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**Turkey's Operation Peace Spring in Northeastern Syria:
questioning its legitimacy under Article 51 of the UN
Charter.**

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Introduction

Since 2011, Syria has been devastated by a protracted civil war which began as part of the wave of revolutions initiated by the Arab Spring. The Syrian Observatory for Human Rights has documented the death of 586,100 persons across Syria since the start of the Syrian Revolution on the 15th of March 2011 to the 14th of March 2020.¹ In addition 5.6 million Syrians have fled the country, according to the UN High Commissioner for Refugees, and more than 6.6 million people are displaced internally. In this context, besides the insurgents and other armed groups against the Assad's government, a variety of actors has intervened in the development of the conflict, going from other States, international organizations, NGOs to terroristic groups.

Last October, Turkey launched an offensive into Syria's Kurdish-held northeast region, under the name of Operation Peace Spring. The military action aimed at destabilizing the Kurdish groups, who according to Ankara are affiliated to the recognized terrorist organization of the Kurdistan Workers' Party in Turkey. Considering them as terrorists and a menace to Turkish national security, Erdogan declared to act in self-defence according to Article 51 of the UN Charter and launched the military offensive in the northeastern part of Syria pushing the Kurdish forces back and creating what they have called a safety corridor. This Operation has been justified through self-defence by the Turkish government, however a variety of States have declared the military action an act of aggression and have strongly condemned it. The aim of this thesis is actually to analyze the Turkish claim and understand if it can actually be justified according to Article 51 of the UN Charter.

In the first chapter an historical background of the Syrian war is given. Starting from the very origin of the civil war in 2011 with the outbreak of the Arab Spring, it gives an account of the multiple parties taking part to the conflict and to the different developments of the war, considering the fight against ISIS and until the most recent turnouts in the Idlib province. The

¹ Syrian Observatory for Human Rights, *Syrian Revolution NINE years on: 586,100 persons killed and millions of Syrians displaced and injured*, March 15, 2020, from https://www.syriahr.com/en/?p=157193&cf_chl_jschl_tk_=426c4c8c939e510aea485bc0a2e6500214e193ea-1591351215-0-AVBdVw2utJuD1cYZp9ed9tleinmlkrDIFTiksuG6HG7Z4PP0VaJ0UQgvw7_Um0LYKffqLJDhBI7KIhawAXXussaNk-t99iBtiCDSDa-YJjdQdUL-VoFeYZTtXwzGRH5Duv4DWUdhv3Jlg7nwka4o4v0iq2Oqn1Pz5alTSJj5nkmL82K5enGRhBSXuhYzCN-hLVljZACIGG0x2MdzpUbpNcOppvssj5EmfxrXUa7B35Aa4n2RkDFpm9QI.WH0azsleo4PIB03F8GyfdPyGtvclolHXbI9AYRL6AS23j3J7PMC.

chapter then moves the focus on the Turkish position in the civil war, which has been of relevance since the beginning. The last part delineates the development of Operation Peace Spring, the reasons behind it and at the end it takes into consideration the letter from the government of Turkey to the United Nations Security Council to inform it of the launching of the military action on the basis of Article 51 of the UN Charter.

The second chapter focuses on whether the justification of self-defence for Operation Peace Spring was legitimate or not. It starts by taking into account Article 51 and the conditions for its fulfilment, it then considers the three criteria necessary to determine the legitimacy of the use of force in self-defence, namely necessity, proportionality and immediacy. The chapter then moves to wider interpretations of the right of self-defence considering anticipatory and pre-emptive self-defence. This in order to give an account of the use of this ground in order to justify Turkish military operation, to understand if this claim is legitimate or if the Operation gives rise to the responsibility of Turkish being an international wrongful act. The analysis moves then to the question of the use of force against non-state actors and at the end the responsibility of Syria is taken into consideration.

The third and last chapter first gives an account of the reaction of the Security Council to Operation Peace Spring. As a matter of fact, an emergency meeting was called in by some countries in order to issue a resolution condemning the Turkish military action. Nevertheless, the Council failed to agree on any resolution as veto power was exercised. The chapter moves then to the international reactions brought about by the Operation and by the silence of the Security Council on the matter. Many States have expressed themselves strongly condemning Ankara's offensive and calling it an act of aggression towards the territorial integrity of Syria.

Chapter 1: The Syrian War and Operation Peace Spring

1. Historical Background

Entering the 9th year of conflict in Syria, it is necessary to go back to the beginning of 2011 to understand how this conflict got started. The Syrian civil war began as a limited non-violent protest erupted in the wave of anti-government protests brought about by the wider movement called Arab Spring, which was already spreading in other Middle eastern countries such as Tunisia and Egypt. Human rights activists and civil society groups and organisations were already operating in Syria prior to the eruption of the revolution in 2011, such as the ‘Damascus declaration initiative’ of 2005² and earlier reformers who sought change during the Damascus Spring of 2001.³ However, these groups were not the driving forces behind the eruption of the protests of March 2011. The Syrian conflict has evolved into a complex international landscape and has been the cause of a massive regional and international refugee crisis. It caused 6.6 million internally displaced Syrians and nearly 5.6 million seeking refuge abroad. The Syrian conflict has been marked by widespread and brutal atrocities, including a death toll exceeding 470,000.⁴

1.1 Parties to the conflict

The Syrian civil war started out as an insurgency, so « an organized, protracted politico-military struggle designed to weaken the control and legitimacy of an established government, occupying power, or other political authority while increasing insurgent control. »⁵ The major parties to this insurgency thus were the Syrian Government under Bashar Al Assad and the

² The Damascus Declaration (DD) is a secular umbrella opposition coalition named after a statement drafted in 2005 by numerous opposition groups and individuals demanding a multiparty democracy in Syria. It calls for a gradual and peaceful transition to democracy and the equality of all citizens in a secular and sovereign Syria. Carnegie Middle Eastern Center, *The Damascus Declaration*, March 2012, retrieved from <https://carnegie-mec.org/diwan/48514?lang=en>.

³ The “Damascus Spring” is the name given to period of intense opposition activism and tentative political liberalization that followed the death of Hafez al-Assad in the year 2000. It was characterized by demands for political, legal, and economic reforms, some of which were tentatively introduced before being withdrawn. Carnegie Middle Eastern Center, *The Damascus Spring*, April 2012, retrieved from <https://carnegie-mec.org/diwan/48516?lang=en>.

⁴ SCHARF MICHAEL P., STERIO MILENA, WILLIAMS PAUL R., *The Syrian Conflict's impact on International Law*, 2020, p. 5.

⁵ U.S. ARMY/MARINE CORPS, *Field Manual 3-24: Insurgencies and Countering Insurgencies*, 2006, p. 13.

first insurgents⁶ under an alliance of different brigades consisting of deserting soldiers and civilian volunteers, namely the Free Syrian Army (FSA).⁷

Along with these two, other actors entered the conflict and started to define the sorts of the civil war. The Democratic Union Party (Partiya Yekîtiya Demokrat) and its military branch, the People's Protection Units (Yekîneyên Parastina Gel), are military non-state actors connected to the Turkish Kurdistan Workers' Party (Partiya Karkerên Kurdistanê), which is considered a terrorist group by the Western countries. Due to this connection, the group is viewed mainly by Turkish authorities as terrorist menace. The Democratic Union Party (PYD) – People's Protection Units (YPG), which form the backbone of the Syrian Democratic Forces (SDF),⁸ played an outstanding role taking the North of the Syrian country, which has a Kurdish majority, as a consequence of their collaboration with the US-led Coalition against the Islamic State of Iraq and Syria (ISIS). Their main political aim is to establish a democratic self-administration system, which currently exists in Rojava region, within a democratic Syrian constitutional framework.⁹ For their objectives and the strong structure of the command of the organization, the status of these armed groups is not really clear as on one hand their project would also envisage a collaboration with the Syrian government, which is already to some extent taking place, and there is the affiliation with a recognized terrorist organization on the other.

More active organizations on the Syrian soil are Jabhat al Nusra,¹⁰ recently renamed as Hayat Tahrir al-Sham, and ISIS. The first is a relatively localized Syrian terrorist organization,

⁶“An organized movement aimed at the overthrow of a constituted government through the use of subversion and armed conflict... an organized, protracted politico-military struggle designed to weaken the control and legitimacy of an established government, occupying power, or other political authority while increasing insurgent control”. U.S. ARMY/MARINE CORPS, *Field Manual 3-24*, cit.5.

⁷The FSA was established during the Syrian government's crackdown on the 2011 protests. Only in March 2012 was it possible to identify command and coordinated military operations. In 2012, the Supreme Military Council was established and many rebel groups operating in Syria affiliated with it. GAL T., *Legal Classification of the Conflict(s) in Syria*, in HILLY MOODRICK-EVEN KHEN, NIR T. BOMS, SARETA ASHRAPH (a cura di), *The Syrian War Between Justice and Political Reality*, 2020, pp.46-50.

⁸The SDF, an alliance of Kurdish and Arab militias, was founded in 2015, nearly four years after an armed rebellion erupted against Syrian President Bashar al-Assad. The Kurdish group is fighting for self-rule in northeast Syria, and it largely consists of YPG fighters and smaller groups of Arab, Turkmen and Armenian fighters. AL JAZEERA, *Who are the Syrian Democratic Forces*, in 'Al Jazeera, October 2015, from <https://www.aljazeera.com/news/2019/10/syrian-democratic-forces-191015080247945.html>.

⁹DEMOCRATIC UNION PARTY, Internal System, Ratified during the Party's 6th General Conference, 20-21/09/2015, from <http://pydrojava.net/english/internal-system/>.

¹⁰Jabhat al Nusra was at first considered as an insurgent group, whose main objective was the overthrow of the Assad's regime in Syria to then replace it with an Islamic government based on Sharia law. The strategy used by the group is focused on terroristic attacks on the major government's institutions and assets, but also on persuasion and a gradual change in order to root itself among the Syrian society. BALINT SZLANKO, *Jabhat Al Nusra's New Syria*, in 'The National', December 15, 2012, from <https://www.thenational.ae/world/mena/jabhat->

which retains a Salafi-jihadist ideology despite it detached from al-Qaeda in 2017. The latter is widely recognized as an international terroristic organization, being responsible of disorders and continued violent acts against the established power and the civil society in various countries.¹¹

In addition to all these actors, various states have given their support to the different parties and also intervened into the conflict. ¹²

1.2 The outbreak of the Syrian war

Pro-democracy protests broke out in March 2011 in the southern city of Deraa, capital of the agricultural region of Hawran, after the arrest and torture of some teenagers who painted revolutionary slogans on a school wall and the first protestants were Sunni Arabs inhabiting the rural and peripheral areas of the country. The main issue was rooted in the socio-economic circumstances featured by a rapid population growth, accompanied by social and economic distress and government's policies aimed at opening Syria to the global economy. Severe droughts affecting the pillar of the Syrian economy, namely the agricultural sector, worsened the situation. The agricultural sector was at the base of the consensus which led the Assad/Baathist establishment to power in the 1970s, now they felt that same government had turned its back on them, and they were the first to back up the protests. The unrest triggered nationwide protests demanding President Assad's resignation and the fall of its government.¹³

In order to suppress the protests, the Syrian government employed violent means even if the first protests were not violent at all. Initially it deployed the security forces, the police, and also members of irregular militias, known as shabiha,¹⁴ who acted with unrestrained

[al-nusra-s-new-syria-1.364239](#) and Mapping Militant Organizations, *Jabhat al-Nusra*, Stanford University, October 2015.

¹¹ MARCHISIO S., *Corso di diritto internazionale*, Torino, 2013, p. 218.

¹² The states are Russia, Iran, Jordan, Qatar, Saudi Arabia, Turkey, United States, United Kingdom, France and other EU states. SCHARF MICHAEL P., STERIO MILENA, WILLIAMS PAUL R., *The Syrian Conflict's impact on International Law*, cit.4, pp. 7-9.

¹³ RODGERS L., GRITTEN D., OFFER J. AND ASARE P., *Syria: The story of the conflict*, in 'BBC News', March 11, 2016, from <https://www.bbc.com/news/world-middle-east-26116868>.

¹⁴ "In late March 2011, the shabiha gangs appear to have come to the aid of President Assad when major anti-government protests erupted in Latakia, as well as the nearby towns of Baniyas and Jabla. As the repression of dissent intensified, the meaning of the word "shabiha" expanded, with people from across Syria beginning to use it to refer to pro-regime militiamen who acted with impunity. The term derived from the Arabic word for "ghost" ("shabh"), it has come to mean "thugs" in modern day Syria. The term is believed to have first appeared in relation to the uprising against President Bashar al-Assad after a crackdown was launched in the port city of Latakia, where a notorious, mafia-like organised crime syndicate called the Shabiha has existed since the 1970s". BBC News, *Syria Unrest: who are the shabiha?*, May 2012, from <https://www.bbc.com/news/world-middle-east-14482968>.

brutality. When the government understood that the revolution was escalating, military units were sent into the field. The local population started to turn to armed resistance led by defectors from the Syrian Armed forces in response to this widespread use of violence from the government, which was backed also by Iran, that provided military forces and a significant number of the Iranian Revolutionary Guard Corps (IRGC) al-Quds Force. The Free Syrian Army was the first armed opposition to the government. It consisted of mainly Sunni Arabs, but also of other minorities such as Palestinians, Kurds, and Druze. The FSA was officially established in summer 2011 in a military base in Turkey and in March 2012 it reached the threshold of armed group as able to conduct concrete military operation.¹⁵ By summer 2012, the FSA was supported by Western States and in particular Turkey. In November 2012, the Syrian National Coalition for Syrian Revolutionary and Opposition Forces¹⁶ was established in order to form a strong and internationally relevant opposition to the government. This coalition was recognized as the legitimate representative of the Syrian people, ceasing recognition of the government led by Bashar Al Assad, by the states of the Gulf, the Arab League, France, Turkey, Spain, United Kingdom and the United States. The events from a protest movement quickly escalated in a popular uprising, then in an armed rebellion and at the end, in a civil war.

Even if the level of violence was quickly escalating, international humanitarian law was not applied to the conflict until February 2012 as the threshold of intensity of the hostility was not considered high enough and non-state actor (NSA) parties to the conflict were considered still not sufficiently organized,¹⁷ considering the understanding of a non-international armed conflict within the 1977 Additional Protocol II to the Geneva Conventions and the minimum requirements of common Article 3 to the Geneva Conventions of 1949.¹⁸ To be considered part of the conflict an armed group should possess organized armed forces, be under a certain

¹⁵ “FSA fighters operating in Syria had set up command structures. It was apparent that coordinated action between the various armed groups was becoming more frequent and that the groups had the capacity to mount sustained military operations against the state’s security and armed forces. By March 2012 the FSA was clearly able to recruit new members and provide basic military training; it was also evident that it had access to a relatively regular supply of weapons from outside the country.” ARIMATSU L., CHOUDHURY M., *The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya*, Chatham House, International Law PP 2014/01, March 2014, p. 15.

¹⁶ Carnegie Middle Eastern Center, *National Coalition for Syrian Revolutionary and Opposition Forces*, from <https://carnegie-mec.org/syriaincrisis/?fa=50628>.

¹⁷ “In Tadić, the International Criminal Tribunal for the Former Yugoslavia (ICTY) affirmed that a NIAC exists when there is ‘protracted armed violence between governmental authorities and organized armed groups or between such groups within a State’.¹⁴ This holding is widely accepted as establishing the two key criteria for qualification as a NIAC: i) intensity of the hostilities; and ii) the involvement of an organized armed group (OAG).” ARIMATSU L., CHOUDHURY M., *The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya*, cit. 15, p. 4.

¹⁸ INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC), *Geneva Convention Relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention)*, 12 August 1949, 75 UNTS 287.

command structure and be able to sustain military operations.¹⁹ The Syrian President, Bashar Al Assad, admitted that Syria was in a state of war only on 26 June 2012 and for the Syrian government the situation quickly deteriorated.

Assad regime's counterinsurgency, namely the attempt to regain control over the whole of its territory, was abandoned by the fall of 2012. Fighting reached the capital Damascus and second city of Aleppo in 2012, bringing the city of Raqqa to fall to the rebels in March 2013. For this reason, Ankara's leadership decided to change strategy, launching a total war against the opponents, with the aim of targeting also the civilian population and trying to impede their active support to the rebels. The Syrian government started using its military forces against both urban areas and rural villages held by the rebels. The government forces employed conventional weapons, including artillery fire, aerial bombardment, and advanced surface-to-surface missiles. In areas where it was unable to purge its enemies, the government imposed blockades or sieges, leading widespread hunger.

Notwithstanding the strong invitation of the international community and especially of the US to abstain from using chemical weapons,²⁰ the Assad government repetitively made use of them against the rebels and the civilian population in 2012 and 2013, causing thousands of deaths.²¹ This was seen as the crossing of a "red line" and it brought the American administration to start preparing for a military intervention, even if they weren't backed internationally. However, thanks to the agreement between the foreign ministers of Russia and the United States "Framework for the elimination of Syrian Chemical Weapons" store by mid-2014,²² it was granted to Bashar al-Assad breathing space from any future US military action

¹⁹ INTERNATIONAL COMMITTEE OF THE RED CROSS (ICRC), *How is the Term "Armed Conflict" Defined in International Humanitarian Law?*, Opinion Paper, March 2008.

²⁰ "I have, at this point, not ordered military engagement in the situation. But the point that you made about chemical and biological weapons is critical. We have been very clear to the Assad regime, but also to other players on the ground, that a red line for us is we start seeing a whole bunch of chemical weapons moving around or being utilized." PRESIDENT BARACK OBAMA, *Remarks by the President to the White House Press Corps*, Office of the Press Secretary, The White House, Washington D.C., August 20, 2012, from <https://obamawhitehouse.archives.gov/the-press-office/2012/08/20/remarks-president-white-house-press-corps>.

²¹ SANDERS-ZAKRE ALICIA, *What you need to know about Chemical Weapons Use in Syria*, in 'Arms Control Association', March 2019, retrieved from <https://www.armscontrol.org/blog/2018-09-23/what-you-need-know-about-chemical-weapons-use-syria>.

²² "The United States and the Russian Federation express their joint determination to ensure the destruction of the Syrian chemical weapons program (CW) in the soonest and safest manner. The United States and the Russian Federation have committed to prepare and submit in the next few days to the Executive Council of the OPCW a draft decision setting down special procedures for expeditious destruction of the Syrian chemical weapons program and stringent verification thereof. The United States and the Russian Federation commit to work together towards prompt adoption of a UN Security Council resolution that reinforces the decision of the OPCW Executive Council." US DEPARTMENT OF STATE, *Framework for Elimination of Syrian Chemical Weapons*, Office

so long as he refrained from using chemical weapons. As a matter of fact, Russia played a fundamental role supporting the Syrian government. Russia supported Syria diplomatically, also vetoing various resolutions in the United Nations Security Council, and by providing military supply.²³ Russian support and intervention enabled the Syrian government to advance in its war efforts and regain control of many areas in the Syria.

1.3 The fight against the rise of ISIS

In this framework the rise of the terroristic jihadist group Islamic State of Iraq and Syria added a further dimension, declaring in 2014 the creation of the Islamic State caliphate, which controlled roughly one-third of Syrian territory, with Raqqa as its capital. The rise of ISIS changed US priorities in Syria, with the United States now considering the elimination of the terror group its main objective. This prompted direct US military intervention through a US-led coalition.²⁴ The United States and several allies launched air strikes in both Syria and Iraq to combat the group. The Russians also began conducting their own air strikes in Syria in October 2015, to eradicate terrorists from Syria. In Syria, the air campaign began in September 2014. Since then, more than 14,600 strikes have been carried out by coalition forces, which include Australia, Bahrain, France, Jordan, the Netherlands, Saudi Arabia, Turkey, United Arab Emirates and the UK.²⁵

As Kurdish-led forces showed their effectiveness in fighting ISIS, international support for their effort in combatting terrorism grew, particularly from the United States. In 2017 Trump made the decision to arm the Syrian Kurds, as one of the only ways to successfully deal with ISIS and retake Raqqa. The unlikely alliance between the USA and the YPG paved the way for new dynamics in the war-torn country. The Kurds quietly expanded their territory and took control of non-Kurdish areas, retaking much of what was once considered to be the heartland of ISIS's self-proclaimed caliphate in northwest Syria.

of the Spokesperson, Washington, DC, September 14, 2013, from <https://2009-2017.state.gov/r/pa/prs/ps/2013/09/214247.htm>.

²³ CHARAP S., TREYGER E., GEIST E., *Understanding Russia's Intervention in Syria*, in Research Reports, RAND Corporation, 2019.

²⁴ The Global Coalition against Daesh was formed in September 2014 and is unique in its membership, scope and commitment. Together, the Global Coalition is committed to degrading and ultimately defeating Daesh. The Coalition's 82 members are committed to tackling Daesh on all fronts, to dismantling its networks and countering its global ambitions. Beyond the military campaign in Iraq and Syria, the Coalition is committed to: tackling Daesh's financing and economic infrastructure; preventing the flow of foreign terrorist fighters across borders; supporting stabilization and the restoration of essential public services to areas liberated from Daesh; and countering the group's propaganda. GLOBAL COALITION, *What is the coalition?*, from <https://theglobalcoalition.org/en/>.

²⁵ BBC News, *Islamic State and the crisis in Iraq and Syria in maps*, March 2018, from <https://www.bbc.com/news/world-middle-east-27838034>.

By 2017, Kurdish-led groups controlled more than one-quarter of Syria's territory, the second-largest region after the government-controlled areas of Syria.²⁶ After months of fighting, backed by US airstrikes, the SDF entered Raqqa in October 2017. The reclamation of Raqqa in Syria, together with the fall of Mosul in Iraq, brought to the disappearance of almost all ISIS's territorial caliphate. The SDF advanced south to Deir al-Zour finally taking the very last ISIS holdout in March 2019.

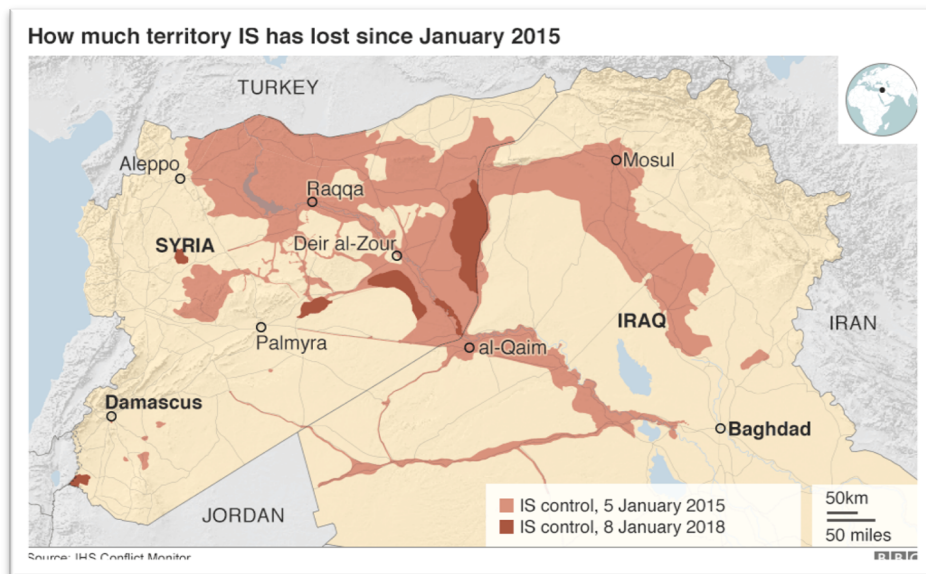


Figure 1: The map shows the result on the ground of the action of the US-led coalition in fighting ISIS²⁷

1.4 Further developments

After a failed attempt to begin UN-led peace negotiation in Geneva in 2014, rounds of peace talks have been held intermittently since 2015, especially in response to the Syrian refugee crisis. 2015 was, indeed, the year in which the refugees' crisis clearly became an issue to be addressed with immediacy, especially for Europe which had to face 1.3 million migrants applying for asylum.

From 2015 to 2016, the Russian military intervention led to the fall of Aleppo, the second-largest city in the country, to the Syrian government and its allies, as well as the partial

²⁶ KAJJO SIRWAN, *Syrian Kurds*, in HILLY MOODRICK-EVEN KHEN, NIR T. BOMS, SARETA ASHRAPH (a cura di), *The Syrian War Between Justice and Political Reality*, 2020, p. 269.

²⁷ IHS CONFLICT MONITOR in 'BBC News', *Islamic State and the crisis in Iraq and Syria in maps*, March 2018, retrieved from <https://www.bbc.com/news/world-middle-east-27838034>.

collapse of the rebel factions. During this period, Iran began providing the Assad government with weapons, money, and support by its own forces and by proxy through Hezbollah militias from Lebanon.²⁸ The Russians and the Iranians together with Lebanese Hezbollah's warriors were able to determine the shift in the war, giving to the Syrian government a stronger position in a conflict which was in a mutual hurting stalemate, where both parties knew they could neither win nor lose.²⁹ During this stage, the tide of the conflict turned overwhelmingly in favour of the Syrian regime. The Assad regime aggressively reasserted its control over most of the country. By the end of 2016, it had retaken major cities, including Aleppo, as well as areas across Syria's strategic western spine.³⁰

The chemical attack of Khan Shaykhun on the 4th April 2017, perpetrated by the Syrian government played a decisive role in shifting US's attention back on the civil war. President Trump took the decision to respond with an attack in Syria and this marked the first direct US action against Assad's government. Another chemical attack was launched in April 2018 in Douma.³¹ The United States, joined by the UK and France, conducted targeted strikes on regime chemical research and military assets. In 2017 a Memorandum of Understanding,³² which was the outcome of the Astana Peace Process led by Moscow, was signed by Russia, Iran and Turkey for the cessation of hostilities between rebel groups and forces fighting on behalf of Bashar al-Assad's government in four so-called de-escalation zones in mainly opposition-held areas of the country.³³ One of these zones was Idlib province and parts of the neighbouring provinces in the north of the country, near the border with Turkey. Another was the region between the cities of Hama and Homs. A third zone was the rural area to the east of Damascus, al-Ghouta al- Sharqiyya. The fourth zone included parts of Daraa and Quneitra provinces near the border with Israel and Jordan. Armed military operations were prohibited in these zones, including activity by the Syrian air force.³⁴ However, two of these de-escalation

²⁸ ZISSER EYAL, *The Syrian Government's war against its people*, in HILLY MOODRICK-EVEN KHEN, NIR T. BOMS, SARETA ASHRAPH (a cura di), *The Syrian War Between Justice and Political Reality*, 2020, pp. 56-57.

²⁹ The concept is based on the notion that when the parties find themselves locked in a conflict from which they cannot escalate to victory and this deadlock is painful to both of them (although not necessarily in equal degree or for the same reasons), they seek an alternative policy or Way Out. ZARTMAN W., *The Timing of Peace Initiatives: Hurting Stalemates and Ripe Moments*, in 'The Global Review of Ethnopolitics', Vol. 1, no. 1, September 2001, 8-18.

³⁰ SCHARF MICHAEL P., STERIO MILENA, WILLIAMS PAUL R., *The Syrian Conflict's impact on International Law*, 2020, cit. 4.

³¹ BBC News, *Syria war: what we know about Douma 'chemical attack'*, July 2018, from <https://www.bbc.com/news/world-middle-east-43697084>.

³² Memorandum on the creation of de-escalation areas in the Syrian Arab Republic, The Ministry of Foreign Affairs of the Russian Federation, May 6, 2017, from https://www.mid.ru/en/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2746041.

³³ Al Jazeera, *Syria's 'de-escalations zones' explained*, July 2017, from <https://www.aljazeera.com/news/2017/05/syria-de-escalation-zones-explained-170506050208636.html>.

³⁴ ZISSER EYAL, *The Syrian Government's war against its people*, cit.28, pp.72-73.

zones were already disappeared at the beginning of 2018 as the Assad government advanced and took control of the Idlib area and of the oriental Ghouta, outside of Damascus.³⁵

In 2018, US President Trump decided to stop the assistance the US had given to the various rebel groups in Syria, especially the Kurds, ending American involvement in the civil war itself. This decision was followed by another one, withdrawing US forces from Syria, although 2,000 American soldiers still remain on Syrian soil. This withdrawal had and still may have a great number of consequences. First of all, it could create a vacuum for ISIS to take action once again, Russia has already emerged as the most powerful actor in this framework and it is likely to further consolidate its role as significant regional mediator. Iran will continue playing a substantial role in Syria's future, continuing to provide also Hezbollah's support to the Assad government.³⁶ In addition, the position of the Syrian Democratic Forces has been put into array, being the major partner of US in the fight against ISIS, raising also the chances of a conflict between Turkey and Syria's Kurds.³⁷

Since April 2019 around 1300 people were killed and almost 1 million displaced because of bombings carried out in the Idlib province, by the Syrian government and supporting Russian forces. At least 11500 airstrikes have been launched, including the documented use of more than 460 cluster bombs and 1280 barrel bombs, in order to target the remains of the Syrian opposition.³⁸ The strikes persistently attacked civilian targets such as schools and hospitals.³⁹ The Syrian army and its ally Russia denied the allegations. Russia's U.N. Ambassador, Vassily Nebenzia, declared to the UN Security Council «it was said that the Russia Federation deliberately — deliberately — is conducting airstrikes using bombs targeting hospitals and schools. This is a lie». The Syrian government wrote to the Security Council stating that the allegations were false, because several of the facilities it struck had been taken

³⁵ TROMBETTA LORENZO, GLIOTI ANDREA, *Due zone di de-escalation non esistono più*, in 'Limes Rivista Italiana di Geopolitica', January 2018, from <https://www.limesonline.com/du-zone-di-de-escalation-in-siria-non-esistono-piu/103985?prv=true>.

³⁶ ALAALDIN RANJ, *A Welcome Delay: The US Withdrawal from Syria*, in 'ISPI Istituto per gli Studi di Politica Internazionale', March 2019, from <https://www.ispionline.it/it/pubblicazione/welcome-delay-us-withdrawal-syria-22467>.

³⁷ RHODES BENJAMIN, *The US withdrawal from Syria*, in 'The International Institute for Strategic Studies', Vol. 25 Strategic Comments 1, January 2019.

³⁸ MCKERNAN B., *More than 1,000 killed in Syria airstrikes since April, say monitors*, in 'The Guardian', November 20, 2019, from <https://www.theguardian.com/world/2019/nov/20/more-than-1000-dead-and-1-million-displaced-by-syria-bombing#maincontent>.

³⁹ "More than 23 hospitals have been hit by attacks since the offensive on Idlib began in late April, according to the UN". AL JAZEERA NEWS AGENCY, *Russia-Syria assault on Idlib leaves over 500 civilians dead*, in 'Al Jazeera', July 7, 2019, from <https://www.aljazeera.com/news/2019/07/russia-syria-assault-idlib-leaves-500-civilians-dead-190707063546686.html>.

over by terrorist groups and were no longer functioning.⁴⁰ In August 2019, the UN Secretary-General António Guterres announced the setting up of an internal inquiry into attacks in the Idlib de-escalation zone,⁴¹ after 10 of the 15 countries on the UN Security Council asked to investigate the attacks. The board's investigation had to cover the destruction of or damage to facilities on the deconfliction system's list⁴² and UN-supported facilities in the area and determine whether Russia and Syria used coordinates provided by the UN to target hospitals.⁴³ The Board was supposed to submit its report by 13 December 2019 but it requested an extension of its mandate until 31 January 2020 and, subsequently, to 13 March 2020.⁴⁴ The investigation concluded that the Syrian government or its allies had committed most of the attack, but it failed to name Russia, the most important of those allies, as a perpetrator.⁴⁵ The Russian and Syrian missions to the United Nations did not comment on the report, and there are suppositions that Russia pressed for the non-release of the document.⁴⁶

⁴⁰ BESHEER M., *Syria's Idlib at Risk of Humanitarian Disaster*, in 'VOA News', July 30, 2019, from <https://www.voanews.com/middle-east/syrias-idlib-risk-humanitarian-disaster>.

⁴¹ "On 1 August 2019, I announced my decision to establish a United Nations Headquarters Board of Inquiry to investigate certain incidents that had occurred in northwest Syria since 17 September 2017, when the Memorandum on Stabilization of the Situation in the Idlib De-escalation Area was signed by the Russian Federation and Turkey, in which facilities on the United Nations deconfliction list or supported by United Nations were destroyed or damaged as a result of military operations." UN SECRETARY-GENERAL ANTÓNIO GUTERRES, *Summary by the Secretary-General of the report of the United Nations Headquarters Board of Inquiry into certain incidents in northwest Syria since 17 September 2018 involving facilities on the United Nations deconfliction list and United Nations supported facilities*, April 6, 2020, from https://www.un.org/sg/sites/www.un.org.sg/files/atoms/files/NWS_BOI_Summary_06_April_2020.pdf.

⁴² "The deconfliction system works by sharing the location of humanitarian sites with Russian, Turkish and United States-led coalition forces operating in Syria, on the understanding that they will not target those sites. The system is voluntary, (...) The groups give locations of their own choosing to the United Nations Office for the Coordination of Humanitarian Affairs, the agency that runs the system". HILL E., HURST W., *The U.N. Tried to Save Hospitals in Syria. It Didn't Work.*, in 'The New York Times', December 29, 2019, from <https://www.nytimes.com/2019/12/29/world/middleeast/united-nations-syria-russia.html>.

⁴³ BESHEER M., *UN Chief Establishing Inquiry into Attacks on Civilian Targets in Syria's Idlib*, in 'VOA News', August, 2019, from <https://www.voanews.com/middle-east/un-chief-establishing-inquiry-attacks-civilian-targets-syrias-idlib>.

⁴⁴ UN SECRETARY-GENERAL ANTÓNIO GUTERRES, *Summary by the Secretary-General of the report of the United Nations Headquarters Board of Inquiry into certain incidents in northwest Syria since 17 September 2018 involving facilities on the United Nations deconfliction list and United Nations supported facilities*, cit. 41.

⁴⁵ HILL E., *U.N. Inquiry Into Syria Bombings Is Silent on Russia's Role*, in 'The New York Times', April 6, 2020, from <https://www.nytimes.com/2020/04/06/world/middleeast/UN-Syria-Russia-hospital-bombings.html>.

⁴⁶ MCKERNAN B., *UN inquiry stops short of directly blaming Russia over Idlib attacks*, in 'The Guardian', April 7, 2020, from <https://www.theguardian.com/world/2020/apr/07/un-inquiry-stops-short-of-directly-blaming-russia-over-idlib-attacks-syria>.

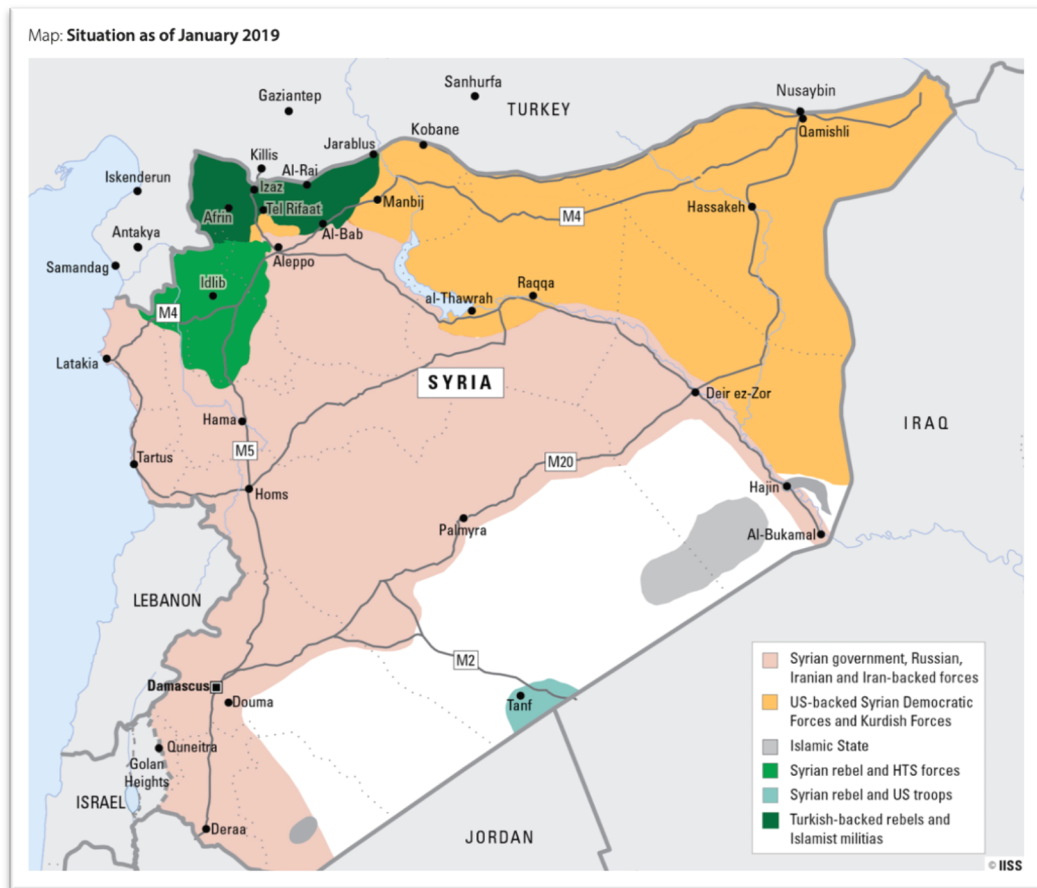


Figure 2: Situation in Syria as of January 2019⁴⁷

1.5 Turkish position in the civil war

Turkey played an important role since the outbreak of the first uprisings in 2011. It immediately gave its support to the creation and establishment of the insurgent group, known as Free Syrian Army, the first and major opponent to the Assad's government. This group indeed became the direct representative of Turkish will during the war, assisting Turkey and acting as its proxy in its principal goal namely the campaign against the People Protection's Unit, military branch of the Syrian Kurdish Democratic Unity Party.

For decades, the Kurdistan Worker's Party (PKK) waged a violent insurgency inside Turkey, fighting to establish their own independent Kurdish state and according to Erdogan a direct link between the PKK and the PYD exists. As a matter of fact, apart from the intervention against ISIS backing the US-led coalition, almost every act perpetrated by Turkey

⁴⁷ RHODES BENJAMIN, *The US withdrawal from Syria*, cit. 37.

in the framework of the Syrian war has been aimed at tackling the presence of Syrian Kurds. Turkey deployed several thousand forces into Syria, both to protect civilians from attack by the Syrian regime but mostly to prevent Kurdish forces from holding contiguous territory along the Turkish border. The war gave to the PYD the possibility to gain power and establish in the northeastern part on Syria a self-governed area called “Rojava”.

After 2015 any ceasefire agreement or attempt for peace between the two parties failed and Turkey increased its opposition to the American support to the YPG as part of the US-led coalition. Moreover, the major Turkish concern is represented by the possibility of the establishment of a Kurdish entity in northern Syria, fearing it would boost the Kurdish insurgency in its own country. Turkey launched several operations in Syria since the start of the civil war, the first one being Operation Euphrates Shield carried out in August 2016 in the region between the Euphrates river and the area around Azaz to fight against the ISIS force as well as the Syrian Democratic Forces, in particular the YPG. It also aimed at preventing the Syrian Kurdish PYD and YPG from merging their three separate cantons, namely Kobane, Jazira, and Afrin, along the Syrian-Turkish border. In October 2017, following the Astana agreement, the Idlib De-escalation Control Force activities were initiated to set up and maintain 12 observation posts within rebel-held territories in the Idlib Governorate. In January 2018, Turkey carried out a full-scale offensive under Operation Olive Branch against the Kurdish enclave of Afrin in north-western Syria. The main objective was to attack and dislodge from the region the Syrian Kurdish Democratic Unity Party and the People Protection’s Unit.⁴⁸

Erdogan thus wanted to push the Syrian Kurds back from the border and establish a buffer zone between them and his country. This buffer zone had also the aim of resettling some 2 million of the 3.6 Syrian refugees who fled to Turkey since the start of the Syrian War. However, what made Ankara refrain from moving forward was the United States and the small number of troops still stationed in northeastern Syria. With the 2018 Trump’s declaration of pulling out troops from Syria the situation changed, even if a framework which outlined joint security mechanism along the Turkey-Syria border was agreed between US and Turkey to address some security concerns of the latter.⁴⁹ Notwithstanding the security agreement and the

⁴⁸ KAJJO SIRWAN, *Syrian Kurds*, cit. 26, p.284.

⁴⁹ CRONK T. M., *U.S., Turkey Cooperate in Defeat-ISIS Effort*, US Department of Defense, September 18, 2019, from <https://www.defense.gov/Explore/News/Article/Article/1964619/us-turkey-cooperate-in-defeat-isis-effort/>.

joint patrols, once the American troops were moved, Turkey had an open pathway into the Kurdish territory, giving start to the 2019 Operation Peace Spring.⁵⁰

2. Operation Peace Spring

The Operation Peace Spring was initiated by Turkey on the 9th of October 2019, as soon as the American troops withdrew from the Northeastern part of Syria, targeting the Kurdish-led SDF to create a safe zone. With this operation, Turkey mainly aimed to establish control over the area between Syria's Tel Abyad in the west and Ras al-Ayn in the east controlled by the PYD and the YPG, considered as a terrorist organization, fundamental to enable the security of Turkish's southern border with Syria.

The plan of the operation, mainly carried out by the Free Syrian Army as Turkish proxy, provided the retreat of YPG fighters at least 30 kilometers away from its border and the establishment a so-called safe zone in parts of Syrian territory it seized. Turkey, as a matter of fact, mainly wanted to prevent the creation of an autonomous Kurdish region in the area called "Rojava", the invasion was so intended to send a message of deterrence to Kurds in Turkey. This is tied to a Turkish nationalism ideal that President Recep Tayyip Erdogan has been promoting for more than a decade, casting Turkey as the renewed protector of Sunni Islam and reorienting its regional ambitions eastward to the lands once dominated by the Ottoman Empire.⁵¹

In addition to that, following the recent rise in the anti-refugee sentiment spread among the whole Turkish population, Ankara planned to reposition some of the 3.5 million refugees that Turkey currently host in this newly conquered part of territory. This would inevitably damage the Kurdish presence in the area, creating also a widely ethnically fragmented zone. The offensive constituted, indeed, another step in Turkey's long-lasting efforts to militarily counter the regional dimensions of the PKK threat, seen as a terroristic menace. It would also grant Ankara territorial access into Syria and enable it to play an active role in shaping the new Middle East emerging out of the ashes of the Syrian civil war. With the United States practically

⁵⁰ KIRBY JEN, *9 questions about Turkey, Syria and the Kurds you were too embarrassed to ask*, in 'Vox', October 2019, retrieved from <https://www.vox.com/world/2019/10/16/20908262/turkey-syria-kurds-trump-invasion-questions>.

⁵¹ KAUFMAN ASHER, *Israel's Occupation of Lebanon Failed. Turkey's Invasion of Syria Probably Will, Too.*, in 'Foreign Policy', November 2019.

out of Syria, Russia and Iran are the major external actors in the new landscape, and Turkey would like to have an influencing place at the negotiating table.⁵²

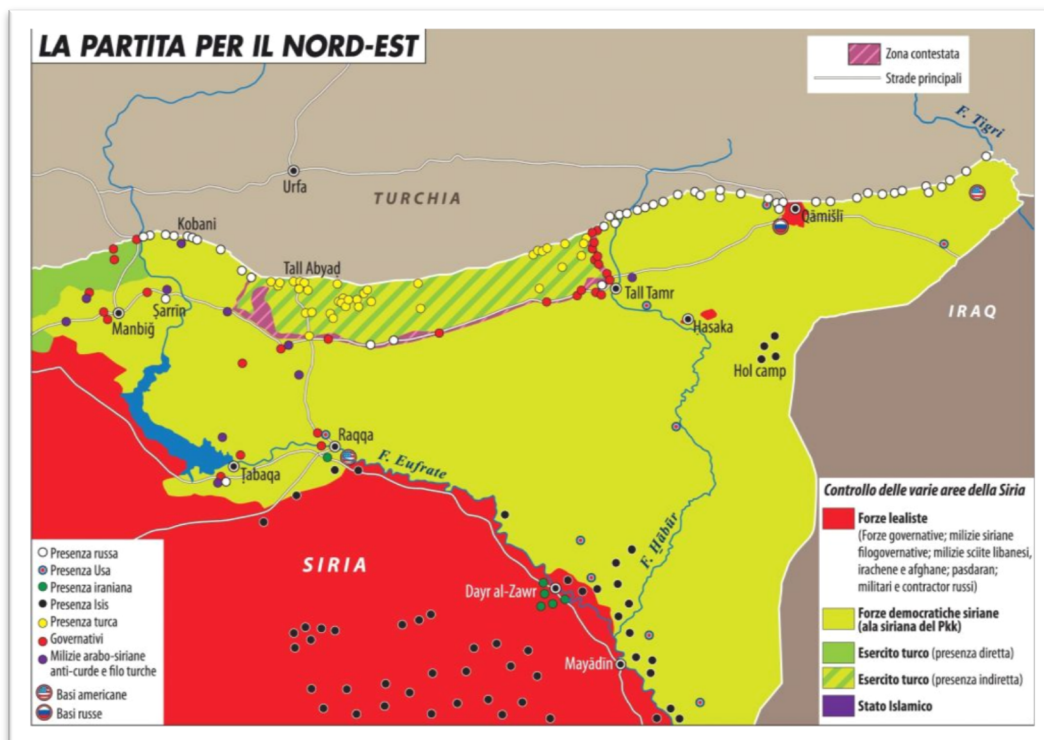


Figure 3: Geographical framework of the Operation Peace Spring⁵³

Moreover, the operation had concerning humanitarian impacts, as it exacerbated the safety and well-being of the area's 3 million residents, adding that nearly 180,000 people including some 80,000 children that border region in just two weeks. More than 10,000 people have reached Iraq since the beginning of the recent operation.⁵⁴ A report issued by Amnesty International highlighted also serious violations and war crimes, including summary killings and unlawful attacks that have killed and injured civilians, during the offensive into northeast Syria. A prominent Syrian-Kurdish female politician, Hevrin Khalaf, was killed by members of

⁵² KAUFMAN ASHER, *Israel's Occupation of Lebanon Failed. Turkey's Invasion of Syria Probably Will, Too*, cit.51.

⁵³ CANALI LAURA in TROMBETTA LORENZO, *Dalla rivolta contro Assad al confronto tra potenze: nove anni di guerra in Siria*, in 'Limes Rivista Italiana di Geopolitica', March 2020, from <https://www.limesonline.com/siria-guerra-nove-anni-storia-assad-ribelli-russia-stato-islamico-curdi/117157>.

⁵⁴ UNITED NATIONS, Meetings coverage, Security Council 8645th meeting (pm), *Turkey's Military Operation Has Displaced Thousands of Civilians, Worsened Syria's Dire Humanitarian Crisis, Top Official Warns Security Council*, October 24th, 2019.

Ahrar Al-Sharqiya, part of the Syrian National Army, a coalition of Syrian armed groups equipped and supported by Turkey.⁵⁵

These acts were strongly condemned by the European Union, which agreed to stop any weapon export to Turkey and asked for an immediate halt of the operation considered as a *de facto* invasion. President Erdogan responded by threatening the European Union (EU) of opening its borders and sending the 3.5 million refugees hosted into Europe. The operation was condemned also by the Arab League, calling it a violation of Syria's sovereignty, and by the United States too, which at first gave a green light for the start of the operation.

2.1 The end of the Operation Peace Spring

On October 18th, following a meeting between the US Vice President Mike Pence and Erdogan, Ankara agreed to suspend the operation, giving to the SDF 120 hours to pull its forces 30km back from a 120km long strip along the Turkey-Syria border, the planned Turkey-controlled "safe zone" area between the towns of Tal Abyad and Ras al-Ain.⁵⁶ This agreement was followed by the signature of a Memorandum of Understanding between Turkey and Russia on the 22nd of October, establishing that Russian military police and Syrian border guards would enter the Syrian side of the Turkish-Syrian border, outside the area of Operation Peace Spring, to facilitate the removal of YPG elements and their weapons to the depth of 30 km from the Turkish-Syrian border to be finalized in 150 hours.⁵⁷ Joint Russian-Turkish patrols would then start in the west and the east of the area of the operation with a depth of 10 km, except for Qamishli city.⁵⁸ These agreements actually put an end to the operation, even if not all YPG members left the now Turkish-controlled safe zone.

2.2 Self-defence as justification of the operation

On 9th October 2019, the government of Turkey informed through a letter the United Nations Security Council of the launching of the Peace Spring Operation, on the basis of Article 51 of the UN Charter. The Turkish Permanent Representative, Feridun H. Sinirlioglu,

⁵⁵Amnesty International, *Syria: Damning evidence of war crimes and other violations by Turkish forces and their allies*, October 2019, retrieved from <https://www.amnesty.org/en/latest/news/2019/10/syria-damning-evidence-of-war-crimes-and-other-violations-by-turkish-forces-and-their-allies/>.

⁵⁶ URAS UMUT, *Turkey's Operation Peace Spring in northern Syria: One month on*, in 'Al Jazeera', November 2019.

⁵⁷ Memorandum of Understanding Between Turkey and the Russian Federation, President of Russia, October 22, 2019, from <http://en.kremlin.ru/supplement/5452>.

⁵⁸ The Defense Post, *FULL TEXT: Memorandum of Understanding between Turkey and Russia on northern Syria*, October 2019, retrieved from <https://www.thedefensepost.com/2019/10/22/russia-turkey-syria-mou/>.

highlighted the security threat to Turkey by the PKK, PYD and YPG as direct and imminent, this would inevitably enable Turkish self-defence. He stated that Turkey's response would have been proportionated, measured and responsible following international law and coordinating with United Nations agencies. Notwithstanding the notification to the Security Council, Turkish offensive raised several issues related to the use of self-defence, namely the action being preemptive and against a non-state actor.

« Turkey initiated Operation Peace Spring on 9 October 2019, in line with the right of self-defence as outlined in Article 51 of the Charter of the United Nations, to counter the imminent terrorist threat, to ensure Turkey's border security, to neutralize terrorists starting from along the border regions adjacent to Turkish territory and to liberate Syrians from the tyranny of PKK's Syrian branch, PKK/PYD/YPG, as well as Deash.

(...) As has been the case in its previous counter-terrorism operations, Turkey's response will be proportionate, measured and responsible.

(...) Turkey will carry out this operation in support of efforts to facilitate the safe and voluntary return of displaced Syrians to their homes of origin or other places of their choice in Syria in line with international law and in coordination with relevant United Nations agencies.

I would like to underscore once again that, unequivocally and strongly committed to the territorial integrity and political unity of Syria, Turkey undertakes this measure with a view to contributing to and furthering these fundamental principles. This operation is also a solid expression of Turkey's determination to reject any separatist agenda aimed at undermining the sovereignty and territorial integrity of Syria.»⁵⁹

Furthermore, in the Security Council meeting of the 24th of October focusing on the worsening humanitarian crisis accentuated by the Operation, Sinirlioglu, stated « we are all entitled to our own views, but we are not entitled to our own facts. » Operation Peace Spring was a limited cross-border intervention to fight terror organizations, including PKK/PYD/YPG (Kurdish Workers Party/Democratic Union Party) and ISIL/Da'esh. This was the response to the Syrian representative's intervention in which the latter accused Turkey

⁵⁹ SINIRLIOGLU FERIDUN H. Permanent Representative, *Letter dated 9 October 2019 from the Permanent Representative of Turkey to the United Nations addressed to the President of the Security Council*, October 2019, United Nations Security Council.

of a new round of aggression against the territorial integrity of his country, leading to the occupation of territory, deaths of hundreds, displacement of hundreds of thousands and great destruction. The Syrian Representative, Bashar Ja'afari, continued by adding that the Turkish explanation of the aggression has been full of lies, including the citing of Article 51 in the Charter of the United Nations enabling self-defence.⁶⁰

⁶⁰ UNITED NATIONS, Meetings coverage, Security Council 8645th meeting (pm), *Turkey's Military Operation Has Displaced Thousands of Civilians, Worsened Syria's Dire Humanitarian Crisis, Top Official Warns Security Council*, cit.54.

Chapter 2: Questioning the legitimacy of Operation Peace Spring under Article 51

1. Article 51 of the UN Charter

The existence of a general principle admitting self-defence in contrast with the prohibition against the use of force in international relations is without question. This principle is acknowledged by Article 51 of the Charter of the United Nations which preserves a State's inherent right of self-defence in the face of an armed attack. Consequently, a State exercising this right of self-defence in line with Article 51 is not, even potentially, in breach of prohibition of the use of force outlined in Article 2, paragraph 4 of the UN Charter, «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».⁶¹ Within the Chapter VII of the UN Charter, dealing with Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Article 51 states:

«Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.»⁶²

⁶¹ UNITED NATIONS, *Charter of the United Nations, Article 2, Paragraph 4*, concluded in San Francisco on 26 June 1945 and entered into force on 24 October 1945, 1 UNTS XVI.

⁶² UNITED NATIONS, *Charter of the United Nations, Chapter VII — Action with respect to Threats to the Peace, Breaches of the Peace, and Acts of Aggression, Art. 51*, concluded in San Francisco on 26 June 1945 and entered into force on 24 October 1945, 1 UNTS XVI.

In order to guarantee the legality of the use of force as self-defence, this article sets out conditions which should be fulfilled in the carrying out of the defensive response. First of all, the wording «if an armed attack occurs» constitutes a fundamental part of the article, bringing the interpretation to «no self-defence can be exercised if no armed attack occurs».⁶³ However, a clear definition of what can be considered an armed attack has not yet been given by the international community, especially taking into account the evolving of types of attacks carried out and of the actors perpetrating them, like irregular forces or armed bands. This issue was first addressed by the International Court of Justice, in the Nicaragua case, even if it took into consideration armed bands and forces acting under the influence of a State and on its behalf.⁶⁴

In addition, two procedural requirements exist, namely the measures adopted as self-defence need to be immediately reported to the Security Council and they should end as soon as the Security Council assess the situation and steps in implementing its efforts to maintain and secure peace.

1.1 The necessity, proportionality and immediacy criteria

Along with these conditions, there are some criteria of legitimacy, whose fulfilment would determine the legitimate use of force. These parameters come mainly from customary international law,⁶⁵ nevertheless a uniform agreement on these matters is missing as they are mostly evaluated on a case-by-case basis and subordinated to the fact that self-defence is at

⁶³ RUYS TOM, 'Armed attack' and other conditions of self-defence, in *Armed Attack and Article 51 of the UN Charter*, 2010, p. 67.

⁶⁴ "In particular, it may be considered to be agreed that an armed attack must be understood as including not merely action by regular armed forces across an international border, but also 'the sending by or on behalf of a State of armed bands, groups, irregulars or mercenaries, which carry out acts of armed force against another State of such gravity as to amount to' (inter alia) an actual armed attack conducted by regular forces". International Court of Justice, *Case concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v USA)*, June 27, 1986, Merits ICJ Rep. 14, at para 195.

⁶⁵ "The submission of the exercise of the right of self-defence to the conditions of necessity and proportionality is a rule of customary international law. As the Court stated in the case concerning *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*: there is a "specific rule whereby self-defence would warrant only measures which are proportional to the armed attack and necessary to respond to it, a rule well established in customary international law" (*I.C.J. Reports 1986*, p. 94, para. 176). This dual condition applies equally to Article 51 of the Charter, whatever the means of force employed." International Court Of Justice, *Advisory Opinion on the Legality of the Threat or Use of Nuclear Weapons*, 1996 ICJ Rep, 8 July 1996, para 41.

stake. Necessity and proportionality of the armed military action together with the immediacy of the response are considered fundamental characteristics of self-defence.

Starting from the necessity requirement, it implies that States can only recur to an armed attack as a last resort, once they actually validated that there is no feasible alternative mean of redress. In other words, a State can only make use of self-defence when any peaceful option has been exhausted and diplomatic efforts would be ineffective. Thus, this criterion highlights how self-defence needs to be used only when it is necessary to end or avert an attack, and no practical non-military alternative to the proposed course of action is available to terminate the threat. «The defensive attack must be limited to what is necessary to avert the on-going attack or bring it to an end.»⁶⁶

Taking into consideration the immediacy criterion, it is understood as referring to the temporal relation between the armed attack and the self-defence response. This requirement would then imply that the State, which has experienced the attack, has to reply without delay, the defensive action should be undertaken while the armed attack is still in place or in any case considering a short time gap between the end of the latter and the start of self-defence.

Nevertheless, it is widely acknowledged especially by States practice, that there is flexibility on the concept of immediacy, a precise time limit cannot be fixed.⁶⁷ This because while taking the decision of acting in self-defence, time may be needed in order to explore all the alternatives required by the above-mentioned principle and also to effectively organize the engagement in the practice, considering elements like military deployment.⁶⁸ In any case this immediacy criterion works as an important factor in order to distinguish lawful self-defence from armed reprisals and further highlights how hostilities may not be re-opened later on in time. The concept of armed reprisals indicates the use of military force following an incident, usually to punish or in retaliation or revenge, which does not comply with the self-defence criteria.⁶⁹ As a matter of fact, unilateral countermeasures implying the use of

⁶⁶ “3. Force may be used in self-defence only when this is necessary to bring an attack to an end, or to avert an imminent attack. There must be no practical alternative to the proposed use of force that is likely to be effective in ending or averting the attack.” WILMSHURST E., *Principles of International Law on the Use of Force by States in Self-Defence*, The Royal Institute of International Affairs, Chatham House, October 2005, p. 7.

⁶⁷ RUYSS TOM, *Armed Attack and Article 51 of the UN Charter*, cit.63, pp. 99-100.

⁶⁸ LUBELL N., *The Parameters of Self-Defence*, in *Extraterritorial Use of Force Against Non-State Actors*, 2010, p.44.

⁶⁹ O’CONNELL M. E., *Unlawful Reprisals to the Rescue against Chemical Attacks?*, in ‘EJIL:Talk! Blog of the European Journal of International Law’, April 2018, from <https://www.ejiltalk.org/unlawful-reprisals-to-the-rescue-against-chemical-attacks/>.

force, without any authorization from the Security Council as stated in Articles 41 and 42 of the UN Charter, are to be considered unlawful.⁷⁰

For what concerns the proportionality requirement, according to the well-established rule of customary international law, also confirmed by the International Court of Justice, the level of force used must not exceed the amount that is necessary to end the attack or remove the threat.⁷¹ Moreover, the physical and economic consequences of the force used must not be excessive in relation to the harm expected from the attack.⁷² This as a consequence of the fact that the use of force as self-defence should not punish the aggressor, so proportionality criterion should focus on the control of the response's aim of being a defensive action.⁷³

2. Anticipatory and Preventive Self-Defence

Having considered these fundamental requirements for the use of self-defence to be acknowledged as legitimate, the focus will now shift to some circumstances in which the defensive response inevitably misses some of the mentioned criteria. Most importantly they miss the necessity of the occurrence of an armed attack in order to exercise the right of self-defence, stated by the UN Charter in Article 51. This because, an overall tendency has been witnessed, namely a wider interpretation of the notion of self-defence than the one endorsed by the UN Charter. This broad interpretation revolves around another concept, whose exact meaning and definition is still under discussion, the one of imminence.

2.1 Anticipatory Self-Defence

The first consequence of this wider interpretation is the anticipatory self-defence, which consists of an armed response that takes place as soon as there is the certainty of an attack about to happen. The assumption here is that anticipatory self-defence may be a legitimate option for defensive action under a specific circumstance that needs to be added to the three mentioned before, this one being the concept of imminence. This requirement

⁷⁰ MARCHISIO S., *Corso di diritto internazionale*, Torino, 2013, pp. 330-338.

⁷¹ International Court of Justice, *Case concerning Military and Paramilitary Activities in and against Nicaragua*, cit.64, at para. 176.

⁷² WILMSHURST E., *Principles of International Law on the Use of Force by States in Self-Defence*, cit.66, page 10.

⁷³ RUYS TOM, *Armed Attack and Article 51 of the UN Charter*, cit.63, p. 111.

was first highlighted by Hugo Grotius stating the necessity of the danger to be immediate.⁷⁴ Later on, a further acknowledgement of the issue was given through the Caroline Case⁷⁵ and the formulation by the US Secretary of State Daniel Webster, known as Caroline Test, namely the «necessity of that self-defence is instant, overwhelming, and leaving no choice of means, and no moment for deliberation».⁷⁶

To be noted, anticipatory self-defence can only be launched against an imminent attack and it is the imminence criterion that may give rise to the legitimacy of this anticipatory defensive act. The notion of imminence requires a specific anticipated attack, which must go beyond the suspicion of it, there must be a reasonable level of certainty. The attack or the threat, as a matter of fact, must be an identifiable actual offensive which is being prepared, a concrete danger of an imminent threat, often a visible mobilization of armies, navies and air forces preparing to hit, and not just a potential, not yet materialized attack.⁷⁷ The requirement of imminence may become in these specific circumstances, therefore, an additional criterion to be further considered after the ones before stated, namely necessity, proportionality and immediacy.

2.2 Pre-emptive Self-Defence

The other interpretation, which starts from anticipatory self-defence and the idea of imminence but take it to the extreme is the concept of pre-emptive self-defence and/or preventive self-defence.⁷⁸ Thus, pre-emptive self-defence is directed against an attack which

⁷⁴GROTIUS H., *On the Law of War and Peace*, 1625, Book II, Chapter 1, V.

⁷⁵ The case is about a British attack on an American ship, the schooner Caroline, in 1837. The Caroline had been used to transport supplies to Canadians rebelling against British domination and was consequently attacked by the British while was lying in the harbor. The Caroline test was formulated in response to the British claims that they attacked the Caroline in self-defence. KLABBERS J., *International Law*, 2nd Edition, 2017, p. 209.

⁷⁶ WEBSTER D., *Letter to Lord Ashburton*, Department of State, Washington, 6 August 1842, from https://avalon.law.yale.edu/19th_century/br-1842d.asp#web2.

⁷⁷ LUBELL N., *The Problem of Imminence in an Uncertain World*, in WELLER M. (edited by), 'The Oxford Handbook of the Use of Force in International Law,' January 2015.

⁷⁸ Many scholars further differentiate the concepts of pre-emptive and preventive self-defence. There is evidence of this specification also in the Report of the Secretary-General's High-level Panel on Threats, Challenges and Change 'A More Secure World: Our Shared Responsibility' of December 2004, in which we can find stated "Can a State, without going to the Security Council, claim in these circumstances the right to act, in anticipatory self-defence, not just pre-emptively (against an imminent or proximate threat) but preventively (against a non-imminent or non-proximate one)?" Report of the Secretary-General's High-level Panel on Threats, *Challenges and Change 'A More Secure World: Our Shared Responsibility'*, 2 December 2004, UN Doc. A/59/ 565, para 189.

has not yet been launched, a threat which has not yet fully materialized. Inevitably there is uncertainty on the time and place at which the attack would occur.⁷⁹

In this understanding, self-defence becomes a policy advocating preventing action to counter future threats. According to this doctrine, in order to face, in particular, the new types of threats against which dissuasion does not have any effect, for example the terrorist menaces and Weapons of Mass Destruction (WMD), States should have the right to intervene not only in the imminence of an armed attack, but also in the case in which the territorial State hosts terroristic groups or is in possess of WMD. This expansion of the notion of legitimate self-defence and its concrete application has been exemplified by the so-called Bush Doctrine on preventive war in 2002, through which US took action first in Afghanistan, then in Iraq with the Operation Enduring Freedom.⁸⁰

However, these threats, differing from the case of anticipatory self-defence, result vague and not really identifiable, they are latent, a mere possibility. For these reasons the Caroline test, so the imminence requirement, inevitably fails, they cannot be univocally defined as imminent. In addition to that, the criteria of proportionality couldn't be materially applied as no attack has verified in the first place and there is no evidence of an armed action being prepared. There is no way to make an objective assessment of the threat in order to respond proportionately, the matter is left to the subjective discretion of the defending State.

⁷⁹ RUYTS T., *The 'armed attack' requirement ratione temporis*, in *Armed Attack and Article 51 of the UN Charter*, 2010, pp. 252-254.

⁸⁰After the 9/11 attack, the US National Security Strategy (NSS) was adopted in September 2002, which states "the nature and motivations of these new adversaries, their determination to obtain destructive powers hitherto available only to the world's strongest states, and the greater likelihood that they will use weapons of mass destruction against us, make today's security environment more complex and dangerous. (...) We must be prepared to stop rogue states and their terrorist clients before they are able to threaten or use weapons of mass destruction against the United States and our allies and friends. (...) Given the goals of rogue states and terrorists, the United States can no longer solely rely on a reactive posture as we have in the past. The inability to deter a potential attacker, the immediacy of today's threats, and the magnitude of potential harm that could be caused by our adversaries' choice of weapons, do not permit that option. We cannot let our enemies strike first (...) we recognize that our best defense is a good offense" PRESIDENT BUSH G.W., *The National Security Strategy of the United States of America*, The White House, Washington D.C., September 2002, from <https://georgewbush-whitehouse.archives.gov/nsc/nss/2002/index.html>.

3. Operation Peace Spring and self-defence

Tracing back all this analysis to the case study of the Turkish Operation Peace Spring, on the 9th of October 2019, the Turkish government notified the Security Council with a letter communicating the start of the Operation as an action in self-defence. «Turkey initiated Operation Peace Spring on 9 October 2019, in line with the right of self-defence as outlined in Article 51 of the Charter of the United Nations, to counter the imminent terrorist threat, to ensure Turkey's border security, to neutralize terrorists starting from along the border regions adjacent to Turkish territory and to liberate Syrians from the tyranny of PKK's Syrian branch, PKK/PYD/YPG, as well as Deash».⁸¹ The Turkey statement further assured that any action taken though this Operation would have been proportionate, measured and responsible, as its previous counter-terrorism operations.

Focusing on these statements given in the letter and by the letter itself, Turkey would be in line with the procedure requested by the Security Council and outlined in Article 51 of the UN Charter. However, as highlighted by the word imminent, used to refer to the terrorist threat, an actual armed attack against the Turkish State has not taken place. This lack of an offensive act finds the claim of self-defence strongly in contrast with the wording of the UN Charter, which foresees the need of an armed attack in order to trigger the mechanism. This being the case, Turkey would have been breaching the prohibition of the use of force of Article 2. Nevertheless, another factor should be taken into consideration, namely the specific circumstances for which «the necessity for self-defence is instant, overwhelming, and leaving no choice of means, and no moment for deliberation.»⁸²

In this understanding and making reference to the concept of imminence, the Turkish Permanent Representative, Feridun H. Sinirlioglu, in his letter to the Security Council to justify Operation Peace Spring in the realm of self-defence, stated «Turkey's national security has been under the direct and imminent threat of terrorist organizations operating in the east of the Euphrates in Syria, among which Deash and PKK/PYD/YPG are at the forefront. (...) In particular, PKK/PYD/YPG units close to Turkish borders in

⁸¹ SINIRLIOGLU FERIDUN H. Permanent Representative, *Letter dated 9 October 2019 from the Permanent Representative of Turkey to the United Nations addressed to the President of the Security Council*, cit.59.

⁸² WEBSTER D., *Letter to Lord Ashburton*, cit.76.

the north-east of Syria, continue to be a source of direct and imminent threat as they opened harassment fire on Turkish border posts».⁸³

Here, it can be highlighted how the reference to an imminent threat is used without actually specifying any detail on the imminence of the threat, the wording is vague and hard to be verified. The Turkish representative indicates the presence of terrorist organizations, namely the PKK/PYD/YPG and Daesh, at the border and he further highlights how these are involved in some types of terrorist activities. Among these activities, it can be found harassment fire on Turkish border posts, using snipers and advanced weaponry, the smuggling of explosive devices, weapons and ammunition into Turkey with the aim of empowering PKK-affiliated units. In the wording of the letter, there is no reference at all to the term armed attack and no claims of an action to counter an ongoing armed attack.

Considering the facts and what is reported to the Security Council, an actual armed attack against Turkey did not take place and there was no instant and overwhelming necessity to recur to self-defence. There is no point in the letter in which actually Turkey substantiate the claim of an imminent cross-border armed attack by Kurdish forces.⁸⁴ What is pointed out is the possibility of an attack undermining the Turkish security following some episodes of harassment fire on the border and activities that may empower PKK-affiliated groups inside Turkey. However, there is little evidence that the Kurdish fighters were posing a significant security threat to Turkey,⁸⁵ and most importantly there is no consideration at all of the proportionality criteria as Turkey made use of a massive amount of force to counter what has been defined as harassment fire, which, moreover, is almost impossible to be verified. Force is in this case used not in anticipatory self-defence, so to protect themselves from an instant and overwhelming threat, but to prevent a prospective threat from becoming

⁸³ SINIRLIOGLU FERIDUN H. Permanent Representative, *Letter dated 9 October 2019 from the Permanent Representative of Turkey to the United Nations addressed to the President of the Security Council*, cit. 59.

⁸⁴ KREß K., *A Collective Failure to Prevent Turkey's Operation 'Peace Spring' and NATO's Silence on International Law*, in 'EJIL:Talk! Blog of the European Journal of International Law', October 14, 2019, from <https://www.ejiltalk.org/a-collective-failure-to-prevent-turkeys-operation-peace-spring-and-natos-silence-on-international-law/>,

⁸⁵ HATHAWAY O., *Turkey is violating international law. It took lessons from the U.S.*, in *The Washington Post*, October 22, 2019.

imminent, making use of pre-emptive self-defence.⁸⁶ Accordingly, Turkey through Operation Peace Spring was not acting following the lawful principles and procedures of self-defence.

By analyzing the wording of the Turkish letter, it can be noted how a reference to the continuous character of these attacks is made, namely «PKK/PYD/YPG units close to Turkish borders in the north-east of Syria, continue to be a source of direct and imminent threat».⁸⁷ This approach could be vaguely reconducted to the accumulation of events doctrine, in whose understanding multiple attacks of the same magnitude taking place over time may be part of a pattern of continued armed activity.⁸⁸ This series of attacks taken together could then rise to the intolerable level of an armed attack, providing the basis for invoking the right of self-defence.⁸⁹ However, such doctrine has given rise to some discussion within the international legal community and it has not yet evolved into customary international law. In addition to that Turkey has not overtly tried to advance a claim by referring to the accumulation of events.⁹⁰

In addition to this, what has to be remarked is the actual legal status of the forces implied in the events preceding the Operation. As a matter of fact, as outlined in the first chapter, the PYD and the YPG are considered by Turkey affiliated to the terrorist organization of the PKK and for these reasons view as terroristic threats. From the legal point of view, these two organizations operating in Syria and in particular in the Northern part are armed groups, whose status is not actually crystal clear as they are both trying to mediate with the Syrian government in order to achieve some kind of autonomy and they have connection with a recognized terrorist organization as the PKK. Their status as armed forces, which are not under the control of the Syrian State, actually give rise to so issues regarding the lawfulness of self-defence in response to acts not carried out by a State.

⁸⁶ MIGNOT-MAHDAVI R., *On the illegality of Turkish offensive in Syria*, in 'Asser Institute, Centre for International & European Law', October 2019, retrieved from <https://www.asser.nl/about-the-institute/asser-today/blog-post-on-the-illegality-of-the-turkish-offensive-in-syria/>.

⁸⁷ SINIRLIOGLU FERIDUN H. Permanent Representative, *Letter dated 9 October 2019 from the Permanent Representative of Turkey to the United Nations addressed to the President of the Security Council*, cit. 59.

⁸⁸ MIGNOT-MAHDAVI R., *On the illegality of Turkish offensive in Syria*, cit. 86.

⁸⁹ AKANDE D. AND LIEFLÄNDER T., *Clarifying Necessity, Imminence, and Proportionality in The Law of Self-Defense*, in 'The American Journal of International Law', Vol. 107:563, 2013.

⁹⁰ SCHMIDT D., *Turkey's Syria Invasion: German Research Report Says Illegal on All Counts*, in Just Security, November 15, 2019, from <https://www.justsecurity.org/67219/turkeys-syria-invasion-german-research-report-says-illegal-on-all-counts/>.

4. The Responsibility of States for Internationally Wrongful Acts

Since self-defence is considered a lawful reaction against an armed attack and condition precluding the wrongfulness of the use of force, in accordance with Article 51 of the UN Charter, a breach of the latter would inevitably give rise to State responsibility.

The International Law Commission's (ILC) Articles on Responsibility of States for Internationally Wrongful Act⁹¹ describe the general conditions necessary for State responsibility to arise. The constitutive elements that give rise to an international wrongful act are essentially two, namely the conduct of a subject of international law and this conduct being a breach of an international obligation. If the wrongful conduct is attributable to a State under international law, then the State has to be held accountable for that act, as clearly stated by Article 1 of the ILC Draft Articles, «every internationally wrongful act of a State entails the international responsibility of that State».

This attribution to the responsibility of the State can be made if the conduct is carried out by an individual, who according to the internal regulation of that State is considered an organ of the State and acted within the limits of its office. As a matter of fact, this reference to a State organ covers all those entities which are part of the organization of the State and act on its behalf. In some other circumstances, also an act perpetrated outside the above-mentioned limits or by an actor which cannot be considered a State organ, could be reconducted to the State. This is the case if a person or an entity is empowered by the law of that State to exercise elements of the governmental authority or an organ is placed at the disposal of the State by another State if acting under the governmental capacity given. In some circumstances, also acts carried out by these actors in their capacities can be considered an act of the State, even if they had exceeded authority or contravened instructions.⁹²

⁹¹ INTERNATIONAL LAW COMMISSION, *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, Yearbook of the International Law Commission, 2001, vol. II, Part Two.

⁹² This view can be attributed to the article 4-7 of the International Law Commission's Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries of 2001. INTERNATIONAL LAW COMMISSION, *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, cit. 91, pp. 38-47.

4.1 Breach of an international obligation

When the conduct of an actor recognized under international law, in particular a State, amounts to a failure to comply with that international obligation, then an international obligation is breached. Consequently, an internationally wrongful act lies in the non-conformity of the State's behaviour with the conduct it should have adopted in order to observe a particular international obligation.

Notwithstanding this outline, some circumstances exist for which the wrongfulness of the act is precluded. These cases in which the non-conformity with the international obligations can be justified are six, namely consent, self-defence, countermeasures, *force majeure*, distress and necessity.⁹³

Among these six circumstances, what is relevant for the case in analysis, namely Operation Peace Spring led by Turkey in Northeastern Syria against the Kurdish-led SDF, is self-defence. Article 21 of the ILC Draft Articles states «The wrongfulness of an act of a State is precluded if the act constitutes a lawful measure of self-defence taken in conformity with the Charter of the United Nations». Here the ILC specifies how the Commission considers the principles set out in the Charter constitute international law of universal application. Self-defence then consists in an act of the subject, which should be considered unlawful, that becomes justified as aimed at responding to an unjust act of violence experienced by the subject if it is complying with the guidelines given by the Charter, without further specifying the definition of the concept of self-defence.⁹⁴

Nevertheless, this circumstance does not preclude the respect to all the obligations related to international humanitarian law, human rights and protocols regarding the protection of victims of international armed conflicts, which apply equally to all the parties in an international armed conflict.

⁹³ The category of these circumstances was developed by the ILC in its work on international responsibility for injuries to aliens. Special Rapporteur García Amador, first report on State responsibility, *Yearbook of International Law Commission 1956*, vol. II, pp. 203–209, document A/CN.4/96, and third report on State responsibility, *Yearbook of International Law Commission 1958*, vol. II, pp. 50–55, document A/CN.4/111. INTERNATIONAL LAW COMMISSION, *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, cit.91, p. 72.

⁹⁴ PALCHETTI P., *Customary Rules on the Use of Force in the Work of Codification of the International Law Commission*, in Cannizzaro E., Palchetti P., (a cura di) *Customary International Law on the Use of Force: A Methodological Approach*, Leiden, 2005, pp. 233-243.

This being said and having already analysed the conduct of Turkey within Operation Peace Spring's framework, it is inevitable to notice that the Turkish government breached the obligations inherent to Article 51 of the UN Charter. Even under a broader reading of self-defence, namely taking into account the anticipatory self-defence doctrine, the armed offensive taken against the PKK/PYD/YPG groups in Northern Syria cannot be considered lawful.⁹⁵ Turkey has to be considered responsible for its conduct and the international wrongful act.

5. Use of Force against Non-State Actors

The analysis of the Turkish Operation Peace Spring inevitably gives rise to another issue that has brought lots of discussion inside the international community, namely the use of force in self-defence against non-state actors. This matter has growth in importance in recent years, since the rise in importance and capabilities of armed groups, which operate outside from their borders and whose activity cannot be attributed to another State. The ever-increasing military capacity of non-state actors calls for a modern assessment of the definition of armed attack and the conditions for lawful self-defence. However, this issue presents itself as quite controversial as the attack is not immediately attributable to another State.

Since State responsibility can only be triggered by an act attributable to a State, it could be claimed that an act committed by a non-state actor would not trigger Article 51 and the right to self-defence. Anyway, this would inevitably link self-defence to State responsibility and exclude any act of subjects non directly attributable to a State, even if self-defence is recognized by customary law as an inherent right of a state. Article 51 confirms a more functionalist view by not limiting at any point the right of self-defence to be applicable only to attacks by States. The article does not mention the nature of the party responsible for the attack, only that of the entity which has the right to respond.⁹⁶ Notwithstanding this

⁹⁵ SCHMIDT D., *Turkey's Syria Invasion: German Research Report Says Illegal on All Counts*, in Just Security, November 15, 2019, from <https://www.justsecurity.org/67219/turkeys-syria-invasion-german-research-report-says-illegal-on-all-counts/>.

⁹⁶ LUBELL N., *The Possibility of Self-Defence Against Non-State Actors*, in *Extraterritorial Use of Force Against Non-State Actors*, 2010, p.31.

reading of Article 51, it has to be highlighted how according to the International Court of Justice (ICJ) in Advisory Opinion on the Wall (2004) stated « Article 51 of the Charter thus recognizes the existence of an inherent right of self-defence in the case of armed attack by one State against another State ».⁹⁷

Following this interpretation of the ICJ, in order to be able to legitimately trigger self-defence, attacks should be actually attributable to a State. This was first outlined in the Nicaragua case⁹⁸ and the connected standard of effective control. As a matter of fact, it should be proved that the activities of the non-state actor were effectively controlled by a State, which would incur in state responsibility and the defending State would be entitled then to self-defence. This view was furtherly stated by the ICJ in the Democratic Republic of the Congo v. Uganda (2005). Here the Court stated «It is further to be noted that, while Uganda claimed to have acted in self-defence, it did not ever claim that it had been subjected to an armed attack by the armed forces of the DRC. The armed attacks to which reference was made came rather from the ADF.⁹⁹ The Court has found above that there is no satisfactory proof of the involvement in these attacks, direct or indirect, of the Government of the DRC. The attacks did not emanate from armed bands or irregulars sent by the DRC or on behalf of the DRC. For all these reasons, the Court finds that the legal and factual circumstances for the exercise of a right of self-defence by Uganda against the DRC were not present».¹⁰⁰ Thus, the Court, once having assessed that the armed attack could not be attributed, even under the concept of effective control, to the conduct of a State, dropped any further attempt to give a clear judgment on the possibility of self-defence against non-state actors. This probably because, the Court did not find the 2004 Opinion to be sufficiently addressing the question and wanted to leave it open to further debate.¹⁰¹

However, this has been considered a too restrictive interpretation and in need of further explanation in order to finally take a position on the matter of self-defence against non-state actors not under the control of a State. As a matter of fact, in Democratic Republic

⁹⁷ International Court Of Justice, *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, [2004] ICJ Rep, para 139.

⁹⁸ International Court Of Justice, *Military and Paramilitary Activities in und against Nicaragua (Nicaragua v. United States of America)*, cit. 64.

⁹⁹ Allied Democratic Forces.

¹⁰⁰ International Court Of Justice, *Case Concerning Armed Activities on the Territory of the Congo (Democratic Republic of the Congo v. Uganda)* paras 146–147.

¹⁰¹ LUBELL N., *The Possibility of Self-Defence Against Non-State Actors*, cit. 96, pp. 32-34.

of the Congo v. Uganda, in their separate opinions Judges Kooijmans and Simma underlined how the use of armed force by non-state actors actually gives rise to the legitimate right of self-defence.¹⁰² Judge Kooijmans pointed out how the absence of governmental authority in the whole or part of the territory of certain States has become a wide phenomenon as the one of international terrorism. He actually stated «The Court describes a phenomenon which in present-day international relations has unfortunately become as familiar as terrorism, viz. the almost complete absence of government authority in the whole or part of the territory of a State. (...) It would be unreasonable to deny the attacked State the right to self- defence merely because there is no attacker State, and the Charter does not so require».¹⁰³

Moreover, their focus is on the Charter as changed by the events of and since 11 September 2001, and by subsequent state practice and *opinio juris*.¹⁰⁴ The adoption of Resolution 1368 (2001)¹⁰⁵, Resolution 1373 (2001)¹⁰⁶ and most recently Resolution 2249 (2015)¹⁰⁷ further exemplified this change of interpretation. This being said, there is more and more agreement on the fact that if armed attacks are carried out by irregular forces from territories without actual government against a neighbouring State, these activities are still armed attacks even if they cannot be attributed to the territorial State.

A further opinion on the matter was given by the Institut de Droit International, during its session in Santiago de Chile in 2007. Article 10 of the Institut de Droit International's resolution concerning the problems of the use of armed forces in international law states «In the event of an armed attack against a State by non-State actors, Article 51 of the Charter as supplemented by customary international law applies as a matter of principle».¹⁰⁸ Notwithstanding this fundamental claim recognizing Article 51 to be completed

¹⁰² LUBELL N., *The Possibility of Self-Defence Against Non-State Actors*, cit. 96, pp. 32-34.

¹⁰³ International Court of Justice, *Democratic Republic of the Congo v. Uganda*, cit. 100; Separate Opinion Of Judge Kooijmans, para 30.

¹⁰⁴ KAMMERHOFER J., *The Armed Activities Case and Non-state Actors in Self-Defence Law*, Hague International Tribunals, in 'Leiden Journal of International Law', 20 (2007), pp. 89–113.

¹⁰⁵ United Nations Security Council, Threats to international peace and security caused by terrorist acts, Resolution 1368 (2001), Adopted by the Security Council at its 4370th meeting, on 12 September 2001, S/RES/1368 (2001).

¹⁰⁶ United Nations Security Council, Threats to international peace and security caused by terrorist acts, Resolution 1373(2001), Adopted by the Security Council at its 4385th meeting, on 28 September 2001, S/RES/1373 (2001).

¹⁰⁷ United Nations Security Council, Threats to international peace and security caused by terrorist acts, Resolution 2249 (2015), Adopted by the Security Council at its 7565th meeting, on 20 November 2015, S/RES/2249 (2015).

¹⁰⁸ INSTITUT DE DROIT INTERNATIONAL, *Present Problems of the Use of Armed Force in International Law, A. Self-defence*, Session de Santiago, 27 October 2007 10ème Commission.

by customary international law, the resolution as a whole expresses a more cautious view, if non-state actors launch an armed attack under the instructions, direction or control of a State, the latter can become the object of self-defense by the target State.¹⁰⁹ In summary, the use of force in self-defense can only be directed against another state, engaging the latter's sovereignty and territorial integrity, except in the situations where that state does not function as such or there is the consent of the host state.¹¹⁰

Tracing it back to Peace Spring Operation, the Turkish reacted in self-defence against Kurdish groups PYD/YPG, which they consider terrorist groups affiliated to the PKK, and Daesh. These groups are actually non-state actors which operate in Syria, but they are not under Assad's government instructions, direction or control. In addition, Turkey did not have any consent from the part of the Syrian government to carry out an armed attack on Syrian territorial State. As a matter of fact, consent by a State to particular conduct by another State is necessary in order to preclude the wrongfulness of that act in relation to the consenting State. This provided that the consent is valid and to the extent that the conduct remains within the limits of the consent given.¹¹¹ This was further highlighted by the Permanent Representative of the Syrian Arab Republic to the United Nations, Bashar Jaafari, who spoke of Turkey starting a new round of aggression against the territorial integrity of Syria.¹¹²

6. The Responsibility of Syria

Following this reasoning the role of Syria and its government comes into play. As a matter of fact, the terrorist groups targeted by Turkey act on Syrian soil and by attacking them without Syria's consent, Turkey may incur into an act of aggression. Two further

¹⁰⁹ RONZITTI N., *Le operazioni contro l'ISIS e la legittima difesa contro gli attori non statali*, in SCISO E., RONZITTI N. (a cura di), *I Conflitti in Siria e Libia: possibili equilibri e le sfide al diritto internazionale*, March 2018.

¹¹⁰ Consent is one of the six circumstances precluding wrongfulness. Article 20 "Valid consent by a State to the commission of a given act by another State precludes the wrongfulness of that act in relation to the former State to the extent that the act remains within the limits of that consent." International Law Commission, *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, cit. 91, Article 20, p. 72.

¹¹¹ International Law Commission, *Draft articles on Responsibility of States for Internationally Wrongful Acts, with commentaries*, cit. 91, p. 72.

¹¹² UNITED NATIONS, Meetings coverage, Security Council 8645th meeting (pm), *Turkey's Military Operation Has Displaced Thousands of Civilians, Worsened Syria's Dire Humanitarian Crisis, Top Official Warns Security Council*, cit.54.

conditions could be considered as preventing the extraterritorial use of force in self-defence to be considered an act of aggression, without giving rise to State responsibility, by enlarging the applicability of Article 51. The first one is outlined above, namely the host State exercises direction, control or gives instructions to the non-state actor, which is perpetrating the armed attack.

The second condition presents itself when the non-state actors are actually acting from a host State which is unwilling or unable to tackle the presence of these armed groups, and no type of control is exercised over the armed groups by the State. The unwilling or unable test requires the victim State to ascertain whether the territorial State is willing and able to address the threat posed by the nonstate group before using force in the territorial State's territory without consent. As a matter of fact, toleration of armed groups' activities on a State's soil, if these activities are directed against another State, is unlawful under current international law. The host State must be asked to take actions with or without help from other States, opening the possibility of allowing entry of the victim State's forces into their territory. If the territorial State is willing and able, the victim State may not use force against it, and the former is expected to take the appropriate steps against the non-state group. On the contrary, if the State is not willing or able to provide for the solution and prevention of further attacks by those groups or does not consent to the intervention of the victim State, the latter is then legitimated to use the level of force necessary and proportionated to suppress the threat posed by these actors.¹¹³

A hosting State's inability to intervene and pose an end to these kinds of threats may be due an outstanding power vacuum, having collapsed the power structures providing political support for law and order. This condition of the state could then lead to its classification as a failed State. A failing State is one which is essentially associated with internal and endogenous problems together with the internal collapse of law and order. Though retaining legal capacity, it has for all practical purposes lost the ability to exercise it on its territory. In addition, it ceases to be recognized at the international level as there are

¹¹³ DEEKS A. S. *Unwilling or Unable: Toward a Normative Framework for Extraterritorial Self-Defense*, in 'Virginia Journal of International Law', vol. 52, no. 3, Spring 2012, pp. 483-550.

no bodies capable of representing it, and no institution has the authority negotiate, represent, and enforce.¹¹⁴

The unwilling or unable doctrine has received explicit support from a number of States, even if it has not been accepted by the international community so as to amount to settled practice to widen the concept of armed attack and the right to self-defence. The unwilling or unable doctrine lacks a defined scope and it would allow the use of force on readings of factual circumstances which are difficult to objectively ascertain with any degree of certainty.¹¹⁵

Currently, Syria is a State plagued by economic, societal, and political collapse and it is considered as the 4th most fragile state according to the Fragile State index of 2020.¹¹⁶ Even if the country is still characterized by a chaotic and violent status quo, the Assad regime started actually regaining control the majority of the territorial State and reaffirming its power. The Assad government is still recognized by the international community as the legitimate representative of the Syrian State and the Syrian people.¹¹⁷ For these reasons Syria cannot actually be considered a failed State according to the characteristics stated before. In addition, the Syrian government never accepted the unwilling or unable argument to justify self-defence and stated that any action of any type conducted without the Syrian consent would be considered an aggression against Syria.¹¹⁸ It must be further highlighted how Turkey has not verified the unwillingness or the inability of Syria to deal with the armed groups on the Northern zone of the country and it has not made use of the unwilling or unable doctrine in order to justify Operation Peace Spring in the first place.

Following the reasoning of this chapter, it can be said that the Turkish Operation Peace Spring implied none of the conditions that prevented the armed action from being considered unlawful and giving rise to State responsibility. The offensive did not comply with the requirements set out by Article 51 of the UN Charter, an armed attack from the

¹¹⁴ THÜRER D., *Failing States*, in 'Max Planck Encyclopedias of International Law', February 2009.

¹¹⁵ JEFFERI HAMZAH SENDUT, *The Unwilling and Unable Doctrine and Syria*, in 'Cambridge Law Society', 2017, retrieved from <https://www.culs.org.uk/per-incuriam/the-unwilling-and-unable-doctrine-and-syria>.

¹¹⁶ THE FUND FOR PEACE, *Fragile State Index, Annual Report 2020*, 2020, from <https://fragilestatesindex.org/analytics/fsi-heat-map/>.

¹¹⁷ ZISSER EYAL, *The Syrian Government's war against its people*, cit. 28.

¹¹⁸ CORTEN O., *The 'Unwilling or Unable' Test: Has it Been, and Could it be, Accepted?*, in 'Leiden Journal of International Law' 2016, 29, pp. 777–799.

Kurdish groups PYD/YPG did not take place and there was not any evidence suggesting the inevitable imminence of a further attack. In addition, even if there is increasing support to act against non-state actors not backed by any State if they pose a terroristic threat, the Turkish government did not ask for the consent to actually take armed action on the territorial State of Syria, as the presuppositions for the use of self-defence according to Article 51 were missing. It could then be stated that Turkish action is in full violation of the prohibition of the use of force of Article 2, paragraph 4 of the UN Charter, its offensive amounting to an act of aggression against Syria and giving rise to State responsibility.

Chapter 3: The international response to Operation Peace Spring

1. UN Security Council response to Operation Peace Spring

Following the letter of Turkey to the Security Council and the subsequent deployment of the Operation Peace Spring, an emergency closed-door session of the UN Security Council was called on the 10th of October. The aim of the meeting was to discuss and analyse the status of the situation on the ground and its possible developments.¹¹⁹ As a matter of fact the discussion focused on the consequences of the military action on the fight against terrorist activities of ISIS and in particular to the humanitarian crisis that could arise. The Turkish offensive, indeed, threw northeastern Syria into chaos, forcing the Syrian Defence Forces, mainly constituted by PYD/YPG forces, to stop all counter-ISIS operations. In addition, humanitarian and development NGOs could not function effectively in an active conflictual zone. This could actually lead ISIS to take the opportunity to regroup and organize for the struggle, especially if Turkish actions helped ISIS detainees to escape from prison.¹²⁰

For these reasons, the UN Secretary General Antonio Guterres expressed his deep concern on the ongoing Turkish military operation and the escalation of the amount of violence originating from the events. He further called on a de-escalation of renewed conflict in northern Syria as absolutely essential, not believing in military solutions for the Syrian problem. Any end to the conflict would have to endorse the respect the sovereignty and the territorial unity of Syria.¹²¹ The Secretary General also highlighted the humanitarian implications, «military operations must always respect the United Nations' chapter and

¹¹⁹ MORELLO C., *U.N. Security Council members divided on Turkey's military action in Syria*, in 'The Washington Post', October 11, 2019.

¹²⁰ November 2019 Monthly Forecast, *Middle East: Syria*, in 'Security Council Report', October 31, 2019, from <https://www.securitycouncilreport.org/monthly-forecast/2019-11/syria-13.php>.

¹²¹ UN News, *De-escalation of Turkish military operation in northern Syria 'absolutely essential'*, October 10, 2019, from <https://news.un.org/en/story/2019/10/1049021>.

international humanitarian law, and I am worried with the humanitarian concerns that exist in relation to not only casualties but also the displacement that is taking place».¹²²

During the meeting, five European countries, namely Belgium, France, Germany, Poland and the United Kingdom, introduced a statement condemning Turkey's Operation in Syria. The joint statement moreover urged the Turkish government to cease the unilateral military action, as they claimed the operation threatened progress against the stability of region and the fight to ISIS terrorist group, despite one aim of the operation was actually to clear any remaining ISIS terrorists from the region, as stated by the Turkish letter to the Security Council.

Nevertheless, the Security Council actually failed to agree on any resolution regarding Turkish military offensive. As a matter of fact, the United States and Russia vetoed the statement of the five European countries.¹²³ Russia's UN Ambassador, Vassily Nebenzia, justified to the press its position on the voting by highlighting how any Security Council statement should focus and address broader issues regarding the situation in Syria, especially for what concerns the presence of foreign forces on Syrian soil.¹²⁴ This official standpoint is actually not surprising as Russia is a key ally of Bashar Al Assad's government. This is not the first time, indeed, that Russia played its role of veto power on important decisions and resolutions regarding the situation in Syria.¹²⁵ Notwithstanding the Turkish declaration of having received a green light from the US White House to carry out the Operation on the 6th of October,¹²⁶ the US Ambassador, Kelly Craft, claimed that the United States made really clear they did not in any way endorsed Turkey's decision to mount a military incursion in northeast Syria. According to the United States' representant, Turkey will have to bear full

¹²² Radio FreeEurope, *Heavy Fighting As Turkey Pushes Into Syria, Thousands Flee*, October 10, 2019, from <https://www.rferl.org/a/turkey-urged-to-show-restraint-in-syria-offensive-un-security-council-to-meet/30209019.html>.

¹²³ EKSTRACT J., *SYRIA: U.S., Russia Veto Statement to UN Security Council On Operation Peace Spring*, in 'Turkish Journal', October 10, 2019, from <https://www.turkishjournal.com/2019/10/10/syria-u-s-russia-veto-statement-to-un-security-council-on-operation-peace-spring/>.

¹²⁴ Daily Sabah, *US, Russia veto UN Security Council statement on Turkey's op in Syria*, October 10, 2019, Istanbul, from <https://www.dailysabah.com/war-on-terror/2019/10/10/un-security-council-fails-to-issue-joint-statement-on-turkeys-op-in-syria>.

¹²⁵ "Russia, backed by China, on Friday cast its 14th U.N. Security Council veto since the start of the Syrian conflict in 2011". NICHOLS M., *Russia, backed by China, casts 14th U.N. veto on Syria to block cross-border aid*, in 'Reuters', December 20, 2019, from <https://www.reuters.com/article/us-syria-security-un/russia-backed-by-china-casts-14th-u-n-veto-on-syria-to-block-cross-border-aid-idUSKBN1YO23V>.

¹²⁶ PUSANE O. K., *Turkish Public Diplomacy And Operation Peace Spring*, in 'War on the Rocks', January 13, 2020, from <https://warontherocks.com/2020/01/turkish-public-diplomacy-and-operation-peace-spring/>.

responsibility for the outcomings of its actions and face the consequences if it fails doing it.¹²⁷

This stalemate, caused by the vetoes, inevitably brought the Security Council to remain officially silent on the situation enacted by the Operation Peace Spring. In addition, no statement at all was made on the actual legality of the Operation, especially taking into consideration the outstanding violation of the justification of self-defence according to Article 51 of the UN Charter. There was neither an official condemnation of the military offense by the part of the Security Council nor an actual plan of intervention led by the Security Council to take action on Syrian soil in order to end Turkish operation or to take the lead of it. The lack of a clear and definite position on the legality of the action and the impossibility to act, caused by the veto power exercised by Russia and the US, brings on the table the question of which significance could this silence of the Security Council mean and its consequences on the international scene.

1.2 Silence of the Security Council

The Security Council is a primary institution entrusted with the task of safeguarding international peace and security. It indeed has the power to quest any controversy or situation that could give rise to an international dispute and it also covers the role of adjudicator in the peaceful settlement of disputes. The member States have agreed to accept and execute the decisions of the Security Council in conformity with the dispositions of the UN Charter concerning the maintenance of international peace and security.¹²⁸ The lack of an official response, including inaction, by the Council could bring in matters regarding the significance of this silence.¹²⁹ As a matter of fact, especially in respect to the *jus ad bellum* and the importance of the question of the threat or use of the use of force, the use of silence could be considered as acquiescence regarding the issue at stake.

However, it has been argued that the procedures of the Security Council may make it really difficult to actually read such a significance into Council's inaction. An outstanding example is the veto possibility for which inaction could indeed mean that some states

¹²⁷ Daily Sabah, *US, Russia veto UN Security Council statement on Turkey's op in Syria*, cit. 124.

¹²⁸ MARCHISIO S., *L'ONU: il diritto delle Nazioni Unite*, Bologna, 2012, pp. 171-195.

¹²⁹ LEWIS D.A., MODIRZADEH N.K., BLUM G., *Quantum Of Silence: Inaction And Jus Ad Bellum*, Harvard Law School Program on International Law and Armed Conflict, 2019, pp. 33-34.

considered the action unlawful but could not arrive to nine affirmative votes, especially including those of the five permanent members for a resolution of condemnation.¹³⁰ Following this argument, toleration, meaning a lack of reaction by the Council, and the failed adoption of a particular resolution do not carry the meaning of active acceptance, which is the only one that actually represents a confirmation of legality.

This being said, the situation following the Operation Peace Spring perfectly fits this possibility. For this reason, the lack of adoption of a statement from the part of the Security Council does not in any case mean an official endorsement of Turkish military action nor the legality of such practice. The Council did not pronounce itself, not for a lack of willing or because it saw the operation as legitimate, but because of the veto power exercised by two of the five permanent members, namely United States and Russia. These two, and especially Russia, because of the role they have played in the Syrian war since its beginning and some bilateral agreements between them and Turkey, had some interests in not having an official statement coming from the Security Council condemning the Operation and taking the lead of the actions on the Syrian territory.

2. International Reactions

Following the impossibility of endorsing an official and unified resolution concerning the Operation Peace Springs and its developments by the Security Council, single States and Leagues of States adopted their own positions concerning the issue. Since the second day of the Turkish military offensive, governments across the world joined in condemning Turkey's actions into northeastern Syria.

The European Union held a plenary session on the 9th of October, in this occasion the European Union High Representative, Federica Mogherini, stated «Turkey's military action will undermine the security of the Coalition's local partners, namely the Kurdish forces, and risk protracted instability in north-east Syria, providing fertile ground for the resurgence of Da'esh' (...) We hope that the Turkish attack will not delay the first meeting

¹³⁰ LEWIS D.A., MODIRZADEH N.K., BLUM G., *Quantum Of Silence: Inaction And Jus Ad Bellum*, cit. 129, pp. 41-42.

of the Constitutional Committee. Yet we cannot exclude this eventuality».¹³¹ The European Parliament President, David Sassoli, characterised the Turkish invasion as an act of war. In his speech to the European Council, he said «We must do everything in our power to stop this act of aggression and launch an initiative that can be thrashed out within NATO and submitted to the UN Security Council. The European Union would show itself to be speaking with one voice when working for peace in multilateral fora».¹³²

These statements coming from the European Union institutions followed the single positions taken by the Member States after the Operation Peace Spring. The Italian government condemned the Turkish operation and called for «an immediate end to this offensive which is absolutely not acceptable given that the use of force continues to endanger the life of the Syrian people».¹³³ The German Government strongly condemned the operation and called for its immediate end because the operation ran the risk of further destabilizing the region, exacerbating civilian suffering and provoking further displacement, and sparking a resurgence of the Islamic State terrorist organization. While not expressly saying so, Germany did not accept Turkey's argument that Operation Peace Spring could be based on the right of self-defence. It was then made clear through a statement by the spokesperson for the Federal Government, «Turkey faces considerable and recurrent threats from terrorism. However, we do not accept that as justification for the military operation which has just started».¹³⁴ In this context, the European Union further recalled the decision taken by some of its member States to immediately halt arms exports licensing to Turkey, each State committing to strong national positions regarding their arms export policy.¹³⁵

On the 24th of October, the European Parliament adopted a resolution on the Turkish military operation in northeast Syria and its consequences, in which it strongly condemned Turkey's intervention, constituting a grave violation of international law and undermining the stability and security of the region as a whole, and urged it to withdraw all

¹³¹ STANICEK B., *Turkey's military operation in Syria and its impact on relations with the EU*, in 'European Parliamentary Research Service', European Parliament, November 2019, p. 3.

¹³² STANICEK B., *Turkey's military operation in Syria and its impact on relations with the EU*, cit. 131.

¹³³ CUZZOCREA A., VECCHIO C., *Siria, Di Maio contro Erdogan: "Inaccettabile l'invasione contro i curdi"*. *E convoca l'ambasciatore turco in Italia*, in 'La Repubblica', October 10, 2019, from <https://www.repubblica.it/politica/2019/10/10/news/curdi-238161744/>.

¹³⁴ TALMON S., *A roundabout way to say that the Turkish invasion of north-eastern Syria is illegal under international law*, in 'GPIL – German Practice in International Law', October 16, 2019.

¹³⁵ "Several E.U. members, including the Netherlands, France, and Germany, individually imposed their own embargos as a reaction to Operation Peace Spring." PUSANE O. K., *Turkish Public Diplomacy And Operation Peace Spring*, cit. 126.

of its forces from Syrian territory. In addition, the resolution highlighted the risk of Islamic State resurgence and, rejecting the Turkish plan for a safe zone, called for an UN-led security zone.¹³⁶ The European Union recalled that it would not provide stabilization or development assistance in areas where the rights of local populations are ignored or violated and confirmed its engagement and efforts towards effectively addressing the serious humanitarian and refugee crisis in light of evolving needs.¹³⁷

During the meeting of the 12th of October, with the foreign ministers of the Member States in Cairo, the Arab League¹³⁸ Secretary General, Ahmed Aboul Gheit, declared Turkey's military operation as an «invasion of an Arab state's land and an aggression on its sovereignty».¹³⁹ He also stated «the Arab League condemns the invasion and that the world must not accept it, either, since it contradicts international norms and international law, no matter what pretext the invader uses».¹⁴⁰ This emergency meeting was called by Egypt, whose Foreign Ministry condemned the Turkish offensive by referring to it as an aggression against Syria's sovereignty. He also called for the UN Security Council to halt «any attempts to occupy Syrian territories or change the demographics in northern Syria».¹⁴¹

The Arab League condemned Turkey's military operation and warned to take retaliatory measures against Turkey unless it withdrew its forces from Syria, as it considered them a direct threat to Arab national security. However, the decision was not unanimous as Libya rejected the anti-Turkey statement, and Qatar and Somalia, put reservations over it.¹⁴² On the other hand, the Iraqi Foreign Minister, Mohammed Ali Hakim, who presided over the session, said the Turkish invasion would cause a further deterioration of the situation in

¹³⁶ European Parliament, *The Turkish military operation in northeast Syria and its consequences*, European Parliament resolution of 24 October 2019, 2019/2886(RSP).

¹³⁷ Council of the European Union, *North East Syria: Council adopts conclusions*, Press Release, October 14, 2019, from <https://www.consilium.europa.eu/en/press/press-releases/2019/10/14/council-conclusions-on-north-east-syria/>.

¹³⁸ «The Arab League was established as a regional international organization in 1945 by six independent Arab states. The League, which currently has 22 members, is the only pan-Arab organization aiming to integrate the Arab world». ATAMAN M., *The Arab League's reaction to Operation Peace Spring*, in 'Daily Sabah', October 16, 2019, from <https://www.dailysabah.com/columns/ataman-muhittin/2019/10/16/the-arab-leagues-reaction-to-operation-peace-spring>.

¹³⁹ SABA Y., *Turkey's Syria offensive an 'invasion': Arab League secretary general*, in 'Reuters', October 12, 2019, from <https://www.reuters.com/article/us-arableague-turkey-syria-idUSKBN1WR0C9>.

¹⁴⁰ YERANIAN E., *Arab League Condemns Turkey's Syria Incursion, Calls for UN Action*, in 'VOA News', October 12, 2019, from <https://www.voanews.com/middle-east/arab-league-condemns-turkeys-syria-incursion-calls-un-action>.

¹⁴¹ AL JAZEERA NEWS AGENCY, *Turkey-Syria border: All the latest updates*, in 'Al Jazeera', October 10, 2019, from <https://www.aljazeera.com/news/2019/10/turkey-syria-border-latest-updates-191008131745495.html>.

¹⁴² ATAMAN M., *The Arab League's reaction to Operation Peace Spring*, cit.138.

Syria and a worsening of terrorism both in Syria and neighboring states, like Iraq. The same statement was made by the United Arab Emirate's minister of state for foreign affairs, Anwar Ghargash, talking about «Turkey's blatant aggression» against Syria and urged the international community to condemn it. He further stated how Operation Peace Spring represented «a threat to the sovereignty of all Arab states and [exploited] chaos in the country to flout all international norms and destabilize the region».¹⁴³

The same position towards the matter was taken by other States of the region. The Saudi Foreign Minister, Adel al-Jubeir, said that the kingdom condemned the Turkish incursion in northeastern Syria as «blatant violation of the unity, independence and sovereignty of Syrian territories»¹⁴⁴ and demanded an immediate end to the military operations, pointing out also the concern for the humanitarian conditions.¹⁴⁵ Israeli Prime Minister, Benjamin Netanyahu, condemned in a tweet what he called an «invasion of the Kurdish areas in Syria » and even warned against «the ethnic cleansing of Kurds by Turkey and its proxies». He stated to be prepared to offer «humanitarian assistance to the gallant Kurdish people».¹⁴⁶

Iran and Russia urged for caution on the soil and called for an end of the action on the Syrian territory. Both the foreign minister of the Islamic Republic of Iran and the Russian foreign minister, Sergei Lavrov, declared the understanding of Turkey's security concerns but called for dialogue and a peaceful way of dealing with such problems. The two countries both underlined that the United States was partly to blame for the situation in Syria that has led to Turkey's action.¹⁴⁷

Coming to consider United States' position on the matter brings in some blurred circumstances. As a matter of fact, following a conversation with Erdogan, U.S. President Donald Trump unexpectedly announced on the 6th of October that he would withdraw U.S.

¹⁴³ YERANIAN E., *Arab League Condemns Turkey's Syria Incursion, Calls for UN Action*, cit. 140.

¹⁴⁴ AL JAZEEERA NEWS AGENCY, *Turkey-Syria border: All the latest updates*, cit. 141.

¹⁴⁵ BAKEER A., *Arab states condemnation of Turkey's 'Peace Spring' exposes double standards and hidden agendas*, in 'The New Arab', October 18, 2019, from <https://english.alaraby.co.uk/english/indepth/2019/10/18/saudi-arabia-and-egypt-positions-on-turkeys-peace-spring>.

¹⁴⁶ NETANYAHU B. (@netanyahu), «Israel strongly condemns the Turkish invasion of the Kurdish areas in Syria and warns against the ethnic cleansing of the Kurds by Turkey and its proxies. Israel is prepared to extend humanitarian assistance to the gallant Kurdish people.», 2:15 PM - Oct 10, 2019, Twitter.

¹⁴⁷ SMITH P., *World leaders unite in condemnation of Turkey's Syria operation*, in 'NBC News', October 10, 2019, from <https://www.nbcnews.com/news/world/world-leaders-unite-condemnation-turkey-s-syria-operation-n1064591>.

forces for the northeastern part of Syria.¹⁴⁸ This was seen by the Ankara government and by the international scene as a green light to the Turkish operation aiming at securing the zone and a form of treason versus the Kurdish people and their fundamental role in the fight against ISIS. Notwithstanding this conversation between the two head of State, the Secretary of State, Mike Pompeo, denied the United States gave Turkey a green light for its offensive in Syria and that the government will not be involved nor support the military operation.¹⁴⁹ President Trump even threatened to put sanctions on Turkey's economy if it went off limits and he did not endorse the attack, calling it a bad idea. He also added that Turkey would be considered responsible for ensuring that suspected ISIS fighters being held captive remained in prison and that ISIS did not regroup.¹⁵⁰ The US Treasury Department announced that it was placing sanctions on Turkey's Ministry of National Defense and Ministry of Energy and Natural Resources, along with the minister of national defense, minister of energy and natural resources, and minister of the interior. The sanctions effectively cut them off from the global financial system. Following these Trump's statements and the sanctions, the United States' President event talked to Erdogan urging him to stop the invasion and agree to enact a ceasefire.¹⁵¹

Having analyzed these positions and considering the direct claim of aggression made by Syria in the Security Council meeting held on the 24th of October,¹⁵² it can be said that Turkey found itself quite alone on the diplomatic and international scene as it began to carry out its Operation Peace Spring in northeastern Syria.¹⁵³ Notwithstanding the impossibility for the Security Council to issue a condemning statement against Turkey because of the incidence of the vetoes, the international community moved to give a strong account of their

¹⁴⁸ CEBUL M., *Operation "Peace Spring" and U.S. Strategy in Syria*, in 'Foreign Policy Research Institute', October 11, 2019, from <https://www.fpri.org/article/2019/10/operation-peace-spring-and-u-s-strategy-in-syria/>.

¹⁴⁹ ATAMAN M., *Factors influencing US reactions to the Turkish anti-terror operation in Syria*, in 'SETA Foundation for Political, Economic and Social Research', October 9, 2019, from <https://www.setav.org/en/factors-influencing-us-reactions-to-the-turkish-anti-terror-operation-in-syria/>.

¹⁵⁰ MARCUS J., *US says it did not approve Turkey's Syria offensive*, in 'BBC News', October 10, 2019, from <https://www.bbc.com/news/world-middle-east-49995494>.

¹⁵¹ RAPPEPORT A., CROWLEY M., *Trump Imposes Sanctions on Turkey as Syria Conflict Intensifies*, in 'The New York Times', October 14, 2019, from <https://www.nytimes.com/2019/10/14/us/politics/trump-turkey-tariffs.html>.

¹⁵² "Syria's representative, rejecting those claims, said Turkey has started a new round of aggression against the territorial integrity of his country, leading to the occupation of territory, deaths of hundreds, displacement of hundreds of thousands and great destruction." UNITED NATIONS, Meetings coverage, Security Council 8645th meeting (pm), *Turkey's Military Operation Has Displaced Thousands of Civilians, Worsened Syria's Dire Humanitarian Crisis, Top Official Warns Security Council*, cit. 54.

¹⁵³ PUSANE O. K., *Turkish Public Diplomacy and Operation Peace Spring*, cit. 126.

position on the matter, as they did not consider silence as an option. Many States and leagues of States released condemning declaration, addressing to the Operation as an act of aggression, and some of them even put economic sanctions on Turkey. The inability to act of the Security Council did not give rise to silence from the international community, but to a wave of denunciation and indignation openly criticizing Ankara's military offensive.

This situation of stalemate for the Security Council and the condemning reactions of the various States actually bring into question the real effectiveness of its functions. As a matter of fact, despite its fundamental role regarding the question of maintenance and enforcement of international peace and security, single States have anyway given their own opinion on the matter, even if the Council did not pronounce itself. Many States accounted Operation Peace Spring as an act of aggression notwithstanding the silence of the Council on the issue of legality of the action. At this point, discussions arise on whether this mechanism of dealing with breaches of law and illegal use of force is still an effective and valid one, considering that States implement their own opinions and even sanctions to integrate or substitute the position of the Security Council. Even more outstanding is the increasing interference of single States interests on matters of this kind of importance and the weight of these single interests in situations where the veto power is involved. For these reasons, more than once reforms of the mechanisms inside the Security Council have been called by the various States but none of these has ever been taken into consideration.

Conclusion

Having entered the 9th year of the Syrian war and having witnessed the developments of the conflict, it has been evident that there are a lot of issues and different interests at stakes. This conflict characterized the main news and outcomes of the last 9 years bringing on the international scene first a violent civil war, the greatest domestic and international refugee crisis since the Second World War and the rising of a terroristic group establishing a caliphate. The Syrian war has then deeply influenced and changed not only the lives of the millions of Syrian people, displaced within or outside their countries, but also the equilibria among the international community and within States.

The end of the Syrian war sees, as its best-case scenario, a peaceful closure of the conflict. This is what the international community and especially the United Nations wish and hope for the well-being of the Syrian population and Syria as a country, however all the evidences at the moment point in another direction. What started as an insurgency against the Assad government moved by socio-economic circumstances, especially concerning the agricultural sector, soon became a complex international landscape where different interests, from economic and political to security and power-related ones, came into play. As a matter of fact, as outlined throughout the dissertation, the conflict is far from an end. Extremely violent act and war crimes are still taking place in Syrian territory, carried out by the Syrian government but also by the other actors active on the soil. Since the beginning of the conflict brutal irregular militias, chemical weapons, and attacks against the civilian population and targets, such as hospitals and schools, have taken place. The international response has been strong, calling for the intervention of various States and the United Nations, especially for what concerns the use of chemical weapons and the terroristic organizations on the soil. Notwithstanding this response, the consequences on the actors that have caused these widespread and brutal atrocities, have not been effective and haven't brought to any peaceful development in the war.

In this context, Operation Peace Spring finds its place. The Turkish military offensive has been widely justified in a letter to the Security Council as an act legitimate under the right of self-defence of Article 51 of the UN Charter. Ankara's authorities claimed that Turkey was «under the direct and imminent threat of terrorist organizations operating in the east of the Euphrates in Syria, among which Deash and PKK/PYD/YPG are at the forefront. (...)

In particular, PKK/PYD/YPG units close to Turkish borders in the north-east of Syria, continue to be a source of direct and imminent threat as they opened harassment fire on Turkish border posts». ¹⁵⁴ This statement motivated the start of the Operation in line with Article 51 and its procedure. Nevertheless, having considered the facts and all the elements necessary for the use of force not to be characterized as illegitimate and in contrast with Article 2, paragraph 4 of the Charter, it can be said that Operation Peace Spring did not comply with many of them. As highlighted before, an actual armed attack against Turkey did not take place nor was made explicit reference to it in the letter. In addition, no instant and overwhelming necessity was there to recur to self-defence, therefore Turkey made use of pre-emptive self-defence. Accordingly, Ankara's government through Operation Peace Spring was not acting following the lawful principles and procedures of self-defence, it is inevitable to notice that there was a breach of the obligations inherent to Article 51. Turkey's action has to be considered an act of aggression against Syria and it has to be accounted responsible for its conduct and the international wrongful act.

This condemning position was actually taken by a wide number of States within the international community, first and foremost by the Permanent Representative of the Syrian Arab Republic to the United Nations, Bashar Jaafari, who spoke of Turkey starting a new round of aggression against the territorial integrity of Syria. ¹⁵⁵ The willingness and effort of single States to stand up and give a strong account of their position on the matter was not obstructed by the Security Council's inability to issue a condemning statement, following the stalemate brought about by the vetoes during the voting of the resolution.

This actually is not the first situation in which the Security Council is not able to take action in a situation which is seriously undermining the status of international peace and security. It is sufficient to take into consideration the report commissioned by the UN Secretary-General António Guterres on the attacks in the Idlib de-escalation zone since April 2019 to determine whether Russia and Syria used coordinates provided by the UN to target hospitals. As a matter of fact, following two extensions of mandate the investigation failed to name Russia, the most important of Syria's allies, as a perpetrator. Some media have even

¹⁵⁴ SINIRLIOGLU FERIDUN H. Permanent Representative, *Letter dated 9 October 2019 from the Permanent Representative of Turkey to the United Nations addressed to the President of the Security Council*, cit. 59.

¹⁵⁵ UNITED NATIONS, Meetings coverage, Security Council 8645th meeting (pm), *Turkey's Military Operation Has Displaced Thousands of Civilians, Worsened Syria's Dire Humanitarian Crisis, Top Official Warns Security Council*, cit.54.

reported the suggestion of Russian diplomats pressuring Guterres's office not to release the report.

Following these events in which there has not been an official condemnation by the part of the United Nations and the Security Council of such outstanding breaches of international obligations, discussions could arise even more on whether the current Security Council mechanism of dealing with breaches of law and illegal use of force is still an effective and valid one. This grows in importance if we consider the increasing interference of single States interests and their weight when veto power is involved. More than once, as a matter of fact, new proposals for the change of some of these mechanisms have been submitted to the Security Council in order to make them fairer and equal and avoid these kinds of stalemates. To effectively provide the maintenance of international peace and security and face the new kinds of threats and wars that are substituting the more classical ones, the Security Council should envisage some changes in the way it works.

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Abstract

La guerra civile in Siria è iniziata nel 2011 sull'onda delle rivoluzioni della primavera araba, come una serie di proteste non violente contro il governo di Bashar al Assad. Le prime insurrezioni, in seguito all'intervento del governo, si sono velocemente sviluppate in una guerra civile e, su alcuni fronti anche in un conflitto internazionale dal momento in cui altri Stati sono entrati in gioco. L'Osservatorio Siriano per i Diritti Umani ha infatti documentato la morte di 586.100 persone dall'inizio dell'insurrezione fino al 14 marzo 2020. Da aggiungere a questo dato sono i 5.6 milioni di siriani che hanno lasciato la Siria e i 6.6 milioni di sfollati internamente al Paese. Lo scorso ottobre, la Turchia ha lanciato un'offensiva armata nella regione nord-est della Siria, occupata da una maggioranza curda. L'azione militare aveva come obiettivo quello di destabilizzare i gruppi curdi sul territorio, affiliati, secondo il governo di Ankara, al gruppo terroristico Partito dei Lavoratori del Kurdistan (PKK). Erdogan ha dichiarato di aver agito in legittima difesa secondo l'Articolo 51 della Carta delle Nazioni Unite. Lo scopo di questa tesi è quello di analizzare questa dichiarazione e capire se l'Operazione Peace Spring possa essere considerata quale esercizio di autotutela.

I primi movimenti della guerra civile hanno innescato un'opposizione nazionale volta a chiedere le dimissioni del Presidente Bashar Al Assad. Le circostanze socioeconomiche portate da un rapido aumento della popolazione, la diffusa sofferenza sociale ed economica nella regione agricola e le politiche di apertura verso l'economia globale da parte del governo, sono state le cause determinanti di queste prime proteste, in seguito a un grande periodo di siccità. In questo contesto, varie parti sono emerse come decisive per lo sviluppo della guerra civile a partire dal governo di Bashar Al Assad e i primi insorti, un'alleanza di diverse brigate formate da soldati disertori e volontari civili, sotto il nome di Free Syrian Army (FSA). Il Partito dell'Unione Democratica (PYD) e il suo ramo militare Unità di Protezione Popolare (YPG) sono attori non statali connessi al Partito dei Lavoratori del Kurdistan (PKK) turco, considerato dai Paesi occidentali un gruppo terroristico. Per questa connessione il PYD e il YPG vengono categorizzati dalla Turchia come organizzazioni terroristiche e, quindi, una minaccia per la sicurezza nazionale turca. Ciononostante, questi gruppi curdi fanno parte della spina dorsale delle Forze Democratiche Siriane (SDF), che hanno svolto un ruolo di fondamentale importanza nella coalizione guidata dagli Stati Uniti contro lo Stato Islamico

di Iraq e Siria (ISIS). Quest'ultimo, insieme ad altri gruppi, tra cui Jabhat al-Nusra, formano le maggiori organizzazioni terroristiche attive sul territorio siriano.

Le prime insurrezioni sono presto diventate violente a causa della forte reazione del governo siriano, supportato anche dall'Iran, che ha fornito forze militari provenienti dalle Iranian Revolutionary Guard Corps (IRGC) al-Quds Force. Queste milizie sono state usate dal governo contro le aree urbane e i villaggi occupati dai ribelli, arrivando a ricorrere anche ad armi chimiche, impiegate più volte nel corso del 2012 e 2013 e fortemente condannate dagli Stati Uniti e dalla comunità internazionale. A partire dal 2014 si è aperto un altro fronte conflittuale, parallelo a quello della guerra civile. Dopo la proclamazione del califfato, che comprendeva un terzo del territorio siriano e vedeva Raqqa come capitale, il contrasto all'ascesa del gruppo jihadista dello Stato Islamico di Iraq e Siria e l'eliminazione del califfato stesso, sono diventate le priorità principali dell'intervento statunitense in Siria e della coalizione da loro guidata, lanciando da settembre 2014 oltre 14.600 incursioni aeree.

Negoziazioni di pace, volte a concludere la guerra, hanno avuto luogo senza successo sin dal 2014 e si sono intensificate dal 2015 con lo scoppio della crisi dei rifugiati siriani, che ha visto 1.3 milioni richiedenti asilo in Europa. Tra il 2015 e il 2016, l'intervento russo e iraniano in favore del governo di Assad ha portato il conflitto a una svolta in favore di quest'ultimo. Una serie di attacchi chimici perpetrati dal governo siriano, ha spostato l'attenzione della comunità internazionale nuovamente sul conflitto, portando alla creazione di quattro zone di de-escalation attraverso il processo di pace di Astana, tra Russia, Iran e Turchia per far cessare le ostilità tra i ribelli e le autorità siriane.

La Turchia, nel conflitto in Siria, ha giocato una parte importante sin dall'inizio dell'insurrezione nel 2011, supportando la nascita e lo sviluppo del gruppo di insurrezione Free Syrian Army. Quest'ultimo è diventato il principale opponente di Assad e proxy turco durante il conflitto, in particolare nell'opposizione contro il gruppo curdo Unità di Protezione Popolare. Fatta specie per il contributo nella coalizione anti-ISIS guidata dagli Stati Uniti, ogni intervento turco è stato caratterizzato dalla volontà di andare a colpire la presenza curda nel nord della Siria. Essa, infatti, avrebbe potuto influenzare maggiormente la comunità curda in Turchia, con il suo progetto di stabilire una zona auto governata chiamata Rojava. Diverse operazioni contro la popolazione curda sono state intraprese dalla Turchia, quali l'Operazione Scudo dell'Eufrate nel 2016 e l'Operazione Ramoscello d'Ulivo

nel 2018. L'intento di Erdogan era quello di allontanare i curdi siriani dal confine stabilendo una zona cuscinetto, con l'obiettivo di ritrasferirci 2 dei 3.6 milioni di rifugiati che si erano spostati in Turchia dall'inizio del conflitto. La dichiarazione di Trump del 2018, che prevedeva il ritiro di un centinaio di unità americane presenti lungo la fascia di confine con la Turchia e sulla zona controllata dai curdi, ha lasciato aperta la strada al governo di Ankara verso il territorio curdo, dando inizio il 9 ottobre 2019 all'Operazione Peace Spring.

Questa operazione si poneva come obiettivo il raggiungimento del controllo del nord est della Siria, area governata dal Partito dell'Unione Democratica e dall'Unità di Protezione Popolare, considerate dalla Turchia organizzazioni terroristiche. Il piano prevedeva la creazione di una striscia di circa 30 chilometri per assicurare la sicurezza nazionale turca e riposizionare un numero considerevole di rifugiati. A seguito di un incontro tra il presidente Erdogan e il segretario di Stato americano Mike Pence, e della firma di un Memorandum of Understanding, l'operazione militare è stata sospesa, stabilendo una serie di controlli congiunti tra Russia e Turchia sul confine turco-siriano. L'operazione tuttavia ha avuto risvolti umanitari preoccupanti ed è stata fortemente condannata dalla comunità internazionale, poiché considerata come un'invasione del territorio siriano.

La Turchia ha giustificato l'Operazione Peace Spring inviando al Consiglio di Sicurezza una lettera in cui informava dell'inizio dell'azione militare sulla base dell'Articolo 51 della Carta delle Nazioni Unite. La dichiarazione ha sottolineato come la Turchia stesse subendo una minaccia alla sua sicurezza da parte dei gruppi terroristici PKK, PYD e YPG, portandola inevitabilmente a fare uso del diritto di legittima difesa.

L'Articolo 51 della Carta delle Nazioni Unite va a rafforzare l'esistenza incontestabile di un diritto di legittima difesa in seguito a un attacco armato. Uno Stato, che esercita questo diritto non è in violazione della proibizione dell'uso della forza delineata nell'Articolo 2 della Carta. Questa eccezione è, però, determinata dal conseguimento di alcune condizioni nel portare a termine l'azione difensiva. Prima di tutto, esiste la necessità che un attacco armato abbia avuto luogo e che il Consiglio di Sicurezza venga messo al corrente delle misure adottate. Inoltre, queste ultime devono essere sospese non appena il Consiglio decida di agire per ristabilire la pace e la sicurezza internazionale. A queste condizioni si affiancano tre criteri fondamentali per determinare la legittimità dell'uso della forza, quali la necessità, la proporzionalità e l'immediatezza.

Ci sono, tuttavia, circostanze in cui la legittima difesa non segue i criteri sopracitati. Questo fenomeno deriva da una serie di ampie interpretazioni della nozione di legittima difesa, tra cui troviamo la legittima difesa preventiva e la guerra preventiva, anche nota come dottrina Bush. La prima fa riferimento a una risposta armata che ha luogo non appena si ha la certezza che un attacco stia per accadere. La legittimità di questa difesa preventiva risiede nel concetto di imminenza di un'offensiva identificabile con un certo grado di certezza, e che questa costituisca un concreto pericolo. La seconda interpretazione, ovvero quella della dottrina Bush, amplia ulteriormente questo concetto di imminenza andando a rispondere a un attacco che non è ancora stato lanciato e di cui non si ha la certezza.

Tornando all'analisi dell'Operazione Peace Spring e alla notifica fatta al Consiglio di Sicurezza, dichiarando l'attacco armato come legittima difesa in conformità con l'Articolo 51 e assicurando la proporzionalità e responsabilità dell'azione, la Turchia potrebbe sembrare in linea con le direttive della Carta e, quindi, non in violazione del divieto dell'uso della forza. Ciononostante, nella lettera viene fatto riferimento a una minaccia terroristica imminente, ma un effettivo attacco armato contro la Turchia non ha avuto luogo né si può definire con certezza l'imminenza di quest'ultimo. Inoltre, nessuna interpretazione della lettera può portare a comprovare l'affermazione di un imminente attacco armato oltre il confine turco-siriano da parte del Partito dell'Unione Democratica e del suo ramo militare l'Unità di Protezione Popolare. In questo caso, l'azione militare non può essere considerata legittima difesa preventiva e quindi protezione da un imminente e soverchiante attacco armato. Al contrario si tratta di un'azione per prevenire la prospettiva di una minaccia dal diventare imminente. La Turchia, quindi, con l'Operazione Peace Spring, non ha agito seguendo i principi e le procedure lecite della legittima difesa. Avendo infranto le obbligazioni derivanti dall'Articolo 51 della Carta, l'azione militare ammonta a un illecito internazionale. Lo Stato turco deve quindi essere considerato responsabile per la sua condotta, dal momento che è in violazione del divieto dell'uso della forza secondo l'Articolo 2 della Carta delle Nazioni Unite.

Il 10 ottobre 2019, il Consiglio di Sicurezza ha convocato una riunione di emergenza a porte chiuse per discutere e analizzare la situazione e gli sviluppi sul territorio dell'Operazione Peace Spring. La discussione si è focalizzata sulle conseguenze dell'offensiva militare e i relativi risvolti umanitari, soprattutto per quanto riguarda la lotta contro le attività terroristiche dell'ISIS. Durante l'incontro cinque Stati europei hanno presentato una dichiarazione con l'intento di condannare l'operazione turca in Siria e far cessare le ostilità

militari. A causa dell'opposizione e del veto di due dei membri permanenti, Russia e Stati Uniti, nessuna risoluzione è stata approvata, portando così, il Consiglio di Sicurezza a non pronunciarsi ufficialmente a riguardo. Questo silenzio non è stato però sostenuto da parte di un gran numero di singoli Stati, che hanno rilasciato forti dichiarazioni condannanti l'operazione militare turca, considerandola un atto di aggressione nei confronti della sovranità territoriale siriana, e applicando, in alcuni casi, sanzioni economiche nei confronti della Turchia. La posizione degli Stati Uniti resta la più ambigua, in quanto il ritiro delle truppe da parte di Trump, in seguito a una conversazione con Erdogan, sembra essere stato il segnale di via libera per l'inizio dell'operazione. L'amministrazione americana ha tuttavia negato qualsiasi atto di sostegno nei confronti dell'azione militare turca.

Nonostante uno dei maggiori obiettivi delle Nazioni Unite sia al momento quello di portare, attraverso un procedimento pacifico, al termine la guerra siriana, giunta ormai al nono anno, tutti gli sviluppi e la situazione attuale fanno pensare che questo traguardo sia ancora ben lontano. Atti estremamente violenti e crimini di guerra stanno ancora avendo luogo in Siria.

L'Operazione Peace Spring, prendendo in esame i fatti e tutti gli elementi necessari per un uso della forza legittimo secondo l'Articolo 51, deve essere considerata un atto di aggressione nei confronti della sovranità siriana. La volontà da parte dei singoli Stati di condannare un atto illecito di questo tipo non è stata ostacolata dall'inabilità del Consiglio di Sicurezza di agire a riguardo. Tuttavia, non è la prima situazione in cui il Consiglio non riesce a muoversi per risolvere una condizione minante il mantenimento della pace e della sicurezza internazionale, a causa dello stallo provocato dal potere di veto. In aggiunta, bisogna anche considerare la crescita dell'importanza e dell'influenza degli interessi dei singoli attori, specialmente quando il potere di veto è coinvolto. Per questo motivo, viene sempre più messo in discussione il meccanismo del Consiglio di Sicurezza per risolvere e trattare violazioni di norme e in particolare l'uso illecito della forza.