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## **Imagining justice for Syria : water always finds its way**

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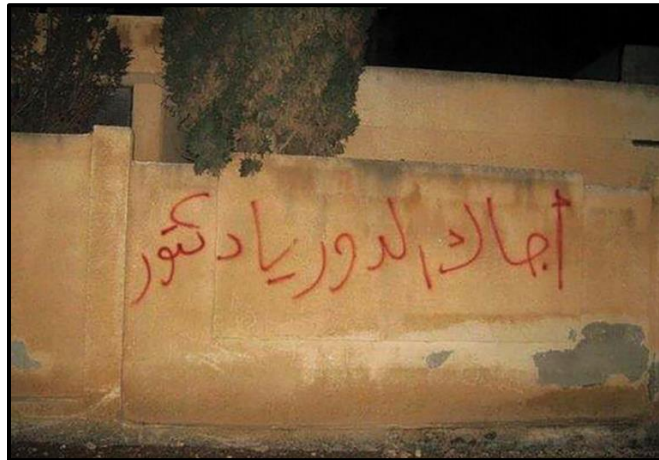
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## A Short History if a Long Conflict: From Revolution to Atrocity

*If Hafez al-Assad was held accountable for the Hama, Aleppo, Al Shoghor Bridge, and Tadmur massacres, would his son dare to do what he has done? I do not think so.*<sup>1</sup>

This is a conflict that began with—and has been characterized by—the torture of children.<sup>2</sup> Early in the revolution, some teenagers allegedly painted revolutionary slogans on a school wall in Dara'a: “It’s your turn, Doctor,” they wrote, referring to President Bashar al Assad, who trained as an ophthalmologist. The presumed culprits were rounded up and tortured.<sup>3</sup> Later, the mutilated corpse of another boy who had been arrested at a protest, thirteen-year-old Hamza Ali al-Khateeb, was returned to his parents a month after his arrest. In a postmortem video that depicted the extent of the child’s abuse, a Syrian activist demanded, “Where are human rights? Where are the international tribunals?”<sup>4</sup> These are the very questions that animate this dissertation.



This chapter provides a short, and necessarily incomplete, history of the Syrian uprising and the conflict that followed, touching upon critical moments that have led to, and marked, this protracted, bloody, and ultimately crushed revolution.<sup>5</sup> Chapter 3 elaborates upon this history

<sup>1</sup> Craig Charney & Christine Quirk, *Post-Conflict Accountability: “Whoever Committed a Crime Should Be Accountable,”* in Craig Charney & Christine Quirk, “HE WHO DID WRONG SHOULD BE ACCOUNTABLE”: SYRIAN PERSPECTIVES ON TRANSITIONAL JUSTICE (2014) (quoting an anti-regime Sunni IDP in Raqqa).

<sup>2</sup> LAWYERS & DOCTORS FOR HUMAN RIGHTS, NO SILENT WITNESSES: VIOLATIONS AGAINST CHILDREN IN SYRIAN DETENTION CENTRES (Dec. 2019).

<sup>3</sup> David Burke, *The Boy Whose Graffiti Changed the World*, DAILY MAIL, Mar. 14, 2017. The photograph above appeared in J. Michael Waller, *Weaponizing Ridicule*, MILITARY L. REV. 49, 52 (Sept.-Oct. 2017).

<sup>4</sup> Liam Stack, *Video of Tortured Boy’s Corpse Deepens Anger in Syria*, N.Y. TIMES, May 30, 2011.

<sup>5</sup> Members of the media, think-tanks, and academics have produced a number of useful timelines and narrative accounts of this unfolding tragedy, but the definitive history of the conflict remains to be written. *See generally Syria Profile - Timeline*, BBC, Feb. 7, 2018; Ben Atherton, *Timeline: Syria and the Assads*, ABC, Mar. 8, 2012; *Syria, Timeline of the Civil War and US Response*, ABC, Feb. 22, 2018; Anup Kaphle, *Timeline: Unrest in Syria*, WASH. POST, Jan. 20, 2014; *Syrian Civil War Timeline: Tracking Five Years of Conflict*, INDEPENDENT, Mar. 13,

through a close read of proceedings before the U.N. Security Council. Other key moments concerned with the promotion of accountability are discussed in greater detail elsewhere in this volume. All told, this is a story of unprecedented violence against civilians, great-power maneuverings reminiscent of the Cold War, the flouting of the once sacrosanct taboo against the use of chemical weapons, and the destruction of Aleppo, Palmyra, and other irreplaceable sites of an ancient mosaic culture. The conflict as a whole has placed key precepts of international law—including the global commitment to ensuring accountability for mass atrocities—under severe strain.

## Post-Independence Syria & The Rise of the House of Assad

Syria's modern history is marked by instability, violence, and repression, and the Assad family has been at the center of Syrian politics for much of it.<sup>6</sup> In 1946, Syria won its independence after being carved out of the Ottoman Empire. The 1958 unification of Syria and Egypt into the fleeting United Arab Republic produced deep dissatisfaction within Syria, which eventually seceded and re-established the autonomous Syrian Arab Republic in 1961.<sup>7</sup> A state of emergency was declared in 1963, which gave the security forces broad powers to restrict citizens' rights. At the time, Bashar al-Assad's father, Hafez al-Assad—the descendent of a modest Alawite family—was a lieutenant in the Air Force and a ranking member of the Ba'ath Party, whose power and influence rendered Syria essentially a one-party state.<sup>8</sup> Hafez rose through the ranks of the Syrian military forces, being promoted to general in 1964, then commander-in-chief of the Air Force in 1965, and then Minister of Defense the next year.<sup>9</sup> He lived through an internal party coup in 1966 and the Israeli seizure of the Golan Heights during the 1967 Six-Day War. He then launched his own bloodless coup in 1970, overthrowing President Nur al-Din al-Atasi and much of the Ba'ath Party civilian leadership.<sup>10</sup>

Once in power, Assad was ruthless about consolidating his authority, suppressing internal dissent, and using patronage politics and manipulation of the welfare state to maintain power.<sup>11</sup> He rebuilt Syria's military by installing Alawites in leadership positions and established multiple—and competing—intelligence services (the *Mukhabarat*), which surveilled each other as well as the Syrian populace. “Syrians had long ago internalized the *mukhabarat*, even in the diaspora. It was a fear rooted in the belief that they had unlimited reach.”<sup>12</sup> The 1973 Constitution declared the Ba'ath Party to be the leading party of the State and society.<sup>13</sup> In the late 1970s, this constitutional hegemony provoked a series of uprisings that included terrorist acts attributed to the

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2016; *Syria Civil War Timeline: A Summary of Critical Events*, DW; *Uprising in Syria, 2011-*, ENCYCLOPEDIA BRITANNICA.

<sup>6</sup> See SAMI M. MOUBAYED, *STEEL & SILK: MEN AND WOMEN WHO SHAPED SYRIA: 1900–2000* (2006).

<sup>7</sup> DEFENSE AND SECURITY: A COMPENDIUM OF NATIONAL ARMED FORCES AND SECURITY POLICIES 793 (Karl DeRouen, Jr. & Uk Heo eds., 2005).

<sup>8</sup> *Profile: Syria's Ruling Baath Party*, BBC, July 9, 2012.

<sup>9</sup> Neil MacFarquhar, *Hafez al-Assad, Who Turned Syria Into a Power in the Middle East, Dies at 69*, N.Y. TIMES, June 11, 2011.

<sup>10</sup> *The Ba'ath Party in Syria*, HARV. DIVINITY SCH., <https://rlp.hds.harvard.edu/faq/baath-party-syria> (last visited Feb. 11, 2018).

<sup>11</sup> See generally DAVID W. LESCH, *SYRIA: THE FALL OF THE HOUSE OF ASSAD* (2013).

<sup>12</sup> ALIA MALEK, *THE HOME THAT WAS OUR COUNTRY: A MEMOIR OF SYRIA* 189 (2017).

<sup>13</sup> Permanent Constitution of the Syrian Arab Republic art. 8, Mar. 13, 1973, [http://www.servat.unibe.ch/icl/sy00000\\_.html](http://www.servat.unibe.ch/icl/sy00000_.html).

Muslim Brotherhood and other Sunni Islamists.<sup>14</sup> This sectarian violence prompted a brutal response, particularly in January and February 1982, when Hafez crushed a Sunni uprising in Hama, leveling much of the Old City.<sup>15</sup> It is estimated that the army slaughtered upwards of 10,000 civilians—likely many more, but the final death toll remains unknown and unknowable.<sup>16</sup> These “events” (as they are called) have long stood as a warning to would-be dissidents. The massacre evoked little in the way of international reaction; the charitable explanation is that information was scarce and inexact.<sup>17</sup> Hama was followed by decades of repression characterized by gross human rights violations, including arbitrary arrests and detentions, systemic torture, forced disappearances, and summary executions as state policy.<sup>18</sup> After surviving several assassination and coup attempts (including one by his own brother),<sup>19</sup> Hafez died in 2000 of a heart attack.

Meanwhile, Hafez’s second son, Bashar al-Assad, pursued a medical degree in ophthalmology and then studied abroad in the United Kingdom.<sup>20</sup> After Hafez’s eldest son and heir-apparent was killed in a car accident in 1994, Assad *fills* returned to Syria and was eventually made a lieutenant colonel in the army. Upon his father’s death, Assad was nominated to the Presidency by the Ba’ath Party, which necessitated a legislative amendment given his youth. After an election in which he ran unopposed, Assad became president of the Syrian Arab Republic in July 2000, continuing the Assad dynasty.<sup>21</sup> His inaugural speech hinted he might be willing to change course when it came to political freedoms and civil rights. Early moves—such as measures aimed at economic liberalization,<sup>22</sup> the release of political prisoners, and certain overtures to the West—suggested cautious reforms could replace his father’s unbending authoritarianism.<sup>23</sup> This period of time—dubbed the “Damascus spring”—inspired a flourishing of civic discourse and opposition activism within civil society.<sup>24</sup> Nonetheless, renewed crackdowns on sources of dissent

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<sup>14</sup> Liad Porat, *The Syrian Muslim Brotherhood and the Asad Regime*, CROWN CTR. FOR MIDDLE EAST STUD. (Dec. 2010).

<sup>15</sup> Jason Rodrigues, *1982: Syria’s President Hafez al-Assad Crushes Rebellion in Hama*, THE GUARDIAN, Aug. 1, 2011.

<sup>16</sup> Deborah Amos, *30 Years Later, Photos Emerge From Killings in Syria*, NPR, Feb. 2, 2012; Azmat Khan, *The Troubled History of Hama, Syria*, FRONTLINE, June 7, 2012 (citing estimates of 10,000 to 30,000 dead).

<sup>17</sup> See *Syria: Bloody Challenge to Assad*, TIME, Mar. 8, 1982 (a contemporaneous account suggesting only 1,000 dead); *Like Father, Like Son—Tyranny in Syria, A Massacre in Hama*, ASSOC. FOR DIPLOMATIC STUD. & TRAINING, <https://adst.org/2015/06/like-father-like-son-tyranny-in-syria-a-massacre-in-hama/>.

<sup>18</sup> See generally U.S. Dep’t of State, Bureau of Democracy, H.R. and Lab., *1999 Country Reports on Human Rights Practices—Syria* (Feb. 23, 2000); *Human Rights Watch World Report 2000—Syria*, HUMAN RIGHTS WATCH (Dec. 1, 1999).

<sup>19</sup> Brian Whitaker, *Syrian Heir Disputed by Uncle in Exile*, THE GUARDIAN, June 12, 2000.

<sup>20</sup> *Profile: Bashar al-Assad*, AL JAZEERA, Oct. 25, 2011.

<sup>21</sup> Assad has been re-elected ever since in elections denounced as mere “farce.” *John Kerry: Syrian President Election a “Farce,”* CBS NEWS, May 15, 2014 (“Assad’s elections are a farce. They’re an insult. They are a fraud on democracy, on the Syrian people and on the world.”).

<sup>22</sup> Deborah Amos, *Syrian Official Pushes for Economic Reform*, NPR, Aug. 2, 2005; Deborah Amos, *Once-Socialist Damascus Displays New Wealth, Glitz*, NPR, Feb. 5, 2008.

<sup>23</sup> See U.N. SCOR, 66th Sess., 6524th mtg., U.N. Doc. S/PV.6524 (Apr. 27, 2011) (briefing by Lynn Pascoe, Under-Secretary for Political Affairs, on Assad’s mix of reforms and repression).

<sup>24</sup> Carnegie Middle East Center, *The Damascus Spring*, DIWAN (Apr. 1, 2012).

and the withdrawal of minor reforms suggested more continuity than change.<sup>25</sup> “Like father, like son,” as the saying goes.<sup>26</sup>



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### The Arrival & Decline of the Arab Spring

Many thought that the Syrian police state would be immune to the Arab Spring, including Bashar al-Assad who believed that “a form of Syrian exceptionalism ... would shield it from serious popular unrest.”<sup>27</sup> Indeed, Syrians had felt the warmth of spring in the recent past, but it had proven to be illusory. Nonetheless, following uprisings in Tunisia, Egypt, and Libya, the winds of revolution arrived in Syria in March 2011.<sup>28</sup> Demonstrators held simultaneous Days of Dignity and of Rage in Damascus and Dara’a, respectively, to demand the release of political prisoners, greater press freedoms, and the end of the state of emergency, which had been in place for decades.<sup>29</sup> Although the protests were largely peaceful, the army over-reacted, particularly in Dara’a,<sup>30</sup> by deploying troops and tanks and by opening fire on civilians. Protesters quickly innovated, inventing the “airplane demonstration”—during which demonstrators would chant for several minutes and then take flight before the security services could arrive—or convene at an

<sup>25</sup> See U.S. Dep’t of State, Bureau of Democracy, H.R., and Lab., Country Reports on Human Rights Practices—Syria (offering annual assessments from 2000 onward, each year Bashar has led the country).

<sup>26</sup> U.N. SCOR, 67th sess., 6711th mtg., U.N. Doc. S/PV.6711 (Feb. 4, 2012), at 3 (statement of France) (“The father killed on a mass scale; the son has followed in his footsteps.”).

<sup>27</sup> INTERNATIONAL CRISIS GROUP, POPULAR PROTEST IN NORTH AFRICA AND THE MIDDLE EAST (VI): THE SYRIAN PEOPLE’S SLOW-MOTION REVOLUTION, at i, July 6, 2011.

<sup>28</sup> See generally CARSTEN WIELAND, SYRIA, A DECADE OF LOST CHANCES: REPRESSION AND REVOLUTION FROM DAMASCUS SPRING TO ARAB SPRING (2012); Leila Fadel, *Assad Blames Protests on ‘Vandalism,’ ‘Saboteurs,’* WASH. POST, June 20, 2011.

<sup>29</sup> See WILLEM VAN DER WOLF & CLAUDIA TOFAN, LAW AND WAR IN SYRIA: A LEGAL ACCOUNT OF THE CURRENT CRISIS IN SYRIA (2013).

<sup>30</sup> See, e.g., HUMAN RIGHTS WATCH, “WE’VE NEVER SEEN SUCH HORROR”: CRIMES AGAINST HUMANITY BY SYRIAN SECURITY FORCES (2011) (discussing violence in Dara’a Governorate).

agreed upon time and place wearing the same color to demonstrate the size of the opposition.<sup>31</sup> Assad's first speech to Parliament offered little in the way of concessions.<sup>32</sup> Over time, Assad announced some conciliatory measures, including the lifting of the odious state of emergency and the release of some prisoners. Although the latter move was billed as a concession, some members of the opposition insist that those released held the most extremist positions, which contributed to the radicalization of emergent armed groups. In any case, the uprisings spread, consuming suburbs of Damascus, Dara'a, Hama, and Homs—the latter of which became the epicenter of the revolution.<sup>33</sup> The memory of the 1982 Hama massacre remained fresh in the minds of the older generations; indeed, early in the revolution, someone tweeted: "Homs 2011 = Hama 1982, but slowly, slowly."<sup>34</sup>

As localized protests morphed into a nationwide uprising, the military and security forces continued to react with excessive force, a response that eventually devolved into "a scorched earth counterinsurgency" campaign.<sup>35</sup> Violence by paramilitaries and pro-government militia, the dreaded *shabiha*, gave the government deniability for some of the worst atrocities.<sup>36</sup> Many government personnel—including Prime Minister Riyad Farid Hijab in August 2011<sup>37</sup> alongside myriad members of the police and military—either secretly helped the demonstrators, defected to the opposition, or left the country to avoid complicity in abuses.<sup>38</sup> Others fled to escape mandatory conscription. Violence became increasingly sectarian, with many Alawites and other religious minorities becoming convinced their collective survival depended upon Assad remaining in power.<sup>39</sup> Against these escalating tensions, Assad launched a constitutional reform and referendum effort in February 2012, which resulted in a new Constitution that purported to allow some additional political parties, although it did not significantly curtail presidential powers.<sup>40</sup> Although these gestures came far too late, were too one-sided in execution, did not respond to other legitimate grievances, and were ultimately ineffective against the momentum of the demonstrations, they did mark some of the few peaceful efforts by the government to respond to the uprising. Ultimately, protesters' demands morphed into calls for Assad's removal, which constricted space for additional concessions.

Any hope that this conflict might be on a path towards resolution, or at the least remain a battle between armed actors, was shattered on May 25, 2012, when the news emerged of a massacre, committed by way of door-to-door executions, in the region known as El-Houla that resulted in the death of a hundred civilians, mainly from two extended families.<sup>41</sup> Many of the victims—including fifty children—were killed execution-style at point-blank range or in a play of

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<sup>31</sup> WENDY PEARLMAN, *WE CROSSED A BRIDGE AND IT TREMBLED* 78 (2017). For a discussion of how the Syrian revolution unfolded, see Wendy Pearlman, *Moral Identity and Protest Cascades*, 48 *BRIT. J. POL. SCI.* 877 (2018).

<sup>32</sup> Katherine Marsh, *Assad Blames Conspirators for Syrian Protests*, *THE GUARDIAN*, Mar. 30, 2011.

<sup>33</sup> Malek, *supra* note 12, at 193.

<sup>34</sup> Caitlin Fitz Gerald, *Syria: Is Homs 2011 Hama 1982 in Slow Motion?*, CNN, Nov. 29, 2011.

<sup>35</sup> SYRIA'S MUTATING CONFLICT, INTERNATIONAL CRISIS GROUP 6 (2012).

<sup>36</sup> *Syria Unrest: Who are the Shabiha?*, BBC, May 29, 2012.

<sup>37</sup> Damien Cave & Dalal Mawad, *Ex-Premier Says Syrian Government is Falling Apart*, *N.Y. TIMES*, Aug. 14, 2012.

<sup>38</sup> *Interactive: Tracking Syria's Defections*, *AL JAZEERA*, July 30, 2012.

<sup>39</sup> See Simon Adams, *The World's Next Genocide*, *N.Y. TIMES*, Nov. 15, 2012.

<sup>40</sup> THE CONSTITUTION OF THE REPUBLIC OF SYRIA (Feb. 26, 2012), <https://www.refworld.org/docid/5100f02a2.html>.

<sup>41</sup> *Houla: How a Massacre Unfolded*, BBC, June 8, 2012. For a summary of international responses, see Int'l Coal. For the Responsibility to Protect, *Crisis Update: Massacre in Syria renews calls for immediate action to halt violence* (May 30, 2012).

bullets in their homes.<sup>42</sup> The Security Council unanimously condemned the massacre,<sup>43</sup> and the U.N. Human Rights Council deployed its Commission of Inquiry (COI) to undertake a special investigation with an eye towards holding the perpetrators accountable.<sup>44</sup> These events also activated the U.N. human rights treaty bodies, with the U.N. Committee Against Torture and the U.N. Committee on the Rights of the Child both weighing in with their own condemnation of the events.<sup>45</sup> The massacre, which by many accounts was the work of the *shabiha*, also inspired some of the first calls to refer the situation in Syria to the International Criminal Court.<sup>46</sup> For its part, the Syrian government cynically convened an inquiry that blamed the incident on “terrorists.”<sup>47</sup>

The Human Rights Council’s COI initially presented three hypotheses as to who was responsible for El-Houla: the *shabiha* operating with the acquiescence, if not support, of government forces; opposition forces seeking to escalate the conflict or punish individuals who had withheld their support; or foreign elements with unknown affiliation.<sup>48</sup> The COI indicated—with what now appears to be misplaced optimism—its intention to save evidence for future accountability purposes.<sup>49</sup> It later concluded that there were “reasonable grounds to believe” that the government was responsible for the massacre and that no evidence supported Assad’s version of events.<sup>50</sup> With the benefit of hindsight, this incident portended the level of brutality that this conflict would eventually achieve.

### **The Initial Response of the International Community**

Relations between Syria and the West have long been fraught.<sup>51</sup> Syria has been on the United States’ list of state sponsors of terrorism since 1979.<sup>52</sup> Its prolonged alignment with Iran and meddling in Lebanon earned it a place in the United States’ sanctions program in 2004.<sup>53</sup> At first, the international community was relatively united in condemning Assad’s reaction to the

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<sup>42</sup> Stephanie Nebehay, *Most Houla Victims Killed in Summary Executions: U.N.*, REUTERS, May 29, 2012.

<sup>43</sup> Security Council Press Statement on Attacks in Syria, U.N. Doc. SC/10658 (May 27, 2012); Rory Carrol & Matt Williams, *Syria Condemned by UN Security Council for Houla Massacre*, THE GUARDIAN, May 27, 2012.

<sup>44</sup> Human Rights Council, *The Deteriorating Situation of Human Rights in the Syrian Arab Republic, and the Recent Killings in El-Houleh*, U.N. Doc. A/HRC/RES/S-19/1, ¶ 8 (June 4, 2012).

<sup>45</sup> Oral Update of the Independent International Commission of Inquiry on the Syrian Arab Republic, U.N. Doc. A/HRC/20/CRP.1, ¶ 33 (June 26, 2012).

<sup>46</sup> Carrol & Williams, *supra* note 43.

<sup>47</sup> A/HRC/20/CRP.1, *supra* note 45, ¶¶ 26–30; *see also* Neil MacFarquhar, *Assad Condemns Houla Massacre, Blaming Terrorists*, N.Y. TIMES, June 3, 2012.

<sup>48</sup> A/HRC/20/CRP.1, *supra* note 45, ¶ 48.

<sup>49</sup> *Id.* ¶ 60.

<sup>50</sup> Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, U.N. Doc. A/HRC/21/50, ¶¶ 44–50 (Aug. 15, 2012).

<sup>51</sup> *See* ANDREW TABLER, *IN THE LION’S DEN: AN EYEWITNESS ACCOUNT OF WASHINGTON’S BATTLE WITH SYRIA* (2011).

<sup>52</sup> *State Sponsors of Terrorism*, U.S. DEP’T OF STATE, <https://www.state.gov/j/ct/list/c14151.htm> (last visited Feb. 9, 2019).

<sup>53</sup> Exec. Order No. 13338, *Blocking Property of Certain Persons and Prohibiting the Export of Certain Goods to Syria*, 69 Fed. Reg. 26751 (May 13, 2004). Indeed, Syria had long interfered in Lebanon viewing it as an extension of its own territory. With a significant push from the U.N. Security Council, the Special Tribunal for Lebanon opened its doors in 2009 to prosecute the perpetrators of the assassination and related acts of terrorism. S.C. Res. 1757, ¶ 3, U.N. Doc. No. S/RES/1757 (May 20, 2007). Unable to gain custody over the accused, the Tribunal is proceeding *in absentia* against four defendants (a fifth was killed in battle in Syria where he allegedly commanded Hezbollah forces). *Hariri Assassination Suspects ‘On the Run’ as Lebanon Tribunal Nears End*, ALARABY, Sept. 9, 2018; *Hezbollah Commander Badreddine Killed in Syria*, BBC, May 13, 2016.



uprising.<sup>54</sup> Even Russia and China were critical of Assad's disproportionate response, although Russia's rhetoric regularly bestowed equal condemnation on terrorist elements and foreign interference.<sup>55</sup> The U.N. Human Rights Council began holding a series of special sessions devoted to Syria, resulting in the establishment of a Fact-Finding Mission (FFM)<sup>56</sup> and then a COI<sup>57</sup> to document the abuses and identify those responsible with an eye towards future accountability. Assad largely denied unfettered territorial access to these missions as well as to many humanitarian groups, exacerbating the crisis.<sup>58</sup> By September 2011, the FFM described the violence in Syria as rising to the level of crimes against humanity.<sup>59</sup> The COI followed suit and continues to issue harrowing reports. Hundreds of names of potential perpetrators have been compiled and remain under seal at the U.N. Office of the High Commissioner for Human Rights.<sup>60</sup>

The United States and the European Union (EU) initially reacted to the escalation of violence with waves of additional sanctions against Syrian officials and entities.<sup>61</sup> These sanctions were later expanded to include Assad and others within his inner circle through various executive orders and the Caesar Syrian Civilian Protection Act of 2019, which was integrated into the 2019 National Defense Authorization Act.<sup>62</sup> Syrian oil imports were banned on August 17, 2011.<sup>63</sup> In August 2011, President Barack Obama and other world leaders called upon Assad to step down.<sup>64</sup> It has been argued that this stance emboldened the opposition, made it more difficult to conceptualize inclusive options for resolving the conflict in which all sides have a stake in the outcome, encouraged the Gulf states to flood the opposition with resources, and created unrealistic expectations that NATO would commence airstrikes to forcibly remove a pariah leader, as it had done in Libya.<sup>65</sup> At the same time, the comment could be interpreted to be a call for a negotiated political process, although even then, it was difficult to imagine a return to normalcy with so much blood on Assad's hands.

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<sup>54</sup> See MARTY HARRIS, INTERNATIONAL RESPONSES TO THE SYRIAN UPRISING: MARCH 2011–JUNE 2012, PARLIAMENT OF AUSTRALIA (2012), [https://www.aph.gov.au/About\\_Parliament/Parliamentary\\_Departments/Parliamentary\\_Library/pubs/BN/2012-2013/SyrianUprising#\\_ftnref27](https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/2012-2013/SyrianUprising#_ftnref27).

<sup>55</sup> See U.N. SCOR, 66th Sess., 6524th mtg., U.N. Doc. S/PV.6524, at 7 (Apr. 27, 2011) (“Like other members of the Security Council, the Russian Federation views with great concern the increasing tension and manifestations of confrontation in Syria, which are claiming victims and causing suffering among the demonstrators, law enforcement personnel and the army.”) (statement of Russia).

<sup>56</sup> See U.N. Doc. A/HRC/RES/S-16/1 (Apr. 29, 2011).

<sup>57</sup> See U.N. Doc. A/HRC/RES/S-17/1 (Aug. 23, 2011).

<sup>58</sup> Kersten Knipp, *Assad Cannot Legally Deny Humanitarian Aid, Study Finds*, DEUTSCHE WELLE, May 7, 2014.

<sup>59</sup> See Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in the Syrian Arab Republic, U.N. Doc. A/HRC/18/53, ¶ 69 (Sept. 15, 2011) (describing patterns of violence that may amount to crimes against humanity).

<sup>60</sup> Margaret Besheer, *UN Commission May Name Alleged War Criminals in Syria*, VOA, Feb. 20, 2015.

<sup>61</sup> See, e.g., Exec. Order No. 13572, Blocking Property of Certain Persons With Respect to Human Rights Abuses in Syria, 76 Fed. Reg. 24787 (May 3, 2011) (targeting three Syrian officials—including Ali Mamluk, the director of the Syrian General Intelligence Directorate—the Intelligence Directorate itself, and the Iranian Islamic Revolutionary Guard Corps for providing material support to the Syrian government); Exec. Order No. 13573, Blocking Property of Senior Officials of the Government of Syria, 76 Fed. Reg. 29143 (May 20, 2011).

<sup>62</sup> Deborah Amos, *Congress Authorizes Sanctions on Syria, Iran and Russia*, NPR (Dec. 17, 2019); H.R. 31: Caesar Syria Civilian Protection Act of 2019, <https://www.govtrack.us/congress/bills/116/hr31/text>.

<sup>63</sup> Exec. Order No. 13582, Blocking Property of the Government of Syria and Prohibiting Certain Transactions with respect to Syria, 76 Fed. Reg. 52209 (Aug. 22, 2011).

<sup>64</sup> Jason Ukman & Liz Sly, *Obama: Syrian President Assad Must Step Down*, WASH. POST, Aug. 18, 2011.

<sup>65</sup> Javier Solana, *The Demise of Western Illusions in Syria*, JORDAN TIMES, Jan. 28, 2019.

The League of Arab States reacted in kind and, in a bold move, suspended Syria's membership in November 2011.<sup>66</sup> The League also imposed a travel ban and asset freeze on top Syrian officials<sup>67</sup> and launched an unprecedented, if short-lived, Observer Mission.<sup>68</sup> In February 2012, the United States shuttered its embassy in Damascus after Assad supporters managed to scale the walls.<sup>69</sup> Ambassador Robert S. Ford, who had left Syria briefly in October 2011 for security reasons, permanently returned to Washington, D.C., where he continued to work on Syrian issues until 2014, ultimately becoming the U.S. representative to the opposition.<sup>70</sup> After the El-Houla massacre in May 2012, the Obama Administration expelled the Syrian *chargé d'affaires*.<sup>71</sup> Secretary of State Hillary Rodham Clinton called upon states to join the Friends of the Syrian People (FOSP), an alliance dedicated to standing by the people, not the government. Clinton also pledged support for an accountability effort in April 2012, which became the Syria Justice and Accountability Center (SJAC). In July 2012, the U.S. Treasury Department authorized the Syrian Support Group to raise funds for the Free Syrian Army.<sup>72</sup>

### **The Opposition's Perpetual Rearrangements**

Finding a reliable partner for multilateral engagement within the opposition emerged as a perennial challenge for the international community, particularly once the conflict metastasized; the opposition splintered and then oscillated among different alliances; and *jihadi* elements entered the mix. Although Syrian civil society had been significantly weakened under the Assads' rule, protesters did begin to organize as the revolution unfolded. Hundreds of Local Coordination Committees (LCCs) (*tansiqiyat*) cropped up to disseminate information, coordinate anti-regime protests, and distribute humanitarian relief.<sup>73</sup> Turkey played host to meetings of the Syrian National Council (SNC), a nascent opposition umbrella organization originally aligned with the LCCs. As the SNC devolved into in-fighting, lost credibility, and failed to unite the opposition,<sup>74</sup> the National Coalition for Syrian Revolutionary and Opposition Forces (or the Syrian Opposition Coalition (SOC) for short) emerged from a 2012 meeting in Doha, Qatar, as a rival, and more expansive, representative of the revolution, although there was considerable overlap between the two organizations.<sup>75</sup> Elements of the international community—including the United States, the United Kingdom, Turkey, France, and the Gulf States—eventually recognized the SOC as “the legitimate representative” of the Syrian people.<sup>76</sup> (A number of states—including the United

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<sup>66</sup> Neil MacFarquhar, *Arab League Votes to Suspend Syria Over Crackdown*, N.Y. TIMES, Nov. 12, 2011.

<sup>67</sup> See U.N. SCOR, 67th Sess., 6710th mtg., U.N. Doc. S/PV.6710 (Jan. 31, 2012) (recounting briefings by the Prime Minister of Qatar and the Secretary-General of the League of Arab States on the League's activities vis-à-vis Syria).

<sup>68</sup> LEAGUE OF ARAB STATES OBSERVER MISSION TO SYRIA, REPORT OF THE HEAD OF THE LEAGUE OF ARAB STATES OBSERVER MISSION TO SYRIA FOR THE PERIOD FROM 24 DECEMBER 2011 TO 18 JANUARY 2012 (2012); see *Arab League Suspends Syria Observer Mission*, VOA, Jan. 27, 2012.

<sup>69</sup> Anthony Shadid, *U.S. Embassy in Syria Closes as Violence Flares*, N.Y. TIMES, Feb. 6, 2012. The Czech Republic now serves as the United States' Protecting Power. Emily Tamkin, *Americans, Need Help in Syria? Call the Czechs*, FOREIGN POLICY, Aug. 4, 2017.

<sup>70</sup> Michael R. Gordon, *U.S. Representative to Syrian Opposition is Retiring*, N.Y. TIMES, Feb. 4, 2014.

<sup>71</sup> For a detailed discussion of U.S. policy in Syria, see CARLA E. HUMUD ET AL., CONG. RESEARCH SERV., RL33487, ARMED CONFLICT IN SYRIA: OVERVIEW AND U.S. RESPONSE 9 (Mar. 25, 2019) [hereinafter *CRS Report*].

<sup>72</sup> *How Safe Are Donations to Syrian Rebels?*, NPR, Aug. 9, 2012.

<sup>73</sup> Carnegie Middle East Center, *Local Coordination Committees of Syria*, DIWAN (Dec. 20, 2012).

<sup>74</sup> See *Guide to the Syrian Opposition*, BBC, Oct. 17, 2013.

<sup>75</sup> Carnegie Middle East Center, *National Coalition for Syrian Revolutionary and Opposition Forces*, DIWAN (Jan. 11, 2013). The SOC was also represented within the Arab League.

<sup>76</sup> Stefan Talmon, *Recognition of Opposition Groups as Legitimate Representative of a People*, 12 CHINESE J. INT'L L. 219 (2013) (discussing the international community's political recognition of the Coalition).

States—hedged at first, recognizing the group as “a” legitimate representative).<sup>77</sup> Recognition can be significant, because it legitimates the group’s struggle against the *de jure* government, can enable certain forms of aid and assistance without running afoul of the principle of non-intervention, accord standing to the group within international organizations, and make frozen government assets available.<sup>78</sup>

Although members of the international community often bemoan the “divided opposition,” others who have worked with the Syrian opposition insist that this observation is overblown and an excuse articulated by international actors to justify their inaction. According to one observer who has participated in peace negotiations, “[t]he opposition is a collection of individuals from various political, ideological, and sociological backgrounds with a common belief that the Syrian government should be more representative and accountable with a firmer grounding in human rights (and often in agreement that this cannot be achieved with Assad in power)—it is inevitable that there are disagreements between them about how to achieve this.”<sup>79</sup>

Two hallmarks of the conflict’s first few years deserve mention. First is the fact that the protests of ordinary Syrians remained peaceful, even as the violence and atrocities around them escalated. Surprising to many, demonstrations even continued in the early days after the Islamic State in Iraq and the Levant (ISIL) took Raqqa. This commitment to the peaceful exercise of Syrian’s civil and human rights stands as a testament to the principles of justice, democracy, pluralism, and secularism underlying the revolution, particularly in the face of the government’s use of disproportionate force and the emergence of groups driven by religious extremism.

Second is the role of women in the revolution. One of the first people to start documenting atrocities—and training others to do so—was Razan Zaitouneh, a human rights lawyer with the Violations Documentation Center.<sup>80</sup> Zaitouneh—deemed an “icon of the revolution”<sup>81</sup> and a recipient of the prestigious Sakharov Prize—was instrumental in standing up the LCCs and building a network of activists working against the regime and against extremism within the opposition. She was disappeared in December 2013 in Douma, and her whereabouts remain unknown.<sup>82</sup> It was hoped that her fate would be revealed once government forces retook Tawbeh Prison in Douma in 2018, which had been occupied by the so-called Army of Islam (*Jaish al-Islam*), a hardline opposition group long suspected in her kidnapping. Alas, it was not to be, and the complete circumstances of her disappearance remain a mystery.<sup>83</sup> This may yet change, however. In early 2020, France charged a member of the Army of Islam—Majdi Mustafa Nameh a.k.a. Islam Alloush—with torture, forced disappearances, and war crimes in connection with Zaitouneh’s disappearance.<sup>84</sup> Although women have been the victims of war crimes and crimes

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<sup>77</sup> *Id.* at 221–23.

<sup>78</sup> Stefan Talmon, *Recognition of the Libyan National Transitional Council*, 16 ASIL INSIGHTS (June 16, 2011).

<sup>79</sup> Email from Betsy Popken, Special Counsel, Orrick, to author (Apr. 23, 2019) (on file with author).

<sup>80</sup> Razan Zaitouneh, VITAL VOICES, <https://www.vitalvoices.org/people/razan-zaitouneh/>; Razan Zaitouneh, FRONTLINE DEFENDERS, <https://www.frontlinedefenders.org/en/profile/razan-zaitouneh>.

<sup>81</sup> Nidal Bitari, Stanford University, February 20, 2019.

<sup>82</sup> Karam Nachar, *Who’s Afraid of Razan Zaitouneh?*, AL-JUMHURIYA (Dec. 9, 2017).

<sup>83</sup> Bassem Mroue, *Clues but no Answers in one of Syria War’s Biggest Mysteries*, FOX NEWS (Aug. 13, 2018).

<sup>84</sup> *France Arrests Syrian Islamist on War Crimes Charges*, FRANCE24, Jan. 31, 2020.

against humanity throughout the conflict—and they are often exclusively portrayed as such by the media—they have also been agents of the revolution since the beginning.<sup>85</sup>

### **The Warring Parties**

The violence in Syria remained starkly asymmetrical until late spring 2011 when an organized armed opposition, made up of Syrian army defectors and rebels drawn from the civilian ranks, began to coalesce and engage government forces. The Free Syrian Army (FSA) announced itself in July 2011 with an intent to protect peaceful protesters and resist the security forces.<sup>86</sup> Following a meeting organized by the FOSP, the FSA created a Supreme Joint Military Command of the Syrian Revolution in December 2012 to coordinate the operations of various insurgent groups on the ground and to improve communications with the nascent political opposition.<sup>87</sup> Much of the FSA's leadership was billeted in Turkey or Jordan; it remains a loose and fluid conglomeration of armed groups, often without a unified command.<sup>88</sup> Opposition forces began to attack military targets, such as an army base outside of Damascus, signaling their growing strength. Syrian government forces responded by bombarding opposition strongholds. Homs was particularly hard hit.

In June 2012, elements within the opposition began to hold territory and stand up quasi-governmental entities. In July 2012, members of the opposition successfully bombed the National Security headquarters in the heart of Damascus, killing a number of Assad's top aides including the Minister of Defense.<sup>89</sup> By mid-2012, the International Committee of the Red Cross (ICRC)<sup>90</sup> and U.N. observers<sup>91</sup> began describing events as a full-scale "civil war" subject to the international humanitarian law (IHL) governing non-international armed conflicts.<sup>92</sup> After the opposition won some tactical victories and gained control of several key cities in 2013, its fortunes reversed course. This was due in part to ineffective governance and the emergence of rival Islamist groups, such as the Nusra Front, that were unaligned with prior opposition forces and did not necessarily espouse the secular and pluralist ideals of the original revolution.<sup>93</sup> Also consequential at this point: Iran and Lebanese Hezbollah had come to Assad's defense.

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<sup>85</sup> See *Women in the Syrian Revolution*, PEACEFARE.NET (Sept. 30, 2013), <https://www.peacefare.net/2013/09/30/women-in-the-syrian-revolution/>; Elizabeth Hagedon & Hussein Akoush, *Syrian Revolution Changed how Women are Viewed in the Workplace*, PRI, Aug. 30, 2018.

<sup>86</sup> See generally Charles Lister, *The Free Syrian Army: A Decentralized Insurgent Brand*, BROOKINGS (Nov. 2016) (discussing the FSA's formation).

<sup>87</sup> ELIZABETH O'BAGY, *THE FREE SYRIAN ARMY* (2013).

<sup>88</sup> See Lucas Winter, *A Modern History of the Free Syrian Army in Daraa*, FMSO Monographs (Nov. 1, 2013).

<sup>89</sup> Neil MacFarquhar, *Syrian Rebels Land Deadly Blow to Assad's Inner Circle*, N.Y. TIMES, July 18, 2012.

<sup>90</sup> *ICRC Declares Syrian Conflict a Civil War*, CHANNEL 4 NEWS, July 15, 2012; Rogier Bartels, *Follow-Up on the Organisational Requirement: ICRC Statements and Conflict Qualification*, ARMED GROUPS AND INTERNATIONAL LAW (Aug. 10, 2012). The ICRC generally communicates confidentially with the parties at first, with an eye toward ensuring their respect for international humanitarian law, before making its classification determinations public. See *Internal Conflicts or Other Situations of Violence—What Is the Difference for Victims?*, ICRC (Dec. 10, 2012) (interview with Kathleen Lawand).

<sup>91</sup> Louis Charbonneau, *Syria Conflict now a Civil War, UN Peacekeeping Chief Says*, REUTERS, June 12, 2012.

<sup>92</sup> See JOSEPH HOLLIDAY, *THE ASSAD REGIME: FROM COUNTERINSURGENCY TO CIVIL WAR* (2013).

<sup>93</sup> The Nusra Front—considered to be the branch of Al Qaida operating in Syria—has also been known as Jabhat Fateh Al-Sham and then Hay'at Tahrir al-Sham. See Counter Extremism Project, *Nusra Front (Jabhat Fateh Al-Sham)*, <https://www.counterextremism.com/threat/nusra-front-jabhat-fateh-al-sham>. Its rebranding has been described as an effort to distance itself from Al Qaida, although some observers are skeptical. See Colin P. Clarke, *Al Qaeda in Syria Can Change Its Name, But Not Its Stripes*, RAND CORP. (Mar. 23, 2017).

By 2015, components of the armed opposition—which encompassed upwards of 1,500 different armed groups that can be plotted along a continuum of secular to Islamist to “*jihadist*”—had formed a second alliance under the banner of the Syrian Democratic Forces (SDF), a loose association dominated by Kurdish fighters in the form of People’s Protection Units (YPG).<sup>94</sup> The prominence of the latter, and their overt coordination with Western forces, endured as a source of vexation for Turkey. Indeed, Turkey, which views the Syrian Kurds as an extension of the Turkish Kurdish Workers’ Party (PKK) militia that shares its irredentist aims, has unilaterally engaged YPG forces in Syria.<sup>95</sup> Opposition groups made some advances in 2015, which precipitated Russia’s entrance into the conflict in September 2015.<sup>96</sup> As the war wore on, Assad either retook, or allowed opposition fighters to withdraw from, areas that had been under control of the ISIL or the opposition, such as Homs and Aleppo—all with Russian assistance.

### The Islamic State

The emergence of ISIL in Syria in April 2013 triangulated the violence, adding a new and brutal set of perpetrators into the mix while complicating the conflict’s geopolitics.<sup>97</sup> The presence of ISIL, and its exclusion from the various ceasefire attempts between the government and the opposition, has confounded efforts to bring a pause, no less an end, to the fighting to facilitate humanitarian aid and political dialogue.

ISIL traces its roots to Al Qaida in Iraq (AQI), originally founded by the late Abu Musab al-Zarqawi.<sup>98</sup> By February 2014, however, Al Qaida had officially cut ties with ISIL.<sup>99</sup> Eventually, AQI declined in significance in Iraq, but found new life in the Syria civil war. It rebranded itself multiple times: starting with the Islamic State of Iraq and al-Sham (ISIS), the Islamic State of Iraq and the Levant (ISIL), and finally the Islamic State to signal its global and sovereign aspirations.<sup>100</sup> Meanwhile, Syrians call the group *Da’esh*, a derogatory acronym derived from the group’s name in Arabic. In contrast to Al Qaida’s erstwhile affiliate in Syria, the Nusra Front, which has sometimes cooperated with rebel forces against the Assad government, ISIL has refused to align itself with groups it deems infidels, even if they share a common enemy.<sup>101</sup> ISIL’s largely unchallenged recruitment efforts inspired upwards of forty thousand foreign fighters from over a hundred countries to flock to the region.<sup>102</sup> ISIL’s ranks swelled with recruits whose reasons for joining the fight are as varied as they are astonishing: an ardent desire to help build the imagined

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<sup>94</sup> For a history of the SDF, see Dan Stigall, *The Syrian Detention Conundrum: International & Comparative Legal Complexities*, 11 HARV. NAT’L SEC. J. 54, 61-62 (2020).

<sup>95</sup> Terry D. Gill, *Classifying the Conflict in Syria*, 92 INT’L L. STUD. 353, 376 (2016). The PKK is a designated terrorist organization in the United States.

<sup>96</sup> Lister, *supra* note 86, at 9.

<sup>97</sup> See Cameron Glenn, *Timeline: The Rise, Spread and Fall of the Islamic State*, WILSON CTR. (July 5, 2016).

<sup>98</sup> Mary Anne Weaver, *The Short, Violent Life of Abu Musab al-Zarqawi*, THE ATLANTIC, July/Aug. 2006. See generally Ahmed S. Hashim, *The Islamic State: From Al-Qaeda Affiliate to Caliphate*, 21 MIDDLE EAST POL’Y COUNCIL J. 69 (2014).

<sup>99</sup> Liz Sly, *Al-Qaeda Disavows Any Ties with Radical Islamist ISIS Group in Syria, Iraq*, WASH. POST, Feb. 3, 2014. See generally Aaron Y. Zelin, *The War between ISIS and al-Qaeda for Supremacy of the Global Jihadist Movement*, WASH. INST. (June 2014).

<sup>100</sup> See *Mapping Militant Organizations, Syria*, Stanford University, <http://web.stanford.edu/group/mappingmilitants/cgi-bin/maps/view/syria>; Taylor Wofford, *ISIL, ISIS or IS? The Etymology of the Islamic State*, NEWSWEEK, Sept. 16, 2014.

<sup>101</sup> Lister, *supra* note 86, at 10.

<sup>102</sup> Robin Wright, *Are We Nearing the Endgame with ISIS?*, THE NEW YORKER (July 27, 2017) (interview with Brett McGurk, Special Presidential Envoy for the Global Coalition to Counter ISIS).

caliphate, the search for means or meaning, a quest to bring down Assad, an opportunity to test or attest to their faith, and love.<sup>103</sup>

ISIL declared a cross-border caliphate in June 2014, with Raqqa as its Syrian capital<sup>104</sup> and the late Abu Bakr al-Baghdadi—once imprisoned by U.S. troops in Iraq—as its leader.<sup>105</sup> At its peak, it was able to fly its ominous black flags over significant territory in Syria, holding roughly 25% of the country, exerting influence in 10 of the country’s fourteen governorates, and subjecting over eight million people to its cruel regime.<sup>106</sup> This reach gave it access to oil fields and refineries, priceless antiquities, and banks—all of which enriched its coffers to the tune of millions of dollars per month.<sup>107</sup> As it expanded its operations, ISIL followed a bureaucratic, systematized process, establishing “intelligence operations, followed by military operations, *dawa* (missionary) activities, *hisba* activities (moral policing and consumer protection), and governance.”<sup>108</sup> According to Aymenn al Tamimi, arguably the foremost translator and publisher of original ISIL documents:

after the declaration of the Caliphate, documentary evidence shows the emergence of various so-called *Diwans*: institutions corresponding to government departments or ministries. The image of governance presented is accordingly much more comprehensive, pointing to local administrations of various realms of daily life that may also answer to higher central departments whose authority in the issuing of edicts should span the entirety of Islamic State territory.<sup>109</sup>

In September 2014, the United States announced an international coalition to defeat ISIL<sup>110</sup> and began rolling back ISIL’s conquests in Iraq and then in Syria alongside Western, Syrian, SDF, and opposition forces, some of whom were simultaneously embattled with each other.<sup>111</sup> The SDF successfully attacked Raqqa in June 2017 with support from U.S. air strikes and special forces. By October 2017, ISIL’s one-time capital had been largely liberated,<sup>112</sup> with ISIL fighters evacuating with the protection of forced civilian shields.<sup>113</sup> Although successful at routing ISIL, the operation came at great cost to the civilian infrastructure and population.<sup>114</sup> In November 2017, the Syrian

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<sup>103</sup> Vera Mironova & Sam Whitt, *A Glimpse into the Minds of Four Foreign Fighters in Syria*, COMBATING TERRORISM CTR. (June 2014).

<sup>104</sup> See Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, *Rule of Terror: Living under ISIS in Syria*, U.N. Doc. A/HRC/27/CRP.3 (Nov. 14, 2014) at 13.

<sup>105</sup> Michael Pizzi, *In Declaring a Caliphate, Islamic State Draws a Line in the Sand*, AL JAZEERA, June 30, 2014.

<sup>106</sup> See CHARLES LISTER, *AL QAEDA, THE ISLAMIC STATE AND THE EVOLUTION OF AN INSURGENCY* 186 (2015).

<sup>107</sup> SETH G. JONES, ET AL., *ROLLING BACK THE ISLAMIC STATE* 20 (2017).

<sup>108</sup> Joby Warrick, et al., *The Rise of ISIS: ‘Remaining and Expanding,’* WASH. INST., Nov. 12, 2015 (statement of Aaron Zelin).

<sup>109</sup> Aymenn al-Tamimi, *The Evolution in Islamic State Administration: The Documentary Evidence*, 9 PERSPECTIVES ON TERRORISM 123 (August 2015).

<sup>110</sup> U.S. Dep’t of State, *The Global Coalition to Defeat ISIS*, <https://www.state.gov/s/seci/> (last visited Feb. 11, 2019); Claire Mills and Louisa Brooke-Holland, *House of Commons Briefing Paper No. 06995, ISIS/Daesh: The Military Response in Iraq and Syria*, July 7, 2015.

<sup>111</sup> Josie Ensor, *ISIL Defeated in its Last Syrian Town as Jihadists Mount Final Stand*, THE TELEGRAPH, Dec. 14, 2018.

<sup>112</sup> Anne Barnard & Hwaida Saad, *Raqqa, ISIS ‘Capital,’ Is Captured, US-Backed Forces Say*, N.Y. TIMES, Oct. 17, 2017.

<sup>113</sup> *Syrian Islamic State Fighters Evacuate Raqqa City—SDF*, REUTERS, Oct. 14, 2017.

<sup>114</sup> Amnesty International, *Syria: US-led Coalition ‘Deeply in Denial’ about Civilian Casualties in Raqqa*, July 17, 2018.

government declared victory over ISIL in Deir al-Zour, the epicenter of Syria's oil industry.<sup>115</sup> It was not until March 2019 that the last territorial stronghold in the village of Baghouz was liberated by the SDF and friends.<sup>116</sup> Clean up operations were launched to identify remaining ISIL loyalists, which may number in the thousands even as the physical caliphate is no more.<sup>117</sup>

Hundreds of detainees from upwards of 40 countries found themselves in SDF custody, and the United States began seeking their repatriation for the purpose of prosecution or other disposition in their countries of origin.<sup>118</sup> Concerns that many of these detainees have escaped and are poised to regroup have mounted following President Trump's surprise, and controversial, order to U.S. forces to withdraw in late 2018.<sup>119</sup> What to do with the families of ISIL fighters remains a dilemma, many of whom are languishing in refugee camps. Kosovo and some Central Asian states (notably Kazakhstan<sup>120</sup>) have taken back their citizens with little protest. By contrast, Western European states have resisted, at times allowing the most vulnerable (e.g., orphans) to return but revoking the citizenship of adults who traveled to the region.<sup>121</sup> Such moves threaten to render these individuals stateless, potentially in violation of international law. The 1961 Convention on the Reduction of Statelessness, for example, generally disallows for such revocations except under certain enumerated grounds, such as if the individual's nationality was procured by fraud, if the individual has "conducted himself in a manner seriously prejudicial to the vital interests of the State," or if an individual "has taken an oath, or made a formal declaration, of allegiance to another State, or given definitive evidence of his determination to repudiate his allegiance to the Contracting State"—all scenarios that might cover someone joining ISIL.<sup>122</sup> Other human rights instruments also speak to the right to a nationality.<sup>123</sup>

## War Crimes & Chemical Weapons

Amidst this ever-evolving conflict, evidence of war crimes mounted.<sup>124</sup> In January 2014, graphic images of industrial-grade torture and murder were smuggled out of the country by a forensic photographer code-named "Caesar."<sup>125</sup> U.S. intelligence later suggested that a crematorium was being used to dispose of the bodies.<sup>126</sup> Although torture in Syrian detention

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<sup>115</sup> *Syria Declares Victory over Islamic State in Deir al-Zor*, REUTERS, Nov. 3, 2017.

<sup>116</sup> Ben Wedeman & Lauren Said-Moorhouse, *ISIS has Lost its Final Stronghold in Syria, the Syrian Democratic Forces Says*, CNN, Mar. 23, 2019.

<sup>117</sup> Ellen Mitchel, *Experts Warn ISIS Still Has Up to 10,000 Loyalists in Syria, Iraq: Report*, THE HILL, Jan. 22, 2018.

<sup>118</sup> *Media Roundtable with General Joseph F. Dunford and Special Envoy Brett McGurk*, U.S. DEP'T OF DEF., Oct. 16, 2018.

<sup>119</sup> Daniel Byman, *Trump's Syria Pullout: A Quick Assessment*, LAWFARE (Dec. 20, 2018).

<sup>120</sup> See Stevan Weine, *Rehabilitating the Islamic State's Women and Children Returnees in Kazakhstan*, JUST SECURITY (Dec. 12, 2019).

<sup>121</sup> Letta Taylor, *Western Europe Must Repatriate its ISIS Fighters and Families*, HUMAN RIGHTS WATCH (June 21, 2019).

<sup>122</sup> U.N. Convention on the Reduction of Statelessness art. 8, Aug. 30, 1961, 989 U.N.T.S. 175. The Treaty is not well subscribed to, although many European states have acceded to it. See [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=V-4&chapter=5&clang=en#2](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=V-4&chapter=5&clang=en#2) (last visited Mar. 5, 2020).

<sup>123</sup> See generally Shiva Jayaraman, *International Terrorism and Statelessness: Revoking the Citizenship of ISIL Foreign Fighters*, 17 CHIC. J. INT'L L. 178, 191-193 (2016) (compiling human rights provisions).

<sup>124</sup> See generally Beth Van Schaack, *Mapping War Crimes in Syria*, 92 INT'L L. STUD. 282 (2016) (cataloguing war crimes being committed).

<sup>125</sup> HUMAN RIGHTS WATCH, SYRIA: STORIES BEHIND PHOTOS OF KILLED DETAINEES (2015).

<sup>126</sup> Kylie Atwood, *State Department Says Crematorium Installed at Syrian Prison*, CBS NEWS, May 15, 2017.

centers was by no means a new phenomenon,<sup>127</sup> these images offered stark evidence of the Assad regime's tried-and-true method for dealing with real or imagined dissent on an industrial scale. The government's depredations extended to the battlefield: government forces dropped barrel bombs from helicopters in civilian areas in breach of Security Council resolutions<sup>128</sup> and resorted to medieval-style siege warfare and the deliberate starvation of the civilian population.<sup>129</sup> Although the opposition began on the high road, and made deeds of commitment to adhere to IHL,<sup>130</sup> rebel elements have been associated with abuses<sup>131</sup>—although on a significantly lesser scale—including the kidnapping, torture, and summary execution of government forces<sup>132</sup> and the use of child soldiers.<sup>133</sup> ISIL significantly added to the mayhem; in addition to attacking civilians associated with the regime and the opposition, ISIL also established a transnational system of child soldiers and sexual slavery that included trafficking Yezidi women and children from Iraq into Syria.<sup>134</sup>

Given Syria's extensive pre-war stockpiles, the threat of chemical weapons use was ever-present as the conflict unfolded. It appears that chemical weapons were first used in December 2012 in Homs and then in March 2013 in the form of a sarin gas attack that killed twenty-six people in Khan al-Assal.<sup>135</sup> As these threats began to materialize, with rumors circulating there was activity at chemical weapons storage sites or even that the regime had begun mixing the precursors required to make sarin nerve gas, President Obama, in impromptu remarks, announced that the use of chemical weapons would cross a "red line" and change his calculus towards the conflict.<sup>136</sup> Specifically, he stated: "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. That would change my calculus; that would change my equation."<sup>137</sup> In August 2013, in Ghouta, a rebel-held suburb of Damascus, hundreds suffocated in another presumed attack, also involving sarin gas.<sup>138</sup> Following the emergence of graphic images of victims convulsing and foaming at the mouth, Obama began the process of seeking Congressional approval to respond militarily.<sup>139</sup> When it became clear from Congressional debates that this authority would not be forthcoming, Obama—not without controversy—withdrawn this threat and backed a deal brokered by Russia.<sup>140</sup> Obama's decision to turn the decision over to

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<sup>127</sup> See AMNESTY INTERNATIONAL, SYRIA TORTURE BY THE SECURITY FORCES (1987).

<sup>128</sup> See, e.g., S.C. Res. 2139, ¶ 3, U.N. Doc. S/RES/2139 (Feb. 22, 2014).

<sup>129</sup> See Beth Van Schaack, *Siege Warfare and the Starvation of Civilians as a Weapon of War and War Crime*, JUST SECURITY (Feb. 4, 2016).

<sup>130</sup> See generally Syria: 4 brigades of the Free Syrian Army commit to prohibit sexual violence and the use of child soldiers, GENEVA CALL (July 3, 2017).

<sup>131</sup> HUMAN RIGHTS WATCH, SYRIA: ARMED OPPOSITION GROUPS COMMITTING ABUSES (2012).

<sup>132</sup> Geneva Call, *supra* note 130.

<sup>133</sup> See Report of the Secretary-General, Children and Armed Conflict, U.N. Doc. A/72/865-S/2018/465 (May 16, 2018), at ¶¶ 184–87.

<sup>134</sup> HUMAN RIGHTS WATCH, IRAQ: WOMEN SUFFER UNDER ISIS (2016).

<sup>135</sup> *Timeline of Syrian Chemical Weapons Activity, 2012–2018*, Arms Control Association; *Timeline: Chemical Weapons Use in Syria's Civil War*, HAARETZ, Apr. 4, 2017.

<sup>136</sup> James Ball, *Obama Issues Syria a 'Red Line' Warning on Chemical Weapons*, WASH. POST, Aug. 20, 2012.

<sup>137</sup> Obama: Chemical Weapons in Syria Are a "Red Line", CBS NEWS, Aug. 20, 2012; *Obama Warns Syria not to Cross "Red Line"*, CNN, Aug. 21, 2012.

<sup>138</sup> [Ben Hubbard & Hwaida Saad, \*Images of Death in Syria, but No Proof of Chemical Attack\*, N.Y. TIMES, Aug. 21, 2013.](#)

<sup>139</sup> Mark Landler and Jonathan Weisman, *Obama Delays Syria Strike to Focus on a Russian Plan*, N.Y. TIMES, Sept. 10, 2013.

<sup>140</sup> Mariam Karouny, *Destruction of Syrian Chemical Weapons Begins Mission*, REUTERS, Oct. 6, 2013.



Congress was heralded as one of the flaws of his presidency once it became clear that his red line had been interpreted as a green light by the Assad regime.<sup>141</sup> Others have argued that Obama's threat of force spurred a massive multilateral mobilization that ultimately led to the elimination of much of Assad's chemical weapon stockpiles and was an example of the effective use of coercive diplomacy.<sup>142</sup>



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As part of the Russia-brokered Framework Agreement for the Elimination of Syrian Chemical Weapons, Assad agreed to turn over the country's chemical weapons stockpiles for destruction<sup>143</sup> and ratify the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC).<sup>144</sup> Months later, the Organization for the Prohibition of Chemical Weapons (OPCW) ultimately certified that 1,300 metric tons of chemical weapons and their precursors had been destroyed, and the facilities for their replacement rendered inoperative. Nonetheless, the accuracy of the government's declaration of existing stocks, the thoroughness of this removal process, and the genuineness of Assad's commitment to renounce these weapons have been repeatedly called into question as chemical weapons attacks continued. Indeed, in August 2015 and several times thereafter, Assad reportedly

<sup>141</sup> Hisham Melhem, *How Obama's Syria Chemical Weapons Deal Fell Apart*, THE ATLANTIC, Apr. 10, 2017 (arguing that the failure of the chemical weapons deal is a tale of "Syrian deception, Russian duplicity and American dithering"). Senator John McCain tweeted that the failure to penalize earlier gas attacks had emboldened Assad. Dominic Evans and Khaled Yacoub Oweis, *Syria Gas 'Kills Hundreds,' Security Council Meets*, REUTERS, Aug. 21, 2013.

<sup>142</sup> Derek Chollet, *Obama's Red Line, Revisited*, POLITICO, July 19, 2016.

<sup>143</sup> Michael Gordon, *U.S. and Russia Reach Deal to Destroy Syria's Chemical Arms*, N.Y. TIMES, Sept. 14, 2013.

<sup>144</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, Jan. 13, 1993, S. Treaty Doc. No. 103-21, 1974 U.N.T.S. 317; Arms Control Association, *Chemical Weapons Convention Signatories and States-Parties* (June 2008), <https://www.armscontrol.org/factsheets/cwcsig>. In a letter to the U.N. Secretary-General, Syria indicated it would observe its CWC obligations immediately rather than wait 30 days from the date of accession, as provided for by the treaty. *Id.*

attacked civilians with chlorine gas, an agent that was not part of the OPCW's weapons elimination program though its use in combat is prohibited by the CWC.<sup>145</sup> ISIL also appeared to have either acquired mustard gas stockpiles that escaped elimination under the OPCW process or developed the capacity to weaponize these chemicals itself given confirmed use in 2015 near Aleppo (and also in Iraq in the vicinity of U.S. and Kurdish forces).<sup>146</sup> Investigations under the purview of the United Nations, the COI, and the OPCW have confirmed attacks and allocated responsibility, as discussed in chapter 8 on new modalities of documentation.

An airborne nerve gas attack in Khan Sheikhoun in April 2017 appeared to implicate Syria or Russia as the only states in the air at the time.<sup>147</sup> Newly-elected President Donald Trump responded soon after with air strikes on the Al Shayrat airbase where the attack was presumed to have originated, indicating in his 48-hour War Powers Act Report an intention to “degrade the Syrian military’s ability to conduct further chemical weapons attacks.”<sup>148</sup> Renewed strikes on what were identified as fundamental elements of Syria’s chemical weapon infrastructure<sup>149</sup> followed an apparent chemical weapon attack in the suburb of Douma in April 2018.<sup>150</sup> At first, the U.S. government did not provide a domestic or international law justification for this response, other than to indicate the intent to “prevent and deter the spread and use of deadly chemical weapons.”<sup>151</sup> In language sounding of reprisals, the Trump administration later asserted inherent domestic legal authority for such strikes under Article II of the U.S. Constitution to advance important national interests in “averting a worsening catastrophe in Syria, and specifically deterring the use and proliferation of chemical weapons.”<sup>152</sup> In a briefing, Pentagon officials avoided the *jus ad bellum* issues and focused on the strikes’ compliance with the *jus in bello*.<sup>153</sup> The Department of Justice’s Office of Legal Counsel finally issued an official opinion on the legality of the airstrikes in May 2018, citing the convergence of domestic and international legal justifications for the use of force, including humanitarian concerns and the need to deter the proliferation of chemical weapons.<sup>154</sup> For its part, after starting with an individual and collective (on behalf of Iraq) self-defense

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<sup>145</sup> David Welna, *5 Questions About Syria and Chemical Weapons*, NPR, Apr. 9, 2018.

<sup>146</sup> Columb Strack, *The Evolution of the Islamic State’s Chemical Weapons Efforts*, COUNTER TERRORISM CTR. (Oct. 2017).

<sup>147</sup> Anne Barnard and Michael Gordon, *Worst Chemical Attack in Years in Syria; U.S. Blames Assad*, N.Y. TIMES, Apr. 4, 2017; *OPCW Director-General Shares Incontrovertible Laboratory Results Concluding Exposure to Sarin*, ORG. FOR THE PROHIBITION OF CHEMICAL WEAPONS, Apr. 19, 2017.

<sup>148</sup> Michael Gordon, Helene Cooper & Michael D. Shear, *Dozens of U.S. Missiles Hit Air Base in Syria*, N.Y. TIMES, Apr. 6, 2017; Communication from the President of the United States, *Notification of Missile Strikes on the Shayrat Military Airfield in Syria* (Apr. 8, 2017).

<sup>149</sup> Department of Defense Press Briefing by Pentagon Chief Spokesperson Dana W. White and Joint Staff Director Lt. Gen. Kenneth F. McKenzie Jr. in the Pentagon Briefing Room, Apr. 14, 2018.

<sup>150</sup> See ORGANIZATION FOR THE PROHIBITION OF CHEMICAL WEAPONS, REPORT OF THE FACT-FINDING MISSION REGARDING THE INCIDENT OF ALLEGED USE OF TOXIC CHEMICALS AS A WEAPON IN DOUMA, SYRIAN ARAB REPUBLIC, ON 7 APRIL 2018 (2019) (concluding that reactive chlorine was utilized in the attack).

<sup>151</sup> *Statement by President Trump on Syria*, THE WHITE HOUSE, Apr. 6, 2017.

<sup>152</sup> Department of Defense, Statement by Secretary James N. Mattis on Syria (Apr. 13, 2018); see also Communication from the President of the United States, *Statement on the April 13, 2018, Striking of Military Chemical Weapons-Related Facilities in Syria* (April 16, 2018).

<sup>153</sup> *Pentagon Briefing on Syria Airstrikes*, C-SPAN (Apr. 13, 2018), <https://www.c-span.org/video/?444080-1/secretary-mattis-confident-syria-responsible-chemical-attack>.

<sup>154</sup> Office of Legal Counsel, *Memorandum Opinion for the Counsel to the President, April 2018 Airstrikes Against Syrian Chemical-Weapons Facilities*, May 31, 2018, <https://www.justice.gov/olc/opinion/file/1067551/download>.

argument in connection with 2015 drone strikes against two British foreign fighters in Raqqa,<sup>155</sup> the United Kingdom invoked the ancient doctrine of humanitarian intervention as its legal basis for acting in response to chemical weapons attacks.<sup>156</sup>

States' responses to these developments have been largely (but not exclusively) positive, or at least neutral, suggesting an increased acceptance of the use of force for ostensibly humanitarian reasons, at least in response to serious breaches of international law by a pariah state.<sup>157</sup> International law commentators are largely (but not exclusively) unconvinced.<sup>158</sup> Some of the states on record indicated that the strikes were legal; a broader geographic set communicated their general approval (indicating that the operations were justified, necessary, appropriate, and/or legitimate) without addressing the question of legality, *per se*. Others expressed vague concerns without fully condemning the United States' actions. Only a handful of states conveyed outright disapproval, with Russia calling the strikes an act of aggression.<sup>159</sup> Russia was not, however, able to garner any support for a Security Council resolution that would have condemned the attacks.<sup>160</sup> Notwithstanding these attempt at deterrence, the use of chemical weapons has continued.

### A Humanitarian Catastrophe

The ceaseless violence has led to a humanitarian catastrophe—one of the worst ever faced by the United Nations.<sup>161</sup> As of 2020, almost 5.6 million Syrians had fled abroad and registered as refugees with the Office of the U.N. High Commissioner for Refugees (UNHCR)<sup>162</sup>—the largest refugee crisis since World War II.<sup>163</sup> Even more people remain internally displaced,<sup>164</sup> a number that expanded at a rate of 9,500 per day.<sup>165</sup> Indeed, many people have undergone serial displacement as a result of the competing constellations of power. Millions of people in Idlib Governorate, for example, are finding themselves displaced again now that the regime has

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<sup>155</sup> Owen Bowcott & Nicholas Watt, *UK Envoy Makes New Legal Argument for Drone Killings in Syria*, THE GUARDIAN, Sept. 10, 2015.

<sup>156</sup> Prime Minister's Office, *Syria Action—UK Government Legal Position* (Apr. 14, 2018), <https://www.gov.uk/government/publications/syria-action-uk-government-legal-position/syria-action-uk-government-legal-position>.

<sup>157</sup> *Syria War: World Reaction to US Missile Attack*, BBC, Apr. 7, 2017.

<sup>158</sup> See Ryan Goodman, *What do Top Legal Experts say about the Syria Strikes?*, JUST SECURITY (April 7, 2017).

<sup>159</sup> See Alonso Gurmendi Dunkelberg, Rebecca Ingber, Priya Pillai & Elvina Pothelet, *Mapping States' Reactions to the Syria Strikes of April 2018*, JUST SECURITY (Apr. 22, 2018).

<sup>160</sup> U.N. SCOR, 73rd sess., 8233rd mtg., U.N. Doc. S/PV.8233, at 22–23 (Apr. 14, 2018).

<sup>161</sup> Martin Chulov, *Half of Syrian Population 'Will Need Aid by End of Year,'* THE GUARDIAN, Apr. 19, 2013 (recounting comment by António Guterres when he headed UNHCR).

<sup>162</sup> *Syria Refugee Response*, UNHCR, <https://data2.unhcr.org/en/situations/syria> (last visited Feb. 24, 2020) (indicating close to 3.6 million of these refugees are in neighboring Turkey); *Turkey's Syrian Refugees: Defusing Metropolitan Tensions*, INT'L CRISIS GROUP (Jan. 29, 2018).

<sup>163</sup> Ibrahim al-Assil, et al., *The Return of Syrian Refugees*, CARNEGIE ENDOWMENT FOR INT'L PEACE (May 23, 2018).

<sup>164</sup> *Internally Displaced People*, UNHCR, <https://www.unhcr.org/sy/internally-displaced-people> (last visited Feb. 20, 2020).

<sup>165</sup> See Report of the Special Rapporteur on the Human Rights of Internally Displaced Persons on his Mission to the Syrian Arab Republic, U.N. Doc. A/HRC/32/35/Add.2 (Apr. 5, 2016), at ¶ 10.

recovered control.<sup>166</sup> The crisis there—a final stronghold of opposition—resulted in close to a million people being displaced as 2020 unfolded.<sup>167</sup>

Hundreds of thousands of people have been killed over the course of the conflict. The United Nations stopped counting casualties in 2016 (when the number reached 400,000) because the data could not be verified.<sup>168</sup> By the end of 2018, the Syrian Observatory had put the count, which encompasses civilians and combatants, at over 500,000 (2% of Syria's pre-war population).<sup>169</sup> Of those who remain in the country, millions are food-insecure and need humanitarian assistance,<sup>170</sup> and 60% live in poverty according to the World Bank.<sup>171</sup> The United States alone has spent over \$10 billion to alleviate the suffering within and outside Syria.<sup>172</sup>

The Assad regime has erected myriad obstacles to, and tried to micromanage, the provision of humanitarian assistance in an effort to retain power and squeeze opposition zones.<sup>173</sup> This includes barring U.N. personnel and aid workers coming from the West.<sup>174</sup> In 2014, the Council by way of Resolution 2165 established an unprecedented program to establish and monitor four humanitarian border crossings via Turkey, Iraq, and Jordan to bring aid to civilian areas,<sup>175</sup> overriding U.N. preferences for providing such assistance with the consent of the affected country (and on the basis of an appeal).<sup>176</sup> Although saddled by onerous inspection regimes, the ability of the United Nations and its implementing partners to cross conflict lines measurably improved the situation.<sup>177</sup> The multidimensional needs remained acute, however. They threatened to worsen once Russia vetoed a proposed extension of this cross-border aid corridor in December 2019 at the peak of the crisis in Idlib. Hours before the system for humanitarian aid delivery was set to expire, the Council approved a scaled back version, but only for six months and only involving two border crossings in Turkey.<sup>178</sup>

### **Foreign Intervention: Aid, Arms, and Airstrikes**

The involvement of foreign militaries—all motivated by divergent interests—in Syria has complicated, and exacerbated, the conflict since its inception. The web of alliances is dizzying. Assad has received support from the Shi'ite Hezbollah militia in Lebanon, Iranian Revolutionary

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<sup>166</sup> *Quick Facts: What you Need to Know about the Syria Crisis*, MERCY CORPS, <https://www.mercycorps.org/articles/iraq-jordan-lebanon-syria-turkey/quick-facts-what-you-need-know-about-syria-crisis>.

<sup>167</sup> *UN High Commissioner for Refugees Appeals for Safety for Civilians Trapped in Idlib*, UNHCR USA (Feb. 20, 2020).

<sup>168</sup> Megan Specia, *How Syria's Death Toll is Lost in the Fog of War*, N.Y. TIMES, Apr. 13, 2018.

<sup>169</sup> *Syria: 560,000 Killed in Seven Years of War*, SYRIAN OBSERVATORY FOR HUMAN RIGHTS (Dec. 12, 2018), <http://www.syriahr.com/en/?p=108829>.

<sup>170</sup> *Syria Complex Emergency—Fact Sheet #4 FY20*, USAID (Feb. 7, 2020).

<sup>171</sup> WORLD BANK, *THE TOLL OF WAR: THE ECONOMIC AND SOCIAL CONSEQUENCES OF THE CONFLICT IN SYRIA*, at viii (2017).

<sup>172</sup> USAID, *supra* note 170.

<sup>173</sup> See Cedric Ryngaert, *Humanitarian Assistance and the Conundrum of Consent: A Legal Perspective*, 5 AMSTERDAM L. FORUM 5 (Spring 2013).

<sup>174</sup> Stephanie Nebehay, *Syria Refusing Visas for Western Aid Workers*, REUTERS, July 16, 2012.

<sup>175</sup> S.C. Res. 2165, ¶¶ 2–3, U.N. Doc. S/RES/2165 (July 14, 2014); S.C. Res. 2449, ¶ 3, U.N. Doc. S/RES/2449 (Dec. 13, 2018) (renewing arrangement until 2020). Russia and China abstained on the renewal.

<sup>176</sup> G.A. Res. 46/182, Annex ¶ 3, U.N. Doc. A/RES/46/182 (Dec. 19, 1991).

<sup>177</sup> Aron Lund, *Aid Deliveries to Syria at Risk in UN Security Council Vote*, IRIN, Dec. 4, 2018.

<sup>178</sup> S.C. Res. 2504, ¶ 3, U.N. Doc. S/RES/2504 (Jan. 10, 2020).

Guards, and Russia.<sup>179</sup> Over the years, Russia's support for Assad ultimately broke through the war's deadly deadlock and will likely hand victory to the regime. The opposition has received lethal and nonlethal support from Europe, the United States, and many of the Gulf States.

In 2013, President Obama and Congress authorized the provision of non-lethal assistance to Leahy-vetted Syrian opposition groups,<sup>180</sup> notwithstanding the country sanctions in place.<sup>181</sup> Additional assistance was provided through covert action authorities, until President Trump ended the program.<sup>182</sup> These supply chains had to be temporarily suspended when ISIL seized a warehouse of U.S.-supplied aid.<sup>183</sup> In 2014, the U.S. Department of Defense committed more resources to lead a train-and-equip program aimed both at empowering the moderate opposition against the regime and at combating terrorist groups active in Syria (the United States favored the latter objective while the recipients remained focused on the former).<sup>184</sup> This project collapsed spectacularly when the Nusra Front routed U.S.-trained rebels,<sup>185</sup> and General Lloyd Austin, Commander of U.S. Central Command testified to Congress the hundreds of millions of dollars spent had resulted in "four or five" trained fighters.<sup>186</sup> Even as more details about these efforts have come to light, the number of successful trainees remains unknown.<sup>187</sup> Eventually, this aid was extended to lethal supplies on a smaller scale,<sup>188</sup> ending the longstanding legal and policy angst surrounding this issue.<sup>189</sup>

Other states, particularly in the Gulf, were not so reticent and flooded the conflict with all manner of lethal *matériel*.<sup>190</sup> For its part, the EU lifted the arms embargo on the opposition in May 2013.<sup>191</sup> The chaotic and decentralized support for various FSA factions, which have viewed themselves as both allies and rivals, ultimately undermined the organization's structural unity and led to the emergence of alternative nodes of leadership.<sup>192</sup>

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<sup>179</sup> See Gill, *supra* note 95, at 356.

<sup>180</sup> Any aid to armed groups from the United States must adhere to the "Leahy Act." See Foreign Assistance Act of 1961, 22 U.S.C. § 2378d ("No assistance shall be furnished under this chapter . . . to any unit of the security forces of a foreign country if the Secretary of State has credible information that such unit has committed a gross violation of human rights.").

<sup>181</sup> Louisa Loveluck, *What's Non-Lethal about the Aid to the Syrian Opposition?*, FOREIGN POLICY, Sept. 20, 2012.

<sup>182</sup> CARLA E. HUMUD, ET AL., ARMED CONFLICT IN SYRIA: OVERVIEW AND U.S. RESPONSES 37 (Jan. 2, 2019) (Congressional Research Service Report RL33487); Faysal Itani, *The End of American Support for Syrian Rebels Was Inevitable*, THE ATLANTIC (July 21, 2017).

<sup>183</sup> Michael R. Gordon et al., *U.S. Suspends Nonlethal Aid to Syrian Rebels*, N.Y. TIMES, Dec. 11, 2013.

<sup>184</sup> CRS Report, *supra* note 71, at 26.

<sup>185</sup> Liz Sly, *U.S.-Backed Syria Rebels Routed by Fighters Linked to Al-Qaeda*, WASH. POST, Nov. 2, 2014.

<sup>186</sup> Spencer Ackerman, *US Has Trained Only 'Four or Five' Syrian Fighters Against ISIS, Top General Testifies*, THE GUARDIAN, Sept. 16, 2015.

<sup>187</sup> Greg Miller, *CIA Ramping Up Covert Training Program for Moderate Syrian Rebels*, WASH. POST, Oct. 2, 2013.

<sup>188</sup> Greg Miller & Adam Entous, *Plans to Send Heavier Weapons to CIA-backed Rebels in Syria Stall Amid White House Skepticism*, WASH. POST, Oct. 23, 2016.

<sup>189</sup> See also Jonathan Masters, *What Should U.S. Policy Be in Syria?*, COUNCIL ON FOREIGN RELATIONS (Dec. 11, 2012); Doug Mataconis, *No, We Should Not Arm the Syrian Rebels*, OUTSIDE THE BELTWAY (Oct. 12, 2012) (recounting debates).

<sup>190</sup> Frank Gardner, *Gulf Arabs 'Stepping Up' Arms Supplies to Syrian Rebels*, BBC, Oct. 8, 2015.

<sup>191</sup> *Syria Crisis: EU Agrees to Lift Arms Embargo on Rebels*, BBC, May 28, 2013.

<sup>192</sup> Lister, *supra* note 86, at 8.

The United States and a coalition of Gulf States first launched air strikes in Syria in September 2014 against ISIL<sup>193</sup> (and the shadowy Al Qaida-linked Khorasan Group<sup>194</sup>) in areas under its occupation in and around Raqqa and Aleppo.<sup>195</sup> Although the Security Council declared ISIL to be “an unprecedented threat to international peace and security”<sup>196</sup> after it attacked soft targets in Europe, Lebanon, Tunisia, and elsewhere in 2015, the coalition acted without Security Council authorization or express Syrian consent (unlike in neighboring Iraq).<sup>197</sup> These operations were brought under the banner of Combined Joint Task Force-Operation Inherent Resolve (OIR), which consolidated anti-ISIL operations in Syria and Iraq (although not all member states participated in both halves of OIR).<sup>198</sup> When it comes to domestic law, the U.S. operations are ostensibly conducted pursuant to the 2001 Authorization for Use of Military Force (AUMF) passed in the wake of the September 11<sup>th</sup> attacks and the President’s inherent authority.<sup>199</sup> From the perspective of international law, the United States at first cloaked its operations in the mantle of the inherent right of states to engage in collective self-defense,<sup>200</sup> and notified the Security Council accordingly.<sup>201</sup> The theory is that it is protecting itself and its ally Iraq from ISIL’s safe havens and launching pads in Syria, which has proven itself to be unwilling or unable to suppress this threat even as it is actively embattled with the group.<sup>202</sup> The United Kingdom followed suit.<sup>203</sup>

For the most part, the OIR coalition assiduously avoided attacking Syrian government-held areas or assets, which would have unequivocally transformed the nature of the conflict, unless regime forces posed direct threats to U.S. personnel or partner forces.<sup>204</sup> In such circumstances, the United States has cited force protection as a rationale for engaging Syrian government

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<sup>193</sup> See Letter to Congressional Leaders Reporting on the Deployment of United States Armed Forces Personnel to Iraq and the Authorization of Military Operations in Syria September 23, 2014, DCPD201400697.

<sup>194</sup> Spencer Ackerman, *Khorasan Group Back in US Crosshairs as Air Strikes Hit Non-ISIS Targets in Syria*, THE GUARDIAN, Nov. 6, 2014. See Letter to Congressional Leaders Reporting on the Commencement of United States Military Operations in Syria September 23, 2014, DCPD201400698.

<sup>195</sup> See House of Commons Library, *ISIS/Daesh: The Military Response in Iraq and Syria*, Research Paper 06995, July 7, 2015.

<sup>196</sup> S.C. Res. 2249, pmbl., U.N. Doc. S/RES/2249 (Nov. 20, 2015).

<sup>197</sup> Somini Sengupta, *A Host of Possible Objections to Expanded Airstrikes in Syria*, N.Y. TIMES (Sept. 17, 2014).

<sup>198</sup> See generally Operation Inherent Resolve, <http://www.inherentresolve.mil/> (last visited Feb. 11, 2019). The United Kingdom received Parliamentary authorization to participate. Steven Erlanger & Stephen Castle, *British Jets Hit ISIS in Syria After Parliament Authorizes Airstrikes*, N.Y. TIMES, Dec. 3, 2015.

<sup>199</sup> General Joseph F. Dunford, Chairman of the Joint Chiefs of Staff, Remarks at the National Press Club (June 19, 2017).

<sup>200</sup> REPORT ON THE LEGAL AND POLICY FRAMEWORKS GUIDING THE UNITED STATES’ USE OF MILITARY FORCE AND RELATED NATIONAL SECURITY OPERATIONS (Dec. 2016).

<sup>201</sup> See Letter dated 23 September 2014 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General, U.N. Doc. S/2014/65 (Sept. 23, 2014).

<sup>202</sup> See Ashley S. Deeks, *Unwilling or Unable: Toward a Normative Framework for Extraterritorial Self-Defense*, 52 VA. J. INT’L L. 483 (2012); Jens David Ohlin, *The Unwilling or Unable Doctrine Comes to Life*, OPINIO JURIS (Sept. 23, 2014).

<sup>203</sup> Letter dated 7 September 2015 from the Permanent Representative of the United Kingdom of Great Britain and Northern Ireland to the United Nations addressed to the President of the Security Council, U.N.Doc. S/2015/688 (Sept. 8, 2015).

<sup>204</sup> David Botti, *First Came ISIS, Then Iran: How the Mission at a U.S. Base in Syria Kept Growing*, N.Y. TIMES, Feb. 9, 2019.

forces.<sup>205</sup> The Syrian regime has objected to the coalition's operations,<sup>206</sup> but has not consistently opposed coalition strikes on ISIL targets (no doubt because the group is a common foe), giving rise to theories of passive consent.<sup>207</sup> The Assad regime did, however, insist in advance that any strikes not coordinated with the Syrian government would be considered acts of aggression.<sup>208</sup> The United States has so far refused this invitation to engage in joint action.<sup>209</sup>

Russia began its own air strikes in August 2015, necessitating a de-confliction plan and air-safety protocols with the U.S. coalition.<sup>210</sup> Although Russia's sorties are ostensibly aimed at ISIL, it has been accused of targeting opposition areas in an effort to prop up Assad and of attacking civilians directly.<sup>211</sup> Israel has also conducted airstrikes, mostly to disrupt weapons convoys destined for Hezbollah<sup>212</sup> or target Iranian positions.<sup>213</sup> France joined the fray in 2015, after the ISIL attacks in Paris, citing self-defense as the legal justification for its actions.<sup>214</sup> President Trump also decided to arm the Kurdish People's Protection Units (YPG), drawing the ire of Turkey. For its part, Turkey began operations in northern Syria west of the Euphrates in August 2016 as part of Operation Euphrates Shield, and its clashes with Kurdish groups add another deadly dimension to the conflict,<sup>215</sup> particularly in the Afrin "security belt" in 2018.<sup>216</sup>

This involvement came to a head in 2019 when the U.S. pulled its troops out of Syria. Turkey wasted no time filling the vacuum in pursuit of its Kurdish nemesis, leading to new charges of war crimes, including forced displacements of civilians the execution of *hors de combat* fighters.<sup>217</sup> It also raised the specter that the Kurdish fighters would be forced to release the thousands of foreign fighters in their custody because they lacked the ability to respond to Turkish incursions while still guarding these fighters, particularly given the challenges around repatriation.<sup>218</sup> Marking a reconfiguration of the conflict involving Ankara, Damascus, and

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<sup>205</sup> Letter from the President to the Speaker of the House of Representatives and the President Pro Tempore of the Senate (Dec. 11, 2017).

<sup>206</sup> Identical Letters dated September 16, 2015 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council, U.N. Doc. S/2015/718 (Sept. 17, 2015).

<sup>207</sup> Phil Stewart & Tom Perry, *U.S. and Arab Allies Launch First Strikes on Militants in Syria*, REUTERS (Sept. 22, 2014).

<sup>208</sup> Raphael Van Steenberghe, *From Passive Consent to Self-Defence after the Syrian Protest against the US-led Coalition*, EJIL: TALK! (Oct. 23, 2015).

<sup>209</sup> Claus Kreß, *The Fine Line between Collective Self-Defense and Intervention by Invitation: Reflections on the Use of Force Against 'IS' in Syria*, JUST SECURITY (Feb. 17, 2015).

<sup>210</sup> *U.S. and Russia Sign Deal to Avoid Syria Air Incidents*, BBC, Oct. 20, 2015.

<sup>211</sup> Ruth Sherlock, *Why Civilians Are Being Targeted in Syria Airstrikes*, NPR, Feb. 7, 2018.

<sup>212</sup> *See, e.g., Israel Said to Have Hit Hezbollah Convoys Dozens of Times*, TIMES OF ISRAEL, Aug. 17, 2017.

<sup>213</sup> *Syrian War: Israeli Jets Target Iranian Positions Around Damascus*, BBC, Jan. 21, 2019; Isabel Kershner, *Israel Confirms Attacks on Iranian Targets in Syria*, N.Y. TIMES, Jan. 20, 2019.

<sup>214</sup> Alissa J. Rubin & Anne Barnard, *France Strikes ISIS Targets in Syria in Retaliation for Attacks*, N.Y. TIMES, Nov. 15, 2015; *see* U.N. SCOR, 70th Sess., 7565th mtg. at 2, U.N. Doc. S/PV.7565 (Nov. 20, 2015) (statement of France).

<sup>215</sup> *Turkey to Launch Operation against U.S.-backed Kurds in Syria "In a Few Days,"* REUTERS, Dec. 12, 2018.

<sup>216</sup> Bulent Aliriza & Zeynep Yekeler, *Understanding Turkey's Afrin Operation*, CTR. FOR STRATEGIC STUD. (Jan. 25, 2018).

<sup>217</sup> Beth Van Schaack & Julia Brooks, *Turkey's Actions Trigger All States' Obligations to Prosecute War Crimes by Turkish Forces*, JUST SECURITY, Oct. 15, 2019.

<sup>218</sup> *See* Stigall, *supra* note 94, at 65-66.

Moscow, Turkish soldiers were killed in an airstrike in February 2020, spinning up NATO as this thesis is being finalized.

The United States first moved ground troops into Syria to assist in the mission against ISIL in 2015.<sup>219</sup> By late 2018, the initial 50 soldiers had grown to approximately 2,000 U.S. personnel.<sup>220</sup> Although, ISIL controlled large swaths of Syrian territory at one point, by October 2017, it had been driven from its *de facto* capital of Raqqa.<sup>221</sup> Iraq achieved similar victories against ISIL on its side of the border, shrinking the territory of the would-be caliphate. President Trump's December 2018 announcement that he would withdraw all U.S. troops from Syria<sup>222</sup> (a plan that was later walked back following criticism)<sup>223</sup> generated uncertainty about the sustainability of ISIL's downfall, as signaled by the resignations of U.S. Secretary of Defense James Mattis and Brett McGurk, the Special Presidential Envoy for the Global Coalition to Counter ISIL.<sup>224</sup> Then-National Security Advisor John Bolton also insisted that U.S. forces would remain in Syria until all Iranian-led forces withdraw; contemporaneous statements by then-Defense Secretary Mattis, however, suggest that the Department of Defense was not operating under such an extended mission.<sup>225</sup> Although ISIL was left controlling only a small swath of largely uninhabited territory, it retained thousands of fighters who—it was feared—would reconstitute themselves as an insurgency with the withdrawal of U.S. engagement.<sup>226</sup> At present, a few hundred U.S. troops remain in Syria. President Trump's announcement of their complete withdrawal in October 2019 threw U.S. policy into “turmoil.”<sup>227</sup> It also triggered a new alliance between Kurdish forces and the Syrian government—poignantly described by the SDF commander-in-chief as the only alternative to genocide.<sup>228</sup>

## Failed Peace Processes

Over the years, various elements within the international community have undertaken multiple attempts to broker a durable ceasefire and bring a lasting peace to the country, at times in parallel processes spearheaded by the United Nations in Geneva, Switzerland, and Russia and friends in Astana (now Nur-Sultan), Kazakhstan.<sup>229</sup> The Arab League initially put forward an ambitious Plan of Action, which was premised on dialogue with the opposition, the release of political prisoners, a military withdrawal, the holding of free and internationally supervised

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<sup>219</sup> Dan Roberts & Tom McCarthy, *Obama Orders U.S. Special Forces to 'Assist' Fight against ISIS in Syria*, THE GUARDIAN, Oct. 30, 2015.

<sup>220</sup> Mark Landler, Helene Cooper & Eric Schmitt, *Trump to Withdraw U.S. Forces from Syria, Declaring 'We Have Won Against ISIS.'* N.Y. TIMES, Dec. 19, 2018.

<sup>221</sup> Anne Barnard & Hwaida Saad, *Raqqa, ISIS 'Capital', is Captured, U.S.-Backed Forces Say*, N.Y. TIMES, Oct. 17, 2017.

<sup>222</sup> Donald Trump (@realDonaldTrump), “We have defeated ISIS in Syria, my only reason for being there during the Trump Presidency,” (Dec. 19, 2018, 9:33 AM).

<sup>223</sup> Rick Noack, *Why Trump is Suddenly Going Back on His Promise to Withdraw All U.S. Troops from Syria, Explained in One Map*, WASH. POST (Feb. 22, 2019).

<sup>224</sup> Helene Cooper, *Jim Mattis, Defense Secretary, Resigns in Rebuke of Trump's Worldview*, N.Y. TIMES, Dec. 20, 2018.

<sup>225</sup> Paul Sonne & Missy Ryan, *Bolton: U.S. Forces Will Stay in Syria until Iran and Its Proxies Depart*, WASH. POST, Sept. 24, 2018

<sup>226</sup> DEPARTMENT OF DEFENSE, OFFICE OF INSPECTOR GENERAL, LEAD INSPECTOR GENERAL FOR OPERATION INHERENT RESOLVE, QUARTERLY REPORT TO THE U.S. CONGRESS (Jan. 1, 2019–Mar. 1, 2019).

<sup>227</sup> Peter Baker & Lara Jakes, *Trump Throws Middle East Policy Into Turmoil Over Syria*, N.Y. TIMES, Oct. 7, 2019.

<sup>228</sup> Mazloum Abdi, *If We Have to Choose Between Compromise and Genocide, We Will Choose Our People*, FOREIGN POLICY, Oct. 13, 2019.

<sup>229</sup> *Syria Diplomatic Talks: A Timeline*, AL JAZEERA, Sept. 15, 2017.



elections, and the formation of a unity government.<sup>230</sup> Assad at first accepted the Plan but later rejected it after his proposed amendments were not accepted.<sup>231</sup> Leading the international effort to promote a peaceful solution to the crisis has been a series of Joint Special Envoys of the United Nations and the League of Arab States—a post originally recommended by the U.N. General Assembly.<sup>232</sup> The first Special Envoy, Kofi Annan, generated a six-part peace plan on March 16, 2012. The plan, which continues to inspire peace efforts, contains the following elements:

1. The launch of an inclusive Syrian-led political process to address the legitimate aspirations and concerns of the Syrian people;
2. A cessation of violence to protect civilians and stabilize the country;
3. The timely provision of humanitarian aid to all areas affected by fighting, facilitated by a 2-hour daily humanitarian pause;
4. An intensification of the pace and scale of the release of arbitrarily detained persons;
5. Freedom of movement for journalists; and
6. The recognition of the freedom of association and the right to demonstrate as legally-protected rights.<sup>233</sup>

Although the Annan plan earned the endorsement of the U.N. Security Council,<sup>234</sup> and Assad's ostensible support,<sup>235</sup> it has yet to be implemented in full or even in part. After Annan resigned in frustration in August 2012, subsequent Special Envoys have continued to recommend his plan only to eventually resign in the absence of an effective international response. The League of Arab States promulgated its own peace plans in 2011 and 2012, which also called for the formation of a unity government and the convening of genuine elections, but Assad rejected these efforts.<sup>236</sup>

Formal peace talks have not yielded durable results. The Action Group for Syria—composed of the U.N. Secretary-General; the Arab League Secretary-General; the Foreign Ministers (or equivalent) of the P-5, Turkey, Iraq, Kuwait and Qatar (the latter three holding relevant chairs within the League of Arab States); and the High Representative for Foreign Affairs & Security Policy of the European Union—launched a series of conferences in Geneva beginning in June 2012. Geneva I resulted in the Geneva Communiqué, a roadmap to peace premised upon the establishment of a transitional governing body on the basis of “mutual consent” with full executive powers (which, it was envisaged, could include members of the present government), the promulgation of a new constitution, and the holding of democratic elections.<sup>237</sup> Later fully endorsed by the Security Council,<sup>238</sup> the Communiqué made clear references to accountability and transitional justice when it pronounced: “Accountability for acts committed during the present conflict must be addressed. There also needs to be a comprehensive package for transitional justice,

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<sup>230</sup> Liz Sly, *Arab League Announces Peace Plan for Syria*, WASH. POST, Nov. 2, 2011; Kareem Fahim, *Arab League Floats Ambitious New Peace Plan for Syria*, N.Y. TIMES, Jan. 22, 2012.

<sup>231</sup> Mark Hallam et al., *Syria Rejects Latest Arab League Plan*, DEUTSCHE WELLE, Jan. 23, 2013.

<sup>232</sup> G.A. Res. 66/253, ¶ 11, U.N. Doc. A/RES/66/253 (Feb. 16, 2012).

<sup>233</sup> Douglas Hamilton, *Text of Annan's Six-Point Peace Plan for Syria*, REUTERS, Apr. 4, 2012.

<sup>234</sup> Statement by the President of the Security Council, U.N. Doc. S/PRST/2012/6 (Mar. 21, 2012).

<sup>235</sup> *Syrian Government Accepts Anna Peace Plan*, BBC, Mar. 27, 2012.

<sup>236</sup> Neil MacFarquhar, *Arab League Votes to Suspend Syria Over Crackdown*, N.Y. TIMES, Nov. 12, 2011.

<sup>237</sup> Action Group for Syria, *Final Communiqué* (June 30, 2012), [https://peacemaker.un.org/sites/peacemaker.un.org/files/SY\\_120630\\_Final%20Communiqué%20of%20the%20Action%20Group%20for%20Syria.pdf](https://peacemaker.un.org/sites/peacemaker.un.org/files/SY_120630_Final%20Communiqué%20of%20the%20Action%20Group%20for%20Syria.pdf) [hereinafter *Geneva Communiqué*].

<sup>238</sup> S.C. Res. 2118, ¶ 16, S/RES/2118 (Sept. 27, 2015).

including compensation or rehabilitation for victims of the present conflict, steps towards national reconciliation and forgiveness.”<sup>239</sup> As it turns out, this marked the one and only time issues of accountability were publicly raised in the Syrian peace talks. In January 2013, Assad released his own plan—which envisioned a reconciliation conference and a new government—but it was rejected by the opposition.<sup>240</sup> Geneva II, held in early 2014, failed to reach a comprehensive agreement. Lakhdar Brahimi, who was Envoy at the time, did not extend his assignment after Geneva II when the regime failed to agree to negotiate about anything other than “terrorism.”

Subsequent meetings in November 2015 in Vienna, Austria, reaffirmed the imperative of bringing the government and the opposition back together for peace talks under U.N. auspices in keeping with the Geneva Communiqué. States in Vienna formed the International Syria Support Group (ISSG), a working group co-chaired by the United States and Russia tasked with finding a diplomatic solution to the crisis that would be built upon a comprehensive and enduring cessation of hostilities.<sup>241</sup> This occurred at a time when terrorist activity was on the upswing, altering the political configurations, suggesting the emergence of two parallel conflicts, and enabling the Assad regime to carry the counterterrorism mantle. The ISSG had some success with the regime and opposition groups, but the plan did not encompass ISIL or the Nusra Front. This enabled Russia to continue airstrikes, ostensibly against terrorist groups. The ISSG largely collapsed, however, as compliance with its announced ceasefires waned. In December 2015, Saudi Arabia hosted groups aligned with the opposition to help form a High Negotiations Committee (HNC), later called the Syrian Negotiation Commission, which has become a key representative of the political opposition.<sup>242</sup> In their final statement, participants called for an all-inclusive, democratic, and civilian-led Syria.<sup>243</sup> Not to be outdone, Assad hosted a competing event in Damascus for the “patriotic opposition.”<sup>244</sup>

Also in December 2015, the Security Council released its own plan for a comprehensive political settlement in the form of Resolution 2254, which incorporated elements of Annan’s six-point plan and the Geneva Communiqué.<sup>245</sup> Geneva III was aborted in February 2016 when the government and opposition failed to reach agreement on humanitarian issues; Geneva IV met the same fate when the opposition walked out of talks in protest over the escalation of violence on the ground and the talks lost political momentum. (The efforts of Envoy Staffan de Mistura in 2016 and 2017 are also called the “Intra-Syrian Dialogue”).

In 2017, Russia announced its own (arguably competing) efforts in Astana (the United States participated as an observer), where Russia, Iran, and Turkey agreed to establish de-escalation zones in order to piece together a nation-wide ceasefire. Astana II ended with further agreements on monitoring modalities and the exchange of prisoners and the dead. After these relative successes, the opposition refused to attend Astana III amidst allegations that the government was not adhering to the ceasefire and was endeavoring to recapture de-escalation

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<sup>239</sup> Geneva Communiqué, *supra* note 237, at 4.

<sup>240</sup> Anne Barnard, *Defiant Speech by Assad Is New Block to Peace in Syria*, N.Y. TIMES, Jan. 6, 2013.

<sup>241</sup> Andrew J. Tabler & Olivier Decottignies, *The Vienna Process: Transitioning Toward a Transition*, WASH. INST. (Dec. 17, 2015).

<sup>242</sup> *High Negotiations Committee (HNC)*, GLOBALSECURITY.ORG, <https://www.globalsecurity.org/military/world/para/hnc.htm> (last visited Feb. 10, 2019).

<sup>243</sup> *Riyadh Opposition meeting Calls for Inclusive Syria: Statement*, REUTERS, Dec. 10, 2015.

<sup>244</sup> Aron Lund, *Syria’s Opposition Conferences: Results and Expectations*, CARNEGIE MIDDLE EAST CENTER, DIWAN (Dec. 11, 2015).

<sup>245</sup> S.C. Res. 2254, pmb., S/RES/2254 (Dec. 18, 2015).

areas. Astana IV, which was to reinforce the four envisioned de-escalation zones, also ended with an opposition walkout in May 2017. Astana V (July 2017) and VI (September 2017) remained focused on establishing and policing the de-militarization of key areas with Russia, Turkey, and Iran as guarantors. The Assad government, however, ended up re-taking several of these locales under the guise of countering terrorist elements, which were again excluded from the terms of the professed ceasefire. By 2020, Western delegations were arguing that the Astana formula was no longer working and it was time for the United Nations to retake control of the negotiations.<sup>246</sup>

Meanwhile, participants within Geneva V (held in February 2017) attempted to advance negotiations on the implementation of Resolution 2254, but Geneva VI ended in May 2017 and Geneva VII in July 2017 with little progress.<sup>247</sup> Presidents Trump and Vladimir Putin agreed to a ceasefire later in July 2017; this proved to be short lived after Assad bombed the suburbs of Damascus. Russia also hosted a Syrian People's Congress in Sochi in January 2018, although many Syrian opposition groups boycotted the gathering or refused to leave the airport.<sup>248</sup> The last Geneva rounds, held in January 2018, were inconclusive as well, no doubt given the regime's "momentum" on the ground.<sup>249</sup> That said, a de-militarization or de-escalation agreement between Turkey and Russia agreed to in September 2018 in Idlib has held for a period of time, notwithstanding some regime breaches.

Under the leadership of the penultimate U.N. Special Envoy for Syria Staffan de Mistura, those in attendance at Sochi produced a Syrian Constitutional Committee proposal that has received some international support, although membership modalities remained contentious given the goal of equal governmental, non-governmental, and expert representation (the latter of whom were selected by the United Nations).<sup>250</sup> In September 2019, the current Special Envoy Geir O. Pedersen finally announced the formation of the Committee, which includes 50 government representatives, 50 opposition representations, and 50 members of civil society (but no representation from the Kurdish autonomous administration in the north), with a subset making up the drafting committee. Although some meetings progressed at the end of 2019, leaving some participants optimistic, the Committee reached an impasse by the end of the year, with parties even unable to agree on an agenda and Assad claiming that any outcome cannot bind Damascus.<sup>251</sup>

## Conclusion

At this point in time, both the armed opposition and ISIL are a fraction of their former selves. Most armed opposition groups have been defeated, significantly weakened, geographically isolated, or infiltrated by terrorist elements. To the extent that the Kurdish-dominated SDF retained significant territory, it has now escheated to the Syrian government with the U.S. troop withdrawal. Assad seems destined to emerge triumphant. Although Assad will claim military victory, low-level

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<sup>246</sup> *Crisis in Syria Likely to Turn Catastrophic Unless Global Community Mobilizes to Conflict*, Senior United Nations Officials Warn Security Council, U.N. Doc. SC/14114 (Feb. 19, 2020).

<sup>247</sup> Not all observers continue to denominate these Geneva gatherings with roman numerals, but I have done so for clarity. See Lisa Roman & Alexander Bick, *It's Time for a New Syria Peace Process*, FOREIGN POLICY (Sept. 15, 2017).

<sup>248</sup> Patrick Wintour, *Russia's Syrian Peace Conference Teeters on Farce*, THE GUARDIAN, Jan. 30, 2018.

<sup>249</sup> DANIEL R. COATS, WORLDWIDE THREAT ASSESSMENT OF THE US INTELLIGENCE COMMUNITY 32 (2019).

<sup>250</sup> Nicholas Norberg, *A Primer on Syria's Constitutional Committee*, LAWFARE (Dec. 22, 2018); Sinan Hatahet, *The Prospective and Limitations of the Syrian Constitutional Committee*, GENEVA CENTRE FOR SECURITY POLICY (Feb. 2020).

<sup>251</sup> M. Hosam Hafez, *Syria New Constitutional Committee: Enlightened UN Diplomacy or Repositioning the Assad Regime?*, AL JAZEERA CENTRE FOR STUDIES (Oct. 31, 2019).

conflict is likely to continue in pockets around the country. Furthermore, it is unclear if Assad will be able to truly gain control of areas held by the political opposition or if the revolution has simply been forestalled for now. In any case, this putative victory will reduce any pressure to make concessions to the opposition and call into question whether any post-war accountability or transitional justice program will be launched within the country. What is clear is that the Syria of old has largely disintegrated: “Syria has ceased to exist as a unified state except in memories and on maps.”<sup>252</sup> What remains is a country still beset by competing zones of influence, with most of the country back under government control (with support from Russia and Iran) with the exception of areas controlled by Syrian Kurds and aligned forces in the northeast and a few areas in the northwest occupied by opposition forces and militia newly-aligned with Turkey.<sup>253</sup>

It remains to be seen how the international community will adapt to an Assad victory. Although the United States no longer calls for Assad’s removal,<sup>254</sup> President Trump has announced the United States will not contribute to reconstruction efforts unless the government commits to elements of the political solution outlined in Resolution 2254, passed unanimously in 2015.<sup>255</sup> This stance could be legislatively-mandated if something akin to the No Assistance for Assad Act is ever passed.<sup>256</sup> The European Union and Gulf Cooperation Council have made similar pledges, although relations are normalizing between Syria, the Gulf monarchies, and other Arab League members.<sup>257</sup> The bill for reconstruction will likely exceed \$200 billion, according to U.N. and World Bank estimates.<sup>258</sup>

Throughout the conflict, many have seen the international community’s inaction in the face of the atrocities as offering a green light to Assad. Indeed, early in the conflict the U.N. Special Advisers on the Prevention of Genocide and on the Responsibility to Protect released a joint statement in which they argued that:

The lack of unified international condemnation and response to protect the Syrian population has encouraged the Government to continue its course of action. Reports suggest that the Government has intensified its attacks in the face of Security Council paralysis, leading to a sharp increase in the number of deaths, injuries and cases of abuse and torture over recent weeks and months.<sup>259</sup>

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<sup>252</sup> RANIA ABOUZEID, *NO TURNING BACK: LIFE, LOSS, AND HOPE IN WARTIME SYRIA* xi (2018).

<sup>253</sup> Brett McGurk, *Hard Truths in Syria*, FOREIGN AFFAIRS (May/June 2019).

<sup>254</sup> See *Special Representative for Syria Engagement Jeffrey in Interview with RIA Novosti & Kommersant*, U.S. MISSION RUSSIA (Nov. 23, 2018), <https://ru.usembassy.gov/special-representative-for-syria-engagement-jeffrey-in-interview-with-ria-novosti-and-kommersant/> (“America will never have good relations with Bashar al-Assad—nonetheless, we are committed to a political process that is with and by the Syrian people. The Syrian people get to decide who will lead them and what kind of a government they will have. We are not committed to any kind of regime change. We are committed to a change in the behavior of that regime.”).

<sup>255</sup> Richard Salame, *The Syrian War Is Still Raging, But the Battle Over Reconstruction Has Already Begun*, THE NATION, Sept. 5, 2018.

<sup>256</sup> No Assistance for Assad Act, H.R. 1706, 116th Congress (2019), <https://www.govtrack.us/congress/bills/116/hr1706/text>.

<sup>257</sup> Marc Daou, *Thaw in Relations between Arab Leaders and Syria’s Assad*, FRANCE24 (Jan. 4, 2019).

<sup>258</sup> Omer Karasapan, *Rebuilding or Redefining Syria*, BROOKINGS (Feb. 13, 2017); Paul Cochrane, *After the War: Who’s Going to Pay for Syria’s Reconstruction?*, MIDDLE EAST EYE (Nov. 12, 2017).

<sup>259</sup> Statement of the Office of the Special Adviser on the Prevention of Genocide, INT’L COAL. FOR THE RESPONSIBILITY TO PROTECT (Mar. 15, 2012),

<http://responsibilitytoprotect.org/index.php/component/content/article/136-latest-news/4044-struggle-to-protect-civilians-in-syria-continues-commission-of-inquiry-on-libya-report-released-first-icc-verdict-issued>.

Once the guns fall silent, the hard work of rebuilding Syria must begin, including the repatriation and reintegration of the internally and externally displaced, the reconstruction of the country, and the elimination of ISIL remnants. It remains to be seen whether any form of accountability or transitional justice will be pursued. As discussed elsewhere, there have been unprecedented efforts by ordinary Syrians and international advocates to document atrocities, but no multilateral steps have been taken towards actual accountability. As this volume reveals, there are plenty of blueprints to draw from—all that is necessary is the political will to begin.