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Imagining justice for Syria : water always finds its way

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Introduction

Syria's Challenge to the Promise of International Justice

*Behind much of the savagery of modern history lies impunity.*¹

I. Introduction

The situation in Syria poses an acute—some might say existential—challenge to the international community's commitment to justice and accountability. It also marks the abject failure of the international system of peace and security erected in the post-World War II period. The Security Council has been almost entirely incapacitated by the propensity of Russia to veto nearly every coercive measure of any consequence that might be imposed on the regime of Syrian President Bashar Al-Assad, including legal accountability. As a result, other actors, within and without the United Nations, have endeavored to find inventive ways around this geopolitical impasse. This forced creativity has generated a number of innovative institutions, legal arguments, and investigative techniques aimed at advancing justice and accountability for Syria wherever possible. This dissertation catalogues the many obstacles to this pursuit of justice for Syria and analyzes ways today's justice entrepreneurs have worked to find ways around them. The subtitle of this dissertation—*Water Always Finds Its Way*—reflects this idea that the quest for justice is inexorable. Just as water eventually finds its way through cracks and around obstacles, even if at a trickle, so too will justice.

A. Introduction to the Research

Virtually every international crime that forms part of the international penal code—a *mélange* of customary international law and treaty provisions—has been committed in and around Syria. The Syrian people have witnessed and been subjected to deliberate, indiscriminate, and disproportionate attacks; the misuse of conventional, unconventional, and improvised weapon systems;² industrial-grade custodial abuses in a vast network of formal and informal prisons;³ unrelenting siege warfare; the denial of humanitarian aid and what appears to be the deliberate use of starvation as a weapon of war; sexual violence, including the sexual enslavement of Yezidi women and girls trafficked from Iraq and the sexual torture of detained men and boys;⁴ and the intentional destruction of irreplaceable cultural property.⁵ Thousands of Syrians are missing, many

¹ Kenneth Roth, *The Case for Universal Jurisdiction*, FOREIGN AFF. 150 (Sept./Oct. 2001), <https://www.foreignaffairs.com/articles/2001-09-01/case-universal-jurisdiction>.

² See Beth Van Schaack, *Mapping War Crimes in Syria*, 92 INT'L L. STUD. 282 (2016).

³ See INDEPENDENT INTERNATIONAL COMMISSION OF INQUIRY ON THE SYRIAN ARAB REPUBLIC, OUT OF SIGHT, OUT OF MIND: DEATHS IN DETENTION IN THE SYRIAN ARAB REPUBLIC, U.N. Doc. A/HRC/31/CRP.1 (Feb. 3, 2016), https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/A-HRC-31-CRP1_en.pdf.

⁴ See, e.g., Special Report of the Office of the Special Representative of the Secretary-General on Sexual Violence in Conflict, *Submission to the Security Council Committee pursuant to resolutions 1267 (1999), 1989 (2011) and 2253 (2015) concerning ISIL (Da'esh), Al Qaida and Associated Individuals, Groups, Undertakings and Entities*, U.N. Doc. S/2016/1090 (Dec. 2016).

⁵ See Emma Cunliffe, Nibal Muhesen & Marina Lostal, *The Destruction of Cultural Property in the Syrian Conflict: Legal Implications and Obligations*, 23 INT'L J. CULTURAL PROPERTY 1 (2016).

of them victims of enforced disappearances.⁶ The long-standing taboo against the use of chemical weapons has been repeatedly flouted, and the sectarian nature of the violence has raised the specter of genocide against ethno-religious minorities.⁷ All told, violence in the region has contributed to the biggest exodus of refugees since World War II.⁸

The Syrian battlespace is a crowded one. As the revolution unfurled, the regime of President Bashar al-Assad stood accused as the main culprit. As one observer put it, “since 2011, not a minute has passed in which the Syrian government has not been committing multiple, simultaneous, widespread war crimes and crimes against humanity.”⁹ One set of regime adversaries emerged from detached village defense forces and eventually evolved into a revolutionary army full of defectors and newly-armed civilians. As in the case of many Arab Spring uprisings, the opposition captured the West’s imagination. Anti-government armed actors, however, have not escaped censure and have also been faulted for committing their own breaches of humanitarian law,¹⁰ notwithstanding receiving multiple trainings in the law of armed conflict¹¹ and the issuance of a righteous Proclamation of Principles.¹² That said, any allegation of equivalency between the regime’s deprivations and the war crimes of the Syrian opposition is an artifice. The emergence of the Islamic State of Iraq and the Levant/Da’esh (ISIL) on the scene introduced a new set of ruthless perpetrators who have brought the violence to an even more alarming level of brutality. ISIL has also served as a bridge between the wars in Syria and Iraq given the high degree of conflict spillover. Finally, the involvement of Western powers on opposite sides of the conflict—at once allies and adversaries—has complicated events on the ground and generated new risks to civilians. The conflict has been so destructive, the crime base so massive, and the pool of potential defendants so voluminous that existing institutions cannot adequately respond.

Although the political resolve within the international community around how to bring this fractured conflict to an end has not materialized, there have been consistent expressions of the need for future accountability and unprecedented investment in documentation efforts. Indeed, the Syrian conflict has become the most well-documented international crime base in human history. Under the auspices of the U.N. Human Rights Council, the Independent International Commission of Inquiry on the Syrian Arab Republic (COI) has been working to investigate all violations of international law since the commencement of the conflict in March 2011 and, where possible, identify those who are responsible. Alongside the COI, several fact-finding missions and investigative bodies are tracking the use of chemical weapons and apportioning responsibility.

⁶ See INDEPENDENT INTERNATIONAL COMMISSION OF INQUIRY ON THE SYRIAN ARAB REPUBLIC, WITHOUT A TRACE: ENFORCED DISAPPEARANCE IN SYRIA (Dec. 19, 2013),

<https://www.ohchr.org/Documents/HRBodies/HRCouncil/CoISyria/ThematicPaperEDInSyria.pdf>.

⁷ GENOCIDE WATCH, GENOCIDE AND MASS ATROCITIES ALERT: SYRIA (Apr. 26, 2013), <http://www.genocidewatch.org/syria.html>.

⁸ UNHCR, SYRIA CONFLICT AT 5 YEARS: THE BIGGEST REFUGEE AND DISPLACEMENT CRISIS OF OUR TIME DEMANDS A HUGE SURGE IN SOLIDARITY (Mar. 15, 2016).

⁹ Ben Taub, *Does Anyone in Syria Fear International Law?*, THE NEW YORKER, Aug. 31, 2016, available at <https://www.newyorker.com/news/news-desk/does-anyone-in-syria-fear-international-law>

¹⁰ AMNESTY INTERNATIONAL, SYRIA: “TORTURE WAS MY PUNISHMENT”: ABDUCTIONS, TORTURE AND SUMMARY KILLINGS UNDER ARMED GROUP RULE IN ALEPPO AND IDLEB, SYRIA (July 5, 2016).

¹¹ CENTER FOR CIVILIANS IN ARMED CONFLICT, CIVILIAN PROTECTION IN SYRIA (Dec. 2012).

¹² FSA PLATFORM, THE FREE SYRIAN ARMY’S PROCLAMATION OF PRINCIPLES PUBLISHED WITH THE ESTABLISHMENT OF THE FSA IN 2012, <http://fsaplatform.org/fsa-principles>.

Most innovative on the multilateral level is the International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011 (IIIM), the result of the General Assembly flexing its muscles in the face of Security Council debility.¹³ In the non-governmental realm, multiple organizations—Syrian and international—are adding to the massive cache of potential evidence.

A new documentation model has emerged in the form of the Commission for International Justice and Accountability (CIJA), a privatized investigative team preparing proto-indictments of potential perpetrators and analytical briefs even in the absence of a ready forum in which to admit such evidence or a clear path to justice.¹⁴ From the grassroots, citizen journalists have uploaded millions of digital images and thousands of hours of footage of the carnage. Because the Syrian revolution has played out on social media, new technological tools have been developed and deployed to capture, authenticate, and deduplicate the millions of digital images now available on the internet. These documentarians are securing these collections in digital vaults, churning out a steady stream of fact-finding reports, conducting statistical data analysis, and even compiling detailed dossiers on potential defendants for future prosecutions.

The assumption has been that all this information would lay the groundwork for a whole range of transitional justice mechanisms—in the event that there is ever a transition in Syria—including criminal trials against those deemed responsible. So far, however, documentation has emerged as a substitute for justice, and it is unclear whether, when, or where the information gathered will be systematically transformed into hard evidence in a court of law. Since the conflict in Syria broke out, elements of the international community, including key organs of the United Nations, have deployed robust messaging that justice and accountability must be an integral component of Syria’s transition.¹⁵ For one, almost every Security Council resolution devoted to Syria mentions the imperative of accountability. Individual states are in accord. From the perspective of the United States, Secretary Hillary Rodham Clinton announced at an early meeting of the Friends of the Syrian People that accountability constituted a central pillar of the United States’ Syria policy.¹⁶ The U.S. House of Representatives overwhelmingly passed a resolution calling for the Security Council to establish a tribunal dedicated to the crimes committed, on all sides, in Syria (although it did not account for the fact that Russia was unlikely to support any such

¹³ G.A. Res. 71/248, U.N. Doc. A/RES/71/248 (Dec. 21, 2016).

¹⁴ Mark Kersten, *What Counts as Evidence of Syria’s War Crimes*, WASH. POST., Oct. 28, 2014, https://www.washingtonpost.com/news/monkey-cage/wp/2014/10/28/what-counts-as-evidence-of-syrias-war-crimes/?utm_term=.aa56fcbe5dff.

¹⁵ See, e.g., U.N. Doc. A/PRST/2011/16, at pmbl (Aug. 3, 2011) (“those responsible for the violence should be held accountable.”); U.N. Doc. G.A. Res. 66/253, ¶ 8, U.N. Doc. A/RES/66/253 (Feb. 12, 2012) (“Stresses again the importance of ensuring accountability and the need to end impunity and hold to account those responsible for human rights violations, including those violations that may amount to crimes against humanity.”); *Annan, in Syria, calls for Accountability*, CNN (May 28, 2012), available at <http://www.cnn.com/2012/05/28/world/meast/syria-unrest/> (noting remarks by then U.N./Arab League envoy after the massacre in El-Houla that left 49 children dead).

¹⁶ *Secretary Clinton Delivers Remarks at the Conference of the Group of Friends of the Syrian People*, YOUTUBE (Apr. 2, 2012), <https://www.youtube.com/watch?v=AHuTGxdmxr4> (noting measures to be taken to “ratchet up” pressure on the regime, including additional sanctions, “a new accountability clearinghouse to train Syrian citizens to document atrocities and abuses and to identify perpetrators” (a proposal that was to become the SJAC), and support to the civilian opposition).

initiative).¹⁷ Allied states followed suit with similar demands.¹⁸ And yet, despite these articulated intentions, legal accountability has been elusive because these statements have not been matched by the actions necessary to actually achieve accountability. In the absence of a tangible threat of actual prosecutions, such messaging has exerted a limited rhetorical effect.

Many factors have contributed to this entrenched impunity. For one, an impenetrable Russian veto has prevented a referral of the situation in Syria to the International Criminal Court (ICC).¹⁹ That said, there are novel theories for how the ICC could proceed against some actors within the conflict—notably foreign fighters who hail from ICC member states and individuals accused of committing cross-border crimes that cause harm on the territories of ICC member states—even if it cannot exercise the full reach of its jurisdiction in Syria. Although the failure of the ICC referral effort marks a disappointment for many human rights advocates, it is not clear that the ICC is best positioned to administer justice for Syria. Given the scale and nature of the harm, a dedicated *ad hoc* tribunal with subject matter jurisdiction over the entire catalogue of war crimes committed in non-international armed conflicts (in addition to crimes against humanity and genocide) in many respects offers a better alternative.²⁰ Even though the ICC was supposed to obviate the need to produce new justice mechanisms, there remain situations like Syria where an *ad hoc* tribunal is called for. New theories for how to accomplish this, drawn from the Nuremberg precedent and more recent past practice, have emerged that do not depend on a consensus within the Security Council or Assad's consent.

Not all of the inaction in the multilateral sphere can be blamed on Russia's exercise of its veto prerogative, although this was a decisive factor in the Security Council chamber. For one, many states remained fixated on calling for the Security Council to undertake an ICC referral, despite the obvious and unyielding obstacles to such an endeavor.²¹ This singular focus on the ICC eclipsed other worthy avenues for accountability that might have been pursued. The international community's reticence was also due to persistent ambivalence about the potential for vigorous criminal accountability to complicate the hoped-for peace negotiations and future processes of reconciliation. Furthermore, there were concerns that any accountability regime might sweep in personnel from third states that were gradually ramping up their involvement in the Syrian conflict. Finally, states have been palpably wary of creating a tribunal outside of the Council or without Syrian consent—a precedent that might be deployed against powerful states by other multilateral

¹⁷ See H.Con.Res.121, <https://www.congress.gov/bill/114th-congress/house-concurrent-resolution/00121> (asking the President to direct his Ambassador to the United Nations to promote the establishment of a war crimes tribunal in the Security Council).

¹⁸ *Syria/International Criminal Court—Joint statement by France, Australia, the United Kingdom, the Republic of Korea and Luxembourg* (Jan. 18, 2013), <https://uk.ambafrance.org/France-calls-for-Syria-to-be-taken> (“we felt that we must speak out on the absolute need for accountability and to send a clear message that the international community is not turning a blind eye to the atrocities being committed in Syria. Without accountability, there will be no sustainable peace.”).

¹⁹ See U.N. Doc. S/2014/348 (May 22, 2014) (draft resolution referring the situation in Syria to the ICC vetoed by Russia and China).

²⁰ Van Schaack, *supra* note 2 (noting that the ICC cannot prosecute many of the war crimes relevant to Syria, as a non-international armed conflict).

²¹ See *id.* (“We fully support the Swiss initiative [for the Council to refer the situation in Syria to the ICC] and will remain at the forefront of the international community in calling for the situation in Syria to be referred to the ICC and in ensuring that, without exception, all perpetrators of the most serious international crimes in Syria are held to account. We hope other countries will join this initiative.”).

configurations. For all these reasons, the establishment of a hybrid or *ad hoc* tribunal has failed to garner the necessary diplomatic support.

Although the establishment of international judicial institutions has been entirely foreclosed when it comes to Syria, glimmers of justice are apparent. For one, domestic courts are filling the accountability gap by invoking the entire array of domestic jurisdictional principles—not always to their full reach, but more than they ever have before. Indeed, the conflict in Syria has helped to re-enliven the principle of universal jurisdiction, which had been in retreat in recent years following a concerted backlash launched by powerful states. The exercise of various species of extraterritorial domestic jurisdiction has been facilitated by robust regimes of mutual legal assistance, greater cooperation between dedicated national war crimes units, the formation of joint investigative units between nation-states, and the inexorable integration of European criminal justice systems. In addition, a new-found interoperability is apparent between non-governmental organizations, multilateral criminal investigative mechanisms, and domestic prosecutorial authorities. This new architecture, bridging the public and the private, is contributing to a more robust and coordinated *system* of international justice.

All of these developments are playing out in venues not governed by the veto. Indeed, in what might be viewed as another silver lining, the paralysis in the Council has created space for advocates, policymakers, diplomats, and investigators to innovate elsewhere. These developments signal the diversification of actors, a new institutional heterogeneity, and a burgeoning creativity around the imperative of justice. With the opening of each new situs of activity, the Security Council becomes increasingly marginalized, suggesting a shift in the balance of powers among the U.N. organs and on the international stage. The IIIM and CIJA—one a multilateral innovation and the other a determined non-state actor—are both carrying out normally statist functions, revealing that sovereign states no longer enjoy a monopoly on criminal law processes. Further, these developments evince a striking willingness on the part of states to outsource aspects of their prosecutorial process and work in partnership with non-governmental and multilateral institutions in the quest for justice.

In many respects, this proliferation of investigative innovations is a good news story. However, a less sanguine trend is also apparent: it cannot be gainsaid that these new multilateral justice mechanisms are decidedly weaker than those developed in response to historical tragedies involving mass violence. Indeed, since the renaissance of international criminal law, the genealogy of international justice institutions reveals that each new generation has emerged weaker than the last. Starting in the 1990s, the Security Council imposed the two international tribunals upon the states in question during (in Yugoslavia) and immediately after (in Rwanda) a period of mass atrocities. Whereas these original *ad hoc* tribunals enjoyed a Chapter VII provenance, dependable U.N. funding, and obligations of cooperation on the part of states (albeit not always fulfilled), the second generation of international justice institutions in Cambodia, Sierra Leone, and Lebanon were premised on state consent (allowing target states to exact contentious concessions) and dependent on voluntary funding and cooperation. The third generation of hybrid institutions and mixed chambers depend on the existence of a functioning, fair, and willing domestic judicial system that is not always available. Anything operating at present, or that might be established, will have to function without the power of the Security Council behind it or the consent of Syria. All told, the Syria situation exemplifies two countervailing trends: the development of robust investigative methods within the international community alongside the dearth of international judicial institutions to receive the information unearthed. If Syrian victims are to enjoy any

measure of accountability, the international community needs to better align these trajectories in the direction of justice.

B. Research Aims

Given these general themes, this dissertation seeks to respond to the following research question:

How has the conflict in Syria inspired institutional, methodological, and jurisdictional innovation within the system of international criminal justice?

This research query encapsulates the following sub-questions:

1. How effective is our system of collective security in dealing with the imperative of justice following the commission of mass atrocities, particularly when crimes are ongoing and there has been no regime change?
2. To what extent do we have the legal tools and judicial architecture necessary to administer justice in these circumstances or do we need to conceptualize new institutions and new pathways to accountability?
3. How have advocates for justice attempted to surmount blockages within the Security Council to advance accountability, including through new documentation techniques, theories of jurisdiction, and models of institutional design?
4. Despite the double veto exercised by Russia and China in response to France's attempt to refer the situation in Syria to the International Criminal Court (ICC), are there nonetheless theories for how the Court could exercise its jurisdiction over events in and connected to Syria, at least in part? How would such a "situation" be defined within the framework of the Rome Statute?
5. Given the impediments to activating the ICC's plenary jurisdiction and to the creation of an *ad hoc* international tribunal dedicated to Syria in the model of the International Criminal Tribunals for the Former Yugoslavia and Rwanda, what other options exist to "internationalize" justice for Syria? What are the articulated practical and legal impediments to such proposals, and what political objections exist?
6. In light of the failure of the international community to avail itself of any of these options, to what extent are domestic prosecutorial authorities and courts stepping in to fill the accountability void that is Syria? What challenges exist in relying upon domestic courts to administer justice for a conflict as multi-faceted and destructive as the one in Syria?
7. If agents of the state—criminal investigators, prosecutors, and judges—fail to achieve justice when defendants are in reach is there nonetheless value in seeking civil justice, either against individual perpetrators, the state of Syria itself, and/or other states that are supporting the Assad regime?
8. How have documentation challenges, methods, and actors evolved to address contemporary conflicts like the one in Syria and the current information environment? How will these new documentation efforts support the various justice options discussed?

9. Given that the conflict remains ongoing, and the prospects of a genuine political transition are increasingly improbable, is there value within the international community in exploring transitional justice options without transition?

This dissertation responds to these questions and engages these broad themes by situating the war in Syria within the actual and imagined system of international criminal justice and discussing the range of measures that are available to the international community to respond to the crisis. It explores the legal impediments and diplomatic challenges that have led to the fatal trinity that is Syria: the massive commission of international crimes that are subject to detailed investigations and documentation but whose perpetrators have enjoyed virtually complete impunity with no end in sight. It also tracks a number of accountability solutions to this tragic state of affairs that are being explored within multilateral gatherings, by states, and by civil society actors, including innovations of institutional design; the re-activation of a range of domestic jurisdictional principles (including universal jurisdiction in Europe); the emergence of creative investigative and documentation techniques, technologies, and organizations; and the rejection of state consent as a precondition for the exercise of jurisdiction. The text engages both law and policy around international justice by exploring legal constraints and openings, and by offering a set of original institutional blueprints, within and without the International Criminal Court. In so doing, it attempts to capture results of the creative energy radiating from members of the international community intent on advancing the accountability norm in Syria even in the face of geo-political blockages within the U.N. Security Council.

C. Thesis Structure

The dissertation begins in chapter 1 with a short history of a long conflict, covering the arrival of the Arab Spring in Syria, the transformation of a long-overdue revolution into a full-scale armed conflict, and the evolution of the situation on the ground to date. This chapter prefaces the contemporary violence with a few historical events, surfacing atrocities committed in the 1980s that have never been the subject of any genuine accountability process (and that mirror contemporary intercommunal violence) and the rise of an authoritarian state under the House of Assad. This chapter also explores the involvement of major Western powers that are at once adversaries and allies—aligned with opposing sides in the internal armed conflict but also focused on ISIL as a common foe—as well as the impact of spillover conflicts in the sub-region involving Iraq, Turkey, and Israel. In compiling this necessarily abbreviated background, I rely upon open source research—including journalistic accounts, living timelines, and think tank white papers—as well as the memories and memoirs of survivors. Others will write the definitive history of this tragedy; my goal here is to touch upon key milestones as this conflict unfolded and eventually engulfed the country.

Chapter 2 engages the question of why the Security Council, which is charged under the U.N. Charter with maintaining international peace and security, has been so paralyzed when it comes to the situation in Syria and particularly the imperative of justice. Drawing upon a close read and thick description of original U.N. records, it revisits the history of the Syrian conflict from the perspective of events in the U.N. Security Council. This chapter thus surveys Security Council action, and inaction, around a number of key areas, including the denunciation of abuses, efforts to resolve the conflict and provide humanitarian assistance, the condemnation of foreign fighters and the use of chemical weapons, international sanctions, and the promotion of accountability. In so doing, it presents the evolving and piecemeal responses of the international

community to the metastasis of the conflict in Syria and tracks the obstruction wrought by the volley of Russian and Chinese vetoes. Given blockages in the Council wrought by the re-emergence of great power rivalries, this chapter touches upon other situses of action (including the U.N. Human Rights Council and the Organization for the Prohibition of Chemical Weapons (OPCW)) and foregrounds the emergence of the General Assembly as a force for accountability. In this way, the Council has been sidelined in a way that has opened space for other multilateral entities to operate. The failure of the Security Council to effectuate its Charter mandate vis-à-vis Syria has sharpened calls for Council reform, as discussed at the end of this chapter.

Given this paralysis in the Council, the next set of chapters asks what pathways to justice exist when it comes to the Syrian conflict? In response, these chapters consider the architecture of international justice with reference to the matrix of liability set forth below. This matrix is organized along two axes: the first (x) is premised on the distinction between criminal and civil liability; the second (y) compares the types of justice institutions and legal authorities that are available against individual perpetrators and Syria as a sovereign state. This section of the dissertation explores the different routes to accountability through this matrix and the various advantages presented by, and the challenges encumbering, justice options within each of these cells when it comes to the situation in Syria. It does this through traditional legal research as well as off-the-record conversations with diplomats, practitioners, and policymakers.

		Tribunal		
		International	Hybrid/Regional	Domestic
Respondent/Defendant	Individual Perpetrators	∅	∅	Alien Tort Statute, <i>partie civile</i> system
		International Criminal Court, <i>ad hoc</i> tribunals	Special Court for Sierra Leone, Extraordinary African Chambers	Domestic international crimes statutes (e.g., 18 U.S.C. § 2340, German Code of Crimes Against International Law (CCAIL))
	The Sovereign State	International Court of Justice, human rights treaty bodies (e.g., Committee Against Torture)	African Court of Human & People’s Rights, European Court of Human Rights	U.S. Foreign Sovereign Immunities Act or equivalent
		∅	∅	∅

Tort Liability
 Criminal Liability

Chapter 3 focuses on the ICC and asks whether it is indelibly foreclosed when it comes to Syria given the dual veto deployed by Russia and China and in light of its statute, the treaty's drafting history, and the Court's jurisprudence as to its own jurisdiction. It highlights areas of potential and residual ICC jurisdiction over crimes being committed in Syria, even absent a Security Council referral. While the full conflict, in all its criminal manifestations, is not within the ICC's jurisdiction at present, there are creative arguments being advanced that would bring certain acts and actors within the Court's reach. These include animating the ICC's nationality jurisdiction, focusing on continuing crimes that involve the imposition of human suffering on the territories of ICC states parties, and referring the ISIL "situation" to the Court, even though ISIL no longer controls territory or enjoys any attributes of statehood.

Chapter 4 asks: assuming that the prosecutor of the ICC declines to move forward with any of these theories of jurisdiction, what are the other potential modalities for establishing an international *ad hoc* tribunal for Syria? In response, this chapter surveys the structure and origins of other international and hybrid tribunals as well as live proposals involving Syria. It presents an array of other options for exercising international jurisdiction that do not involve the Council, including a number of innovative paradigms for creating an *ad hoc* tribunal. These encompass novel proposals premised on the potential for a subset of states to pool their respective jurisdictional competencies to create an *ad hoc* tribunal reminiscent of the Nuremberg Tribunal. Other available approaches explored in this chapter include additional action at the General Assembly; an international or hybrid tribunal created by way of an international agreement among interested states; trials before specialized chambers in liberated areas in Syria or within neighboring states with varying degrees of international involvement; a regional tribunal; or the building of a shell of a special chamber that could be eventually inserted into the Syrian judicial system post transition.²² Any one of these proposals could have resulted in the establishment of a fully-functioning and stand-alone tribunal or a skeletal legal framework for an eventual tribunal of which Syrian constituencies could ultimately take ownership and in which they could play central roles. All of these models could incorporate various elements of hybridity, including when it comes to the substantive law to be applied, which could be international criminal law, domestic criminal law, or a combination of the two.

There are any number of diplomatic, operational, and technical activities that were, or could have been, undertaken mid-conflict by the international community to lay the groundwork for future criminal prosecutions of crimes committed by all sides during the Syrian conflict, even in the absence of an ICC referral, multilateral consensus within the Council, or Syrian consent. These include, but were not limited to, building multilateral and Syrian support for the various available models; identifying existing platforms and organizations that might host deliberations, drafting sessions, and the chosen institution itself in the pre-transition phase; establishing the necessary legal framework and drafting any constitutive documents; bolstering Syrian knowledge of accountability and transitional justice principles; and training future personnel and fielding an advance team.²³ Although a number of innovative proposals were floated, no tangible progress

²² See S. 905, Syrian War Crimes Accountability Act of 2017, <https://www.congress.gov/bill/115th-congress/senate-bill/905> (calling for the President to support efforts to ensure accountability for war crimes and for the completion of a feasibility study of potential transitional justice mechanisms for Syria (including a hybrid tribunal) to address crimes committed).

²³ For example, the Public International Law and Policy Group (PILPG) drafted a notional statute for a hybrid court. See The Chautauqua Blueprint for a Statute for a Syrian Extraordinary Tribunal to Prosecute Atrocity

was made on the multilateral level until late 2016 when the General Assembly authorized the creation of the IIIM, which remains primarily an investigative body without prosecutorial powers.

In light of the lack of action at the international level, chapter 5 thus shifts attention to the potential for domestic courts to fill the accountability void. Based upon a review of domestic penal codes, comparative jurisprudential research, and conversations with practitioners, it asks to what extent are national courts exercising jurisdiction over events in Syria and under what theories of jurisdiction and legal frameworks? This chapter observes that principles of complementarity have contributed to more empowered and aggressive domestic courts when it comes to the prosecution of grave crimes of international concern. This chapter lays out the spectrum of jurisdictional bases that are being invoked in domestic courts around the globe. This includes a discussion of the utility of the re-invigorated concept of universal jurisdiction plus alternative theories of protective and effects jurisdiction that might be invoked by frontline states overwhelmed by the refugee crisis occasioned by the Syrian war. This chapter also acknowledges sources of resistance to the expansion of these forms of extraterritorial jurisdiction. After setting out these broad principles, this chapter tracks—in real time—criminal cases proceeding in domestic courts in France, Germany, Sweden, and elsewhere under these various jurisdictional principles. These legal proceedings are rendering small cracks in the wall of impunity around perpetrators in Syria. Although important, trials remain sporadic and largely dependent upon the serendipitous presence of a defendant within reach of a willing prosecutor.

Rounding out the matrix of accountability, chapter 6 queries whether there is utility to exploring the concept of state responsibility and tort liability to address the prevailing impunity in Syria. It presents several non-penal proceedings, including civil suits in domestic courts against responsible individuals and options for exercising jurisdiction over the sovereign state of Syria. Because there is no notion of state criminality under international law, only civil claims seeking money damages can be advanced against states. Although jurisdiction over Syria before the International Court of Justice (ICJ) exists under the Convention Against Torture and Other Cruel, Inhuman, and Degrading Treatment or Punishment, proposals to invoke the Court have not borne fruit for lack of a state willing to step up and pronounce, *J'accuse!* And so, victims must bear this burden elsewhere. In this regard, some tort law options exist in domestic courts, especially in the United States with its suite of statutes giving its domestic courts jurisdiction over international law violations. Although civil remedies are not as robust as those available in criminal proceedings, civil liability offers victims certain benefits, such as the opportunity to control the litigation process and act where the public authorities may be unable or unwilling to do so. This chapter features a groundbreaking suit against Syria under the United States' Foreign Sovereign Immunity Act (FSIA), which resulted in a \$300 million judgment for the surviving family members of Marie Colvin, the intrepid war correspondent assassinated by the Syrian regime.

The penultimate chapter discusses the imperative of international crimes documentation as well as institutional and technical innovations inspired by the Syrian conflict. It asks: to what extent have new documentation techniques and technologies emerged to democratize fact-gathering and lay the groundwork for future accountability efforts if the political will emerges? While documentation is not necessarily an accountability mechanism in its own right, almost any transitional justice response will benefit from, or be dependent on, the documentation of crime-

Crimes, <http://www.publicinternationallawandpolicygroup.org/wp-content/uploads/2014/01/Chautauqua-Blueprint-2014.pdf>.

base and linkage information. The Syrian conflict coincided with the explosion of social media and the ubiquity of smart phones capable of capturing the commission of international crimes from multiple perspectives. The ability of ordinary people to contemporaneously record potential evidence on their personal devices has created both opportunities and challenges to accountability, particularly given the surfeit of unverified (and in some cases unverifiable) data. Organizations such as Benetech, Satellite Sentry, *Videre es Credere*, Hala Systems, and eyeWitness to Atrocities are developing applications and techniques of big data acquisition and analyses to render the terabytes of open source information useful for any number of accountability processes. Given that witnesses are the soft underbelly of the international justice system, there is hope that these new evidentiary tools will supplement, and potentially provide a substitute for, witness testimony. These documentation efforts have emerged as another bright spot in this conflict, as civil society actors have prepared for accountability by preserving potential evidence of atrocities and undergoing training in the whole range of transitional justice options.

The dissertation closes with a discussion of the prospects for a genuine transitional justice process in Syria. Chapter 8 thus asks the question of whether the field of transitional justice has anything to offer Syrian victims, even if a political transformation never materializes. Drawing upon academic research—including new empirical studies made possible by the creation of comprehensive transitional justice databases—the chapter begins with a discussion of the archetypal tools within the transitional justice toolkit—criminal accountability, truth commissions, reparations, conditional amnesties, lustration, and institutional reform—and the way in which transitional justice efforts have become increasingly internationalized. This reflects the belief—premised on historical case studies and emerging empirical research—that societies in transition must address the crimes of the past in some capacity or risk their repetition. This chapter discusses ways in which the international community has tried to prepare for a future transitional justice process even in the absence of a transfer of power, which seems increasingly unlikely as this thesis is finalized, and forms of transitional justice that might still be encouraged as the conflict winds down without a genuine transition in sight.

The Conclusion offers some final reflections as well as lessons learned from the tragedy that is Syria. These include over-arching observations about the weaknesses inherent to our systems of collective security and international justice that have been laid bare by the crisis. Notwithstanding these grounds for discouragement, the conclusion attempts to offer a few silver linings and rays of hope, most notably the greater sophistication of human rights documentation, the enlivening of domestic courts as engines of accountability, and the sheer volume of creative energy flowing through the international community as dedicated justice entrepreneurs attempt to advance the accountability norm and bring some measure of justice to Syria.

D. Methodology & Sources

In undertaking this thesis, I engaged in standard academic research with a range of legal and non-legal sources. For background and context on the war in Syria, I reviewed several firsthand accounts of the conflict written by journalists, members of the Syrian diaspora, and others who lived through these events, such as Alia Malek's *THE HOME THAT WAS OUR COUNTRY: A MEMOIR OF SYRIA* (2018) and Rania Abouzeid's *NO TURNING BACK: LIFE, LOSS, AND HOPE IN WARTIME SYRIA* (2018). Particularly poignant was *WE CROSSED A BRIDGE AND IT TREMBLED: VOICES FROM SYRIA* (2017) by Wendy Pearlman, which contains a series of interviews with ordinary Syrians recounting their country's tragic descent into war. Several NGOs and entities

have conducted population-based surveys of Syrians to glean their preferences around transitional justice, which informed my own thinking about the centrality of criminal accountability to any transitional justice response.²⁴ My affiliation with several human rights and international crimes documentation organizations, such as the Commission on International Justice & Accountability (CIJA), gave me direct access to caches of original documents collected from Syria. I also reviewed the 1000-page casefile of *Colvin v. Syrian Arab Republic*, Case 1:16-cv-01423-ABJ, a lawsuit filed in the United States under the Foreign Sovereign Immunity Act, which includes sworn affidavits by insiders and defectors as well as Syrian experts.

In considering the legal challenges of providing accountability for a massive crime base, I engaged in classic legal research, drawing upon the history and jurisprudence of the war crimes trials held before international, hybrid, and domestic courts following World War II and the revival of international criminal law in the mid-1990s. I also examined the *lex lata* of international criminal law with reference to relevant treaties, customary international law, general principles of law, and judicial decisions. To identify the latter, I surveyed legal databases of contemporary national jurisprudence to collect as many decisions and judgments as possible from domestic prosecutions involving events in Syria. In this regard, I was aided by several websites devoted to surveying international criminal justice efforts, such as TRIAL International,²⁵ the Case Matrix Network,²⁶ Legal Tools Database,²⁷ the International Crimes Database,²⁸ vLex,²⁹ Lexis-Nexis, and the Hague Justice Portal.³⁰ In addition to this caselaw, I reviewed the most recent scholarship, as well as classic works, devoted to explicating principles of international and domestic jurisdiction, institutional design, international criminal law, and atrocities prevention and response. For the chapter on Transitional Justice Without Transition, I also collected and reviewed the best empirical and interdisciplinary research on the impact of transitional justice mechanisms—trials, amnesties, truth commissions, and lustrations—on instantiating peace, achieving justice for victims, and promoting deterrence.

A major theme of this manuscript is that the law is not the problem; there is plenty of extant international criminal law and there are no legal impediments to the many options to bring justice to Syria. Instead, this is a problem of geopolitics. To accurately understand and convey the multilateral dynamics around Syria and accountability, I gave the relevant records of deliberations in the U.N. Security Council, the U.N. General Assembly, and the U.N. Human Rights Council a close read as well as other accounts of the policies of the United States, Russia, Iran, European Union member states, and Turkey towards Syria drawn from the disciplines of political science and international relations. To capture the nature and scope of the violence, I collated the many reports produced by the Independent International Commission of Inquiry on the Syrian Arab Republic,³¹ human rights non-governmental organizations (NGOs) (notably Amnesty International and Human Rights Watch, whose reporting of atrocities has been comprehensive and

²⁴ See, e.g., Charney Research, <https://syrianperspectives2013.syriaaccountability.org/chapter/post-conflict-accountability/>.

²⁵ TRIAL International, <https://trialinternational.org/>.

²⁶ Center for Case Matrix Network, International Centre for Law Research & Policy, <https://www.cilrap.org/purpose/>.

²⁷ Legal Tools Database, <https://www.legal-tools.org/>.

²⁸ International Crimes Database, <http://www.internationalcrimesdatabase.org>.

²⁹ vLex, <https://vlex.com/>.

³⁰ The Hague Justice Portal, <http://haguejusticeportal.net/>.

³¹ U.N. Human Rights Council, Independent International Commission of Inquiry on the Syrian Arab Republic, <https://www.ohchr.org/en/hrbodies/hrc/iicisyria/pages/independentinternationalcommission.aspx>.

damning), and media accounts. I also read many of the situation reports from the Institute for the Study of War, which has covered the conflict extensively since it began;³² the Council on Foreign Relations' conflict tracker;³³ and the analyses generated by other reputable think tanks.

In addition to this desk research, I informally consulted key players who have been working to establish some form of accountability for the innumerable international crimes committed during the Syrian conflict. This includes the academics, diplomats, human rights advocates, U.N. personnel (including two former U.N. High Commissioners for Human Rights), and journalists identified in the Acknowledgements. Former and current members of the U.S. State Department and the diplomatic corps of other concerned states shared their accounts—on a non-attribution basis—of the increasingly acrimonious deliberations within the United Nations in New York and Geneva. In addition, the staff and principals of the International Independent Investigative Mechanism for Syria (IIIM) and the U.N. Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD) offered invaluable insights into the formation and operation of their respective investigative mechanisms as well as their understanding of the ways their work might eventually contribute to justice processes. Furthermore, I spoke with a number of lawyers (prosecutors, defense counsel, and victims' counsel) involved in the many cases proceeding in Europe and the United States to better understand the accountability landscape within domestic courts. The European Center for Constitutional and Human Rights (ECCHR) and their Syrian partners were particularly helpful in this regard.

Members of several human rights documentation groups devoted to Syria—including the Syrian Archives, the Syria Justice & Accountability Center (SJAC), the Center for Justice & Accountability (CJA), and CIJA—helped me to understand how new and traditional documentation techniques are preserving evidence for future accountability purposes. In this regard, I had conversations with a number of NGOs (e.g., Benetech, Witness, eyeWitness to Atrocities and *Videre est Credere*) and for-profit corporations (e.g., Twitter, Facebook, and Microsoft) devoted to developing new human rights, communications, data analysis, secure storage, and encryption tools more generally. These sources indirectly informed the research, were operating under Chatham House rules, or spoke with me on a not-for-attribution basis and so are not cited directly in the text.

This thesis draws upon some of my earlier scholarship, including the following articles and book chapters:

- *With All Deliberate Speed: Civil Human Rights Litigation As a Tool for Social Change*, 57 VANDERBILT L. REV. 2305 (2005).
- *Justice Without Borders: Civil Universal Jurisdiction*, 2005 ASIL PROCEEDINGS 120.
- *Finding the Tort of Terrorism in International Criminal Law*, 28 UNIV. OF TEXAS, REV. LITIG. 381 (2009).
- Beth Van Schaack, *State Cooperation & The International Criminal Court: A Role for the United States?*, in BEYOND KAMPALA: NEXT STEPS FOR U.S. PRINCIPLED ENGAGEMENT WITH THE INTERNATIONAL CRIMINAL COURT 3 (American Society of International Law 2010).

³² Institute for the Study of War, <http://iswresearch.blogspot.com/search/label/Syria>.

³³ Global Conflict Tracker, Syria, https://www.cfr.org/interactives/global-conflict-tracker?cid=ppc-Google-grant-conflict_tracker-010715&gclid=CjwKEAjjwh6SsBRCYrKHF7J3NjicSJACUxAh73kL4x8gPd8BMYy6aFxbXUyBqojitpCU3bBjO79FFzxoC-73w_wcB#!/conflict/civil-war-in-syria.

- *The Prevalence of “Present-In” Jurisdiction*, 107 ASIL PROCEEDINGS 237 (2013) (with Zarko Perovic).
- *Mapping War Crimes in Syria*, 92 INT’L L. STUD. 282 (2016).
- *The Building Blocks of Hybrid Justice*, 44 DENVER J. INT’L LAW & POLICY 169 (2016).
- CAMBODIA’S INVISIBLE SCARS: TRAUMA PSYCHOLOGY IN THE WAKE OF THE KHMER ROUGE (2011, 2016) (with Daryn Reicherter).
- “*More than a Domestic Mechanism*”: *Options for Hybrid Justice in Sri Lanka*, in TRANSITIONAL JUSTICE IN SRI LANKA: MOVING BEYOND PROMISES 331 (Bhavani Fonseka ed., 2017).
- *Crimes Against Humanity: Repairing Title 18’s Blind Spots*, in ARCS OF GLOBAL JUSTICE (Margaret M. deGuzman & Diane Marie Amann eds., 2018).

Some of this material also appeared in blog posts on the *Just Security* and *IntLawGrrls* blogs. Many of the chapters of this thesis were workshopped at academic gatherings, including at the University of Michigan and Stanford Law School. These chapters have undergone extensive peer review; many academics in the field commented on draft chapters, as indicated—with my appreciation—in the Acknowledgements.

II. Contribution to Knowledge

This thesis makes an original contribution to knowledge—and particularly the fields of public international law, international criminal law, transitional justice, human rights, and foreign policy—by capturing the state-of-the-art when it comes to accountability for grave international crimes through the lens of the Syrian conflict. Using the matrix identified above, the thesis demonstrates ways in which the international community, civil society actors, victims’ lawyers, and prosecutorial authorities could traverse, and have begun to traverse, the various pathways to accountability for the mass crimes being committed in Syria. These include novel theories of ICC jurisdiction that are only beginning to be explored in the academic literature.³⁴

The thesis also identifies and evaluates a set of untried blueprints for a range of international, and quasi-international, tribunal models that could be constructed for the conflict in Syria.³⁵ Although there were a number of articles early in the conflict that mapped prior models, and advocated for the activation of existing accountability options,³⁶ none of the theories explored in this text has yet to receive careful or comparative analysis in the literature.³⁷ To be sure, there are discrete articles analyzing some components of this accountability landscape—such as new

³⁴ See, e.g., Payam Akhavan, *The Radically Routine Rohingya Case: Territorial Jurisdiction and the Crime of Deportation under the ICC Statute*, 17 J. INT’L CRIM. JUST. 325 (2019). See chapter 3.

³⁵ See chapter 4.

³⁶ Annika Jones, *Seeking International Criminal Justice in Syria*, 89 INT’L L. STUD. 802 (2003); Jane Hunter, *Accountability or Continued Impunity? Syria and International Criminal Justice*, ACTION ON ARMED VIOLENCE (Mar. 28, 2014); Leila N. Sadat, *Genocide in Syria: International Legal Options, International Legal Limits, and the Serious Problem of Political Will*, 5 IMPUNITY WATCH L.J. 1 (2015).

³⁷ Kaleab A. Kassaye, *The Long Road Towards Justice in Syria: Challenges and Perspectives on War Crimes*, 7(1) J. CIVIL. & LEGAL SCI. (2018).

multilateral mechanisms³⁸ or the revival of universal jurisdiction in Europe³⁹—as well as other international law issues implicated by the war in Syria,⁴⁰ such as the use of armed force and humanitarian intervention.⁴¹ However, these works do not take the *tour d’horizon* approach of the present thesis.

While there is a rich scholarship devoted to the field of transitional justice generally,⁴² with some attention to Syria specifically,⁴³ the thesis poses an overarching question that has not received sufficient scholarly attention: the utility of developing and pursuing the range of transitional justice mechanisms in the transitional justice toolkit absent a genuine political transition.⁴⁴ Furthermore, the chapter on documentation offers new insights into the role of civil society actors in compiling evidence for accountability purposes. This contribution is situated within an emergent literature exploring the implications of social media and the digital revolution on accountability and transitional justice, with some attention to Syria specifically.⁴⁵

In terms of existing scholarship on the Syrian armed conflict, the tragedy has—not surprisingly—inspired a number of interdisciplinary academic works from the fields of history, political science, and international relations.⁴⁶ These join multiple moving memoirs from victims,

³⁸ Alex Whiting, *An Investigative Mechanism for Syria: The General Assembly Steps into the Breach*, 15 J. INT’L CRIM. JUST. 231 (2017); Christian Wenaweser & James Cockayne, *Justice for Syria?: The International, Impartial and Independent Mechanism and the Emergence of the UN General Assembly in the Realm of International Criminal Justice*, 15 J. INT’L CRIM. JUST. 211 (2017); David Kaye, *Human Rights Prosecutors? The United Nations High Commissioner of Human Rights, International Justice, and the Example of Syria*, UC Irvine School of Law Research Paper No. 2013-83 (2013), available at SSRN: <https://ssrn.com/abstract=2196550>; David Mandel-Anthony, *Hardwiring Accountability for Mass Atrocities*, 11 DREXEL L. REV. 903 (2019).

³⁹ Hilly B. Moodrick-Even Khen, *Revisiting Universal Jurisdiction: The Application of the Complementarity Principle by National Courts and Implications for Ex-Post Justice in the Syrian Civil War*, 30 EMORY INT’L L. REV. 261 (2015).

⁴⁰ YASMINE NAHLAWI, *THE RESPONSIBILITY TO PROTECT IN LIBYA AND SYRIA: MASS ATROCITIES, HUMAN PROTECTION, AND INTERNATIONAL LAW* (2019); Cian C. Murphy, *Islamic State, the United Nations and the Fragility of the Rule of Law* (May 1, 2016), available at SSRN: <https://ssrn.com/abstract=3211145>.

⁴¹ MICHAEL P. SCHARF ET AL., *HOW THE SYRIA CONFLICT CHANGED INTERNATIONAL LAW* (forthcoming Cambridge University Press 2020); Carsten Stahn, *Syria and the Semantics of Intervention, Aggression and Punishment: On ‘Red Lines’ and ‘Blurred Lines’*, 11 J. INT’L CRIM. JUST. 955 (2013); Zachary Kaufman, *The United States, Syria, and the International Criminal Court: Implications of the Rome Statute’s Aggression Amendment*, 55 HARV. INT’L L. J. ONLINE 35 (2013).

⁴² See, e.g., COLLEEN MURPHY, *THE CONCEPTUAL FOUNDATIONS OF TRANSITIONAL JUSTICE* (2017); JAMIE ROWEN, *SEARCHING FOR TRUTH IN THE TRANSITIONAL JUSTICE MOVEMENT* (2017); ZACHARY D. KAUFMAN, *UNITED STATES LAW AND POLICY ON TRANSITIONAL JUSTICE: PRINCIPLES, POLITICS, AND PRAGMATICS* (2016).

⁴³ Ammar Bajboi, *Transitional Justice and Victor’s Justice in Syria*, (May 20, 2018), available at SSRN: <https://ssrn.com/abstract=3182111>; Espen Stokke & Eric Wiebelhaus-Brahm, *Syrian Diaspora Mobilization: Vertical Coordination, Patronage Relations, and the Challenges of Fragmentation in the Pursuit of Transitional Justice*, ETHNIC & RACIAL STUD. 1466 (2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3339913.

⁴⁴ See chapter 8.

⁴⁵ Paul J. Zwier, *Social Media and Conflict Mapping in Syria: Implications for Peacemaking, International Criminal Prosecutions and TRC Processes*, 30 EMORY INT’L L. REV. 169 (2015).

⁴⁶ See, e.g., CHRISTOPHER PHILLIPS, *THE BATTLE FOR SYRIA: INTERNATIONAL RIVALRY IN THE NEW MIDDLE EAST* (2018); NIKOLOAS VAN DAM, *DESTROYING A NATION: THE CIVIL WAR IN SYRIA* (2017); SAM DAGHER, *ASSAD OR WE BURN THE COUNTRY: HOW ONE FAMILY’S LUST FOR POWER DESTROYED SYRIA* (2019).

survivors, witnesses, journalists, and members of the diaspora.⁴⁷ A number of political scientists and scholars of international relations have written about the causes and consequences of the war,⁴⁸ the convoluted alliances among the parties involved,⁴⁹ the (inadequate) response of the international community,⁵⁰ and the prospects for a negotiated peace.⁵¹ None of these approaches is devoted exclusively, or even primarily, to promoting justice and accountability, however.

This thesis does not explore the Syrian crime base or the evidence collected to date in great depth, on the theory that these topics have been well-documented by the Human Rights Council's Commission of Inquiry,⁵² human rights groups,⁵³ Syrian and international documentation centers,⁵⁴ and journalists.⁵⁵ Indeed, there are a number of contemporaneous works focusing on particular manifestations of the violence that remain under-theorized, such as the destruction of cultural property⁵⁶ or the use of chemical weapons.⁵⁷ The emergence, rise, and decline of ISIL has also inspired a whole literature⁵⁸ within the burgeoning field devoted to preventing and countering violent extremism and the foreign fighters phenomenon.⁵⁹ Many of these interdisciplinary texts are largely theoretical in nature, whereas I have tried to retain a certain pragmatism that will be useful for policymakers, diplomats, and practitioners in addition to being of interest to academics and scholars.

This study complements and builds on this universe of existing work by focusing on the imperative of justice and accountability with an eye towards capturing what is being done (in domestic courts and multilateral fora) and what could be done if only the political will existed. All told, there is no current scholarly work that covers this much ground while also providing a deep dive into the conflict in Syria and the international community's reaction thereto.⁶⁰

⁴⁷ See, e.g., JANINE DI GIOVANNI, *THE MORNING THEY CAME FOR US: DISPATCHES FROM SYRIA* (2017); AEHAM AHMAD, *THE PIANIST FROM SYRIA: A MEMOIR* (2019).

⁴⁸ JOSEPH DAHER, *SYRIA AFTER THE UPRISINGS: THE POLITICAL ECONOMY OF STATE RESILIENCE* (2019).

⁴⁹ HARRIET ALLSOPP, *THE KURDS OF SYRIA: POLITICAL PARTIES AND IDENTITY IN THE MIDDLE EAST* (2015).

⁵⁰ See, e.g., AMANDA GUIDERO & MAIA CARTER HALLWARD, *GLOBAL RESPONSES TO CONFLICT AND CRISIS IN SYRIA AND YEMEN* (2019).

⁵¹ Paul R. Williams, et al., *The Peace vs. Justice Debate and the Syrian Crisis*, 24 ILSA J. INT'L & COMP. L. 417 (2018).

⁵² U.N. Comm'n of Inquiry, *"I Lost My Dignity": Sexual and Gender-Based Violence in the Syrian Arab Republic*, U.N. Doc. A/HRC/37/CRP.3 (Mar. 8, 2018).

⁵³ See, e.g., AMNESTY INTERNATIONAL, *JUSTICE FOR SYRIA*, <https://www.amnesty.org/en/latest/campaigns/2017/03/justice-for-syria/>.

⁵⁴ SYRIA JUSTICE & ACCOUNTABILITY CENTRE, *WALLS HAVE EARS: AN ANALYSIS OF CLASSIFIED SYRIAN SECURITY SECTOR DOCUMENTS* (May 2019).

⁵⁵ BRIDEY HEING, *ETHNIC CLEANSING AND THE SYRIAN CIVIL WAR* (2018); PATRICK COCKBURN ET AL., *SYRIA: DESCENT INTO THE ABYSS: AN UNFORGETTABLE ANTHOLOGY OF CONTEMPORARY REPORTAGE* (2011-2014).

⁵⁶ HELGA TURKU, *THE DESTRUCTION OF CULTURAL PROPERTY AS A WEAPON OF WAR: ISIS IN SYRIA AND IRAQ* (2018).

⁵⁷ MICHELLE BENTLEY, *SYRIA AND THE CHEMICAL WEAPONS TABOO: EXPLOITING THE FORBIDDEN* (2016).

⁵⁸ See MARIA GRAVANI, *A THEORY OF ISIS: POLITICAL VIOLENCE AND THE TRANSFORMATION OF THE GLOBAL ORDER* (2017); COLIN P. CLARKE, *AFTER THE CALIPHATE: THE ISLAMIC STATE & THE FUTURE TERRORIST DIASPORA* (2019); ABDEL BARI ATWAN, *ISLAMIC STATE: THE DIGITAL CALIPHATE* (2015).

⁵⁹ INMACULADA MARRERO ROCHA & HUMBERTO M. TRUJILLO MENDOZA, *JIHADISM, FOREIGN FIGHTERS AND RADICALIZATION IN THE EU: LEGAL, FUNCTIONAL AND PSYCHOSOCIAL RESPONSES* (2018).

⁶⁰ See WILLEM-JAN VAN DER WOLF & CLAUDIA TOFAN, *LAW AND WAR IN SYRIA: A LEGAL ACCOUNT OF THE CURRENT CRISIS IN SYRIA* (2013).

III. Conclusion

Syria emerged as a test of the system of international justice and the ability of the international community to deliver justice and accountability for the commission of international crimes on a massive scale and mid-conflict. It is never easy to shatter a culture of impunity for international crimes, and the situation in Syria has proven to be particularly intractable. In the words of one international judge, “The evolution of international criminal justice was never and will never be a linear progress.”⁶¹ Although the international community missed the opportunity up front to fully integrate a justice component into its response to the Syrian conflict, it now has a chance to use the reconstruction process to create a path to accountability by conditioning aid on Syria’s cooperation with future transitional justice and accountability efforts, and with those already underway, including domestic prosecutions in Europe.⁶² As the international community begins to absorb the inevitability of Assad remaining in power, it remains to be seen whether justice will be a priority at the back end of this horrific conflict.

⁶¹ Bertram Schmitt, *ICC Judge Schmitt Counsels Resilience to Preserve International Justice*, JUST SECURITY (Feb. 13, 2019).

⁶² Melinda Rankin, *A Road Map for Germany: Negotiating a Path to Accountability with Assad*, PEACELAB BLOG (Dec. 18, 2018).