaries of the above-mentioned Art.20. In order to file the consent to a third-party involvement, the government requesting must be recognized as legitimate. Some countries stopped recognizing the Syrian government as legitimate after the beginning of the repression. In 2011, in a joint statement by the Heads of Government of the UK, France and Germany, declared “Our three countries believe that President Assad, who is resorting to brutal military force against his own people and who is responsible for the situation, has lost all legitimacy

⁶⁵ Art. 53, Vienna Convention on the Law of Treaties of 1969.

⁶⁶ J. KLABBERS, *International Law*, 2017, p.185.

⁶⁷ Art. 54, Draft Articles on Responsibility of States for Internationally Wrongful Acts of the ILC of 2001.

and can no longer claim to lead the country”⁶⁸. The international community is divided on the issue of legitimacy of the Assad’s regime. While some like the UK, the US, France and Germany have declared it illegitimate, Libya has moved one step forward by recognizing the Syrian National Council as the legitimate authority of the country⁶⁹. Therefore, the countries which do not recognize the legitimacy of the regime, do not recognize the legality of Russian military intervention either.

1.6.3 Turkish military intervention

First Turkish military intervention on Syrian soil was launched on August 24th, 2016 under Operation Euphrates Shield. As a legal justification for the operation, the country appealed to the right to self-defense laid down in Art. 51, Chapter VII of the UN Charter and to the UNSC Resolution 2249 adopted in 2015⁷⁰. Indeed, the reason for Turkish intervention had been declared as a matter of self-defense against the expansion of the Islamic State and of the Kurdish militia block of the YPG/PKK intensively fighting IS in Northern Syria and which is classified by Turkey as a terrorist organization itself. The first operation, defined as ”successfully concluded” having cleared 2,015 km² from IS and enabled some displaced Syrians to return home, was concluded in 2017⁷¹. The following year, Turkey issued a letter of notification to the Security Council about the initiation on January 20th 2018, of an additional military operation. The intervention had been declared necessary due to an increase of rocket attacks directed at two provinces on the Turkish border from the Afrin region in Northern Syria, under control of Kurdish militias. The country has therefore appealed again to the right of self-defense and to the international obligations of states in the fight against terrorism and described the operation as being “essential in order to ensure the border security of Turkey and our national security based on our right of self-defense, as defined in Article 51 of the Charter, but also within the context of the responsibility attributed to Member

⁶⁸ CROWN COPYRIGHT, *Joint UK, French and German statement on Syria*, in *GOV.UK*, August 18 2011, available at www.gov.uk.

⁶⁹ R. SHERLOCK, *Libya’s new rulers offer weapons to Syrian rebels*, in *The Telegraph*, November 25 2011, available at www.telegraph.co.uk.

⁷⁰ M. YEŞİLTAŞ, M. SEREN, N. ÖZÇELİK, *Operation Euphrates Shield, Implementation And Lessons Learned*, in *SETA*, 2017, available at setav.org.

⁷¹ Identical letters dated 20 January 2018 from the Chargé d’affaires a.i. of the Permanent Mission of Turkey to the United Nations addressed to the Secretary-General and the President of the Security Council of 22 January 2018, S/2018/53.

States in the fight against terrorism, including through Security Council resolutions 1373 (2001), 1624 (2005), 2170 (2014) and 2178 (2014)⁷².

⁷² *Ibid.*

Violations of International Humanitarian Law in the Syrian Civil War

1.7 Prohibited means and methods of warfare in IHL

Wars are highly regulated phenomena. In International Law, there are two main domains of the use of force. The law relating to the right to wage war is known as *jus ad bellum*, the law regulating the use of force in armed conflict is known as *jus in bello*. The latter, laws regulating the conduct of hostilities, are known as International Humanitarian Law (IHL), or the law of armed conflict. The purpose of the creation of a body of law regulating war is the avoidance of unnecessary suffering of combatants and the protection of non-combatants through the regulation of the means and methods of warfare. Practices and regulations of the conduct of hostilities have existed for thousands of years already. However, the birth of modern IHL goes back to the 19th century, when the first organization for the protection of wounded and sick soldiers, also called 'hors de combat', was founded. In 1863, indeed, the Red Cross and Red Crescent Movement was established with the purpose of providing aid on the field and regulations for the conduct of warfare. Under the International Committee of the Red Cross, the apparatus of the organization operating on the field and overseeing the implementation of IHL, the first document for the protection of the wounded and sick in armed forces in the field, the First Geneva Convention, was adopted in 1864. IHL is regulated by two main bodies of law, the Geneva Law and the Hague Law. The latter, formulated as a result of the peace conferences of 1899 and 1907 at the Hague, comprises a series of conventions regulating the means and the methods of warfare. The former, is aimed at the protection of the victims of conflict and it is articulated into four treaties and three additional protocols. The First Geneva Convention provides for the protection of the wounded and sick of the armed forces in the field; the Second Geneva Convention is aimed at the protection of the wounded, sick and shipwrecked of the armed forces at sea; the Third Geneva Convention regulates the treatment and protection of prisoners of war; the Fourth Geneva Convention protects the civilian population of areas affected by conflicts. In 1977, the two Protocols Additional to the 1949 four Geneva Conventions were adopted in order to strengthen the protection of the conventions and to enlarge their scope. The First Additional Protocol entails the protection of victims of international armed conflicts; the Second Additional Protocol regulates the protection of victims of non-international armed conflicts and the prohibition of certain means of warfare; the Third Additional Protocol, adopted in 2005, envisages the adoption of an additional distinctive emblem, the red crystal, for the Red Cross and Red Crescent Movement.

International humanitarian law is based on fundamental principles which provide a basis for the adoption of regulations on the conduct of hostilities. The first principle of IHL, laid down in Art. 48 of the Additional Protocol I of 1977 and considered a customary norm of international law, is the principle of distinction, which underlines the distinction between combatants and civilians and between civilian and military objectives. The provision prohibits deliberate attacks on civilians as well as the targeting of civilian objects⁷³. From the above-mentioned principle, the proportionality principle derives, allowing military operations only if they result to be proportionate to the military advantage. Therefore, attacks against military objectives which could result in excessive incidental civilian casualties and damages to civilian objects are deemed unlawful. The principle of military necessity entails that measures otherwise prohibited by IHL be permitted only if necessary to accomplish legitimate military purpose. The only military purpose deemed legitimate in an armed conflict is “to weaken the military capacity of the other parties to the conflict”⁷⁴. This principle in turn leads to the prohibition to inflict superfluous injuries and unnecessary suffering to combatants, as war is inevitable but it should not be more cruel than it already is. Another fundamental principle on which IHL relies on is the principle of humanity which refers to the so-called Martens Clause establishing that, even in situations not covered by IHL treaties, the basic guarantees of International Law still applies for people involved in armed conflicts. The principle is restated in Art. 1 of the Additional Protocol I to the Geneva Convention of 1977 which states that “in cases not covered by this Protocol or by other international agreements, civilians and combatants remain under the protection and authority of the principles of international law derived from established custom, from the principles of humanity and from the dictates of public conscience”⁷⁵. In light of these principles, some means and methods of warfare, like indiscriminate attacks and indiscriminate weapons are prohibited or strictly regulated. As laid down in Art. 35 of the Additional Protocol I to the Geneva Convention of 1977, “in any armed conflict, the right of the Parties to the conflict to choose methods or means of warfare is not unlimited. It is prohibited to employ weapons, projectiles and material and methods of warfare of a nature to cause superfluous injury or unnecessary suffering. It is prohibited to employ methods or means of warfare which are intended,

⁷³ Art. 48, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977.

⁷⁴ M. SASSOLI *et al.*, *Military necessity*, in *How Does Law Protect War?*, available at casebook.icrc.org

⁷⁵ Art. 1 para. 2, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977.

or may be expected, to cause widespread, long-term and severe damage to the natural environment”⁷⁶.

1.7.1 1.1 Indiscriminate attacks

Art. 51 of the Additional Protocol I, concerns the protection of the civilian population. Paragraphs 4 and 5 prohibit indiscriminate attacks, defined as “ those which are not directed at a specific military objective; those which employ a method or means of combat which cannot be directed at a specific military objective; or those which employ a method or means of combat the effects of which cannot be limited as required by this Protocol; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction; (...) an attack by bombardment by any methods or means which treats as a single military objective a number of clearly separated and distinct military objectives located in a city, town, village or other area containing a similar concentration of civilians or civilian objects; and an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated”⁷⁷. A military objective is defined in Art. 52, paragraph 2 of Additional Protocol I as “limited to those objects which by their nature, location, purpose or use make an effective contribution to military action and whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage”⁷⁸. The Syrian regime, along with the Russian and Iranian forces, but also the other warring parties, have carried out countless indiscriminate attacks during the years of the conflict. According to the Syrian Network for Human Rights, roughly 489 attacks were carried out on civilian objects in 2018 alone, undermining their purpose to serve the civilian populations and yielding civilian casualties⁷⁹. The attacks were targeted at a wide range of civilian facilities such as educational facilities, places of worship, medical facilities, communal facilities and infrastructures. Indiscriminate attacks have

⁷⁶ Art. 35, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977.

⁷⁷ Art. 51, paras. 4 and 5, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977.

⁷⁸ Art. 52 para. 2, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977.

⁷⁹ SNHR, *No less than 15 Attacks on Vital Civilian Facilities in Syria in August 2018*, September 7 2018, available at sn4hr.org.

been carried out through the use of prohibited weapons as well, among them chemical weapons, barrel bombs, incendiary weapons and cluster munitions. Among most recent cases of indiscriminate attacks is the streak of military offenses carried out by Turkish forces starting from January 20, 2018 in the Kurdish enclave in the Afrin district. Turkish attacks, explained by Turkish authorities as a response to previous YPG indiscriminate attacks across the border, resulted in thousands of displaced and dozens of civilian casualties. The past months have witnessed a resumption of indiscriminate attacks in civilian areas. The turn of the year has come along with fundamental changes in the conflict's power balance, with government forces trying to storm the last rebel-held areas. After a six-month ceasefire, the fights escalated again with hundreds of attacks carried out by the Syrian-Russian forces which, since April, have targeted rebel cells mainly in the Idlib province but also in the governorates of Hama and Aleppo. The NGO Human Rights Watch has reported that the coalition has made use of combinations of indiscriminate weapons banned under international humanitarian law. The military coalition has indeed made use of barrel bombs, cluster munitions and incendiary weapons in civilian populated areas "killing an estimated 200 civilians, including 20 children."⁸⁰

1.7.2 1.2 The use of Chemical weapons, barrel bombs, cluster munitions and incendiary weapons

In the aftermath of the First World War, on June 17, 1925, the Protocol for the Prohibition of the Use of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare was adopted. The Protocol is now a widely accepted customary norm of IHL which however prohibits the use but not the possession of these weapons. For this reason two additional conventions were adopted: in 1972, the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, and in 1993, the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction. These two conventions are not recognized as customary international, therefore, ratification is need for these documents to have a binding effect. At the beginning of the conflict, the Syrian Arab Republic was not part to the conventions prohibiting the use of chemical weapons. In 2012, the Syrian Foreign Ministry spokesman announced the possession of such weapons by the State of Syria, justifying the possession for use in

⁸⁰ HUMAN RIGHTS WATCH, *Russia/Syria: Flurry of Prohibited Weapons Attacks*, June 3 2019, available at www.hrw.org.

cases of external aggression, not against the population⁸¹. At the end of the same year, the first alleged use of chemical weapons was reported, with the same event being repeated in 2013 and confirmed by the Syrian Observatory for Human Rights. On August 21, 2013, one of the deadliest chemical attacks of the conflict took place in the suburban area of Ghouta, allegedly producing about a thousand of civilian casualties, shocking the international community which accused the regime of war crimes and of having violated the 1925 Protocol on Chemical Weapons. Despite President Assad's statements that the regime had not used such weapons, the US released information condemning the Syrian government for having perpetrated the attack. On October 14, 2013, as pressure from the international community was mounting up, Syria accessed the Chemical Weapons Convention of 1993, allowing OPCW and UN teams to carry out a plan for the destruction of Syria's chemical weapons stockpiles⁸². In the same month, the OPCW Executive Council declared that Syria had rendered the chemical weapons inoperable, and announced the beginning of a program for their transportation and destruction. However, in the middle of the various processes of delivery and destruction, another alleged chemical attack was carried out in April 2014. In 2015, the UN Security Council adopted Resolution 2209(2015) condemning the use of chlorine gas and threatening activation of collective military intervention in case of non-compliance by the Syrian regime. During the following years, the veto power of Russia and China in the Security Council acted as an obstacle for condemning the regime as several chemical attacks all yielding civilian casualties were reported and verified by the OPCW Fact-Finding Mission. As a whole, the number of chemical attacks carried out during the conflicts has been gravely high considering the efforts and controls exercised by the United Nations and the appeals of the international community to comply with the international norms. Human Rights Watch has reported that between 2013, year of the first reporting of the attacks, and 2018, 85 chemical weapons attacks have been confirmed, the majority of which perpetrated by the Syrian government. The organization has also documented 36 cluster munitions attacks carried out between July 2017 and June 2018 only⁸³.

⁸¹A. SANDERS-ZAKRE, *Timeline of Syrian Chemical Weapons Activity, 2012-2019*, March 2019, available at www.armscontrol.org.

⁸² ORGANISATION FOR THE PROHIBITION OF CHEMICAL WEAPONS, *Syria's Accession to the Chemical Weapons Convention Enters into Force*, October 14 2013, available at www.opcw.org.

⁸³ HUMAN RIGHTS WATCH, *Syria, events of 2018*, available at www.hrw.org.

In 2015, a statement released by Paulo Sérgio Pinheiro, Chairman of the UN International Commission of Inquiry for Syria, openly denounced the bombardment campaigns carried out by the Syrian regime. Mr. Pinheiro claimed that indiscriminate bombardments had been “the primary cause of civilian casualties and mass displacement in the Syrian Arab Republic”, and added that “according to NGOs working on documentation, casualties from aerial strikes, ground shelling and explosions count for over 50% of total documented deaths in 2014, a substantial part of which are caused by barrel bombs”⁸⁴. A barrel bomb is a large, usually home-made incendiary device filled with explosives, incendiary materials, nails and other objects which cause superfluous injuries and unnecessary suffering. The regime is also been accused of using other unlawful means of warfare such as incendiary weapons and cluster munitions in civilian centers, causing thousands of civilian casualties. In 2017, the Syrian Network for Human Rights (SNHR) released the report “Rain of Fire” documenting that Russian forces alone have resorted to 78 attacks with incendiary weapons since their engagement in the war, in cases not justifiable by military necessity and directed at civilian-populated neighborhoods⁸⁵. Incendiary weapons are strictly regulated under the Protocol on Prohibitions or Restrictions on the Use of Incendiary Weapons (Protocol III) of 1980, contained in the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects of 1980. The Syrian Arab Republic is neither a party to the Convention nor to the Protocol, but such weapons are categorized as indiscriminate, therefore their unregulated use violates the principles of IHL. The Federation, however, has ratified both documents, violating therefore its obligations under the Convention⁸⁶. Syrian and Russian forces have also made extensive use of cluster munitions. This type of weapon can be dropped on targets by aircrafts or can be launched from the ground through the use of artillery systems. A very dangerous feature of cluster munitions is that they contain other explosive bomblets which cause wider explosions. Sometimes, however, some of these submunitions do not detonate at the time of the impact, leaving dangerous unexploded devices around. The Cluster Munition Coalition documented over 600 attacks by cluster munitions between July 2012 and June 2018⁸⁷. The use, production and stockpiling of these weapons is prohibited under IHL by the Convention on Cluster Munitions of 2008. Nevertheless, several militarily powerful states like the US, Russia and China are not party to the Convention. However, cluster munitions, as barrel

⁸⁴ Statement by Mr. Paulo Sérgio Pinheiro Chair of the Independent International Commission of Inquiry on the Syrian Arab Republic of March 17 2015.

⁸⁵ SNHR, *Russian Forces Have Used Incendiary Weapons 78 Times at least since They Intervened in Syria, Rain on Fire*, January 26 2017, available at sn4hr.org

bombs, are categorized as indiscriminate weapons, therefore recognized as unlawful also for countries not parties to the Convention.

1.8 POW status , war crimes and crimes against humanity in Syria

Rules concerning the treatment of prisoners of war (POW) had already been codified in the Geneva Convention of 1929. In the aftermath of the Second World War, when the Geneva Conventions were adopted, this document was refined in the Third Geneva Convention of 1949. Today the protection of POWs is covered by the Third Geneva Convention and by the Additional Protocol I of 1977. As stated in the first paragraph of Art. 44 of the Additional Protocol I, combatants who fall in the hands of the opposing party, shall enjoy the status of prisoner of war. In order to be granted this status, and to insure the protection of civilians, a person needs to be identifiable as belligerent following certain requirements laid down in Art. 4, paragraph 2 of the Third Geneva Convention. As laid down in this provision, belligerents who are not members of the armed forces, shall be considered as combatants provided that they are subordinate to a commander responsible for them; they wear a fixed distinctive emblem recognizable at distance; they carry arms openly; the conduct operations in accordance with the law of armed conflicts”⁸⁸. In addition to belligerents and members of the armed forces, the status of prisoners of war shall apply to members of the armed forces under a government or an authority not recognized by the detaining party; persons accompanying armed forces without being members and therefore being physically involved in the fighting; “members of crews, including masters, pilots and apprentices of the merchant marine and the crews of civil aircraft of the Parties to the conflict, who do not benefit by more favourable treatment under any other provisions of international law”⁸⁹; inhabitants of a non-occupied territory who, in order to protect it from advancing enemy, spontaneously take arms, without the need of being organized in an armed unit and provided that they carry arms openly and act in accordance to the rules of IHL. According to Art. 45, paragraph 1 of Additional Protocol I “a person who takes part in hostilities and falls into the power of an adverse Party shall be presumed to be a prisoner of war, and therefore shall be protected by the Third Convention, if he claims the status of prisoner of war, or if he appears to be entitled to such status, or if the Party on which he depends claims such status on his behalf by notification to the detaining Power or to the Protecting Power. Should any

⁸⁷ CLUSTER MUNITION COALITION, *Use of cluster bombs*, available at www.stopclustermunitions.org

⁸⁸ Art 4 para. 2, Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949.

⁸⁹ Art 4 para. 5, Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949.

⁸⁹ Art 45 para. 2, Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts (Protocol I) of 8 June 1977.

doubt arise as to whether any such person is entitled to the status of prisoner of war, he shall continue to have such status and, therefore, to be protected by the Third Convention and this Protocol until such time as his status has been determined by a competent tribunal”⁹⁰. Part II of the Third Geneva Convention contains regulations on treatment and protection of prisoners of war. When a person falls into enemy hands, they result to be in possession of the capturing party but not of the individuals or unites which have captured them. POWs must be at all times humanely treated, they may never be subject to measures of reprisals, physical mutilation and degrading treatment, and they should receive equal treatment without distinctions on gender, race, nationality or similar criteria. During the period of captivity, POWs shall have the possibility to meet with delegates sent by the protective party and delegates of the ICRC, which shall be able to inspect the site to assert the living conditions of the facilities. They shall also be able to interview the prisoners without witnesses and to refer messages to their families⁹¹. As laid down in Art. 118 of the Third Geneva Convention, at cessation of hostilities, prisoners of war shall be released and repatriated, with the costs of the process being shared between the protective and the detaining power⁹². The Third Geneva Convention and the Additional Protocol I, however, regulate situations taking place in the context of international armed conflicts, defined by Common Article 2 to the Geneva Conventions of 1949 as “declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them”. Moreover, the article proceeds by explaining that the effects of the Convention apply to “all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance”⁹³. The Syrian civil war, despite the foreign involvement of High Contracting Parties which have brought the event to the international arena, is categorized as an “armed conflict not of an international character occurring in the territory of one of the High Contracting Parties”⁹⁴. For this category of conflicts, it is more challenging to determine the legal status and responsibility of the parties. The distinction between civilian and combatants status is blurred as well, since violence is not carried out by two countries’ regular armed forces. Moreover, the status of prisoner of war is only attributed to combatants fighting in international armed conflicts. In conflicts of a non-international character, a person falling in the hands of the detaining party does not enjoy the status of prisoner of war and therefore, the protections reserved to them by the Third Geneva

⁹¹ Art 126, Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949.

⁹² Art 118, Geneva Convention Relative to the Treatment of Prisoners of War of 12 August 1949.

⁹³ Art. 2, Geneva Conventions of 12 August 1949.

⁹⁴ Art. 3, Geneva Conventions of 12 August 1949.

Convention. These kinds of conflicts are regulated by the Additional Protocol II to the Geneva Conventions of 1949, and relating to the Protection of Victims of Non-International Armed Conflicts and by Common Article 3. The latter, dealing with conflicts of a non-international character, is common to all four conventions and is said to constitute a mini-Convention within the documents “ as it contains the essential rules of the Geneva Conventions in a condensed format and makes them applicable to conflicts not of an international character”⁹⁵. Indeed, the article envisages the application of minimum requirements of humane treatment such as the prohibition of murder, mutilation, cruel treatment, the taking of hostages, degrading treatment, executions without previous judgement by a regularly constituted court, and provides for assistance to the wounded and sick.

Crimes against humanity, as defined by Art. 7 of the Rome Statute of the International Criminal Court of 1998, comprise a list of acts perpetrated as “part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack”⁹⁶. The acts listed in the article, which constitute crimes against humanity are: murder, extermination, enslavement, deportation, imprisonment and other deprivations of physical liberty which violate international law, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, enforced disappearance, apartheid, persecution against a group on grounds of sex, race, religion, ethnicity, political or national identity, and other grounds recognized as impermissible under international law. The list is not exhaustive as in the last point of the first paragraph it includes “other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health”⁹⁷. While Art. 7 defines crimes against humanity, Art. 8 provides a definition for war crimes as “grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention: (i) Wilful killing; (ii) Torture or inhuman treatment, including biological experiments; (iii) Wilfully causing great suffering, or serious injury to body or health; (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly; (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power; (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; (vii) Unlawful deportation or transfer or unlawful

⁹⁵ ICRC, *The Geneva Conventions of 1949 and their Additional Protocols*, October 29 2010, available at www.icrc.org.

⁹⁶ Art. 7, Rome Statute of the International Criminal Court of 1998.

⁹⁷ Art. 7 para. 1, Rome Statute of the International Criminal Court of 1998.

confinement; (viii) Taking of hostages”⁹⁸. While subparagraphs (a) and (b) explicitly refer to conflict of an international character, subparagraphs (c) and (e) list similar acts which would constitute war crime in the context of conflicts of a non-international character. Subparagraph (c), indeed, appeals to Common article 3 of the four Geneva Conventions of 1949 to lay down the parameters which constitute war crimes.

The Syrian regime *in primis*, but the other warring parties as well, have been accused of committing such acts which constitute crimes against humanity and war crimes. The NGO Amnesty International has occupied a frontline position in denouncing IHL and human right violations since the beginning of the war. A first major case of acts which could constitute crimes against humanity already took place in the first phase of the conflict, during the months of April and May of 2011, in Tell Kalakh, a town close to the Lebanese border. According to a report released by the NGO, in the aftermath of uprising in Tell Kalakh, Syrian troops started a campaign of mass arrests of male residents including some elderly and minors, who were arbitrarily detained, some being subject to torture and degrading treatment. In the aftermath of this mass arrests campaign and ill-treatment of the arrested, at least nine deaths under custody were reported. The military crackdown in Tell Kalakh was only one of many episodes which pushed the organization to denounce the inhumane treatment reserved to detainees in prison camps. In the report “Human slaughterhouse: Mass hanging and the extermination at Saydnaya prison, Syria” published in 2017, the organization exposed the government’s campaign of mass extrajudicial executions of detainees, committing war crime and crimes against humanity. The organization has reported that “between 2011 and 2015, every week and often twice a week, groups of up to 50 people were taken out of their prison cells and hanged to death. In five years, as many as 13,000 people, most of them civilians believed to be opposed to the government, were hanged in secret at Saydnaya”⁹⁹. It has been documented that what should have been a regular judicial trial to determine executions, had been replaced by a “two-minute procedure at a so-called Military Field Court” which delivers summary and arbitrary decisions¹⁰⁰. In addition to the execution, extermination policies were enacted through the infliction of torture, denial of water, food and medical treatment and infliction of degrading treatments. As stated by The New York Times in 2018 “since the conflict began seven years ago, tens of thousands of people have disappeared into government jails where torture and mistreatment, sometimes

⁹⁸ Art. 8 para. 2, Rome Statute of the International Criminal Court of 1998.

⁹⁹ AMNESTY INTERNATIONAL, *Syria: Secret campaign of mass hangings and extermination at Saydnaya Prison*, February 7 2017, available at www.amnesty.org.

¹⁰⁰ *Ibid.*

causing death, are rife, human rights groups say. The prisoners included rebels as well as political protesters, and their families were often left struggling to get information”¹⁰¹. In the past months, attempts to hold President Assad accountable for his actions have started. Twenty-eight Syrian refugees in Jordan have appealed to human rights lawyers who have filed the first cases at the International Criminal Court (ICC). Although Syria is not a party to the Rome Statute of the International Criminal Court of 1998, the lawyers have used a ruling on Rohingya refugees in Bangladesh in order to file the lawsuits. Myanmar, indeed, is not a member of the Rome Statute either, however the hosting country, Bangladesh is. Since Jordan, like Bangladesh is a party to the Rome Statute, the ICC has jurisdiction over the country, which could make possible for the refugees to appeal to the court.

The Syria civil war, burst in the wake of the Arab Spring wave that swept across the MENA region in 2011, has been, since the beginning, an extremely complicated intertwining of cultural and religious divergences, Islamic jihadism and geopolitical and cultural supremacy of regional and world powers. The conflict, of a non-international character, was soon transformed into a chessboard for foreign political games. The regime forces, backed up by its main allies, Russia and Iran, have initiated a brutal military campaign in order to neutralize the rebel and jihadist threat aimed at overturning the government. With the rise of jihadist forces, a US-led international coalition has stepped into the war to aid the FSA and the Kurds in the fight against the Islamic State and Tahrir al-Sham. The opposing political aims of the foreign powers, which aim at protecting their interests in the region, have prompted debates about the escalation of the conflict into multiple proxy war. Indeed, several external rivalries are being played out in the wider context of the Syrian civil war. Saudi Arabia and Iran, whose rivalry goes back to long-standing religious differences, are using the Syrian conflict as a means for establishing their supremacy in the region. The Russian Federation and the United States, are playing out the long-standing tension left over by the dynamics of the Cold War, each trying to prevail on the other to affirm their exclusive predominance as world hegemony. The attempts of the United Nations to solve the crisis have been thwarted by two permanent members of the Security Council, Russia and China, which have made use of their veto power to prevent the activation of the UN collective security system. The efforts of the organization to mediate a solution to the conflict have remained an ongoing process since its

¹⁰¹ B. HUBBARD, K. SHOUMALI, *Hundreds Died in Syrian Custody, Government Acknowledges*, in *The New York Times*, July 26 2018, available at www.nytimes.com.

beginning, and operate on the basis a six-point plan devised by former UN Secretary-General, and at the time Joint Special Envoy of the United Nations and the Arab League for Syria, Kofi Annan. Meanwhile, the war scene has been characterized by continuous violations of the law of conflicts, particularly by the Syrian-Russian coalition and the jihadist groups. Several NGOs such as Amnesty International and Human Rights Watch, have denounced the acts of the regime which has made large use of indiscriminate weapons, banned under international humanitarian law in violation of Art. 35 of the Additional Protocol I to the Geneva Conventions of 1949. These indiscriminate attacks, indeed, have been perpetrated through the use of internationally banned chemical weapons, cluster munitions, incendiary weapons and barrel bombs, which, directed in inhabited neighbourhoods, have produced thousands of civilian casualties. The violations of international humanitarian law and of human right law perpetrated during the conflict, have prompted the international community to accuse the Assad's regime of being guilty of war crimes and crimes against humanity. Nevertheless, since Syria is not a party to the Rome Statute of the International criminal Court of 1998, attempts to try President Assad for the crimes committed have failed. However, in the past few months, human rights lawyers have based a precedent ruling of the Court on Rohingya refugees from Bangladesh which allowed to file lawsuits against Assad by filing them on behalf of refugees in Jordan, over which the ICC exercises jurisdiction.

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Riassunto

La Repubblica Araba di Siria è uno Stato del Medio Oriente che affaccia sul Mediterraneo. Conquistata dall'Impero Ottomano nel sedicesimo secolo, dopo la Prima Guerra Mondiale, la regione è stata amministrata dalla Francia, secondo quanto previsto dall' Accordo Sykes-Picot stipulato tra Francia e Gran Bretagna del 1916. Alla fine della guerra, la Francia ottenne un mandato della Società Delle Nazioni il quale formalizzò il controllo Francese sulla Siria e sul Libano. Con la conclusione della Seconda Guerra Mondiale e la formazione delle Nazioni Unite, nel 1946 la Siria ottenne la ritirata delle forze francesi e divenne una repubblica indipendente. In seguito al raggiungimento dell'indipendenza, la Repubblica Siriana ha vissuto un lungo periodo di instabilità politica scandita da continui colpi di Stato e cambi di regime. Poco più di dieci anni dopo l' indipendenza, nel 1958, la Siria si unì all'Egitto come provincia amministrativa della Repubblica Araba Unita. Quest'ultima, tuttavia, ebbe vita breve in quanto nel 1961, con un colpo di Stato, la Siria tornò ad essere uno Stato sovrano. Due anni dopo la ricostituzione della Repubblica Siriana, un ulteriore colpo di Stato portò al potere ufficiali militari affiliati al partito Ba'th siriano il cui scopo principale era l'unificazione degli stati arabi per raggiungere libertà e indipendenza. Nel Novembre 1970, il generale Hāfiz al-Asad, approfittando di un momento di debolezza nei ranghi del partito, effettuò un colpo di Stato salendo al potere come primo presidente Alawita del paese. Il presidente Hāfiz al-Asad governò per trent'anni, rendendo la Siria un importante attore regionale e portando il paese nello scenario internazionale mantenendo buone relazioni politiche sia con l'Unione Sovietica e, dopo il suo collasso, con gli Stati Uniti. Alla sua morte nel Giugno 2000, dopo trent'anni di governo, il figlio Bashār al-Asad successe il padre alla guida del Paese.

Con l' ascesa al potere, Bashār al-Asad, giovane uomo che aveva compiuto gli studi universitari nel Regno Unito, incarnava le speranze del popolo siriano nell'avvento di una "primavera" che avrebbe portato un miglioramento per lo sviluppo economico e sociale del Paese. Ma le speranze di una primavera che avrebbe dovuto portare un incremento in diritti politici e sociali, presto si sono trasformate in un forte discontento popolare dovuto alle false promesse di Assad, al perseverare della corruzione e della repressione politica. Con l'avvento del 2011, un'onda di "primavera" ha pervaso il Paese, tuttavia, non si è trattato della tanto attesa primavera riformatrice, ma della Primavera Araba. Con il termine "Primavera Araba" si fa riferimento all'onda di proteste che ha pervaso il Nord Africa e il Medio Oriente partendo dalla Tunisia alla fine del 2010. I manifestanti in Paesi come la Tunisia, l'Egitto, lo Yemen, la Libia, la Siria e altri, sono scesi in piazza esprimendo pacificamente il dissenso popolare per i rispettivi regimi politici, richiedendo le dimissioni dei capi

di Stato, il rispetto dei diritti umani e delle libertà politiche e un più elevato tenore di vita. Le proteste sono subito state contrastate da violente repressioni che hanno condotto i paesi sull'orlo della guerra civile. In stati come la Libia, lo Yemen e la Siria, la violenza si è intensificata a tal punto da sfociare in impetuose guerre civili che ancora oggi dilanano le loro società. L'onda di proteste democratiche ha colpito la Siria nel Marzo 2011, partendo dalla città di Dar'a ed espandendosi in tutto il Paese. Le forze di sicurezza hanno contrastato violentemente i manifestanti, causando un'intensificazione delle proteste. Nel 2012, il Paese è sfociato nella guerra civile che ad oggi non ha ancora trovato una conclusione e che ha causato più di mezzo milione di vittime. La guerra civile siriana, è uno dei conflitti più complessi del ventunesimo secolo. Iniziata da manifestazioni pacifiche, il conflitto è sfociato in una sanguinosa guerra di molteplici fazioni opposte, poteri regionali e mondiali. Il regime di Assad, i cui principali sostenitori sono la Federazione Russia, l'Iran ed Hezbollah, è contrastato da molteplici fazioni ribelli. Il fronte ribelle, è raccolto sotto la Coalizione Nazionale Siriana, riconosciuto come rappresentate diplomatico dei ribelli. Le principale guerriglie ribelli combattono sotto il l'Esercito Libero Siriano (ELB), supportato dalla Turchia, dagli Stati Uniti e dalle nazioni arabe Sunnite. Un altro fronte ribelle è costituito da diversi gruppi jihadisti che combattono per rovesciare il regime. Nel 2014, infatti, un ramo di Al-Qaeda in Iraq si è espanso in territorio siriano, combattendo per guadagnare quanto più territorio possibile e proclamando lo Stato Islamico (IS). Un'altra fazione ribelle è quella dei Curdi. Questi ultimi sono minoranza etnica situata nel nord-est della Siria che combatte per difendere il proprio territorio dall'avanzata dell'IS. Infatti, raggruppati sotto le Forze Democratiche Siriane, i Curdi, aiutati da una coalizione internazionale guidata dagli Stati Uniti, sono i principali oppositori al gruppo jihadista. Mentre nel 2015, lo Stato Islamico aveva pericolosamente conquistato territorio, fortemente preoccupando la comunità internazionale, ad oggi, le forze Curde, aiutate dalla coalizione internazionale, il regime e i ribelli sono riusciti a sradicare quasi completamente il gruppo jihadista dal suolo siriano. Gli equilibri sono cambiati anche per il governo, il quale sembrava sarebbe stato schiacciato dalle forze ribelli ma che, dopo l'intervento russo nel 2015, è riuscito a riconquistare gran parte del territorio perso. L'ultima roccaforte ribelle rimasta si trova nella provincia di Idlib dove membri dell' ELB, ma anche gruppi jihadisti, sono rifugiati. Essendo la provincia abitata da circa 3 milioni di persone, ed essendo fallita la tregua di sei mesi negoziata tra Russia e Turchia, la battaglia per Idlib potrebbe diventare una delle più sanguinose della guerra.

Il conflitto siriano è stato fortemente condizionato dall'intervento militare straniero che ha trasformato il conflitto in una guerra per procura tra i principali attori coinvolti. L'intervento nella guerra, infatti, è stato spinto dal bisogno dei poteri regionali e mondiali di assicurare i propri

interessi nella regione. L'Iran e l'Arabia Saudita, i più grandi e influenti paesi del Medio Oriente, sono contrapposti da una rivalità che risale a divergenze religiose storiche e tensioni per l'egemonia nella Penisola arabica. Il coinvolgimento dei due Stati nel conflitto deriva dall'interesse di stabilire la propria egemonia nella regione, destabilizzando l'avversario regionale. Altri due storici rivali, la Russia e gli Stati Uniti, si stanno contrapponendo nel conflitto Siriano riaccendendo tensioni risalenti alla Guerra Fredda e ai successivi tentativi di imporsi come egemone globale. L'intervento di parti terze nel conflitto è stato giustificato secondo diverse norme del diritto internazionale. La Carta delle Nazioni Unite, nell'articolo 2, proibisce l'uso della forza nelle relazioni internazionali. Tuttavia, nel Capitolo VII, gli articoli 42 e 51, prevedono due eccezioni alla proibizione dell'uso della forza, rispettivamente per attivazione di misure forzate da parte del Consiglio di Sicurezza dell'ONU e come mezzo di legittima difesa che non mini l'autorità del Consiglio. Inoltre, per quanto riguarda l'intervento militare di Stati terzi nel territorio di uno stato sovrano, l'articolo 20 del Progetto di Articoli sulla Responsabilità dello Stato della Commissione del Diritto Internazionale del 2001 prevede che Stati terzi possano intervenire militarmente sotto invito dello Stato in questione. La Federazione Russa, infatti, ha giustificato l'intervento in Siria in conformità con l'articolo 20, avendo ricevuto l'invito del governo Siriano ad intervenire. Tuttavia, quest'ultimo deve essere effettuato da un governo legittimo, il che mette in discussione la legalità dell'intervento russo, in quanto il regime di Assad è stato dichiarato illegittimo da molteplici Stati. L'intervento degli USA nel 2014 è stato giustificato in base all'articolo 51 della Carta delle Nazioni Unite, poiché, come misura di legittima difesa contro l'ISIS, l'Iraq ha invitato gli Stati Uniti ad intervenire in suo aiuto. La legalità dell'intervento americano è stata però messa in dubbio poiché lo Stato Islamico, nel 2014, si è espanso in territorio Siriano. Per intervenire in Siria, gli Stati Uniti avrebbero dovuto ricever un invito dal regime, tuttavia, come riportato nel Progetto di Articoli sulla Responsabilità dello Stato della Commissione del Diritto Internazionale del 2001, l'intervento senza invito può essere giustificato se lo stato in questione risulta essere riluttante o incapace di gestire la minaccia. Nel 2017, gli Stati Uniti e altri membri della coalizione internazionale hanno espanso le proprie operazioni militari, dirigendo attacchi anche verso obiettivi militari del regime. L'intervento militare contro il regime è iniziato in risposta al continuo uso di armi chimiche contro la popolazione civile. L'utilizzo di armi chimiche è una violazione di una norma *ius cogens*, le norme *ius cogens* sono norme consuetudinarie inderogabili che hanno effetto *erga omnes*, creando quindi obblighi verso l'intera comunità internazionale. In risposta all'uso di armi chimiche da parte del regime di Assad, gli Stati Uniti si sono appellati prima all'articolo 48 del Progetto di Articoli sulla Responsabilità dello Stato della Commissione del Diritto Internazionale del 2001, invocando la responsabilità del governo siriano per la violazione della norma *erga omnes*, e in seguito hanno

giustificato l'intervento secondo l'articolo 54 dello stesso documento il quale prevede la possibilità di adottare contromisure contro uno stato in seguito a violazioni di norme *erga omnes* da parte dello stato in questione. Anche l'intervento della Turchia è stato giustificato in base all'articolo 51 della Carta delle Nazioni Unite. Le forze militari turche sono intervenute due volte, la prima nel 2016 con l'Operazione Euphrates Shield , e la seconda nel Gennaio 2018. Il Paese, infatti, si è appellato al diritto di legittima difesa contro le milizie Curde YPG/PKK operanti nel nord-est della Siria, lungo il confine turco. I Curdi sono percepiti dalla Turchia come minaccia nazionale, in quanto un'espansione Curda in Siria potrebbe alimentare ulteriormente il separatismo curdo in Turchia, dove dal 1978 il governo è in lotta contro la minoranza etnica. Le autorità Turche hanno dichiarato l'intervento necessario alla difesa del confine dovuto all'incremento di attacchi perpetrati dalle milizie curde dal distretto di Afrin.

Sin dall'inizio del conflitto, l'ONU, insieme alla Lega Araba, ha ripetutamente cercato di agire come mediatore per raggiungere una soluzione pacifica. Nel 2012 le due organizzazioni hanno iniziato una stretta cooperazione per lavorare a una soluzione del conflitto, e hanno nominato l'ex Segretario Generale dell'ONU, Kofi Annan, come Inviato Speciale delle Nazioni Unite e della Lega Araba per la Siria. Con lo scopo di raggiungere una tregua tra le parti belligeranti, Annan ha elaborato il Six-point plan, un piano di sei punti incentrato sull'elaborazione di un percorso politico per dare voce al popolo siriano e ricostruirne lo Stato. Il piano ideato prevedeva l'invito a tutte le parti belligeranti di abbandonare l'uso di armi pesanti e di ritirare le forze militari dalle aree inabitate dai civili, di provvedere a fornire aiuto umanitario alle zone colpite dal conflitto, al rilascio di persone detenute arbitrariamente e la restaurazione della libertà di libera associazione e di libero movimento dei giornalisti nel Paese. Durante la Conferenza di Ginevra, il 30 Giugno 2012, il piano di Annan è stato integrato nel Final Communiqué dell'Action Group for Syria, usato come base per un intervento di novanta giorni supervisionato dalla Missione di Supervisione delle Nazioni Unite in Siria per implementare il piano. Tuttavia, la divergenze all'interno del Consiglio di Sicurezza hanno impedito la piena implementazione del piano, portando Annan a dimettersi dalla carica di Inviato Speciale. Il Consiglio di Sicurezza, infatti, sin dall'inizio del conflitto, è stato diviso dagli interessi della Russia e della Cina che, opposte ai restanti membri del Consiglio, hanno più volte fatto uso del potere del veto per bloccare l'approvazione di risoluzioni. Il piano di Kofi Annan, tuttavia, ha continuato ad essere utilizzato come piano di azione nelle successive conferenze e per l'adozione della Risoluzione 2254 del Consiglio di Sicurezza nel 2015 che ha fornito le fondamenta per le conferenze diplomatiche iniziate ad Astana nel 2017 e pilotate dalla Russia, dalla Turchia e dall'Iran

Il diritto internazionale umanitario è il corpo di norme che regola la condotta dei conflitti armati. Creato con l'obiettivo di evitare la sofferenza superflua dei combattenti e risparmiare la vita dei civili, il diritto umanitario è regolato dalle Convenzioni dell'Aia che regolano i mezzi e metodi di guerra, e le Convenzioni di Ginevra del 1949 con i tre Protocolli aggiuntivi che proteggono i soldati malati, feriti, e naufragati, i prigionieri di guerra e la popolazione civile. La guerra siriana, però, non è classificata come conflitto internazionale ma come conflitto non internazionale. Questo tipo di conflitti non è coperto da tutte le convenzioni del diritto umanitario. Tuttavia, il Protocollo Aggiuntivo II del 1977 e l'articolo 3, comune alle Convenzioni di Ginevra mantengono le protezioni fondamentali per le vittime di conflitti di carattere non internazionale. Uno dei principi del diritto umanitario, codificato nell'articolo 48 del Protocollo Aggiuntivo I del 1977 e considerato norma consuetudinaria del diritto internazionale, afferma la necessità di distinguere tra individui e obiettivi militari e civili. In accordo con questo principio, sotto l'articolo 35 dello stesso protocollo, è vietato l'uso di armi indiscriminate che possano causare ferite e sofferenze superflue e che non rispettino la distinzione tra militari e civili. Tutte le parti del conflitto, ma soprattutto la coalizione russo-siriana, hanno perpetrato attacchi indiscriminati utilizzando armi chimiche, armi incendiarie, bombe a botte e munizioni a grappolo in centri abitati, causando migliaia di perdite civili e violando i principi del diritto umanitario. In oltre, mentre la Terza Convenzione di Ginevra regola il trattamento e la protezione dei prigionieri di guerra, nei conflitti non internazionali, lo stato di prigionieri di guerra non esiste. Nelle prigioni, dunque, non viene fatta distinzione tra combattenti e civili. Le NGO Amnesty International e Human Rights Watch hanno ripetutamente denunciato i crimini contro l'umanità commessi dal regime, di cui la tortura, i trattamenti degradanti e le impiccagioni di massa dei detenuti senza un regolare processo, sono solo una parte. Il regime di Assad, è stato accusato dalla comunità internazionale di aver commesso crimini di guerra e contro l'umanità. Tuttavia, poiché la Siria non è parte dello Statuto di Roma della Corte Penale Internazionale del 1998, la Corte non ha giurisdizione sullo Stato. Tuttavia, negli ultimi mesi, alcuni avvocati esperti di diritti umani, hanno utilizzato una sentenza della Corte Penale sui rifugiati Rohingya in Bangladesh pronunciata per poter processare la Birmania, per aprire le accuse contro Assad. Infatti, gli avvocati, hanno aperto il caso da parte di ventotto rifugiati Siriani in Giordania, Stato parte della Corte Penale Internazionale, per aprire una causa contro il regime e tentare di rendere Assad responsabile per le azioni compiute.