

ARTICLES

THE SYRIAN CRISIS: VIOLATIONS OF BASIC HUMAN RIGHTS AND PARTICULARLY CHILDREN'S RIGHTS

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** I dedicate this Article to my parents. My father, Khooshie Lal Panjabi, author, journalist, Editor, Indian freedom-fighter, and diplomat. His career took us all over the world, and I benefited greatly from his wisdom, his respect for diversity and his innate humanity. His career enabled me to experience the wonders of this planet in Africa, the Middle East, Asia, North America and Europe. Brilliant in his many interests, he taught me that the best education should teach not how much one knows but how much more there is always to learn. I owe so much to my wonderful mother, Lata K. Panjabi, that I will never be able to repay the debt. My mother was a musician, an artist, and a poet whose political verses played a role in India's epic nonviolent freedom struggle and brought cheer to millions struggling for independence from colonial rule. Later, as a career diplomat's wife, she shone in every country with her quick wit and her boundless charm. I owe everything to my parents. I also dedicate this to the memory of my grandfather Lal Panjabi, whose career inspired me to study law. This is also in memory of M. with all that could have been and a love that remains fresh as it is watered by the tears of remembrance. Above all, my devotion to "Thirty Four" and so much shared joy and laughter.

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Finally, I dedicate this to the people of Syria, the men, women and children who dared to dream and paid dearly for that "indulgence."

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I. INTRODUCTION

If this wonderful planet of ours survives another five hundred years, students then studying the twentieth century will undoubtedly search for the greatest contributions that men and women made to civilization in that era. I would venture to suggest that what will stand out as the most significant contributions will not be great technology, nor advances in communication, nor globalization, but the codification, proliferation and dedication to human rights. This one development will mark the twentieth and now twenty-first centuries as eras when a global consensus emerged about what was and was not morally acceptable behavior by governments, political leaders, and hopefully, soon, even non-state actors. Detractors in the future may indeed argue that the moral compass in our time was forcibly turned in the wrong direction on so many occasions as to render the implementation of human rights very problematic. However, it is entirely possible that future generations may also look upon our time with a degree of kindness born of distance, and understand that humanity struggled hard to achieve in reality what was eloquently articulated in documentary form as the ideal standard to be followed. Whether or not our descendants will laud us for trying hard or whether they will condemn us for losing the battle to enhance human rights will depend to a large extent on the commitment and dedication each of us today shows to exposing violations, cataloguing atrocities, highlighting infractions and insisting on legal and judicial accountability for perpetrators of these crimes. Every action endorsing our approval of human rights ensures that this wonderful contribution, largely formulated during the twentieth century, will remain in place to protect those generations that follow in the future.

To return to the present, the world is today confronting one of the worst human rights and humanitarian crises in the history of this young century. The ancient, beautiful and cultured country Syria is now in ruins, its people scattered across the globe, much of its wonderful historical heritage stolen or destroyed. This Article attempts to understand some aspects of the crisis and to assess the situation within the rubric of the international human rights that have been systematically and brutally violated to maintain the decades-long dictatorship of one man, his family, and his regime's loyal supporters. Tens of thousands of Syrian men, women and children—civilians—have been sacrificed to ensure the survival of the regime. They have been systematically and deliberately subjected to the violation of every right that is now globally acknowledged as our automatic birthright as human beings.

This Article will attempt to explore and explain the violation of some of the most basic of those rights, the rights to life, liberty, and freedom from torture. It will also seek to explore in particular violations against children that have so marked this crisis. The children of Syria have paid a terrible price. International human rights commitments protecting them have been shunted aside as the regime and other combatants have brutalized them because they are the most vulnerable of civilians.

The Article makes no attempt to provide a comprehensive history of the entire crisis. Length constraints for the Article will only permit exploration into certain specific topics that provide insight into this humanitarian disaster. The subjects that have been selected for deeper exploration and research are indicative of both the tragedy that has fallen on that once-cultured country and, more important, of the flaws in the international human rights umbrella that should protect us all.

Human rights must never be a protection only in peaceful times. The real test of this great contribution of the twentieth century to human civilization must occur when wars are fought with an understanding that such rights are so sacrosanct that they cannot be violated, even in moments of physical conflict. Because the Syrian crisis amounts to a very serious step back in the progressive march toward the implementation of human rights, it is important that we chronicle the flaws and work even harder to enhance the protective systems that every man, woman and child in the world deserves to enjoy.

One practical way of studying the Syrian problem as a serious violation of human rights is to examine a few of the international human rights instruments that have been universally lauded and form part of international humanitarian law. There are too many of these instruments now in existence for inclusion in this Article. The necessary selection resulted in a primary choice, the Convention on the Rights of the Child. That international instrument is marked with the usual United Nations eloquence and its mantle of protection for children is all-encompassing. However, there are fatal flaws in the Convention and a later section of this Article will explore the issue in some detail with relevance to the grim reality prevailing in Syria. An ancillary brief discussion will focus on related measures affecting children that ultimately led to the creation of the Convention.

There is a tragic irony in the fact that the most universally lauded and adopted instrument of international human rights law—the Convention on the Rights of the Child—is today one of the most egregiously violated of

such treaties.¹ Across this planet of ours, the Americas, Africa, the Middle East, Europe, and Asia, children are being trafficked for prostitution, kidnapped to serve as soldiers, abused as child laborers, and tortured and killed to serve the greed and self-interest of a variety of state and non-state actors who have no compunction or concern about their misuse of these most vulnerable of human beings. The sad reality is that life is so fraught with danger for the youngest of humanity that this world is for many of them literally no place for a child.² As Professor John Wall of Rutgers University explained, “Children today are the world’s most disadvantaged group.”³ He added that “[c]hildren across the world are more likely than adults to be poor, malnourished, deprived of security, prevented from exercising freedoms, silenced, done violence, abused, exploited, and discriminated against.”⁴ Commenting on the global nature of the problem, then United Nations (U.N.) Secretary-General Ban Ki-moon bluntly told the Security Council that “[i]n places such as Iraq, Nigeria, Somalia, South Sudan, Syria and Yemen, children suffer through a living hell.”⁵ Of the world’s children, one out of four lives in a country afflicted by emergency situations,⁶ political, economic or environmental. Anthony Lake, Executive Director of UNICEF has justifiably called it a “world of cascading crises.”⁷

This Article explores the impact of the ongoing Syrian crisis on children’s rights, both with respect to their suffering within their homeland and very briefly, adjacent or farther countries where they (either alone or with their families) flee for refuge and safety. The U.N. Children’s Fund concluded in 2017 that the “Syrian Arab Republic is one of the most dangerous places in the world to be a child.”⁸ As Martin Chulov of the Guardian commented:

¹ See *infra* Section II.

² With apologies to UNICEF, *Uprooted: The Growing Crisis for Refugee and Migrant Children* 1, 3 (Sept. 2016), https://www.unicef.org/publications/files/Uprooted_growing_crisis_for_refugee_and_migrant_children.pdf.

³ JOHN WALL, CHILDREN’S RIGHTS 6 (2017).

⁴ *Id.* at 7.

⁵ Press Release, Security Council, Children’s Rights Violations During Armed Conflicts on Rise Despite National Action Plans to End Abuse, Security Council Told in Day-long Debate, U.N. Press Release SC/12470 (Aug. 2, 2016).

⁶ Anthony Lake, *Executive Director’s Foreword: UNICEF: Humanitarian Action for Children 2017, Overview*, 1, 2 (Jan. 2017), https://www.unicef.org/publications/files/HAC_2017_Overview_ENG.pdf.

⁷ *Id.*

⁸ U.N. Children’s Fund, *Humanitarian Action for Children 2017 – Syrian Arab Republic*, 1 (Dec. 30, 2016), <https://reliefweb.int/report/syrian-arab-republic/humanitarian-action-children-2017-syrian-arab-republic>.

“Syria’s civil war is trampling on its children as easily as it is killing its adults.”⁹

This inquiry into the Syrian crisis which is simultaneously and tragically a civil war, a proxy war both regionally and internationally, as well as a part of the globalized anti-terrorism conflict, has perforce to begin by introducing the contextual particulars that resulted in such a major disaster. Additionally, the Syrian war has been a severe challenge to the concept of globalization. As Syrians by the thousands fled the horrors afflicting their country, they became part of a massive migration movement that has seen millions of people from war-torn countries similarly seek safety in secure societies. The receiving countries have had mixed reactions to the massive inflows with a resulting increase in xenophobia, racism and ethnically-based violence that now afflicts large parts of earth. The refugees, particularly, child refugees have all too frequently become pawns in what is now a globalized controversy.

An additional thread of inquiry must focus on the international idealistic aspirations articulated in the eloquent Convention on the Rights of the Child and juxtapose these with the gruesome reality prevailing in Syria. Astoundingly, on November 20, 1989, it took just two minutes for the U.N. General Assembly to adopt the International Convention on the Rights of the Child.¹⁰ Approved in 1989 by consensus,¹¹ at time of writing this Article in 2017, all Member States of the United Nations, with the exception of the United States of America have ratified this Convention.¹² Syria signed this Convention on September 18, 1990 and ratified it on July 15, 1993, both actions during the rule of former President Hafez al-Assad,¹³ father of the present President Bashar al-Assad.

⁹ Martin Chulov, *Lebanon’s Refugee Schools Provide Hope for Syria’s Lost Generation*, THE GUARDIAN (May 5, 2014), <https://www.theguardian.com/world/2014/may/05/lebanon-refugee-schools-syria-lost-generation>.

¹⁰ *U.N. Assembly Adopts Doctrine Outlining Children’s Basic Rights*, N.Y. TIMES (Nov. 21, 1989), <http://www.nytimes.com/1989/11/21/world/un-assembly-adopts-doctrine-outlining-children-s-basic-rights.html?mcubz=0>.

¹¹ *Id.*

¹² *Convention on the Rights of the Child*, U.N. TREATY COLLECTION, https://treaties.un.org/pages/ViewDetails.aspx?src=IND&mtdsg_no=IV-11&chapter=4&lang=en (last updated Aug. 12, 2017, 7:32 EDT) (alphabetizing a list of signatures and ratifications by country).

¹³ *Id.*

This Article adheres to the U.N. definition of a “child” meaning any person below the age of eighteen years.¹⁴ For many of these, our most vulnerable human beings, life is both tragic and terrifying. They are often innocent victims of actions taken by adults, events over which they have no control. Children are not responsible “for the bombs and bullets, the gang violence, persecution, the shriveled crops and low family wages driving them from their homes.”¹⁵ The theatres of conflict are many, Afghanistan, Syria, Yemen, to name only a few. The areas afflicted with acute poverty are found worldwide from the richest countries of North America and Europe to the poorest regions of sub-Saharan Africa. Unrest, insecurity, hunger, disease and worse mark the lives of many of this world’s young people. In too many cases, their lives are shriveled, stultified and the possibility of their contribution to their countries lost because the world just would not or could not rescue so many of them. On the positive side, there are many dedicated people who constantly prod governments and public opinion about our individual and collective responsibilities to the dispossessed, especially when they are children. The governing principle is that the best interest of the child should always prevail. In reality, this rarely occurs. That was the key principle underlying the Convention on the Rights of the Child.

Nowhere is the irony more evident than in the universal support for the Convention, a document endorsed by democratic leaders and dictators alike. Unfortunately, despite the amazing near-unanimity on advocacy for children’s rights, the reality has not lived up to the promises and commitments made in 1989. Anthony Lake, Executive Director of the United Nations International Children’s Educational Fund (UNICEF) explained in 2014 that “a recognized right is not necessarily an executed right.”¹⁶ This Article will explore aspects of this serious disconnect between ideals and reality, on this issue, using the Syrian crisis as the context for exposing some of the most egregious violations against children. This disconnect has also been the most fatal flaw of the United Nations and one that has cost the world dearly in lost lives.

As the organization tasked with monitoring human rights internationally, the United Nations has revealed all too frequently how flawed it is as a

¹⁴ Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3, part 1, art. 1.

¹⁵ *Uprooted: The Growing Crisis for Refugee and Migrant Children*, *supra* note 2, at 11.

¹⁶ Anthony Lake, *Children’s Rights, Equity and Our Common Future*, UNICEF (June 10, 2014), <https://www.unicef.bg/en/article/Children-s-rights-equity-and-our-common-future/788#helpNowModal>.

protective institution. The failure is not that of the world organization but of all the Member States who deny it any sovereign capacity and then expect it to act decisively to alleviate human suffering. Ultimately, the failure of the United Nations reflects on all of us and on each of us who can acquiesce even silently in the hypocrisy of wonderful articulated ideals enshrined in a growing body of legal instruments named conventions, which are daily violated, leaving a global trail of victims. The violated children are the very future of our species and in too many countries, are now deemed a lost generation. Because of adult expediency or indifference or sheer unwillingness to act, this young generation has been “traumatized, decimated, [and] abandoned to its fate.”¹⁷

The U.N. estimates make for frightening reading. In recent years, over 28 million children have been uprooted from their homes or countries by conflict and the number of child refugees jumped by approximately 75% between 2010 and 2015.¹⁸ By 2015, about 45% of child refugees under the mandate of the United Nations High Commissioner for Refugees (UNHCR) originated in Syria and Afghanistan.¹⁹ Among many global crises afflicting the world today, there are some like Syria that stand out for the massive human suffering generated. One can only hope that someday soon there will be a nexus between the expressed ideals of human rights and the reality as lived by millions of children around the world. The chasm between articulated ideals and reality has somehow to be bridged very soon.

Inevitably, a story like this has multiple threads that must be disentangled to provide as comprehensive a perception as the instant length constraints allow. Many of these threads are not exclusively child-centered. Just as children are part of a family, a community and a society, similarly, these threads need to be followed, examined and analyzed in the hope of creating a coherent view of the situation in Syria. Essentially, one cannot write about children without including what occurred with the adults who are their parents, their extended families and their communities. It is impossible at times to separate specific children's issues from the general mayhem occurring because thousands of young people were tragically suffering alongside their elders and all generations endured injury, pain, hunger, disease, and death.

¹⁷ DIANA DARKE, *MY HOUSE IN DAMASCUS: AN INSIDE VIEW OF THE SYRIAN CRISIS* 256 (Haus Publishing Ltd., 3d ed. 2016).

¹⁸ *Uprooted: The Growing Crisis for Refugee and Migrant Children*, *supra* note 2, at 9.

¹⁹ *Id.* at 18.

The attempt throughout is to present a clear, coherent and comprehensive analysis of the Syrian situation to date, concentrating on the most recent information available to researchers. The historical background has been briefly explained to provide context for the reader. With respect to the present, the complexities of this uprising or revolt must be examined piecemeal with some view of the different international players who have leaped into this crisis, all of them with different agendas, all of them determined to get their way, regardless of the cost in lives and suffering for the millions of Syrian men, women and children. Ultimately, the children of Syria will pay the biggest price. Not only is their present destroyed, but their future has been sacrificed to the political ambitions of diverse national and international individuals and groups.

Once, not so long ago, Syria was regarded as one of the most highly educated of Middle Eastern countries, enjoying a level of sophistication and cultured living that was the envy of its neighbors.²⁰ Today, its cities lie in ruins, untold thousands of its people are dead or maimed or horribly wounded, its children are physically and psychologically traumatized and few of them have any possibility of an education, let alone, a job in the future.

As we commence this explanation of the Syrian war, we must be careful not to define the crisis too restrictively. Too often, the media prefers to pigeonhole such conflicts and define them through the lens of its own myopic vision. Hence, we are fed a stream of reports that classify this as a sectarian conflict, a holy war, a jihad, as the war of a sovereign government against terror groups, or as a struggle for freedom and democracy against dictatorship. The Syrian situation is all of those and more. To focus on one explanation is to provide too narrow and rigid a perspective.

Forming a critical part of the regional moment termed the Arab Spring, the Syrian crisis began nonviolently. Peaceful protesters, demanding freedom, encountered brutal retaliation from their government, as a consequence of which, the demonstrations escalated into an uprising and a civil war. Neighboring countries soon became involved as the brutality increased on both sides and civilians, caught in the cross-fire, fled to any safe-haven they could find. Additionally, regional states saw the crisis as an

²⁰ See *infra* Part XIII.

expedient way of furthering their own agendas, specifically in terms of the sectarian rivalries that have so frequently plagued the Middle East.

The fact that the Syrian President comes from a minority sect, the Alawi, did not sit well with the overwhelming Sunni majority that prevails, both in Syria and in many Islamic countries in that region. Some Middle Eastern countries have allegedly funded radicalized Islamic Sunni militants (termed "terrorists" in the Western world) to enter Syria and fight against the regime, and also to destroy any secular rebel groups. The infamous ISIS took advantage of the prevailing chaos to establish part of its so-called caliphate in Syria and tortured, killed, maimed and executed an unknown but vast number of civilians with its self-publicized acts of brutality.

The Syrian President also found external allies like Shia Iran, a state whose sectarian priorities and regional ambitions made it rush to his defense. The Syrian regime also has an on-going alliance with Russia, a country that saw the Syrian theatre as a venue to fulfill its own superpower agenda.

Everyone, and especially the initial secular rebels who were apparently fighting for democratic freedoms expected the United States to lead the Western free world in taking down both the regime and the terrorist presence in Syria. However, the United States, haunted by the ghosts of Afghanistan and Iraq, balked at that type of military involvement, as we shall see later in this Article. Refusing any meaningful aid to the rebels who had dreamed of democracy, the United States was, however, willing to serve its own national interest by bombing ISIS-held parts of Syria as this fell under its anti-terrorism agenda.

Additionally, the United Nations did what it usually does, drafting endless resolutions, publishing reports detailing the horrors, and demonstrating a great deal of activity on many fronts, but very little effective action to stop the conflict.

The consequence of all these tangled political threads is a highly complex situation that is multi-layered, multi-sectored and at once, domestic, regional and global in significance. The result is that civilians have suffered and died by the thousands and the exact count will probably never be known. Caught between the looting, the demolitions, the starvation, the diseases, the torture, the rapes, the mutilations, the executions and the bombings, have been Syria's millions of civilians and in particular, its most vulnerable, its children, for whom their country now resembles the worst nightmarish descriptions of hell.

This is a very convoluted crisis and at one and the same time it demonstrates a multiplicity of agendas, priorities, and interests, many of them colliding and conflicting, often with no logic or rationale other than the madness that is a concomitant of twenty-first century warfare. Like a

kaleidoscope, the Syrian crisis changes and shifts and presents varied views with each turn of a day. It is imperative to keep in mind that this convoluted situation defines the total picture, and certainly complicates any possibility of a peaceful resolution, should that come someday. Much of this complexity is an inheritance from Syria's past and in order to understand the issues now confronting the global community it is important briefly to examine the country's history.

II. SYRIA: DEMOGRAPHY AND PRE-CRISIS HISTORY

Setting the context for the Syrian crisis is no easy task, given the many intricacies that prevail in that country. At best, given the length constraints of this Article, one can only provide brief particulars that will hopefully clarify some of the reasons behind this multi-faceted conflict that the entire world is now confronting.

With respect to the crisis that began in 2011, all involved parties have waged propaganda campaigns in an effort to woo and convince world public opinion. The Syrian war has been fought in the many cities of that once-beautiful country but also online and through every type of media currently available on this planet. Finding the truth is extremely difficult and challenging. Those of us who live in the Western free democratic world and those who live under dictatorships all bring preconceived notions to the understanding of the Syrian crisis. The tendency is to view Syria through the lens of one's own ideological perspectives. This can cloud any judgment, and great care must be taken to bring a sense of legal detachment to one's assessments. This is no easy task when it is clear that Syrian men, women and children are being barrel-bombed in their homes, tortured in detention, hounded as refugees, and deprived of every vestige of dignity and respect that prevails for those of us who still enjoy what is called "normal life." Ultimately the crucial question remains: How did such an ancient and diverse civilization, graced with a vibrant culture, literature, community life and art fall into this terrible state of tragedy?

In a very real sense, this Middle Eastern country has been both graced and cursed by its highly strategic geographic location, a fact that made it irresistible to foreign conquerors and more constructively, a magnet for migrants from many nations who came, traded, settled, and added to the rich tapestry of Syrian civilization. Present-day Syria shares borders with Turkey, Iraq, Israel, Jordan and Lebanon.²¹ Largely comprised of desert,

²¹ For an interesting study on this subject, see Joshua J. Mark, *Ancient Syria*, ANCIENT HIST. ENCYCLOPEDIA (June 17, 2014), <http://www.ancient.eu/syria>.

arable land accounts for only a quarter of its 185,000 square kilometers, and hence, the economically viable portion of Syria is approximately the size of Switzerland.²² Despite the existence before the war of a number of vibrant, densely-populated cities, by one estimate, approximately 47% of Syria consists of sparsely inhabited steppes.²³ Prior to the crisis, approximately 80% of Syria's population lived west of a line drawn from Damascus, the capital, to Aleppo, which may be one of the oldest continuously inhabited cities in the world.²⁴

Our search could take us right back to the early stages of human development in Syria, a country where traces of ancient civilizations remain right next to modern development. Among various names, Syria was once called the land of Shaam.²⁵ With origins that may go back 700,000 years,²⁶ Syria was preyed upon, fought over and sometimes conquered and settled by Egyptians, Hittites, Assyrians, Persians, Macedonians, Romans, Mongols, Turks, and in modern times by the British and the French.²⁷ The result is that modern "Syria is an extremely heterogeneous society, with Sunnis, Alawi, Ismailis, Druze, Shi'a, Greek Orthodox, Maronite and other Christian sects."²⁸ Religious diversity is compounded by ethnic variety, an inevitable consequence of such an elaborate history and a tradition that offered hospitality to those seeking refuge from various forms of oppression and persecution. Hence, there are in Syria numerous minorities, including Kurds, Armenians, Turcomans, and Circassians.²⁹

The ancient Egyptians in particular showed a keen interest in Syria because this region provided access to forests of cedar, cypress and pine,³⁰ which was necessary for the vast building projects of the Egyptian pharaohs. Alexander the Great added this area to his global empire.³¹ The Bible contains significant references to Syria.³² Damascus, popularly called the

²² William R. Polk, *Understanding Syria: From Pre-Civil War to Post-Assad*, THE ATLANTIC (Dec. 10, 2013), <https://www.theatlantic.com/international/archive/2013/12/understanding-syria-from-pre-civil-war-to-post-assad/281989/>.

²³ Fabrice Balanche, *These Maps Show How Ethnic Cleansing Has Become a Weapon in Syria's Civil War*, BUS. INSIDER (Dec. 8, 2015), <http://www.businessinsider.com/these-maps-show-how-ethnic-cleansing-has-become-a-weapon-in-syrias-civil-war-2015-12?r=UK&IR=T>.

²⁴ DIANA DARKE, SYRIA 3, 165 (2010).

²⁵ JOHN MCHUGO, SYRIA A RECENT HISTORY 35 (2014).

²⁶ Mark, *supra* note 21.

²⁷ Polk, *supra* note 22.

²⁸ SAMER N. ABBOUD, SYRIA 5 (2016).

²⁹ NIKOLAOS VAN DAM, THE STRUGGLE FOR POWER IN SYRIA: POLITICS AND SOCIETY UNDER ASAD AND THE BA'TH PARTY 1 (2011).

³⁰ THOMAS COLLETO, SYRIA: A COUNTRY STUDY 4 (1988) (Segment: Ancient Syria).

³¹ MCHUGO, *supra* note 25, at 11.

³² *Id.* at 36.

City of Jasmine,³³ was in ancient times the site where the apostle St. Paul converted to Christianity.³⁴

Every group that interacted with Syria, whether by war or trade or marriage, added to the rich diversity of the civilization that resulted. Eventually, Islam and the civilization, language, art and culture that accompanied that religion dominated Syria along with political empires, termed Caliphates like the Umayyad and the Abbasid.³⁵ The Ottoman Turks conquered Syria in 1516 and they ruled the area until European imperialism took over as a result of Turkey's defeat during the First World War.

The victorious Western powers sought eagerly to carve up the Ottoman territories according to their own self-interest. There was however, one significant difference. Largely because of the idealistic vision of U.S. President Woodrow Wilson, the Powers had to agree to the creation of an international organization which they called the League of Nations. No longer could countries exercise bold rapacity to grab foreign lands. Now there had to be a 'moral justification' for such action. The League came up with the idea of declaring a number of regions, including Syria 'mandates,' giving them in trust to the victorious Western Powers with the proviso that these regions were to be prepared for eventual self-government.³⁶ Per Article 22 of the Covenant of the League, France would govern Syria and Lebanon (present-day names) as a "sacred" trust of civilization, for the "well-being and development of the people."³⁷ The language of the Covenant is replete with early twentieth century imperial phraseology that would be deemed pompous and presumptuous today. Article 22 refers to territories "inhabited by peoples not yet able to stand by themselves under the strenuous conditions of the modern world," and awards them to "advanced nations . . . who can best undertake this responsibility."³⁸ It was naked imperialism, now cloaked in a mantle of self-justificatory hypocrisy.

It is also important to note that the present borders of the Syrian Arab Republic are a substantially truncated part of what constituted Greater Syria at the beginning of the twentieth century. Utilizing power politics, duplicity and betrayal, the British and French undercut the aspirations of the Arabs for a large sovereign state of Syria and instead acquiesced in the creation of

³³ See DARKE, *supra* note 24, at 66 for one explanation for this description.

³⁴ MCHUGO, *supra* note 25, at 36.

³⁵ *Abbasid Dynasty*, ENCYCLOPEDIA BRITANNICA, <https://www.britannica.com/topic/Abbasid-dynasty> (last visited Dec. 9, 2017).

³⁶ *The Covenant of the League of Nations*, YALE L. SCH. art. 22, http://avalon.law.yale.edu/20th_century/leagcov.asp (last visited Dec. 9, 2017). See also MCHUGO, *supra* note 25, at 70.

³⁷ *The Covenant of the League of Nations*, *supra* note 36, art. 22; see also MCHUGO, *supra* note 25, at 70.

³⁸ *The Covenant of the League of Nations*, *supra* note 36, art. 22.

Israel, Jordan, Lebanon, and the remainder constituted the economically unviable Palestinian areas.³⁹

France set about with enthusiasm 'implementing' its 'responsibility and sacred trust' (per the Covenant of the League) by planting the seeds of sectarian division in Syria. "[S]ectarian loyalties were deliberately incited in order to prevent or suppress the rise of Arab nationalism,"⁴⁰ which might have threatened French imperial interests. Despite the commitments of the League's Covenant, the actual practices of the French Mandatory power were more illustrative of the now infamous divide and rule imperial policy that Britain also followed with devastating consequences in India.⁴¹ India was partitioned into two countries (India and Pakistan) and hundreds of thousands died in the riots that followed that decision.

Although there was little sense of nationalism in the country when the French Mandate in Syria began in 1920, there was a feeling of cultural identity grounded in the rich tapestry of influences going back thousands of years.⁴² A vital part of this cultural ethos was a tolerance and a mutual spirit of live and let live. Some of that vibrant tolerance outlasted the departure of the French in 1946. Diana Darke, an Oxford scholar of Arabic, was so taken with Syria that she decided to buy a house there and described this adventure in an interesting book.⁴³ Prior to the present war, Darke commented that "Syria has a tradition of religious tolerance that is quite unusual in the Middle East . . . [r]eligion is considered a private and personal matter and none is judged on the basis of it."⁴⁴ Regrettably, now in 2017, the sectarian divide in Syria has become a chasm that appears daily to be widening. It is imperative for this study to formulate the nature and scope of this sectarian division and hopefully provide some insight into its origins under French imperial rule.

³⁹ For an interesting summary of this complex series of maneuvers, see MCHUGO, *supra* note 25.

⁴⁰ VAN DAM, *supra* note 29, at 4.

⁴¹ Having won its ninety-year struggle against British imperial rule in 1947, India suffered the final indignity of being partitioned into a secular state India and an Islamic theocracy Pakistan. Millions of Muslims chose to remain in India and are there to this day, constituting 13.4% of the population, Indian Muslims now number approximately 170 million. *Population of the World: India (2017)*, LIVE POPULATION, <http://www.livepopulation.com/country/india.html> (last visited Dec. 9, 2017). The brutal consequences of divide and rule politics have resulted in a number of wars between India and Pakistan, the death of thousands in both countries and India is now subject to incessant fundamentalist terrorist attacks that it alleges emanate from Pakistan.

⁴² *Syria*, HARV. DIVINITY SCH., <https://rlp.hds.harvard.edu/syria> (last visited Dec. 9, 2017).

⁴³ DARKE, *supra* note 17.

⁴⁴ DARKE, *supra* note 24, at 21.

A researcher studying this area finds that statistical precision of any type is next to impossible as calculations, even official enumerations from this part of the world are notoriously unreliable and are at best guesstimates. Any researcher realizes very quickly that all statistics are tentative and that they vary with every source consulted. Allowing for a variety of available statistics and a consequent doubt about all of them, one can venture to make a few general comments. The first is that in Islamic sectarian terms, Syria has traditionally been predominantly Sunni, accounting for approximately 75% of the pre-war population.⁴⁵ The Shi'a sect might constitute 10%.⁴⁶ Christians have comprised about 10% of the total, while Druze and Alawi minorities are thought to constitute the remaining 5%.⁴⁷ It has also been claimed that the Alawi are the largest religious minority in Syria, numbering between 12% and 20% of the population.⁴⁸ Syrian experience validates author Alia Malek's observation that "[b]eing a minority is complex in any country, even one that is full of minority communities."⁴⁹

By 2011, when the uprising began, the overwhelming majority of Syria's 22 million people were Arabs with a significant Kurdish minority, numbering approximately 8%.⁵⁰ "Most Kurds are nominally Sunni Muslim, but the Kurdish identity is based on ethnicity and cultural tradition rather than religion."⁵¹ In terms of economic leverage, it is important to note that Syria's oil fields lie mainly in the Kurdish north-eastern region.⁵² This community has taken a leading role in the present conflict against terrorist organizations like the so-called Islamic State (also called Daesh or ISIS or ISIL).

The Alawi minority, led by the ruling Assad family, is officially acknowledged to comprise 12% of the total population,⁵³ and more important, is clearly Syria's most influential minority. Numerical guesses aside, the reality is that the Alawi minority, whatever its size in the population, constitutes a ruling group that has enjoyed political prominence, social influence and financial benefits since the accession to power in 1970 of Hafez al-Assad. This group has zealously supported the regime in the

⁴⁵ U.S. DEP'T OF STATE, INTERNATIONAL RELIGIOUS FREEDOM REPORT (2011), https://www.state.gov/j/drl/rls/irf/2010_5/168276.htm.

⁴⁶ *Id.*

⁴⁷ DARKE, *supra* note 24, at 22.

⁴⁸ DARKE, *supra* note 17, at 49.

⁴⁹ ALIA MALEK, *THE HOME THAT WAS OUR COUNTRY: A MEMOIR OF SYRIA* 13 (2017).

⁵⁰ ABBOUD, *supra* note 28, at 5.

⁵¹ DARKE, *supra* note 17, at 214–15.

⁵² *Id.* at 216.

⁵³ *Id.* at 49.

instant crisis,⁵⁴ and some of its members stand accused of participating vigorously in the alleged brutalization of other ethnic groups, with “some of the worst atrocities of the conflict . . . [being] committed by the shabiha, freewheeling armed gangs of largely Alawite thugs.”⁵⁵

It was the French Mandatory Power that acted with considerable zeal to undo the binding ties of millennia that had helped the people who inhabited Syria tolerate and welcome so much diversity and variety. Having succeeded in ousting nationalist Arab leader Emir Feisal who had briefly enjoyed the status of elected King of Syria,⁵⁶ the French set about arbitrarily to redraw geographical boundaries, to Syria’s detriment. Determined to fragment the country, the French Mandatory Power created the sovereign state of Lebanon.⁵⁷ The Hatay province was given away by the French to Turkey,⁵⁸ an action that still rankles with Syrians. Autonomous regions were also allotted to the Alawi and Druze minorities, thereby intensifying the latter’s focus on ethnic and sectarian identity.⁵⁹ John McHugo comments that “France . . . attempted to turn its Mandate into a patchwork quilt of semi-autonomous but dependant territories, over which it would retain overall control.”⁶⁰ The point was to emphasize a sectarian identity that would be detrimental to “a Syria-wide sense of national feeling.”⁶¹ This was a classic example of the politics of divide and rule and is the genesis of the sectarian crisis presently destroying Syria.

While the population comprising the original Greater Syria may or may not have enjoyed a shared nationalistic feeling, the fact is that they had the foundations to succeed in that endeavor, had the French honestly implemented the Mandate. Because the vast majority of Syrians (recently approximately 85%⁶²) are ethnically Arabs, Arabic is naturally the lingua

⁵⁴ Ruth Sherloc, *In Syria’s War, Alawites Pay Heavy Price for Loyalty to Bashar al-Assad*, TELEGRAPH (Apr. 7, 2015), <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/11518232/In-Syrias-war-Alawites-pay-heavy-price-for-loyalty-to-Bashar-al-Assad.html>.

⁵⁵ Joshua Hersh, *The Dilemma of Syria’s Alawites*, NEW YORKER (Oct. 18, 2013), <http://www.newyorker.com/news/news-desk/the-dilemma-of-syrias-alawites>.

⁵⁶ REESE ERLICH, *INSIDE SYRIA: THE BACKSTORY OF THEIR CIVIL WAR AND WHAT THE WORLD CAN EXPECT* 47 (2016).

⁵⁷ *Lebanon Country Profile*, BBC NEWS (Dec. 6, 2017), www.bbc.com/news/world-middle-east-14647308.

⁵⁸ EHRlich, *supra* note 56, at 49.

⁵⁹ MCHUGO, *supra* note 25, at 75.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² DARKE, *supra* note 24, at 18.

franca of the region. An environment of mutual respect and tolerance had, with some exceptions, prevailed for centuries. While tribal loyalties and familial ties were very important, the city of one's origin, the land of one's ancestors, and the patriotic pride that grew from an appreciation for the rich cultural tradition left behind by those who had gone before were as well. All Syrians appreciated the wonderful monuments of the past that occupied so much of their homeland, whether these were mosques or Crusader castles, ancient bazaars, or Christian monasteries. Cultivation of those binding factors by the Mandatory Power would have generated a constructive nationalism, and Syria along with its neighbor Arab States might have enjoyed a vastly different and more peaceful history. Instead, Syrians were manipulated into identifying with concepts based on family, "clan, sect [and] geography."⁶³ It is evident that sect became the most significant and the most divisive factor.

Given the length constraints of this Article, this incursion into early Syrian history had necessarily to be brief. The purpose has been to explain those features of Syrian history that are relevant to the events now unfolding in the country. It is important to emphasize that the aim of these historical sections is definitely not to provide a comprehensive history of Syria.

With the benefit of hindsight and the twenty/twenty vision it affords, one can discern the massive mistakes made by so many participants in this terrible tragedy that began in 2011. However, history will undoubtedly record that the greatest responsibility for the escalation of this crisis lies with Syria's President whose reactions led to all the other degrees of escalation.

It is probably unlikely that Syria's President Bashar al-Assad could have predicted that he would someday be part of so complicated a war when in more peaceful times he studied ophthalmology in England. Although a member of the minority Alawi clan, the Assad family and those it favored enjoyed a highly privileged status in Syria. It is important to understand how an overwhelmingly Sunni population came to be ruled by a minority leader who was able to establish such a tight dictatorship over the entire country.

The withdrawal of French soldiers and independence in 1946 enabled Syrians to continue to pursue political modernization and experiment with some form of democratic government under the leadership of President Shukri al-Quwwatli and the National Party. However, the country was beset with serious problems. The French had left the economy in tatters, and

⁶³ ABBOUD, *supra* note 28, at 19.

inflation had risen as high as 830%.⁶⁴ In a very incisive and well-written history of the country, John McHugo has wondered whether Syria was after all a geographical expression at that time, “menaced from almost all points of the compass.”⁶⁵ The competing ambitions of Turkey, Jordan, Palestine (much of which would become Israel) along with those of Egypt, Iraq, and Saudi Arabia served to ensure the fragility of Syrian democracy. As McHugo states, “these Arab states would exploit whatever divisions they could open up in Syrian society.”⁶⁶ These factors coalesced to create a nearly ungovernable state particularly when political parties proliferated in number and their conflicting ambitions polarized an already-toxic environment. The Palestinian crisis and the proclamation of Israel as a nation-state in 1948 generated more upheaval in Syria.

Internally, the divide and rule policies of the French Mandatory Power had created a sense of sectarian identity that was antithetical to the concept of modern secular nationhood. Islam became a political presence with the Muslim Brotherhood’s entry into Syrian politics. This impact was felt in the new Constitution that made Islam the religion of the Head of State and Sharia the “main source” of legislation.⁶⁷ Interestingly, it was not Islamic ideology that underpinned the demise of democracy and the rise of dictatorship in Syria. That was the singular accomplishment of an entirely novel political philosophy called Ba’athism. The name means ‘Resurrection’⁶⁸ or ‘Rebirth.’⁶⁹

Ba’athism was the brain child of two Damascenes, Michel Aflaq, a Greek Orthodox Christian,⁷⁰ and his close friend Salah al-Din Bitar, a Sunni Muslim.⁷¹ They were both sons of Syrian corn merchants, who got the opportunity to study in Paris, returned to teach school in Damascus, and created an ideology dedicated to unity, freedom and socialism.⁷² These ideas took organizational form in 1947, with the creation of the Arab Ba’ath political party.

This ideology eventually exerted great influence over the military officer corps of Syria and prevailed in the bureaucracy and in parts of the

⁶⁴ MCHUGO, *supra* note 25, at 112.

⁶⁵ *Id.*

⁶⁶ *Id.* at 114.

⁶⁷ *Id.* at 117.

⁶⁸ ROBIN YASSIN-KASSAB & LEILA AL-SHAMI, *BURNING COUNTRY: SYRIANS IN REVOLUTION AND WAR 8* (Pluto Press, 2016).

⁶⁹ ERLICH, *supra* note 56, at 60.

⁷⁰ VAN DAM, *supra* note 29, at 15.

⁷¹ *Id.*

⁷² MCHUGO, *supra* note 25, at 118–19.

legislature.⁷³ The military officer corps was dominated by the Alawi minority, partly a result of French identity politics.⁷⁴ The Alawis traditionally formed a majority of the population in Latakia, were historically inclined to rural pursuits like growing tobacco, suffered significant poverty, and had on occasion been compelled to send their daughters as indentured servants to serve the richer urban Sunni families.⁷⁵ A military position afforded the sons of these impoverished Alawi peasants, a degree of social dignity and status, and a way to serve with honor.

Ba'athism appealed to more than disadvantaged minorities in Syria. Its calls for Arab unity and nationalism resonated across a wide part of the region. By the 1950's, the Party was the second largest in Syria. A wave of pan-Arabism and the existence in Egypt of a charismatic leader, Gamal Abdel Nasser, impelled Syria to unify with Egypt in 1958 to create the United Arab Republic.⁷⁶

However, the enthusiasm diminished considerably as Nasser, suspicious of the Ba'ath party⁷⁷ formally dissolved all political parties in Syria. He sought tighter restrictions on the Syrian economy, including extensive nationalization and high taxation that paid for heavily subsidized public benefits.⁷⁸ This combination, in a very real sense, destroyed the nascent Syrian democracy. Nasser laid the foundations of personality-oriented dictatorship in Syria, following the template he pursued in his own country. He was revered, particularly by the poor in Egypt. Syrians were clearly not as enthused.

The union with Egypt was dissolved in 1961 following a successful military coup in Syria,⁷⁹ an event which clearly demonstrated the extent to which the military had become politicized—always a danger sign for any democracy. The aftermath was precarious as Syria lurched from one coup to another.

The resuscitated Ba'ath Party, which had never won a general election⁸⁰ in the brief 'democratic' era following independence, seized power in a bloodless military coup in 1963 and has governed Syria ever since. In the process, the idealistic goals of the founders became subsumed by the realities of governing when the pie was small, the demands were large, and the

⁷³ ABBOUD, *supra* note 28, at 22.

⁷⁴ Diven Trivedi, *Primer on the Alawi*, FOREIGN POL. RES. INST. (Dec. 2016); Daniel Pipes, *The Alawi Capture of Power in Syria*, MIDDLE EASTERN STUD. (1989).

⁷⁵ VAN DAM, *supra* note 29, at 7–9.

⁷⁶ ABBOUD, *supra* note 28, at 23.

⁷⁷ *Id.* at 23–24.

⁷⁸ MIDDLE EAST RECORD: VOL. 2, at 578 (Yitzhak Oron ed., Tel Aviv University, 1961).

⁷⁹ M. CLEMENT HALL, *THE HISTORY OF SYRIA: 1900–2012* (2012).

⁸⁰ MCHUGO, *supra* note 25, at 140.

supporters of the regime looked for influence, retribution and in some cases, revenge. The priority was now to redress the class and power structures of centuries with “the placing of relatives, friends and people who came from the same small town or belonged to the same tribe or sect in government jobs.”⁸¹ Whether or not it was “authoritarianism-populism,”⁸² or just sheer cronyism, or both, will undoubtedly be debated for years to come. The lack of training and education of many of the new beneficiaries of Ba’ath political largesse assured Syria of a tortuous and “legendarily impenetrable bureaucracy,”⁸³ which soon degenerated into a process of blatant corruption used to grease the wheels of this cumbersome system. In 2016, Transparency International ranked Syria a dismal 173 out of 176 countries in its global Corruption Perceptions Index.⁸⁴

With the military in power, purges inevitably followed. This revolving door resulted in eight Defense Ministers and five Chiefs of Staff.⁸⁵ The resulting changes in personnel and consequent low morale were further exacerbated by Israel’s spectacular victories during its pre-emptive strike against Arab States in June 1967. Syria suffered considerable humiliation with the loss of the strategically important Golan Heights to Israel—and to date, this territory has not been returned.

In one of those strange ironies, the Syrian Defense Minister deemed responsible for losing the Golan Heights eventually emerged as the victorious dictator who established a dynasty that rules Syria to this day. A former Air Force General, Hafez al-Assad, seized power in 1970 via a bloodless coup, claiming that it was merely a “corrective movement,” to put the Ba’ath Party back on track.⁸⁶

Born in 1930, in Latakia province to a poor Alawi family, Hafez al-Assad attended a military academy in Homs, trained as an Air Force pilot in Russia,⁸⁷ and became active in the Ba’ath Party. He rose quickly to become Defense Minister in 1966, before carrying out a successful coup four years later.⁸⁸ At the time of his coup, the army was said to be 40% Alawi.⁸⁹ He attempted to legitimize his rule with a referendum in 1971 that gave him a

⁸¹ *Id.* at 144–45.

⁸² ABBOUD, *supra* note 28, at 27.

⁸³ MCHUGO, *supra* note 25, at 145.

⁸⁴ *Corruption Perceptions Index 2016*, TRANSPARENCY INT’L (Jan. 25, 2017), https://www.transparency.org/news/feature/corruption_perceptions_index_2016.

⁸⁵ MCHUGO, *supra* note 25, at 149.

⁸⁶ *Id.* at 153.

⁸⁷ DARKE, *supra* note 17, at 50.

⁸⁸ ERLICH, *supra* note 56.

⁸⁹ DARKE, *supra* note 17, at 51.

questionable 99% of the vote, after which he assumed the title of President.⁹⁰ He ruled Syria with an iron hand till his death in 2000.⁹¹ The government has been called “an authoritarian regime that ruled Syria through a combination of repression and clientism.”⁹²

Astute, highly intelligent, and motivated, Assad established the main pillars of an absolutist dictatorship, allowing no opposition. These included the creation of a vast security police apparatus that penetrated into every city, town, and neighborhood throughout the country. Author Wendy Pearlman commented that “parents reared children on the saying ‘Whisper, the walls have ears.’”⁹³ Besides the regular police, Syrians were overseen by Party militias and “at least twelve overlapping security agencies.”⁹⁴ One aspect of this police state was the infamous Mukhabarat that was notorious for its brutality⁹⁵ and this group played a large role defending the regime during the 2011 uprising.

The second pillar was the Ba’ath Party, now no longer the legitimate policy-making and intellectual underpinning of government envisaged by Michel Aflaq, but instead, as Yassin-Kassab and Al-Shami explain, a vast “patronage machine, a vehicle for personal gain.”⁹⁶ Continuing, these authors state:

Membership offered job opportunities and eased promotion and access to state funds. The party was also an organised proclaimer of the Assadist cult of personality. Grim statues of the Leader watched over squares and campuses; his name was painted on walls and hillsides.⁹⁷

The Syrian bureaucracy proved its effectiveness as the vital third pillar of the Assad regime, reaching into every corner of Syrian life with a complex maze of rules, regulations, and requirements that could only be sidestepped by bribery and corruption. The bureaucracy bloated, as such institutions usually do around the world, to the point that during the 1980’s, almost a quarter of Syrians were employed in the public sector.⁹⁸ Between the 1980’s

⁹⁰ ROGER OWEN, *THE RISE AND FALL OF ARAB PRESIDENTS FOR LIFE* 81 (2014).

⁹¹ ERLICH, *supra* note 56, at 64.

⁹² ABBOUD, *supra* note 28, at 3.

⁹³ WENDY PEARLMAN, *WE CROSSED A BRIDGE AND IT TREMBLED: VOICES FROM SYRIA*, at xxxiv (Harper Collins, 2017).

⁹⁴ YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 12.

⁹⁵ MCHUGO, *supra* note 25, at 244.

⁹⁶ YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 12.

⁹⁷ *Id.*

⁹⁸ ABBOUD, *supra* note 28, at 31.

and the commencement of the uprising, the Assad regime encouraged an affiliation between this bureaucracy and business elites, transforming Syria into a “capitalist economy characterized by cronyism.”⁹⁹

Most important of all was the military and with reorganization and an inflow of more Alawi supporters to important positions,¹⁰⁰ Assad was assured of military loyalty and support. The system cleverly combined coercion with some benefits. It has aptly been called a system of “patronage politics.”¹⁰¹ The Alawi flourished most of all. As scholar Fouad Ajami explained, “the Alawis were invested in the regime and captured by it.”¹⁰²

The Syrian rural peasantry benefited from land grants. Urban dwellers found work in the ever-growing ranks of the bureaucracy, the security apparatus, and the military. A tacit “security bargain” enabled people to “live in relative peace, and businessmen could make money—so long as they kept out of politics.”¹⁰³ Additionally, universities, the media, and the judiciary were under government control.¹⁰⁴ On the positive side, literacy rates increased steadily and women were more free than in many other Muslim countries.¹⁰⁵ As regards religion, while favoring Muslim minorities, particularly the Alawi, the regime was fairly tolerant and inclined toward a secular approach. In 1973, Assad dropped the requirement that the President had to be a Muslim.¹⁰⁶

Hafez al-Assad’s foreign policy can only be very briefly mentioned here. With characteristic shrewdness, he capitalized on Syria’s strategic importance in the Middle East to woo friendship and funding from the USSR and the revolutionary Shia government that took power in Iran after its 1979 revolution.¹⁰⁷ While portraying himself a peace-maker, he participated with Egypt in the 1973 Yom Kippur war against Israel, but failed to regain the Golan Heights.¹⁰⁸ Three years later, he intervened militarily in the Lebanese Civil War and established a Syrian presence that was not removed until Syrian troops withdrew in 2005.¹⁰⁹ After fellow-Ba’athist Iraqi dictator

⁹⁹ FAWAZ A. GERGES, *ISIS: A HISTORY* 171 (2016) (citing Bassam Haddad, *The Syrian Regime’s Business Backbone*, Middle East Research and Information Project 42 (Spring 2012); and Haddad, *Business Networks in Syria: The Political Economy of Authoritarian Resilience*, 38 (2011)).

¹⁰⁰ YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 12.

¹⁰¹ PEARLMAN, *supra* note 93, at xxxiv.

¹⁰² FOUAD AJAMI, *THE SYRIAN REBELLION* 123 (2012).

¹⁰³ YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 13.

¹⁰⁴ OWEN, *supra* note 90, at 81.

¹⁰⁵ Polk, *supra* note 22.

¹⁰⁶ HALL, *supra* note 79.

¹⁰⁷ OWEN, *supra* note 90, at 82.

¹⁰⁸ HALL, *supra* note 79.

¹⁰⁹ MCHUGO, *supra* note 25, at 163.

Saddam Hussein invaded Kuwait in 1990, Assad joined the international coalition that waged Operation Desert Storm, defeated Saddam, and liberated Kuwait. Assad gained in prestige and international influence because he had picked the winning side.

The longevity of this dictatorship gave the country a façade of political stability, but this was largely an illusion. Urban uprisings were suppressed in 1973, 1980, and most brutally in 1982 when between 10,000 and 20,000 people were killed in Hama.¹¹⁰ After 1982, Syria “became a kingdom of silence, a realm of fear.”¹¹¹

Hafez al-Assad’s second son, Bashar (born in 1965), inherited the Presidency in 2000, after the Constitution was expediently amended (with respect to the minimum age provisions for any President) in order to allow the young thirty-four year old to take charge of Syria.¹¹² Bashar’s older brother and the prospective Assad dynastic heir Basil, had died in a car accident in 1994.¹¹³ Bashar had trained to be an ophthalmologist, studied in London, acquired fluency in English and met and married an attractive British-Syrian woman, a banker named Asma, who is from a prominent Sunni family from Homs.¹¹⁴

The new President, basking in an early glow of popularity, allowed a slight easing of restrictions on freedom of expression and on the media and a burst of public enthusiasm, now sadly termed the “Damascus Spring,”¹¹⁵ brought forth ideas on democracy and political reform. Political prisoners were released and civic groups, advocating for human rights were allowed to form.¹¹⁶ Dissident lawyer Haitham al-Maleh led the newly-created Human Rights Association in Syria.¹¹⁷

For those who in the U.S. government of President Barak Obama who later doubted that Syrians were ever genuinely interested in democracy, the debates, discussions, forums, and writings unleashed during this brief Damascus Spring would have been enlightening. Like people everywhere,

¹¹⁰ Estimates vary and the true number will probably never be known. Roger Owen gives an estimate of between 5,000 and 10,000 in OWEN, *supra* note 90, at 82. For an estimate of 20,000 see YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 13–14.

¹¹¹ YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 14.

¹¹² VAN DAM, *supra* note 29, at 132–33.

¹¹³ *Id.* at 130.

¹¹⁴ MCHUGO, *supra* note 25, at 203.

¹¹⁵ OWEN, *supra* note 90, at 85.

¹¹⁶ MCHUGO, *supra* note 25, at 206.

¹¹⁷ YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 19.

the Syrians longed for an end to political repression, corruption, and the constant fear that haunted their every movement. There were public appeals for an end to the state of emergency that had prevailed for forty years.¹¹⁸ There was popular support for the rule of law, “including a recognition of political pluralism, freedom of assembly, the press and expression; and for the freedom of citizens to participate in the country’s development.”¹¹⁹ Many hopes were pinned on the popular young President to reform Syria even as he sought to modernize its institutions.

It was all too much for the government elites, particularly for those around the President who saw their entire comfortable existence imperiled by these calls for reform and attacks on patronage and bribery. “By autumn 2001, the Damascus Spring had turned to winter.”¹²⁰ The movement was stifled, the reformers were arrested and the joyfully anticipated human rights failed to materialize. Later, the President referred to the Damascus Spring as a “pure media term with which the Syrian government does not deal.”¹²¹ He added: “It only deals with reality.”¹²²

Dealing with reality meant re-imposing the one effective means of social control—the prison system and its attendant horrors including widespread resort to torture.¹²³ It is important to note that the Syrian government under Bashar al-Assad acceded to the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment in 2004,¹²⁴ while simultaneously allegedly detaining and beating and electrocuting unknown numbers in his prisons.¹²⁵ In their study of this subject, authors Yassin-Kassab and Al-Shami explained that torturers could work with impunity as they were protected in Syria by Legal Decree No. 14, which “provides that ‘no legal action may be taken against General Intelligence [Division] employees for crimes committed in an official capacity.’”¹²⁶ These authors added that in 2008, this law was extended to cover the entire police and security force.¹²⁷ Clearly, for the Assad presidencies, accession to human rights conventions was an expedient action, taken cavalierly, possibly

¹¹⁸ OWEN, *supra* note 90, at 86.

¹¹⁹ YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 17–18.

¹²⁰ *Id.* at 20.

¹²¹ *Id.* at 16.

¹²² *Id.*

¹²³ *Id.* at 23.

¹²⁴ Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, 1465 U.N.T.S. 85.

¹²⁵ YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 23.

¹²⁶ *Syria: Rein in Security Services*, HUMAN RTS. WATCH (Apr. 21, 2011), <https://www.hrw.org/news/2011/04/21/syria-rein-security-services>.

¹²⁷ YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 23.

as a public relations maneuver and not intended for actual implementation. It is important to remember this point as we proceed to discuss the numerous violations of another U.N. treaty, the Convention on the Rights of the Child.

Length constraints in this Article preclude any detailed history of the internal and foreign policies of the Assad presidents. However, this exploration of the Damascus Spring is relevant in view of the 2011 Uprising. First, the earlier episode clearly shows a Syrian people longing for human rights, for freedom and for democratic systems and equally important, for a secular, pluralistic multi-cultural society. There is no reason to doubt that these ideals also motivated the early phases of the 2011 Uprising. Second, the Damascus Spring tragically reveals the inherent weakness of the opposition in Syria and thereby explains why this group failed in 2011. It appears that the Opposition primarily consisted of intellectuals, an elite that failed to produce either in 2000 or in 2011 one great leader who could become the voice of the entire oppressed nation. Additionally, successful revolts need an organizational and funding structure and the regime saw to it that the “opening up of political space for civil-society groups to form and operate was . . . severely restricted,” by insisting that licensing depended on approval by thirteen intelligence agencies as well as other government functionaries.¹²⁸

Those groups that succeeded through this tortuous process functioned primarily as charity and humanitarian organizations, posing little threat to the regime. Arguably, the provision of charity became vital for many as the young President encouraged economic market reforms. The huge financial subsidy system was dismantled, price ceilings were lifted and public-sector monopolies were replaced with private sector entrepreneurship.¹²⁹ Over the first decade of the Bashar al-Assad presidency, the results of these policies were disastrous for the Syrian people. By one estimate approximately 20% of the population endured life in slum villages.¹³⁰ Youth unemployment rose to 48%.¹³¹ Over 30% of the population existed below the poverty line.¹³² The Syrian economy, so reliant on agriculture, also suffered from a drought that occurred for four years prior to the 2011 uprising.¹³³ The one positive achievement of the Assad governments, namely the expansion of public education, only served to create qualified young people, many of whom lacked the means and family connections to acquire jobs in the

¹²⁸ ABBOUD, *supra* note 28, at 40–43.

¹²⁹ *Id.* at 34–38.

¹³⁰ *Id.* at 38.

¹³¹ YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 29.

¹³² AJAMI, *supra* note 102, at 9.

¹³³ DARKE, *supra* note 17, at 139.

establishment. “Ultimately, high levels of corruption, nepotism and bureaucratic inertia stifled Bashaar’s economic reforms.”¹³⁴

Regrettably, neither in 2000 nor in 2011 did Syria produce an opposition leader and political party who could capitalize (no pun intended) on these economic disasters to galvanize public reform and become a credible alternative to the regime. The Syrian people were understandably too ground down by so many years of repression. In a very real sense, even those who disliked the regime could not conceive pragmatically of a feasible and viable way to change their political system without submitting to egregious amounts of mass suffering. Absent effective unifying leadership, a coherent politically capable opposition party and facing a government that had no limits to its brutality, is it any wonder that Syrians could not gain their freedom either in 2000 or in 2011? Another critical factor required was extensive and effective external assistance, and this was also lacking.

Over its long tenure, the Assad regime had cultivated and created a supportive establishment that was strongly tied to the dictatorship and willing to go to any length to ensure its survival. Writing for *The New Yorker*, Joshua Hersh aptly commented that the Alawites backed the regime “because they are the regime; its demise would be their own.”¹³⁵ On the heels of the 1963 Ba’ath seizure of power, the Alawi were provided with scholarships, the chance to study abroad and enter the professions of law, medicine and teaching, engineering and diplomacy. This process of “Alawisation” brought considerable financial and other benefits to this formerly impoverished community.¹³⁶ By one estimate, in 2011 about 80% of Alawis were state employees and they were astute enough to understand that if the regime fell their lives were in jeopardy.¹³⁷

We have seen how cavalierly the Syrian government ignored its international law commitments with respect to the Convention Against Torture. Briefly, the situation is similar with respect to the two core human rights treaties that presently serve as the global standard by which we assess governments worldwide. Syria acceded to both the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights on April 21, 1969.¹³⁸ Along with some other

¹³⁴ YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 31.

¹³⁵ Hersh, *supra* note 55.

¹³⁶ VAN DAM, *supra* note 29, at 9–10.

¹³⁷ DARKE, *supra* note 17, at 210.

¹³⁸ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171; International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

countries, the Syrian government has made a mockery of its international law commitments to these important Covenants. So, it should come as no great surprise that it has violated so many provisions of the most widely-accepted international law treaty in history, the Convention of the Rights of the Child.

III. THE CONVENTION ON THE RIGHTS OF THE CHILD AND VIOLATIONS IN SYRIA

In 1989, it was famously called the “Magna Carta for children.”¹³⁹ In fifty-four Articles,¹⁴⁰ the signatories outlined a charter for children that, if ever implemented with the same enthusiasm with which it was endorsed, would have changed the world for the better.¹⁴¹ Ironically, although constantly violated, it is considered legally binding.¹⁴² Preferring to focus on the positive, the United Nations has pointed to the enhanced awareness of child rights globally, as evidenced by the proliferation of child commissioners, ombudspersons for children, mediators, and human rights commissioners, all seeking to serve the best interest of their young clientele.¹⁴³

This Convention is undoubtedly a brilliant creation, articulating the best ideals of human thought and civilization. Unfortunately, it has serious flaws and perhaps the most constructive way of assessing this document is to suggest that it is a crucial first step in serving the best interest of the child. Member States referred to and acknowledged the direction given by the Universal Declaration of Human Rights, which specified that “childhood is entitled to special care and assistance.”¹⁴⁴ Children are protected from various forms of discrimination,¹⁴⁵ and promised, as a cardinal

¹³⁹ Statement by James P. Grant, Executive Director of UNICEF, *U.N. Assembly Adopts Doctrine Outlining Children’s Basic Rights*, *supra* note 10.

¹⁴⁰ See generally Convention on the Rights of the Child, *supra* note 14.

¹⁴¹ See generally LITIGATING THE RIGHTS OF THE CHILD: THE UN CONVENTION ON THE RIGHTS OF THE CHILD IN DOMESTIC AND INTERNATIONAL JURISPRUDENCE (Ton Liefwaard & Jaap E. Doek eds., 2015).

¹⁴² *Multidisciplinary Responses to the International Rights of the Child*, in CHILD RIGHTS: THE MOVEMENT, INTERNATIONAL LAW AND OPPOSITION 2 (Clark Butler ed., 2012).

¹⁴³ UNICEF, *Is the World a Better Place for Children?: A Statistical Analysis of Progress Since the Adoption of the Convention on the Rights of the Child, in 25 YEARS OF THE CONVENTION ON THE RIGHTS OF THE CHILD*, https://www.unicef.org/eapro/UNICEF_CRC_at_25.pdf.

¹⁴⁴ Convention on the Rights of the Child, *supra* note 14, at Preamble.

¹⁴⁵ *Id.*

requirement¹⁴⁶ that their “best interests” will be a “primary consideration.”¹⁴⁷ States parties commit to the protection of children,¹⁴⁸ recognizing the child’s right to life,¹⁴⁹ to nationality,¹⁵⁰ and to a legally-recognized identity.¹⁵¹ Additionally, children are provided with the right to free expression of opinion and particularly to be heard in administrative and judicial proceedings.¹⁵² Freedom of thought, conscience, and religion are also endorsed;¹⁵³ although for these rights, there are public safety limitations.¹⁵⁴ Similar limits are placed on a child’s freedom of association and peaceful assembly.¹⁵⁵ Per international legal practice, the formulations of the Convention have to be integrated into the national legal systems of ratifying nations.¹⁵⁶

In the Syrian context, almost all the progressive rights of children have been systematically and brutally violated during the instant crisis. Unfortunately, the civil war, aka proxy war, in Syria has made a mockery of the Convention and of a number of its most beneficial clauses. Any student of this subject must conclude with considerable regret that the Syrian crisis has resulted in the virtual shredding of almost the entire Convention.

It is important to note that in Article 38, “States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.”¹⁵⁷ United Nations investigations on behalf of the International Commission of Inquiry on Syria concluded in a searing Report that “Syrian children continue to be victims of violations by all warring parties. Continually exposed to unbearable levels of violence, they suffer from ongoing, multiple and

¹⁴⁶ Jyothi Kanics, *Realizing the Rights of Undocumented Children in Europe*, in CHILDREN WITHOUT A STATE: A GLOBAL HUMAN RIGHTS CHALLENGE 132 (Jacqueline Bhabha ed., 2011).

¹⁴⁷ Convention of the Rights of the Child, *supra* note 14, art. 3 ¶ 1.

¹⁴⁸ *Id.*

¹⁴⁹ *Id.* art. 6 ¶ 1.

¹⁵⁰ *Id.* art. 7 ¶ 1.

¹⁵¹ *Id.* art. 8 ¶¶ 1–2.

¹⁵² *Id.* art. 13 ¶ 1.

¹⁵³ *Id.* art. 14 ¶ 1.

¹⁵⁴ *Id.* art. 14 ¶ 3.

¹⁵⁵ *Id.*

¹⁵⁶ Tom O’Neill & Dawn Zinga, *Introduction*, in CHILDREN’S RIGHTS: MULTIDISCIPLINARY APPROACHES TO PARTICIPATION AND PROTECTION 16 (2008).

¹⁵⁷ Convention on the Rights of the Child, *supra* note 14, art. 38.1.

frequently untreated trauma.”¹⁵⁸ Also violated is Article 19, which commits States:

Parties to take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.¹⁵⁹

It is important to note that the Syrian Government is not the only entity that has committed serious crimes against children. Although Syrian children have been victimized by all combating groups, they have suffered severely at the hands of their own government. Its use of air power and bombs that target homes, hospitals, and schools has resulted in an unknown numbers of deaths of children and adults.¹⁶⁰ Opposition areas have been under such severe bombardment that entire towns have been leveled.¹⁶¹ Children are not collateral damage in Syria, but are on occasion specifically victimized. The United Nations reported that in Aleppo “children were the subject of deliberate targeting by snipers.”¹⁶²

Equally horrifying are the ground-based attacks against civilians conducted by the multiplicity of terror organizations which have made Syria a base of operations. Numerous non-state actors involved in this multi-party war are guilty of egregious attacks against children. These include various groups including the Islamic State. All combatants stand accused of recruiting children by force, or by promising boys monthly salaries to become child soldiers.¹⁶³

The moral compass of various players in this crisis has clearly not pointed in the direction of protection for children. Article 22 of the Convention

¹⁵⁸ Rep. of the Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, Human Rights Council, Thirty-Third Session, at 17, U.N. Doc. A/HRC/33/55 (2016).

¹⁵⁹ Convention on the Rights of the Child, *supra* note 14, art. 19.1.

¹⁶⁰ See Rep. of the Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, Human Rights Council, *supra* note 158, at 6.

¹⁶¹ *Id.*

¹⁶² Rep. of the Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, Human Rights Council, Twenty-Fifth Session, at 12, U.N. Doc. A/HRC/25/65 (2014).

¹⁶³ See Sergio Paçanha & Jeremy White, *From Syria, an Atlas of a Country in Ruins*, N.Y. TIMES (Mar. 6, 2015), <https://www.nytimes.com/interactive/2015/02/12/world/middleeast/syria-civil-war-damage-maps.html>.

commits States Parties to protect and assist refugee children, whether accompanied by parents or unaccompanied (as too many are).¹⁶⁴ The present migration crisis in Europe is part of the global impact of the Syrian war and some European states have been both remiss and cruel in renegeing on the commitments they so enthusiastically made when they signed and ratified this Convention. An unknown number of Syrian children who have reached Europe either on their own or with family, have been victimized by a notorious rogue's gallery of Europe-based criminals, people traffickers, smugglers, organ traffickers, sexual predators, and pedophiles who have all taken advantage of this terrible war and its impact on civilians.¹⁶⁵ The exact number of missing Syrian children will probably never be known, but it is likely to be a large number, in the thousands, lost in Syria, neighboring countries, and in Europe. There has been no dearth of miscreants from many countries who have sought financial gain at the expense of the Syrian people, and particularly Syrian children.

Given the war situation that dominates every phase of Syrian existence, child rights to adequate health care, nutritious food, clean drinking water and other basic necessities, have all been systematically destroyed. These are all guaranteed in Article 24 of the Convention.¹⁶⁶ Similarly, the right to education,¹⁶⁷ so important for training the next generation, has been violated as schools in particular have been targeted for attack. By early 2016, over 3 million children in Syria were no longer regularly going to school, mainly because schools have been subjected to deliberate attack by the various warring groups.¹⁶⁸

Children have often had to become the family bread-winners, engaging in street begging or other forms of child labor, including prostitution, for survival. Given this glaring reality, the promises of the Convention sound quite bizarre and hollow. Article 32 commits States Parties to protect children from economic exploitation and hazardous work, and provides for national legislation to decree minimum ages for employment and regulation of working hours.¹⁶⁹

¹⁶⁴ Convention on the Rights of the Child, *supra* note 14, art. 22.

¹⁶⁵ *See infra* Section VIII.

¹⁶⁶ Convention on the Rights of the Child, *supra* note 14, art. 24.

¹⁶⁷ *Id.* art. 28.

¹⁶⁸ Rep. of the Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, Human Rights Council, Thirty-First Session, at 11, U.N. Doc. A/HRC/31/68 (2016).

¹⁶⁹ Convention on the Rights of the Child, *supra* note 14, art. 32.

The articles supposedly protecting children from being dragged into drug trafficking or being sexually exploited are quite weak,¹⁷⁰ and needless to say, the Syrian situation has resulted in extremely serious violations in this regard. Similarly feeble is the clause against child trafficking,¹⁷¹ an issue that has become extremely serious as globally, criminals have leaped to take advantage of the plight of the Syrian refugees.

President Hafez al-Assad committed the Syrian government not to torture children per Article 37 of the instant Convention.¹⁷² His son, President Bashar al-Assad, has gained international notoriety for the alleged torture, arrest, detention and terrorizing of unknown numbers of adults and children.¹⁷³ Similarly, the most extreme of the terrorist groups involved in this conflict, like Daesh, have also been accused of very serious physical assaults against children.¹⁷⁴ United Nations investigators found that “ISIL continues to carry out indiscriminate attacks that result in the death of children.”¹⁷⁵

The Convention is weak with respect to the issue of accountability for violations and this is a crucial problem. While States may commit to wonderful and progressive measures in favor of human rights, there are no serious consequences if governments simply ignore the provisions. In 2016, the United Nations Independent International Commission of Inquiry on Syria grimly concluded that “[f]lagrant violations of human rights and international humanitarian law continue unabated, aggravated by blatant impunity.”¹⁷⁶ In a very real sense, this problem confronts all the idealistic and eloquent formulations produced by the United Nations. The strength of any human rights measure must be gauged by its successful application during times of crisis. Having wonderful human rights conventions that are adhered to when

¹⁷⁰ *Id.* arts. 19, 32–36.

¹⁷¹ *Id.*

¹⁷² *Id.* art. 37.

¹⁷³ Rep. of the Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, *supra* note 168, at 4.

¹⁷⁴ The Carter Center, *The Children in Daesh: ‘Future Flag Bearers’ of the ‘Caliphate’* 1 (2017), https://www.cartercenter.org/resources/pdfs/peace/conflict_resolution/countering-isis/children-in-daesh.pdf.

¹⁷⁵ Rep. of the Indep. Int’l Comm’n of Inquiry on the Syrian Arab Republic, *supra* note 168, at 11.

¹⁷⁶ *Id.*

convenient and discarded whenever expedient does not reflect well on any Member State. The Syrian situation sadly demonstrates that in the realm of effective enforcement, the world still has a long way to go.

Because the Convention “positions the nation state as the primary guarantor of those rights,”¹⁷⁷ it leaves wide open the issue about the fate of children in the event that any State has to concentrate on the survival of its government or its sovereignty. Indeed, because the United Nations is plagued with a desperate need to secure consensus, often at the expense of doing what is morally right, Conventions like the one under scrutiny contain morally questionable clauses such as Article 38. This clause specifies that “[i]n accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.”¹⁷⁸ It appears that in the Syrian situation, ‘feasible measures’ have been hard to find. The intensive research for this Article demonstrates that the international community is still very “far from having achieved the child-friendly world that is promised by the Convention.”¹⁷⁹

The absence of clear provisions for accountability leaves an altogether too heavy burden on the Committee on the Rights of the Child, a group of ten elected experts tasked with monitoring the observance of the Convention.¹⁸⁰ The process is one of periodic self-reporting by Member Nations to the Committee which in turn reports to the General Assembly.¹⁸¹ In an ideal world the Committee’s remit, if implemented by all States that so enthusiastically ratified the Convention, would ensure great improvement for millions of children. Specifically, the Committee has attempted to prepare a comprehensive national agenda for children; to develop permanent means for coordinating multi-sectoral government actions; to ensure compatibility between the Convention’s clauses and national legislation; to raise the visibility of children; to ensure that budgetary priorities include effective allocation for child needs; to collect and disseminate data, particularly on the plight of children; to provide training on appropriate implementation measures; to promote child rights by establishing national monitoring bodies

¹⁷⁷ Julia O’Connell Davidson, *Moving Children: Child Trafficking, Child Migration, and Child Rights*, 31 CRITICAL SOC. POL’Y 454, 471 (2011).

¹⁷⁸ Convention on the Rights of the Child, *supra* note 14, art. 38.

¹⁷⁹ *Is the World A Better Place for Children?*, *supra* note 143, at 50.

¹⁸⁰ Convention on the Rights of the Child, *supra* note 14, art. 43.

¹⁸¹ *Id.* art. 44.

such as ombudsperson offices and to involve children; and to raise children's awareness and participation in these activities on their behalf.¹⁸² In some countries there have been improved conditions for children, but as the Syrian example demonstrates, the strength of a human rights formulation has to be assessed in times of crisis when the protection is most needed and sadly, usually denied.

Finally, it is also important to note that although this Convention has been lauded for its near-universal endorsement by the global community, a number of states made reservations of various types to the provisions. However, that subject is outside the remit of the instant Article.

Three Protocols have been accepted and attached to this Convention to deal with issues that are of considerable importance for children.¹⁸³ The first and second Protocols were adopted in 2000, and came into force two years later. They deal with the involvement of children in armed conflict and the sale of children, and child prostitution, and pornography, respectively.¹⁸⁴ The first Protocol addresses the problem of children being recruited to serve as soldiers and urges states to legally criminalize such activity.¹⁸⁵ U.N. investigations have already concluded that the Syrian government has violated this Protocol by using children in pro-government militias.¹⁸⁶

The second Protocol attempts to protect children from commercial sexual exploitation.¹⁸⁷ UNICEF estimated that annually over a million children, particularly girls were drawn into the sex trade.¹⁸⁸ All governments are required to criminalize and prosecute the perpetrators with heavy penalties.¹⁸⁹

The third Protocol, entered into force in 2014, and establishes a mechanism whereby complaints on violations of children's rights can be

¹⁸² *Is the World A Better Place for Children?*, *supra* note 143, at 50.

¹⁸³ *Advancing the CRC*, UNICEF (May 19, 2014), https://www.unicef.org/crc/index_protocols.html.

¹⁸⁴ *Id.*

¹⁸⁵ Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, A/RES/54/263, art. 4 (May 25, 2000) (as adopted Feb. 12, 2002).

¹⁸⁶ Rep. of the Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic, *supra* note 168, at 11.

¹⁸⁷ *Advancing the CRC*, *supra* note 183.

¹⁸⁸ Press Release, UNICEF, *UNICEF Calls for Eradication of Commercial Sexual Exploitation of Children* (Dec. 12, 2011), <https://www.unicef.org/newsline/01pr97.htm>.

¹⁸⁹ G.A. Res. 54/263, Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography (May 25, 2000).

presented to the monitoring Committee.¹⁹⁰ This provision effectively brought the Convention in line with other notable human rights instruments in providing for a process of individual complaints.¹⁹¹

Despite the rapid near-universal acceptance of this Convention, the progress toward that final stage was slow, arduous, laborious, and even tortuous as United Nations discussions tend to be. The search for universal agreement in a world filled with sovereign nation states can be a very difficult process. Hence the near-universal acceptance of the Child Rights Convention is a very significant achievement in international cooperation.

IV. SELECTED INTERNATIONAL FORMULATIONS CONCERNING CHILDREN

Although they can be legally binding and constitute a significant part of international law, it is important to remember that United Nations' human rights instruments are essentially statements of aspirational ideals, and—particularly in dictatorships—can be perceived as not particularly obligatory commitments. Even when they are deemed legally binding, their implementation is in the hands of those whose self-interest dictates on occasion a preference for the commission of violations. War in the twenty-first century is as barbaric as war has ever been. Regrettably, the weaponry is now technologically more efficient than in the past. When dictators wage war, particularly as in Syria, against their own people, the niceties of international law are frequently tossed aside.

It would be unfair to blame the United Nations for the failures of its Member States. Contrary to a widely-held public opinion, the United Nations is not a world government. It has no sovereign authority and is only as strong as its Members will allow it to be. Nowhere is this more visibly evident than in the many failures of the Security Council where the five victor states of World War II accorded themselves the veto power¹⁹² in order to control forever the activities of the world organization.

Where the United Nations excels is as a forum for the articulation of world public opinion. It also plays a significant role in preparing and publishing an avalanche of documents and excellent reports chronicling violations of human rights, deprivations that afflict communities,

¹⁹⁰ G.A. Res. 66/138, Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure (Dec. 19, 2011).

¹⁹¹ *Id.*

¹⁹² U.N. Charter art. 27.

brutalization of minorities and so on. If the United Nations cannot yet direct the world's governments to behave respectfully toward their nationals and towards each other, it at least documents infractions, brings them to public notice, and highlights the injustices being suffered. In that sense, its critical role is to be the moral conscience of the world. If global leaders choose only to pay lip service to this conscience, that cannot be the fault of the world organization.

There are of course United Nations agencies that do very worthwhile humanitarian work, for instance, taking care of hungry children and refugees. United Nations personnel often work in dangerous conditions, to bring medical care and aid to remote communities. One can only laud the work of UNICEF in doing all it can to fulfill its mandate on behalf of the world's children. The focus of the instant Article is, however, on some of the activities at the world organization, primarily at its Headquarters in New York.

This barbaric notion of fighting wars as a means of settling differences of opinion, ideology, religion, and the like will forever mar the reputation of the human species. Having worked hard to create, civilize, build, develop and improve their quality of life, human beings resort for the most trivial of reasons to engage in an orgy of destruction that spares no one and nothing. At the end of this exercise in self-annihilation, the involved members of the species engage in a frenetic search for peaceful resolutions, restitution for the victors, *mea culpas*, and sometimes reparations from the defeated, and a few years later, the former enemies often become allies. The twentieth century twice witnessed the globalization of this war phenomenon, and thereafter human beings engaged in proxy wars where localized combatants in client states fought in service of rich and powerful patron states who provided weapons and money. The amount of human suffering was enormous and the scale of destruction significant.

The largest number of victims was inevitably civilians, men, women, and children who got caught between combating sides, regardless of whether the venue was in Asia, Africa, or Latin America. The particularly heavy toll of women and children in so many wars led the U.N. General Assembly as early as 1974 to issue a Declaration prohibiting attacks and bombings of civilians, as well as acts of torture and violence against women and children.¹⁹³

One constructive consequence of these terrible conflicts has been the recognition that charters of human rights need to be in place as an important

¹⁹³ G.A. Res. 3318 (XXIX), Declaration on the Protection of Women and Children in Emergency and Armed Conflict (Dec. 14, 1974).

standard of ideals and principles that all nations ought to follow. Deviations during crisis can no longer be permitted, and for such violators there must be a deterrent—national or international justice and severe penalties. It is beyond the remit and allowable length of this Article to explore all these international instruments. The emphasis will be on highlighting a few of those statements of principle, some of which inspired and led the world to the formulation of the Convention on the Rights of the Child.

The horrors of the First World War inspired the Geneva Declaration of the Rights of the Child, which was adopted in 1924 by the League of Nations, the international body that preceded the United Nations.¹⁹⁴ Acknowledging that “mankind owes to the Child the best that it has to give,” this Declaration made fulfillment of specific obligations a duty.¹⁹⁵ Member States pledged to provide for the material and spiritual development of children; to provide help for hungry, sick, disabled, delinquent and orphaned children; to have primacy for receiving relief in times of distress; to provide the means to earn a livelihood, protection from exploitation; and, to foster an upbringing focused on social responsibility.¹⁹⁶

All these fine ideals remained dormant when the world engaged in the sequel, World War II where the number of civilian deaths cannot even be accurately estimated.¹⁹⁷ Conservative estimates place that number at 45 million,¹⁹⁸ but the reality is probably far worse. The holocaust, largely affecting Jews in Europe, was a significant example of the egregious cruelty that human beings can demonstrate. Following the war, the Universal Declaration of Human Rights which was adopted by the United Nations in 1948, enunciated the importance of “special care and assistance” for children.¹⁹⁹

The establishment in 1946 of the United Nations Children’s Emergency Fund (UNICEF) provided a huge boost to the cause of child rights. Having successfully addressed the issue of post-war famine in Europe, this

¹⁹⁴ Geneva Declaration of the Rights of the Child, League of Nations (1924).

¹⁹⁵ *Id.*

¹⁹⁶ Kirsten Sandberg, *25 Years of the Convention on the Rights of the Child: The Genesis and Spirit of the Convention on the Rights of the Child*, UNICEF (2014), https://www.unicef.org/crc/files/03_CRC_25_Years_Sandberg.pdf. See also *Geneva Declaration of the Rights of the Child*, *supra* note 194; Lake, *supra* note 16.

¹⁹⁷ *Research Starters: Worldwide Deaths in World War II*, NATIONAL WWII MUSEUM NEW ORLEANS, <https://www.nationalww2museum.org/students-teachers/student-resources/research-starters/research-starters-worldwide-deaths-world-war> (last visited Dec. 11, 2017).

¹⁹⁸ *Id.*

¹⁹⁹ G.A. Res. 217 (III) A, Universal Declaration of Human Rights, art. 25 (Dec. 10, 1948).

organization continued and expanded its scope globally providing care and aid to thousands of children, particularly those suffering in war-torn countries. By 1953, UNICEF's mandate was extended indefinitely and in 1965, this Organization received the prestigious Nobel Peace Prize.²⁰⁰

By 1959, the General Assembly adopted a document of ten principles which formed the foundation of the Convention on the Rights of the Child.²⁰¹ Although not legally binding,²⁰² the Declaration is an eloquent statement, providing that "mankind owes to the child the best it has to give."²⁰³ The ten principles enunciate that all children are entitled to non-discrimination, special protection, nationality, social security, physical needs like nutrition and medical care, special treatment for the handicapped child, a caring environment, including where necessary financial support, education, primacy in receiving relief care, and freedom from exploitation including unsafe working conditions. The principles invoke minimum working ages and encourage social responsibility.²⁰⁴

In 1978, these eloquent but non-binding principles inspired the Polish delegation at the United Nations to present a draft proposal for a Convention that reflected the research and work of Dr. Janusz Korczak, an author and educator.²⁰⁵ It took eleven years of the usual United Nations debating, discussing, wrangling and haggling to create an acceptable Convention that met the United Nations test of consensus.²⁰⁶ Inevitably, there had to be a great deal of political compromise to achieve near unanimity.²⁰⁷ Given the disparate opinions in a world still dominated by the notion of sovereign states, the strong endorsement for this Convention was a real achievement.

By 1990, concern for the welfare of children was being expressed by human rights advocates across the planet. That year, following the near-universal adoption of the Convention on the Rights of the Child, a global Summit resulted in the acceptance by seventy-one States of a plan of action

²⁰⁰ *About UNICEF*, UNICEF, https://www.unicef.org/about/who/index_history.html (last visited Dec. 11, 2017); *see also Frequently Asked Questions*, UNICEF, <https://unicefusa.org/about/faq> (last visited Dec. 11, 2017).

²⁰¹ Geneva Declaration of the Rights of the Child, *supra* note 194.

²⁰² Sandberg, *supra* note 196, at 1.

²⁰³ Geneva Declaration of the Rights of the Child, *supra* note 194.

²⁰⁴ *Id.*

²⁰⁵ Sandberg, *supra* note 196, at 2.

²⁰⁶ *Id.*

²⁰⁷ *The Beginnings of the Convention on the Rights of the Child*, HUMANIUM, <https://www.humanium.org/en/convention/beginnings/> (last visited Dec. 11, 2017).

that emphasized the principle of “first call for children” with respect to resource allocation.²⁰⁸

At time of writing, all Member States, with the exception of the United States of America, have ratified this Convention.²⁰⁹ Even though the Convention may often be honored more in the breach than by implementation, it is still regarded as the most widely accepted of all human rights instruments and by that standard alone has to be considered “the most successful document in U.N. history.”²¹⁰ It is also important for its comprehensive coverage in that it is the “first legally binding international document to recognize the civil, political, economic, social, and cultural rights of children.”²¹¹

In 1994, the U.N. Secretary-General appointed child rights advocate, Ms. Graca Machel, to investigate and report on the impact of armed conflict on children.²¹² Lauded as a “seminal study,”²¹³ her Report, which was published in 1996,²¹⁴ demonstrated that the adverse conditions affecting children caught in conflict zones have prevailed for years. Length constraints preclude a detailed study of the Report in this Article. Suffice it to say that the instant situation concerning Syrian children is by no means unique and similar horrors have been and continue to be inflicted on young people in numerous countries.²¹⁵

There can be little doubt that the United Nations excels at revealing and exposing violations in many countries. This task results in generating world public opinion and this is a great achievement. Hopefully, someday, the

²⁰⁸ KATHERINE COVELL, *CHILD RIGHTS: THE MOVEMENT, INTERNATIONAL LAW, AND OPPOSITION* 42 (Clark Butler ed., 2014).

²⁰⁹ Susan P. Limber & Målfrid Grude Flekkøy, *The U.N. Convention on the Rights of the Child: Its Relevance for Social Scientists*, 9 SOC. POL'Y REP., no. 2 at 1, 9 (1995).

²¹⁰ Lynne Marie Kohm, *Suffer The Little Children: How the United Nations Convention On the Rights of the Child Has Not Supported Children*, 22 N.Y. INT'L L. REV. 57, 58 (2009) (citing Laine Rutkow & Joshua T. Lozman, *Suffer the Children? A Call for United States Ratification of the United Nations Convention on the Rights of the Child*, 19 HARV. HUM. RTS. J. 161, 162 (2006)).

²¹¹ Limber & Flekkøy, *supra* note 209, at 2.

²¹² U.N. Secretary-General, *Impact of Armed Conflict on Children*, ¶ 1, U.N. Doc. A/51/306 (Aug. 26, 1996).

²¹³ KENDRA E. DUPUY & KRIJN PETERS, *WAR AND CHILDREN: A REFERENCE HANDBOOK* 141 (2010).

²¹⁴ *Impact of Armed Conflict on Children – Twenty Years of Action Following the Publication of Graca Machel Report to the General Assembly*, CHILDREN AND ARMED CONFLICT (Aug. 25, 2016), <https://childrenandarmedconflict.un.org/graca-machel-report-20th/>.

²¹⁵ DUPUY & PETERS, *supra* note 213.

enhanced awareness of the chasm between eloquent formulations and reality will lead to an insistence that this divide be bridged with meaningful accountability provisions that will act as a deterrent to violators. Although barbaric wars continue, the world is already moving in the direction of holding violators responsible and bringing some justice for victims. That trend must be universally encouraged.

V. THE UPRISING IN SYRIA: DARAA

It has aptly been stated that there “was no single cause of the Syrian uprising. The conflation of social, economic, and political factors alongside the breakdown of a culture of fear in the country all contributed to the protest movement.”²¹⁶ It is now common knowledge that the popular protests that came to be known as the Arab Spring originated in December 2010 in Tunisia with the tragic self-immolation of produce-vendor Mohammed Bouazizi, who reacted to injustice and harassment by local authorities.²¹⁷ That single act was the catalyst that ignited a region-wide revolt and led to the spectacular toppling of dictatorships in Tunisia, Egypt, and Libya. Public discontent sparked off demonstrations in Jordan, Algeria, Yemen, Bahrain, and Oman.²¹⁸ As regards Syria, Bashar al-Assad expressed confidence to the *Wall Street Journal*, that the “close ideological links between the government and the people” in Syria precluded a uprising.²¹⁹ He “lived in a political cocoon . . . absolutely convinced that he was immune from the Arab Spring. He believed his own public relations propaganda that Syrians would never rebel against a pan-Arabist, anti-Israel, anti-imperialist fighter like himself.”²²⁰ He was at the very least mistaken, and possibly believed that his personal popularity precluded a protest movement.

Despite his public denial of any possibility of a revolution in Syria, Assad took no chances when nonviolent demonstrations began. His quick and ruthless reaction to peaceful protesters lies in the possible fear he felt when he realized that the Tunisian and Egyptian regimes had fallen very rapidly. Additionally, the horrible public death on October 20, 2011 of Libyan dictator Muammar Gaddafi at the hands of an angry mob may have terrified Assad about his own likely fate, should his government fall. If his regime collapsed, his options ranged from a humiliating public execution at the hands of enraged Syrians to an internationally-organized trial for crimes

²¹⁶ ABBOUD, *supra* note 28, at 53–54.

²¹⁷ *Id.* at 54.

²¹⁸ DARKE, *supra* note 17, at 1.

²¹⁹ ABBOUD, *supra* note 28, at 56.

²²⁰ ERLICH, *supra* note 56, at 82.

against humanity. Neither option was desirable. Far better, he probably reasoned, to stick it out and risk destroying his country in order to save his rule. Self-preservation is, after all, a powerful motivator for any dictator. He regrettably forsook his early popularity with the country as a whole and allegedly allowed functionaries like his state police, the Mukhabarat, and worse the militants, the Shabiha to exert power on and harass the people. This turned out to be a very serious mistake as it was such activities that turned peaceful protesters into revolutionary militants.

The Syrian uprising was begun by children, was initially proclaimed by children and its first tortured martyrs were children. Although there were scattered protests in January and February 2011, the popular revolt really 'took off' in March²²¹ with events that unfolded in Daraa, a mainly Sunni southern town, focused on agriculture,²²² and located near the Jordanian border.²²³ Daraa was "the spark from which the Syrian uprising first erupted."²²⁴ Arguably, Daraa was ripe for unrest. A multi-year crippling drought had decimated agriculture in some parts of Syria.²²⁵ The result was that thousands of displaced people had crowded into towns like Daraa,²²⁶ which was already one of the poorest areas in Syria,²²⁷ straining the infrastructure and adding to simmering tension.

Because of length constraints in this Article, a decision was made to focus in some detail on events in Daraa in order to provide an in-depth view of the early stages of this revolt and not simply list off the particulars of demonstrations in various parts of Syria. City by city information is easily available from a variety of sources.

As we have seen, the Arab spring began with the self-immolation in December 2010 of Mohammad Bouazizi,²²⁸ a much-harassed produce vendor in Tunisia and spread rapidly through vast parts of the Arab world. These cascading events had a domino effect that eventually reached Syria and in particular, Daraa. The astounding revolts occurring in Tunisia and Egypt

²²¹ The date provided in one source (ABBOUD, *supra* note 28, at 56) is from February. However, the majority of authors place this uprising in March.

²²² VAN DAM, *supra* note 29, at 5.

²²³ HALL, *supra* note 79.

²²⁴ SAMAR YAZBEK, A WOMAN IN THE CROSSFIRE: DIARIES OF THE SYRIAN REVOLUTION 118 (2012).

²²⁵ Thomas L. Friedman, *Without Water, Revolution*, N.Y. TIMES (May 18, 2013), <http://www.nytimes.com/2013/05/19/opinion/sunday/friedman-without-water-revolution.html>.

²²⁶ DARKE, *supra* note 17, at 136.

²²⁷ *Id.*

²²⁸ ERLICH, *supra* note 56, at 81.

were widely publicized and were seen on television through much of the Arab world.²²⁹

Although accounts about this iconic event in Daraa vary somewhat, the facts appear to be that one day, approximately fifteen school children, all boys under fifteen years old,²³⁰ wrote graffiti slogans on walls. These children, some as young as nine, wrote their demand for the end of the political regime on the walls of their school.²³¹ The children were inspired by and mimicking the televised slogans that were then popular in many parts of the Arab world. One Daraa slogan read, “Now it is your turn, Doctor,” referring to their ophthalmologist turned President.²³² Another said: “Down with the regime.”²³³ The children also wrote “Down with corruption.”²³⁴ Clearly, “it was just a prank,”²³⁵ an incident that would in any democratic country have resulted in at best a scolding from the school authorities and at worst a charge of vandalism which would have been suspended, given the youth of the ‘offenders.’

The Orwellian nature of the Syrian regime can be discerned from its reaction to this childish prank. The children were arrested, taken to Damascus to be interrogated, and by most accounts, brutally tortured.²³⁶ It appears that the youngsters’ fingernails were ripped out,²³⁷ and they were beaten by police.²³⁸

Distraught parents placed responsibility for their missing children on the Daraa Head of Political Security, Atef Najib, who happened to be a cousin of President Bashar Assad.²³⁹ As the emotional temperature of Daraa increased, finding out precisely what occurred becomes quite difficult for the researcher. In Daraa, as days passed by and the anxiety of parents rose, the only option was to do what would have been unthinkable, to protest and demand the release of their children. Rafik Schami explained that this torture and violation against children was “the straw that broke the camel’s back” in Syria.²⁴⁰ Thousands protested against the actions of the Security

²²⁹ ASSAD AL-SALEH, *VOICES OF THE ARAB SPRING: PERSONAL STORIES FROM THE ARAB REVOLUTIONS* 198 (2015).

²³⁰ YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 38.

²³¹ MCHUGO, *supra* note 25, at 221.

²³² AL-SALEH, *supra* note 229, at 198.

²³³ CHRISTOPHER PHILLIPS, *THE BATTLE FOR SYRIA: INTERNATIONAL RIVALRY IN THE NEW MIDDLE EAST* 49 (2016).

²³⁴ Rafik Schami, *Foreword to Yazbek*, *supra* note 224, at x.

²³⁵ MALEK, *supra* note 49, at 167.

²³⁶ MCHUGO, *supra* note 25, at 221.

²³⁷ YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 38.

²³⁸ ERLICH, *supra* note 56, at 82.

²³⁹ YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 38.

²⁴⁰ Schami, *supra* note 234, at x.

chief in Daraa and at least four were shot dead.²⁴¹ The demands escalated from release of the children to the removal of Najib,²⁴² including anger about a variety of grievances: “emergency laws, poor socioeconomic conditions, corruption, police brutality, and arbitrary detention.”²⁴³ The Daraa momentum spread to Damascus, Aleppo, Hama, and other towns and cities in Syria.²⁴⁴ A childish prank in Daraa had become an iconic event for the Syrian uprising.

Daraa became a microcosm of the entire Syrian revolt. By early May 2011, residents claimed that almost all males above the age of fifteen had been arrested by security forces.²⁴⁵ As the protests continued, the toll of wounded and dead rose. Security forces, unleashed from any concepts of restraint, occupied hospitals and detained or shot any wounded protesters who came for medical treatment.²⁴⁶ Additionally, the authorities cut cell phone service, internet access, electricity, and water, and let the people starve.²⁴⁷ Dozens of homes were destroyed.²⁴⁸ In a powerful account of this phase of the revolt, Syrian journalist, writer and mother, Samar Yazbek concluded, “Of course, it is obvious that the regime wants to teach all of Syria a lesson through Dar’a, even if they have to exterminate every last person in the process.”²⁴⁹ Yazbek’s memoir includes eyewitness accounts from participants in the revolt, one of whom commented that the regime had turned Daraa into a “giant prison.”²⁵⁰ This witness added that most of the victims were boys between fifteen and sixteen years old and commented, “Their moustaches were just starting to grow, it was like fuzz. They were just children and they were shot in the head or in the chest.”²⁵¹

In fairness, it must be stated that there were some attempts by the regime to conciliate the people. President Assad ordered the release of the children, promised justice for the bereaved and sent the families his condolences.²⁵² The local governor, Faysal Kalthum, was held responsible for the escalation,

²⁴¹ MCHUGO, *supra* note 25, at 221.

²⁴² YAZBEK, *supra* note 224, at 119.

²⁴³ ABBOUD, *supra* note 28, at 56.

²⁴⁴ *Id.* at 57.

²⁴⁵ Khalid Ali & Kim Sengupta, *As Tanks Line the Streets, Syrians Stand Firm to Defy Brutal Regime*, INDEPENDENT (May 6, 2011), <http://www.independent.co.uk/news/world/middle-east/as-tanks-line-the-streets-syrians-stand-firm-to-defy-brutal-regime-2280352.html>.

²⁴⁶ YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 38.

²⁴⁷ *Id.*

²⁴⁸ YAZBEK, *supra* note 224, at 45.

²⁴⁹ *Id.* at 34.

²⁵⁰ *Id.* at 113.

²⁵¹ *Id.*

²⁵² YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 38.

and was fired.²⁵³ Assad also terminated the reviled state of emergency, revised the constitution, and released some political prisoners.²⁵⁴ It was however, too little, too late. No regime that combined ruthless repression with limited actions of reform could hope to quell so much rage. The protesters, angered by the spate of continued regime killings of unarmed civilians, retaliated by attacking the headquarters of the ruling Baath Party, and other buildings.²⁵⁵

Unfortunately, the pent-up fury of forty-one years under a government that had imposed a permanent state of emergency on the country exploded in violence against regime structures. This provided the government with the opportunity to articulate a propaganda spin campaign that portrayed the demonstrators demanding freedom as foreign-sponsored agitators, eager to establish an Islamist state,²⁵⁶ something that the intensive research for this Article establishes was totally fictitious with respect to the early phases of the uprising.

President Assad hoped above all to convince the majority of his people that he was the only force standing between them and either total chaos or an Islamist state. Assad probably feared the initial democratically-inclined protesters more than any other element because had they succeeded they could have become a desirable alternative to his rule. He demonstrated keen political acuity in ensuring that the protesters could not wage nonviolent revolution as the Indian people had under Mohandas Gandhi so many years earlier.²⁵⁷ Nonviolence would have deprived Assad of the justification he sought for his own resort to violence. He probably calculated that the destruction of any peaceful protest movement and its conversion to an armed uprising was worth the price of ignominy that would attach to his rule. He may well have figured that violating every human right imaginable and earning global disrepute was the price he had to pay to remain in power. He paid the price in popular support and, to date, remains in power.²⁵⁸

It does appear that very early, many protestors wanted to peacefully reform the system. Regime change was not an issue at that starting stage.²⁵⁹

²⁵³ VIJAY PRASHAD, *THE DEATH OF THE NATION AND THE FUTURE OF THE ARAB REVOLUTION* 96 (2016).

²⁵⁴ MARC LYNCH, *THE NEW ARAB WARS: UPRISINGS AND ANARCHY IN THE MIDDLE EAST* 108 (2016).

²⁵⁵ YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 38.

²⁵⁶ *Id.* at 39–40.

²⁵⁷ LYNCH, *supra* note 254, at 109 (discussing how Assad used violence to keep protests from organizing but in such a way to not draw international attention).

²⁵⁸ Malak Chabkoun, *How Assad 'won the war,'* AL JAZEERA (Nov. 3, 2017), <http://www.aljazeera.com/indepth/opinion/assad-won-war-171101114949181.html>.

²⁵⁹ LYNCH, *supra* note 254, at 109.

However, clearly, a sustained commitment to nonviolence requires patience, discipline and excellent leadership committed to that principle. Author Reese Erlich comments that “Syrian demonstrators never adopted a Gandhi-style campaign of nonviolent civil disobedience. When government forces fired live ammunition into crowds, the protestors hurled rocks.”²⁶⁰

Unfortunately, the diffuse, decentralized nature of the Opposition allowed for the incursion of multiple groups with a variety of methods and ideologies and, in the absence of coherent and unifying leadership, Assad could declare himself the only viable alternative to chaos.²⁶¹

Declaring the freedom protesters to be terrorists, he concentrated his fire power on destroying them and thereby is alleged to have enabled and facilitated the real terrorists like ISIS and other radical groups to enter Syria, seize territory, and impose a form of rule that is alien to the modern world.²⁶² By framing the official propaganda against the Opposition in sectarian terms, Assad sought and to a large extent succeeded in destroying any hope of unity within the freedom/democracy/liberty groups that had initially protested peacefully. He was even accused by some of his opponents of facilitating the conversion of democratic and secular protests into a sectarian uprising by “intentionally releasing Islamic extremists from jail in hopes they would take up a divisive armed struggle.”²⁶³

Self-preservation is a mighty motivating force where dictators are concerned. Seeing the speed with which the totalitarian regimes of Tunisia and Egypt fell when confronted by thousands of angry protesters, Assad and his supporters were determined not to let go of their grip on Syria. Syrians reading graffiti scribbled on walls by loyalists saw the following warning: “Assad or we burn down the country.”²⁶⁴

Assad’s miscalculation was in oppressing Syrians while simultaneously wooing them. Having for years been accustomed to terrorizing the citizens, the Syrian establishment could not understand, accept, or even comprehend that this time the people had had enough and had found a unified voice in their anger that arose when children were tortured. Resistance in Daraa appears to have struck a sensitive nerve in the regime for the punitive actions against this town were extremely severe indeed. As Diana Darke aptly commented: “Violence is the default setting of the Assad regime.”²⁶⁵

²⁶⁰ ERLICH, *supra* note 56, at 84.

²⁶¹ *See id.* at 85 (discussing the nonhierarchical structure of the early resistance movement).

²⁶² *Id.* at 117.

²⁶³ *Id.* at 90.

²⁶⁴ PEARLMAN, *supra* note 93, at xli.

²⁶⁵ DARKE, *supra* note 17, at 36.

On April 25 at dawn, a fleet of tanks invaded Daraa and they fired right into homes.²⁶⁶ Eventually there were “[h]undreds of tanks, every intersection in every neighbourhood . . . had a tank.”²⁶⁷ The President’s younger brother, Maher, commanded an army division whose troops also entered the town.²⁶⁸ The results were truly horrifying.

Snipers prevented ambulances from reaching the injured. Soldiers arrested medical personnel, set fire to pharmacies and prevented medical supplies from entering the city. The power outage had disabled the morgue, so the accumulating corpses were being stored in grocery refrigerators run on generators.²⁶⁹

Although the catalyst for revolt in Daraa sprang from a local incident, these grievances “resonated throughout Syria because of their underlying causes which affected all Syrians.”²⁷⁰ The amalgam of political, social, and economic grievances, might have been subject to negotiation had the regime not continued its penchant for killing and torturing men, women and children.

Just as the catalyst for revolt involved the childish prank of scribbling graffiti, the turning point could have been the barbaric treatment of a thirteen-year old boy from Daraa. His name was Hamza al-Khateeb and he was participating with his family in a demonstration on April 29, 2011, when during the ensuing gunfire he got separated from his family.²⁷¹

A month later his body was returned to his family, “burned, shot and castrated.”²⁷² The child had apparently been arrested at the march by Air Force Intelligence and his battered young body²⁷³ left little doubt that his fate was meant as a warning to all the citizens of Daraa who defied the regime. The government denied that Hamza had been tortured and even provided an autopsy report to that effect, and the President visited the family to express his condolences.²⁷⁴ Physicians explained that the wounds on the child were

²⁶⁶ *Tanks Shell Centre of Syrian City as Death Toll in Violent Anti-Government Protests Hit 535*, DAILY MAIL (May 2, 2011), <http://www.dailymail.co.uk/news/article-1382450/Syria-protests-Tanks-shell-Daraa-death-toll-hits-535.html>.

²⁶⁷ YAZBEK, *supra* note 224, at 114.

²⁶⁸ YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 44.

²⁶⁹ *Id.*

²⁷⁰ MCHUGO, *supra* note 25, at 222.

²⁷¹ *Id.* at 225.

²⁷² PHILLIPS, *supra* note 233, at 54.

²⁷³ YASSIN-KASSAM & AL-SHAMI, *supra* note 68, at 49.

²⁷⁴ MCHUGO, *supra* note 25, at 225–26

inflicted post-mortem, leading author Alia Malek to comment that it “was a master class in how to hear, read, and speak this coded language, the one that exists between dictator and dictated.”²⁷⁵

Hamza’s sacrifice has been a rallying-cry and an inspiration for many Syrians. The prominent Syrian cartoonist Ali Ferzat recounted how one of his political cartoons resulted in a vicious attack in August 2011 when a pro-regime thug broke his hands. Ferzat commented that he was humbled by the suffering of Hamza and those like him who were sacrificing their lives for freedom.²⁷⁶

According to authors Yassin-Kassab and Al-Shami, leaked videos also surfaced depicting the dreaded Mukhabarat (Military Intelligence Directorate) “taunting, whipping and even electrocuting even primary school-aged children.”²⁷⁷

This in-depth view of Daraa and events in that town was not meant to deal with every incident that has occurred there either chronologically or historically. Rather, the point is to demonstrate how Daraa serves as a microcosm of the situation in various parts of Syria. By extrapolating the Daraa situation, one can acquire a reasonable idea of the main issues in the Syrian crisis, namely political oppression, economic deprivation, social discrimination, and consequent societal disintegration. Daraa is above all also iconic because this is where Syria’s first child martyrs suffered their gruesome fate. In terms of the remit of this Article, there can be no doubt that the regime brazenly violated human rights and continues with impunity thus far to do so. If there are lessons to be learned from the Syrian tragedy, one imperative is for the world community to figure out a way to increase the scope of accountability for all those who rule countries and feel they can freely do as they wish to the citizens.

As the Syrian war, now part of a global crisis, continues at time of writing, it is not easy to speculate on what the outcome might be. By butchering peaceful protestors in Daraa, the President placed himself in an untenable position. As the killing by his security forces and government-hired militants, the Shabiha, continued, his own tenure on power became more insecure. The brutalization, particularly of the schoolboys and young Hamza, polarized public opinion all over Syria, generated revulsion and anger in the world and turned those young schoolboy pranksters and Hamza into icons and martyrs of this tragedy.

²⁷⁵ MALEK, *supra* note 49, at 191.

²⁷⁶ Ali Ferzat, *Two Cartoons*, in SYRIA SPEAKS: ART AND CULTURE FROM THE FRONTLINE 171 (Malu Halasa, Zaher Omareen & Naware Mahfoud eds., 2014).

²⁷⁷ YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 49.

It is interesting to note that the icons in Syria have largely been children. Fortunately, one Syrian seven-year old girl named Bana Alabed, also an iconic figure in this terrible tragedy, managed to survive and escape with her mother to Turkey. Bana became famous when she went online to chronicle the suffering of people in her home town Aleppo. Calling it the “city of death,” Bana wrote to U.S. President Donald Trump asking him to save the people of Syria.²⁷⁸

VI. ESCALATION OF THE REVOLT

“Destroying something is easy—that is quick. But building something up again—that takes generations.” Abu Ashraf²⁷⁹

With the escalation of the revolt across Syria, it became clear that the people, although weak in organization, lacking adequate weaponry, and unable to garner effective external support, were still ignited by their individual and collective grievances. In an interesting study of the crisis, author Samer N. Abboud explained that there “was no common demographic (young/old), religious (Sunni/minority or secular/religious), social (urban, rural) or economic (upper/lower class) background to the protesters.”²⁸⁰ “What started as a peaceful revolution was fully militarized by the summer of 2012,”²⁸¹ and had morphed into a bloody civil war. Harvard scholar, David Armitage, commented succinctly that “no form of war is more nominally contentious than civil war.”²⁸²

It is also clear from this research, especially into U.N. sources, that children were present during many of the anti-government protests that occurred in the first phase of the uprising between 2011 and 2012. Those early marches popularized the protesters’ slogan “One, one, one: The Syrian people are one,”²⁸³ emphasizing the non-sectarian perspective.

As the revolt spread, more and more children lost their lives. It is not clear whether the children were present on their own or whether their parents brought them to the demonstrations to witness history being made. It was probably a combination of both. The Secretary-General reported that children were injured or killed by government forces, including the infamous

²⁷⁸ Conor Gaffey, *Syrian Twitter Girl Bana Alabed Ask[s] Donald Trump To ‘Save Children of Syria,’* NEWSWEEK (Jan. 25, 2017), <http://www.newsweek.com/syrian-twitter-bana-alabed-letter-donald-trump-save-children-syria-547918>.

²⁷⁹ DARKE, *supra* note 17, at 230 (quoting Abu Ashraf).

²⁸⁰ ABBOUD, *supra* note 28, at 66.

²⁸¹ SYRIA SPEAKS: ART AND CULTURE FROM THE FRONTLINE, *supra* note 276, at ix.

²⁸² DAVID ARMITAGE, CIVIL WARS: A HISTORY IN IDEAS 233 (2017).

²⁸³ Hassan Abbas, *Between the Cultures of Sectarianism and Citizenship*, in SYRIA SPEAKS: ART AND CULTURE FROM THE FRONTLINE, *supra* note 276, at 53.

roof snipers in Daraa, Homs, Idlib, Aleppo, Damascus, Hama, and Deir ez-Zor.²⁸⁴ To provide one example of these ubiquitous massacres, the United Nations concluded that in May 2012, security forces killed 100 civilians, half of them children.²⁸⁵ By 2016, matters had deteriorated to such an extent that U.N. Emergency Relief Coordinator, Stephen O'Brien described the situation in the ancient city of Aleppo as a "slaughterhouse."²⁸⁶

The government targeted Syrian adults and children indiscriminately with expanding bullets and thermobaric bombs (in Aleppo), which destroyed entire blocks of residential dwellings; conducted house-to-house searches that resulted in the indiscriminate killing and maiming of children; shot and massacred entire families including young children; dispatched ground-to-ground missiles and dropped barrel bombs on civilian areas; conducted air strikes against villages and cities; and, even launched air warfare against camps near the Turkish border that housed displaced civilians.²⁸⁷ Clearly, there were no limits envisaged by the Syrian regime in its conduct of warfare against its own people. Even the public shouting of the ubiquitous prayer "Allahu Akbar" became an anti-regime provocation.²⁸⁸

It is important to note that decades earlier, the U.N. General Assembly (in 1974) had deemed this type of repression a criminal measure. "All forms of repression and cruel and inhuman treatment of women and children, including imprisonment, torture, shooting, mass arrests, collective punishment, destruction of dwellings and forcible eviction, committed by belligerents in the course of military operations . . . shall be considered criminal."²⁸⁹

Should President Assad ever face either Syrian or international justice, it may well be mentioned that Syria had signed the Convention (IV) Relative to the Protection of Civilian Persons in Time of War—the Geneva

²⁸⁴ U.N. Secretary-General, *Report of the Secretary-General on Children and Armed Conflict in the Syrian Arab Republic*, U.N. Doc. S/2014/31 (Jan. 27, 2014).

²⁸⁵ JANINE DI GIOVANNI, *THE MORNING THEY CAME FOR US* 174 n.4 (2016).

²⁸⁶ Chelsea Bailey, *U.N. Official: Nearly A Million Syrians Are Living Under Siege*, NBC NEWS (Nov. 22, 2016), <https://www.nbcnews.com/storyline/syrias-children/u-n-official-nearly-million-syrians-are-living-under-siege-n687456>.

²⁸⁷ *Report of the Secretary-General on Children and Armed Conflict in the Syrian Arab Republic*, *supra* note 284.

²⁸⁸ CHARLOTTE McDONALD-GIBSON, *CAST AWAY: TRUE STORIES OF SURVIVAL FROM EUROPE'S REFUGEE CRISIS* (2016).

²⁸⁹ *Declaration on the Protection of Women and Children in Emergency and Armed Conflict*, G.A. Res. 3318 (XXIX) (Dec. 14, 1974).

Convention—in 1949 and had ratified that document in 1953.²⁹⁰ Inter alia, this agreement called for the protection of children who were orphaned or separated from their families.²⁹¹ Syria had also agreed not to cause the physical suffering of protected persons, including a prohibition against murder, torture, corporal punishment and mutilation,²⁹² applied either by civilian or military agents, which could clearly implicate the Shabiha.

It is also significant that the initial peaceful protests were not aimed at destruction of the regime. The demand was for some type of democracy, for freedom,²⁹³ and for an easing of the numerous restrictions imposed by the hated Emergency that had been imposed on the Syrian people since 1963. Decades under emergency rule had cowed most of the people and deprived them of an opportunity to know the basics about staging any type of revolt. As student demonstrator, Mohammed Kadalal admitted: “We had no previous experience with demonstrations.”²⁹⁴ The protesters relied on their social media skills to spread the word about events in Syria. They took selfies, holding up banners protesting the regime.²⁹⁵ They also produced leaflets and even wrote “Down with Assad” on hundreds of ping-pong balls and then rolled these down the streets.²⁹⁶ They were clearly no match for a regime that was more than experienced in the use of violence to intimidate and terrorize its population.

The massive attacks perpetrated by the government and particularly its militias—the Shabiha—hardened and polarized positions. Writing for Chatham House, Mazen Ezzi commented that the Syrian regime had “delegated a large swath of its powers to loyal militias, entrusting them with preserving security, representing the regime and handling the day-to-day affairs of local communities.”²⁹⁷ This led to an orgy of violence, murder,

²⁹⁰ Geneva Convention (IV) Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

²⁹¹ *Id.* art. 24.

²⁹² *Id.* art. 32.

²⁹³ *What’s Happening in Syria?*, BBC (Apr. 7, 2017), <http://www.bbc.co.uk/newsround/16979186>.

²⁹⁴ Mohammed Kadalal, *A Story From Homs*, in AL-SALEH, *supra* note 229, at 217.

²⁹⁵ Khalid Khalifa, *Forward* to MIRIAM COOKE, *DANCING IN DAMASCUS: CREATIVITY, RESILIENCE, AND THE SYRIAN REVOLUTION*, at xiii (2017).

²⁹⁶ MCDONALD-GIBSON, *supra* note 288, at 26.

²⁹⁷ Mazen Ezzi, *The Regime and Loyal Militias Will Struggle to Disentangle Their Relationship*, CHATHAM HOUSE (July 2017), <https://syria.chathamhouse.org/research/the-regime-and-loyal-militias-will-struggle-to-disentangle-their-relationship>.

kidnapping and extortion,²⁹⁸ all of it affecting civilian life. Any reasonable outsider can only wonder how President Assad expects such actions against his own people to result in the long-term survival of his regime.

Students of dictatorship have often concentrated on the dysfunctional aspects of such regimes, particularly when analyzing civil wars. It is possibly a mistake to deem the Assad regime dysfunctional. Its very success thus far belies that idea. However, as authors Gary A. Haugen and Victor Boutros have suggested in an incisive study of poverty and violence: “Dysfunction is rarely random; it is driven by assumptions, motivations, fears, and calculations which are quite purposeful and rational for the people working inside the system.”²⁹⁹ This may be the dominant mindset in the Syrian regime. It is a very deliberate exercise of authoritarianism with the singular aim of self-preservation. Whether this regime will continue once the war is over will depend on the international community’s need to seek redress for the Syrian victims.

Given the Syrian situation, a Gandhian, non-violent civil disobedience movement as had occurred earlier in India was not deemed an option in Syria. The “rebels” militarized and mobilized into a Free Syrian Army (FSA) in July 2011, which came on the heels of the Opposition formalizing itself politically into the short-lived Syrian National Council.³⁰⁰ Local committees were also created to undertake basic administration. The FSA did enjoy some success but was increasingly side-lined and marginalized. Drawn from ordinary people, armed with the most basic weapons, the FSA was up against an organized military force that did not hesitate to use tanks and planes against civilians.³⁰¹ As author V.P. Haran explains, being “a disparate lot,” the Opposition “lacked cohesion, credibility and a common program of action.”³⁰² Syrian author Samar Yazbek commented that this “Army” covered an “extremely diverse set of groups, with varying characteristics and attitudes—from the cruel to the compassionate.”³⁰³ There

²⁹⁸ *Id.*

²⁹⁹ GARY A. HAUGEN & VICTOR BOUTROS, *THE LOCUST EFFECT: WHY THE END OF POVERTY REQUIRES THE END OF VIOLENCE* 171 (2014).

³⁰⁰ DI GIOVANNI, *supra* note 285, at 187.

³⁰¹ SAMAR YAZBEK, *THE CROSSING: MY JOURNEY TO THE SHATTERED HEART OF SYRIA* 33 (2015).

³⁰² VP Haran, *Roots of the Syrian Crisis*, INSTITUTE OF PEACE AND CONFLICT STUDIES (Mar. 2016), http://www.ipcs.org/pdf_file/issue/RootsoftheSyrianCrisis_VPHaran.pdf.

³⁰³ YAZBEK, *supra* note 301, at 15.

was simply no one person or idea or issue that could unify all those who opposed the regime. That was its fatal flaw.

The Syrian crisis also became a magnet for radical external forces, eager to use the country as a canvas on which to create their own picture of an ideal system. An ironic lucky break for the Assad regime—a plethora of groups hastened to constitute themselves as being formally opposed to his government, numbering 1,000 different entities by one estimate,³⁰⁴ each one pursuing a separate ideology and methodology. All the groups vied for military and financial aid from external backers but such aid often came with dangerous ideological strings attached.

Saudi Arabia saw the Syrian crisis as a golden opportunity to further its own theological ambitions and liberally funded and armed opposition groups that declared themselves aligned with its ultra conservative version of Islam—Wahabism.³⁰⁵ Secular public opinion in the Arab world did not take kindly to the Saudi involvement in Syria nor to its friendly relationship with the United States. As Arab humorist and satirist Bassem Youssef wryly commented, “America goes along with it as long as they pump out the oil as fast as they pump the hate.”³⁰⁶

Saudi Arabia and the State of Qatar favored support for the Opposition to overthrow the Syrian regime,³⁰⁷ and, accordingly, also persuaded the Arab League to suspend Syria in 2011.³⁰⁸ Both countries were generous in funding Islamist groups and, as a consequence, hundreds of jihadis from across the world entered Syria to join the fray.³⁰⁹ These groups of militants pursued a strictly sectarian agenda, in line with the priorities of their regional donors. This was clearly detrimental for Opposition forces who favored a more national non-sectarian, even secular approach.

The appearance on the scene of opposition fighters dedicated to a radical and extremist version of Islam ironically played right into the hands of President Assad, who had from the beginning accused his detractors of being

³⁰⁴ *What's Happening in Syria?*, *supra* note 293.

³⁰⁵ DANIEL BYMAN, *AL QAEDA, THE ISLAMIC STATE, AND THE GLOBAL JIHADIST MOVEMENT: WHAT EVERYONE NEEDS TO KNOW* 70 (2015).

³⁰⁶ BASSEM YOUSSEF, *REVOLUTION FOR DUMMIES: LAUGHING THROUGH THE ARAB SPRING* 36 (2017).

³⁰⁷ AL-SALEH, *supra* note 229, at 199.

³⁰⁸ Neil MacFarquhar, *Arab League Votes to Suspend Syria Over Crackdown*, N.Y. TIMES (Nov. 12, 2011), <http://www.nytimes.com/2011/11/13/world/middleeast/arab-league-votes-to-suspend-syria-over-its-crackdown-on-protesters.html?reterer=>.

³⁰⁹ BYMAN, *supra* note 305, at 179.

foreign-sponsored terrorists, while portraying himself as the only feasible ruler for Syria. Following the earlier French Mandate's policy of "divide and rule," Assad worked hard to fragment the Opposition, first by decimating the secular elements within its ranks, second, and this is truly bizarre, by releasing jihadi extremists from Syrian prisons to facilitate their joining the radical groups.³¹⁰ Simultaneously, he arrested tens of thousands of liberals, human rights advocates, and particularly young Syrian students.³¹¹ These detainees, among them numerous young men and women, were then allegedly exposed to terrible violence and traumatic torture in prison.³¹² Further complicating the situation, these more secular elements of the Opposition were further hounded by the Saudi-funded hardline Islamist groups who clashed violently and frequently with them in a ruthless competitive bid to become the sole and dominant Opposition.

The concentration of governmental fire power and military might on the moderate secular elements facilitated the take-over of territory by the radical Islamists. The terrorist organization, ISIS (the "Islamic state") was able to occupy large parts of Syria "as the Syrian regime focused on targeting more moderate groups."³¹³ In a very interesting study of ISIS, London University scholar Fawaz A. Gerges commented that "ISIS is a symptom of the broken politics of the Middle East," and emphasized that "the rise of radical Islamism is directly proportional to the deepening political authoritarianism in the Arab world."³¹⁴ Assad's efforts at self-preservation via divide and rule paid off. His release of thousands of jihadists from Syrian jails turned a peaceful revolution into a "bloody Islamic jihad."³¹⁵

ISIS occupied a chunk of Syria, focusing on the city of Raqqa, and here it established a puritanical version of religion that was unlike anything the Syrians had encountered in the more secular-inclined Assad dictatorships. Drawing heavily from Wahhabi teachings, ISIS relies on Saudi Arabian textbooks in its schools and utilizes a religious police force to enforce religious conformity.³¹⁶ The group has aptly been classified as "untamed

³¹⁰ *Id.*

³¹¹ Raniah Salloum, *Former Prisoners Fight in Syrian Insurgency*, SPIEGEL ONLINE (Oct. 10, 2013), <http://www.spiegel.de/international/world/former-prisoners-fight-in-syrian-insurgency-a-927158.html>.

³¹² *Id.*

³¹³ BYMAN, *supra* note 305, at 167.

³¹⁴ GERGES, *supra* note 99, at 7, 290.

³¹⁵ YOUSSEF, *supra* note 306, at 66.

³¹⁶ Jacob Olidort & Marcus Sheff, *Teaching Terror: The Islamic State's Textbooks, Guidance Literature, and Indoctrination Methods*, WASHINGTON INSTITUTE (July 15, 2016), <http://www.washingtoninstitute.org/policy-analysis/view/teaching-terror-the-islamic-states-textbooks-guidance-literature-and-indoct>.

Wahhabis” by Bernard Haykel of Princeton.³¹⁷ The existence in their country of a governing radical Islamist entity clearly demonstrated the stark choices facing Syrians. Assad’s divide and rule policy enabled him to survive in power because Syrians were “increasingly left with the miserable choice of either the Assad regime or hardline Islamists.”³¹⁸ Most Syrians would probably have favored neither, on the basis that both were politically absolutist, socially repressive and ideologically oppressive and “[y]ou don’t tolerate the intolerant.”³¹⁹ The so-called Islamic Caliphate, declared in 2014 by ISIS, was destroyed in October 2017 when its capital city Raqqa fell to the American-backed militia group, the Syrian Democratic Forces, that was largely manned by Kurdish fighters.³²⁰

Meanwhile, Russia and Shia-led Iran aided by its adjunct subsidiary organization, the militia group, Hezbollah, assisted Assad who was also confronted by defections from his own armed forces.³²¹ An unknown number of Syrian professional soldiers balked at the notion of ruthlessly raping and killing civilians, especially children, and in escaping from their military posts, they took their military expertise and sometimes their weapons to various Opposition groups.³²² A number of these disaffected former soldiers joined one segment of the Opposition and then another.

The emerging picture was one of total chaos with a multiplicity of groups fighting each other and fighting the government and its external allies. The crucial factor was external funding and military assistance. As we shall see later, the United States, while sympathetic to the democratic aspirations that initially surfaced among the protesters, remained haunted by the specter of its earlier debacles in Iraq and Afghanistan. President Obama feared that military supplies provided too liberally to the Opposition could wind up in the hands of extremist Islamist groups,³²³ as had occurred with devastating

³¹⁷ BYMAN, *supra* note 305, at 171.

³¹⁸ *Id.* at 180.

³¹⁹ LOUISE ARBOUR, MARK STEYN, NIGEL FARAGE, & SIMON SCHAMA, *THE GLOBAL REFUGEE CRISIS: HOW SHOULD WE RESPOND?* (2016).

³²⁰ Anne Barnard & Hwaida Saad, Raqqa, ISIS ‘Capital’ is Captured, U.S.-Backed Forces Say, N.Y. TIMES (Oct. 17, 2017), <https://www.nytimes.com/2017/10/17/world/middleeast/isis-syria-raqqa.html>.

³²¹ BYMAN, *supra* note 305, at 180.

³²² *Assad: Thousands Have Deserted the Syrian Army*, MIDDLE EAST MONITOR (July 27, 2015), <https://www.middleeastmonitor.com/20150727-assad-thousands-have-deserted-the-syrian-army/>.

³²³ BYMAN, *supra* note 305, at 180.

consequences in Afghanistan. The success in Syria of hardline groups like Jabhat al-Nusra confirmed Western apprehensions.³²⁴

The territorial ambitions of terrorist organizations like ISIS added a new consideration to the ongoing Western war on terror. Such ambitions and their apparently easy fulfillment in Syria and Iraq could only be countered by aggressive military involvement. From the American perspective, the Syrian scene changed dramatically with ISIS' entry into this chaotic conflict. As we have seen, ISIS brutalized the Syrian people and by 2014, established at Raqqa in Northern Syria, a capital city for its creation of an Islamic Caliphate.³²⁵ The presence of ISIS played a significant role in escalating the crisis into one more arena in the global war on terrorist organizations. Although it was ambivalent about assisting the initial secular movement in Syria, the United States committed itself to bombing offensives against ISIS-held territories, particularly Raqqa. ISIS responded by using over 200,000 hapless civilians as human shields,³²⁶ and it may never be known how many of them have already died in the airstrikes carried out by the United States and its coalition partners. The United Nations stated that the coalition's strikes had caused a "staggering loss of civilian life."³²⁷ As regards President Assad and the war against ISIS, Maria Abi-Habib aptly explained in the *Wall Street Journal* that Assad "decided to mostly avoid fighting the Islamic State to enable it to cannibalize the more secular rebel group."³²⁸ This was consistent with his divide and rule policy and to date of writing, it has succeeded. Reversing President Obama's policy, the Republican Trump Administration in the United States accepted Assad's continued rule as a "political reality."³²⁹

³²⁴ Oliver Holmes & Alexander Dziadosz, *Special Report: Syria's Islamists Seize Control as Moderates Dither*, REUTERS (June 19, 2013), <https://www.reuters.com/article/us-syria-rebels-islamists-specialreport/special-report-syrias-islamists-seize-control-as-moderates-dither-idUSBRE95I0BC20130619>.

³²⁵ Bassem Mroue, *US-Backed Syrian Force Attacks IS-Held Capital of Raqqa*, ASSOCIATED PRESS (June 6, 2017), <https://apnews.com/954849b1870644309ac63a5e25c51ea0>.

³²⁶ *Id.*

³²⁷ Lina Khatib, *Why the Liberation of Raqqa Will Not Bring Stability to Syria*, CHATHAM HOUSE (June 2017), <https://syria.chathamhouse.org/research/why-the-liberation-of-raqqa-will-not-bring-stability-to-syria>.

³²⁸ Maria Abi-Habib, *Assad Policies Aided Rise of Islamic State Militant Group*, WALL ST. J. (Aug. 22, 2014), <https://www.wsj.com/articles/assad-policies-aided-rise-of-islamic-state-militant-group-1408739733>.

³²⁹ Nabih Bulos, W.J. Hennigan & David Lauter, *U.S. Condemns Suspected Syrian Chemical Attack on Civilians, But Says the Assad Government is a 'Political Reality'*, L.A. TIMES (Apr. 5, 2017), <http://www.latimes.com/world/la-fg-syria-gas-attack-20170404-story.html>.

It is clear that “Syria’s civil war has become a madhouse of forces from Turkey, the United States, Syrian Kurds, the Islamic State group, al-Qaeda as well as Mr. Assad’s allies Russia, Iran, Lebanon’s Hezbollah, Iraqi and Afghan Shia militias all with their own alliances and agendas.”³³⁰ Inevitably, those who have paid the greatest price have been the thousands of civilians caught in the cross-fire of this situation. Syrian children have been both targeted and ruthlessly utilized by all locally-based parties in this conflict.³³¹ On the one hand, they have been arrested, tortured, maimed, mutilated, raped and massacred in numbers that will never be known. Children have, as a consequence of the mayhem, suffered starvation and thirst.³³² They have been afflicted by diseases.³³³ The denial of their right to an education will affect Syria’s development and progress for years to come.

Equally insidious, almost all the groups involved locally have used Syrian children in a variety of military capacities, all of which violate the Convention on the Rights of the Child and its Protocol prohibiting such action. Human Rights Watch has drawn the world’s attention to the many infractions that have occurred, including rebels’ use of children as soldiers, suicide bombers, and stretcher bearers.³³⁴ Children as young as fourteen have been recruited by both the government³³⁵ and the various opposition groups.³³⁶ Combat roles have been assigned to minors and they have served as lookouts for many of the warring groups, and have even conducted reconnaissance missions, all violations of a number of international law provisions and some deemed war crimes.³³⁷ The conscription or enlistment of children under fifteen is a war crime under the Rome Statute of the International Criminal Court.³³⁸

³³⁰ Sarah El Deeb, *Short of Allies, Syria’s Rebels are Down But Not Out*, ASSOCIATED PRESS (June 1, 2017), <https://apnews.com/d2df37e2a07043d8a23744fa8c6f3ee0>.

³³¹ *Report: Syria Rebels Send Children into War*, AL JAZEERA (June 23, 2014), <http://www.aljazeera.com/news/middleeast/2014/06/use-child-soldiers-syria-condemned-20146237583974800.html>.

³³² See U.N. Secretary-General, *Report of the Secretary-General on Children and Armed Conflict*, ¶ 162, U.N. Doc. A/70/836-S/2016/360, <https://documents-dds-ny.un.org/doc/UND/OC/GEN/N13/627/07/PDF/N1362707.pdf?OpenElement>.

³³³ *Id.*

³³⁴ *Report: Syria Rebels Send Children into War*, *supra* note 331.

³³⁵ *Id.*

³³⁶ On the issue of child soldiers, see generally ROMEO DALLAIRE, *THEY FIGHT LIKE SOLDIERS, THEY DIE LIKE CHILDREN: THE GLOBAL QUEST TO ERADICATE THE USE OF CHILD SOLDIERS* (2011).

³³⁷ *Syria: Opposition Using Children in Conflict*, HUMAN RTS. WATCH (Nov. 29, 2012), <https://www.hrw.org/news/2012/11/29/syria-opposition-using-children-conflict>.

³³⁸ Rome Statute of the International Criminal Court, art. 8(2)(b), A/CONF.183/9 (July 17, 1998).

Young children “educated” in areas controlled by ISIS were given military training and encouraged to volunteer for suicide missions.³³⁹ There is a great deal at stake for Syria’s future and for each individual child. As one seventeen year old fighter commented, “I lost my studies, I lost my future, I lost everything.”³⁴⁰

By 2017, UNICEF estimated that the Syrian war had resulted in two and half million displaced children living as refugees in Turkey, Lebanon, Jordan, Egypt, and Iraq.³⁴¹ Over five million Syrians had fled their country by 2017 and, by UNHCR estimates, over six million more were internally displaced.³⁴² People were literally fleeing for their lives; hence, the large number of internally displaced and those seeking refugee status outside Syria. By April 2016, the U.N. Secretary-General estimated that in the first five years of the war, the death toll in Syria had already reached 250,000, including thousands of children.³⁴³ The U.N. estimate was contradicted by the Syrian Centre for Policy Research (SCPR) which provided its own estimate of 470,000 deaths and a drop of life expectancy in Syria from 70 in 2010 to 55.4 in 2015.³⁴⁴

VII. CHEMICAL WARFARE IN SYRIA

The Syrian crisis has clearly revealed the flaw in accountability measures within the human rights system of international law. Nation states sign and ratify the many legal instruments endorsing human rights, often incorporate these instruments into domestic law and yet, whenever expedient, violate them at will, secure in the knowledge that direct accountability, particularly

³³⁹ HUMAN RTS. WATCH, *supra* note 337.

³⁴⁰ *Syria: Armed Groups Send Children into Battle*, HUMAN RIGHTS WATCH, June 22, 2014, <https://www.hrw.org/news/2014/06/22/syria-armed-groups-send-children-battle>.

³⁴¹ UNICEF, News Note, *UNICEF Advocate Ishmael Beah Helps Give a Voice to Young People Affected by the Conflict in Syria*, UNICEF Press Centre (Apr. 27, 2017), https://www.unicef.org/media/media_95902.html.

³⁴² *UN: Number of Syrian Refugees Passes Five Million*, AL JAZEERA (Mar. 30, 2017), <http://www.aljazeera.com/news/2017/03/number-syrian-refugees-passes-million-170330132040023.html>.

³⁴³ U.N. Secretary-General, *Children and Armed Conflict*, U.N. Doc. A/70/836 (Apr. 20, 2016).

³⁴⁴ Ian Black, *Report on Syria Conflict Finds 11.5% of Population Killed or Injured*, THE GUARDIAN (Feb. 10, 2016), <https://www.theguardian.com/world/2016/feb/11/report-on-syria-conflict-finds-115-of-population-killed-or-injured>.

for the leadership, may never become an issue. It is only occasionally that perpetrators have been brought to justice.

One aspect of twentieth century history has been the tussle between universal human rights and national sovereignty. This confrontation continues in the present century. Governments, particularly dictatorships like Syria, hide behind national sovereignty as they violate the rights of citizens at will. At those moments, global public opinion is the only force checking the brutality of dictators. Unfortunately, public opinion is often divided, fickle, and uninterested in a long-term commitment to one issue. The world is plagued by too many political crises, natural disasters, economic upheavals and the like to concentrate for long on one matter, no matter how compelling. That after all, is the reason why we have created a vast body of international law to ensure that the moral compass of the world generally moves in the direction of human rights. The need is for greater deterrence, for consistent criminal prosecution and for the declaration of many rights as so sacrosanct that they cannot be violated for any reason.

One such widely-held international taboo concerns the use of chemical, biological, and other such weapons in warfare. Syria had signed the 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating Poisonous or of Other Gases, and of Bacteriological Methods of Warfare, but nevertheless, developed its production of such weapons during the 1970's and 1980's.³⁴⁵ Eventually, Syria became the “fourth largest chemical weapons state globally and the biggest in the Middle East,” with significant stockpiles of mustard gas, sarin, VX nerve agent, ricin and chlorine.³⁴⁶

While the Syrian government built up its chemical arsenal, the world moved in the direction of outlawing such weapons. The Chemical Weapons Convention was opened for signature in Paris on January 13, 1993 and it entered into force on April 29, 1997.³⁴⁷ States Parties committed never to develop, produce, acquire or use chemical weapons “under any circumstances.”³⁴⁸ This milestone agreement is “the first disarmament treaty

³⁴⁵ MICHELLE BENTLEY, SYRIA AND THE CHEMICAL WEAPONS TABOO: EXPLOITING THE FORBIDDEN 12 (2016).

³⁴⁶ *Id.* at 13.

³⁴⁷ Organisation for the Prohibition of Chemical Weapons, *Origins of the Chemical Weapons Convention and the OPCW*, https://www.opcw.org/fileadmin/OPCW/Fact_Sheets/English/Fact_Sheet_1_-_History.pdf (last visited Dec. 18, 2017).

³⁴⁸ Organisation for the Prohibition of Chemical Weapons, *Assistance and Protection Against Attack with Chemical Weapons*, https://www.opcw.org/fileadmin/OPCW/Fact_Sheet_s/English/Fact_Sheet_8_-_assistance.pdf (last visited Dec. 18, 2017).

to include a time frame for the elimination of an entire class of weapons of mass destruction, [and] it is also the first multilateral arms control treaty to incorporate an extensive verification regime.”³⁴⁹ Syria did not initially accede to this Convention.

On December 23, 2012, the Syrian government was accused of using chemical weapons against its own citizens in Homs.³⁵⁰ The shock of this moment reverberated across the world. It was even more stunning because American President Barak Obama had warned the Syrian regime in August 2012, that the use of chemical weapons would be a red line for the United States.³⁵¹ It clearly seemed as though Assad was thumbing his nose at the U.S. President.

The chemical attacks proliferated as these terrible outlawed agents were dropped from the air on to civilians. Ghouta, a suburb near Damascus, suffered a sarin attack on August 21, 2013.³⁵² The bodies, especially of chemically-victimized children and babies accumulated at clinics and mosques and even on the streets of towns in Syria. Medecins Sans Frontieres reported seeing 3,600 patients presenting “neurotoxic symptoms.”³⁵³ Statistics on the number of deaths vary with every source, but it is estimated that more than 1,400 people may have died in this single attack.³⁵⁴

The combatants engaged in an orgy of mutual recrimination. After an attack on March 19, 2013 killed both civilians and Syrian soldiers, rebels and the government blamed each other.³⁵⁵ The Syrian government formally asked the United Nations to investigate chemical weapons use by Opposition forces in Aleppo.³⁵⁶ United States and French intelligence agencies concluded that the Syrian government was responsible for using chemical weapons.³⁵⁷ Rockets were used in the attacks and it was unlikely that the

³⁴⁹ Organisation for the Prohibition of Chemical Weapons, *The Chemical Weapons Convention: Synopsis of the Text*, <https://www.opcw.org/fileadmin/OPCW/publications/factsheets/02.pdf> (last visited Dec. 18, 2017).

³⁵⁰ Arms Control Association, *Timeline of Syrian Chemical Weapons Activity 2012–2017*, <https://www.armscontrol.org/factsheets/Timeline-of-Syrian-Chemical-Weapons-Activity> (last visited Dec. 18, 2017).

³⁵¹ Editors, *Syria Timeline: Latest Chemical Attack is Far from First*, USA TODAY (Apr. 6, 2017), <https://www.usatoday.com/story/news/world/2017/04/06/syria-conflict-timeline/100150344/>. The red line announcement was published on August 20, 2012. A red-line is a barrier denoting prohibition, with violation possibly invoking a retaliatory response from the United States.

³⁵² *Syria Chemical Attack: What We Know*, BBC NEWS (Sept. 24, 2013), <http://www.bbc.com/news/world-middle-east-23927399>.

³⁵³ *Id.*

³⁵⁴ AL-SALEH, *supra* note 229, at 200.

³⁵⁵ *Syria Timeline: Latest Chemical Attack is Far From First*, *supra* note 351.

³⁵⁶ *Timeline of Syrian Chemical Weapons Activity, 2012–2017*, *supra* note 350.

³⁵⁷ *Syria Chemical Attack: What We Know*, *supra* note 352.

rebels would have had such weapons.³⁵⁸ French intelligence sources also concluded that chemical agent repositories were staffed by loyal Alawites, and that “Bashar al-Assad and certain members of his inner circle were the only ones permitted to give the order for the use of chemical weapons.”³⁵⁹ Ever the loyal ally where Syria is concerned, Russian President Vladimir Putin discounted the idea of Syrian governmental responsibility, dismissing such claims as “utter nonsense.”³⁶⁰

The vicissitudes of U.S. policy, or lack thereof, in the Syrian crisis became a very serious issue in this already-tangled crisis. With respect to the chemical weapons matter, and his declaration of their use as a “red line,” there was a very real hope and possibility that President Obama would finally stop hesitating and provide effective assistance to the rebels. However, instead of taking decisive steps as Commander in Chief to assist the rebels, and also possibly in order to save face regarding his “red line” statement, Obama announced that he would seek prior authorization from Congress for a limited military strike on Syria.³⁶¹ President Obama realized that neither Congress nor the American public favored yet another Middle Eastern war.³⁶² Arguably, the apprehension in the Obama Administration that any weapons provided to the rebels could eventually be used by Islamic militants stemmed from a mindset that superimposed the Afghanistan experience on the Syrian crisis. Luckily for the White House, the mere threat of extensive American intervention had an impact. The U.N. Security Council was able unanimously to pass Resolution S/Res 2118 on September 27, 2013 which *inter alia* required the verification and destruction of Syria’s chemical weapons.³⁶³ Within days, an international team arrived in Syria, determined to implement the complete destruction of the chemical stockpiles and production equipment.³⁶⁴ On June 23, 2014, the Organization for the Prohibition of Chemical Weapons announced that it had removed the last of Syria’s chemical weapons.³⁶⁵ The people working on this project were awarded the Nobel Peace Prize.³⁶⁶ The Syrian government of President

³⁵⁸ *Id.*

³⁵⁹ *Id.*

³⁶⁰ *Id.*

³⁶¹ *Syria Timeline: Latest Chemical Attack is Far from First*, *supra* note 351.

³⁶² BYMAN, *supra* note 305, at 184.

³⁶³ S.C. Res. 2118 (Sept. 27, 2013).

³⁶⁴ BENTLEY, *supra* note 345, at 75.

³⁶⁵ *Syria Timeline: Latest Chemical Attack is Far from First*, *supra* note 351.

³⁶⁶ *What’s Happening in Syria?*, *supra* note 293.

Bashar al-Assad also acceded to the international Chemical Weapons Convention on September 14, 2013.³⁶⁷

Unfortunately, human rights violations via chemical weapons continued in Syria and the toll of injured and dead civilians rose with reported chlorine gas attacks in various locations, including in April 2014 in Kafr Zita, an Opposition-held village, in Talmenes during the same month, in Sarmin in March 2015, and in Aleppo in August 2016.³⁶⁸ U.N. teams concluded that the Syrian regime was responsible for chlorine gas attacks in Idlib province in March 2015.³⁶⁹ The *New York Times* reported that “chlorine gas attacks have become almost routine in northern Syria.”³⁷⁰

Despite Syrian government denials, the U.N. investigators also found that the use of aircraft in attacks in April 2017 on Idlib province and the infliction of sarin gas on civilians confirmed governmental responsibility.³⁷¹ This latest attack killed dozens of civilians, including children, but the Syrian government denied responsibility, blaming the Opposition.³⁷² It is important to note that ISIS is also reported to have used mustard gas in Syria.³⁷³ It is disheartening to realize that war in the twenty-first century has increased in barbarity and brutality.

VIII. THE SYRIAN WAR: INTERNATIONAL INVOLVEMENT

At time of writing, while a cease-fire seems to be holding with some exceptions in Syria, the creation of a fair and just lasting peace remains an elusive target. Had the Syrian uprising remained a local matter, some resolution might have been possible. However, with the proliferation of state and non-state actors, including terrorist organizations all actively and assertively participating in this war, the chances of Syrians ever regaining their former lives in their homeland remain slim. In a 2016 Report, the U.N. Secretary-General expressed serious concern about the “proliferation of

³⁶⁷ Organisation for the Prohibition of Chemical Weapons, *Member States – Syria*, <https://www.opcw.org/about-opcw/member-states/member-states-by-region/asia/member-state-syria/> (last visited Dec. 18, 2017).

³⁶⁸ *Timeline of Syrian Chemical Weapons Activity, 2012–2017*, *supra* note 350.

³⁶⁹ *Id.*

³⁷⁰ Anne Barnard & Michael R. Gordon, *Worst Chemical Attack in Years in Syria; U.S. Blames Assad*, N.Y. TIMES (Apr. 4, 2017), <https://www.nytimes.com/2017/04/04/world/middleeast/syria-gas-attack.html?mcubz=0&mtref=undefined&gwh=8E02782AAE4A8C49C8CD37B282EAF9CD&gwt=pay>.

³⁷¹ *Timeline of Syrian Chemical Weapons Activity, 2012–2017*, *supra* note 350.

³⁷² Barnard & Gordon, *supra* note 370.

³⁷³ *Id.*

parties involved, including international forces.”³⁷⁴ Although the Syrian regime is squarely to blame for reacting so ferociously to initial peaceful protests and reasonable demands by the people, it is also true that escalation occurred because “[o]utside powers took advantage of the uprising, supported and magnified its efforts, and drove it towards militarization.”³⁷⁵ In a very interesting analytical study of the conflict, Samer Abboud concluded that foreign involvement “propelled violence, solidified the stalemate, and embedded the Syrian conflict into wider regional geopolitics.”³⁷⁶

Ironically, although the leading participants on both sides of the Syrian crisis expected, demanded and pleaded for international assistance and support, the intrusion of external elements, both governments and terrorist organizations, only served further to complicate the situation, exacerbate the violence, polarize positions and ensure that the Syrian situation morphed into a global crisis of massive proportions. There was some early recognition of this tragic reality when the Syrian Centre for Policy Research commented in a report that the conflict “continues to destroy the social and economic fabric of the country with the intensification of international interventions that deepen polari[z]ation among Syrians. Human development, rights and dignity have been comprehensively ruined.”³⁷⁷

Although the people and especially the children of Syria garnered an avalanche of global sympathy and an outpouring of support in the media and via social media, the governments of the West, and particularly the United States, were very leery about giving a helping hand to the Syrians who had revolted against their government. Humanitarian intervention is always a tricky business, particularly as the world is so polarized and the intervening country is bound to be both lauded and condemned. However, when people are being butchered by their own government, when children are being systematically tortured, when homes are being indiscriminately demolished with bombs, should the rest of us just sit back and shrug our shoulders because the area in question is far away, and not blessed (or cursed) with resources that we need? It is one of the most difficult and contentious debates in international law.

³⁷⁴ U.N. Secretary-General, *Report of the Secretary-General on the Children and Armed Conflict*, ¶ 148, U.N. Doc. A/70/836-S/1016/360 (Apr. 16, 2016).

³⁷⁵ LYNCH, *supra* note 254, at 107.

³⁷⁶ ABBOUD, *supra* note 28, at 119.

³⁷⁷ Black, *supra* note 344.

When the uprising began, the Free Syrian Army and its supporters begged for arms, for the establishment of a no-fly zone that would have curbed the brutal aerial attacks on Syrian neighborhoods, and for humanitarian aid including surgical supplies and medicines. However, “the West, bruised by failures in Iraq and Afghanistan, had no interest in involvement.”³⁷⁸ Diana Darke argues with conviction that had the West assisted by establishing a safe haven in 2011, thousands of Syrians would not have had to flee their country and “their destabilising outflow into Lebanon, Jordan, Turkey and Europe might have been avoided.”³⁷⁹

This was in stark contrast to the generous helping hand extended by the governments of Russia and Iran to the Syrian regime and to its President Bashar al-Assad. Relations between Russia and Syria dated back decades with a “web of business and military relationships with Syria since the Soviet Union era.”³⁸⁰ Assistance to Syria, particularly from Russia’s naval base at the Syrian port of Tartous, could have appeared to President Putin to mesh with his clear agenda to revive his own country’s superpower status, lost when the Soviet Union dissolved in 1991.³⁸¹ U.S. intervention in Afghanistan (2002), Iraq (2003), and particularly in Libya (2011) appeared threatening to the interests of the Russian government.³⁸²

Accordingly, when the Assad government needed assistance, the Russians, in their own self-interest, found the perfect opportunity to act as a superpower. Their assistance to Assad was more than generous, although from the perspective of the Syrian people, it was lethal and disastrous. The Russian provision of arms worth billions of dollars³⁸³ tipped the military balance in favor of President Assad. Similarly, as Yassin-Kassab and Al-Shami point out, Syrian armed forces were trained by Russians and the latter also provided military intelligence to its ally.³⁸⁴ Russian helicopters were used to bomb residential neighborhoods³⁸⁵ in Syrian cities, towns, and villages. From about 2015, it is also alleged that Russians were specifically engaged in bombing Syrian Opposition cities,³⁸⁶ converting a civil war into a major international crisis. Although overtly allied in the anti-terrorist war against ISIS, it is all too clear that the Russians assisted the Syrian government to weaken the rebel forces that were inclined toward secularism

³⁷⁸ DARKE, *supra* note 17, at 278.

³⁷⁹ *Id.* at 178.

³⁸⁰ YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 201.

³⁸¹ *Id.*

³⁸² ABBOUD, *supra* note 28, at 127.

³⁸³ YASSIN-KASSAB & AL-SHAMI, *supra* note 68, at 201.

³⁸⁴ *Id.*

³⁸⁵ *Id.*

³⁸⁶ DARKE, *supra* note 17, at 265.

and even some form of democracy. The territories held by these rebel groups came under incessant air attack. According to Fabrice Balanche of the Washington Institute for Near East Policy, “Russian and regime airstrikes impede[d] normal life” in those areas.³⁸⁷

In contrast to Russian decisiveness and loyalty toward its ally, the Syrian government, the West “was gripped by paralysis.”³⁸⁸ There was no dearth of sympathy in the West for the plight of the Syrian people, particularly when the technically-savvy protesters used social media to display the egregious violations occurring in the cities of Syria. However, as Marc Lynch aptly comments, “[t]he crystallizing sense that something must be done to stop the atrocities did not translate into any clear path to doing so.”³⁸⁹ President Obama apparently understood that there was no easy “fix” for the Middle East. As famous Arab satirist Bassem Youssef commented, “whatever America is doing, it’s not working.”³⁹⁰

Ultimately, President Assad had more reliable and loyal allies than the Syrian people as represented by their rag-tag Opposition. External support was a crucial factor and the absence of such assistance consigned the Syrian people to a grim fate. Although regional states like Saudi Arabia were opposed to the Assad regime, their intervention manifested by the appearance of radical Islamist jihadis did not help the Syrian people, and only further tangled the skein of Syrian politics. This injected the issue of sectarianism into the conflict and actually assisted Assad’s propaganda machine. The Saudi involvement killed any hope of the Opposition maintaining a mainly secular, human rights orientation. Fabrice Balanche commented, “In sum, the Syrian conflict is a sectarian war, and ethnic cleansing is an integral part of the strategy used by various actors, even if they claim otherwise.”³⁹¹

Although his regime was expelled from the Arab League, Assad found a valuable and loyal ally in Iran and its client Hizbollah, a militant group that allegedly played a significant role in repressing the Syrian people. A sectarian conflict in Syria precisely suited Iran’s agenda and its regional ambitions. Marc Lynch explains that as Syria was Shia-controlled Iran’s

³⁸⁷ Balanche, *supra* note 23.

³⁸⁸ With apologies to DARKE, *supra* note 17, at 213.

³⁸⁹ LYNCH, *supra* note 254, at 114.

³⁹⁰ YOUSSEF, *supra* note 306, at 271.

³⁹¹ Balanche, *supra* note 23.

only Arab state ally, "Iran would do everything in its power to ensure that Assad did not fall."³⁹²

IX. THE UNITED NATIONS AND THE SYRIAN CRISIS

My father, who as an Indian diplomat was a student of international relations and dedicated advocate of human rights, often expressed his disappointment that at the United Nations, in any crisis, there was always a flurry of activity, but very little effective action, and people continued to suffer through their particular crisis or war.³⁹³ In a very real sense, the instant Syrian crisis presented the same situation at the United Nations with lots of activity, an avalanche of words, and to date, not much effective action. As we have seen, the responsibility for this lies not so much with the United Nations as with its most important Members, specifically the Five Permanent Members whose competing national and international interests have played such havoc with the original concept that created the world organization.

To its credit, the United Nations has done its utmost to function, within these Charter-imposed limitations. It has played a very significant role as the voice for the exposure of human rights violations, crimes against humanity, genocide and other criminal actions. In a sharply polarized world, lacking an adequate budget that can meet growing humanitarian needs, unable to fund a permanent international security force to curtail national and international wars and protect civilians wherever conflicts occur, the United Nations has, nevertheless fared quite effectively to reveal atrocities and remind us that the oppressed need our help, wherever they are located. Realistically, given its limitations as a world organization that functions at the behest of just five countries, the United Nations has fared tolerably well.

Although it is beyond the length constraints of this Article to provide intricate detail of the frenetic activity undertaken at United Nations Headquarters in New York and in Geneva, concerning the Syrian crisis, it would be useful to analyze a few of the measures taken by the world community in order to understand both the reach and the limits of internationalism (and particularly human rights implementation) as it struggles against the traditional grip that national sovereignty still holds in our time.

³⁹² LYNCH, *supra* note 254, at 105.

³⁹³ Conversation with Khooshie Lal Panjabi in New York.

The United Nations was involved in the Syrian crisis almost from its inception in Daraa where, as we have seen, a childish prank set off brutal retaliation by the regime in 2011 and the dispatch of tanks to that city as well as other parts of Syria including Banyas, Homs, and some suburban parts of Damascus.³⁹⁴ Various economic sanctions imposed by the United States, the European Union, and the Arab League have failed to curb the Syrian government, mainly because it has enjoyed the economic, political and military support of key allies like Russia and Iran. By October 2011, the siege and attack on the city of Homs generated a flurry of activity at the Security Council.³⁹⁵ Efforts to pass a resolution condemning the Assad government's attacks on protesters were vetoed by both Russia and China.³⁹⁶ To date of writing (2017), Russia has vetoed at least seven Security Council measures aimed against Syria.³⁹⁷ Between April 2011 and July 2017, the Security Council met over eighty times to discuss this crisis.³⁹⁸ Twenty-one Security Council Resolutions did manage to get accepted between April 2012 and December 2016,³⁹⁹ quite an achievement considering that Russia has remained committed to the present Syrian government's survival and the Western world is equally determined, along with most Syrians, to see Assad's dictatorship go.⁴⁰⁰

Very briefly, the Members of the Security Council agreed in April 2012, to establish, deploy and later extend the mandate of a team of thirty military observers to Syria.⁴⁰¹ The team was called the United Nations Supervision Mission in Syria. Its primary task was to monitor a cessation of armed

³⁹⁴ *Syria Country Profile, Syria*, BBC WORLD NEWS (Apr. 11, 2017), <http://www.bbc.com/news/world-middle-east-14703856>.

³⁹⁵ DI GIOVANNI, *supra* note 285, at 188.

³⁹⁶ Draft Resolution, U.N. Doc. S/2011/612 (Oct. 4, 2011).

³⁹⁷ *Id.*; Draft Resolution, U.N. Doc. S/2012/77 (Feb. 4, 2012); Draft Resolution, U.N. Doc. S/2012/538 (July 19, 2012); U.N. Doc. S/2014/348 (May 22, 2014); Draft Resolution, U.N. Doc. S/2016/846 (Oct. 8, 2016); Draft Resolution, U.N. Doc. S/2016/1026 (Dec. 5, 2016); Draft Resolution, U.N. Doc. S/2017/315 (Apr. 12, 2017).

³⁹⁸ See *UN Documents for Syria: Security Council Meeting Records*, SECURITY COUNCIL REPORT, <http://www.securitycouncilreport.org/un-documents/search.php?IncludeBlogs=10&limit=15&tag=%22Security%20Council%20Meeting%20Records%22+AND+%22Syria%22&ctype=Syria&rtype=Security%20Council%20Meeting%20Records&cbtype=syria>.

³⁹⁹ See *U.N. Documents for Syria: Security Council Resolutions*, SECURITY COUNCIL REPORT, <http://www.securitycouncilreport.org/un-documents/search.php?IncludeBlogs=10&limit=15&tag=%22Security%20Council%20Resolutions%22+AND+%22Syria%22&ctype=Syria&rtype=Security%20Council%20Resolutions&cbtype=syria>.

⁴⁰⁰ See Nic Robertson & Mohammed Tawfeeq, *Bashar al-Assad Needs to Leave Before There's Peace, Syrian Opposition Says*, CNN (Nov. 23, 2017), <http://www.cnn.com/2017/11/23/middleeast/syrian-opposition-no-bashar-al-assad/index.html>.

⁴⁰¹ S.C. Res. 2042 (Apr. 14, 2012); S.C. Res. 2043 (Apr. 21, 2012); S.C. Res. 2059 (July 20, 2012).

violence per a plan to end conflict in the country.⁴⁰² Unfortunately, after a brief lull, hostilities resumed with renewed vigor and the military observers ended their mandate in August 2012.⁴⁰³ As conditions for civilians caught in the cross-fire worsened, the Security Council focused on the provision of humanitarian assistance, and to date has passed about six Resolutions demanding that the combatants facilitate such access and also allow peaceful evacuation from war-afflicted areas.⁴⁰⁴

However, it soon became clear that many of the intended recipients of such aid were not waiting for the United Nations. The refugee flood had begun and thousands were fleeing the civil war to face a dangerous journey to Europe and an uncertain future for those who survived the lurking perils of smugglers, traffickers, kidnappers, xenophobic police in some parts of Europe, and the very real possibility of drowning in the Mediterranean during the crossing. In any event, humanitarian aid intended for besieged civilians rarely reached them. According to Nick Hopkins, writing in *The Guardian*, more than 80% of U.N. aid convoys were blocked or delayed in 2016 and the few that got through had substantial quantities of medical supplies and surgical equipment stolen by Syrian authorities.⁴⁰⁵ Worse, one convoy was allegedly attacked by Russian jets near Aleppo, and aid workers were killed.⁴⁰⁶ *Reuters* similarly reported concerns regarding UNICEF aid to Syrian children that was allegedly stolen by Syrian army and allied fighters.⁴⁰⁷ According to U.N. Spokesman Farhan Haq, “[i]n a time when so many children in Syria are in desperate need of humanitarian assistance, it is absolutely vital that aid reaches children and families in need and not get diverted.”⁴⁰⁸

By December 2015, the Security Council was at last able unanimously to adopt Resolution 2254 in an attempt to secure a political solution for

⁴⁰² S.C. Res. 2042 (Apr. 14, 2012); S.C. Res. 2043 (Apr. 21, 2012); S.C. Res. 2059 (July 20, 2012).

⁴⁰³ *United Nations Supervision Mission in Syria*, UNITED NATIONS, <https://peacekeeping.un.org/sites/default/files/past/unsmis/index.shtml/>.

⁴⁰⁴ S.C. Res. 2139 (Feb. 22, 2014); S.C. Res. 2165 (July 14, 2014); S.C. Res. 2191 (Dec. 17, 2014); S.C. Res. 2258 (Dec. 22, 2016); S.C. Res. 2338 (Dec. 19, 2016); S.C. Res. 2332 (Dec. 21, 2016).

⁴⁰⁵ Nick Hopkins, *More Than 80% of UN Aid Convoys in Syria Blocked or Delayed*, THE GUARDIAN (Sept. 30, 2016), <https://www.theguardian.com/world/2016/sep/30/syria-un-aid-convoys-more-than-four-fifths-blocked-delayed-september>.

⁴⁰⁶ *Id.*

⁴⁰⁷ *U.N. Worried About Reported Diversion of Aid in Syria*, REUTERS WORLD NEWS (May 21, 2015), <https://www.reuters.com/article/us-syria-crisis-un-aid/u-n-worried-about-reported-diversion-of-aid-in-syria-idUSKBN0062LW20150521>.

⁴⁰⁸ *Id.*

Syria.⁴⁰⁹ This Resolution placed primary responsibility on the Syrian authorities to protect the population and called for “a Syrian-owned political transition” and insisted that the “Syrian people will decide the future of Syria.”⁴¹⁰ In typical U.N.-speak, this was sufficiently vague to be adopted by all Member States and yet suitably idealistic to provide a measure of hope that this terrible tragedy could end. The Resolution endorsed and encouraged the efforts of the International Syria Support Group (ISSG), an international body co-chaired by the United States and Russia, and established in Fall 2015 in Vienna to find a diplomatic solution to the Syrian crisis.⁴¹¹ Resolution 2254 also called for a nationwide ceasefire, a new constitution, free and fair elections, the suppression of terror groups, humanitarian aid, release of the arbitrarily detained (particularly women and children), and the facilitation of the return of refugees.⁴¹² It was the classic United Nations wish list, with one difference: This time the burden of fulfillment of the list was shifted onto an ancillary body, the ISSG, an action that a cynic might suggest, was expedient with respect to the opprobrium already garnered by the glaring inadequacy of the Security Council. Regrettably, and quite predictably, the ISSG has not fared very well to date. The Syrian government and about ninety-seven Opposition groups agreed to a Cessation of Hostilities (CoH) that lasted very briefly in February 2016.⁴¹³ Ceasefires have been adhered to when expedient for the many combating parties. While avidly participating in international peace talks, the Syrian government continued its air strikes, most notoriously bombing a Medecins Sans Frontieres hospital in Aleppo, an attack that killed fifty-five people.⁴¹⁴

In addition to hosting endless debates at the Security Council, the United Nations also sought a solution through mediation. The severity of the human rights violations and the daily revelation of the horrors suffered by Syrian civilians, especially children, prompted the United Nations and the Arab League in February 2012 to appoint former Secretary-General Kofi Annan as

⁴⁰⁹ S.C. Res. 2254 (Dec. 18, 2015).

⁴¹⁰ *Id.*

⁴¹¹ See U.N. Secretary General, *Note to Correspondent: Statement of the International Syria Support Group* (Feb. 11, 2016), <https://www.un.org/sg/en/content/sg/note-correspondents/2016-02-11/note-correspondents-statement-international-syria-support>.

⁴¹² S.C. Res. 2254, *supra* note 409.

⁴¹³ *Syria War: Cessation of Hostilities Comes into Effect*, BBC NEWS (Sept. 12, 2016), <http://www.bbc.com/news/world-middle-east-37335829>.

⁴¹⁴ *TSI Syria Update: June 16, 2017*, SYRIA INST. (June 16, 2017), <http://syriainstitute.org/2017/06/16/tsi-syria-update-june-16-2017/>.

a peace envoy.⁴¹⁵ Annan's remit was to work for an effective end to the violence under U.N. supervision; humanitarian assistance to affected areas; the withdrawal of military concentrations from population centers, freedom for those arbitrarily detained; respect for rights such as freedom of association and peaceful demonstration; freedom of movement for journalists; and, the fostering of an "inclusive Syrian-led political process to address the legitimate aspirations and concerns of the Syrian people."⁴¹⁶ Both sides in the conflict accepted this Peace Plan and a ceasefire followed. However, within a few days (May 2012) it collapsed,⁴¹⁷ and Annan resigned in August 2012, stating that his "Mission Impossible" style task had proved unachievable because of the Syrian government's intransigence, the escalating military campaign waged by the Opposition, and the disunity of the international community.⁴¹⁸

The numbers of dead, maimed, and wounded kept rising as the Syrian President, taking advantage of the failures of the world organization, relied increasingly on air bombardment of Syrian civilians. There can be no doubt that the "fractured nature of the opposition"⁴¹⁹ also posed an insurmountable obstacle for peace initiatives and this continues to be a major challenge for any future peace plan and incidentally, a real boost for the continuing ambitions of President Assad to remain in power.

Any genuine aspirations for peace within the United Nations also foundered on another critical issue—the division over the future role of President Assad. The Opposition wanted him to leave before peace negotiations began. The Western nations generally supported the end of the Assad regime. At peace talks in Geneva, the U.S. government of President Obama insisted that Assad should not be part of any transitional government.⁴²⁰ This was a card of international support the Opposition was determined to play, no matter any delay and added civilian suffering. Assad, however, was equally determined to hold onto power.

⁴¹⁵ Kofi Annan Appointed U.N.-Arab League Envoy to Syria, REUTERS WORLD NEWS (Feb. 23, 2012), <http://www.reuters.com/article/us-un-syria-envoy-idUSTRE8IM25G2021223>.

⁴¹⁶ S.C. Res. 2042, *supra* note 401, at Annex.

⁴¹⁷ Brian Larkin, *Syria- Timeline of Peace Process*, PEACE AND JUSTICE NEWS (June 1, 2013), <http://peaceandjustice.org.uk/newsletter/peace-and-justice-news-syria-issue/>.

⁴¹⁸ Matthew Weaver & Brian Whitaker, *Syria Crisis: Kofi Annan Resigns as Peace Envoy*, THE GUARDIAN (Aug. 2, 2012), <https://www.theguardian.com/world/middle-east-live/2012/aug/02/syria-crisis-damascus-massacres-live>.

⁴¹⁹ Magnus Lundgren, *Mediation in Syria: Initiatives, Strategies, and Obstacles, 2011–2016*, 37 CONTEMPORARY SECURITY POL'Y 273 (2016).

⁴²⁰ Larkin, *supra* note 417.

Russia and Iran deemed his survival a significant aspect of their patron-client relationship with Syria. Putin in particular envisaged the Syrian war as a theatre to assert Russia's superpower status. Victory over the opposing client interest favored by the United States patron was critical to Putin's assertion of a resurrected Russian hegemony. Putin probably also calculated that he could win this game because the U.S. government, and particularly President Obama, manifested a degree of ambivalence and hesitation that proved very damaging to the Syrian Opposition.

United Nations mediation efforts foundered over all these competing interests, particularly because the proxy war had overtaken the local Syrian issue in significance. Nevertheless, an effort was made again with the appointment in August 2012 of a new mediator, an Algerian diplomat, Lakhdar Brahimi.⁴²¹ Brahimi, however, threw in the towel in May 2014, and Secretary-General Ban Ki-Moon conceded that Syria, the Middle Eastern region, and the international community were "hopelessly divided in their efforts to ending the conflict."⁴²²

However, the U.N. bureaucracy is nothing if not persistent. On July 10, 2014, a third mediation appointment brought Italo-Swedish diplomat Staffan de Mistura to the position of Special Envoy.⁴²³ To date, he continues in that position, supervising and endorsing, as did his predecessors, a continuing series of resolution-seeking meetings that have been held in various European cities including Vienna, Geneva, and Astana (Kazakhstan).⁴²⁴

There are a number of reasons why to date mediation and peace talks have not ended the crisis. The Opposition remains diffuse and composed of competing agendas and priorities. The Syrian President is committed, above all, to his own survival and possibly cannot envisage anything positive for him, his family, and his Alawi support structure in the contemplated transition government. The International Peace Institute suggested yet

⁴²¹ Tom Perry & Louis Charbonneau, *U.N. Names Algerian Diplomat as Syria Envoy; Refugee Crisis Dire*, REUTERS (Aug. 16, 2012), <https://www.reuters.com/article/us-syria-crisis/u-n-names-algerian-diplomat-as-syria-envoy-refugee-crisis-dire-idUSBRE8610SH20120817>.

⁴²² *Syria: UN-Arab League Envoy Brahimi Resigns*, U.N. NEWS CENTRE (May 13, 2014), <http://www.un.org/apps/news/story.asp?NewsID=47780#.WjNDzlQ-dmC>.

⁴²³ *UN Chief Appoints Staffan de Mistura as Special Envoy for Syria Crisis*, U.N. NEWS CENTRE (July 10, 2014), <http://www.un.org/apps/news/story.asp?NewsID=48244#.WjNEWVQ-dmC>.

⁴²⁴ Rick Gladstone, *U.N. Syria Mediator Reports Some Progress in Peace Talks*, N.Y. TIMES (Mar. 3, 2017), <https://www.nytimes.com/2017/03/03/world/middleeast/syria-civil-war-un-tal-ks-mediator-assad.html>.

another reason, namely that “with both sides willing to withstand high levels of suffering, a self-serving stalemate took hold.”⁴²⁵

In view of the paralysis that prevented the Security Council from fulfilling its Charter mandate per Chapter VII to maintain peace and security,⁴²⁶ the General Assembly assumed some of the responsibility for finding a solution to the gruesome tragedy prevailing in Syria. Composed of most of the global community with 193 Member States,⁴²⁷ the General Assembly displayed more gumption than the fifteen Member Security Council—a reality that exposes the iron grip maintained on the latter by the five Permanent Members who have happily twisted global necessities to their national self-interest through much of the history of the world organization. However, per the Charter, the General Assembly is confined to making recommendations and is accordingly the chief deliberative organ of the United Nations.

With respect to Syria, the Assembly took a proactive approach, condemning the violence and recommending the appointment of a Special Envoy in 2011–2012.⁴²⁸ On August 7, 2012, the General Assembly formally deplored “the failure of the Security Council to agree on measures to ensure the compliance of Syrian authorities with its decisions,” in an all-encompassing Resolution that called inter alia for “an inclusive Syrian-led political transition to a democratic, pluralistic political system, in which citizens are equal regardless of their affiliations or ethnicities or beliefs, including through the commencement of a serious political dialogue between the Syrian authorities and the whole spectrum of the Syrian opposition.”⁴²⁹ Of particular note to the instant research, this Resolution referred to violations against children and pointed out that

[c]hildren were among the victims of military operations carried out by [g]overnment forces, including the Syrian armed forces, intelligence forces and “Shabbiha” militias, and that

⁴²⁵ I. William Zartman & Raymond Hinnebusch, *UN Mediation in the Syrian Crisis: From Kofi Annan to Lakhdar Brahimi*, INT'L PEACE INST. (Mar. 24, 2016), <https://www.ipinst.org/2016/03/un-mediation-syrian-crisis>.

⁴²⁶ U.N. Charter art. 39, ¶ 1.

⁴²⁷ General Assembly of the United Nations, *Functions and Powers of the General Assembly*, U.N., <http://www.un.org/en/ga/about/background.shtml>.

⁴²⁸ G.A. Res. 66/176, Situation of Human Rights in the Syrian Arab Republic (Dec. 19, 2011); G.A. Res. 66/253, The Situation in the Syrian Arab Republic (Feb. 16, 2012).

⁴²⁹ G.A. Res 66/253, The Situation in the Syrian Arab Republic (Aug. 7, 2012).

children as young as 9 years of age were victims of killing and maiming, arbitrary arrest, detention, torture and ill-treatment, including sexual violence, and used as human shields.⁴³⁰

The General Assembly continued to condemn the violence in Syria as well as the violations of human rights,⁴³¹ and on December 21, 2016, established an International, Impartial and Independent Mechanism to assist in the investigation and prosecution of those responsible for the commission in Syria of serious crimes under international law.⁴³² Clearly, the General Assembly, reflecting world public opinion, was anxious to push the envelope of its capacities, even as the more powerful Security Council was paralyzed by the power struggle between Russia and the United States.

In spite of, or possibly because of, the paralysis prevailing in the Security Council, other U.N. bodies did all they could to publicize the Syrian situation and compile evidence against the various combating parties. The United Nations is well-aware of its own shortcomings, largely caused by the veto power in the Security Council. Therefore, it is all the more courageous and commendable that the group of international civil servants headed by the Secretary-General did its utmost to generate world public opinion on this issue. The many Reports of the Secretary-General that have been referred to throughout this Article elaborated on the multiplicity of violations of human rights and humanitarian law in Syria. Additionally, the U.N. Human Rights Council established an Independent International Commission on Syria in August 2011.⁴³³ The Commission, established by Human Rights Council Resolution S/17/1, consisted of three members, Paulo Sergio Pinheiro of Brazil (Chair), Karen Koning AbuZayd of U.S.A., and Carla del Ponte of Switzerland.⁴³⁴ Its mandate is to investigate alleged violations of international human rights law since the start of the Syrian crisis.⁴³⁵

This group did excellent work compiling detailed investigative reports of particular incidents of violations committed throughout Syria with particulars

⁴³⁰ *Id.*

⁴³¹ G.A. Res. 67/262, U.N. Doc. A/RES/67/262 (June 4, 2013); G.A. Res. 68/182, U.N. Doc. A/RES/68/182 (Dec. 18, 2013); G.A. Res. 71/130, U.N. Doc. A/71/L.39 (Dec. 7, 2016).

⁴³² G.A. Res. 71/248, U.N. Doc. A/71/L.48 (Dec. 19, 2016).

⁴³³ Human Rights Council Res. S-17/1 (Aug. 22, 2011).

⁴³⁴ *Independent International Commission of Inquiry on the Syrian Arab Republic*, U.N. HUMAN RTS., <http://www.ohchr.org/EN/HRBodies/HRC/IICISyria/Pages/AboutCol.aspx> (last visited Dec. 18, 2017).

⁴³⁵ *Id.*

of the crimes committed, and where children were concerned, their ages, as well as the names of villages and cities where infractions occurred. A series of Reports flowed, describing the horrors unfolding in Syria. The evidence was compiled in a meticulous manner to demonstrate egregious violations of human rights committed against both adults and children. To its credit, the Independent Commission reiterated its call for “accountability,”⁴³⁶ and made numerous very sensible recommendations including calling on all parties to “guarantee effective protection of child rights.”⁴³⁷ Interestingly, in 2016, the Commission boldly called upon the Security Council to “take appropriate action by referring the situation to justice, possibly to the International Criminal Court or an ad hoc tribunal, bearing in mind that, in the context of the Syrian Arab Republic, only the Security Council is competent to refer the situation.”⁴³⁸ This courageous and praiseworthy move met with inevitable disregard from the polarized Security Council where national sovereignty and self-interest trump international law, human rights and the entire body of rights Conventions, Declarations and legal instruments.

Frustration with the Security Council’s intransigence prompted the resignation of Commission of Inquiry member, Carla Del Ponte in early August 2017. A former prosecutor on war crimes who had worked on the Rwanda and Yugoslavia cases, Del Ponte lamented that as regards Syria, “her role had come to be an alibi for inaction,” and added that it “was all about the inaction of the security council.”⁴³⁹ Del Ponte explained that the Commission was powerless, in view of the inaction of the Security Council.⁴⁴⁰ Deeming the prevailing situation a disgrace for the Security Council, Ms. Del Ponte deplored the injustice involved for the Syrian people.⁴⁴¹ However, by 2017, as Patrick Wintour of the Guardian points out, the Commission had managed to interview more than 5,000 witnesses and had, through its multiple Reports, meticulously documented examples of war crimes.⁴⁴²

⁴³⁶ Human Rights Council, Rep. of the Independent International Commission of Inquiry on the Syrian Arab Republic, U.N. Doc. A/HRC/33/55 (Aug. 11, 2016).

⁴³⁷ *Id.* ¶ 140(g).

⁴³⁸ *Id.* ¶ 147(c).

⁴³⁹ Patrick Wintour, *UN Syria Investigator Quits Over Concern about Russian Obstruction*, THE GUARDIAN (Aug. 7, 2017), <https://www.theguardian.com/world/2017/aug/07/we-are-powerless-un-syria-investigator-carla-del-ponte-quits-over-lack-of-political-backing>.

⁴⁴⁰ *Syria Investigator del Ponte Quits, Blaming U.N. Security Council*, REUTERS (Aug. 6, 2017), <https://www.reuters.com/article/us-mideast-crisis-syria-investigator/syria-investigator-del-ponte-quits-blaming-u-n-security-council-idUSKBN1AMOP4>.

⁴⁴¹ Wintour, *supra* note 439.

⁴⁴² *Id.*

The Syrian crisis has demonstrated for all the world to see that the main action-oriented body of the United Nations, the Security Council, is mired in twentieth century notions of political sovereignty, while the rest of the world organization has sought valiantly and in vain to push the envelope toward a more twenty-first century globalized outlook.

Besides condemning the inaction of the Security Council which has become a serious embarrassment for the international community, it is important to underscore the fact that other divisions of the United Nations and its agencies are looking ahead to the future and are clearly envisioning accountability for the terrible rights violations in Syria. References to war crimes in Syria have proliferated in the United Nations and it was felt that some concrete action had to be taken to reflect that growing concern. Accordingly, on December 21, 2016, the General Assembly passed Resolution 71/248 to establish an International, Impartial and Independent Mechanism (IIIM) to assist in the investigation and prosecution of responsible parties for the most serious crimes under international law.⁴⁴³ Judge Catherine Marchi-Uhel of France was appointed Head of this Mechanism.⁴⁴⁴ It is important to note that the mandate of this body mentions “the crime of genocide, crimes against humanity and war crimes as defined in relevant sources of international law,”⁴⁴⁵ perhaps in the hope that this formalization of future accountability would act as a deterrent to the murder and mayhem in Syria.

It is also important to note that this proactive stance by the General Assembly in favor of human rights was vehemently opposed by Russia, which argued that this action violated the U.N. Charter, particularly as the General Assembly did not have the authority to establish a prosecutorial body.⁴⁴⁶

⁴⁴³ U.N. Secretary General, *Note to Correspondents: International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Those Responsible for the Most Serious Crimes Under International Law Committed in the Syrian Arab Republic Since March 2011* (Jan. 26, 2017), <https://www.un.org/sg/en/content/sg/note-correspondents/2017-01-26/note-correspondents-international-impartial-and>.

⁴⁴⁴ *Secretary-General Appoints Catherine Marchi-Uhel of France to Head International Impartial Independent Mechanism Investigating Serious Crimes in Syria*, U.N. (July 3, 2017), <https://www.un.org/press/en/2017/sga1744.doc.htm>.

⁴⁴⁵ *Note to Correspondents: International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of those Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic Since March 2011*, *supra* note 443.

⁴⁴⁶ James Cockayne, *Justice for Syria?*, U.N. UNIV. CTR. FOR POL. RES. (Apr. 21, 2017), <https://cpr.unu.edu/justice-for-syria.html>.

At best, the view of international concern and involvement in the Syrian crisis is complex. On the one hand, world public opinion has expressed shock and dismay at the manner in which civilians in Syria have been subjected to inhuman conditions by both their government and the multiplicity of groups that constitute the Opposition. Additionally, the incursion of radical terror organizations like ISIS has further complicated the situation. Thanks largely to foreign elements, the problem facing Syria and its people is simultaneously a civil war, a regional war, an international crisis, and part of the global war on terror. Time alone will tell whether this tangled situation will ever resolve and lead to the type of peace and good governance that has eluded that tragic country for so long.

X. THE SYRIAN CHILD REFUGEE CRISIS⁴⁴⁷

The Syrian child refugee crisis was poignantly and tragically revealed to all the world when photographer Nilüfer Demir took the picture of the body of toddler Alan Kurdi who drowned while trying to cross the Mediterranean.⁴⁴⁸ This picture literally encapsulated “the Syrian refugee crisis with one iconic image.”⁴⁴⁹

Entire books could and have been written on the current refugee crisis that is unprecedented since the end of the Second World War. Length constraints preclude anything but a very brief reference to this issue that involves the forced diaspora of Syrian children and adults from their homes, schools, and communities. As regards the receiving-host countries that have played a role in saving Syrian lives, they have incurred considerable expense and strain on local infrastructure. The refugee crisis has truly internationalized the Syrian war and has generated a very varied response toward those fleeing from persecution.

Ironically, although some Europeans have raised a loud hue and cry about the invasion by masses of Syrians and the threat their religion, language, and culture poses to the “European-ness” of their way of life, the overwhelming majority of Syrian refugees are not in Europe, have not tried to go to Europe, and are likely only waiting and hoping to return home as soon as the war ends. By one estimate, neighboring states like Turkey had accepted 2.5

⁴⁴⁷ For an interesting study, see generally JASON M. POBJOY, *THE CHILD IN INTERNATIONAL REFUGEE LAW* (2017).

⁴⁴⁸ Nilüfer Demir, Photo of Alan Kurdi, *TIME* (2015), <http://100photos.time.com/photos/nilufer-demir-alan-kurdi>.

⁴⁴⁹ DAVID STARR, *FROM BOMBS TO BOOKS: THE REMARKABLE STORIES OF REFUGEE CHILDREN AND THEIR FAMILIES AT TWO EXCEPTIONAL CANADIAN SCHOOLS 11–12* (2d ed. 2016).

million Syrian refugees, Lebanon 1.1 million, and Jordan 664,000 by 2016.⁴⁵⁰

Some Syrians have dreamed of starting a new life in Europe. For many, that dream has become yet one more nightmare. The plight of unaccompanied refugee children in Europe is dire. According to Human Rights Watch, children said that they experienced abuse from French police and French citizens while stranded in Calais, waiting to be accepted into the United Kingdom.⁴⁵¹ Local residents had thrown bottles at the children and made racist comments.⁴⁵² The Red Cross also emphasized the horrors facing child refugees stranded in the Calais camp, appropriately termed “the Jungle.”⁴⁵³ The dangers included “sexual exploitation, forced labour, trafficking gangs and smugglers,” as well as “unsafe food, poor sanitation and inadequate healthcare.”⁴⁵⁴ It is now a truism that the “largest group of tortured children are amongst refugees.”⁴⁵⁵

Syria’s neighbor Turkey has been among the most hospitable to Syrians fleeing from their country. John P. Howe III, M.D. of Project Hope commented that Turkey had welcomed the refugees with open arms, provided them with identity cards allowing them access to free health care and educational services.⁴⁵⁶ By early 2017, half of Syrian child refugees in Turkey were enrolled in schools, built by UNICEF and staffed by Syrian volunteer teachers.⁴⁵⁷

Although Lebanon has allowed in over a million Syrian refugees, their reception in that tiny country has been varied. Syrian refugees presently constitute about a quarter of Lebanon’s population, and that fact is at the root of many of the problems they encounter. The sudden inflow posed severe challenges for Lebanon.⁴⁵⁸ “Health care, water and sanitation facilities,

⁴⁵⁰ ELIZABETH W. COLLIER & CHARLES R. STRAIN, *GLOBAL MIGRATION: WHAT’S HAPPENING, WHY, AND A JUST RESPONSE* 8 (2017).

⁴⁵¹ *France/UK: London Children From Calais Left in Limbo*, HUMAN RTS. WATCH (Dec. 21, 2016), <https://www.hrw.org/news/2016/12/21/france/uk-lone-children-calais-left-limbo>.

⁴⁵² *Id.*

⁴⁵³ *Id.*

⁴⁵⁴ Ed Thomas & Ed Campbell, *The Desperate Children of the Calais Jungle*, BBC NEWS (Oct. 17, 2016), <http://www.bbc.com/news/world-europe-37654552>.

⁴⁵⁵ AIDA ALAYARIAN, *CHILDREN OF REFUGEES: TORTURE, HUMAN RIGHTS, AND PSYCHOLOGICAL CONSEQUENCES*, at xviii (2017).

⁴⁵⁶ John P. Howe, III M.D. *Medical Needs Growing For Syrian Refugees in Turkey*, PROJECT HOPE (Feb. 11, 2015), <http://www.projecthope.org/news-blogs/In-the-Field-blog/2015/medical-needs-growing-for.html>.

⁴⁵⁷ Ewan Watt, *More Than Half Of Syrian Refugee Children Now In Schools In Turkey*, THEIRWORLD (Jan. 19, 2017), <http://theirworld.org/news/more-than-half-syrian-refugees-now-in-turkey-schools>.

⁴⁵⁸ *Homeless Syrian Refugee Toddler Bitten by Rats*, MIDDLE EAST MONITOR (May 9, 2017), <https://www.middleeastmonitor.com/20170509-homeless-syrian-refugee-toddler-bitten-by-rats/>.

shelter, and other resources that were already strained in Lebanon [were] put under further pressure.”⁴⁵⁹ Kareem Shaheen of *The Guardian* commented on the indignities suffered by Syrians, which included everything “from onerous visa procedures to poor treatment and humiliation at the border and residency offices, to child labour, sexual exploitation, and life in fragile plastic tents that collapse in winter, and the xenophobia of local politicians pandering to fearful followers.”⁴⁶⁰ Syrians also face sudden evictions from their dilapidated tent homes, consequent homelessness and poverty, and as one refugee lamented, “Every day that goes by is worse than the one before.”⁴⁶¹ They are not allowed to work in Lebanon and forbidden from building permanent refugee camps.⁴⁶² When they find temporary private shelter, they pay high rent.⁴⁶³

Explaining the Lebanese dilemma, Prime Minister Najib Azmi Mikati, pleaded for international assistance to improve educational and other opportunities for the vast refugee inflow into his country.⁴⁶⁴ Emphasizing the seriousness of the crisis, Mikati stated:

There are grim personal accounts of children begging on the streets, children being trafficked and girls sold into early marriage, even of young people feeding the international market for body parts by selling their kidneys to survive—and this is happening because thousands of the near one million refugees urgently need the help that an under pressure Lebanon can no longer give on its own.⁴⁶⁵

⁴⁵⁹ Karl Blanchet et al., *Syrian Refugees in Lebanon: The Search for Universal Health Coverage*, CONFLICT AND HEALTH (2016), <https://conflictandhealth.biomedcentral.com/track/pdf/10.1186/s13031-016-0079-4?site=conflictandhealth.biomedcentral.com>.

⁴⁶⁰ Kareem Shaheen, *Tiny Graves: Syrians Refugees in Lebanon Struggle For Space To Bury Children*, THE GUARDIAN (Mar. 30, 2017), <https://www.theguardian.com/world/2017/mar/30/lebanon-no-space-syrian-refugees-graves-bury-dead>.

⁴⁶¹ *Homeless Syrian Refugee Toddler Bitten by Rats*, *supra* note 458.

⁴⁶² See Martin Armstrong, *Lebanon Resists Granting Working Permits to Syrian Refugees*, MIDDLE EAST EYE (Feb. 4, 2016), <http://www.middleeasteye.net/news/lebanon-syria-refugees-jobs-554259285>; Norimitsu Onishi, *Lebanon Worries That Housing Will Make Syrian Refugees Stay*, N.Y. TIMES (Dec. 11, 2013), <http://www.nytimes.com/2013/12/11/world/middleeast/lebanon-worries-that-housing-will-make-syrian-refugees-stay.html>.

⁴⁶³ Loveday Morris, *Tent-Dwelling Syrian Refugees Forced Into Debt By High Rights in Lebanon*, INDEPENDENT (Mar. 27, 2013), <http://www.independent.co.uk/news/world/middle-east/tent-dwelling-syrian-refugees-forced-into-debt-by-high-rents-in-lebanon-8552236.html>.

⁴⁶⁴ Gordon Brown & Najib Azmi Mikati, *Help! An Urgent Plea for Syrian Refugee Children in Lebanon*, HUFFINGTON POST, https://www.huffingtonpost.com/gordon-brown/syria-refugee-children-lebanon_b_4739529.html# (last visited Dec. 18, 2017).

⁴⁶⁵ *Id.*

International assistance did enable Lebanon to provide schooling to nearly a quarter of a million Syrian children by 2016, however, an equal number were still out of school.⁴⁶⁶ It is interesting to note that part of the bargain provided foreign funds to cover enrollment fees for all 197,010 Lebanese students in basic education.⁴⁶⁷ However, financial reasons remained an important factor in the non-attendance of Syrian children. Caught in an economic squeeze, Syrian families were forced to rely on child labor for survival.⁴⁶⁸ Additionally, Lebanon's complex residency regulations severely restricted options for Syrian refugees.

As we have seen, although the welcome in culturally-affiliated neighboring countries was somewhat warmer, the reception in Europe varied from positive to downright racist and bigoted. Many of the Syrian refugees who entered Europe did not fare very well because the initial welcoming of a few migrants with enthusiasm was replaced by a xenophobic fear that the European continent would be overwhelmed, and its character changed by a huge influx of people from such a different culture.

For these refugees, men, women, and children, the biggest shock was to succeed against all odds in fleeing from Syria, survive the perilous ocean crossing and land in Europe, Greece in particular, in order to enjoy liberty and freedom, only to find themselves detained, and incarcerated in conditions they found to be hellish.⁴⁶⁹ Thousands drowned in the Mediterranean but approximately a quarter of a million Syrians managed to reach Europe in just the first ten months of 2015.⁴⁷⁰ They then “trekked across Europe by foot, bus, car, and rail in journeys that could entail weeks of sleeping on the streets, trudging through the rain, carrying babies, and dodging criminals or arrest.”⁴⁷¹

There were, by some estimates, approximately 26,000 child refugees in Europe by 2016 and many of them were “living in conditions of absolute desperation—hungry, cold, scared and . . . increasingly exposed to

⁴⁶⁶ Bassam Khawaja, *European Donors Help Syrian School Children*, EU OBSERVER (July 14, 2016), <https://euobserver.com/opinion/134344>.

⁴⁶⁷ Bassam Khawaja, *How Lebanon's Residency Policy Keeps Syrian Children Out of School*, DAILY STAR (July 14, 2016), <http://www.dailystar.com.lb/Opinion/Commentary/2016/Jul-19/362772-how-lebanons-residency-policy-keeps-syrian-kids-out-of-school.ashx>.

⁴⁶⁸ *Id.*

⁴⁶⁹ Negin Janati & Erin Taylor, *Self-Harm and Depression Rise Among Child Refugees One Year Into the EU-Turkey Deal*, SAVE THE CHILDREN (Mar. 16, 2017), <https://www.savethechildren.net/article/self-harm-and-depression-rise-among-child-refugees-one-year-eu-turkey-deal>.

⁴⁷⁰ Selcuk R. Sirin & Lauren Rogers-Sirin, *The Educational and Mental Health Needs of Syrian Refugee Children* 5, MIGRATION POL'Y INST. (Oct. 2015), <https://www.migrationpolicy.org/research/educational-and-mental-health-needs-syrian-refugee-children>.

⁴⁷¹ PEARLMAN, *supra* note 93, at li.

trafficking and sexual exploitation. . . with at least 10,000 displaced children” having suspiciously disappeared after entering Europe.⁴⁷² Many of these missing children were unaccompanied and therefore extremely vulnerable to traffickers and criminal gangs.⁴⁷³ All this insecurity has compelled some young refugees without adult family members to live in “24-hour survival mode,” and sleep in shifts in order to stay safe.⁴⁷⁴

However, some refugee children in Greece did manage to go to school and started learning the language. *BBC News* reported that the International Organization for Migration was transporting refugee children to schools.⁴⁷⁵ Their reception was mixed, with some schools welcoming them with songs and balloons, while protesters threw stones and booed the children at other schools.⁴⁷⁶

In a strange way, the Syrian crisis has revealed the absence or presence of a moral dimension in countries far from Syria. In some cases, the plight of the Syrian people has elicited a degree of compassion and caring and in others their very presence has generated xenophobia and racism. It is almost as though the Syrians, by their suffering, have held up a mirror for the rest of us to examine ourselves—who we actually are and how much or how little we really care.

XI. IMPERILED HUMAN RIGHTS: INTRODUCTION

One reason why human rights implementation has not progressed as far as it ought to have in this new century is that the issue has all too frequently become politicized.⁴⁷⁷ States applaud, accept, and adopt the fine phraseology of international legal instruments but revert to political exigencies and outright expediency when confronted by any type of challenge that such rights formulations pose to existing power structures. It is important to

⁴⁷² Tanya Steele, *Child Refugees in Camps from Lesbos to Calais Need More Help*, THE GUARDIAN (May 1, 2016), <https://www.theguardian.com/world/2016/may/01/child-refugees-in-camps-from-lesbos-to-calais-need-more-help>.

⁴⁷³ Janati & Taylor, *supra* note 469.

⁴⁷⁴ *Id.*

⁴⁷⁵ Theopi Skarlatos, *Greece's Refugee Children Learn the Hard Way*, BBC NEWS (Apr. 19, 2017), <http://www.bbc.com/news/world-europe-39621097>.

⁴⁷⁶ *Id.*

⁴⁷⁷ With apologies to Delegate Ambassador Rafael Dario Ramirez Carreno of Venezuela. Press Release, Security Council, Starvation by Siege Now ‘Systemic’ in Syria, Assistant Secretary-General Tells Security Council, Amid Warnings that Tactic Could Be War Crime, U.N. Press Release SC/12203 (Jan. 15, 2016).

reiterate that human rights can really only become a meaningful protection when they are honored in times of crisis. This all-too-frequently does not happen, whether the venue is Syria, or Yemen, Afghanistan, or any of the states where conflict is endemic. The problem also lies within the legal instruments. Regrettably, provisions with respect to accountability for lapses and violations are either feeble or non-existent and that reality makes a mockery of the entire convention or treaty. Violations committed with impunity must be deterred with a much stronger umbrella of international criminal law that guarantees that individual and group perpetrators will definitely face justice. The world is moving in that direction but the pace is too slow and too hesitant, particularly given the toll of victims in so many nations. This absence of accountability has seriously denigrated the significance of the Convention on the Rights of the Child. In the Syrian crisis, all involved parties and particularly the Assad regime and its allies, acted with complete indifference to this Convention. The world has a long way to go before eloquent words are matched with morally-grounded actions that prevail even in difficult circumstances.

Globally, children have suffered egregiously because of the varied political stances and activities of adults, the resulting conflicts, and the consequent population upheavals we now term the refugee/migration crisis. The United Nations has estimated that children now constitute approximately 41% of the 43 million displaced people worldwide.⁴⁷⁸ As regards Syria, the outflow of people resulting from this war, has appropriately been termed the “largest humanitarian crisis since the end of World War II.”⁴⁷⁹

There can be no doubt that the Syrian war has resulted in a human rights crisis of mammoth proportions. A once vibrant, albeit politically repressed society, is now altered in ways that are unimaginable. Most of Syria’s major cities are in ruins, homes, shops, schools, hospitals, and gathering-places obliterated. Its people are displaced and scattered in a forced diaspora which is unlike anything the world has seen in recent years. By 2014, the UNHCR was already calling the then four-year conflict in Syria “the single largest driver of displacement,” and it estimated that 3.88 million Syrians were enduring refugee status while 7.6 million more were internally displaced.⁴⁸⁰ “In blunter terms, one in every five displaced persons worldwide . . . [that]

⁴⁷⁸ Umit Bektas, *Syrian Refugee Children at a Camp in Turkey*, ABC NEWS (Feb. 5, 2017), <http://www.abc.net.au/news/2017-02-06/syrian-refugee-children-at-a-camp-in-turkey/8244930>.

⁴⁷⁹ *Humanitarian Action for Children 2017*, *supra* note 6.

⁴⁸⁰ Sam Jones, *One in Every 122 People Is Displaced by War, Violence and Persecution, Says UN*, THE GUARDIAN (June 18, 2015), <https://www.theguardian.com/global-development/2015/jun/18/59m-people-displaced-war-violence-persecution-says-un>.

year was Syrian.”⁴⁸¹ By May 2017, the UNHCR estimate of the number of Syrian refugees had risen to over five million, primarily in Turkey, Jordan, Lebanon, Egypt and Iraq.⁴⁸²

The Norwegian Refugee Council reported that after six years of conflict, 13.5 million Syrians need aid and are in “dire and deteriorating conditions.”⁴⁸³ By 2015, UNICEF estimated that 82% of Syrians were living in poverty.⁴⁸⁴ In March 2017, one journal estimated that 5.8 million Syrian children needed humanitarian assistance.⁴⁸⁵ It is significant to note that in 2016, children were estimated to account for less than a third of global population but, according to UNICEF, they constituted more than half of the world’s refugees.⁴⁸⁶

It is also important to note that many fleeing Syrians do not, for a variety of reasons, register as refugees, and that many have moved to Gulf countries that are not parties to the Refugee Convention, and therefore lack formal recording procedures. Within Europe, as the emotional video footage on the news has clearly shown, Syrians seek to settle in two countries that registered almost two-thirds of the nearly one million asylum claims made between 2011 and 2016.⁴⁸⁷ These two countries are Germany and Sweden.⁴⁸⁸

Syria has become a theatre for demonstrating both the technological effectiveness and the destructive brutality of modern weaponry. Prior to the war, most Syrians, especially those in urban centers, enjoyed the usual amenities of modern life, electricity, running water, phone service, and so on.⁴⁸⁹ Much of this disappeared and Syria reverted back to the Middle Ages

⁴⁸¹ *Id.*

⁴⁸² UNHCR & Government of Turkey, *Syria Regional Refugee Response: Inter-agency Information Sharing Portal*, <http://data.unhcr.org/syrianrefugees/regional.php> (last updated May 1, 2017).

⁴⁸³ Foreign Staff, *Syrian Children Faced Worst Year Yet in 2016, UN Says*, TELEGRAPH (Mar. 13, 2017), <http://www.telegraph.co.uk/news/2017/03/13/syrian-children-faced-worst-year-yet-2016-un-says/>.

⁴⁸⁴ Sirin & Rogers-Sirin, *supra* note 470, at 5 (citing UNICEF Connect, *The Syrian Conflict and Europe’s Refugee Crisis in Numbers* (Sept. 30, 2015), <https://blogs.unicef.org/blog/the-syrian-conflict-and-europes-refugee-crisis-in-numbers/>).

⁴⁸⁵ Conor Gaffey, *2016 Was ‘Worst Year’ For Syrian Children: UNICEF*, NEWSWEEK (Mar. 13, 2017), <http://www.newsweek.com/syria-children-child-soldiers-unicef-567062>.

⁴⁸⁶ Kate Hodal, *Nearly Half of All Refugees Are Children, Says UNICEF*, THE GUARDIAN, (Sept. 6, 2016), <https://www.theguardian.com/global-development/2016/sep/07/nearly-half-of-all-refugees-are-children-unicef-report-migrants-united-nations>.

⁴⁸⁷ *UN: Number of Syrian Refugees Passes Five Million*, *supra* note 342.

⁴⁸⁸ *Id.*

⁴⁸⁹ *See generally* Polk, *supra* note 22.

as the war escalated and starvation became a consequence of protracted siege warfare.⁴⁹⁰ To give just one example of the brutality of this war, the United Nations estimated in 2016, that approximately 7.7 million Syrian civilians were suffering deliberate water cuts.⁴⁹¹ The problems have been caused both by destruction of infrastructure during the fighting and by calculated turn-off of water supplies by the government to anti-regime areas.

Syrian civilians have also faced air strikes that have targeted civilian zones; mortar and rocket attacks; suicide bombings; and the shelling and destruction of entire residential neighborhoods. Additionally, the use of siege warfare has led to serious outbreaks of disease.⁴⁹² Verifiable and reliable statistics on the numbers of injured, dead and maimed are difficult to find, but there can be no doubt that the most vulnerable—Syrian children—have suffered egregious harm. This civil uprising that morphed into a proxy war and is now an internationalized conflict and the consequent humanitarian disaster will be deemed one of the worst in modern history. In the future, a compelling argument may be made about such actions amounting to deliberate ethnic cleansing of the type the world witnessed in the war that afflicted the former Yugoslavia. If measures are not taken soon to end this carnage in Syria, there might be a compelling legal case for genocide as well.

The eloquent phraseology of the Convention on the Rights of the Child became largely irrelevant in the brutal conditions imposed on children during the Syrian war. Both sides in the conflict made inappropriate use of children. In an April 2016 Report, the U.N. Secretary General expressed concern about the recruitment and use of children as young as nine years by the Free Syrian army.⁴⁹³ Islamist terror organizations like ISIS similarly used children for military purposes and children were even trained and utilized as executioners.⁴⁹⁴ Possibly, although not necessarily, as a consequence, the Syrian government arrested, detained, tortured, and sometimes killed children, frequently alleging their involvement with armed opposition

⁴⁹⁰ Marianne Gasser, *Syria Conflict: Siege Warfare and Suffering in Madaya*, BBC NEWS, (Feb. 1, 2016), <http://www.bbc.com/news/world-middle-east-35455705>.

⁴⁹¹ U.N. Secretary-General, *Children and Armed Conflict*, ¶ 162, U.N. Doc. A/70/836-S/2016/360 (Apr. 20, 2016).

⁴⁹² See Resat Ozaras et al., *The Syrian Conflict and Infectious Diseases*, 14 EXPERT REV. ANTI-INFECTIVE THERAPY 547 (2016).

⁴⁹³ U.N. Secretary-General, *supra* note 491, ¶ 151.

⁴⁹⁴ *Id.* ¶ 150.

groups.⁴⁹⁵ All such actions make a mockery of the elegant phrases of the Convention that ask States Parties to “take all feasible measures to ensure protection and care of children who are affected by an armed conflict.”⁴⁹⁶

No one knows how many children have been orphaned by this terrible war or how old they are and how they are coping. Their plight is the most miserable indeed for Syria, in its present state, has lost institutional supports to sustain orphans. In some cases, given the importance of family and tribe, children may find a home with relatives. However, for urbanized Syrians, living as nuclear families, the death or detention of parents may leave children completely exposed and vulnerable.

Given that both the Assad regime and ISIS use the same methods of intimidation, torture, rape, kidnappings, executions and so on, is it any wonder that a massive refugee crisis has occurred? The International Rescue Committee reported that rape was a primary reason why so many people had fled from their homes.⁴⁹⁷ The Shabiha are alleged to have used rape and the threat of rape to ethnically cleanse areas and this terrible crime has been committed against men, women and children. Foreign Correspondent Janine Di Giovanni explained that while “rape in any society is a horrific act of power and subjugation, in Muslim culture, it is devastating. Notions of virginity uphold the central concept of honour in Islam, not only for the victim, but also for the family.”⁴⁹⁸

The list of missing grows daily in Syria as both ISIS and the government have sought out and kidnapped their prey, largely from the civilian population. One 2015 estimate by the Violations Documentation Center stated that ISIS had nabbed approximately 1,200 people and the regime had detained 36,000.⁴⁹⁹ The plight of those in the hands of ISIS is too awful even to contemplate.

A similar fate awaits those who get caught by government forces, often simply for being in the wrong place at the wrong time. Ole Solvang of

⁴⁹⁵ See *id.* ¶ 153.

⁴⁹⁶ Convention on the Rights of the Child, *supra* note 14, art. 38.

⁴⁹⁷ DI GIOVANNI, *supra* note 285, at 19.

⁴⁹⁸ *Id.* at 23.

⁴⁹⁹ *Id.* at 48–49.

Human Rights Watch alleged that “[t]he Syrian government is running a virtual archipelago of torture centres scattered around the country.”⁵⁰⁰

Length constraints preclude detailed consideration of the examples of numerous rights that are being systemically and systematically violated. This introduction served to provide the reader with a glimpse into the seriousness of the crisis afflicting innocent civilians, men, women and children, most of who committed no wrong. With respect to children, the rights to life, health and education take priority and these will be examined in the following sections.

XII. IMPACT ON CHILDREN’S RIGHT TO LIFE AND HEALTH

With respect to the basic rights to life and health for children, no one can dispute the fact that Syria is now “one of the most dangerous places in the world to be a child.”⁵⁰¹ Dr. Marcia Brophy of Save the Children commented that at least “3 million Syrian children under the age of six know nothing but war.”⁵⁰² In a dramatic move to draw public attention to the plight of Syrian children, Save the Children and artist Raul Armenteros teamed to create a mock cemetery in Brussels. This display consisted of gravestones engraved in Arabic with the names and ages of some of the children who have died in the Syrian war.⁵⁰³

Oxfam, in an appeal for donations, reported in April 2017 that almost 60% of Syria’s people required health assistance and half of public health care facilities were either closed or only partially functioning.⁵⁰⁴ Additionally, millions of children live without access to electricity, clean water and sanitation. One reason was deliberate water cuts by the regime.⁵⁰⁵ The U.N. Secretary-General condemned “the use of water as a weapon of war.”⁵⁰⁶ Water facilities were also attacked by various combatants. The Syrian air force was alleged to have targeted large water containers in rebel-

⁵⁰⁰ *Id.* at 49.

⁵⁰¹ UNICEF *Humanitarian Action for Children: Syrian Arab Republic*, UNICEF <https://www.unicef.org/appeals/syria.html> (last updated Jan. 25, 2017).

⁵⁰² ALUN McDONALD, *INVISIBLE WOUNDS: THE IMPACT OF SIX YEARS OF WAR ON THE MENTAL HEALTH OF SYRIA’S CHILDREN* (Save the Children ed. 2017), <https://www.savethechildren.org.uk/content/dam/global/reports/emergency-humanitarian-response/invisible-wounds.pdf>.

⁵⁰³ Negin Janati & Erin Taylor, *Press Release, ‘Graveyard’ for Syrian Children Unveiled in the Heart of Europe*, SAVE THE CHILDREN (Apr. 3, 2017), <http://www.savethechildren.org/site/apps/nlnet/content2.aspx?c=8rKLIXMGIpI4E&b=9506653&ct=14989075>.

⁵⁰⁴ *Syrian Refugee Crisis*, OXFAM CANADA (Aug. 30, 2017), <https://www.oxfam.ca/syriacrisis>.

⁵⁰⁵ Ben Hubbard, *A New Casualty of Syria’s War: Drinking Water in Damascus*, N.Y. TIMES (Jan. 4, 2017), <https://www.nytimes.com/2017/01/04/world/middleeast/a-new-casualty-of-syrias-war-drinking-water-in-damascus.html>.

⁵⁰⁶ U.N. Secretary-General, *supra* note 491, ¶ 162.

held Syrian villages.⁵⁰⁷ By one estimate the destroyed water infrastructure has impacted about 70% of Syrians and such services are “deliberately targeted and used as tactics of war by parties to the conflict.”⁵⁰⁸ By 2015, Syria, as seen from outer space, was a land of darkness, without 83% of its normal electricity functioning.⁵⁰⁹

Additional horrors inflicted on civilians included denial of access to food, an action so egregious that delegates at the U.N. Security Council called this resort to famine as a weapon of war a war crime.⁵¹⁰ U.N. Assistant Secretary-General Kyung-Wha Kang voiced the revulsion of world public opinion about such practices when she declared that “[f]ood, water and medicine are not bargaining chips or favours that parties to conflict can grant or deny at will.”⁵¹¹ She added that these were basic supplies “that were the very essence of the right to survival.”⁵¹² Investigators, working on behalf of the U.N. Human Rights Council concluded that the denial of food and medical care during sieges constituted a violation of international human rights and humanitarian law.⁵¹³

There can be no doubt that the horrors of this war have had a devastating impact on the children of Syria. The international non-governmental organization, Save the Children, reported that Syrian youngsters are showing signs of “‘toxic stress’ that can lead to lifelong health problems, struggles with addiction and mental disorders lasting into adulthood.”⁵¹⁴ Scholars assessing 119 Syrian refugee children (infants to sixteen years in age) at the Jordan University Hospital concluded that “[h]eart disease in Syrian refugee children constitutes a major problem for both patients and health systems of host countries.”⁵¹⁵

Young Syrian children in refugee camps are showing clear signs of serious anxiety and severe mental distress, experiencing a recurring terror of bombings, massacres, and the other horrors to which they have been exposed. They are displaying signs of depression, and suicidal and

⁵⁰⁷ YAZBEK, *supra* note 301, at 203.

⁵⁰⁸ UNICEF *Humanitarian Action for Children*, *supra* note 501.

⁵⁰⁹ PEARLMAN, *supra* note 93, at xlvi.

⁵¹⁰ Press Release, Security Council, Starvation by Siege Now ‘Systematic’ in Syria, Assistant Secretary-General Tells Security Council, Amid Warnings that Tactic Could Be War Crime, U.N. Press Release SC/12203 (Jan. 15, 2016).

⁵¹¹ *Id.*

⁵¹² *Id.*

⁵¹³ Rep. of the Independent International Commission of Inquiry on the Syrian Arab Republic, Human Rights Council, ¶ 132, U.N. Doc. A/HRC/25/65 (Feb. 12, 2014).

⁵¹⁴ *Syrian Children Faced Worst Year Yet in 2016, UN Says*, *supra* note 483.

⁵¹⁵ See Iyad Al-Ammouri & Fares Ayoub, *Heart Disease in Syrian Refugee Children: Experience at Jordan University Hospital*, 82 ANNALS OF GLOB. HEALTH. 300 (2016).

aggressive behavior. Some suffer from phobias, and bouts of hysteria. A team of university researchers based in Turkey, the United States, and Norway conducted a study of a group of Syrian child refugees, aged between nine and eighteen years, all housed in a Turkish refugee facility. This team found that 60% of the children suffered from depression and 65% displayed psychosomatic symptoms that impacted on their ability to function.⁵¹⁶ Save the Children reported that some youngsters had lost the ability to speak and manifested temporary loss of limb movement.⁵¹⁷ Maria Hawilo, in an insightful article on this subject concluded that “[t]o speak of a ‘lost generation of children’ is certainly devastating, yet, the increased risk of suffering from mental illness coupled with untreated trauma could result in more than a lost generation of children.”⁵¹⁸

This type of warfare, using modern technological gadgetry to destroy the health, lives, and environments of civilians is especially egregious when one considers that the Syrian regime is zealously murdering its own people and rendering that beautiful country unlivable for years to come. At the end of this nightmare, even if President Assad survives in power, he will be ruler of a destroyed country. As the regime drops barrel bombs on civilian neighborhoods and demolishes homes, children have become victims, suffering body burns, amputations, and “life-altering injuries.”⁵¹⁹ There are no reliable statistics yet on the numbers of children who have been maimed and blinded by the atrocities committed by all sides in this disastrous war. Although civilians, including children have been attacked by all parties to this conflict, the U.N. Secretary-General confirmed that the Syrian government has been responsible for the majority of violations against civilians.⁵²⁰ Daraa, where the revolt began, suffered terrible deliberate reprisals from the authorities. Blood donations were prohibited on pain of death and wounded civilians seeking medical help were arrested or shot when they reached a hospital.⁵²¹

Cut off from electricity, food and, water, a variety of diseases have surfaced in Syria and children have been particularly vulnerable. Global Health reported the outbreak of polio as well as measles, leishmaniasis, and

⁵¹⁶ SERAP ÖZER, SELÇUK SIRIN & BRIT OPPEDAL, *BAHÇESEHIR STUDY OF SYRIAN REFUGEE CHILDREN IN TURKEY* 36 (Norwegian Institute of Public Health ed. 2013), <https://www.fhi.no/globalassets/dokumenterfiler/moba/pdf/bahcesehir-study-report.pdf>.

⁵¹⁷ MCDONALD, *supra* note 502, at 13.

⁵¹⁸ Maria Hawilo, *The Consequences of Untreated Trauma: Syrian Refugee Children in Lebanon*, 4 *NW. MED. PUB. HEALTH REV.* 5, 11 (2017).

⁵¹⁹ *Id.* at 6.

⁵²⁰ MCDONALD, *supra* note 502.

⁵²¹ YAZBEK, *supra* note 224, at 120.

hepatitis A.⁵²² The Independent International Commission of Inquiry on Syria also found children suffering from tuberculosis, cholera, and meningitis.⁵²³ Despite the risks involved to its personnel, dedicated UNICEF aid workers were able to vaccinate 21 million children against polio in Syria as well as in the neighboring refugee-host countries.⁵²⁴ Unfortunately, some armed groups, including ISIS refused to allow the vaccination of about 35,000 children,⁵²⁵ placing them at serious risk.

The inhuman nature of modern warfare can be gauged by the frequency with which medical facilities have been bombed in Syria. The United Nations verified the frequency of such attacks on both clinics and medical personnel perpetrated by regime forces and by terrorist organizations like ISIS as well as other armed groups, some unknown.⁵²⁶ The first nine months of 2016 witnessed 101 attacks against medical facilities.⁵²⁷ Carlos Francisco, Head of Mission for Syria of the dedicated Medecins San Frontieres deplored the attacks on Aleppo in 2016, commenting that “[b]y damaging the few remaining places where lives can be saved, it is clear that Syria and Russia are squeezing the life out of east Aleppo.”⁵²⁸ By November 2016, Martin Chulov, Kareem Shaheen and Emma Graham-Harrison of *The Guardian* reported on the destruction by airstrike of the last remaining hospital in east Aleppo, alleging that the medical system had been “systematically targeted by Russian and regime jets.”⁵²⁹ With this escalation in 2016 of attacks on hospitals, by 2017 only half were fully functioning.⁵³⁰ Aid intended to restock medical facilities was obstructed,⁵³¹ and surgical supplies were pilfered from convoys by combatants.

⁵²² M.J. Friedrich, *Impact of Syrian Conflict on its Children*, *Global Health*, 315 J. AM. MED. ASS'N 2056, 2056 (2016).

⁵²³ Rep. of the Independent International Commission of Inquiry on the Syrian Arab Republic, *supra* note 513, at 18.

⁵²⁴ *Across the Middle East and North Africa, Conflict Threatens Decades of Progress for Children*, UNICEF (Dec. 11, 2016), https://www.unicef.org/media/media_93867.html.

⁵²⁵ U.N. Secretary-General, *supra* note 491, at 26.

⁵²⁶ *Id.*

⁵²⁷ MCDONALD, *supra* note 502.

⁵²⁸ *Syria: Latest Attacks on East Aleppo Hospitals Leave Medical Care in Tatters*, MEDECINS SANS FRONTIERES (Oct. 15, 2016), <http://www.msf.org/en/article/syria-latest-attack-s-east-aleppo-hospitals-leave-medical-care-tatters>.

⁵²⁹ Marin Chulov, Kareem Shaheen & Emma Graham-Harrison, *East Aleppo's Last Hospital Destroyed By Airstrikes*, THE GUARDIAN (Nov. 19, 2016), <https://www.theguardian.com/world/2016/nov/19/aleppo-hospitals-knocked-out-airstrikes>.

⁵³⁰ UNICEF *Humanitarian Action for Children*, *supra* note 501.

⁵³¹ See Starvation by Siege Now 'Systematic' in Syria, *supra* note 510.

Although attacks on hospitals, which ought to be zones of nonviolence, were committed by various combating parties, “[g]overnment forces were the main perpetrators of [such] attacks.”⁵³² According to the United Nations, the Syrian government built checkpoints at the entrance to hospitals; interfered with the medical staff; arrested patients and medical personnel; executed some of these detainees at the entrance to the hospital and shelled ambulances, killing and injuring the occupants.⁵³³ Clearly, in the Syrian war there are no safe zones for civilians.

By 2016, over eighty humanitarian workers had been killed in Syria.⁵³⁴ A variety of parties to this conflict have threatened and participated in killing health care providers and the result has been that “more Syrians have died due to health complications resulting from inadequate health care services than as a direct consequence of the conflict.”⁵³⁵ The very courageous and dedicated humanitarian personnel of Medecins Sans Frontieres persisted against all odds and have established field hospitals in Syria, treating both combat and non-combat surgical needs which they found were high, “given the conflict-afflicted setting.”⁵³⁶ The bravery of their personnel has to be commended.

An equally serious health risk for Syrian children concerns their potential exposure to land mines and cluster munitions.⁵³⁷ Approximately 3 million Syrian children are living with the potential threat of exposure to explosive weapons.⁵³⁸ Even if the war ends soon and people return, Syria will still be a very dangerous place for civilians, particularly for children.

Most shocking to the world community, has been the use of chemical warfare, allegedly by the regime, against civilians. Save the Children reported that nearly a third of the casualties of the chemical attack in April 2017 in Idlib (a city of approximately two million), were children.⁵³⁹ Some

⁵³² U.N. Report of the Secretary-General, *supra* note 343, at 11.

⁵³³ *Id.* at 11–12.

⁵³⁴ Starvation by Siege Now ‘Systematic’ in Syria, *supra* note 510.

⁵³⁵ Miguel Trelles et al., *Providing Surgery in a War-Torn Context: The Medecins Sans Frontieres Experience in Syria*, CONFLICT & HEALTH (2015).

⁵³⁶ *Id.*

⁵³⁷ *Syrian Children Faced Worst Year Yet in 2016, UN says*, *supra* note 483.

⁵³⁸ MCDONALD, *supra* note 502.

⁵³⁹ Negin Janati & Erin Taylor, *Children Breathless and Barely Conscious Following Alleged Chemical Attacks in Idlib*, SAVE THE CHILDREN (Apr. 4, 2017).

of the young children presented with symptoms indicating that sarin had been used.⁵⁴⁰ Pictures of Syrian children, victims of chemical attacks, were published across the world and evoked a universal feeling of horror.

A team of medical scholars who feared the long-term impact of the Syrian war expressed their apprehensions. They explained that “war is a pervasive environment in which trauma, infectious disease, mental illness, and poor nutrition can affect maternal physiology sufficiently to propagate biological effects across generations.”⁵⁴¹ This team concluded that war “affects both today’s children and those yet to be born in ways that can last a lifetime.”⁵⁴²

XIII. IMPACT ON CHILDREN’S RIGHT TO EDUCATION

Shelly Culbertson and Louay Constant, conducting a Rand Corporation study on the education of Syrian refugee children, commented that the “Syrian civil war has created an education crisis for the Middle East,” and correctly concluded that Syrian refugee children are a global responsibility.⁵⁴³ This is a terrible outcome for a nation acknowledged and respected for years as one of the best-educated in the region.

Education has always played an important role in Syrian society. Syria’s multi-lingual population enjoyed a high literacy rate, which by one recent estimate was over 91% for adult males and over 80% for adult females.⁵⁴⁴ Based on Syrian sources, enrollment in primary school was universal and at the secondary level was nearly universal.⁵⁴⁵ The ongoing war has drastically lowered this high percentage, given the destruction of schools and the forced diaspora of millions of children. Syria’s primary school enrollment in 2015, was one of the lowest in the world.⁵⁴⁶ As any educator would agree, children need school, not simply to learn, but to gain social skills, coping mechanisms, and to have a set routine in their young lives. The destruction of normal life has wreaked havoc on millions of children in that war-torn land.

⁵⁴⁰ *Id.*

⁵⁴¹ Delan Devakumar et al., *Child Health in Syria: Recognising The Lasting Effects of Warfare on Health*, 9 CONFLICT AND HEALTH 1 (2015).

⁵⁴² *Id.*

⁵⁴³ SHELLY CULBERTSON & LOUAY CONSTANT, EDUCATION OF SYRIAN REFUGEE CHILDREN: MANAGING THE CRISIS IN TURKEY, LEBANON, AND JORDAN, at x (Rand Corp. ed. 2015).

⁵⁴⁴ *Syria Population*, COUNTRYMETERS, <http://countrymeters.info/en/Syria> (last visited Dec. 17, 2017).

⁵⁴⁵ Sirin & Rogers-Sirin, *supra* note 470, at 1.

⁵⁴⁶ *Id.*

As the Syrian protests escalated into violence and counter-violence, the multiple groups participating in this conflict showed particular zeal in demolishing structures that were important for children. As early as 2011, the government targeted schools, destroying them and arresting both teachers and children.⁵⁴⁷ Snipers were positioned on rooftops and they wreaked havoc, injuring and killing children.⁵⁴⁸ As the war escalated, in 2012 and 2013, schools were targeted by government air strikes and shelling in Aleppo, Daraa, Hama, Homs, and Idlib governorates.⁵⁴⁹ Ironically, Syria's accession to the Geneva Convention protecting civilians, included a provision for the facilitation of the education of young children in all circumstances.⁵⁵⁰

Attacks on schools increased in 2016.⁵⁵¹ The U.N. Secretary-General reported in early 2016 that per Syrian Ministry of Education figures, over 6,500 schools had been “destroyed, partially damaged, used as shelters for internally displaced persons or rendered otherwise inaccessible.”⁵⁵² *The Telegraph* commented that “[t]here was no letup to attacks on schools, hospitals, playgrounds, parks and homes as the Syrian government, its opponents and the allies of both sides showed callous disregard for the laws of war.”⁵⁵³

Between 2014 and 2015, over half of Syrian children could not attend school and that figure increased up to 74% in the “hardest-hit areas.”⁵⁵⁴ Statistics vary and one can only emphasize the unreliability of many estimates about this crisis. To cite just one example of this confusion about numbers, authors Selcuk Sirin and Lauren Rogers-Sirin in their very interesting study for the Migration Policy Institute cite UNICEF's calculation that in 2015, approximately 2.7 million Syrian children failed to attend school.⁵⁵⁵ However, journalist Conor Gaffey reported in March 2017, apparently also from UNICEF sources, that 1.7 million Syrian children were out of school and a third of the schools were no longer functioning, either because of physical damage or because they had been “repurposed as shelters

⁵⁴⁷ U.N. Report of the Secretary-General, *supra* note 343, at 10.

⁵⁴⁸ *Id.*

⁵⁴⁹ *Id.* at 10–11.

⁵⁵⁰ Geneva Convention Relative to the Protection of Civilian Persons in Time of War, art. 24, Aug. 12, 1949, U.N.T.S. 75.

⁵⁵¹ UNICEF *Humanitarian Action for Children*, *supra* note 501.

⁵⁵² U.N. Secretary-General, *supra* note 491, ¶ 157.

⁵⁵³ *Syrian Children Faced Worst Year Yet in 2016, UN Says*, *supra* note 483.

⁵⁵⁴ Sirin & Rogers-Sirin, *supra* note 470, at 7 (citing SYRIAN CTR. FOR POL'Y RESEARCH, *Alienation & Violence: Impact of the Syria Crisis in 2014*, http://www.unrwa.org/sites/default/files/alienation_and_violence_impact_of_the_syria_crisis_in_2014_eng.pdf).

⁵⁵⁵ *Id.* (citing UNICEF Connect, *supra* note 484).

or military bases.”⁵⁵⁶ The discrepancies in calculations could be explained by the massive death toll of children and the fact that millions had fled Syria as asylum seekers and refugees. In a crisis of such mammoth proportions, statistics can only be guesstimates. The numbers should not obscure the ultimate message being conveyed, namely that masses of children are growing up either in Syria or outside without a proper education, without the necessary mathematical, scientific, and literacy skills that are so necessary in modern life and without any serious possibility of qualifying as they become adults for the skilled job markets that globalization demands.

An additional danger confronting Syrian children relates to their recruitment by terrorist organizations, like ISIS (that operated from Raqqa) and the militant Nusra Front,⁵⁵⁷ that use children as soldiers, suicide bombers, look-outs and messengers. ISIS ‘educates’ children to adhere to its own ideological priorities that emphasize violence. Even if the war ends and this terrorist organization is removed as a threat to the world, these children will grow up with memories of that early indoctrination in violence and will require intensive de-programming to enable them to function normally in a peaceful society. The unknown number of Syrian children kidnapped by various combatants from their homes and schools and forcibly turned into child soldiers will similarly need extensive psychological assistance long after the war ends. This war will be at the forefront of global attention for decades to come.

Absent the opportunity to acquire an education, the majority of Syrian children will continue to face economic deprivation. Education enables people to take advantage of opportunities. It is the key to unlocking a sense of hope in any community.⁵⁵⁸ Poverty can often induce radicalization as choices shrink for those who are not equipped for the complex job markets of the modern world. A good education is the best panacea against the proliferation of civil unrest and terrorism. So, education is not just a human right, it is now a human necessity and every government must make universal literacy a priority in its social programming.

The diaspora children now living in various countries, face a similar education deficit and many are growing up without the fundamentals of literacy and mathematics. It is incumbent upon all of us, especially we who live in the democratic free world, to do our utmost to encourage our

⁵⁵⁶ Gaffey, *supra* note 485.

⁵⁵⁷ YAZBEK, *supra* note 301, at 180.

⁵⁵⁸ For some interesting insights into this subject (but not concerning Syria specifically) see Rebecca Winthrop & Jackie Kirk, *Learning for a Bright Future: Schooling, Armed Conflict, and Children's Well-Being*, 52 COMP. EDUC. REV. 639 (2008), <http://www.jstor.org/stable/10.1086/591301.pdf>.

governments to fund education for Syrian refugee children. Any adherence by refugee-host countries to the provisions of the Convention on the Rights of the Child relating to education ought to be welcomed by the international community and funded generously, particularly by countries like the United States that restricts the inflow of Syrian refugees. As Human Rights Watch aptly commented:

Securing these children's education will reduce the risks of early marriage and military recruitment of children by armed groups, stabilize their economic future by increasing their earning potential, and ensure that today's young Syrians will be better equipped to confront uncertain futures.⁵⁵⁹

Although some host nations are working hard to provide educational opportunities for refugee children, they are far from achieving universality in that regard. Syrians have always taken great care to emphasize the importance of education and their literacy rates were once very high. The war has drastically changed this situation. Deprived of a normal education, the "odds are increasingly stacked against the next generation of Syrians."⁵⁶⁰

XIV. SYRIA: SOME FINAL THOUGHTS

While the dictatorial regime has to date survived, its political, economic and social failures are now glaringly exposed to the entire world. One lesson learned from the Syrian crisis is that in this age of globalization, development capable of constructively transforming a society "won't happen if only a few people dictate the policies a country must follow."⁵⁶¹

Although dictatorships unfortunately prevail in a number of societies, the technological communications marvels that have made globalization so significant demand participatory democracy. The phenomenon called world public opinion now has a voice that can in a second reverberate across the planet. Quelling that message exposes dictators as regressive and out of touch. The immense sacrifice of the Syrian people for some degree of freedom has to be respected, honored and acknowledged and the rights for which thousands of them have died demand commitment from the global community to fulfill their dreams.

⁵⁵⁹ *Turkey, 400,000 Syrian Children Not in School*, HUMAN RTS. WATCH (Nov. 8, 2015), <https://www.hrw.org/news/2015/11/08/turkey-400000-syrian-children-not-school>.

⁵⁶⁰ *UNICEF Humanitarian Action for Children*, *supra* note 501.

⁵⁶¹ JOSEPH E. STIGLITZ, *GLOBALIZATION AND ITS DISCONTENTS* 252 (2002).

Early in this revolt, the hope was not regime change but for reform within a unified Syria. Now, years later, as the war lurches on and the numbers of dead, dying, and displaced increase daily, that unity has become illusory. Looking forward to a peace that must come someday to this tragic land, the idea of partition has already emerged in international discourse. A federal system has been proposed for Syria.⁵⁶²

Retired U.S. General David Petraeus, compared the Syrian war to the children's nursery rhyme "Humpty Dumpty," and explained that he was not sure the country could be pieced back together.⁵⁶³ It is imperative that all Syrians of every ethnic and sectarian group unite in opposing the partition of their country. That outcome, if deemed an inevitable precondition for "peace," would be a disastrous prelude for endless conflicts far into the future.

The suffering of the Syrian people has elicited sympathy around the world. Who can fail to be moved by the sight of hundreds of men, women, often pregnant women and small children getting into dangerous boats to cross the Mediterranean to what they pray will be safety and freedom. No one can be hardened enough not to feel the horror of thousands of civilians in their homes, listening nervously for the sound of aircraft and praying desperately that they will not be at the receiving end of the explosives dropped from the sky. No one in the world can be immune to the cries and screams of children, crushed under rubble, maimed and scarred for life because one ruler remains committed to his own permanence in office.

If there was a practical and pragmatic way of channeling all that global sympathy into constructive action to assist that tragic land and help its people, the entire world would benefit. There have been some actions. Countries like Canada have made a public point of welcoming Syrian refugees, with Prime Minister Justin Trudeau greeting arrivals at the airport. However, where millions of fleeing people are involved, no one host nation can hope to cope with so vast a refugee outflow. In any event, it would seem far better to find a way to resolve this problem and enable the people of Syria to return to their own country and rebuild it.

⁵⁶² Balanche, *supra* note 23.

⁵⁶³ Alexander Smith & Michele Neubert, *Syria Civil War: Petraeus Says Country May Never Reunify*, NBC NEWS (Oct. 6, 2016), <https://www.nbcnews.com/storyline/syrias-child-ren/ex-general-david-petraeus-says-humpty-dumpty-syria-may-never-n660751>.

As we have seen, despite its handicaps, the United Nations has struggled valiantly in the realms where it is allowed by the Permanent Five Members to function effectively. With specific reference to the remit of this Article, the United Nations has led the world toward an enhancement of international law, specifically in the field of human rights and child rights. At lengthy meetings, delegates have labored to draft conventions, and present them to the representatives of Member States for signature and ratification. For the sake of appearances, nations overcame their reluctance and signed and bound themselves in some instances to observe a higher standard of human rights than they were historically accustomed to in their country. The international standard of human dignity was thus raised with every convention and treaty that was promulgated.

As regards the Convention on the Rights of the Child, some signatory nations took their new obligations seriously, adapted the international law into domestic legislation, created the matrix of a system of implementation, and worked hard to live up to the new commitments. However, for other nations, the ratification was simply to pay lip service to a popular concept—children’s rights and not necessarily to generate meaningful change.

Pre-crisis Syria under the rule of the Assad family, stood somewhat in the middle. On the positive side, before the war, the steady increase in literacy and the provision of education for both girls and boys augured well for the government’s commitment to the Convention. The fact that so many women worked in various capacities and utilized their education was another constructive development. Although healthcare could have been more widespread, in pre-war Syria, it was certainly better than in a lot of other countries.

The sticking point in Syria related to the personality-oriented nature of the government. The entire power structure rotated around the priorities of one ruling family and its supporters. The Assads have always been keenly aware of the fact that they are from a minority Muslim sect and that they rule over an overwhelmingly Sunni majority. In Islamic societies, unlike the West, such differences can matter a great deal. Remaining in power permanently became the prime motivation, outweighing betterment of the lives of the citizens. This rather skewed set of priorities resulted in reliance on their extended family and tribal affiliations related to the Assads, namely the Alawite sect. Favoritism toward this group, a minority, inevitably alienated the majority Sunni population which felt disaffected, disengaged, and even angry because corruption became endemic and was often the only way to get anything achieved in Syria. Additionally, Bashar al-Assad, regrettably forsook his early popularity within the country as a whole to

allow functionaries like his state police, the Mukhabarat and worse the militants, the Shabiha to exert power on and harass the citizens.

From the perspective of any economy, corruption along with poverty generated by years of drought can become a lethal combination. Syria was stewing long before the Arab Spring swept across the region inspiring revolts in other somewhat similar Middle Eastern countries.

It is also important to consider that the increase in education brought greater awareness to the people, especially urban dwellers in Syria. Acquiring knowledge of modern computer technology, they learned about conditions across the world, including democratic nations that elected their rulers in honest elections, countries that allowed free speech and freedom of assembly. For a people who had lived under emergency rule since 1963, the lure of such democratic rights was irresistible, an emotion enhanced when in 2011, the Tunisian and Egyptian dictatorships fell within days of popular uprisings in those two countries.

The Syrian crisis has clearly demonstrated the fallibility of the present human rights system that supposedly sets an international moral guideline for states to follow. As we have seen, the rights disappear entirely when hatred explodes into unfettered violence and an orgy of destruction. The solution should not be to abandon the concept of human rights as only workable in peaceful democracies. Rather, the goal has to be to accompany the human rights instruments with a very strong commitment to accountability for violators from all sides. An enlargement of the realm of international criminal law, not just in words but in actions is probably the only way to head off such civil/regional wars. Human rights instruments need also to hold non-state actors liable for the commission of crimes against humanity. Although the Syrian government is largely responsible for the unbridled violence, the Opposition, including those organizations globally acknowledged as terrorist have flaunted and published their descent into sheer barbarity.

No longer should the prevalence of war in any way allow for the wanton massacres, mutilations and rape of innocent men, women and children. If wars have to be fought, there must be a mutual adherence to certain limits. It is time for the international community to draw any number of red lines with respect to the conduct of war in the twenty-first century. The eloquent phraseology of these international conventions, declarations, and covenants has to be matched with a strong global adherence to their implementation, both in peace and during war.

One limit has to involve an acceptance by all combatants that children must be protected at all times and not be brutalized as they are being in Syria. Again, the global community has to be firm in upholding the concept of accountability for all those who commit crimes against children. As children's advocate Graca Machel stated, "power and greed can never be an excuse for sacrificing children."⁵⁶⁴

As regards Syria, at time of concluding this Article, the multiple parties continue sporadically to fight, and civilians continue to flee. If the powers at the United Nations could for once all acknowledge that the continuation of this crisis cannot but destabilize much of the world, perhaps, in their own self-interest, they could unite to bring about a lasting cessation of violence. The outlook for permanent peace in Syria and for the return of its now vast diaspora of talented people is bleak indeed. The prospect for the establishment of a viable democratic government appears remote. The continuation of the present government seems unlikely to be acceptable to its millions of victims—those that have survived. For many Syrians the alternative, of governance by a radical and equally brutal religious extremist movement is a terrifying prospect, and one that would be vehemently opposed by most Western countries. Partitioning Syria along sectarian lines is unlikely to lead to peace, as the example of India and Pakistan clearly demonstrates. For the people of Syria, especially its children who are its future—there appear to be no good choices. When the country has unraveled to this extent, for the people, exodus appears to be the only option.

⁵⁶⁴ Press Release, UNICEF, Graca Machel Calls for an End to Impunity for War Crimes Against Children and Women (Sept. 13, 2017), <https://www.unicef.org/newsline/00pr64.htm>.
