Al-Marsad – Arab Human Rights Centre in Golan Heights

From Peaceful Demonstrations to Armed Conflict:

Considering Humanitarian Intervention in the Case of Syria

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April 2013

Al-Marsad

Al-Marsad – Arab Human Rights Centre in Golan Heights is an independent non-profit legal human rights organisation, located in Majdal Shams, in the occupied Syrian Golan. The Center was founded in October 2003 by a group of lawyers and professionals in the fields of health, education, journalism and engineering - mostly town-planners - as well as human rights defenders and other interested community members. Al-Marsad is a member of Convenio Palestina 2015. For further information contact Al-Marsad at:

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Cover photo

Syrian army shelling the village of Juatha Alkahshab, a village which is associated with the opposition. This village is located in south-west Syria, close to the ceasefire line of the occupied Syrian Golan.

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Acknowledgements

The authors would like to express their gratitude to the staff of Al-Marsad, especially Dr Nizar Ayoub for his assistance. This report is dedicated to the people of Syria and their quest for peace, unity, democracy and realisation of human rights.

Contents

Introduction

> *…If humanitarian intervention is, indeed, an unacceptable assault on sovereignty, how should we respond to a Rwanda, to a Srebrenica – to gross and systematic violations of human rights that affect every precept of our common humanity? In essence the problem is one of responsibility: in circumstances in which universally accepted human rights are being violated on a massive scale we have a responsibility to act.*[1]

The above statement encapsulates a longstanding and contentious dilemma which has frequently divided the international world. The current conflict in Syria has created international discord and divergent views regarding what constitutes the most appropriate response to a humanitarian crisis of this kind. According to the United Nations (UN) approximately 70,000 Syrians have been killed,[2] more than 907,100 Syrians have registered as refugees or are awaiting registration,[3] over 2 million have become internally displaced[4] and 1 million Syrians are starving as a result of the ongoing conflict.[5]

1 A/55/1, 'Report of the Secretary General on the Work of the United Nations, 55th Session, Supplement No.1', 30 August 2000, at para 37.

2 'Statement by the High Commissioner for Human Rights to the Security Council, on 12 February 2013 during the Council's thematic debate on the Protection of Civilians', 12 February 2013. Available at http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12990&LangID=E [accessed 25 February 2013].

3 Available at http://data.unhcr.org/syrianrefugees/regional.php [accessed 25 February 2013].

4 'UNHCR and partners seek US$1 billion as Syrian refugee exodus grows', *UNHCR*, 19 December 2012._Available at http://www.unhcr.org/50d18e776.html [accessed 31 January 2013].

5 Luke Harding and Ian Black, 'Syrian fighting is preventing food aid getting through to 1m people, says UN', *The Guardian*, 8 January 2012. Available at http://www.guardian.co.uk/world/2013/jan/08/syria-un-wfp-food-aid [accessed 31 January 2013].

Given the intensity of the Civil War these numbers are rising by the day, further increasing the number of violations of humanitarian and human rights laws which have taken place throughout the conflict as a result of the actions of both State forces and opposition forces. Consequently, these rising figures raise the question of what is the role of the international community when mass human rights abuses, such as those witnessed during this ongoing conflict in Syria, are being committed? It also raises the query of what actions should the international community be adopting to satisfy this role? To date the international community has exerted minimal effort in providing support to the people of Syria. Has the time come, or is it possibly overdue, for this effort to be increased to a level of humanitarian intervention, i.e. proportionate threat or use of military force by international forces?

This research encompasses two parts. Part I outlines the current situation in Syria. It discusses the background to the conflict, the involvement of the international community and regional organisations and the development of the Syrian National Coalition for Opposition and Revolutionary Forces. It highlights the violations of international human rights law and international humanitarian law committed by both State and opposition forces. It also suggests ways to ensure accountability for the atrocities committed during this conflict. Part II discusses the legality of humanitarian intervention in Syria. It outlines the definition, history and legal status of humanitarian intervention. It considers the reasoning behind arguments in favour and against humanitarian intervention in Syria. Finally, conclusions and recommendations will be made with regard to humanitarian intervention and the conflict in general.

Part I: The Current Situation in Syria

The current conflict in Syria has developed from an excessively violent suppression of civilian protestors by Syrian State forces into an all-out Civil War. Beginning in March 2011, the conflict has troubled the conscience of the international community. The Arab League, European Union, United Nations and States acting individually, have attempted to encourage an end to the violence through techniques of political diplomacy. This has included public appeals by State leaders and each of the collectives for an end to violence and reform of the democratic process within Syria.[6] It has also involved both the United Nations and Arab League publishing resolutions condemning the violence, deploying monitors and submitting peace proposals to Syria's government.[7] As the violence has progressed States have become more vocal with their allegiance. An increasing number of States are recognising the unelected National Coalition for Syrian Revolutionary and Opposition Forces as Syria's sole legitimate representative.[8] Yet, to date, each of these attempts has failed to end the violence, from both State and opposition forces. Instead the violence and human suffering, which is approaching its third year, has intensified with no end in sight. Thus, posing the question of whether it is now or will ever be appropriate for external military forces to become actively involved in the conflict, an intervention otherwise known as humanitarian intervention. To provide the basis for attempting to answer this question, it is important to gain a better

6 'US and UN demand end to Syria violence', *Al Jazeera*, 13 March 2012. Available at http://www.aljazeera.com/news/middleeast/2012/03/2012312165735839.html [accessed 27 January 2013].

7 'Syria rejects new Arab League peace mission proposal', *BBC News*, 13 February 2012. Available at http://www.bbc.co.uk/news/world-middle-east-17008597 [accessed 31 January 2013]. *See also* http://www.un.org/en/peacekeeping/missions/unsmis/mandate.shtml [accessed 31 January 2013].

8 Paul Schemm, '114 countries back new Syrian coalition', *The Washington Times*, 12 December 2012. Available at http://www.washingtontimes.com/news/2012/dec/12/france-100-countries-back-new-syrian-coalition/?page=all [accessed 31 January 2013].

understanding of the origins and development of the conflict. This section of the research seeks to offer this by providing a greater insight into how the conflict has evolved and to provide an overview of the current, though notably ever-changing, situation.

From Peaceful Demonstrations to Civil War

The unrest, before it spiraled into a Civil War, originated from civilian demonstrations for reform. The trigger had been a protest against the torture of students who had put up anti-government graffiti in a city in southern Syria.[9] These demonstrations, which were launched on 15 March 2011, were met with excessive use of force by the Syrian State forces. This disproportionate response had the opposite effect to that which was intended, which was to suppress all protests and any open condemnation of the Assad Government. Instead, the more the Government forces attempted to quash the protests, the more citizens demonstrated. As a result thousands of protestors were extra-judicially killed, injured and arbitrarily detained by Syrian security forces. The heightened tensions during these protests even resulted in Syrian State forces shooting at mourners present at funerals for those killed during the demonstrations. Other examples of excessive use of force on behalf of the State forces included sending army tanks and snipers into residential areas.[10] For example, in the north-western governorate of Idleb, they employed a "scorched earth" policy. The justification given by the Government for these actions was that it was being attacked by armed gangs, yet there has been no concrete evidence of this. It is alternatively suggested that the purpose of these acts by State forces was to quash the protests through intimidation and threats to life of the protestors, their families and neighbors.

9 'Syria – Uprising and Civil War', *The New York Times*, 4 February 2013. Available at http://topics.nytimes.com/top/news/international/countriesandterritories/syria/index.html [accessed 4 February 2013].

10 Amnesty International, *Annual Report 2012 The State of the World's Human Rights* (2012), at 45. Available at: http://www.amnesty.org/en/region/syria/report-2012, [accessed 31 January 2013].

Nevertheless, the protests continued and were attended by thousands. Towards the end of March 2011, Assad made a public pledge to consider granting Syrians greater freedoms and over the remaining months of 2011 a number of reforms were rolled out.[11] It is contested that the months of protests, increasing death tolls and a fear of a similar fate to that of Ben Ali in Tunisia, Mubarak in Egypt and Gaddaffi in Libya, drove Syrian President Bashar Al-Assad, to consider another tactic. Yet Assad continued to order disproportionate force to be used against the resilient protests alongside these supposed reforms. One of the major reforms was lifting the state of emergency. Syria had been under a state of emergency since the military coup which brought the Ba'ath Party to power in 1963, with the reasoning that it was necessary due to the continuing state of war with Israel and threats posed by military groups. With the continued dominance of the Ba'ath Party in Syrian politics, which was largely unquestioned until the 2011 uprising, the emergency law had remained in force. This emergency law suspended most constitutional protections for Syrians and led to thousands of human rights violations. The emergency law allowed State actors extraordinary powers, which included the ability to restrict an individual's freedom regarding travel, residence and meetings. It also enabled the arrest of anyone who was suspected of endangering public security.[12] Consequently, with the suspension of the state of emergency reserved hope was created that legitimate and sustainable reforms would be implemented. Some limited changes were brought about. The Supreme State Security Court was dissolved, a Court which was renowned for jailing opponents of the Government. Furthermore, Syrian citizenship was given to some of the Kurdish minority. However, whilst it may seem

11 Suleiman al-Khalidi, 'Thousands chant "freedom" despite Assad reform offer', *Reuters*, 24 March 2011. Available at http://www.reuters.com/article/2011/03/24/us-syria-idUSTRE72N2MC20110324 [accessed 28 January 2013].

12 'Syria protests: Assad to lift state of emergency', *BBC News*, 20 April 2011. Available at http://www.bbc.co.uk/news/world-middle-east-13134322 [accessed 27 January 2013].

that improvements were being made, the opposite was in fact the case. With these changes Assad also decreed that detention without charge or trial was permissible for up to two months. Additionally, the Peace Assembly Law was brought in which only permitted demonstrations that were licensed by the authorities.[13]

These reforms provided State forces with a legal framework to continue to oppress any opposition to the State on a national level. This has been at the expense of a number of norms of customary international law and human rights law, which Syria, as a member of the United Nations and through ratifying all of the key human rights treaties, is tasked with upholding. For example, allowing administrative detention blatantly disregards the principles of due process set out within Article 10 of the Universal Declaration of Human Rights 1948 (UDHR) and Article 14 of the International Covenant on Civil and Political Rights 1966 (ICCPR). Furthermore, restricting peaceful demonstrations is questionable given the guarantees provided for within Article 20(1) of the UDHR and Article 21 of the ICCPR. Therefore, the reforms which were promoted as progression towards greater freedom and democracy were in fact alternative manifestations of the same oppression enforced by the now obsolete state of emergency. Thus, in reality these reforms have only sought to further restrict the democratic rights of Syrians, including the right to due process and the rights to freedom of expression and association. The Syrian Government's reforms and continued repression of Syrian civilians have made it clear that Assad did not have any interest in addressing the concerns of Syrians or restoring the freedoms that had been repressed for over fifty years. As a result the peaceful protests progressed into an expression of armed resistance by Syrians in pockets of Syria. By the end of 2011 the death toll was reported to be 5,000,[14] a significant jump from the 37 protestors

13 Human Rights Watch, *"By All Means Necessary!" Individual and Command Responsibility for Crimes against Humanity in Syria* (2011). Available at: http://www.unhcr.org/refworld/docid/4f05a2c92.html [accessed 27 January 2013].

14 Amnesty International, *Annual Report 2012 The State of the World's Human Rights* (2012), at 45. Available at: http://www.amnesty.org/en/region/syria/report-2012, [accessed 31 January 2013].

reported dead at the end of March 2011.[15] Thousands more had been wounded, arrested or both.[16] The majority of those who were killed were civilians - innocent bystanders who were no threat to security forces.[17] In addition, it has also been reported by Amnesty International that wounded protestors were denied treatment and hospital staff who defied orders risked arrest or death.[18] Moreover, those who continued to participate in protests continued to be arrested by security forces. These arrests took place at protests and as a result of house to house searches.[19] They also often resulted in abuse or torture during detention.[20] Not all of those who were arrested are accounted for with a huge number being classified as enforced disappearances, a number which has the potential to run into the thousands.[21] Furthermore, it is not only protestors who are being oppressed and subject to such illegal treatment.[22] There are also reports of soldiers who refused to fire on protestors, activists,

15 Suleiman al-Khalidi, 'Thousands chant "freedom" despite Assad reform offer', *Reuters*, 24 March 2011. Available at http://www.reuters.com/article/2011/03/24/us-syria-idUSTRE72N2MC20110324 [accessed 28 January 2013].

16 Amnesty International, *Annual Report 2012 The State of the World's Human Rights* (2012), at 45. Available at: http://www.amnesty.org/en/region/syria/report-2012, [accessed 3rd October 2012].

17 Amnesty International, *Annual Report 2012 The State of the World's Human Rights* (2012), at 45. Available at: http://www.amnesty.org/en/region/syria/report-2012, [accessed 3rd October 2012].

18 Amnesty International, *Annual Report 2012 The State of the World's Human Rights* (2012), at 45. Available at: http://www.amnesty.org/en/region/syria/report-2012, [accessed 3rd October 2012].

19 Amnesty International, *Annual Report 2012 The State of the World's Human Rights* (2012), at 45. Available at: http://www.amnesty.org/en/region/syria/report-2012, [accessed 3rd October 2012].

20 Amnesty International, *Annual Report 2012 The State of the World's Human Rights* (2012), at 45. Available at: http://www.amnesty.org/en/region/syria/report-2012, [accessed 3rd October 2012].

21 Amnesty International, *Annual Report 2012 The State of the World's Human Rights* (2012), at 45. Available at: http://www.amnesty.org/en/region/syria/report-2012, [accessed 3rd October 2012].

22 Amnesty International, *Annual Report 2012 The State of the World's Human Rights* (2012), at 45. Available at: http://www.amnesty.org/en/region/syria/report-2012, [accessed 3rd October 2012].

journalists and dissidents being targeted.[23] Each of these actions has violated some element of international humanitarian and human rights laws.[24] More specifically the right to life as protected generally within the principles set out in the Geneva Conventions 1949 and expressly within Article 3 of the Universal Declaration of Human Rights (UDHR) and Article 6 of the International Covenant on Civil and Political Rights (ICCPR). Furthermore, the right to freedom from ill-treatment and torture,[25] the right of access to healthcare,[26] right to equality and freedom from discrimination,[27] and the right to a fair trial[28] have also been contravened. The extent of violations has raised concerns that they have become widespread, systematic and encouraged by State policy, which would place them within the scope of crimes against humanity and war crimes.[29]

23 Amnesty International, *Annual Report 2012 The State of the World's Human Rights* (2012), at 45. Available at: http://www.amnesty.org/en/region/syria/report-2012, [accessed 3rd October 2012].

24 A/HRC/1853/, 'Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights In the Syrian Arab Republic', 15 September 2011. Available at http://www.ohchr.org/Documents/countries/SY/Syria_Report_2011-08-17.pdf [accessed 25 February 2013]; A/HRC/S-172//Add.1, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', 23 November 2011. Available at http://www.ohchr.org/Documents/Countries/SY/A.HRC.S-17.2.Add.1_en.pdf [accessed 25 February 2013]; A/HRC/1969/, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', 22 February 2012. Available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-69_en.pdf [accessed 25 February 2013]; A/HRC/2150/, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', 16 August 2012. Available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-50_en.pdf [accessed 25 February 2013].

25 *See for example,* Additional Protocol II to the Geneva Conventions 1949, Relating to the Protection of Victims of Non-International Armed Conflicts 1977; Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984.

26 *See for example*, Additional Protocol II to the Geneva Conventions 1949, Relating to the Protection of Victims of Non-International Armed Conflicts; Article 25, Universal Declaration of Human Rights 1948.

27 Article 1, Universal Declaration of Human Rights 1948; Article 26, International Covenant on Civil and Political Rights 1966; Convention on the Elimination of All Forms of Racial Discrimination 1965.

28 Articles 14, 15 and 16, International Covenant on Civil and Political Rights 1966.

29 Articles 7 and 8, Rome Statute of the International Criminal Court 1998.

It is stressed that while the State forces are viewed as the main perpetrator, they are not solely to blame for the violations of international law which have occurred.[30] Reports have also emerged of violations at the hands of opposition forces such as torturing and extra-judicially killing men in their custody.[31] A contributing factor to violations by opposition forces seems to be that the development of different factions within these forces has made it difficult to ensure that all fighters are aware of and are adhering to principles of international law. This has become increasingly challenging with the growth in opposition forces and the dispersion of these forces all throughout the country.

As the oppression increased and become more indiscriminate, the armed resistance of Syrians spread. Consequently, the fighting is now taking place all over the country and no longer limited to specific areas. Thus, in June 2012 Syria was declared to be in a state of Civil War by the United Nations.[32] The International Committee of the Red Cross (ICRC) attempted to explain the nature of the non-international armed conflict in July 2012:

30 'Press Conference on Independent International Commission of Inquiry on Syria', *UN News Centre*, 16 October 2012. Available at http://www.un.org/News/briefings/docs/2012/121016_Syria.doc.htm [accessed 25 February 2013].

31 Human Rights Watch, 'Syria: End Opposition Use of Torture, Executions', 17 September 2012. Available at http://www.hrw.org/news/2012/09/17/syria-end-opposition-use-torture-executions [accessed 30 January 2013]; A/HRC/18/53, 'Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights In the Syrian Arab Republic', 15 September 2011. Available at http://www.ohchr.org/Documents/countries/SY/Syria_Report_2011-08-17.pdf [accessed 25 February 2013]; A/HRC/S-17/2/Add.1, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', 23 November 2011. Available at http://www.ohchr.org/Documents/Countries/SY/A.HRC.S-17.2.Add.1_en.pdf [accessed 25 February 2013]; A/HRC/19/69, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', 22 February 2012. Available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-69_en.pdf [accessed 25 February 2013]; A/HRC/21/50, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', 16 August 2012. Available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-50_en.pdf [accessed 25 February 2013].

32 'Syria in civil war, says UN official Herve Ladsous', *BBC News*, 12 June 2012. Available at http://www.bbc.co.uk/news/world-middle-east-18417952 [accessed 28 January 2013].

> In a climate of "unrestrained hostilities," as described by the Commission of Inquiry (CoI), the conflict threatens growing numbers of civilians and may cause further regional destabilization. The Syrian government no longer claims to be implementing reforms and is openly engaged in a military fight for survival. While a growing number of high-level defections may indicate that the internal cohesiveness of the regime is weakening,
>
> President Assad continues to utilize security forces,"shabiha"[33] and Syria's dwindling financial resources to retain power at all costs. The degree to which the government directs the "shabiha" is uncertain, but their attacks pose a grave threat to all civilians.
>
> Now receiving greater external support, the fragmented armed opposition has become increasingly capable of militarily engaging with government forces, contesting control of several major cities. According to the CoI, fighting between government and opposition forces has evolved into "continuous combat, involving more brutal tactics and new military capabilities on both sides."
>
> Sectarian divisions are exacerbating the violence, yet the safety and security of Alawites, Kurds, Christians and other minorities is critical to the resolution of the conflict.[34]

In essence, the fighting is predominantly taking place between the armed forces, pro-Government shabiha and the opposition groups including the Free Syrian Army. According to an independent assessment from the Washington-based Institute for the Study of War released in January 2013:

33 The shabiha are groups of young Alawites who work for members of the Assasd family in an unofficial capacity. They are known as thugs in modern day Syria and commit some of the worst crimes against civilians including executions and sectarian attacks.

34 Global Centre for Responsibility to Protect, 'R2P Monitor: Issue 5', September 2012. Available at http://www.globalr2p.org/media/files/ce6f68d47496a46af5b723bafe59dbe6.pdf [accessed 31 January 2013].

> the government controls Dara'a, Suwaida and the coastal province. The rebels control Aleppo and the north, most of the border with Turkey and south of Idlib. Control of Idlib and Homs is always changing with Homs divided between government and rebel groups.[35]

Yet given the intensity of this conflict, the status quo is constantly changing and it becomes difficult to ascertain who is in control where. This difficulty is further contributed to by the State's severe restrictions of international journalists' access, the State's oppression of those distributing information from within Syria and the State imposing severe limitations on internet and other forms of communication within Syria.[36] However, despite limits on information, the worsening situation is evident. As summarised by the UN High Commissioner for Human Rights, Navi Pillay, "human rights abuses are rampant, and have reached the point where mass killings, summary executions and torture are the norm."[37]

In addition, the divisions have been blurred due to the rising number

35 Joseph Halliday, *Syria's Armed Opposition* (Institute Study of War, March 2012). Available at http://www.understandingwar.org/sites/default/files/Syrias_Armed_Opposition.pdf [accessed 31 January 2013].

36 A/HRC/1853/, 'Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights In the Syrian Arab Republic', 15 September 2011. Available at http://www.ohchr.org/Documents/countries/SY/Syria_Report_2011-08-17.pdf [accessed 25 February 2013]; A/HRC/S-172//Add.1, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', 23 November 2011. Available at http://www.ohchr.org/Documents/Countries/SY/A.HRC.S-17.2.Add.1_en.pdf [accessed 25 February 2013]; A/HRC/1969/, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', 22 February 2012. Available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-69_en.pdf [accessed 25 February 2013]; A/HRC/2150/, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', 16 August 2012. Available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-50_en.pdf [accessed 25 February 2013].

37 Global Centre for Responsibility to Protect, 'R2P Monitor: Issue 5', September 2012. Available at http://www.globalr2p.org/media/files/ce6f68d47496a46af5b723bafe59dbe6.pdf [accessed 31 January 2013].

of defections from the pro-Government forces to the opposition. A defection is when an individual changes allegiances in a conflict. Media reports suggest that there have been 74 high level defections.[38] One of the most prominent defections was of Prime Minister Riyad Farid Hijab, on 6 August 2012.[39] Also Abdel Aziz Jassem al-Shallal, head of Syria's military police, defected on 26th December 2012.[40] While these defections do indicate that the regime is weakening, Assad continues to use Syria's State forces and financial resources in his campaign.[41]

The Civil War from the Perspective of International Law

From a legal perspective, with the conflict now categorized as a 'non-international armed conflict' or Civil War, both the State forces and opposition forces are subject to international humanitarian law and international human rights law. Thus both sides must adhere to and are answerable to violations of customary international law, including Common Article 3 of the Geneva Conventions, Geneva Convention Additional Protocol II. Common Article 3 of the Geneva Conventions 1949 states:

> In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

38 'Interactive: Tracking Assad defectors', *Al Jazeera*, 27 December 2012. Available at http://www.aljazeera.com/indepth/interactive/syriadefections/2012730840348158.html [accessed 27 January 2013].

39 Global Centre for Responsibility to Protect, 'R2P Monitor: Issue 5', September 2012. Available at http://www.globalr2p.org/media/files/ce6f68d47496a46af5b723bafe59dbe6.pdf [accessed 31 January 2013].

40 Peter Beaumont, ‹ Syria military police chief defects to rebels', *The Guardian*, 26 December 2012 Available at http://www.guardian.co.uk/world/2012/dec/26/syria-military-police-chief-defects [accessed 27 January 2013].

41 Global Centre for Responsibility to Protect, 'R2P Monitor: Issue 5', September 2012. Available at http://www.globalr2p.org/media/files/ce6f68d47496a46af5b723bafe59dbe6.pdf [accessed 31 January 2013].

> (1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.
>
> To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:
>
> (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
>
> (b) taking of hostages;
>
> (c) outrages upon personal dignity, in particular humiliating and degrading treatment;
> (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.
>
> (2) The wounded and sick shall be collected and cared for.

This provision applies generally to all parties, State and non-State actors, involved in the internal conflict. Also Additional Protocol II of the Geneva Conventions, Relating to the Protection of Victims of Non-International Armed Conflicts 1977 should be adhered to. This instrument provides that all parties must be treated humanely, especially children, civilians and those requiring medical attention. With regard to the application of this instrument, Article 1(1) of Protocol II specifies that:

> This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of application, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol [emphasis added].

In the context of the Syrian Civil War, which involves State forces and a number of organized armed groups under responsible command, the principles set out within this instrument apply to both sides of the armed conflict. Furthermore, obligations set out within human rights treaties which Syria has ratified, such as the ICCPR and Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT),[42] should be adhered to. Traditionally only States were considered to be bound by these treaties. However, it is becoming increasingly common for the UNSC and UN Special Rapporteurs to hold non-State actors accountable to human rights law in certain circumstances.[43] For example, the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions indicated in the context of his mission to Sri Lanka that:

42 Human Rights Watch 'Q & A on Laws of War Issues in Syria', 10 August 2012. Available at <http://www.Human Rights Watch.org/news/2012/08/09/q-laws-war-issues-syria.> [accessed 27 January 2013].

43 United Nations Office of the High Commissioner of Human Rights, 'International Legal Protection of Human Rights in Armed Conflict' (UNHCHR 2011), at 24. Available at http://www.ohchr.org/Documents/Publications/HR_in_armed_conflict.pdf [accessed 31 January 2013].

> as a non-State actor, the LTTE does not have legal obligations under the ICCPR, but it remains subject to the demand of the international community, first expressed in the UDHR, that every organ of society respect and promote human rights… The Security Council has long called upon various groups that Member States do not recognize as having the capacity to formally assume international obligations to respect human rights.[44]

Yet despite the obligations imposed upon the State and non-State actors in the Syrian Civil War, grave violations are common place. This includes ill-treatment, torture, extrajudicial killings, withholding medical assistance, food and water, conducting mass forced displacements, destroying residential areas, and attacking civilians. As a result approximately 70,000 Syrians have been killed,[45] more than 907,100 Syrians have registered as refugees or are awaiting registration,[46] over 2 million have become internally displaced[47] and 1 million Syrians are starving.[48] A further issue is that there is no accountability for the violations of international humanitarian and

44 E/CN.4/2006/53/Add.5, 'Addendum to the Report of the Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions: Mission to Sri Lanka (28 November to 6 December 2005)', 27 March 2006, at paras 25-27. Available at http://www.unhcr.org/refworld/publisher,UNCHR,,,45377b400,0.html [accessed 31 January 2013].

45 'Statement by the High Commissioner for Human Rights to the Security Council, on 12 February 2013 during the Council's thematic debate on the Protection of Civilians', 12 February 2013. Available at http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12990&LangID=E [accessed 25 February 2013].

46 Available at: http://data.unhcr.org/syrianrefugees/regional.php [accessed 25 February 2013].

47 'UNHCR and partners seek US$1 billion as Syrian refugee exodus grows', *UNHCR*, 19 December 2012._Available at http://www.unhcr.org/50d18e776.html [accessed 31 January 2013].

48 Luke Harding and Ian Black, 'Syrian fighting is preventing food aid getting through to 1m people, says UN', *The Guardian*, 8 January 2012. Available at http://www.guardian.co.uk/world/2013/jan/08/syria-un-wfp-food-aid [accessed 31 January 2013].

human rights laws which have been committed, resulting in the State and non-State perpetrators being cloaked in impunity. It is contended that this impunity should be dealt with immediately by the International Criminal Court (ICC).

The ICC was created by the Rome Statute to the International Criminal Court 1998, which came into force in July 2002. It has jurisdiction over the crime of genocide, crimes against humanity, war crimes and the crime of aggression, which are viewed as "the most serious crimes of concern to the international community as a whole."[49] As provided for by Article 25 of the Rome Statute, its jurisdiction extends to State and non-State actors. The primary reason for the creation of the ICC was to find a sustainable solution for the end of impunity. In the case of Syria, it is unlikely that all violations will be adequately investigated and punished at a domestic level. In the current situation this is due to the chaos that exists, however, once this conflict hopefully ends it will inevitably be a case of the post-conflict Government being unwilling or unable to prosecute those responsible for the crimes. In theory the ICC can step in to fulfill the role that the existing or a new Government would not be able to with regard to the fight against impunity. In order for the ICC to consider this role it must have jurisdiction to act against the parties in question.

While the Syrian Arab Republic (Syria) signed the Rome Statute on the 29th November 2000, it has not ratified it, thus preventing the ICC's jurisdiction from being extended to Syria. Syria could remedy this by later ratifying the Rome Statute, which is a possible outcome if the opposition forces succeed and the Assad Government is removed. However, as set out in Article 24 of the Rome Statute, the Statute is non-retrospective i.e. the ICC cannot prosecute crimes that were committed when the territory was not under the jurisdiction of the court. Yet two options remain, which would enable the crimes committed during the Syrian conflict to be investigated by the ICC. Under Article 13(b) of the Rome Statute and Chapter VII of the UN

49 Article 5, Rome Statute of the International Criminal Court 1998.

Charter, the UNSC can refer a case to the ICC for investigation in a situation where one or more of the crimes set out within the Rome Statute are committed. Additionally, the ICC's Prosecutor has the power to initiate an investigation in respect of such crimes under Articles 13(c) and 15 of the Rome Statute.

Over fifty States, led by Switzerland, have lodged a request with the UNSC to refer the situation in Syria to the ICC.[50] However, it is contested that while this may assist in ensuring an end to impunity and may act as a deterrent for further violations of international law, it will not bring the conflict to an immediate end. Consequently, a number of other measures have been considered by the international community as a way of encouraging adherence to international law and conflict resolution.

The Developing Involvement of the International Community

When the conflict began to escalate, the international community (United Nations, Arab League, European Union, and/or individual States) became involved in various ways. The actions implemented range from setting up the United Nations Supervisory Mission in Syria (UNSMIS), sending special envoys/commissions, considering a no fly zone, and supporting the Syrian National Council (SNC) and its evolution into the National Coalition for Syrian Revolutionary and Opposition Forces. Each of the actions to date have been fueled by humanitarian concerns, but by not involving active military intervention in the conflict of external military forces, they do not fall within the legal definition of humanitarian intervention accepted within the wider legal community. They can instead be classified as attempts to bring about conflict resolution. This approach reflects the principles set out within Chapter VII of the UN Charter, which clearly

50 Philippe Sands, 'Referring Syria to the international criminal court is a justified gamble' *The Guardian*, 16 January 2013. Available at http://www.guardian.co.uk/commentisfree/2013/jan/16/syria-international-criminal-court-justified-gamble [accessed 30 January 2013].

indicates that humanitarian intervention should only be called upon as a last resort.

The involvement of the international community to date has not been straightforward. UN Secretary General, Ban Ki Moon has described the conflict as a "proxy war, with regional and international players arming one side or the other."[51] For example, the Friends of the Syrian People are a group of over 80 States, some of whom are allegedly providing financial support and arms to opposition forces.[52] On the flip side, the State forces have the support of China, Russia, Iran and Venezuela, all of whom have been outspoken in their support for President Assad and his Government.[53] These States have also been providing the Syrian State forces with practical support. For example, Iran and Russia has allegedly been supplying the Syrian State forces with arms.[54] Venezuela has helped alleviate economic sanctions by publicly committing to shipping fuel to Syria.[55] Furthermore, as Permanent Members to the United Nations, Russia and China have the power to veto Security Council resolutions, which effectively prevents the provisions of the vetoed resolutions from being realized. In showing support for Assad's Government, both Russia and China have being using the power of veto to inhibit the United Nations' intervention in the conflict. For example, China and Russia have vetoed UN resolutions calling for sanctions to be imposed upon Syria.

51 Global Centre for Responsibility to Protect, 'R2P Monitor: Issue 5', September 2012. Available at http://www.globalr2p.org/media/files/ce6f68d47496a46af5b723bafe59dbe6.pdf [accessed 31 January 2013].

52 Ian Black, 'Arm Syrian rebels to contain jihadis, says Saudi royal', *The Guardian*, 25 January 2013. Available at http://www.guardian.co.uk/world/2013/jan/25/arm-syrian-rebels-jihadis-saudi [accessed 4 February 2013].

53 'Iran "steps up Syria support", Hillary Clinton warns', *BBC News*, 1 February 2013. Available at http://www.bbc.co.uk/news/world-us-canada-21289219 [accessed 4 February 2013].

54 'Iran "steps up Syria support", Hillary Clinton warns', *BBC News*, 1 February 2013. Available at http://www.bbc.co.uk/news/world-us-canada-21289219 [accessed 4 February 2013].

55 Global Centre for Responsibility to Protect, 'R2P Monitor: Issue 5', September 2012. Available at http://www.globalr2p.org/media/files/ce6f68d47496a46af5b723bafe59dbe6.pdf [accessed 31 January 2013].

The most recent was on 19 July 2012, which threatened Syria with sanctions if it did not comply with UN-Arab League Joint Envoy Kofi Annan's Six Point Plan.[56] Growing frustrated with China and Russia's stance and appreciating the spiraling situation in Syria, many Western and Arab States have pressed ahead with imposing the provisions of resolutions concerning Syria's conflict, including cutting diplomatic ties with Syria.[57]

As a result of these developments, which have exposed the divisions that exist within the international community regarding the Syrian Civil War, the UN Human Rights Council set up a Commission of Inquiry (CoI) in an attempt to establish the best course of action. The CoI has described Syria as a climate of "unrestrained hostilities."[58] It has confirmed that the Syrian Government is no longer even attempting to pretend to be reforming but is instead openly engaging in hostilities.[59] It also stated that war crimes, crimes against humanity and gross violations of human rights and international humanitarian law had been committed by Government forces and their allies "shahiba" militas. The CoI's investigations have uncovered that these actions are being committed in line with State policy. However, the CoI also stated that, while on a smaller scale, armed opposition groups were guilty of war crimes. The CoI took the opportunity to further highlight that civilians are suffering the worst in the conflict.[60]

56 SC/10714, 'Security Council Fails to Adopt Draft Resolution On Syria That Would Have Threatened Sanctions, Due to Negative Votes of China, Russian Federation', 19 July 2012. Available at https://www.un.org/News/Press/docs//2012/sc10714.doc.htm [accessed 29 January 2013].

57 Global Centre for Responsibility to Protect, 'R2P Monitor: Issue 5', September 2012. Available at http://www.globalr2p.org/media/files/ce6f68d47496a46af5b723bafe59dbe6.pdf [accessed 31 January 2013].

58 Global Centre for Responsibility to Protect, 'R2P Monitor: Issue 5', September 2012. Available at http://www.globalr2p.org/media/files/ce6f68d47496a46af5b723bafe59dbe6.pdf [accessed 31 January 2013].

59 Global Centre for Responsibility to Protect, 'R2P Monitor: Issue 5', September 2012. Available at http://www.globalr2p.org/media/files/ce6f68d47496a46af5b723bafe59dbe6.pdf [accessed 31 January 2013].

60 Global Centre for Responsibility to Protect, 'R2P Monitor: Issue 5', September 2012. Available at http://www.globalr2p.org/media/files/ce6f68d47496a46af5b723bafe59dbe6.pdf [accessed 31 January 2013].

The CoI report offered an independent assessment of the situation and confirmed previously unverified media reports. It also confirmed that there was no easy fix for the situation. In reflecting this reality, the international community seems uncertain as to what is the correct course of action regarding Syria. As indicated above in the discussion concerning China and Russia's stance, an issue seems to be a lack of unity as to how exactly to address the conflict. This has been fueled by both the political objectives of individual States and the violations of international law that have been committed by State and opposition forces within Syria. Thus, not all factions of the international community are in favour of a decisive victory of the opposition, for fear it would result in sectarian revenge killings. However, also not all factions of the international community are in favour of Assad remaining in power due to obliteration of the opposition. This is also reflective of the division that exists within Syria itself. The international community hears the cries of those being oppressed but must also hear the cries of those who support the Assad regime. Nevertheless, setting up the United Nations Supervisory Mission in Syria (UNSMIS), sending special envoys/commissions, considering a no fly zone, and supporting the Syrian National Council (SNC) and its evolution into the National Coalition for Syrian Revolutionary and Opposition Forces, have been supported by factions of the international community in an attempt to provide relief for civilians, irrespective of their political leanings.

No Fly Zone

In recent times there have been calls for intervention in Syria in the form of a no fly zone.[61] The UN has a history of mandating a no fly zone as a precursor to further action. The UN mandated a no fly zone in South Iraq and the Balkans in 1992 with the aim of protecting civilians. The fact that no fly zones are regularly adopted is not necessarily a reflection on the effectiveness of it as a measure. As a

61 Hadeel Al Shalchi, 'U.S., Turkey to study Syria no fly zone', *Reuters*, 11 August 2012. Available at http://www.reuters.com/article/2012/08/11/us-syria-crisis-idUSBRE8610SH20120811 [accessed 27 January 2013].

military operation they can be difficult to implement.[62]

A no fly zone has been defined as "a three-dimensional piece of airspace, usually over another state's land or sea territory, in which aircraft may not fly."[63] This concept has been described as the occupation of another State's airspace. It allows enforcers of the no fly zone to launch military action against any unauthorized violation of the designated space. It is quite severe in that even launching an aircraft would be a violation of the zone. The function of a no fly zone is to restrict military operations of a State. This could be to protect civilians, or harm its operations, more often than not it is for both reasons. A no fly zone can be created during an international armed conflict, but if one does not exist, then only the Security Council can authorise one. The legal basis for no fly zones is provided by Chapter VII of the United Nations Charter. It clarifies that if the Security Council has not authorised the no fly zone, and there is no international armed conflict, then a no fly zone would be a violation of Article 2(4).[64]

The procedure under which the Security Council authorises a no fly zone is that a finding under Article 39 of the UN Charter must first be made. This essentially means that a situation is a threat to international peace and security. In Resolution 1970 which addressed the situation in Libya, the Security Council explicitly stated that it was "[a]cting under Chapter VII of the Charter of the United Nations, and taking measures under its Article 41."[65] Consequently, these provisions provided the legal basis for imposing non-forceful sanctions upon Libya including an arms embargo, travel ban, assets freeze of certain government

62 Michael Knights, 'Slippery Slope: Libya and the Lessons of Previous No-Fly Zones', 25 February 2011. Available at http://www.washingtoninstitute.org/policy-analysis/view/slippery-slope-libya-and-the-lessons-of-previous-no-fly-zones [accessed 31 January 2013].

63 Michael N Schmitt. 'Wings Over Libya: The No-Fly Zone in Legal Perspective' (2011) 36 *The Yale Journal of International Law Online* 45, at 46.

64 Michael N Schmitt. 'Wings Over Libya: The No-Fly Zone in Legal Perspective' (2011) 36 *The Yale Journal of International Law Online* 45.

65 S/RES/1970, 'Resolution 1970 (2011)', 26 February 2011. Available at http://www.unhcr.org/cgi-bin/texis/vtx/refworld/rwmain?docid=4d6ce9742 [accessed 31 January 2013].

individuals and referral to the International Criminal Court.

An illustration of past examples of no fly zones can be found in the United Nations Security Council Resolution 688, which introduced a no fly zone over Iraq.[66] The no fly zone was a crucial measure in protecting Kurdish internally displaced persons in northern Iraq during the 1991 War. Also a no fly zone was put in place in Bosnia-Herzegovina from 1992 to1995, yet it failed to adequately protect civilians and it seems that its core function was to act as a base for future military operations.[67] A no fly zone resolution will state who will assume the responsibility of enforcement action. The choice is between Member States (such as a coalition of the willing), a UN force or an international organization such as North Atlantic Treaty Organisation (NATO). In the case of Libya the enforcement action was undertaken by Member States and NATO.[68]

The legality of a no fly zone is indisputable. Article 2(7) of the UN Charter makes an exception for enforcement mechanisms under Chapter VII. It states:

> [n]othing contained in the present Charter shall authorize the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or shall require the Members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of enforcement measures under Chapter VII [emphasis added].

66 Michael Knights, 'Slippery Slope: Libya and the Lessons of Previous No-Fly Zones', 25 February 2011. Available at http://www.washingtoninstitute.org/policy-analysis/view/slippery-slope-libya-and-the-lessons-of-previous-no-fly-zones [accessed 31 January 2013].

67 Michael Knights, 'Slippery Slope: Libya and the Lessons of Previous No-Fly Zones', 25 February 2011. Available at http://www.washingtoninstitute.org/policy-analysis/view/slippery-slope-libya-and-the-lessons-of-previous-no-fly-zones [accessed 31 January 2013].

68 Michael Knights, 'Slippery Slope: Libya and the Lessons of Previous No-Fly Zones', 25 February 2011. Available at http://www.washingtoninstitute.org/policy-analysis/view/slippery-slope-libya-and-the-lessons-of-previous-no-fly-zones [accessed 31 January 2013].

A no fly zone is an enforcement mechanism employed by the Security Council under this Chapter; therefore, this measure does not constitute unlawful intervention.[69] Notably, when no fly zones are adopted in conflicts involving anti-government uprisings, it has the result of implicating the foreign power in the conflict as a combatant.[70] Whilst a no fly zone is not a form of humanitarian intervention, it is often used as a precursor to the authorization of such intervention.

With regard to Syria, as long as the international community honours the principles set out with the UN Charter concerning a no fly zone and follows the established guidelines, this type of intervention would be viable. Towards the end of 2012 serious conversations took place concerning establishing a no fly zone in Syria.[71] The catalyst for these talks were rumours that Assad was about to launch chemical weapons against his own people.[72] It is notable that during these talks a potential plan was drafted, which suggested that if a no fly zone were implemented it would also involve limited humanitarian intervention, including the deployment of troops.[73] However, to date these talks have not moved beyond dialogue.

69 Michael N Schmitt. 'Wings Over Libya: The No-Fly Zone in Legal Perspective' (2011) 36 *The Yale Journal of International Law Online* 45.

70 Michael Knights, 'Slippery Slope: Libya and the Lessons of Previous No-Fly Zones', 25 February 2011. Available at http://www.washingtoninstitute.org/policy-analysis/view/slippery-slope-libya-and-the-lessons-of-previous-no-fly-zones [accessed 31 January 2013].

71 James Kirkup and Tim Ross, 'Britain could intervene in Syria as David Cameron considers no-fly zone', *The Telegraph*, 15 November 2012. Available at http://www.telegraph.co.uk/news/politics/9656624/Britain-could-intervene-in-Syria-as-David-Cameron-considers-no-fly-zone.html [accessed 29 January 2013].

72 Michael Evans and Deborah Haynes, 'Allies weigh Syria no-fly zone and special forces', *The Australian Times*, 6 December 2012. Available at http://www.theaustralian.com.au/news/world/allies-weigh-syria-no-fly-zone-and-special-forces/story-fnb64oi6-1226530760318 [accessed 29 January 2013].

73 Michael Evans and Deborah Haynes, 'Allies weigh Syria no-fly zone and special forces', *The Australian Times*, 6 December 2012. Available at http://www.theaustralian.com.au/news/world/allies-weigh-syria-no-fly-zone-and-special-forces/story-fnb64oi6-1226530760318 [accessed 29 January 2013].

European Union

The European Union (EU) has also been involved in promoting peace in Syria. The EU High Representative Catherine Ashton has robustly stated that the crimes committed in Syria must be punished. She also stated that a strong response must be made to the widespread and systematic violation of human rights being committed in Syria, that impunity must be addressed and those responsible must be brought to justice.[74]

From a theoretical point of view, this is a strong statement from a European representative, which promotes fundamental principles of international humanitarian and human rights laws. It is also worth noting that the actions that the EU is promoting apply to the illegal actions of both State and opposition forces. The EU High Representative has even gone as far as to provide some suggestions for how these principles can be implemented in practice. This has included providing support to the Independent Commission of Inquiry and lobbying its extension, and offering assistance to relevant bodies and mechanisms of the UN. Furthermore, the EU has also pledged an unspecified amount to assisting the Syrian people with the transition from conflict to democracy. In her conclusion, the EU High Representative has emphasized that "the future of Syria belongs to the Syrian people."[75] This was followed with the statement that the EU has to help people of Syria in every possible way that it can. This indicates that, while the EU would not rule out humanitarian intervention, it is only in favour of humanitarian intervention that is viewed as in the best interests of the people of Syria and not one that is warranted by the political agenda of individual States.

74 A/404/12, 'Statement by EU High Representative Catherine Ashton in the European Parliament on the situation in Syria Strasbourg', 11 September 2012. Available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/132371.pdf [accessed 31 January 2013].

75 A/404/12, 'Statement by EU High Representative Catherine Ashton in the European Parliament on the situation in Syria Strasbourg', 11 September 2012. Available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/132371.pdf [accessed 31 January 2013].

Nevertheless, while it is a strong statement of intent, the EU High Representative's address is little more than rhetoric. That said the EU has provided significant practical support in assisting refugees of the Syrian conflict. To date the EU has approved spending of €360 million for Syrian refugee camps. Furthermore, the EU is preparing for a significant increase in Syrian refugees within EU countries in the coming months.[76]

UN-Arab League Joint Envoy to Syria and the United Nations Supervision Mission in Syria

In February 2012, Kofi Annan was appointed UN-Arab League Joint Envoy to Syria. He was tasked with negotiating sustainable peace within the country. The basis for his negotiations was the aptly named 'Six Point Plan'. This Plan called for:

1) Syrian-led political process to address the aspirations and concerns of the Syrian people;
2) End to violence by all sides; army troops to stop using heavy weapons and withdraw to barracks;
3) Parties to allow humanitarian aid;
4) Authorities to free political detainees;
5) Authorities to ensure freedom of movement for journalists; and
6) Authorities to allow peaceful demonstrations.77

Annan was to be assisted by the United Nations Supervision Mission in Syria (UNSMIS). The UNSMIS, which consisted of over 300 observers, was created by UN Security Council Resolution 2043.[78]

76 Harry McGee, 'EU taking logistical and financial steps to prepare for large increase in Syrian refugees', *The Irish Times*, 18 January 2013. Available at http://www.irishtimes.com/newspaper/world/2013/0118/1224328999678.html [accessed 27 January 2013].

77 'Syria Crisis: Kofi Annan quits as UN-Arab League envoy', *BBC News*, 2 August 2012. Available at http://www.bbc.co.uk/news/world-middle-east-19099676 [accessed 29 January 2013].

78 S/RES/2043, 'Resolution 2043(2012)', 21 April 2012. Available at http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/2043%282012%29 [accessed 27 January 2013].

Its mandate was for 90 days with the aim of bringing about a cessation of hostilities under a UN supervisory mechanism.[79] The UNSMIS was also tasked with implementing Annan's Six Point Plan.

Up to this point, the creation of the UNSMIS and the appointment of an UN-Arab League Joint Envoy has been the most serious international effort to solve the conflict diplomatically. Yet despite Assad allowing those involved access to Syria, the State and opposition forces agreeing to the terms of the Six Point Plan and an initial lull in hostilities, the timescales set for fulfilling these terms were not satisfied and the violence began to escalate once again. As a result the UNSMIS had to suspend its activities. On 20 July 2012, the Security Council extended the 90 day mission for a further 30 days, stating any further extension could be possible only "in the event that the Secretary-General reports and the Security Council confirms the cessation of the use of heavy weapons and a reduction in the level of violence sufficient by all sides" to all the UNSMIS monitors to implement their mandate.[80] As those conditions were not met, the UNSMIS's mandate came to end on 19 August 2012.

In addition, Kofi Annan resigned as the Joint Special Envoy to Syria on 2nd August 2012. The reasons he gave for his resignation were that, for one, the United Nations Security Council's (UNSC) lack of unity had made his mission impossible. He also stated that "the bloodshed continues... most of all because of the Syrian government's intransigence and continuing refusal to implement the Six Point Plan, and also because of the escalating military campaign of the opposition."[81]

79 Available at http://www.un.org/en/peacekeeping/missions/unsmis: [accessed 19 September 2012].

80 S/RES/2059, 'Resolution 2059 (2012)', 20 July 2012. Available at http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Syria%20SRES%202059.pdf [accessed 31 January 2013].

81 'Kofi Annan resigns as UN-Arab League Joint Special Envoy for Syrian crisis' *UN News Centre*, 2 August 2012.
Available at http://www.un.org/apps/news/story.asp?NewsID=42609#.UQWFomfVFJM [accessed 27 January 2013].

Despite the withdrawal of the UNSMIS and Annan's resignation, the Six Point Plan continues to be an aspiration. On the 1st September 2012 Lakhdar Brahimi took over the role of UN-Arab League Joint Envoy and continues to face the same struggles as his predecessor.[82] An interesting development occurred in January 2013 when Brahimi indicated for the first time that there is no future for Assad.[83] This may be an indication that the UN is considering humanitarian intervention. Furthermore, regardless of the UNSMIS and UN-Arab League Joint Envoy's next steps, it is clear that for any plan to succeed a true, desire for peace is required by all domestic and international parties involved.

Independent International Commission of Inquiry on Syria

With the termination of the United Nations Supervision Mission in Syria, the Independent International Commission of Inquiry on Syria was established on 22 August 2011. It was introduced by the Human Rights Council under Resolution S17/1.[84] The Commission has been mandated to investigate all alleged violations of international human rights law since March 2011 within Syria. It has also been tasked to establish the facts and circumstances that may amount to such violations, and of the crimes perpetrated, and where possible, to identify those responsible with a view to ensuring that perpetrators of violations, including those that may constitute crimes against humanity, are held accountable. The Commission's mandate was initially for one year, but it has been extended on a number of occasions, the most recent being until March 2013. No extension

82 Global Centre for Responsibility to Protect, 'R2P Monitor: Issue 5', September 2012. Available at http://www.globalr2p.org/media/files/ce6f68d47496a46af5b723bafe59dbe6.pdf [accessed 31 January 2013].

83 ‹Syria accuses Brahimi of bias – Thursday 11 January 2013›, *The Guardian*, 11 January 2013. Available at http://www.guardian.co.uk/world/middle-east-live/2013/jan/10/syria-brahimi-no-place-for-assad-live [accessed 29 January 2013].

84 S-171/, 'Situation of Human Rights in the Syrian Arab Republic', 22 August 2011.

of its mandate has been tabled beyond this date at present, if this remains the case, responsibility for the findings of the Commission will be transferred to the United Nations High Commissioner for Human Rights.

Since its establishment the Commission has produced four reports, plus four periodic updates, exposing human rights violations committed throughout the country based on interviews with over 1,400 witnesses and victims.[85] These first-hand accounts have been used to corroborate incidents. The Commission has been denied entry to Syria, despite submitting formal requests to the Syrian Government. Thus the majority of interviews have been sourced from people in camps and hospitals in countries neighbouring Syria. A number of interviews have also been conducted by telephone and Skype with victims and witnesses inside Syria. In addition, to interviews the Commission has relied upon photographs, video recordings, satellite imagery, forensic and medical reports from Government and non-Government sources, academic analyses and United Nations reports. In considering each of these pieces of evidence the Commission requires that incidents be corroborated to a level where the Commission has reasonable grounds to believe that the incidents occurred as described.

In the course of its work the Commission has recorded accounts of murder, arbitrary detention, sexual violence, torture and forced

85 A/HRC/1853/, 'Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights In the Syrian Arab Republic', 15 September 2011. Available at http://www.ohchr.org/Documents/countries/SY/Syria_Report_2011-08-17.pdf [accessed 25 February 2013]; A/HRC/S-172//Add.1, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', 23 November 2011. Available at http://www.ohchr.org/Documents/Countries/SY/A.HRC.S-17.2.Add.1_en.pdf [accessed 25 February 2013]; A/HRC/1969/, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', 22 February 2012. Available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-69_en.pdf [accessed 25 February 2013]; A/HRC/2150/, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', 16 August 2012. Available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-50_en.pdf [accessed 25 February 2013].

displacement, committed by both the Syrian Government forces and the opposition forces. All of which constitute gross violations of civil and political rights set out within international humanitarian and human rights laws.[86] However, it has been noted that the gross violations of human rights and international humanitarian law are more prevalent on the part of the Syrian Government.[87] The Commission has also emphasised the negative impact that the declining economy, restricted access to healthcare and shortages in fuel, water and electricity, as a result of the on-going violence, are having on socio-economic rights.[88]

In terms of accountability, the Commission has the names of suspected perpetrators, but is refusing to release them on the grounds of the

86 A/HRC/1853/, 'Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights In the Syrian Arab Republic', 15 September 2011. Available at http://www.ohchr.org/Documents/countries/SY/Syria_Report_2011-08-17.pdf [accessed 25 February 2013]; A/HRC/S-172//Add.1, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', 23 November 2011. Available at http://www.ohchr.org/Documents/Countries/SY/A.HRC.S-17.2.Add.1_en.pdf [accessed 25 February 2013]; A/HRC/1969/, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', 22 February 2012. Available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-69_en.pdf [accessed 25 February 2013]; A/HRC/2150/, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', 16 August 2012. Available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-50_en.pdf [accessed 25 February 2013].

87 'Press Conference on Independent International Commission of Inquiry on Syria', *UN News Centre*, 16 October 2012. Available at http://www.un.org/News/briefings/docs/2012/121016_Syria.doc.htm [accessed 25 February 2013].

88 A/HRC/1853/, 'Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights In the Syrian Arab Republic', 15 September 2011. Available at http://www.ohchr.org/Documents/countries/SY/Syria_Report_2011-08-17.pdf [accessed 25 February 2013]; A/HRC/S-172//Add.1, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', 23 November 2011. Available at http://www.ohchr.org/Documents/Countries/SY/A.HRC.S-17.2.Add.1_en.pdf [accessed 25 February 2013]; A/HRC/1969/, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', 22 February 2012. Available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session19/A-HRC-19-69_en.pdf [accessed 25 February 2013]; A/HRC/2150/, 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic', 16 August 2012. Available at http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A-HRC-21-50_en.pdf [accessed 25 February 2013].

right to fair trial and the principles that are contained within this, for example, the doctrine of innocent until proven guilty.[89] However, the evidence gathered by the Commission can be used before the International Criminal Court, if the UNSC chooses to refer it. This is a development which the Commission strongly advocates.[90]

In relation to humanitarian intervention, the Commission is against such a move. It feels "there is no military solution for the crisis" and the only way forward is a political solution, guided by the UN-Arab League Joint Envoy, Lakhdar Brahimi.

Sanctions

Sanctions against economic assets, arms, travel and diplomacy are often imposed by individual States and coalitions against aggressive States. In this regard, Syria is no exception. Many individual States have imposed similar sanctions within their jurisdictions against Syria, including the United States of America (USA), Canada and the United Kingdom (UK). However, sanctions from the UN as a coalition have been absent. That is not for lack of support. External human rights experts, such as Human Rights Watch and the International Coalition for the Responsibility to Protect (R2P), support the embargo of arms to the Syrian government, imposing a freeze on Syrian assets and banning the travel of those who are involved in serious human rights violations.[91] Strongly supported resolutions imposing such sanctions against Syria have also been brought to a vote before the Security

89 'Press Conference on Independent International Commission of Inquiry on Syria', 16 October 2012. Available at http://www.un.org/News/briefings/docs/2012/121016_Syria.doc.htm [accessed 25 February 2013].

90 Ian Black, 'Syrian leaders should face justice at ICC, says UN', *The Guardian*, 18 February 2013. Available at, http://www.guardian.co.uk/world/2013/feb/18/syria-murder-torture-charges-icc [accessed 25 February 2013].

91 Human Rights Watch, *In Cold Blood: Summary Executions by Syrian Security Forces and Pro-Government Militias*, (Human Rights Watch, 2012). Available at http://www.unhcr.org/refworld/docid/4f841efc2.html [accessed 27 January 2013]; Global Centre for Responsibility to Protect, 'R2P Monitor: Issue 5', September 2012. Available at http://www.globalr2p.org/media/files/ce6f68d47496a46af5b723bafe59dbe6.pdf [accessed 31 January 2013].

Council. Yet each time Russia and China have stood in the way of the resolutions succeeding by employing their right to veto.[92] Thus, the UN will never be able to impose the sanctions against Syria, which are favoured by the majority, unless the status quo changes. It is possible that the sanctions imposed on the own accord of individual States are achieving an element of success in reducing the capabilities of the Syrian government. Though, admittedly, this is difficult to measure.

The Arab League

Both independently, and in conjunction with the UN, the Arab League has been extensively involved in attempts to end the conflict in Syria. The Arab League has also worked with the Western backed National Coalition for Syrian Revolutionary and Opposition Forces in an attempt to find a sustainable solution to the conflict.

Established in 1945, the core function of the League of Arab States, otherwise known as the Arab League, is to promote positive relations between the Arab States. In practice, its function is to act as an informal mediator between States. Regarding intervention undertaken by its Member States, the Arab League has a strong involvement insofar as those States that want to participate in an intervention are obliged to inform the Arab League of their intention to join the effort.

Syria is a founding member of the Arab League, but its membership was suspended on 12 November 2011 after failing to adhere to a peace plan it had negotiated with the League. This peace plan, which was agreed on 2 November 2011, demanded an end to all acts of violence against citizens, withdrawal of forces and the release of those detained due to protests. Despite its suspension, as an Arab State, Syria continues to be subjected to the mandate of the League. It may seem that by suspending Syria, the Arab League was distancing itself from the conflict but the opposite is true. The Arab League has continued to be involved in attempting to find a

92 SC/10714, 'Security Council Fails to Adopt Draft Resolution On Syria That Would Have Threatened Sanctions, Due to Negative Votes of China, Russian Federation', 19 July 2012. Available at https://www.un.org/News/Press/docs//2012/sc10714.doc.htm [accessed 29 January 2013].

sustainable solution to the situation in Syria. Firstly, it has been imposing economic sanctions against Syria since 12 November 2011.[93] Secondly, it has worked in conjunction with the UN on the UNIMIS. Thirdly, as previously mentioned, the Arab League has been working in conjunction with the newly formed National Coalition for Syrian Revolutionary and Opposition Forces. However, with regard to humanitarian intervention, it remains to be seen whether the Arab League would back such action.

Border States

The ICRC has warned that "regional tensions are being aggravated by increasing refugee flows and the threat of intensified cross-border conflict in both Lebanon and Turkey."[94] With Jordan in particular finding it difficult to handle the influx of refugees and Israel launching sporadic acts of aggression into Syrian territory, tensions have increased even further since the ICRC released the above statement in September 2012. To provide some examples of how the Syrian conflict has affected its neighboring countries, sectarian violence has been increasing with gun fights between supporters of Assad and supporters of the opposition becoming common in the Lebanese city of Tripoli, which sits 25 miles from the Syrian border.[95] It is suspected that the overspill from the Syrian conflict has reached as far as Beruit with the targeted killing of Lebanon's top intelligence official, Brigadier General Wissam al-Hassan, a supporter of the Syrian opposition.[96] Exchanges between Turkey and Syria have

93 Amnesty International, *Annual Report 2012 The State of the World's Human Rights* (2012), at 45. Available at: http://www.amnesty.org/en/region/syria/report-2012, [accessed 31 January 2013].

94 Global Centre for Responsibility to Protect, 'R2P Monitor: Issue 5', September 2012. Available at http://www.globalr2p.org/media/files/ce6f68d47496a46af5b723bafe59dbe6.pdf [accessed 31 January 2013].

95 Peter Newlands, ‹Syrian fighting spills into Lebanon›, *The Sunday Times*, 9 December 2012. Available at http://www.thesundaytimes.co.uk/sto/news/world_news/Middle_East/article1173840.ece [accessed 29 January 2013].

96 Mitchell Prothero and Peter Beaumont, ‹Anti-Syrian security official among dead in Beirut car bomb attack›, *The Guardian*, 19 October 2012. Available at http://www.guardian.co.uk/world/2012/oct/19/beirut-car-bomb-kills-8 [accessed 29 January 2013].

also taken place. A number of Syrian shells landed in Turkey killing civilians[97] and a Turkish jet was shot down by Syrian forces. Turkey has responded with its own shells and has set up a NATO sponsored missile defence battery.[98] It is also worth noting that it is possible that Turkey has taken a strong stance against Syria due to a fear of what the future might hold regarding its own internal conflict against the Kurdish PKK, especially if the Kurdish minority in Syria continues to enjoy some element of autonomy post-conflict. Thus providing one example of how the conflict in Syria threatens the security of the entire Arab region, with the threat increasing as hostilities escalate.

In addition, Israel has fueled decade's long tensions with Syria by engaging in sporadic military exchange with unidentified Syrian combatants. This exchange began with Israel firing military rounds in response to Syrian shells landing on farmland in the occupied Golan, but at the end of January 2013, Israel upped the stakes by launching air strikes against what Israeli officials claim to have been weapons factories.[99] These exchanges resulted in the deaths of at least three Syrian soldiers and two civilians, with many others injured.[100] The legality of these attacks is questionable on two accounts. The first deals with territory. The Golan is Syrian land which has been illegally occupied by Israel since 1967. Despite condemnation from the

97 Rick Gladstone, ‹Syria Rebukes Turkey as Artillery Fight Continues›, *The New York Times*, 8 October 2012. Available at http://www.nytimes.com/2012/10/09/world/middleeast/syria-turkey.html [accessed 29 January 2013].

98 ‹Second set of NATO Patriot missiles in Turkey go active›, *Reuters*, 29 January 2013. Available at http://www.reuters.com/article/2013/01/29/us-syria-crisis-patriot-idUSBRE90S0MJ20130129 [accessed 29 January 2013].

99 Gill Cohen and Associate Press, ‹IDF responds to Syria gunfire, killing three soldiers›, *Haaretz*, 18 November 2012. Available at http://www.haaretz.com/news/diplomacy-defense/idf-responds-to-syria-gunfire-killing-three-soldiers-1.478665 [accessed 29 January 2013]; Phoebe Greenwood and Richard Spencer, 'Israeli jets "launch strike in Syria"', *The Telegraph*, 30 January 2012.

100 Gill Cohen and Associate Press, ‹IDF responds to Syria gunfire, killing three soldiers›, *Haaretz*, 18 November 2012. Available at http://www.haaretz.com/news/diplomacy-defense/idf-responds-to-syria-gunfire-killing-three-soldiers-1.478665 [accessed 29 January 2013]; Phoebe Greenwood and Richard Spencer, 'Israeli jets "launch strike in Syria"', *The Telegraph*, 30 January 2012. Available at http://www.telegraph.co.uk/news/worldnews/middleeast/syria/9836929/Israeli-jets-launch-strike-in-Syria.html [accessed 31 January 2013].

international community, this occupation has persisted for a range of strategic reasons including the Golan being an affluent water source, its location offering strategic defence against the rest of the Middle East and the economic benefits of its natural resources.[101] In this regard it is Israel that has violated State borders. Nevertheless, Israel continues to act as though the Golan is an annexation of Israel. In this regard it has retaliated to fire from Syrian forces on to the Golan because these assaults threatened the lives of Israeli settlers, who are illegally living on expropriated Syrian land. Despite the illegality of this claim on account of the occupation and unlawful expropriation of the land they inhabit, the international community has remained silent, and therefore become complicit on this particular issue and its relation to the Syrian Civil War. Second, Israel's unprovoked air strike on a target within the heart of Syria constitutes a violation of customary international law. While Israel claims that it was a strike on a weapons factory launched in self-defence, there is no hard evidence to show that these weapons existed or would be used against Israel. Furthermore, under Article 51 of the UN Charter a Member State must be physically attacked first, before it can launch an operation in self-defence. Given that any possible attack by Syria justifying this took place within Syrian territory, which is illegally occupied by Israel, Israel's claim does not fall within the scope of self-defence.

In summary, from a legal point of view, under Article 51 of the UN Charter, a State has the right to self-defence when attacked, until the UNSC has taken measures necessary to maintain international peace and security. It is argued that this protection does not extend to Israel in relation to the territories it is illegally occupying, i.e. the Golan and Palestine. However, it does extend to Turkey and Lebanon who have come under attack from Syria. In relation to lawful humanitarian intervention, it remains to be seen whether the UN will adopt this action as necessary for maintaining peace and security within Syria and between its neighbors.

101 Hannah Russell, ‹Breaking Down the Fence: Addressing the Illegality of Family Separation in the Occupied Syrian Golan› (Al-Marsad, 2010), at 16-17.

Refugees and Internally Displaced Persons

Due to ongoing violence, Syrians have been desperately attempting to escape. This has resulted in a refugee crisis where hundreds of thousands of Syrians are seeking refuge in neighboring countries. As a result refugee camps have been set up in Egypt, Iraq, Jordan, Lebanon and Turkey, which are receiving assistance from organizations, Governments and individuals from around the world.[102] As of 21 February 2013, figures released indicate that 901,100 Syrians have registered or are awaiting registration in total.[103] This is a ten-fold increase since May 2012.[104] Experts suggest that there are also many unregistered refugees. The biggest pressure is being placed on Turkey, Jordan and Lebanon with the UN stating that as of 21 February 2013, 296,967 Syrian refugees were registered or awaiting registration in Jordan, 182,621 in Turkey, and 309,997 in Lebanon.[105] Additionally, 96,270 were registered or awaiting registration in Iraq and over 28,000 in Egypt.[106] The huge influx of refugees has pushed resources to beyond their limits, which has left refugees living in inadequate conditions. There are huge problems in refugee camps ranging from overcrowding, lack of food and lack of water.[107] This has caused rising tensions, which threatens the security of both refugees and citizens of the host State.[108]

102 Available at http://data.unhcr.org/syrianrefugees/regional.php [accessed 25 February 2013].

103 Available at http://data.unhcr.org/syrianrefugees/regional.php [accessed 25 February 2013].

104 'UNHCR and partners seek US$1 billion as Syrian refugee exodus grows', *UNHCR*, 19 December 2012. Available at http://www.unhcr.org/50d18e776.html [accessed 25 February 2013].

105 Available at http://data.unhcr.org/syrianrefugees/regional.php [accessed 25 February 2013].

106 Available at http://data.unhcr.org/syrianrefugees/regional.php [accessed 25 February 2013].

107 UNHCR and partners seek US$1 billion as Syrian refugee exodus grows', *UNHCR*, 19 December 2012. Available at http://www.unhcr.org/50d18e776.html [accessed 31 January 2013].

108 Global Centre for Responsibility to Protect, 'R2P Monitor: Issue 5', September 2012. Available at http://www.globalr2p.org/media/files/ce6f68d47496a46af5b723bafe59dbe6.pdf [accessed 31 January 2013]; Harriet Edwards, ‹Syrians at refugee camp struggle with choking sand and wretched conditions›, *The Guardian*, 3 September 2013. Available at http://www.guardian.co.uk/world/2012/sep/03/syrians-refugee-camp-wretched-conditions [accessed 29 January 2013].

Furthermore, it is estimated that at least 2.5 million Syrians have become internally displaced since the beginning of the Syrian conflict, all of whom require emergency aid.[109] There are also an estimated 1 million Syrians starving due to Syrian Government forces obstructing and restricting the distribution of aid.[110] This contributes to other dangers inside Syria that face internally displaced persons such as insecurity, mass violence, the cold and lack of basic services and items.[111] In trying to deal with the issue, the United Nations has secured $1.5 billion in aid from international donors.[112]

The National Coalition for Syrian Revolutionary and Opposition Forces

Prior to the formation of the Syrian National Coalition, the most dominant opposition group had been the Syrian National Council.[113] Despite its dominance the Syrian National Council faced significant criticism. This was based on the claim that their exile dominated group did not represent those who were actually risking their lives fighting on the ground. They were also accused of being ineffective and not representative of all opposition groups.[114] At the most

109 ‹Syria displaced number 2.5m, says Red Crescent›, *BBC News*, 13 November 2013. Available at http://www.bbc.co.uk/news/world-middle-east-20311194 [accessed 29 January 2013].

110 Luke Harding and Ian Black, ‹Syrian fighting is preventing food aid getting through to 1m people, says UN›, *The Guardian*, 8 January 2013. Available at http://www.guardian.co.uk/world/2013/jan/08/syria-un-wfp-food-aid [accessed 31 January 2013].

111 ‹UNHCR and partners seek US$1 billion as Syrian refugee exodus grows', *UNHCR*, 19 December 2012. Available at http://www.unhcr.org/50d18e776.html [accessed 31 January 2013].

112 'Donors pledge $1.5bn for UN Syria aid operation', *BBC News*, 30 January 2013. Available at http://www.bbc.co.uk/news/world-middle-east-21258511 [accessed 31 January 2013].

113 Jim Muir, 'Syria crisis: Gulf states recognise Syria opposition' *BBC*, 13 November 2012. Available at http://www.bbc.co.uk/news/world-middle-east-20295857 [accessed 27 January 2013].

114 'Guide to the Syrian opposition', *BBC News*, 12 November 2012. Available at http://www.bbc.co.uk/news/world-middle-east-15798218 [accessed 27 January 2013].

basic level, the disunity that existed within the opposition forces was standing in the way of any feasible opposition driven political solution. Former US Secretary of State, Hilary Clinton, opined that the SNC was too fragmented and did not include important minority groups. She stated that the SNC could "no longer be viewed as the visible leader of the opposition." [115] Thus it became clear that a body needed to be created that could be a real sustainable alternative to the Assad regime. As a result, the international community began to put pressure on the Syrian opposition forces to unify as one body, so that there was a single point of contact for Western Governments.

Consequently, a number of the Opposition groups met in Doha, Qatar in November 2012 and worked together to create the National Coalition for Syrian Revolutionary and Opposition Forces. Moaz al-Khatib, a former Imam[116] in Damascus, was chosen as the President of the new coalition. He fled Syria earlier this year after being detained on numerous occasions for criticizing Assad. Al-Khatib is seen as a moderate who wants "freedom for every Sunni, Alawite, Ismaili (Shia), Christian, Druze, Assyrian... and rights for all parts of the harmonious Syrian people."[117] There are two Vice-Presidents to the Coalition - the female activist Suhair Al Atassi and renowned dissident Riad Seif.[118] The Council also includes representatives from Christians, ethnic Kurds, Alawites, women and a military section which includes the Free Syrian Army.

The Syrian National Coalition has received a mixed reaction from the international community, but overall it has been well received,

115 'Guide to the Syrian opposition', *BBC News*, 12 November 2012. Available at http://www.bbc.co.uk/news/world-middle-east-15798218 [accessed 27 January 2013].

116 An Imam is an Islamic leader.

117 'Profile: Syria opposition leader Ahmed Moaz al-Khatib', *BBC News*, 12 November 2012. Available at http://www.bbc.co.uk/news/world-middle-east-20300356 [accessed 27 January 2013].

118 'Syria cleric Moaz al-Khatib to lead opposition', *BBC News*, 11 November 2012, Available at http://www.bbc.co.uk/news/world-middle-east-20285898 [accessed 27 January 2013].

garnering recognition from 114 countries.[119] Turkey and Western nations, including the UK and USA, have welcomed the new body, with Turkey highlighting how the international community now has no excuse for not supporting the opposition forces.[120] However, in an attempt to realize its aspirations, the Coalition has asked for arms and financial aid to support their cause.[121] The former request has been met with a cold reception. For example, the USA is reluctant to arm the Syrian opposition due to the fact in the chaos of the conflict Jihadist groups are prospering, a development that the USA is wary of as it sees such groups as a threat to its own national security.

The Arab League is in favour of the new Coalition. However, the League has stopped short of giving the Coalition full recognition as the sole representative of the Syrian people. This has been fuelled by hesitancy from some of the League's Member States, such as Lebanon and Iraq, who do not fully support the Coalition as they are reluctant to openly promote a "revolt."[122] Unsurprisingly, China and Russia have been relatively silent about the new Coalition with a Chinese Foreign Ministry spokesman merely stating "that his country supported a political transition led by the Syrian people as soon as possible."[123] Russia's response was that the Coalition should

119 Paul Schemm, '114 countries back new Syrian coalition', *The Washington Times*, 12 December 2012. Available at http://www.washingtontimes.com/news/2012/dec/12/france-100-countries-back-new-syrian-coalition/?page=all [accessed 31 January 2013].

120 Jim Muir, 'Syria crisis: Gulf states recognise Syria opposition' *BBC News,* 13 November 2012. Available at http://www.bbc.co.uk/news/world-middle-east-20295857 [accessed 27 January 2013].

121 Dana El Baltaji & Dahlia Kholaif 'Syria Opposition Aims to Raise $60 Billion for Rebuilding', 21 November 2012. Available at http://www.bloomberg.com/news/2012-11-21/syria-opposition-seeks-to-raise-60-billion-for-reconstruction.html [accessed 27 January 2013].

122 Jim Muir, 'Syria crisis: Gulf states recognise Syria opposition' *BBC News,* 13 November 2012. Available at http://www.bbc.co.uk/news/world-middle-east-20295857 [accessed 27 January 2013].

123 Jim Muir, 'Syria crisis: Gulf states recognise Syria opposition' *BBC News,* 13 November 2012. Available at http://www.bbc.co.uk/news/world-middle-east-20295857 [accessed 27 January 2013].

"seek a peaceful resolution of the conflict by Syrians themselves, without external interference, through dialogue and negotiations."[124] Furthermore, outside of the political aspirations of individual States, which have driven decisions on whether to support the Coalition, the Coalition is not without criticism. This criticism is based on principles of democracy and inclusiveness. Firstly, it is an unelected body and yet is attending conferences as Syria's sole representative. Secondly, the Syrian National Coalition does not include all opposition groups such as the National Coordination Body for Democratic Change.

The National Coordination Body for Democratic Change is a coalition of non-armed opposition parties and figures based in Syria. It was established in June 2011 to unite the demands of the opposition and to organise political dialogue and peaceful anti-regime protests. It called for peaceful protests to secure basic demands before the opposition would engage in any dialogue with the Syrian Government. These demands include the release of political prisoners, withdrawal of the Syrian army from cities, lifting the state of emergency, allowing foreign journalists into Syria, prosecution of those responsible for violence, and annulling Article 8 of the Syrian Constitution which would allow parties to freely compete for public office. Within its founding document the National Coordination Body also made a number of suggestions with regard to drafting a new Constitution and democratic laws, and installing an interim government.

Members of this body are committed to three principles: 1) no to foreign military intervention, 2) no to religious and sectarian instigation' and 3) no to violence and the militarization of the revolution.[125] On the basis of these principles, representatives of four Syrian opposition groups - the National Coordination Body, the Damascus Declaration, the Muslim Brotherhood and the independent Islamic movement -

124 Jim Muir, 'Syria crisis: Gulf states recognise Syria opposition' *BBC News,* 13 November 2012. Available at http://www.bbc.co.uk/news/world-middle-east-20295857 [accessed 27 January 2013].

125 Available at http://carnegie-mec.org/publications/?fa=48369 [accessed 4 February 2013].

met in Doha in September 2011. An agreement was reached at this gathering in which the participants would form a national coalition. This agreement was short-lived. The Muslim Brotherhood withdrew after the Arab League announced a peace initiative in September 2011 proposing that Assad remain in power for an additional two years. With regard to Friends of Syria conferences held by Syrian opposition groups and supporting external States, given the political differences between the National Coordination Body, the Syrian National Council and supporting external States, the National Coordination Body refused to attend the conferences held in February and April of 2012. However, the National Coordination Body did attend the Arab League sponsored conference in July 2012.[126]

At this conference an agreement was made with regard to a National pact and a Joint Political Plan, but reached a stalemate in relation to the formation of a unified body to represent the opposition. The National Coordination Body played a key role in this stalemate, at the expense of its own involvement in future negotiations. The National Coordination Body disagrees with, what is now the Syrian National Coalition, on three grounds. First, the National Coordination Body has refrained from calling for the overthrow of Assad, a key demand of the Syrian National Coalition. Second, while the National Coordination Body believes that the Free Syrian army plays a key role in protecting Syrian society, it rejects calls to arm it as it fears that this will only result in an escalation of violence. Third, the National Coordination Body believes that a political solution should be achieved through internal pressure on the Syrian Government and thus rejects international support and foreign military intervention. Though it did support some form of humanitarian intervention on the basis of Kofi Annan's Six Point Plan. Fourth, the National Coordination Body feels that the Muslim Brotherhood dominates the Syrian National Coalition and argues that this is a misrepresentation of the Syrian people.[127] The National Coordination Body's objections have been largely ignored,

126 Available at http://carnegie-mec.org/publications/?fa=48369 [accessed 4 February 2013].

127 Available at http://carnegie-mec.org/publications/?fa=48369 [accessed 4 February 2013].

with the Syrian National Coalition gaining momentum, to the extent that the National Coordination Body has now been left out in the cold.

It is contested that such support has been shown for the unelected Syrian National Council by the majority of the international community for three main reasons. The first is that this Council assists States' individual political aspirations and provides these States a rare opportunity to influence State policy outside of its own jurisdiction. Second, encouraging structured unity within the opposition may assist in bringing conflict resolution to the situation in Syria without the need for humanitarian intervention. Third, if humanitarian intervention is to take place, having a primed Syrian Government, though unelected, to swoop in with the predicted fall of Assad would be the ideal outcome for many of the supporting States.

In a response to the support shown for the Syrian National Coalition, Assad has unveiled plans for a new peace initiative. He stated there would be a new Government, Constitution and a national reconciliation conference. Unsurprisingly, he insisted Western and regional countries had to stop funding and arming opposition groups. Assad stated he would hold talks with those "who have not betrayed Syria."[128] Assad is still denying there is an uprising against his family. However, Syrian opposition groups have rejected this plan stating Assad must step down.[129] Despite this Assad's initiative has managed to gain some degree of support, demonstrating that Assad still has supporters. Nevertheless, the Syrian National Coalition is having increasing dialogue with external Governments. To the extent that it is considered, by its supporters within the international community, that the Syrian National Coalition will be the next Syrian Government. The democratic implications of this and whether this will play out in reality remain to be seen.

128 'Syrian opposition rejects Assad's peace plan', *Al Jazeera*, 7 January 2013. Available at http://www.aljazeera.com/news/middleeast/2013/01/2013161004953919.html [accessed 31 January 2013].

129 'Syrian opposition rejects Assad's peace plan', *Al Jazeera*, 7 January 2013. Available at http://www.aljazeera.com/news/middleeast/2013/01/2013161004953919.html [accessed 31 January 2013].

Part II: The Legality of Humanitarian Intervention in Syria

Part I of this research set out the origins and development of the Syrian conflict. This included an assessment of actions which have been considered by various parties in relation to attempting to achieve conflict resolution. To date each of these actions have had minimal impact and have failed to bring the conflict to a peaceful end. In the words of the ICRC "external political influence upon the Syrian government via the UN and regional actors remains weak. Sanctions have had limited success as Syria's few remaining allies have continued to provide crucial economic insulation."[130] As a result the possibility of humanitarian intervention has been seeping into rhetoric concerning the Syrian Civil War more and more.

There are a number of elements which will contribute towards whether humanitarian intervention will occur in relation to the current conflict in Syria. Many of these elements will be politically driven, and therefore, cannot provide a clear answer as to whether such intervention will take place. One thing that can be discussed with some certainty is the legality of humanitarian intervention in the Syrian context. This discussion will be carried out within this part of the research. It will start by examining the concept of humanitarian intervention generally. It will discuss the definition, history and legality of humanitarian intervention. It will deconstruct arguments in favour of and opposed to such intervention. In doing so, it will outline the idea of responsibility to protect, with reference to the role of the international community in this regard. It will also dissect unilateral humanitarian intervention.

130 Global Centre for Responsibility to Protect, 'R2P Monitor: Issue 5', September 2012. Available at http://www.globalr2p.org/media/files/ce6f68d47496a46af5b723bafe59dbe6.pdf [accessed 31 January 2013].

Definition of Humanitarian Intervention

The debate about humanitarian intervention encompasses legal, political, and moral aspects. Consequently, the issue of humanitarian intervention has caused great debate amongst international law scholars. It is opined that the crux of this debate lies in the issue of the legality of intervention.[131] This debate is extremely wide ranging, encompassing a variety of concerns. The fundamental question in humanitarian intervention is whether it permissible for a State to use force against another State to address and protect against human rights violations, and if so, in what circumstances? Furthermore, this issue raises challenging questions as to the role of the State in the international community, and the moral responsibilities of a State.[132] Amongst academic literature there seems to be a reluctance to define the concept of humanitarian intervention precisely. A popular definition of humanitarian intervention is:

> the threat or use of force across State borders by a State (or group of States) aimed at preventing or ending widespread and grave violations of the fundamental human rights of individuals other than its own citizens, without the permission of the State within whose territory force is applied.[133]

Using this definition as a basis, experts have warned that the motivation for intervention should not be to solve the roots of conflicts or try to reconcile warring parties.[134] This in many regards is an unrealistic aspiration. There is no doubt that when called upon

131 Robert O Keohane 'Political Authority After Interventions: Gradations in Sovereignty', in Holzgrefe JL & O Keohane (eds), *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge: Cambridge University Press, 2003).

132 Aidan Hehir, *Humanitarian Intervention after Kosovo Iraq, Darfur and the Record of Global Civil Society* (Palgrave Macmillan, 2008).

133 JL Holzgrefe and Robert O Keohane, *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge University Press, 2003), at 18. *See also* Sean D Murphy, *Humanitarian Intervention: The United Nations in an Evolving World Order* (University of Pennsylvania Press, 1996).

134 John Janzekovic, *The Use of force in Humanitarian Intervention: Morality and Practicialities* (Ashgate 2006).

in the appropriate situation that humanitarian intervention has the potential to aid peace and political stability, but this will be a secondary outcome. Humanitarian intervention should be about protecting the rights and freedoms of civilians that have been threatened or attacked by the conflict that has unfolded.

Thus, interpreting this definition in the context of the Civil War in Syria, humanitarian intervention would consist of the United Nations, Arab League and/or individual external States' becoming actively involved in the conflict by adopting proportionate military intervention, with the sole purpose of ending the widespread and grave violations fundamental human rights, which Syrians are being subjected to by both State and non-State actors.

Humanitarian Intervention in History

The debate about intervention has been raging for centuries now. Arguably the earliest intervention was in 1827 when Great Britain, Russia and France intervened on behalf of the Greek insurgents who were fighting against the Turks.[135] Prior to the UN Charter, the last intervention was by the USA in Cuba in 1895.[136] Following the end of the Second World War the United Nations was created in 1945 with four main purposes:

> 1) To maintain international peace and security, and to that end: to take effective collective measures for the prevention and removal of threats to the peace, and for the suppression of acts of aggression or other breaches of the peace, and to bring about by peaceful means, and in conformity with the principles of justice and international law, adjustment or settlement of international disputes or situations which might lead to a breach of the peace;

135 MT Karoubi, *Just or Unjust War? International Law and Unilateral Use of Armed Force by States at the Turn of the 20th century* (Ashgate, 2004).

136 MT Karoubi, *Just or Unjust War? International Law and Unilateral Use of Armed Force by States at the Turn of the 20th century* (Ashgate, 2004).

> 2) To develop friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, and to take other appropriate measures to strengthen universal peace;
>
> 3) To achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion; and
>
> 4) To be a centre for harmonizing the actions of nations in the attainment of these common ends.[137]

As part of this the Charter of the United Nations was created which provided codification of these principles and how the UN would operate to achieve them. These principles are accepted as forming part of customary international law, and thus apply to all States, irrespective of UN membership. Included within this, provisions were introduced regulating humanitarian intervention within Chapter VII of the Charter. These provisions will be discussed in greater detail within the next section of this research.

Since the enactment of the UN Charter, there have been a number of humanitarian interventions. The most famous in recent times is the invasion of Iraq by the UK and USA coalition forces in 2003. In this intervention, the coalition occupied Iraq, removed the existing government and placed a governor of their choice, albeit as a temporary measure.[138] Prior to the intervention the UN had passed Resolution 1441 (2002),[139] which reaffirmed that Resolution 688

137 Article 1, Charter of the United Nations 1945.

138 MT Karoubi, *Just or Unjust War? International Law and Unilateral Use of Armed Force by States at the Turn of the 20th century* (Ashgate, 2004).

139 S/RES/1441, 'Resolution 1441 (2002)', 8 November 2002. Available at http://www.un.org/Depts/unmovic/documents/1441.pdf [accessed 4 February 2013].

(1991)[140] had still not been complied with and that Iraq's internal conflict continued to threaten international peace and security.[141] However, the Resolution did not include an enforcement mechanism and stopped short of authorizing humanitarian intervention. As a result, the military intervention launched by the USA and UK coalition forces was illegal.[142] For one, the coalition forces had not received authorisation from the UNSC, a step which is required by Article 39 of the UN Charter. Second, the issue of State sovereignty was raised because the intervention was launched without the consent of the Iraqi Government.[143] Furthermore, if a State becomes involved in a dispute between a Government and, for example opposition groups, it is violating Article 2(4) of the UN Charter, which specifically states that the threat or use of force should not be used against "political independence." It is advanced that political independence is a subcomponent of State sovereignty, which is why it is stated specifically as a violation. This is extremely relevant to the current situation in Syria as the Civil War began with demonstrations for political reform.[144]

A variety of reasons were put forward in defence of the coalition's intervention in Iraq, one of which was to provide humanitarian assistance.[145] The coalition attempted to justify its actions by arguing

140 S/RES/0688, 'Resolution 688', 5 April 1991. Available at http://www.fas.org/news/un/iraq/sres/sres0688.htm [accessed 31 January 2013].

141 S/RES/1441, 'Resolution 1441 (2002)', 8 November 2002. Available at http://www.un.org/Depts/unmovic/documents/1441.pdf [accessed 4 February 2013].

142 Human Rights Watch, 'War in Iraq: Not a Humanitarian Intervention', 1 January 2004. Available at: http://www.unhcr.org : http://www.unhcr.org/refworld/docid/402ba99f4.html [accessed 27 January 2013]; Ewen MacAskill and Julian Borger, 'Iraq war was illegal and breached UN charter, says Annan', *The Guardian*, 16 September 2004. Available at http://www.guardian.co.uk/world/2004/sep/16/iraq.iraq [accessed 4 February 2013].

143 Human Rights Watch, 'War in Iraq: Not a Humanitarian Intervention', 1 January 2004. Available at: http://www.unhcr.org : http://www.unhcr.org/refworld/docid/402ba99f4.html [accessed 27 January 2013].

144 Oscar Schachter, 'The Right of States to Use Armed Force' (1984) 82 *Michigan Law Review* 1620.

145 Human Rights Watch, 'War in Iraq: Not a Humanitarian Intervention', 1 January 2004. Available at: http://www.unhcr.org : http://www.unhcr.org/refworld/docid/402ba99f4.html [accessed 27 January 2013].

that its invasion of Iraq was based on respecting and protecting human rights.[146] It drew its authority to do so from its own interpretation of UN Resolution 1441.[147] The coalition further argued that if a Government was committing mass human rights abuses then the principles of non-intervention and State sovereignty were out-weighted by the necessity to protect individuals' rights.[148] Interestingly, although Iraq's State sovereignty was violated, no resolution was passed by the UN Security Council or General Assembly stating that the coalition forces' actions were a violation of international law.[149] In relation, to the Syrian Civil War individual States have vocalised that their Foreign Ministries are considering the implications of humanitarian intervention. States neighboring Syria also appear to be actively getting ready for such intervention, for example, Turkey has set up NATO sponsored defence missiles along its borders.[150] Yet, with the exception of Israel who launched an unprovoked air strike in Syria at the end of January 2013,[151] States appear to be respecting the

146 Nicholas J Wheeler 'The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Intervention for Humanitarian Purposes in International Society' in JM Welsh (ed) *Humanitarian Intervention and International Relations* (Oxford University Press, 2004).

147 S/RES/1441, 'Resolution 1441 (2002)', 8 November 2002. Available at http://www.un.org/Depts/unmovic/documents/1441.pdf [accessed 4 February 2013].

148 Nicholas J Wheeler 'The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Intervention for Humanitarian Purposes in International Society' in JM Welsh (ed) *Humanitarian Intervention and International Relations* (Oxford University Press, 2004).

149 Nicholas J Wheeler 'The Humanitarian Responsibilities of Sovereignty: Explaining the Development of a New Norm of Military Intervention for Humanitarian Intervention for Humanitarian Purposes in International Society' in JM Welsh (ed) *Humanitarian Intervention and International Relations* (Oxford University Press, 2004).

150 'NATO sets up defence system in Turkey', *Al Jazeera*, 27 January 2013. Available at http://www.aljazeera.com/news/middleeast/2013/01/2013126162756106385.html [accessed 31 January 2013].

151 Phoebe Greenwood and Richard Spencer, 'Israeli jets "launch strike in Syria"', *The Telegraph*, 30 January 2012. Available at http://www.telegraph.co.uk/news/worldnews/middleeast/syria/9836929/Israeli-jets-launch-strike-in-Syria.html [accessed 31 January 2013].

principles set out within the UN Charter. Though questions are raised regarding the allegations that Turkey, Qatar, Saudi Arabia and the United Arab Emirates are financing and arming Syrian opposition forces.[152] If these allegations are true, using the International Court of Justice's ruling in Nicaragua v United States of America (1986), such intervention would be in breach of obligations "under customary international law not to use force against another State… not to intervene in its affairs… and not to violate its sovereignty."[153]

With regard to the UNSC, it has favoured alternative forms of intervention and support to date. It has also faced the challenge of China and Russia consistently engaging its power to veto, which, if it came to a vote would halt authorisation of humanitarian intervention. Nevertheless, the UN-Arab League Joint Envoy, Lakhdar Brahimi has warned that Syria is experiencing "unprecedented levels of horror" and as a result "the Security Council simply cannot continue to say: 'we are in disagreement, therefore let's wait for better times'… they have to grapple with this problem now."[154]

States are more cautious in present times about the motives of intervening with the affairs of other States, especially since the 2003 incursion in Iraq. This is due to the dubious motives that were presented for the 2003 intervention by the UK and USA. It has been widely argued that the primary objective for intervening in Iraq in 2003 was motivated by oil, not concern for the well being of Iraqis, yet the Coalition attempted to put forward humanitarian reasons as one of the grounds for intervention.[155] States are apprehensive that human rights justifications are masking other motives, possibly of

152 Ian Black, 'Arm Syrian rebels to contain jihadis, says Saudi royal', *The Guardian*, 25 January 2013. Available at http://www.guardian.co.uk/world/2013/jan/25/arm-syrian-rebels-jihadis-saudi [accessed 4 February 2013].

153 *Case Concerning the Military and Paramilitary Activities In and Against Nicaragua (Nicaragua v United States of America) (Merits)*, Judgment of 27 June 1986.

154 'Syria crisis: Brahimi warns horror is "unprecedented"', *BBC News*, 30 January 2013. Available at http://www.bbc.co.uk/news/world-middle-east-21255536 [accessed 31 January 2013].

155 Paul Aarts and Michael Renner, 'Oil and the Gulf War' (1991) 21 *Middle East Report* 171.

the neo-imperial variety. When examining the issue of humanitarian intervention in Syria, lessons can be learned from the situation in Iraq. If humanitarian intervention was to take place in Syria it would need to be purely in order to prevent or end widespread and grave violations of the fundamental human rights of Syrian citizens, and within the limits of international law. As the EU High Representative, Catherine Ashton, has emphasized, the best interests of the Syrian people must be at the centre of this decision.[156] This is imperative for any kind of legitimacy in the eyes of the international community.

The Legality of Humanitarian Intervention

To date international law has not recognised a general right to intervention.[157] In fact, a prohibition on the use of force has been in place since the adoption of the Charter of the United Nations in 1945. There is no longer a licence to go to war, with the current prohibition on the use of force becoming a matter of customary international law.[158] The prohibition on the use of force is outlined in what is one of the most significant articles of the Charter, Article 2(4). Article 2(4) defines the status quo by stating it is not permissible under international law to resort to force. Article 2(4) specifically states:

> all Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.[159]

156 A/404/12, 'Statement by EU High Representative Catherine Ashton in the European Parliament on the situation in Syria Strasbourg', 11 September 2012. Available at http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/EN/foraff/132371.pdf [accessed 25 February 2013].

157 Ian Brownlie, *International Law and the Use of Force by States*, (Clarendon Press, 1963).

158 Yoram Dinstein, *War, Aggression and Self Defence* (Cambridge University Press, 2001).

159 Article 2 (4) of the UN Charter.

It is obvious when examining Article 1(1) Charter that it was intended that the UN were to have exclusive control over who can resort to force. Article 1(1) states that the one of the purposes of the UN is to "maintain international peace and security." Article 2(4) is the first time in the development of the prohibition on the use of force, that it was specifically stated that States cannot resort to force. This is a major restriction on the use of force, as it includes not just war, but any use of force, or even the threat of use of force. This is now a principle of customary international law as affirmed by the Nicaragua case.[160] The prohibition on the use of force is important as it recognises the serious consequences of such actions. Force can result in mass human suffering, loss of civilian lives and destruction of property. With the world comprised of States both powerful and weak, it is imperative that force is limited for the good of all of the international community.[161]

The United Nations has a significant role in the concept of humanitarian intervention. Aside from being a legal requirement, as set out within Chapter VII of the UN Charter, it is extremely advantageous for State/coalition/regional organisations to receive the Security Council's endorsement before intervening on humanitarian grounds. The actions of the Security Council normally reflect the wider attitude of the international community, if the Security Council and international community support the intervention, there will be more resources available for the intervention and more attention given to achieving a resolution. Although it is widely accepted that the United Nations has the right to authorise humanitarian intervention, this does not mean that it does so in every conflict situation. A decision that has been heavily criticised is the UN refraining from authorizing an intervention in Darfur.[162]

160 MT Karoubi, *Just or Unjust War? International Law and Unilateral Use of Armed Force by States at the Turn of the 20th century* (Ashgate, 2004).

161 Robert Kolb, ' Note on Humanitarian Intervention' (2003) 85 *International Review of the Red Cross* 119.

162 Paul D Williams and Alex . Bellamy, 'The Responsibility To Protect and the Crisis in Darfur' (2005) 36 *Security Dialogue* 27.

With regard to intrastate conflict, that is a conflict occurring within the boundaries of a State, the framers of the Charter were of the opinion that such conflict was not of international concern and fell within domestic jurisdiction of the conflicted State. However, inroads have now been made with regard to the practical application of the Charter. With developments such as the Genocide Convention, the increased presence of intrastate conflict, decolonisation, expanding democracy and even the media reports on mass human rights abuses have changed the attitude of the international community. As a result, it is now concerned with intrastate conflicts and its consequences.[163]
While the use of force is prohibited within Article 2(4) of the UN Charter, there are limited circumstances where a proportionate use of force is acceptable. Therefore, the legal status of humanitarian intervention is dependent upon the type of intervention taking place. Article 51 of the UN Charter provides for the "inherent right of individual or collective self-defence, if an armed attack occurs against a Member of the United Nations." This justification refers to an emergency situation where a State is under attack from another State. It does not require the Security Council's authorisation, but only serves as an interim measure, until the Security Council "has taken measures necessary to maintain international peace and security." This temporary measure would not be applicable to Syria as it is a non-international armed conflict.
Article 39 of the UN Charter deals with humanitarian intervention that is authorised by the UN Security Council. This Article provides that:

> [t]he Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Articles 41 and 42, to maintain or restore international peace and security.[164]

163 Richard A Falk, 'Kosovo, World Order and the Future of International Law' (1999) 93*American Journal of International law* 847.

164 Article 39 of the Charter of the United Nations (1945).

Therefore, under this Article, the UNSC is authorised to make the decision to resort to force. They have the control over to whom force can be used and in what manner.[165] A threat to the peace does not necessarily include a threat of force or actual force. It may be certain actions that the Security Council feels are detrimental.[166] Once the Security Council has determined a situation is a threat to the peace, it seems to be a final decision in that there is no manner in which to challenge this decision. Some academics disagree with the use of Article 39 as a justification for authorising intervention to prevent human rights abuses within a State, on the basis that such intervention violates the principles of non-intervention, prohibition on the use of force and respect for State sovereignty.[167] Arguably each of these principles is connected and forms the basis for inter-State relations.[168] This debate continues into the present day with no conclusion.

Once the Council has established under Article 39 that a threat to international peace and security exists, the Council can choose an enforcement mechanism under Article 41 or 42 of the Charter. Therefore, Article 41 and 42 are the solutions that are available to the Council, if such a threat exists.[169] The difference between the two articles is that Article 41 does not permit the States to militarily impose the enforcement measure. This obviously restricts the power

165 Yoram Dinstein, *War, Aggression and Self Defence* (Cambridge University Press, 2001).

166 Yoram Dinstein, *War, Aggression and Self Defence* (Cambridge University Press, 2001).

167 Ray Murphy, ' Kosovo: Reflections on the Legal Aspects of the Crisis and Its Outcome' (2000) 11 *Irish Studies in International Affairs* 7; Fernando R Tesón 'The Liberal Case for Humanitarian Intervention' in Holzgrefe JL & O Keohane R (eds*), Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge: Cambridge University Press, 2003).

168 A/42/4, 'Report of the International Court of Justice: 1 August 1986-31 July 1987'. Available at http://www.icj-cij.org/court/en/reports/report_1986-1987.pdf [accessed 31 January 2013].

169 D Fleck (ed.), *Handbook of Humanitarian Law in Armed Conflict*, (Oxford University Press, 1995)

of the enforcement mechanism. For example in relation to a no fly zone, it would be unwise to authorise a no fly zone under Article 41 as there would be no incentive for the State to respect it. It is preferable to authorise the no fly zone under Article 42 which allows States to enforce it militarily. Realistically, this is the only option that would ensure success.

Examining the practice of the Security Council, it is clear that the Council believes it, and it alone, has the authority to authorise intervention under Chapter VII of the Charter.[170] However, given the lack of condemnation surrounding the coalition's intervention in Iraq and the absence of clear legislation, the legal status of humanitarian intervention without Security Council authorisation is questionable at best. This is extremely relevant to Syria as currently two Permanent Members of the UNSC, China and Russia, support Assad and have vocalised this support by vetoing three Security Council resolutions, which could have acted as pre-requisites to humanitarian intervention.[171] The result of this is that any kind of humanitarian intervention in Syria would more than likely have to be without Security Council authorization.

Unilateral Humanitarian Intervention

With regard to unilateral humanitarian intervention, which is when a State/s intervene militarily without the UNSC's authorization, there does not seem to be much support for the contention that such intervention can be categorization as a legitimate exception to Article 2(4). Some would argue that as the use of force is not directed at territorial integrity or political independence, it is a legitimate

170 JL Holzgrefe ' The Humanitarian Intervention Debate' in Holzgrefe JL & O Keohane R (eds), *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge University Press, 2003).

171 Thomas Grove and Steve Gutterman 'Signs Russia preparing for fall of Assad as planes sent to evacuate citizens', *The Independent*, 21 January 2013. Available at: http://www.independent.ie/world-news/middle-east/signs-russia-preparing-for-fall-of-assad-as-planes-sent-to-evacuate-citizens-3361451.html [accessed 27 January 2013].

exception to Article 2(4).[172] However, Article 2(4) also includes the caveat "any other manner inconsistent with the Charter" and as the Charter specifically includes articles on State sovereignty, and limiting force, this is quite a weak argument.

The UN Charter only allows for humanitarian intervention as a temporary measure in self defence. The current situation in Syria would not fit within this category. The crux of this issue is the fear that if unilateral humanitarian intervention is permissible under international law, States would use the concept as a shield for other motives,[173] as was arguably the case with the intervention in Iraq in 2003. Nonetheless, if the United Nations does not intervene with military support, the result could be the loss of thousands of more lives. The UN has already provided humanitarian aid to Syria in the form of deploying the UNSMIS and providing shelter, medical support and nutrition, but this has done little in the way of achieving conflict resolution. Since the conflict began in March 2011, approximately 70,000 Syrians have died in the violence, a number which rapidly rising.[174] The developing situation raises a number of important questions: is there no moral argument that an intervention can be undertaken without the UNSC's authorisation?[175] If the Security Council does not act, what happens? Does the international community not still have a legal responsibility to save lives? As Reisman wrote concerning the atrocities in Kosovo: "…each passing day, each passing hour, means more murders, rapes, mutilations and dismemberments-violations of

172 Noam Lubell, *Extraterritorial Use of Force Against Non State Actors* [Oxford University Press, 2010].

173 Ryan Goodman 'Humanitarian Law and Pretexts for War' (2006) 100 *The American Journal of International Law* 107.

174 'Statement by the High Commissioner for Human Rights to the Security Council, on 12 February 2013 during the Council's thematic debate on the Protection of Civilians', 12 February 2013. Available at http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12990&LangID=E [accessed 25 February 2013].

175 John Janzekovic, *The Use of Force in Humanitarian Intervention: Morality and Practicialities* (Ashgate 2006),

human beings that no prosecution will expunge nor remedy repair."[176] Thus does inaction by the international community facilitate this, or would becoming involved without the resources, organization and expertise of the UNSC only contribute further to these atrocities? Furthermore, is it possible to legitimize non-authorised humanitarian intervention within the UN structures? If the Security Council does not condemn the actions of the intervening States/coalition, does this legitimise it? In other words, is inaction an action in itself?

There must be enough political will to intervene. A State, a group of States and/or a regional organisation must commit wholeheartedly to humanitarian intervention and provide adequate money, resources and time to the intervention. In the case of Syria, enough support appears to have been rallied to launch unilateral humanitarian intervention. It seems that the UNSC has attempted to pave the way for humanitarian intervention by proposing the implementation of economic sanctions and consideration for a no fly zone within its three proposed resolutions concerning the situation in Syria. However, despite a majority vote in favour of these resolutions, each of them has been halted by China and Russia exercising their power of veto in support of Assad.[177] China and Russia, along with France, the UK and USA, are the five Permanent Member States to the UN. This status awards these States special voting powers before the UNSC. As a result, if either of these States votes against, otherwise known as vetoing, a UNSC resolution, that resolution and its proposals cannot be implemented. Consequently, in such situations of stalemate where a resolution would otherwise go through if it were not for the power of veto, an argument could be developed in favour of unilateral humanitarian intervention.

176 Michael W Reisman, ' Kosovo Antinomies' (1999) 93 *American Journal of International Law* 860, at 862.

177 Thomas Grove and Steve Gutterman 'Signs Russia preparing for fall of Assad as planes sent to evacuate citizens', *The Independent*, 21 January 2013. Available at: http://www.independent.ie/world-news/middle-east/signs-russia-preparing-for-fall-of-assad-as-planes-sent-to-evacuate-citizens-3361451.html [accessed 27 January 2013].

Furthermore, it should be acknowledged that sometimes humanitarian intervention can actually aggravate a situation. Before humanitarian intervention is undertaken, it is imperative that the possible outcome is examined. Intervention should not take place unless there can be a proportionately positive outcome. In reality, while humanitarian intervention can improve a situation, it still involves the use of force. While it is imperative that this use of force is proportionate, that does not remove the risk to life that is attached to any form of force and the use of valuable resources, nor does the use of force ensure that those at risk can be protected, as shown in the case of Bosnia where thousands were massacred while trying to seek shelter in UN 'safe areas'.[178] Therefore, an assessment of the situation must be conducted and if it is concluded that the intervention cannot in fact improve the situation, it should not take place.[179]

In essence, there is no specific legal basis for unilateral humanitarian intervention under international law. Those arguing in favour of intervention cite certain provisions of the UN Charter to support their stance. They reference provisions within the Charter which advertise the importance of promoting and respecting human rights, such as Article 1(3), which provides that:

> to achieve international co-operation in solving international problems of an economic, social, cultural, or humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion.

178 Barbara Crossette, 'UN details its failure to stop '95 Bosnia massacre', *The New York Times*, 16 November 1999. Available at http://www.nytimes.com/1999/11/16/world/un-details-its-failure-to-stop-95-bosnia-massacre.html [accessed 31 January 2013].

179 Taylor B Seybolt, *Humanitarian Military Intervention: The Conditions for Success and Failure* (Oxford University Press, 2008).

Nevertheless, the nature of human rights is that a balance must be struck and that all actions taken to safeguard these rights must be legal. Thus, using Article 2(4) and Chapter VII of the UN Charter as evidence, it is submitted in opposition to unilateral humanitarian intervention, that the legality of humanitarian intervention in Syria is solely dependent on the authorization of the UNSC.

Consequently, it is contested that to go ahead and intervene militarily without Security Council authorization is inadvisable. Firstly, it is a violation of one of the most basic principles of international law. Secondly, it could cause the conflict to escalate to outside Syria. Thirdly, Assad's regime has far too much support from other countries, which demonstrates it would not be a unified decision of the international community and thus potentially cause more harm than good. That said, drawing lessons from the uncertainty surrounding the intervention in 2003 Iraq, it has become clear that a declaration either way from the UNSC is required in cases of unilateral humanitarian intervention. In this situation it is contended that the Security Council should only have two options after an unauthorised intervention, to condemn the intervention or to endorse it. Inactivity in fear of the political fallout is unsuitable in this area. There is no way for suitable criteria to be drawn up if the rules change from situation to situation.

Morality of Humanitarian Intervention

The atrocities exposed by the Arab Spring, the extent of the recent Israeli assault on Gaza and, the focus of this research, the brutality of the Civil War in Syria, have raised further the question of whether the international community has a responsibility to protect. Essentially, does the international community have a moral duty to intervene? The concept of 'responsibility to protect' developed from a comprehensive report by the International Commission on Intervention and State Sovereignty. This report assesses how the

situation has developed since the end of the Cold War. It cautions that "military power should always be exercised in a principled way, and the principles of right intention, last resort, proportional means and reasonable prospects… are on the face of it, all applicable to such action."[180] It was also highlighted that military intervention is an exceptional measure and is only warranted when there is either large scale loss of life or large scale ethnic cleansing.[181] Thus, relevant to the situation in Syria is one of the basic standards of the report which states that:

> where a population is suffering serious harm, as a result of internal war, insurgency, repression or State failure, and the State in question is unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect.[182]

The UNSC is increasingly considering internal conflicts as a threat to international peace and security. This has been demonstrated by the UNSC authorising interventions in Somalia in 1993[183] and Haiti in 1994.[184] This could be interpreted as the Security Council holding the opinion that there is a responsibility to protect vulnerable citizens of Member States.[185] The Security Council specifically stated in Resolution 1296 "that the deliberate targeting of civilian

180 ICISS, 'Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty'(ICISS, Decmeber 2001), at IX.

181 ICISS, 'Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty'(ICISS, Decmeber 2001), at IX.

182 ICISS, 'Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty'(ICISS, Decmeber 2001), at IX.

183 S/RES/794, 'Resolution 794 (1992), 3 December 1992. Available at http://www1.umn.edu/humanrts/peace/docs/scres794.html [accessed 31 January 2013].

184 S/RES/940, 'Resolution 940 (1994)', 31 July 1994. Available at http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N94/312/22/PDF/N9431222.pdf?OpenElement [accessed 31 January 2013].

185 Ray Murphy, *UN Peacekeeping in Lebanon, Somalia and Kosovo: Legal and Operational Issues in Context* (Cambridge University Press, 2007).

populations…and the committing of systematic, flagrant and wide spread violations of international humanitarian and human right law' may constitute a threat to peace."[186]

An interesting issue is what occurs when the international community does not react to a situation where gross human rights abuses are being committed? The problem may not be restricting the acts of States but actually encouraging States to act in the face of human rights abuses. Although France and the UK were strong advocates for the responsibility to protect, they highlighted that paramount consideration should be given to the political will to intervene and the consensus of when exactly intervention should take place.[187] The objective in certain circumstances may be to coax States into feeling a responsibility to protect human rights.[188] This is reflected in the ICISS' report, which concluded that State sovereignty includes a responsibility to protect the people within its borders. The responsibility for this protection lies first and foremost with the State. If the population is suffering severe harm and the State is "unwilling or unable to halt or avert it, the principle of non-intervention yields to the international responsibility to protect."[189] This principle is supported by what unfolded in 1994 Rwanda. A UN Assistance Mission for Rwanda was deployed to assist a peace agreement between the Hutu Government and Tutsi population, but it soon became clear that more robust international assistance was required to the end the

186 S/RES/1296, 'Resolution 1296 (2000)', 19 April 2000. Available at http://protection.unsudanig.org/data/sg_reports/S-Res-1296%20on%20protection%20civilians%20in%20armed%20conflict%20(19Apr00).pdf [accessed 31 January 2013].

187 Alex Bellamy, 'Responsibility to Protect or Trojan Horse? The Crisis in Darfur and Humanitarian Intervention After Iraq' (2005), 19(2) *Ethics and International Affairs* 31 .

188 Michael Byers and Simon Chesterman 'Changing the Rules about Rules? Unilaterial Humanitarian Intervention and the Future of International Law' in Holzgrefe JL & O Keohane R (eds), *Humanitarian Intervention: Ethical, Legal and Political Dilemmas* (Cambridge University Press, 2003).

189 ICISS, 'Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty'(ICISS, Decmeber 2001).

genocide that was unfolding.[190] Despite requests to that effect from Romeo Dallaire, the UN Force Commander, additional assistance was not given arguably enabling the mass killings of up to 1 million Tutsis and moderate Hutus.[191] Thus, it can be deduced that the intervention adopted must not only fit within the scope of international law, but must also be adequate in the individual circumstances for the responsibility to protect to be satisfied.

The ICISS' report further discussed the significance of Security Council authorisation. The power of the Security Council is not simply in its ability to apply coercive measures and or/force, but also in the fact it is perceived in the eyes of the international community as the judge of legitimacy.[192] The report suggested that to solve the problem of vetoes which often frustrate viable resolutions, the Permanent Member States of the UN (Russia, China, France, United States and United Kingdom) should agree not to veto a resolution which does not affect their national interests.[193] If this suggestion was implemented it would have huge ramifications for the situation in Syria as it would prevent Russia and China from vetoing the aforementioned resolution, unless they could prove it was in their national interests. Furthermore, the report highlighted that if the General Assembly supported action it may provide some sort of legitimacy to a subsequent intervention and bolster the Security Council into acting.[194] In regards to unilateral humanitarian intervention, the report did not outright prohibit these actions. Referring to the intervention in Kosovo, it highlighted that even the parties involved in Kosovo acknowledged that it was an exception and it would have been preferable to have obtained

190 Romeo Dallaire, *Shake Hands with the Devil: The Failure of Humanity in Rwanda* (Da Capo Press, 2004).

191 Available at http://survivors-fund.org.uk/resources/rwandan-history/statistics/ [accessed 4 February 2013].

192 ICISS, 'Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty'(ICISS, Decmeber 2001).

193 ICISS, 'Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty'(ICISS, Decmeber 2001).

194 ICISS, 'Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty'(ICISS, Decmeber 2001).

Security Council (or even General Assembly) authorisation.[195]

In the context of Syria, the Global Centre for Responsiblity to Protect has accused the Syrian Government of not only failing in this duty, but actually being responsible for crimes against humanity.[196] As the Honary Gareth Evans has poignantly highlighted, "the Al-Assad regime has manifestly failed to exercise its responsibility to protect… now is not the time for vetoes. Now is the time for the UNSC to act."[197]

Guidelines for Humanitarian Intervention

If humanitarian intervention is to take place, whether it is UNSC sanctioned or unilateral, a set of guidelines must be followed to ensure that it is conducted in a manner which honours moral and legal obligations. In this regard it is worth considering what factors should be taken into account when determining if military intervention should be undertaken. It has emerged from previous interventions that two factors are considered: 1) is the intervention strictly necessary and 2) how successful would such intervention be. As a backdrop to these factors it has been established that it is imperative that the military action ordered is executed in accordance with international humanitarian law and harms as little of the civilian population as possible. In other words, the military action authorised should be proportionate and necessary.[198]

195 ICISS, 'Responsibility to Protect: Report of the International Commission on Intervention and State Sovereignty'(ICISS, Decmeber 2001).

196 Global Centre for Responsibility to Protect, 'R2P Monitor: Issue 5', September 2012. Available at http://www.globalr2p.org/media/files/ce6f68d47496a46af5b723bafe59dbe6.pdf [accessed 31 January 2013].

197 'Syria Veto Costs Lives: UN Security Council Members Must Uphold Their "Responsibility to Protect"', *Global Centre for the Responsibility to Protect*, 1 February 2012. Available at http://www.responsibilitytoprotect.org/index.php/component/content/article/35-r2pcs-topics/3968-syria-veto-costs-lives-un-security-council-members-must-uphold-their-responsibility-to-protect [accessed 31 January 2013].

198 'Open Letter to the Security Council on the Situation in Libya', *Global Centre for the Responsibility to Protect*, 4 March 2011. Available at http://www.globalr2p.org/media/files/open-letter-to-the-security-council-on-the-situation-in-libya.pdf [accessed 31 January 2013].

Human Rights Watch has set out some illustrative criteria as to conditions that should be met before humanitarian intervention should take place. Firstly, all other methods must have been exhausted with military intervention being the last option. Secondly, the motive for the intervention must be principally humanitarian. Nevertheless, Human Rights Watch recognises it is impossible for a motive to be ever truly altruistic. Another condition is that international humanitarian law and human rights law should be respected in the method of intervention. In this regard, two wrongs do not make a right; you cannot stop human rights abuses by committing human rights abuses. Fourth, the military intervention must have a positive effect. The action must reasonably be expected to help a situation rather than causing more suffering. Finally, the ideal situation would be that the intervention has the endorsement of the UNSC. However, Human Rights Watch argues that when in an emergency this is not a stiff requirement.[199]

Applying these principles to the situation in Syria it appears that these conditions have been met and that a case could be made for humanitarian intervention. Other measures have already been attempted such as the UNSMIS, the special envoys/commissions, and economic sanctions, all of which have failed to cease hostilities. If humanitarian intervention was to take place it would have to be for the interests of the Syrian people. However, the issue of whether it would proportionately assist the situation is difficult to predict in the case of Syria.

199 'Open Letter to the Security Council on the Situation in Libya', *Global Centre for the Responsibility to Protect*, 4 March 2011. Available at http://www.globalr2p.org/media/files/open-letter-to-the-security-council-on-the-situation-in-libya.pdf [accessed 31 January 2013].

Conclusion

In conclusion, this research has examined a range of issues associated with humanitarian intervention and the Syrian Civil War. Expert literature consulted for this research displayed a range of perspectives that reflected the competing interests that require consideration by international interventionists. This research has outlined the main arguments in the debate. The primary argument in favour of humanitarian intervention is principally that the international community has a moral responsibility to intervene. This approach could be implemented in one of two ways. For one, if the UNSC deems that a situation is a threat to international peace and security then it may take measures, including humanitarian intervention, which is lawful under the mandate of the United Nations. Or, if there is no UNSC resolution, the legally questionable unilateral humanitarian intervention could be carried out by relying on the notion of a 'responsibility to protect'.

The converse side of the debate is that humanitarian intervention is not permissible. The first argument is that it disregards State sovereignty. A second argument is that humanitarian intervention can be considered as a form of western imperialism. Intervention always seems to occur in non-western conflicts. A third argument is that humanitarian intervention may be used to cover other motives. It can be used as an excuse to circumvent the prohibition on the use of force with States using it as a shield for their ulterior motives, such as was suspected in Iraq. A fourth argument is the question of whether it is it appropriate for force to be used to safeguard human rights? Are there not other viable solutions? Furthermore, the main argument against unilateral humanitarian intervention is that it has no legal basis.

Taking into account the grave situation that exists in Syria – the fact that approximately 70,000 Syrians have been killed,[200] more than 907,100 Syrians have registered as refugees or are awaiting registration,[201] over 2 million have become internally displaced[202] and 1 million Syrians are starving as a result of the ongoing conflict[203] as a result of actions of both State and opposition forces – it is contended that more robust action is required by the international community. The actions that have been adopted to date, such as the deployment of the UNSMIS, the appointment of an UN-Arab League Joint Envoy, and the humanitarian aid that has been pledged, are to be commended. However, the international community is encouraged to tread carefully with regard to the future of the unelected Syrian National Council. The wellbeing of humans and their rights is the concern of the international community, not imposing an internationally influenced and undemocratically appointed Government. Any action adopted by the international community should be motivated by and reflect the will and democratic rights of the Syrian people, not the political agenda of external Governments.

Thus taking into account how the conflict has developed, the atrocities that are taking place at the hands of both State and non-State actors, and the limited impact that alternative approaches by the international community have had, Al-Marsad is in favour

200 'Statement by the High Commissioner for Human Rights to the Security Council, on 12 February 2013 during the Council's thematic debate on the Protection of Civilians', 12 February 2013. Available at http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12990&LangID=E [accessed 25 February 2013].

201 Available at http://data.unhcr.org/syrianrefugees/regional.php [accessed 25 February 2013].

202 'UNHCR and partners seek US$1 billion as Syrian refugee exodus grows', *UNHCR*, 19 December 2012. Available at http://www.unhcr.org/50d18e776.html [accessed 31 January 2013].

203 Luke Harding and Ian Black, 'Syrian fighting is preventing food aid getting through to 1m people, says UN', *The Guardian*, 8 January 2012. Available at http://www.guardian.co.uk/world/2013/jan/08/syria-un-wfp-food-aid[accessed 31 January 2012].

of humanitarian intervention as soon as reasonably possible. Such intervention can run in conjunction with the actions that are already in operation. However, Al-Marsad is only in favour of humanitarian intervention that is initiated and supported by the UNSC. In this regard, Al-Marsad urges China and Russia to rethink its approach from the angle of their humanitarian and human rights obligations, as opposed to their own political agendas. Furthermore, while it falls outside of the scope of humanitarian intervention, Al-Marsad urges mechanisms to be put in place to hold State and non-State violators of international humanitarian and human rights laws to account. It is further urged that these mechanisms are fully implemented to remove the cloak of impunity that covers the present conflict in Syria. In this regard, Al-Marsad encourages the UNSC to also refer the situation in Syria to the ICC. Al-Marsad also encourages an exploration of other methods of transitional justice such setting up institutions similar to the Gacaca courts in Rwanda or the Truth and Reconciliation Commission in South Africa, implementing reparations programs or providing assistance with institutional reforms.[204]

204 Available at http://ictj.org/about/transitional-justice [accessed 31 January 2013].

Recommendations

Al-Marsad fully supports the cry of the Syrian people for freedom from tyranny, peace, democracy and respect for human rights. In doing so, Al-Marsad recommends:

- The international community must continue to support the increasing humanitarian crisis in Syria.
- UNSC initiated and supported humanitarian intervention should commence as soon as reasonably possible. This humanitarian intervention should satisfy principles of international laws and follow the guidelines including:
    1. Ensuring that the intervention is a strictly necessary last resort,
    2. Ensuring that motivation for the intervention is strictly humanitarian,
    3. Ensuring that intervention respects international humanitarian and human rights laws,
    4. Ensuring that the intervention is reasonably expected to help the situation rather than cause more suffering, and
    5. Ensuring that it is endorsed by the UNSC.
- Both the Government forces and opposition forces should be held accountable for their violations of international humanitarian and human rights laws. This should first be achieved by the UNSC referring the situation in Syria to the International Criminal Court. Other transitional justice options should also be considered, such as domestic criminal prosecutions, establishing a special court, establishing a truth commission, implementing reparation programs and assisting institutional reform.

- Mechanisms which prevent and address impunity in the future should be created, implemented and effectively enforced within Syria.

- Any peace negotiations that occur and the peace agreement that is reached should include a provision that the future Syrian Governments will actively negotiate for the return of the Golan to Syria.

- Any peace negotiations that occur and the peace agreement that is reached will include a provision that requires the creation, implementation and enforcement of laws which protect the basic principles of international humanitarian and human rights laws. This includes a guarantee of democratic rights and freedom from discrimination for all, and a special provision guaranteeing the rights of minorities.

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