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# **The Syrian Crisis and the UN Security Council system: An International Law Stalemate.**

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***“The UN was not created to take***

***Mankind to heaven,***

***But to save Humanity from hell”***

- ***Second United Nations Secretary General***

***Dag Hammarskjöld, May 1954***

## ABSTRACT

La trattazione ha lo scopo di analizzare l'inefficacia del Consiglio di Sicurezza delle Nazioni Unite nel contesto della guerra civile siriana. L'analisi compiuta si è svolta su tre livelli. Il primo livello si è concentrato sul fornire un panorama del contesto storico-politico che parte dall'indipendenza siriana, all'esperimento della Repubblica Araba Unita fino all'introduzione del Partito Baath in Siria, arrivando all'avvento presidenziale di Bashar Al-Assad e lo scoppio delle Primavere Arabe che diedero il via alla crisi siriana. Viene fornita inoltre una ricostruzione degli eventi volta all'analisi di alcuni importanti eventi e processi di pace tentati dall'ONU con riferimento ad alcune importanti Risoluzioni del Consiglio di Sicurezza.

Il secondo livello ha analizzato i motivi dell'inefficacia delle Nazioni Unite nell'autorizzare una missione militare umanitaria legittimata dalla dottrina della Responsabilità di Proteggere (RdP, Responsibility to Protect, R2p). Verranno discusse le origini di questa recente dottrina, i principi alla base e i metodi di attivazione di tale teoria che avviene tramite il Consiglio di Sicurezza dell'ONU. La Responsabilità di Proteggere è figlia degli insuccessi umanitari dell'ONU durante gli anni '90, tra tutti Ruanda e Srebrenica. In questi casi, il sistema delle Nazioni Unite non è riuscito a proteggere popolazioni da gravi crimini, quali genocidio, deportazione e sterminio sistematico di minoranze. Verrà inoltre fornita una comparazione tra l'applicazione della Responsabilità di Proteggere nel contesto libico e quello siriano.

Data l'incapacità del Consiglio di Sicurezza di adottare una risoluzione che preveda un intervento umanitario, che ha acuito una delle più gravi crisi umanitarie della nostra storia, il terzo livello dell'analisi ha avuto lo scopo di individuare un organo internazionale in grado di punire giuridicamente individui responsabili di crimini di guerra e gravi violazioni dei diritti umani. La Corte Penale Internazionale è uno strumento in grado di punire crimini umanitari e avviare indagini in modo indipendente anche all'interno di giurisdizioni straniere. La Corte è caratterizzata dal criterio di *complementarietà* che permette a tale organo di non sostituirsi alle corti nazionali nei procedimenti, rispettando la sovranità giudiziale degli Stati. La Corte Penale Internazionale risulta un organo imparziale, altamente specializzato e può essere attivata dal Consiglio di Sicurezza se ritiene che in un determinato contesto siano state compiute gravi violazioni al diritto umanitario, risultando dunque una minaccia alla pace e la sicurezza internazionale.

Il partito Baath ha accompagnato la storia siriana per oltre 50 anni e ha come esponente principale la famiglia al-Assad. Tutt'oggi la dinastia Al-Assad continua a guidare il partito

Baath, risultando resiliente alle ondate di democrazia che hanno investito alcuni Paesi appartenenti alle regioni MENA (Middle East and North Africa Country) dal 2010. La Siria, con l'ottenimento dell'indipendenza a si è adoperata per divenire un simbolo del Medio Oriente, capace di fungere da guida per tutta la Regione. L'esperimento della repubblica Araba Unita ha tentato di legare sotto lo stesso destino popoli e bandiere di due importanti attori quali l'Egitto di Nasser e la Siria di Shukrī al-Quwwatī, primo Presidente dopo l'indipendenza di Damasco. Le ragioni per la creazione di tale unione sono da rilevarsi nel crescente sentimento Pan-Arabo, accentuato dal conflitto Arabo Palestinese e dalle rivendicazioni terzomondiste. Nasser infatti è uno degli esponenti di spicco di tale movimento, lanciato dalla Conferenza di Bandung del 1955. L'Unione dei due Paesi avrebbe dovuto portare stabilità politica all'interno del contesto siriano, nonché un miglioramento dell'economia nazionale. L'esperimento durò poco. Nel 1961 la Siria si ritira dall'Unione a causa della troppa ingerenza da parte dell'Egitto nell'indipendenza politica siriana. Infatti, prerequisito per la creazione dell'alleanza fu quello di instaurare un controllo burocratico incentrato al Cairo.

Con la restaurazione dei partiti politici in Siria e l'introduzione del partito Baath in Siria, si crearono all'interno dello stesso partito due correnti di pensiero opposte. La prima marcatamente pan-araba, mentre la seconda, sebbene nazionalista, metteva in secondo piano la lotta per l'indipendenza araba, concentrandosi sullo sviluppo sociale ed economico di Damasco. Gli anti-unionisti presero il potere nel 1963, a seguito di un colpo di stato. La loro visione di socialismo riuscì a riscontrare i favori delle classi meno abbienti, contadini e lavoratori, mettendo sempre più in difficoltà le élite legate al passato creatisi durante il periodo del mandato francese. Vennero attuate riforme agrarie ed eliminati i sistemi di mezzadria, permettendo ai più piccoli agricoltori di riuscire a migliorare leggermente la loro condizione di vita.

Nonostante questi sforzi, l'instabilità all'interno del partito Baath cresceva, portando così a un successivo colpo di mano all'interno dello stesso partito. Nel 1971, Hafez al-Assad compie la sua personale *Rivoluzione Correttiva*, epurando l'ala Baathista pro-unionista, impadronendosi del governo e diventando Presidente della Repubblica Araba Siriana.

Sebbene il governo di Hafez fu chiaramente un regime autoritario, tentò di seguire la via delle riforme, ispirando l'economia interna del Paese a quella sovietico-centralizzata.

Con l'intento di stabilizzare il partito Baath, Hafez Al-Assad adottò misure che permettessero alla Siria di svilupparsi a tuttotondo. Per esempio, il Presidente permise la libera professione religiosa al fine di dividere il potere politico da quello religioso. In secondo luogo cercò di creare un'economia che non fosse dipendente da aiuti esterni, bensì che potesse svilupparsi, favorendo sussidi per l'agricoltura e la liberalizzazione dell'economia. Per quanto riguarda il

partito Baath stesso, Hafez creò un regime profondamente controllato. Le posizioni più sensibili del partito, quelle con potere decisionale, erano occupate per lo più da personale che condivideva legami sanguigni e/o interessi politico-economici con la dinastia Al-Assad. La sicurezza del Baath era assicurata dalla polizia segreta, costituita da una fazione militare selezionata e fidata. Questo tipo di composizione politica ha permesso ad Hafez di governare per più di tre decenni la Siria, fino alla sua morte, giunta nel 2000.

L'avvento al potere del secondogenito Bashar Al-Assad è stato fulmineo. In meno di 10 anni, Bashar ha ricevuto un'introduzione lampo alla politica. Nel 1994, da studente di oftalmologia a Londra, Bashar fu richiamato in patria ritrovandosi 8 anni dopo alla guida della Repubblica Siriana a soli 34 anni. Salito al potere nel 2000 con il 97% delle preferenze, Bashar dovette sin da subito affrontare numerose sfide economiche e sociali, tra cui disoccupazione giovanile e crisi finanziaria del Paese. Come se non bastasse, la popolazione chiedeva maggior libertà di espressione e rappresentazione nelle istituzioni politiche, guidate ormai da più di trent'anni da un solo partito, il *Baath*. Inizialmente, Bashar sembrava propenso a concedere sostanziali riconoscimenti nel campo della libertà di espressione. Il tempo sembrava ormai maturo e la società intellettuale siriana innescò la Primavera di Damasco. Questo movimento incoraggiò lo sviluppo di numerosi forum di dialogo tra il 2000 e il 2005 tollerati, almeno inizialmente, dal regime *alawita*. Successivamente, Bashar fu costretto a chiudere questi spazi di dialogo per accontentare la parte "anziana" del partito *Baath*, la stessa fazione che gli aveva permesso di ricoprire la carica di Presidente.

Successivamente, i problemi economici, la disoccupazione e l'avvento delle Primavere Arabe, che dal 2010 avevano già causato la fine del regime tunisino e successivamente quello libico ed egiziano, colpirono anche la Siria. Le violente repressioni armate ai danni delle proteste pacifiche del popolo siriano furono la scintilla che innescò un conflitto che da 6 anni a questa parte ha causato la morte di quasi 300 mila persone (stimate, ma la cifra potrebbe essere di molto superiore). Le Nazioni Unite, organizzazione internazionale che fa del suo obiettivo primario il mantenimento della pace e della sicurezza internazionale, ha tentato in più occasioni di smorzare la tragedia. Tre Inviati Speciali delle Nazioni Unite, tra cui Kofi Annan, hanno tentato di portare al dialogo i vari oppositori del governo di Damasco. Dopo 6 anni, le Nazioni Unite non hanno ancora attivato un canale diplomatico significativo. Per trovare una soluzione pacifica alla crisi siriana, sono state organizzate numerose Conferenze (Ginevra I, II e III) e varie Risoluzioni sono state adottate per appoggiare una transizione politica al fine di riappacificare il governo di Damasco e le fazioni ribelli che non deporranno le armi finché non vedranno la fine della dinastia Al-Assad.

Nel frattempo, il Consiglio di Sicurezza, non è mai riuscito ad adottare una Risoluzione che permettesse una missione militare collettiva per proteggere la popolazione siriana a seguito di gravi violazioni ai diritti umani. Nemmeno nell'agosto del 2013, mese in cui fu compiuto un attacco nella zona rurale del Ghouta con l'utilizzo di armi chimiche, gli USA e l'ONU non hanno autorizzato un'azione militare in suolo siriano.

Questa azione militare collettiva è legittima secondo la cosiddetta Responsabilità di Proteggere. Essa è una dottrina teorizzata e codificata per la prima volta nel 2001, a seguito di un documento rilasciato da una Commissione ad hoc sull'intervento e la sovranità statale (ICISS). Essa ha rilevato i principi base su cui autorizzare un intervento militare umanitario, limitando il più possibile l'ingerenza della comunità internazionale nel diritto interno, ai danni della sovranità statale. Successivamente la dottrina venne adottata come risoluzione nel 2005, al margine del Summit annuale dell'Assemblea Generale.

Nel 2009, Ban Ki Moon dedicò un report alla Responsabilità di Proteggere, delineando tre criteri di applicazione ben precisi. In una risoluzione dell'ONU, possono venire richiamati tre principi fondamentali di tale dottrina. Il primo richiama il dovere dello stato territoriale di proteggere la popolazione da genocidio, crimini di guerra, pulizia etnica e altre violazioni ai diritti umani; il secondo principio ricorda che la comunità internazionale ha il dovere di offrire assistenza a Stati nel quale vi siano manifeste violazioni ai diritti umani; il terzo principio risulta essere il principio più controverso, poiché chiama in causa l'intera comunità internazionale ad agire e risolvere una crisi umanitaria nel momento in cui un qualsiasi Stato non sia in grado di proteggere la popolazione al suo interno. In altre parole, il terzo principio può autorizzare un vero e proprio intervento militare all'interno di un qualsiasi territorio. Il Consiglio di Sicurezza delle Nazioni Unite è l'unico in grado di autorizzare tale operazione militare, poiché è l'organo esecutivo dell'ONU a cui spetta il compito di agire, in caso di minaccia alla pace e sicurezza internazionale. In questo caso, ogni sforzo deve essere compiuto per ristabilire la situazione *quo ante* e far sì che tali violazioni non si ripetano in futuro.

L'intervento libico autorizzato dalla Risoluzione 1973 (2011), è stato il primo esplicito richiamo al terzo principio della Responsabilità di Proteggere, che si è tradotto nell'intervento militare delle Nazioni Unite a scopo umanitario. In questo caso, molte critiche sono state avanzate, poiché la missione guidata dalla NATO ha portato a un cambio di regime e ha favorito l'assassinio del leader libico, Muhammad Gheddafi. Con tutta probabilità, tale episodio ha portato alcuni Membri Permanenti del Consiglio di Sicurezza ad astenersi dall'autorizzare una seconda volta una risoluzione che contenga il terzo principio della Responsabilità di Proteggere. Nel contesto siriano, infatti, nonostante le gravi e documentate violazioni dei diritti umani ai

danni della popolazione, per ben 5 volte, il CDS è riuscito ad adottare risoluzioni che comprendessero la responsabilità di proteggere, ma solo il primo principio, ovvero rammentare alla Siria che è sua responsabilità assicurare la protezione dei propri cittadini. Per evitare che il veto dei Membri Permanenti ostacoli l'adozione di risoluzioni contenenti il terzo principio della RdP in caso di manifeste violazioni ai diritti umani, sono state proposte alcune soluzioni. Nel 2001, il Ministro degli Esteri francese, Hubert Védrine, propose un codice di condotta per limitare l'utilizzo del veto tra i Membri Permanenti del CDS. Nel 2009 il Segretario Generale dell'ONU Kofi Annan classificò il diritto di "veto" come un privilegio anacronistico e esortò i Membri Permanenti ad astenersi dall'utilizzare tale potere in presenza di risoluzioni volte al contrasto di gravi violazioni ai diritti umani. Nel 2009 Ban Ki Moon propose all'interno del suo report "*Implementing the Responsibility to Protect*" una riforma nel metodo e nei casi nei quali utilizzare il veto. Se i Membri Permanenti delle Nazioni Unite utilizzano il loro diritto di veto in caso di situazioni che manifestano violazioni ai diritti umani, essi stessi vengono meno ai loro obblighi derivanti dalla responsabilità di proteggere, ovvero cercare di assicurare un'assistenza umanitaria secondo i principi sanciti dalla Carta delle Nazioni Unite.

Gareth Evans, ex Ministro degli Esteri Australiano e co-presidente della Commissione ICISS, analizzando la situazione siriana dal punto di vista della responsabilità di proteggere, ha constatato che stiamo assistendo a un caso di *fallimento di proteggere*. Nonostante i criteri principali necessari all'attivazione della dottrina delineati dal documento dell'ICISS siano stati ampiamente soddisfatti, (gravità della violazione, la motivazione su cui basare l'intervento, intervento in ultima istanza e la proporzionalità della risposta della comunità internazionale), l'ONU, a causa dell'uso inappropriato del veto non ha ancora risolto una delle peggiori crisi umanitarie dal secondo dopoguerra.

Per questo motivo, l'ultimo livello della trattazione, ha avuto lo scopo di individuare un organo internazionale in grado almeno di punire giuridicamente i crimini di guerra e le violazioni ai diritti umani avvenute nella Repubblica Araba, giudicando individui responsabili di tali abusi. L'organo più adatto a tale compito è la Corte Penale Internazionale.

La Corte è una naturale evoluzione delle corti *ad hoc*, tra le quali è utile ricordare il Tribunale speciale di Norimberga e il Tribunale di Tokyo, istituiti all'indomani del secondo conflitto mondiale. Essi ebbero il compito di giudicare individui colpevoli di aver compiuto crimini di guerra e altre violazioni di carattere umanitario. Questi tribunali militari vennero istituiti da uno Statuto, che ne indicava le finalità e le modalità di procedimento giudiziale. I tribunali speciali furono molto importanti per lo sviluppo del diritto internazionale umanitario, ma ricevettero

molte critiche che contestarono il loro carattere di imparzialità: in effetti, sembrò che tali Corti esercitassero una “giustizia selettiva”: le potenze vincitrici giudicano le potenze sconfitte.

Nel 1998, a seguito di ulteriori casi di Corti speciali (ICTY f.e.), il tempo sembrava ormai maturo per la creazione di una Corte Penale Internazionale permanente. La CPI, (ICC, International Criminal Court), venne istituita nel 1998 a seguito dell’adozione dello Statuto di Roma. Entrerà in vigore nel 2002, in concomitanza con il deposito del sessantesimo strumento di ratifica.

La Corte Penale Internazionale è una Corte indipendente, diversa dai Tribunali ad-hoc, poiché non esercita la sua giurisdizione nel caso in cui uno Stato non abbia ratificato lo Statuto di Roma o non abbia accettato la giurisdizione della Corte tramite un’apposita notifica da depositare presso uno degli organi della corte. Le caratteristiche di imparzialità e di competenza dei giudici che lavorano all’interno della Corte, rendono questo organo uno strumento affidabile e efficiente nell’amministrazione della giustizia. La Corte può essere richiamata a giudicare individui che abbiano commesso gravi violazioni ai diritti umani e che abbiano compiuto crimini di guerra. Non importa quale posizione politica abbia tale individuo, di fronte alla Corte Penale ogni immunità decade. In effetti, la punizione di gravi violazioni ai diritti umani non può in nessun modo essere pregiudicata dalle immunità previste da cariche politiche e/o organizzazioni internazionali.

La corte ha competenza a giudicare verso crimini di uno Stato che ha ratificato lo Statuto di Roma o che abbia accettato tramite apposita notifica la giurisdizione della corte. La corte non può giudicare crimini commessi prima dell’entrata in vigore dello Statuto di Roma (2002), ma può giudicare un individuo che abbia commesso un crimine in uno Stato terzo, che la sua nazionalità non sia parte dello Statuto di Roma ma che abbia commesso violazioni nei confronti di persone la cui nazionalità sia al contrario, parte dello Statuto di Roma. Riassumendo, la Corte Penale Internazionale, fonda l’ammissibilità della propria giurisdizione tenendo conto dei principi di territorialità e nazionalità attiva.

Tuttavia, c’è un ulteriore metodo per attivare la giurisdizione della Corte che non presuppone la nazionalità o ratificazione dello Statuto di Roma come elemento chiave: il rinvio di un caso da parte del Consiglio di Sicurezza. Se il CDS ritiene che vi siano violazioni di diritti umani in un determinato contesto e che esse rappresentino una minaccia alla pace e alla sicurezza internazionale, può sottoporre un caso al Procuratore delle far sì che esso apra un’indagine. Per sottoporre il caso alla Corte c’è però bisogno di una risoluzione del CDS, che deve venire approvata da tutti i membri Permanenti. Come avviene per l’attivazione della Responsabilità di Proteggere e la conseguente autorizzazione di un intervento militare umanitario, anche per



l'attivazione della giurisdizione della Corte è necessaria una Risoluzione del Consiglio di Sicurezza che dovrà mettere d'accordo i *Grandi 5* che siedono al tavolo delle trattative.

Sfortunatamente, in sei anni di conflitto siriano, il CDS non è riuscito né ad attivare la dottrina della Responsabilità di Proteggere, né la Corte Penale Internazionale, organo che avrebbe perlomeno potuto porre una fine all'impunità delle violazioni umanitarie commesse all'interno della Repubblica Araba. Mentre la diplomazia avanza, la crisi umanitaria non ha fine. Con l'avvento dei dialoghi di Astana iniziati lo scorso gennaio e sponsorizzati da Russia, Iran e Turchia, risulta ormai troppi tardi autorizzare eventuali misure coercitive da parte del CDS: esse porterebbero solo a un deterioramento del debole tentativo di dialogo tra ribelli e regime governativo. Oltretutto, Astana ha permesso l'adozione di un cessate il fuoco generale, in vigore ormai dal dicembre 2016 e che a tutt'oggi sembra reggere. Concludendo, se il CDS avesse dovuto agire, avrebbe dovuto farlo prima, non appena si documentarono le prime violazioni e repressioni ai danni dei diritti umani. Tuttavia, non è mai troppo tardi per l'adozione di una risoluzione in grado di attivare la giurisdizione della Corte Penale Internazionale, non solo per punire i principali responsabili delle atrocità sofferte dal popolo siriano, ma anche per terminare una volta per tutte l'impunità nei confronti di crimini così gravi.

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## CHAPTER 1: SYRIA, FROM THE CREATION OF THE BAATH PARTY TO THE SYRIAN CIVIL WAR

1. Introduction: October 2016. This date marks a year from the beginning of the official Russian Intervention in Syria. It also marks five years since China and Russia vetoed a *Draft Resolution*. For the first time ever, on October 2011, the Security Council addressed the regime of Assad as the main perpetrator of the violence spreading around Syria. <sup>(1)</sup> Six years on and the situation has only worsened. Five years since the beginning of the clashes and the United Nations seems to be incapable of doing its business: work to protect human lives. The United Nations stalemate started from the Syrian's turmoil in 2011 is a critical issue.

On October 10 2016, the UN chief Ban Ki-moon declared that the Syrian regime leader Bashar al-Assad's "failure of leadership" has caused the deaths of over 300,000 people. "*If we are not capable of stopping the hostilities, we cannot deliver a decent humanitarian assistance*". <sup>(2)</sup> For its own structure, the Security Council has five Permanent Members with "veto power". Thus, a fully binding resolution on Syria can only be achieved through a political and diplomatic way agreed by all the SC members. However, the path of the Syrian peace process, clearly didn't run smooth.

The major peace-broker sponsors, US and Russia, crashed (definitely?) their peace talks after a violation of the national wide ceasefire on 15 September and a subsequent savage and cruel bombing on a humanitarian convoy near Aleppo on 20 September 2016. <sup>(3)</sup> Both claimed that the other side has responsibility on the violations occurred. As a consequence, the level of trust hit a new low between the two sides of the SC, dragging the situation to a worrying and uncertain future (the so-called *trust gap* defined by Obama during China's G20 summit in Hangzhou). <sup>(4)</sup>

Turmoil in the Syrian soil had a point of no return in 2011, when the Assad regime didn't surrender to the wave of democracy brought by the Arab Spring phenomenon.

While the crisis was mounting over the years, several actors claimed a place as "main protagonist" in the war. However, the UN mechanism, which should defend international peace did not work properly and seemed to be incapable on finding common grounds to end of the conflict.

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<sup>(1)</sup> SECURITY COUNCIL REPORT: <http://www.securitycouncilreport.org/chronology/syria.php?page=5>

<sup>(2)</sup> ASSAD RESPONSIBLE FOR 300000 DEATHS: <http://www.dailysabah.com/syrian-crisis/2016/10/10/un-chief-says-assad-responsible-for-300000-deaths-renews-call-to-refer-syria-to-war-crimes-court>

<sup>(3)</sup> SYRIA CEASEFIRE: <http://edition.cnn.com/2016/09/15/middleeast/syria-ceasefire/>

<sup>(4)</sup> ATTACK ON UN CONVOY HIGHLIGHTS AID DELIVERY CHALLENGES: <http://www.aljazeera.com/indepth/features/2016/09/humanitarian-aid-160922205749183.html>

In the first chapter of my dissertation I will give an overview of the Syrian situation starting from an overview of the country's history and an introduction to the Arab Spring. This "democratic wave" set the beginning of the clashes which affected a major number of Arab Countries in the MENA Region. After that, I will report the main steps related to the Syrian crisis, focusing on the historical facts and the United Nations Security Council movements from 2011 to 2016, which should have facilitated a political solution to the crisis, but, on the contrary, the P5 Members have been totally unable to reach a solution so far.

In the second Chapter, I will analyse the UN Responsibility to Protect Doctrine. According to the R2P norm, a collective military intervention could be authorized by the United Nations Security Council when significant breaches against human rights have been displayed.

In the third Chapter I will assess the possibility for the United Nation Security Council to activate the International Criminal Court to address humanitarian crimes in Syria. This body could constitute a proper way to address humanitarian breaches perpetrated by individuals.

## 2. The Arab Spring, an overview

Since 2010, the international media addressed their attention to the Middle East by focusing on the “Arab Uprisings”. The phenomenon of the uprisings has been called “Arab Spring”, where the word “spring” describes events related to tangible revolutions which, normally, bring some major changes in the current system. <sup>(5)</sup> For example, from 2010 we can see at least three domestic revolutions which had major effects over the MENA regimes, overthrowing the leaders in power: the *Jasmine Revolution* in Tunisia, the *Day of Rage* revolution in Egypt and the *Mukhtar Revolution* in Libya. All three clashes resulted in the departure (in one case, the death) of the ruling leaders. Former Tunisian President, Zine El-Abidine Ben Ali fled the country in January 2011 due to strong clashes and turmoil; former Egyptian President Hosni Mubarak had to leave the floor to a new transition election poll; in February 2011 he was forced to resign and flee away, as the rallies in Tahrir Square (meaning “Liberation” Square) were inflaming; Muammar Gaddafi’s, former President of Libya, did not manage to mitigate the protests which saw the Libyan civil society move towards the Green Square in Tripoli demanding its departure. The government threats of use force against demonstrators did not frightened the people which were proclaiming the so called “Day of Rage” on 17 February 2011. Subsequently, the opposition expanded and on 20 October 2011, Gaddafi has been hunted, caught and killed. In the Libyan case, the UNSC adopted resolution 1973 to provide Libyan rebels with an external intervention from a US-EU coalition to end the grave humanitarian violations perpetrated by Gaddafi’s forces. <sup>(6)</sup>

By the way, when did these movements appear? There are some reasons to believe that the Arab Revolutions were a direct consequence of the American invasion of Iraq in 2003. Some argue

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<sup>(5)</sup> For example, starting from 1962, Czechoslovakia, a Soviet satellite which was respectful of the Varsavia agreement the USSR defensive response to NATO influence, began a series of reforms aiming at decentralizing the economy and give rights to the population. Alexander Dubček, a politician who came to power in 1964 as the leader of the Communist party was the promoter of this movement. He would promote a series of project and reforms which would enable Czechoslovakia to develop its own way to communism and not be a simple puppet in the hands of USSR leader Brežnev. Dubček launched the slogan “human face socialism” which means that any kind of political plan will be respectful of people needs and the domestic dynamics of Czechoslovakia. There is no standard communism which could be implemented and be valid for every country. The movements along with the protests triggered by Dubček vision are known under the term Prague Spring. In 1968, USSR invaded Czechoslovakia in order to quell the protests and change the Prague government, alienating Dubček from the political field. The invasion worked also as a mean to isolate the turmoils, avoiding them to reach and influence several other Soviet satellites.

ENNIO DI NOLFO, *Dagli imperi militari agli imperi tecnologici. La politica internazionale dal XX secolo a oggi*, (Laterza, 2007)

<sup>(6)</sup> LOUISE FAWCETT, *International Relations of the Middle East*, 3rd edition (Oxford University Press, 2013), pp 139-142

that the President George W. Bush “*Freedom Agenda*” had encouraged the Arab Spring in 2011 as a result of its military moves. <sup>(7)</sup> In a way, it is possible to affirm that from 2003, regimes in the MENA and the Gulf region pledged to run free elections to make the population decide for their own leaders. A few examples are Saudi Arabia, which ran municipal elections in 2005; women in Kuwait marched for the right to vote; and Mubarak’s Egypt gave the possibility for his population to choose their own leader through free elections. However, this *freedom momentum* has been surpassed by the return of sectarianism: for instance, in February 2006, Iraq has been hit by terrorist bombings while the new government was being elected with the help of the US-UN joint mission which was monitoring and providing free and democratic polls. <sup>(8)</sup>

During 2010-2011 Syria regime (as well as a number of Gulf monarchies), saw no political changes in their domestic system, rather a critical stalemate started from the democratic wave as a result of the turmoil. This is mainly due to their historic background and domestic political structure.

Thus, while some countries have been concretely and democratically affected by the uprisings, other states did not experience the same outcome. The results of the uprisings have been different from country to country, as the Syrian conflict is showing us.

### 3. The human element of the uprisings

The 2010 Arab Spring is strictly related with the development in the human capability field: mortality reductions, nutrition, schooling, and other dimensions are all aspects who marked a shift in the Arab universe. The role of economic advances, wealth, urbanization and education is at stake when we speak about Arab Springs.

On December 17<sup>th</sup> 2010, Muhammed Bouazizi set himself on fire in front of the government building in a rural town of Tunisia. The extreme human sacrifice has been the spark for the entire Arab Spring process, which would have triggered tumults all over the MENA regions and some Gulf countries. <sup>(9)</sup>

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<sup>(7)</sup> JAMES GELVIN, *The Arab Uprisings: What Everyone Needs to Know*, 2nd Edition (Oxford University Press, 2015), pp. 37-38; 170-171

<sup>(8)</sup> SHAHEEN MOZAFFAR, *Elections, Violence and Democracy in Iraq*, pdf available at: [http://vc.bridgew.edu/cgi/viewcontent.cgi?article=1156&context=br\\_rev](http://vc.bridgew.edu/cgi/viewcontent.cgi?article=1156&context=br_rev)

<sup>(9)</sup> JAMES GELVIN, *The Arab Uprisings: What Everyone Needs to Know*, 2nd Edition (Oxford University Press, 2015), p. 27

People were asking their leaders for democracy and respect of fundamental human rights, such as free parliamentary elections, more jobs and popular representation in the government. Inside the institutions, military and ruling parties have no separation. The regimes saw no distinction between the army and the political power. That is the reason why protesters chose the street as the only option to overturn this vicious cycle. The most common slogan used during the protests throughout the region have been “*Down with the nizam*” (which means regime, system) along with “*Down with the government*”.<sup>(10)</sup>

As soon as clashes started in Tunisia, President Zine al-Abidine Ben Ali, who ruled for a quarter of century, made some promises: more job employment and new government elections. However, he was not credible anymore and the only viable option for him was to flee abroad. On January 14<sup>th</sup> 2011, Ben Ali fled to Saudi Arabia, as its army denied its support by refusing to open fire on protesters gathered in the Tunis streets. This is the first time in the modern history of the Arab World that an uprising forced a ruler out of his country. In the Syrian context, the main spark that led to the civil crisis came from the human side. People claimed a place to be heard and an institution capable of welcoming different voices of the Arab world. From the beginning of the new millennium, improvements of multiple indicators of human development such as a decline in child mortality, increased schooling, increased physical stature on women and increase longevity marked a series of progresses inside the population. Progresses on human developments reflected themselves on a change of relationship between citizens and the state. Fostering human development indexes meant higher expectations among the population, thus pressuring governments to start a period of reforms. If the *yell* from the society remains unheard, people will show grievances, diverting their frustration through the waves of protests, which is what happened looking back to the Arab Spring process. People in the Arab world are expecting more from their governments, even if this would mean challenge an authoritarian State, which owns sophisticated methods to alter the truth and control information.<sup>(11)</sup>

#### 4. The technology as a mean to start turmoil

My last paragraph stressed the fact that the human element in the Arab Uprisings has been crucial to convince people to go out to the streets and start a protest, despite the high risk of

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<sup>(10)</sup> JAMES GELVIN, *The Arab Uprisings: What Everyone Needs to Know*, 2nd Edition (Oxford University Press, 2015), p. 25

<sup>(11)</sup> For a deeper analysis on the relation between human development indexes and Arab revolution movements see: RANDALL KUHN, *On the Role of Human Development in the Arab Spring in Population and Development Review*, Vol. 38, No. 4 (DECEMBER 2012), pp. 649-683



confrontation with the pro-governmental army. However, this *trade-off decision* could have been softened if the cruel images of the Bouazizi's immolation haven't been broadcasted all over the country. Internet and mobile technology permitted to share Bouazizi's pictures among users. Nowadays, smartphones and portable devices are the main instrument to inform the world and share info. News are running almost instantly and are available worldwide instantly. This technology surpasses the limit of censorship and is more efficient than a cabled internet connection, as it results elusive and difficult to block. Some argues that media coverage from broadcaster such as Al-Jazeera of the facts occurred on December 17 2010, contributed to light up the spark, inflaming the heart of the Tunisian population. In this context, mobile technology acted as a *social awareness* instrument galvanizing people to begin their perilous path against the Tunisian regime which were ruling them since 1987. <sup>(12)</sup>

For what concerns the Syrian case, Bashar al-Assad has been the first leader determined to open Syria to the digital era of internet. He has been the promoter of the Informatic Syrian Society. When Bashar came to power in 2000, only 7.000 personal computers had access to the world-wide-web through a unique governmental server. Ten years later, 22,5% of the Syrian population (more than 5 million people) could browse the internet. Many people in the main towns largely used the wireless hotspots or mobile connection. However, in the rural areas and outskirts, where 3g connection was weak or not available, customers largely used Internet Points to keep their digital needs satisfied. When the first anti-regime protests showed up in early 2011, Bashar promulgated the Internet law, which forced owners of Internet Points to report every customer by recording their personal details and their IDs. Despite this, the regime could not stem digital communications means such as Skype, Facebook and YouTube. Simple informatic tricks have been implemented to bypass state's censorship. <sup>(13)</sup> However, the risk of internet freedom has been visibly addressed by Bashar Assad policies during January 2011. At the beginning of civil turmoil in Syria, Damascus authorities were removing all the satellites antennas substituting them with centralized installation which permitted an easier communications' shutdown if necessary.

## 5. Syria, the pre-condition for the uprising: from the independence to the rise of the Baath party

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<sup>(12)</sup> JAMES GELVIN, *The Arab Uprisings: What Everyone Needs to Know*, 2nd Edition (Oxford University Press, 2015), pp. 47-49

<sup>(13)</sup> LORENZO TROMBETTA, *Siria: dagli Ottomani ad Asad e oltre*, (Mondadori Università, 2013), pp. 20-21; 45-47

To better understand the spark of the clashes inside Syria, I will give a brief overview of Syria, from the United Arab Republic (UAR) experiment in 1958, to the rise of the Baath party and the army coup d'état in 1963, to the rise of Hafez al-Assad until the passage of power to Hafez's son, Bashar al-Assad.

The al-Assad family ruled over Syria for almost half century. Both father and son are Alawites (a Shia branch of Islam) and represent the Ba'ath party in the government. Its exponents were the little bourgeois, Druzes and Alawites. Both religion branches were minorities (and still are nowadays). The Baath party (literally meaning *Resurrection*), considered itself as an "*Arab Universal Party*" and planned to widespread all over the Arab world. In Syria, the Baath party has been brought by the army during the 60's and supported by these forces over the years. The ideals behind Baath are resumed in its three-words-motto: "*Unity, Freedom and Socialism*". Its key objective, at least at the beginning, has been to gather all the Arab people under one flag, to protect the country from external influences and colonialism. <sup>(14)</sup> This picture matches the vision of an Egyptian leader, General Gamal Abd el-Nasser. His call for the Pan-Arabism movement resonated all over the Arab regions. <sup>(15)</sup> In fact, part of the supporters of the Baath party shared Nasser's view on Arab Nationalism and they were coming from the rural and the working class, considered the "unprivileged masses". The end of French occupation and the loss of Palestine to Zionist forces in 1948, made Syria rethink its foreign policy against Western Society. While the old French-like élites were losing ground, the new parties emerging from the post-independent Syria were more efficient to address the needs of the population. However, the Baath party could not solve the distribution of welfare among society. Street demonstrations and coup attempts marked the beginning of a period of intense political debate. While the elites in power since the French mandate began to collapse, new parties replaced them. These new political groups could better consider Syria's diverse needs and political interests. The failure of the authoritarian West-oriented elites who ruled Syria between 1949 and 1954, brought to the development of a new leftist radical movement, strongly supported by the middle-low classes from the rural areas and the army as well. The gap was gradually filled with the rise of

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<sup>(14)</sup> Salah Bitar and Michel Aflak were the Baath's founder and ideologues coming from Damascus. Their take on the Baath was that a United Arab Nation had been divided by the imperialist intrusions (French mandate in Syria). As the Arab Nation is a permanent entity in history, it needs a regeneration and resurrection (precisely what *baath* literally means). This regeneration should happen inside each Arab individual. However, this is not a religious process. It does not mean being Muslim or religious, since Islam is a creation of the Arab nations and not its soul.

JOHN GALVANI in MERIP Reports, No. 25 (Feb., 1974), p. 3

<sup>(15)</sup> ENNIO DI NOLFO, *Dagli imperi militari agli imperi tecnologici. La politica internazionale dal XX secolo a oggi*, (Laterza, 2007), p. 272-273

the Baath party. <sup>(16)</sup> The conflict between progressive and conservative politics led to the state's paralysis and inspired the UAR, (United Arab Republic), an Arab alliance proposed by Egypt. The UAR has been declared in 1958, in order to consolidate Syria's political institution and end instability and rebuild the Arab unity against imperialist infiltrations. However, the great limit of the UAR has been Nasser's vision on the domestic ruling role: the Egyptian leader replaced the Syrian Baath party with Egyptian personnel as he saw with suspicious the new Syrian political force. He proposed a Cairo-based bureaucracy, without considering the Syrian's request over a shared governance. Thus, Nasser, as prerequisite for the creation of the UAR, dissolved all Syrian political parties. However, it took only three years for the Syrian Baath to force the reestablishment of the political parties as a consequence of the ideological fallout of the UAR unification. Egypt was adopting measures which were colliding against the Syrian autonomy and sovereignty. <sup>(17)</sup> In 1961, the Baath party regained its power and split in two: the first branch was constituted by the pro-unionists. Syria Baathist unionists tried to re-establish the pre-1958 situation. They came from the Sunni middle-class and, as Sunni, had affinities with Nasserism. They wanted to bring the ideal of Arab unity and nationalism after the collapse of the UAR. The second branch of the Baath party was constituted by anti-unionists. They were still linked with the unionists and committed to re-establish the pre-1958 condition. During the UAR period, many militaries who belonged to the Syria's minority (f.e. Alawys and Druzes) were discharged from their offices. After the UAR collapse, they formed a "military coalition" to increase the role of the army within the Baath party, while pursuing an opposite view on the pro-unionist branch. Hafez al-Assad was part of this coalition. Together with other militaries, they blamed Egypt for the dissolution of the parties during the UAR experiment and wanted to go back to the pre-1958 situation, claiming for a democratic and inclusive structure of the society. They began to move towards Marxism and espoused socialism to separate themselves from the pro-unionists' vision of class-struggle. <sup>(18)</sup>

In this context, on March 8, 1963, a group of young officials took power in Syria, overturning the government after a bloodless coup. At this stage, pro-unionists had no shared vision on their policy and adopted a more conservative position, which has been characterized by the exploitation of the less wealthier classes in favour of the elites. <sup>(19)</sup> The anti-unionists, constituted by the army coalition, relied on socialism and could attract the rural segment of the

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<sup>(16)</sup> LORENZO TROMBETTA, *Siria: dagli Ottomani ad Asad e oltre*, (Mondadori Università, 2013), pp 84-85.

<sup>(17)</sup> LOUISE FAWCETT, *International Relations of the Middle East*, 3rd edition (Oxford University Press, 2013), p. 26

<sup>(18)</sup> SAMER N. ABOUD, *Syria*, (Polity, 2015), pp. 24-28

<sup>(19)</sup> ROSSANA CARNE, *Siria, il potere e la rivolta. Dalle primavere arabe allo stato del terrore dell'Isis*, (Enigma, 2016), p. 10

Syrian society. This is the reason why the coup has been easy to undertake. This anti-unionist version of *Baathism*, was determined to alter the economy of Syria, eliminating feudalism and advocating land reforms. The Baath party became the vehicle to eliminate powerlessness of the countryside. The years that followed the 1963 coup, saw the nationalization of banks, private electricity companies and oil distributing firms. As a result, the control of the non-agricultural sectors became privatized, constituting a new issue: the peasants should bear the costs of this privatization.

Consequently, Hafez al-Assad came to power in 1971 undertaking the *Corrective Revolution*. He has been the first Alawite President of Syria and this would have changed everything inside the country: from now on, a man who belongs to a minority group was leading Syria. As there have been major differences between the political branch and the population (especially the rural part of the society), Assad decided to pursue a socialist vision of the Ba'ath Party, inspiring itself to the Soviet centralization of the economy. Industrial and commercial corporations were nationalized and a redistribution of lands to the peasants have been undertaken through a series of land reforms. Through Hafez al-Assad regime, the Baath party made it possible to redistribute wealth and to shape a just society. <sup>(20)</sup> He wanted to rebuild completely the economic State system, as he had no intention to be too much Soviet-binded and rely entirely on USSR help. The development of a strong economy, guided by the Marxist doctrines was the ideal environment to resist against future crises. <sup>(21)</sup>

Hafez has been a progressive leader: he wanted to promote a new Constitution to delete some *secular* provisions: for example, according to the law, the President of the Syrian Arab Republic should have been a Muslim. <sup>(22)</sup> Syria was not ready to detach itself from Muslims provision and he only managed to maintain the clause which stated that the Shari'a (Islamic law), should not be the main and unique source for legislation issued by the government, rather a "major" source. As important for the Syrian economy, Hafez was equally crucial for the separation between the religious world and the political one. Moreover, the freedom of religion beliefs was guaranteed. Syria started to tolerate the celebration of any profession unless it would not create any public disorder. <sup>(23, 24)</sup>

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<sup>(20)</sup> MIRELLA GALLETI, *Storia della Siria Contemporanea*, (Bompiani, 2014), p. 198

<sup>(21)</sup> *Supra*, pp. 88-91

<sup>(22)</sup> According to Trombetta, the 1953 Syrian Constitution established that the President of the Syrian Arab Republic should belong to the Muslim belief. This aspect created an unstable environment as the non-muslim minorities have been damaged by this provision. LORENZO TROMBETTA, *Siria: dagli Ottomani ad Assad e oltre*, (Mondadori Università, 2013) p. 83.

<sup>(23)</sup> ROSSANA CARNE, *Siria, il potere e la rivolta. Dalle primavere arabe allo stato del terrore dell'Isis*, (Enigma, 2016), pp. 15-16

<sup>(24)</sup> MIRELLA GALLETI, *Storia della Siria Contemporanea*, (Bompiani, 2014), p. 100

Through the “Corrective Revolution” Hafez was intended to build a long-lasting regime, enforcing it from the inside. Since its independence, Syria tried to pursue an economic politics, which did not aim to develop itself, rather aimed at enforcing the State system, polarizing the management of power around the Baath party. Through his Revolution, Hafez wanted to create a real power behind institutions: on one hand, his aim was undertaking policies of legality and transparency, enforcing all the most sensible positions inside the institutions. He forged a ruling policy which considered both the visible power and the invisible one. The formal (visible) power constituted the State institutions, while the hidden one was constituted by security apparatus, which represented the real decisional body.

In this context, the Baath party was used to legitimate the power of the President, while controlling and mobilizing the society. The official media were reporting only the surface or the visible work of institutions, while the decisional procedures, undertaken by the administrative core of the regime, have been kept hidden. Three key actors guaranteed the effective executions of this visible and non-visible ruling mechanism: the security apparatus, the Baath party’s heads and a selected faction of the army. These groups were bloody-bounded to the Assad family, or, alternatively, they shared economic or political interests. By creating ties, the inner core of the party ensured solidity and stability inside the government. This aspect permitted Hafez al-Assad to rule Syria over three decades. More than twenty security agencies have been created under Assad government and all of them responded directly to the *rais*. They have been generally called *ahjizat al Mukhabarat*, which means “intel services” and comprehend the intel agencies and the élite army units. <sup>(25)</sup>

## 6. The Baath Party changes

The regime of Hafez al-Assad, although authoritarian, has brought stability inside the institutions. His political party was progressive even though its own legitimacy was based on a “*regime like*” standard that implied a restrictive and controlled way to rule the country. He was opened to consultation with a variety of counsellors from the Baath party and outside as well. During the 70’s, Hafez government was spending 70’s 20-25% of the country’s budget on the defence sector. The reason is that he wanted to avoid any possible discontent inside the security body.

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<sup>(25)</sup> LORENZO TROMBETTA, *Siria: dagli Ottomani ad Assad e oltre*, (Mondadori Università, 2013), pp. 108-112

Hafez knew that Syria could be stable only if the army, which is the main instruments of power, could have a clear aim to justify its legitimacy with the population. He was able to build a strong foreign strategy against Israel. When Israel claimed its own place in the Arab world as a consequence of the 1947 United Nations Partition Plan for Palestine, this partition included some Syrian original territories. There is no doubt that Syria, Egypt and Iran were competing for being the next symbol of the Middle East world during the Cold War era, aiming at unifying all the Arab Countries. As a consequence, with the help of USSR, which was trying to gain influence inside the Middle East region, Syria undertook several conflicts against the Zionist state: the 1967 (Six days war) war saw Damascus threatened by a “very likely to happen” Israeli invasion. Egypt, Iraq and Jordan intervened. However, the outcome has been eloquent: the Israeli aviation attacked the Egyptian military bases and neutralized the numerous Nasser’s warplanes before they could even take off. Israel occupied the whole Sinai Peninsula and the Golan Heights (territory directly bordering with Syria). Later in 1973, Syria participated to the Yom Kippur war against Israel, to try and liberate the occupied territories from Israeli troops. The contested territory was once again the Golan Heights, considered a strategic point to avoid any foreign activity against Syria. <sup>(26)</sup>

There was no victory in the aftermath of the Yom Kippur war, however, the Arab countries gained a political achievement. The peace talks gave back to Syria some of the occupied territories in the Golan Heights and made the coalition achieve a powerful, although symbolic, claim against Israel and imperialist forces.

## 7. The weak Syrian economy and the Baath party

Despite the great economic losses in the aftermath of the conflict, Hafez has been able to encourage the economy through a series of liberalizations to boost investments. In this way, Syrian economy could recover easily. <sup>(27)</sup> This reforms constituted the only way out from numerous Syrian crisis during the 70’s, 80’s and 90’s: when the leading heads of the regime could not find a way to revive the deficiencies of the state finance, they liberalized specific critical sectors to private corporations, encouraging foreign investments. However, the limits of these methods became clear: as Syria had no specific and efficient banking systems, investors were reluctant and addressed their money to different Middle East countries. Moreover, those

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<sup>(26)</sup> ENNIO DI NOLFO, *Dagli imperi militari agli imperi tecnologici. La politica internazionale dal XX secolo a oggi*, (Laterza, 2007), pp. 326-328

<sup>(27)</sup> MIRELLA GALLETI, *Storia della Siria Contemporanea*, (Bompiani, 2014), pp. 101-103

*privatizing* methods did not ensure a strong Syrian economy-building: in fact, the sectors opened to the private investments created a new élite inside the Country, empowering fewer people while weakening the rural and lower classes. <sup>(28)</sup>

During the 80's, Syria experienced a stalemate of his economy: from 1986, a heavy fiscal crisis hit. Among the major causes behind the recession we can find the uncertain climate due to the *soviet perestrojka* (USSR has always been a key-actor in the social aid mechanism for Syria) and a shift of the Syrian Baath policies. The mechanism of financial and rural support was placed under constant pressure affecting the basis of the Baath party itself. The State's distributive role was no longer efficient and subsidies towards peasants and workers were suspended. This turned to be a failure and was considered as a betrayal of the Baath's party primary social and economics role in Syria: sustain and encourage social welfare through redistribution of wealth by the central government. Consequently, the agricultural productivity declined as Damascus' focus turned to the non-agricultural sector of the Syrian economy and a heavy series of privatization of public assets. The end to the peasants support created a major migration issue into urban peripheries. Privatization of public sectors and destruction of relationships between the peasants and the Baath party was delegitimizing the party's development. In a word, during the 90's, the Syrian government was slowly shifting from a social State to a neoliberalist approach of the economy, bringing the role of private sectors as the key to economy development. <sup>(29)</sup> The rise of this new narrative was playing against decades of Baathist rhetoric about social development. Moreover, soon after the fall of the soviet regime in 1991, Syria experienced, a change of its foreign policy as well: it joined the US coalition (the Imperialist side) against Iraq, as it feared that Saddam's *thirst of power* could challenge the already unstable balance in the Middle East, affecting the Damascus regime too. <sup>(30)</sup>

The last years of Hafez regime have been marked by his sickness and the need to find a political heir after his death. In 1987, Basil al-Asad, the *raïs* first born, was appointed as Chief of the Republican Guard. He seemed to have all what it takes to succeed his father: he was engineer,

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<sup>(28)</sup> LORENZO TROMBETTA, *Siria: dagli Ottomani ad Asad e oltre*, (Mondadori Università, 2013), pp. 126-129

<sup>(29)</sup> The first time that Moscow entered into the Middle East world has been in 1955. While UK and the USA did not agreed to provide Nasser with weapons and supplies, Russia welcomed the request as part of its anti-west strategy to gain more friendly satellites and influence. This Soviet Block proposal affected Damascus as well, as in the same year they signed a commercial agreement which provided Syria with Czech armaments.

Consequently, in 1963 after the first Baathist coup, Damascus tightened up the relations with Moscow by sending a military delegation in the Soviet capital. In 1966 Moscow offered its financial help to build a dam in the east Euphrates area. Moreover, in the 1967 war, Russia helped the replacement of the equipment destroyed during the conflict. In 1971, Hafez al-Asad went to Moscow to ask for economy and army aid. In 1973, USSR in the UNSC called for the cease-fire during the Yom Kippur War. The Kremlin sympathized with the Baath party, as it was considered as revolutionary, progressive and a vanguard for the fight against Western Imperialism, in MIRELLA GALLETI, *Storia della Siria Contemporanea*, (Bompiani, 2014), 151-154

<sup>(30)</sup> SAMER N. ABOUD, *Syria*, (Polity, 2015), pp. 37-39

lieutenant colonel in the paratroopers and in 1991 he was chief of the Presidential Security body. He was not involved in any corruption scandal. Unfortunately, he died in 1994 following a car crash. This is when Bashar al-Assad came in. In 1992 he was attending postgraduate studies at the Western Eye Hospital in London, specialising in ophthalmology. He was recalled to his motherland Syria in 1994 where he received a quick army and policy course. The same year he achieved the rank of Chief of the Homs Military Academy and was nominated Chief of the Republican Guards in 1995. This fast career escalation ended with the nominee of Colonel in 1999. To succeed his father in 2000, he was appointed lieutenant and a special session of the Syrian parliament amended an article of the Syrian Constitution which required at least 40 years old to be appointed as President of the Syrian Arab Republic. This limit was reduced to 34 years old, exactly Bashar's age. On June 18<sup>th</sup> Bashar was declared unanimously leader of the Baath party and he was proposed to run for the Presidential candidature. On 10 July, Bashar, unique candidate for the Presidential role, has been appointed President of the Syrian Arab Republic with 97,29% of preferences. <sup>(31)</sup>

#### 8. The Bashar al-Assad era in Syria, a "Coup Proof Country"

Bashar al-Assad was recalled to Syria in order to lead the country after his father's departure. Ten years after the first Gulf War, 9/11 marked a new landscape in the geopolitical environment. As a consequence of Bush Jr. doctrine "*War on terror*", Syria has been listed among the so called *rogue States*. This caused a reconciliation with Iraq, which welcomed the joint effort to counter the US coalition, which was targeting Afghanistan and Iraq as host countries of terrorist groups. Both countries could have mutual benefits: since Syria experienced a series of economic sanctions as a result of the war on terror strategy, Iraq was the major importer of Syrian goods. Bashar al-Assad considers the alliance an important asset, as he was trying to pursue a new economic strategy based on the definitive passage to a neoliberalist approach. However, the change of foreign policy and the economy deterioration was not the only problem inside the Country. When he took power in 2000, he had to face the wave of democratization brought by the so-called Damascus Spring which saw the Arab leader open to the new millennium challenges of the freedom of speech.

However, given the result of the freedom movements in the MENA regions which started since the beginning of the new century, is there a reason why Syria did not experience a regime change?

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<sup>(31)</sup> MIRELLA GALLETI, *Storia della Siria Contemporanea*, (Bompiani, 2014), pp. 117-118



First, Bashar al-Assad did not believe that the uprisings could reach Syria. He was so trustful his regime was close to the people needs that in January 2011 he promoted an action to dismantle every satellite antenna replacing them with cabled residential connections to maintain the control on the media. *Al Jazeera* and *al Arabiyya* were both dangerous media instruments which could inflame the heart of the Syrian people by broadcasting with no filters events happening around Tunisia, Egypt and Libya. <sup>(32)</sup> During a famous interview with the Wall Street Journal in 2011 he was arguing that his country was stable and would not learn from other countries how to reform itself.

**Wall Street Journal:** *From what we have seen in Tunisia and Egypt in the recent weeks, does it make you think there are some reforms you should be accelerating? And is there any concern that what is happening in Egypt could infect Syria?*

**President Assad:** *If you did not see the need for reform before what happened in Egypt and in Tunisia, it is too late to do any reform. This is first. Second, if you do it just because of what happened in Tunisia and Egypt, then it is going to be a reaction, not an action; and as long as what you are doing is a reaction you are going to fail. So, it is better to have it as a conviction because you are convinced of it, and this is something we talk about in every interview and every meeting. We always say that we need reform but what kind of reform. This is first. Second, if you want to make a comparison between what is happening in Egypt and Syria, you have to look from a different point: why is Syria stable, although we have more difficult conditions? Egypt has been supported financially by the United States, while we are under embargo by most countries of the world. We have growth although we do not have many of the basic needs for the people. Despite all that, the people do not go into an uprising. So, it is not only about the needs and not only about the reform. It is about the ideology, the beliefs and the cause that you have. There is a difference between having a cause and having a vacuum. So, as I said, we have many things in common but at the same time we have some different things. <sup>(33)</sup>*

This speech, is clearly in contrast with Bashar's policy trend at the beginning of his mandate in June 2000. Soon after he took power, Bashar has been welcomed by the Syrian people as a good ruler and keeper of the country stability. The community was hoping that he would have

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<sup>(32)</sup> LORENZO TROMBETTA, *Siria: dagli Ottomani ad Asad e oltre*, (Mondadori Università, 2013), pp. 24-25

<sup>(33)</sup> INTERVIEW WITH SYRIAN PRESIDENT BASHAR AL-ASSAD – January 2011  
<http://www.wsj.com/articles/SB10001424052748703833204576114712441122894>

followed the path of his father by listening to the population's needs and maintaining the solidity within the Baath party. He owned some promising features that made the Syrian community like him, at least at the beginning: he was young aged, he studied outside Syria and did not have any link with the Baath party for what concerned his education. In 1992 he went to London to continue his studies making him the first son of the al-Assad dynasty to have received his education abroad; he knows English and he is passionate about computer technology. He promoted the research and the use of Arabic in the informatic systems. This enabled him to use a new political language inside Syria: the official propaganda was telling that the era of reforms (*islah*) and continuity (*istimrariyya*) was about to come. Syria should change, while maintaining its control on the State institutions. <sup>(34)</sup>

Once he took power in 2000, he tried to address and solve the unemployment crisis among younger Syrians: in 2002 almost 53% of the Syrian population was below 20 years old and around 44% was between 20 and 64. This means that more than a half of the entire Syria population, was indeed worried about the unemployment risk. The domestic support for the Assad regime was deeply dependent on how the Syrian President would have addressed these issues were affecting the younger sector of the society. <sup>(35)</sup>

Thus, to counter the stagnation of the Syrian economy and create job opportunities, he tried to reform the economy. The measures were intended to open Syrian markets and encourage international trades, as the Syrian economy critically slowed down during the 80's and 90's. Moreover, the fall of the Soviet regime ended all the economic aids from Moscow to Damascus. Bashar was committed to create a *social market economy*, whose aim was to increase social welfare by privatizing and marketizing the economy inside the country. The attempt to reform the economy was driven by a neoliberalist approach. This aspect caused the rupture between the State and the society, which failed to solve the social welfare demand. Subsidies were suspended as a direct consequence of the neoliberalist manoeuvre. Moreover, Baath party, which made the control of the economy and *clientelism* a major feature for keeping the state economy, saw its deinstitutionalization. People could not rely on this political power anymore, as they felt as if Baath's role has been distorted and its role of social inclusion has come to an end. At this stage, Baath party could not be the political and financial backer suitable for Syria anymore. The brake between the past and the present Baath party became clear. <sup>(36)</sup>

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<sup>(34)</sup> LORENZO TROMBETTA, *Siria: dagli Ottomani ad Asad e oltre*, (Mondadori Università, 2013), pp. 140-141

<sup>(35)</sup> MIRELLA GALLETI, *Storia della Siria Contemporanea*, (Bompiani, 2014), p. 121

<sup>(36)</sup> SAMER N. ABOUD, *Syria*, (Polity, 2015), p. 34-35

## 9. The Damascus Spring

Secondarily, President Bashar al-Assad had led a controversial campaign on free speech movement. At the beginning, Bashar seemed to tolerate the *free speech movements* that were blooming all around the Syrian intellectual society. During the first period of his mandate, more than 70 “dialogue clubs” have been established, in which people could freely meet and political themes have been debated. The government did not entirely approve them, However, as long as those movements respected specific criteria of *no secrecy* and *no foreign contacts with other groups* (which could consist in a threat to the government itself), the State’s institution tolerated them. The proliferation of free speech groups in Syria is recognized under the so-called *Damascus Spring*. It constituted a valid attempt to create a civil society, based on the political public debate, that would have hopefully led to the first credible political opposition to the Baath party. <sup>(37)</sup>

During October 2000, a group of intellectuals published the “the statement of 99”, in which it was requested the end of martial law (in power since 1963), political pluralism and respect of the fundamental right of the individual. Specifically, the Statement wanted to ensure the freedom of media and expression along with the right to summon non-violent forums of discussion. This statement has been followed by the “Manifest of 1000” appeared in January 2001, which basically expressed the same contents of the previous one. Unfortunately, the *Damascus Spring* lasted only few months: on 29 January 2001, Syrian Information Minister Adnan `Omran declared that civil society is an “*American term*” that had recently been given “*additional meanings*” by “*groups that seek to become parties.*”

This means that Al-Assad government began to fear the civil society movements as a risk factor leading to the deinstitutionalization of the Baath party. On February, Assad declared that:

*“when the consequences of an action affect the stability of the homeland, there are two possibilities: either the perpetrator is a foreign agent acting on behalf of an outside power, or*

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<sup>(37)</sup> According to Human Rights Watch, at the beginning of his mandate, “*Bashar al-Asad emphasized the principle of openness. Sensing a possible opportunity, many political and human rights activists began to raise their voices to demand the introduction of greater freedoms and political reforms in Syria. A number of informal groups began meeting in private homes to discuss human rights and reform efforts. The authorities allowed these forums to take place, leading to a period of relative openness often referred to as the “Damascus Spring.” By early 2001, 21 such informal groups functioned across Syria.*”

Human Rights Watch, REPRESSION OF POLITICAL AND HUMAN RIGHTS ACTIVISM, report available at: <https://www.hrw.org/report/2010/07/16/wasted-decade/human-rights-syria-during-bashar-al-asads-first-ten-years-power>

*else he is a simple person acting unintentionally. But in both cases a service is being done to the country's enemies, and consequently both are dealt with in a similar fashion, irrespective of their intentions or motives."*

After an initial expansion towards freedom of expression in 2000, Bashar Al-Assad was slowly reconsidering his policy. The "old guard" forced him to look the other way when it comes to the civil society movements and human rights respect: if you give power to the opposition, you will end up by weakening your own party. That is something that could not be tolerated by the old supporters of the Baath party, which are now warmly suggesting Bashar to repress the democratic wave started during his presidency. <sup>(38)</sup>

Consequently, attacks on the reform movements by senior government officials and the state-run media escalated in February 2001, and discussion forums were ordered to clear their agendas, speaker lists, and participants with the authorities in advance. By late summer, outspoken dissidents were being accused of insulting the honour of the nation. The historic leader of the Syrian Communist Party, Riyad at-Turk, was arrested after he publicly criticized the Baath Party's economic policies and Syria's involvement in Lebanon. Moreover, liberal activists were rounded up, detained, imprisoned, threatened or subjected to physical violence by the security services during the rest of the year. <sup>(39)</sup>

President Assad was slowly sinking any attempt for a democratic change: provide Syrians with a public space to discuss their aspirations and criticize the government in a productive way. As pointed out by many authors, the Arab Springs has been the MENA movement which best addressed the main problem of the Middle East countries: the lack of popular political representation and the absence of political debate spaces. People were claiming their fundamental rights to be respected, rather than an Arabic- or Pan-Socialist movement to be created. <sup>(40)</sup>

In 2005, the opposition tried to retake the lead as a gamechanger inside Syria: the withdrawal of the Syrian army from Lebanon as a result of the Cedar Revolution, gave back the floor to the civil society movements: the Damascus Declaration have been issued in 2005 and signed by more than 250 major opposition figures. The four pillars which constituted the document have been nonviolence, democracy, oppositional unity and democratic change. For the first time ever, communists, nationalists, Islamic groups, Kurdish and Arab nationalists were working

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<sup>(38)</sup> SAMER N. ABBOUD, *Syria*, (Polity, 2015), p. 14

<sup>(39)</sup> Britannica, SYRIA IN 2001: <https://www.britannica.com/place/Syria-Year-In-Review-2001>

<sup>(40)</sup> LOUISE FAWCETT, *International Relations of the Middle East*, 3rd edition (Oxford University Press, 2013) pp. 211-212

together to solve the grave democratic violations happening throughout Syria. However, there was no real leadership inside the movement, which could have undertaken a more institutional pressure against the regime of the Baath party. The heterogeneity of the supporter of the Declaration has been one of the reason of its failure: many of the signatories were living outside Syria and could not create a reliable and effective social or popular-based opposition. Thus, this movement has been ineffective to advocate for reforms in the Syrian political landscape. <sup>(41)</sup> Five years later, in January 2010, during an opening speech of a conference in Damascus, First Lady Asma al-Asad stated that the government “*wanted to open more space for civil society to work*,”. However, Syria’s security services continue to deny registration requests for independent non-governmental organizations and none of Syria’s human rights groups have been licensed. She added that “*We will learn from our mistakes and a law will be passed soon (after consultation with civil society) to provide non-governmental organizations (NGOs) the safeguards they need to operate effectively.*” Despite all, no draft law has been made public, and it is not clear whether the Syrian authorities will allow independent and human rights NGOs to officially register or whether they will limit any easing of the law to NGOs that assist the government in its “development-oriented policies.” <sup>(42)</sup>

#### 10. The Hierarchy, the Army and Sectarianism

Thirdly, Syria is a fragmented society. There is no correspondence between the head of state and his confessional or ethnical tribal group. In Syria, minorities have been empowered by the 1963 coup d’état and the following “*Corrective Revolution*” promoted by Hafez al Assad. This could be seen as a positive signal, since for the first time, minorities rose their voices inside the Syrian political landscape. However, political power evolved around the figure of the head of state and his confessional-ethnical tribal group, resulting in the exclusion of the remaining branches of the population. It is worthy to point out that the first clashes inside Syria in 2011 showed up in Dar’a town (Sunni majority) and the north-west region of Homs and Hama, which are homeland of two Sunni groups in opposition against the regime.

Moreover, the Syrian military body was carefully selected. By appointing relatives into the more sensitive roles, the army constituted a *coercive monopoly*, which assured the total control inside the ruling mechanism. The armed force is the only institution capable of maintaining the

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<sup>(41)</sup> SAMER N. ABBOUD, *Syria*, (Polity, 2015), pp. 52-53

<sup>(42)</sup> BBC: IS SYRIA READY TO ENGAGE WITH NGOS?: <http://news.bbc.co.uk/2/hi/8477748.stm>

security from external and domestic threats, constituting Baath's trustworthy insurance against the collapse of the state authority. <sup>(43)</sup>

James Gelvin in his Arab Spring analysis, uses a specific term to explain the reason of the Syrian regime resiliency against the wave of democracy: *coup proof*. A *coop proof* country is a regime impregnable from assault from within. The Syrian regime *coup-proofed* its hierarchy, by giving *coup-critical-positions* to trusted member of the Assad family and religious sectarianist affiliates. For example, Bashar's cousin, was appointed head of the presidential guards. Moreover, his brother has been appointed to commander of the Republican Guard and Fourth Armoured Division. If the regime fails, these people will fail too. The regime is based entirely on relatives' relations and those reliable people have been crucial for firing back against the starting rallies in 2011. The Syrian regime could count on the *shabiha*, security thugs who come from Assad hometown, fiercely loyal. Along with the "official" Presidential Guard body, *shabiha* (which is a word related with *ghost* in Arabic), belong to the inner circle of the regime, which make impossible for them to turn on the regime. If the regime goes, they are going too. <sup>(44)</sup>

There is no single cause for the beginning of the clashes inside Syria. However, it is useful to mention the ultimate sacrifice of Mohammed Bouazizi, the economic crisis in Syria, its international political loneliness, the grave concerns of human rights violations claimed by Western powers. The lack of human rights activists and the inability to create a credible and reliable political opposition to challenge the Syrian regime should also to be taken into account. The reasons to protest the Bashar Assad regime have been several: crisis of the economy, youth unemployment and discontent due to prohibition of freedom of speech. Moreover, people felt betrayed by the Baath party on the moment that it changed its role from its original source of *reform* and *population-friendly*. It seemed as *life has been put on hold* for younger generations. While people have been waiting for jobs and employment opportunities, they became discouraged unemployed. In this context of prohibition of speech along with constant economic and social uncertainty, the Syria uprising began. <sup>(45)</sup>

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<sup>(43)</sup> LOUISE FAWCETT, *International Relations of the Middle East*, 3rd edition (Oxford University Press, 2013), pp. 215-216

<sup>(44)</sup> JAMES GELVIN, *The Arab Uprisings: What Everyone Needs to Know*, 2nd Edition (Oxford University Press, 2015), pp. 116-122

<sup>(45)</sup> *Supra*, p. 21

## 11. The Security Council and the perilous path for a peace agreement

In 6 years, the United Nation System worked hard to solve the Syrian crisis. However, six years later, it could not manage to end the conflict. In this section I will try to cover some passages of the Syrian crisis through the SC eyes, enhancing some aspects of the facts, such as peace processes and UNSC Resolutions.

## 12. From the Dar'a clashes to the first UNSC veto against a resolution for Syria

The wave of freedom and democracy brought by the Arab Spring hit Syria. On 26 January 2011, protests began against the authoritarian regime, inspired by turmoil in many MENA countries. Young Hasan 'Uqla set himself on fire to emulate the immolation accomplished by Tunisian Mohammed Bouazizi. <sup>(46)</sup>

The consequent turmoil's escalation worried Bashar al-Assad. On 15 March the official security forces responded with brutality against peaceful demonstrations all over Syria. On 16 March a sit-in in the Dar'a town took place to rise against the Syrian Army. The protest addressed the arrest of children who wrote *graffiti* on the wall of Dar'a town claiming the "Fall of the Syrian Regime".

The Syrian protests were gradually evolving into a big social movement with no central coordination. One of the famous group was the *Youth of March 15*. The name was referring to the second major anti-regime protest, developed in Da'ra during March 15. Peaceful protesters were asking the departure of the current authoritarian regime, the release of political prisoners and the creation of socioeconomics reforms to address poverty and inequality. <sup>(47)</sup>

Soon, protests widely spread around many Syrian towns. The UNSC was monitoring the situation: clashes will soon become acts leading to an open civil war. Mr. Lynn Pascoe, Under Secretary-General for Political Affairs of the Security Council during a meeting of the SC on 27 April 2011, people in Syria were claiming two ways: the fall of the regime or the path through democratic and economic reforms. <sup>(48)</sup>

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<sup>(46)</sup> LORENZO TROMBETTA, *Siria: dagli Ottomani ad Asad e oltre*, (Mondadori Università, 2013), p.32

<sup>(47)</sup> SAMER N. ABOUD, *Syria*, (Polity, 2015), p. 57

<sup>(48)</sup> S/PV.6524: Meeting of the Security Council, page 2.

<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Syria%20S%20PV%206524.pdf>

For this reason, on 16 April, a month after the beginning of the Dar'a's clashes, refusing to give up his power, Assad decided to swear-in for a new government, whose aim was bringing back stability into Syria through a series of reforms. <sup>(49)</sup>

The international response came quickly. On April 29, the UN Human Rights Council agreed to send a mission to Syria to investigate on possible violations of the International Humanitarian Law (especially the protection of civilians during the demonstrations).

*“Decides to urgently dispatch an independent, international commission of inquiry, to be appointed by the President of the Council, to investigate all alleged violations of international human rights law in the Syrian Arab Republic, to establish the facts and circumstances of such violations and of the crimes perpetrated and, where possible, to identify those responsible, to make recommendations, in particular, on accountability measures, all with a view to ensuring that those individuals responsible are held accountable, and to report to the Council at its seventeenth session, and calls upon the Syrian authorities to fully cooperate with the Commission [...]”*

Assad was trying to save his ruling legitimacy by undertaking a *dual reform strategy*: on one hand, Assad was promoting a series of cosmetic reforms with the intention to satisfy some of the protesters' demands and placate the turmoil. On the other hand, the security apparatus (*mukhabarat*, the secret services) and the *shabiha*, (thugs loyal to the regime), were repressing, torturing, beating, kidnapping and murdering protesters and civilians which were taking part to the rallies. <sup>(50)</sup> <sup>(51)</sup>

In this occasion, Kyung-wha Kang, the UN Deputy High Commissioner for Human Rights, noted that Syria is a State party to nearly all of the core international human rights treaties, including the International Covenant on Civil and Political Rights. <sup>(52)</sup>

The 1976 International Covenant on Civil and Political Rights protect people and states that:

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<sup>(49)</sup> Speech by President Bashar al-Assad to ministers after the swearing-in of Syria's new government, 16 April 2011, official translation brought by SANA, the Official Syrian News Agency. Link: [http://al-bab.com/albab-orig/albab/arab/docs/syria/bashar\\_assad\\_speech\\_110416.htm](http://al-bab.com/albab-orig/albab/arab/docs/syria/bashar_assad_speech_110416.htm)

<sup>(50)</sup> SAMER N. ABBOD, *Syria*, (Polity, 2015), p. 58

<sup>(51)</sup> On April 2011, Assad regime extended citizenship to stateless Kurds and repealed the Emergency Law which had been in place since 1963 in an attempt to control and quell the rallies.

<sup>(52)</sup> UN, *UN Human Rights Council calls for investigation into alleged abuses in Syria*, [https://www.un.org/apps/news/story.asp?NewsID=38237#.V\\_9p81SLRdg](https://www.un.org/apps/news/story.asp?NewsID=38237#.V_9p81SLRdg)



*PART I*

*Article 1*

*“1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development. [...]*

*3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.)”* <sup>(53)</sup>

Mr. Ban Ki Moon reiterated an end to the mass arrest of the peaceful demonstrators, who were lawfully show their disagreement against the new government formed on April. <sup>(54)</sup> The Security Council, during an open speech debate, called the urgency on the protection of civilians in armed conflict. An extract from the debate:

*“We urge all parties to armed conflicts to fully comply with their obligations under international humanitarian law concerning the protection of civilians in armed conflict”.*

Meanwhile, Syria withdrew its bid for membership in the Human Rights Council, leaving the place to Kuwait as a possible future candidate. However, Bashar Ja’afari, the Syrian Ambassador to the United Nations, declared that this renounce has nothing to do with the crisis unfolding in Syria. <sup>(55)</sup> <sup>(56)</sup>

Ban Ki Moon, warmly suggested an independent investigation of all the killings occurred during the protests and called for a UN team to enter Syria to assess the humanitarian situation, particularly in the southern city of Dar’a, place where clashes began in March 2011.

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<sup>(53)</sup> OHCHR, *International Covenant on Civil and Political Rights*, full text:

<http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

<sup>(54)</sup> UN, Syria, *Ban reiterates calls for end to deadly violence and mass arrests*,

<http://www.un.org/apps/news/story.asp?NewsID=38315#.WFAh84WcFim>

<sup>(55)</sup> POMED, Syria withdraws nomination for Human Rights Council, <http://pomed.org/blog-post/human-rights/syria-withdraws-nomination-for-human-rights-council/>

<sup>(56)</sup> Human Rights Watch, *UN: reject Syria’s Human Rights Council candidacy*,

<https://www.hrw.org/news/2011/05/06/un-reject-syrias-human-rights-council-candidacy>

On June 8, Security Council members discussed on a draft resolution on the situation in Syria. The draft Security Council resolution recalled the Syrian government's responsibility to protect its citizens, stresses the need for accountability, condemns the systematic abuse of human rights including killings, arbitrary detention, disappearances and torture; and calls upon Syrian authorities to:

*“[.]respect human rights and international humanitarian law, act with restraint and refrain from reprisals, and allow unhindered humanitarian access; undertake comprehensive and credible reforms for genuine political participation; release all prisoners of conscience; lift the siege of Deraa and other affected towns and lift all media and communications restrictions; launch a credible and impartial investigation and cooperate with the UN Human Rights Council's investigative mission.”*

This draft resolution has never been voted. In fact, Brazil, South Africa, India, China and Russia raised the issue that the Council should not prescribe how a country should reform itself politically. On the contrary, the solution to the current crisis should be found through a Syria-led political process. The discussion pointed out the fact that the problems in Syria are still a domestic concern and that President Assad should be given more time to deal with them without outer interference. Moreover, USA hesitation on putting forward the draft is due to the fear of the possible veto coming from any members of the SC, which could have embolden the Assad regime. <sup>(57)</sup>

Meanwhile, the conflict was escalating in Syria, with a major aerial attack in June in the north-west of the country. The aerial campaign was in response to the 120-regime soldier killing by armed rebels. Security forces detained and tortured thousands of Syrians if they were suspected to feel sympathy or sharing the vision of the protesters. <sup>(58)</sup>

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<sup>(57)</sup> SECURITY COUNCIL REPORT, 26 May 2011 No. 2:  
<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Update%20Report%2026%20May%202011%20Syria.pdf>

<sup>(58)</sup> SAMER N. ABBoud, *Syria*, (Polity, 2015), p. 60

Meanwhile, the US and French Embassy have been attacked by Assad supporters. On the international level, members of the SC condemned in the strongest terms the attacks against embassies in Damascus, which have resulted in damage to buildings and injuries to diplomatic staff. Moreover, they recalled the fundamental principle of the inviolability of diplomatic missions and the obligations on host Governments, including the 1961 Vienna Convention on Diplomatic Relations, to take all appropriate steps to protect embassy structures. In this occasion, the members of the Security Council call on the Syrian authorities to protect diplomatic property and personnel. <sup>(59)</sup>

The attacks came after a separate visit of the US and France Ambassadors in the city of Hama. Both governments were expressing solidarity to the anti-regime movements, which could explain the aggressions experienced by both foreign representations in Syria. <sup>(60)</sup> <sup>(61)</sup> The incidents coincide with a government-organised dialogue conference in Damascus that many opposition leaders are boycotting. The meeting would discuss possible political reforms, which the government hope will bring an end to the four-month-old clashes.

On August 3, the Security Council adopted a Presidential Statement which addressed to the Syrian Government to stop the violence against the anti-government movements and calls on the Syrian authorities to respect human rights under the international law and the treaties signed by the government. <sup>(62)</sup>

Presidential Statement has been followed by a Human Rights Council Seventeenth special session on 22 August 2011 on “*Grave human rights violations in the Syrian Arab Republic*”, which:

*“Decides to dispatch urgently an independent international commission of inquiry, to be appointed by the President of the Human Rights Council, to*

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<sup>(59)</sup> UN, *SC press statement on embassy attacks in Damascus*, <http://www.un.org/press/en/2011/sc10321.doc.htm>

<sup>(60)</sup> BBC, *Syria: Assad supporters attack US and French embassies*, <http://www.bbc.com/news/world-middle-east-14111198>

<sup>(61)</sup> According to Geneva Convention on the Vienna Convention on Diplomatic Relations it is up to the receiving State to protect the diplomatic mission:

*Article 22*

*1. The premises of the mission shall be inviolable. The agents of the receiving State may not enter them, except with the consent of the head of the mission.*

*2. The receiving State is under a special duty to take all appropriate steps to protect the premises of the mission against any intrusion or damage and to prevent any disturbance of the peace of the mission or impairment of its dignity.*

<sup>(62)</sup> UNSC Report, Presidential Statement, S/PRST/2011/16 :

<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Syria%20%20SPRST%202011%2016.pdf>

*investigate violations of international human rights law in the Syrian Arab Republic since July 2011[...]*”

Following the establishment of the independent Commission, UK began to circulate a draft resolution containing sanction measures on Syria in response to the ongoing systematic human rights violations by Syrian security and military forces. By the way, the draft has never been voted.

The first UNSC Veto came with a draft resolution presented in October 2011. As known, a contrary vote from a Permanent Member of the SC is enough to block any Security Council resolution. The draft has been blocked by the veto from China and Russia. <sup>(63)</sup>

The document contained deeply condemned “*the continued grave and systematic human rights violations and the use of force against civilians by the Syrian authorities.*”.

The motivations of the veto decision have been the following:

China’s Ambassador, Li Baodong, stated that while his country was highly concerned about the violence in Syria, the text as it stood would only complicate existing tensions;

Russian Ambassador Vitaly Churkin said his country did not support the regime of Syrian President Bashar al-Assad but the draft resolution would not promote a peaceful resolution of the crisis;

Counterparts US and France, showed their disappointment over the failed attempt to adopt the Resolution. They both contested the claims raised by the oppositions that the Resolution would only increase the risk of a direct intervention in Syria by external powers.

Syria’s ambassador in the UN, Bashar Ja’afari, soon after the conclusion of the vote process, said that the Damascus government already has in plan a series of pro-democracy reforms to satisfy the requests of the protesters inside their Country. Moreover, referring to the US and France concerns, he added that this vote should not shock anyone, as it is not the first time that a Country use its veto power to block the resolution. <sup>(64)</sup>

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<sup>(63)</sup> UN, *Russia and China veto draft SC Resolution on Syria*,  
<http://www.un.org/apps/news/story.asp?NewsID=39935#.WE6McIWcE2x>

<sup>(64)</sup> The Guardian, *Russia and China veto UN resolution against Syrian regime*,  
<https://www.theguardian.com/world/2011/oct/05/russia-china-veto-syria-resolution>

### 13. The League of Arab States, the Kofi Annan Plan and the adoption of SC Resolutions 2042-2043

As the UNSC could not reach a shared view on the future of Bashar al-Assad in Syria, the League of Arab State is trying to help by putting pressure on the Syrian president. The Saudi Monarchy, symbol of the Islam Sunni heterodoxy, has always been hostile to the Alawi regime of Syria and the Shia ties with Iran. That is one of the main reason which caused the internationalization of the Syrian conflict. One of the proposed solution has been the League of Arab States Plan. The Gulf Cooperation Council (Qatar and Saudi Arabia are the major supporters), supported the LAS solution on Syria. These actors were the same who approved the armed intervention against Libya in 2011. At this stage, some of the Western powers were masterminding a wide plan to reach a change of regime inside Syria: Washington was working on the creation of a *contact group* which would lead to the establishment of the *Friends of Syria group*. This contact group which is formally an external forum of discussion outside the United Nations, would have the task to maintain the ties with several rebel groups inside Syria, to provide with stability and synchronizing their actions against the regime. Moreover, the plan was expected to build some buffer zones in correspondence with the Turkey and Jordan borders if Bashar will not stick to the LAS plan. These areas were intended to surround Syria, preventing the spread of the crisis throughout all Middle East. Obviously, this plan required the support of the UN to authorize a legal action in Syria and that aspect caused the fracture inside the UNSC, which saw USA, UK and France supporting the rebel groups, while Russia and China were helping the Syrian regime by vetoing any dangerous SC resolution. <sup>(65)</sup>

Syrian authorities, at least at the beginning, seemed to back LAS' plan to end violence in Syria. In fact, on November 3, Damascus agreed to the Arab League Plan. The content of the agreement aimed at stopping violence against protesters, removal of tanks, armoured vehicles from the streets, releasing all political prisoners and beginning a dialogue with the opposition within the country. Syria also agreed to allow journalists, human rights groups and Arab League representatives to monitor the situation in the country. <sup>(66)</sup>

On 6 November, demonstrators have been killed and the Arab League saw this act as a breach on the Arab Plan previously agreed. The crisis is unfolding once again in Syria and the LAS decided to act: on 12 November, during an emergency meeting to discuss the Qatari Foreign

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<sup>(65)</sup> ROBERTO IANNUZZI, *Geopolitica del Collasso*, (Castelvecchi, 2014), pp. 154-156

<sup>(66)</sup> The Guardian, *Arab League to reveal Syria Peace Plan*, <https://www.theguardian.com/world/middle-east-live/2011/nov/02/arab-league-to-reveal-syria-plan-live-updates>

Minister, Sheikh Hamad Bin Jassim, announced the suspension of Syria from the Arab League regional organization. In addition, LAS imposed sanctions upon Syria as the Arab Country did not follow the League's plan agreed on November 2.

Youssef Ahmed, Syria's representative to the Arab League, affirmed that the decision to suspend Damascus violated the organization's charter and showed it was "*serving a Western and American agenda*".<sup>(67)</sup>

However, the discontentment shown by Syrian people is well based: according to the UN, since the beginning of the clashes, 3500 people died due to the repression of the Assad regime forces. Moreover, the Arab League also called on its member states to withdraw their ambassadors from Damascus and threatened to recognise the Syrian National Council (SNC), a broad-based opposition group, if Syria does not implement the Arab peace deal that it has already agreed to.<sup>(68)</sup>

The Syrian National Coalition is an umbrella organizations, which aims to coordinate the several oppositions and factions inside Syria against the Assad regime. Foreign countries such as Turkey, Qatar, USA and France are among the main funders of this coalition providing the most money and weapons to rebels inside Syria. The organization has been hosted by Turkey in Istanbul. Two meeting, the first in Antalya and the second in Istanbul between June and July marked the establishment of the SNC.<sup>(69)</sup>

At the beginning of the crackdowns, Turkey tried to convince Assad to concede to the Syrian population what they were strongly requesting: on August, Turkey Foreign Minister Ahmet Davutoglu held a six-hours meeting in order to raise pressure on Assad to quell the protests in pacific way. Despite these efforts, Assad abandoned the reform path and sustained the fight against what he called *terrorists*, the oppositional forces. According to Bashar, those groups are deeply supported by Western countries and represented an attempt to overthrow his regime.<sup>(70)</sup> When it was clear that Bashar had no intention to sit down at the diplomatic table, even Turkey, a country with strong and important economic ties with Damascus, relied on Western countries to solve the Syrian crisis.

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<sup>(67)</sup> RT, *Arab League suspends Syria*, <https://www.rt.com/news/arab-league-suspends-syria-179/>

<sup>(68)</sup> Al Jazeera, *Arab League decides to suspend Syria*, <http://www.aljazeera.com/news/middleeast/2011/11/20111121342948333.html>

<sup>(69)</sup> ROBERTO IANNUZZI, *Geopolitica del Collasso*, (Castelvecchi, 2014), p. 150-152

<sup>(70)</sup> Al Jazeera, *Turkey raises pressure on Syria*, <http://www.aljazeera.com/news/middleeast/2011/08/20118917850404477.html>

Within the SC, Russia tried to take to the table a discussion for a Draft Resolution on Syria which will be never voted on.

According to Hillary Clinton, the US Secretary of State,

*“for the first time, at least (Russia) is recognizing that this is a matter that needs to go to the Security Council...” “...It is just that we have differences in how they are approaching it, but we hope to be able to work with them.”*

Meanwhile, the Free Syrian Army, claimed that there are 25,000 soldiers who would fight to overturn Assad regime. US, together with other nations and organizations are “de facto” supporting this rebel groups, which are fighting for a regime change. While the Western power wanted to change the head of the regime, the Eastern counterpart such as China and Russia wanted Assad to stay and started to give diplomatic cover within the UNSC. <sup>(71)</sup>

As the Syrian authorities were deliberately avoiding the implementation of the LAS plan, the organization claimed Bashar al-Assad to delegate power to his vice president and go for elections as part of the initiative for a peaceful departure of the Syrian regime. <sup>(72)</sup>

On 4 February 2012, the Security Council drafted a Resolutions which backed the *Plan of Action* of the League of Arab States of 2 November 2011 and its decision of 22 January 2012 to support

*“a Syrian-led political transition to a democratic, plural political system, in which citizens are equal regardless of their affiliations or ethnicities or beliefs, including through commencing a serious political dialogue between the Syrian government and the whole spectrum of the Syrian opposition under the League of Arab States’ auspices, in accordance with the timetable set out by the League of Arab States;”.* <sup>(73)</sup>

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<sup>(71)</sup> RT, *Russia puts new draft resolution in Syria to UNSC*, <https://www.rt.com/news/syria-russia-resolution-draft-963/>

<sup>(72)</sup> Al Jazeera, *Arab League calls on Assad to delegate power*, <http://www.aljazeera.com/news/middleeast/2012/01/201212254625411178.html>

<sup>(73)</sup> DRAFT RESOLUTION S/2012/77: <http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Syria%20S2012%2077.pdf>



Thus, the SC was clearly trying to persuade the Assad regime on behalf of the Arab League, preventing external regional powers to be involved. Unfortunately, not only Russia rejected the resolution, but also China did the same.

As the stalemate continued, on 23 February Kofi Annan, former UN Secretary General, has been appointed as UN Special Envoy for Syria in the Arab League, with the intent to back the Arab League plan on Syria and find a political solution to stop the clashes and dealing with Assad in collaboration with the LAS. <sup>(74)</sup>

#### 14. Kofi Annan Plan - UNSC Resolutions: 2042-2043 and Geneva I Talks

As soon as he took office, Kofi Annan began to work on a new way to stop violence throughout Syria. On 16 March, Annan submitted to the Security Council a *Six-Points-Peace-Plan*, which will be the spine of his strategy towards Syria. The plan consisted in:

*(1) commit to work with the Envoy in an inclusive Syrian-led political process to address the legitimate aspirations and concerns of the Syrian people, and, to this end, commit to appoint an empowered interlocutor when invited to do so by the Envoy;*

*(2) commit to stop the fighting and achieve urgently an effective United Nations supervised cessation of armed violence in all its forms by all parties to protect civilians and stabilize the country;*

*To this end, the Syrian government should immediately cease troop movements towards, and end the use of heavy weapons in, population centres, and begin pullback of military concentrations in and around population centres;*

*As these actions are being taken on the ground, the Syrian government should work with the Envoy to bring about a sustained cessation of armed violence in all its forms by all parties with an effective United Nations supervision mechanism. Similar commitments would be sought by the Envoy from the opposition and all relevant elements to stop the fighting and work with him to bring about a sustained cessation of armed violence in all its forms by all parties with an effective United Nations supervision mechanism;*

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<sup>(74)</sup> UN, *Kofi Annan appointed Joint Special Envoy of UN, LAS on Syrian crisis*, <http://www.un.org/press/en/2012/sgsm14124.doc.htm>



- (3) *ensure timely provision of humanitarian assistance to all areas affected by the fighting, and to this end, as immediate steps, to accept and implement a daily two-hour humanitarian pause and to coordinate exact time and modalities of the daily pause through an efficient mechanism, including at local level;*
- (4) *intensify the pace and scale of release of arbitrarily detained persons, including especially vulnerable categories of persons, and persons involved in peaceful political activities, provide without delay through appropriate channels a list of all places in which such persons are being detained, immediately begin organizing access to such locations and through appropriate channels respond promptly to all written requests for information, access or release regarding such persons;*
- (5) *ensure freedom of movement throughout the country for journalists and a non-discriminatory visa policy for them;*
- (6) *respect freedom of association and the right to demonstrate peacefully as legally guaranteed.*

Following three bombing attacks (two in Damascus on 17 and 19 March and one in Aleppo on 18 March, the Security Council adopted Resolution 2042. <sup>(75)</sup> The Six-Point Proposal of the Special Envoy of the United Nations and the League of Arab States has been attached to this resolution.

The SC adopted Resolution 2042, as part of the plan of the Special Envoy Kofi Annan. The Resolution was intended to send 30 unarmed military as preliminary observers to legitimize a way to control and assess the situation in Syria. <sup>(76)</sup>

This paved the way to Resolution 2043, which marked the constitution of the UNSMIS (United Nations Supervision Mission in Syria. <sup>(77)</sup> 300 unarmed military have been sent to Syria in response of the escalation of violence. The expedition should act as a mean to consolidate the cessation of repression. The SC decision is in line with the Kofi Annan six points plan, whose target is to bring stability through the establishment of a cease-fire agreed with both rebels and the Assad government.

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<sup>(75)</sup> SECURITY COUNCIL PRESS STATEMENT ON TERRORIST ATTACKS IN SYRIA, SC/10585:

<http://www.un.org/press/en/2012/sc10585.doc.htm>

<sup>(76)</sup> S/RES/2042 (2012): <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/295/28/PDF/N1229528.pdf?OpenElement>

<sup>(77)</sup> S/RES/2043 (2012) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/305/91/PDF/N1230591.pdf?OpenElement>

Although on March 27, the Special Envoy's office said that the Syrian government had accepted the peace proposal, and would start working to implement it, the cease-fire agreed with the Six-points-plan was weak and failed in mid-April for mainly two reasons: <sup>(78)</sup>

Bashar al-Assad never implemented the plan and continued ordering attacks against rebel-held towns and villages. Moreover, the rebel side did not trust the Syrian president and halted the fights only for a little time.

The 300 UN observers were too slow to deploy and too small for a country the size of Syria. There would have been between 3,000 and 5,000 observer team to make the plan working with the presence of experts and mediators. One thing is clear, since US and Russia did not agree on the outcome of Bashar future, a major deployment of UN troops could have been considered as a sort of external intervention. To pass resolution 2043, the number of observers should have been limited. <sup>(79)</sup>

On May, the ICRC declared that the Syrian conflict could be classified as *non-international armed conflict*. <sup>(80)</sup>

On May 29, Special Envoy Kofi Annan met Assad and remarked the urgency of the situation in Syria. While Assad affirmed that he has a problem inside the country because the attacks have been occurred by the hand of terrorist groups, Mr Annan said that everybody should stick to his Six-points-plan. Addressing the Houle attack in which 108 people died, Kofi Annan said that “*now Syria is at a tipping point*”, meaning that the Kofi Annan Six Point Plan is not an option and should be immediately implemented. <sup>(81)</sup>

Meanwhile, Western Countries started a new coordinated strategy to make more pressure on Syria: UK, France, Germany, Australia and several other Western Nations expelled Syrian diplomats from their Countries, with the *persona non-grata* formula. <sup>(82)</sup>

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<sup>(78)</sup> Al Jazeera, *Kofi Annan's Six-Point-Plan for Syria*, <http://www.aljazeera.com/news/middleeast/2012/03/2012327153111767387.html>

<sup>(79)</sup> The Wire, *Why did Kofi Annan fail?*, <http://www.thewire.com/global/2012/08/why-did-kofi-fail/55353/>

<sup>(80)</sup> ICRC DEFINITION OF NON INTERNATIONAL ARMED CONFLICT: <https://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf>

<sup>(81)</sup> New York Times, *Western Nations, protesting killings, expels Syrian envoys*, <http://www.nytimes.com/2012/05/30/world/middleeast/kofi-annan-meets-with-bashar-al-assad.html>

<sup>(82)</sup> New York Times, *Annan says Syria is at tipping point*, <http://www.nytimes.com/video/world/middleeast/10000001575118/annan-says-syria-at-tipping-point.html?action=click&gttype=vhs&version=vhs-heading&module=vhs&region=title-area>

On June 7, during a General Assembly meeting, Mr Ban called for a ceasefire for both the regime and the armed opposition. <sup>(83)</sup>

Despite Secretary General efforts, on 15 June, UNSMIS declared the suspension of its mission due to:

*“a lack of willingness by the Parties to seek a peaceful transition, and the push towards advancing military positions is increasing the losses on both sides: innocent civilians, men women and children are being killed every day. It is also posing significant risks to our observers.”* <sup>(84)</sup>

Moreover, on June 22, a Turkish jet has been shot down, while it was patrolling the Syria border as part of a NATO mission. Even NATO, on June 26, condemned the attack, which has been accomplished by the Syrian regular army. As Turkey is a member of NATO, it could invoke Article V of the North Atlantic Treaty and summon the aid of all 28 countries in the alliance if it is under attack. Turkey's government, is now critical of President Bashar al-Assad's regime as tensions has risen along the border between the two countries. <sup>(85)</sup>

On 30 June, Kofi Annan has been able to summon a conference on Syria, which will be recognized as the Geneva I talks. During the meeting held in the Swiss city, the UN-backed Geneva I talks was attended by US Secretary of State Hillary Clinton, Russian Foreign Minister Lavrov, a representative of China, a representative of UK and Kofi Annan himself. They agreed to urge the implementation of Resolution 2042 and 2043 and to promote the Kofi Annan Six-points-plan. At the end of the Conference, a *Final Communiqué* has been agreed among the parties. The key elements of the document are:

- a. Establishment of a transitional governing body with full executive powers that could include members of the government and opposition, and should be formed on the basis of mutual consent.

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<sup>(83)</sup> UNRIC, *SG remarks to the General Assembly on the situation in Syria*, <http://www.unric.org/it/siria/28132-the-secretary-generals-remarks-to-the-general-assembly-on-the-situation-in-syria-new-york-7-june-2012>

<sup>(84)</sup> *Statement attributable to the Head of the UN Supervision Mission in Syria, General Robert Mood*: [http://www.un.org/en/peacekeeping/missions/past/unsmis/documents/press\\_mood\\_16062012.pdf](http://www.un.org/en/peacekeeping/missions/past/unsmis/documents/press_mood_16062012.pdf)

<sup>(85)</sup> The Guardian, *Syrian crisis: Erdogan threatens military retaliation*, <https://www.theguardian.com/world/middle-east-live/2012/jun/26/syria-crisis-nato-meeting-live>

- b. Participation of all groups and segments of society in Syria in a meaningful national dialogue process.
- c. Review of the constitutional order and the legal system.
- d. Free and fair multi-party elections for the new institutions and offices that have been established.
- e. Full representation of women in all aspects of the transition. <sup>(86)</sup>

This attempt has been designed to build a national-wide dialogue and bring together the government and the opposition. Ironically, both the Syrian institutions and representatives from the oppositions in Syria did not attend the talks. <sup>(87)</sup>

Following, on July, the SC tried to renew the UNSMIS mandate. There have been two draft resolutions on the table. However, only one passed as the first draft implied Article VII of the Charter and has been vetoed by China and Russia. The draft included provisions under Article 41 of the UN Charter, which calls for partial or complete interruption of economic and communication means. If we compare both resolutions, the one which has been approved is only one page long, contains no preamble and no concerns over the critical situation and no references of intervention in line with Chapter VII of the UN Charter. Moreover, the draft vetoed by SC members was clearly accusing the regular government forces of endangering and impeding the UNSMIS personnel mission; in addition the resolution argued that Kofi Annan's Six-points-plan has been deliberately ignored by both the authorities and the Syrian oppositions. <sup>(88, 89)</sup>

On 20 July, the SC agreed and adopted 2059 (2012) to renew the UNSMIS mandate for 30 days more, and extend it only on one condition:

*[...] 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*

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<sup>(86)</sup> Action Group for Syria, Final Communiqué, full text, June 6, 2012  
<http://www.un.org/News/dh/infocus/Syria/FinalCommuniqueActionGroupforSyria.pdf>

<sup>(87)</sup> SAMER N. ABOUD, *Syria*, (Polity, 2015), pp. 151-152

<sup>(88)</sup> S/2012/538 : 19 July 2012, Draft Resolution which has been vetoed.  
<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Syria%20S2012%20538.pdf>

<sup>(89)</sup> S/RES/2059 (2012) : resolution passed, which extends UNSMIS mandate for 30 days more.  
<http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/Syria%20SRES%202059.pdf>

*the level of violence by all sides sufficient to allow UNSMIS to implement its mandate.*

Meanwhile, on 9 July, Kofi Annan met Assad to insist once again on negotiating a new cease fire, and stressed the importance to have a dialogue with several rebel groups in Syria. Annan affirmed that the UN could be helpful to recognize those groups, identifying them and bringing them to dialogue. Annan was prepared to ask Assad to name an envoy to meet a candidate put forward by anti-regime groups. Both sides would be forming a transitional government. The issue that emerged from the meeting was that rebel groups has no unified command or clear structure. Thus, it results very difficult to deal with them. <sup>(90)</sup>

In response to the attacks brought by the official Syrian Army, July 29 marked the officialization of the so-called, Free Syrian Army (FSA). This constitute the main opposition group against Assad forces. The self-declared non-sectarian group is a hybrid of former military and civilian fighters. The origin of this army comes from a reaction to the regime brutality against the peaceful mass protesters. While its headquarters lies in Turkey, the FSA has several battalions in the north-west (Idlib-Aleppo), the central regions (Homs, Hama and Rastan), the coast around Latakia, the south (Deraa) and the Damascus area. These regions have been stage of frequent clashes between the Assad forces and the opposition. As the diplomatic stalemate continued and the FSA proved to be very efficient to resist and counter the regime forces, the role of the FSA has been central and received support from Western countries as well as, NATO with army supplies and logistical support. <sup>(91)(92)</sup>

#### 15. The first UN Envoy failure: Kofi Annan resignation and the US Red Line

On August 2, Kofi Annan announced his resignation as Special Envoy of the UN in the Arab League. <sup>(93)</sup> This act is a consequence of the missed implementation of the Six-points-plan. Following the resignation, the General Assembly quickly approved on 7 August a resolution

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<sup>(90)</sup> The guardian, *Annan-Assad talks on Syria described as constructive*, <https://www.theguardian.com/world/2012/jul/09/annan-assad-talks-syria>

<sup>(91)</sup> Washington Institute, *Assad's army opposition: the Free Syrian Army*, <http://www.washingtoninstitute.org/policy-analysis/view/asads-armed-opposition-the-free-syrian-army>

<sup>(92)</sup> Global Security, *Free Syrian Army*, <http://www.globalsecurity.org/military/world/para/fsa.htm>

<sup>(93)</sup> The Guardian, *Kofi Annan resigns as Syria envoy*, <https://www.theguardian.com/world/2012/aug/02/kofi-annan-resigns-syria-envoy>

which encouraged and renewed the efforts to move for a peaceful political transition and a cessation of the hostilities. <sup>(94)</sup>

On 17 August, Lakhdar Brahimi was appointed as the Joint Special Representative for Syria. Kofi Annan words during his resignation announcement have been a hard blow for the entire peace process the UN was trying to put in place.

*"It is impossible, for me or anyone to compel the Syrian government in the first place and also the opposition, to take the steps necessary to begin a political process, therefore, [...] I do not intend to continue my mission when my mandate expires at the end of August.*

*[...] At the time when we need, when the Syrian people desperately need action there continue to be finger-pointing and name calling in the Security Council [...]*

*"You have to understand: as an envoy, I can't want peace more than the protagonists, more than the security council or the international community for that matter" [...]*

*[...] Let me say that the world is full of crazy people like me, so don't be surprised if someone else decides to take it on." <sup>(95)</sup>*

To put pressure on the Syrian regime, on August 21, US President Barack Obama announced the US *Red Line doctrine*: if the Syrian government will use or move chemical or biological weapons, it will cross a red limit, provoking the USA military response. A red line for Obama will *"change his calculus, it would change its equation"* addressing to the USA non-intervention's vision about Syria. <sup>(96)</sup>

#### 16. Lakhdar Brahimi, the new UN Envoy and the Six-Principles Plan

On 24 October, a press statement by the President of the Security Council has been published. It welcomed the appointment of Lakhdar Brahimi, the new Joint Special Representative for Syria. Moreover, it stated that the Security Council, according to Chapter VIII of the UN

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<sup>(94)</sup> A/RES/66/253 B : [http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a\\_res\\_66\\_253\\_b.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/a_res_66_253_b.pdf)

<sup>(95)</sup> Youtube, *Kofi Annan resignation speech*, video available at: <https://www.youtube.com/watch?v=AxrwDK3J4hA>

<sup>(96)</sup> CNN, *Obama warns Syria not to cross the "Red Line"*, <http://edition.cnn.com/2012/08/20/world/meast/syria-unrest/>

Charter, will take measures to restore peace and security by strengthening the relations between the Arab League and the UN. Syria is in a state of civil war and has become militarised to such a degree that it seems there is little or no political space remaining to negotiate a peaceful solution to the crisis. <sup>(97)</sup>

Consequently, Damascus accepted the ceasefire agreement put forward by Lakhdar Brahimi, the new UN-Arab League joint special representative to Syria and the Arab League chief Nabil al-Arabi. <sup>(98)</sup>

Unfortunately, the proposed ceasefire did not work and has been repeatedly violated by both the regime and the Syrian forces. Meanwhile, the National Coalition of Syria was formally established and recognized. Its aim was to prevent the destruction of Syria on behalf with the FSA. The Free Syrian Army, as reported by the official website of the National Coalition of Syria, worked to provide protection of civilians and their legitimate right to self-defence. It completely stands for the plan outlined by the *Geneva Communiqué*, moving forward to a transitional government to formulate a new Syrian constitution and hold free and democratic elections. <sup>(99)</sup>

In response to ferocious attacks on 12 December and on 21 December, Syria fired Scud missiles against noted rebel positions. Damascus denied using such weapons. According to the public opinion, this situation was showing President Assad running out of options as the Free Syrian Army and the National Coalition of Syria formally self-declared themselves in the previous month and started to gain external support. Many voices occurred, that Assad should not “survive” until the next summer and that the fall of his regime was near. Until now, the conflict has been a domestic Syrian-Syrian affair, even though the international community could not ignore the humanitarian crisis. While Assad was suspected to have used SCUD missiles against rebel held positions, NATO was announcing the deployment of Patriot missiles on the Turkish Syria border. This was a result of Turkey’s parliament approval for military intervention in Syria on 4 October, which constituted the first step to provide a buffer zone between Syria and Turkey. Both countries share more than 800 kilometres of border. <sup>(100)</sup>

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<sup>(97)</sup> SECURITY COUNCIL PRESS STATEMENT ON CEASEFIRE IN SYRIA:

<http://www.un.org/press/en/2012/sc10800.doc.htm>

<sup>(98)</sup> BBC, *Lakhdar Brahimi: Syria ceasefire for Islamic holiday*, <http://www.bbc.com/news/world-middle-east-20054010>

<sup>(99)</sup> ETILAF, *Fact sheet of the National Coalition of Syrian Revolution and Opposition forces*, <http://en.etilaf.org/about-us/fact-sheet.html>

<sup>(100)</sup> BBC, *Turkey’s parliament authorizes military action in Syria*, <http://www.bbc.com/news/world-middle-east-19830928>



For what concerns the humanitarian crisis, Valerie Amos, head of the Office of Coordination of Humanitarian Affairs, (OCHA), briefed the Security Council in a closed-door session on the humanitarian issue in Syria on 18 January 2013:

*“According to UN estimates, there are 4 million people in the country in need assistance, half of whom have been displaced internally”.*

She stressed the fact that UN humanitarian capacity could not easily reach people in need. In addition, more pressure has been made to call for the Security Council to refer the situation of Syria to the ICC (ongoing attempts have been made since March 2011) <sup>(101)</sup>

This statement was clearly displaying the President Assad view on external powers: he was convinced that Western and European Countries were using humanitarian aids and support the Free Syrian Army to sneak inside his territory to overthrow him. <sup>(102)</sup>

Joint Special Representative for Syria Lakhdar Brahimi presented the *New six-principles for a political transition in Syria report* at the United Nations Security Council, to inform the status of negotiations with Syria. The main principles of his new plan are a natural evolution of the previous Kofi Annan Six-point-plan:

- a. Syria's independence, sovereignty and territorial integrity must be preserved;
- b. There must be clear recognition that the ultimate objective is to enable the Syrian people to exercise their legitimate rights to dignity and human rights and to have a full say in the manner in which they are governed;
- c. An essential element in that process is the formation of a transitional Government with full executive powers. The meaning of "full executive powers" has to be clarified before the Syrian parties come together to discuss the formation of that transitional government. Leaving that definition, the definition of full executive powers, to the parties is fairly certain to lead to a dead end;

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<sup>(101)</sup> A/67/694-S/2013/19 LETTER TO THE GENERAL ASSEMBLY AND THE SECURITY COUNCIL: [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2013\\_19.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_19.pdf)

<sup>(102)</sup> ISS, *Humanitarian crisis as a fresh justification for international action in Syria*, <http://www.iss.europa.eu/de/publikationen/detail/article/humanitarian-crisis-as-a-fresh-justification-for-international-action-in-syria/>



- d. The actual negotiation should take place between a strong, fully representative team on behalf of the opposition and a strong civilian-military delegation representing the Government. Of course, both negotiating teams should be comprised of individuals capable of reaching a compromise agreement during a reasonable period of time;
- e. These negotiations should start outside of Syria and take place according to an agreed timetable to enable the process to move – as fast as possible - towards the democratic process which would include the election, constitutional reform and referendum. From what I heard in Damascus and elsewhere, it will not be too difficult to secure agreement to move the country from the present Presidential system to a Parliamentary system of Government;
- f. It is important that the Council unequivocally expresses support for the right of each citizen in Syria to enjoy full equality before the law irrespective of gender, religion, language or ethnicity. <sup>(103)</sup>

#### 17. Stepping over the RED LINE: from the first chemical attacks to the Goutha tragedy

On 19 March 2013, rebels and Syrian Government accused each other of striking with rockets two main cities in the north of Aleppo. Both sides claimed that chemical weapons could have been used. If the attack appears to be true, the International Community would reconsider its approach to the Syrian civil war.

US state department spokeswoman Victoria Nuland declared that:

*"We have no reason to believe these allegations represent anything more than the regime's continued attempts to discredit the legitimate opposition and distract from its own atrocities committed against the Syrian people,"* <sup>(104)</sup>

However, Russia was backing Syria claiming that rebels have been the main responsible of the attacks.

On the contrary, the opposition groups in Syria argued that they did not own any chemical weapon and that they would never hit their own brothers. Meanwhile, Mr Ban Ki Moon, through

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<sup>(103)</sup> CFR, *Brahimi's six principles for a political transition in Syria*, <http://www.cfr.org/syria/brahimis-six-principles-political-transition-syria-january-2013/p29913>

<sup>(104)</sup> The guardian, *Syria attacks involved in chemical weapons, rebels and regime claims*, <https://www.theguardian.com/world/2013/mar/19/syria-rocket-attacks-chemical-weapons>

a letter dated 22 March addressed to the SC, declared that the probe into the alleged use of chemical weapons in Syria's Aleppo will start as soon as possible. <sup>(105)</sup>

On the diplomatic track, UN-Arab League Joint Special Representative for Syria Lakhdar Brahimi briefed Council members on 19 April, sharing his own efforts to facilitate a political solution to the Syrian conflict. Brahimi denied rumours that his resignation was imminent and reiterated his position that the situation in Syria required action by the Council. He added that the solution should be reached with the negotiations between Damascus and the oppositions. Consequently, a new plan on Syria should be discussed within the SC and especially between Russia and USA. Mr. Brahimi said:

*“With the Syrians, I got nowhere. With the Security Council, with the Americans and the Russians we made some progress, but it was far too weak”.*

*“Every day I wake up, I think I should resign, but I haven't so far”.* <sup>(106,107)</sup>

In a letter addressed to the SC from the Permanent Representative of Jordan to the United Nations and to the President of the Security Council, Zeid Ra'ad Zeid Al-Husseini called article 24 (1) and invoked Article 35 (1) of the Charter and Article 34 of the Charter, requesting the SC to consider the fact that the influx of Syrian refugees into Jordan represents a threat to international peace and security. The Syrian crisis was worsening and becoming a major crisis, involving humanitarian intervention, r2p and sovereignty issues. However, the dynamics of the SC seemed to ignore the humanitarian track: if Council members spend too much time addressing the humanitarian issue, the cost might be, in their view, an unacceptable concession on the political track. <sup>(108)</sup>

Following a series of meetings in April and May, US Secretary of State John Kerry and his Russian counterpart Sergei Lavrov reiterated their commitment to try and solve the Syrian

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<sup>(105)</sup> S/2013/184 LETTER DATED 22 MARCH FROM SECRETARY GENERAL TO THE SC:  
[http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2013\\_184.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_184.pdf)

<sup>(106)</sup> UN, *Joint UN-ARAB League envoy urges SC to act on “most serious crisis”*,  
<http://www.un.org/apps/news/story.asp?NewsID=44712#.WFAOSIWcGtZ>

<sup>(107)</sup> Al Jazeera, *Brahimi gives grim report on Syria stalemate*,  
<http://www.aljazeera.com/news/middleeast/2013/04/2013419182328159159.html>

<sup>(108)</sup> S/2013/247 PRIVATE MEETING WITH JORDAN ON SYRIA:  
<http://www.whatsinblue.org/2013/04/private-meeting-with-jordan-on-syria.php>

crisis. This is the first step through the Geneva II Conference on Syria. The difference between Geneva I and Geneva II is that the new plan will try to bring together both opposition and government for direct talks. This time, Brahimi could address the trend of the meeting not only on the necessity for a shared political transition without moving for a military action against Assad, but also, he took in consideration the security of civilians which are the main victims of this civil war. <sup>(109)</sup>

Soon after the 7 May meeting, something started to move as the General Assembly adopted on a resolution, which condemned the Syrian government's use of indiscriminate violence against civilian populations and welcoming the establishment of the National Coalition for Syrian Revolutionary and Opposition Forces as interlocutors needed for a political transition. At this stage, the General Assembly was demanding to all sides of the conflict the end of hostilities and efforts to ensure a political transition and permit human activists to have access to besieged areas assisting those in need. <sup>(110)</sup>

While the Syrian crisis was experiencing one of its several stalemates, Valerie Amos repeatedly briefed the Security Council in June, stating that the regime in Syria was largely using the *siege* strategy, to weaken the counterpart. Syrian forces were not able in any case to simultaneously prioritize multiple fronts, causing them to prioritize *asymmetric techniques* such as sieges and chemical weapons. <sup>(111)</sup>

This deteriorating strategy has been clearly worsening the humanitarian crisis, preventing humanitarian goods to reach the most endangered locations as they have been sieged by the official army or the rebel groups.

During the G8 meeting on June 17-18 in Northern Ireland, leaders agreed on a seven-point document which stated that the Syrian crisis should find an end through a political transition. The joint statement signed by the parties, also condemned "*any use of chemical weapons in Syria*" and urges both Damascus and the rebels at the Geneva conference "*to commit to destroying and expelling from Syria all organisations and individuals affiliated to al-Qaeda and any other non-state actors linked to terrorism*". <sup>(112)</sup>

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<sup>(109)</sup> RT, *Russia, US, to push for global Syria conference*, <https://www.rt.com/news/kerry-lavrov-putin-syria-958/>

<sup>(110)</sup> A/RES/67/262. GENERAL ASSEMBLY ADOPTS TEXT CONDEMNING VIOLENCE IN SYRIA: <http://www.un.org/press/en/2013/ga11372.doc.htm>

<sup>(111)</sup> Businessinsiders, *Assad's regime 5 biggest military goals in the Syrian civil war*, <http://www.businessinsider.com/these-are-the-assads-regimes-4-biggest-military-goals-in-the-syrian-civil-war-2015-4?IR=T>

<sup>(112)</sup> BBC, *G8 backs urgent Syria peace talks in Geneva*, <http://www.bbc.com/news/world-middle-east-22957614>

In August 2013, all the diplomatic efforts tried until now seemed to vanish in one night. The Ghouta attack marked one of the lowest events of the Syrian Civil War. A cruel chemical attack launched in Ghouta, a rural zone around Aleppo killed more than 1000 people. The losses were related with exposure to sarin, a neurotoxic agent. It remained unclear who carried out the attack. <sup>(113)</sup>

The same day, members of the SC requested an urgent meeting to brief the situation of the attack. UK, France and US, strongly condemned this act and urged for an immediate UN investigation. Russia, as always, has been very cautious and suggested that the attack could have been led by the opposition as an attempt to discredit the regular Damascus government.

The P5 disagreement inside the SC was preventing an efficient and decisive action in Syria. It appeared that the political level was completely detached from the situation on Syria's ground. Both At this point, China and Russia have vetoed three resolutions on Syria (October 2011, February 2012 and July 2012) and there was no change in their positions.

In this context, the Red Line Doctrine traced by the US President Obama, has been widely surpassed. From now on, the intervention could become more and more likely to happen, despite the authorization of the SC.

Thus, a draft resolution introduced by UK on 28 August urged the international community an authorisation for *all necessary measures* under CHAPTER VII of the UN Charter. The UN Chemical Weapons Team, which was already present on Syria's ground during the Goutha attack, has been given permission to go and visit the site of the raids to assess the situation. <sup>(114)</sup>

#### 18. Resolution 2118 on Chemical and Geneva II Talks: from stalemate to compromise

USA and Russia in August agreed to prepare preliminary talks during September, in order to start Geneva II talks as soon as possible. The international community and Mr. Ban Ki Moon are pushing to force the beginning of what could be a light at the end of the tunnel. However, after the chemical attack affair, US called off the preparatory works.

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<sup>(113)</sup> BBC, *Syria Chemical attack: what we know*, <http://www.bbc.com/news/world-middle-east-23927399>

<sup>(114)</sup> UN, *Syria un chemical weapons team reaches inspection site*, <http://www.un.org/apps/news/story.asp?NewsID=45701#.WFAgcoWcFim>

On 9 September, to avoid a unilateral military strike on Syria by the US over the Syrian government's usage of chemical weapons, Russia proposed to the UNSC that Syrian chemical weapons stocks would be put under international control. <sup>(115)</sup>

On a letter dated 19 September 2013 from the Permanent Representatives of the Russian Federation and the US to the Secretary-General, both US and Russia agreed on a framework to eliminate the Syrian Chemical Weapons. The plan will have the objective of complete removal and destruction of CWs in the first half of 2014.

While the United States Secretary of State of the United States of America, John Kerry stated that Assad would not comply with a potential SC resolution, Sergey Lavrov Minister of Foreign Affairs of the Russian Federation, prevented a direct intervention in Syria, protecting the Syrian government by putting its chemical arsenal under international control. <sup>(116)</sup>

Finally, on 27 September, the SC adopted Draft Resolution 2118, which dealt with the destruction of any chemical weapons on the Syrian ground and encouraged the Geneva II Peace Talks to take place, to ensure a peaceful political transition and a temporary governing body with full executive powers.

Even though, the Resolution has been the first hopeful news on Syria in a long time, the disagreement between US and Russia is still relevant: while John Kerry stated that it was up to the regime to implement in an effective way to comply with the provisions included in Resolution 2118, Sergei Lavrov underlined the fact that Syria is not the only responsible for its implementation. <sup>(117)</sup> <sup>(118)</sup>

Meanwhile, UN secretary General pressured the SC to quickly create a mission to implement UNSC Resolution 2118. He proposed a Joint Mission between UN and OPCW (Organization for the prohibition of Chemical Weapons), to dismantle the Syrian chemical weapon programme. As the situation in Syria is critical and unclear, the UN-OPCW mission must be

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<sup>(115)</sup> The Guardian, *Russia calls on Syria to hand over chemical weapons*,

<https://www.theguardian.com/world/2013/sep/09/russia-syria-hand-over-chemical-weapons>

<sup>(116)</sup> A/68/398–S/2013/565: General and complete disarmament: implementation of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction. [http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_2013\\_565.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2013_565.pdf)

<sup>(117)</sup> S/RES/2118 (2013): Resolution 2118 on page 4/13, paragraph 21, recalls Chapter VII of the UN Charter. However, it does not include which kind of intervention would be implied. Thus, any decision to impose measures under Chapter VII, could unleash the veto of SC members like Russia and China, preventing the adoption of the resolution and a consequent stalemate. [http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_res\\_2118.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2118.pdf)

<sup>(118)</sup> UN Press, SC requires scheduled destruction of Syria's Chemical Weapons, <http://www.un.org/press/en/2013/sc11135.doc.htm>

set as soon as possible and the Secretary General proposed a simple exchange of letters by the SC Members to arrange and authorize the operation. <sup>(119)</sup>

As the Geneva II Peace talks was approaching, many of the SC Members did not allow a negotiation for a new resolution on Syria at this stage, as it would have endangered the incoming peace talks planned on 22 January 2014. If Resolution 2118 would not be implemented, some members could move towards a humanitarian resolution, which may include the R2P (responsibility to protect) clause to operate in favour of crimes against humanity, as the UN Independent Commission of Inquiry pointed out through massive evidences. <sup>(120)</sup>

## 19. Geneva II Talks

On the eve of the January 22 (2014) Geneva II peace talks, UK circulated a draft press statement, which condemned the Syrian government airstrikes which have been occurring on a daily basis. In particular, it highlighted the fierce of the attacks, confirming the use of heavy weapons as SCUD missiles and Barrel Bombs against rebel-held positions. In the eyes of the International Community, Syria is not respecting its primary responsibility to protect civilians, failing to fulfil its obligation under international humanitarian law. A similar draft has been circulated by the US on 18 December. However, Russia blocked the statement as it resulted improper to point the finger only to the Damascus government for the responsibility over the attacks in Syria.

The SNC (Syrian National Coalition) met in Paris along with the Friends of Syria Group with the purpose to invite the Syrian National Coalition to the Geneva 22 January talks. On 12 January, during the meeting, the future political change in Syria have been discussed. The issue at stake for Geneva II talks was to decide over the future role of President Assad.

On 22 January, the Geneva II talk was held and saw the participation of the SNC. Predictable, the vision of the several protagonists have been very diverse. US was saying it was unthinkable Assad would have any role in a transitional government, while Russia argued against predetermining the outcome of the peace process. Meanwhile, the Syrian National Council expressed its doubt on whether the government was there to negotiate in good faith. <sup>(121)</sup>

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<sup>(119)</sup> Whatsinblue, *Briefing on joint OPCW and UN Mission*, <http://www.whatsinblue.org/2013/10/briefing-on-joint-opcw-and-un-mission.php>

<sup>(120)</sup> Whatsinblue, *Briefing on humanitarian situation in Syria*, <http://www.whatsinblue.org/2013/12/briefing-on-humanitarian-situation-in-syria.php>

<sup>(121)</sup> UNSC, Syria February 2014 Monthly Forecast: [http://www.securitycouncilreport.org/monthly-forecast/2014-02/syria\\_4.php](http://www.securitycouncilreport.org/monthly-forecast/2014-02/syria_4.php)

During the Conference, Ban Ki Moon had the role of mediating the talks between Syria and the opposition. More than one time he had to stop the Syrian Foreign Minister, Walid Muallem, accusing him to use inflammatory language against the Syrian National Coalition. The Minister was in fact referring to the SNC as a terrorist and extremist group. Syrian foreign Minister response to Ban Ki Moon has been the following:

*“You live in New York, I live in Syria, I have the right to give the Syrian version here in this forum [...]”* <sup>(122)</sup>

The representative of the SNC, was asking to the Syrian government to immediately sign the Geneva Communiqué, which would transfer the power from Assad and open the path towards a political transition. However, the result of Geneva II, at least on the diplomatic track, has been a complete failure. <sup>(123)</sup>

Special Envoy Brahimi, from 24 January on, was shuttling between the SNC and government delegations in order to drive the UN mediation talks. He was expressing some signs of hope that the talks would at least continue through the end of January. At least he managed to bring the Syrian government and the SNC in the same room. Despite Brahimi’s efforts, two rounds of talks ended producing no outcomes. In fact, while Assad regime was focused on tackling terrorist groups on Syria’s soil, the SNC was forcing the implementation of the Geneva Communiqué. <sup>(124)</sup>

Following the failure of Geneva II talks, the SC decided to rely on humanitarian resolutions. If diplomatic efforts and political transitions seemed not feasible, the UN tried to focus on Syrian civilians in need. On 22 February, SC adopted unanimously Resolution 2139 demanding to the Syrian authorities to allow and facilitate the access to humanitarian aid through the conflict lines, especially in besieged areas, to stop aerial bombing and to fight terrorist threats.

Regarding the chemical weapon track, UN-OPCW briefings indicated significant concerns regarding Syria’s cooperation. If such concerns are again amplified, the Council could issue a statement reminding Syria that resolution 2118 decided to impose measures under Chapter VII in the event of non-compliance.

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<sup>(122)</sup> BBC, *Angry exchanges as Syria peace conference starts*, <http://www.bbc.com/news/world-middle-east-25840731>

<sup>(123)</sup> BBC, *Syria, Geneva II Peace talks witness bitter exchanges*, <http://www.bbc.com/news/world-middle-east-25843986>

<sup>(124)</sup> BBC, *What is the Geneva Conference on Syria?:* <http://www.bbc.com/news/world-middle-east-24628442>



Meanwhile, on 14 February, Brahimi summoned a trilateral meeting between Russia and US. At this stage, Brahimi, as facilitator for the talks, outlined the fact that Kerry and Lavrov were only blaming each other's: Russia was disrespecting the resolutions adopted through the SC while USA was accused as the main pressure factor for a "regime change" in Syria. The pessimistic conclusion of the UN Special Envoy Brahimi is eloquent: it is quite clear that the UNSC dynamics are a matter between US and Russia disagreement. <sup>(125)</sup>

Entering the 4<sup>th</sup> year of conflict, the Syrian situation was experiencing a new stalemate. While Syria was announcing the presidential election on June 3, UN Special Envoy Brahimi stressed the fact that this would mean the end of the Geneva Process. If Assad, is seeking 7 more years of power, the SC Members should pressure for a negotiated political solution. There is no way that a government which does not comply with SC Resolutions could be in charge for one more term. <sup>(126)</sup>

## 20. Lakhdar Brahimi resigns

On 13 May, UN-Arab League Joint Special Representative Lakhdar Brahimi resigned. During his briefing to the Council members on the failure of the Geneva peace talks, he stated that Syrian government's intransigence has been the major key factors for the process derailment. Between the Syrian government and the oppositions there is no intention to solve the crisis. Moreover, he remarked the fact that the Syrian election announcement was the last straw which made the entire peace process collapse. In the end, he gave a sour prediction: if anything happens, Syria will likely to become a failed state in 2015 with a death toll approaching 350,000. <sup>(127)</sup>

On 22 May, China and Russia blocked a French Draft Resolution referring Syria to the ICC, for grave humanitarian law violations. All other SC members voted in favour. <sup>(128)</sup>

As predicted by Brahimi, on 3 June, President Bashar al-Assad was re-elected with the 88.7 percent of preferences. One thing that has been reported is that the polling has been held only

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<sup>(125)</sup> Whatsinblue, *Special Representative to Syria to brief on stalled political process*: <http://www.whatsinblue.org/2014/03/brahimi-to-brief-council-members-on-syria-for-the-first-time-in-nearly-a-year.php>

<sup>(126)</sup> UNSC May 2014, *monthly forecast*: [http://www.securitycouncilreport.org/monthly-forecast/2014-05/syria\\_7.php](http://www.securitycouncilreport.org/monthly-forecast/2014-05/syria_7.php)

<sup>(127)</sup> SYRIA SPECIAL REPRESENTATIVE TO BRIEF ON FAILED GENEVA PROCESS: <http://www.whatsinblue.org/2014/05/special-representative-to-syria-to-brief-on-failed-geneva-process.php>

<sup>(128)</sup> UNSC Syria June 2014 *monthly forecast*, [http://www.securitycouncilreport.org/monthly-forecast/2014-06/syria\\_8.php](http://www.securitycouncilreport.org/monthly-forecast/2014-06/syria_8.php)



in the governmental controlled area. On 20 June, Secretary General presented a six-points approach to Syria. The plan should consider an arm embargo, humanitarian access, a new political process which should be more effective than the two past Geneva I and II talks, destruction of chemical weapons and the fight of extremist groups. In addition, he announced a new special envoy who would take the lead of the new political solution to the conflict. <sup>(129)</sup> On 16 July, Assad swore in for his new seven-year mandate as President. During his inaugural speech, he called for national reconciliation, however he stated that would never start talks with the SNC, the Syrian National Coalition. <sup>(130)</sup>

For the international community, Assad assignment did not constitute the only bad news for Syria. In fact, on 28 July, the SC adopted a presidential statement in which addressed the seizure of oilfields and pipelines in Syria and Iraq by the new-born ISIS and Al-Nusra group. The message sent by the Council was to prevent any State actor or person with the possibility to trade resources with these terrorist groups.

During July, US increased their supply of weapons and ammunitions to many opposition groups in Syria, as they believe that Syrian rebel forces could be a major factor to counter ISIS from entering Syria, pushing them back to Iraq. <sup>(131)</sup>

Since early June, a new terrorist group named after Islamic State, (ISIS) substantially gained ground and strength. In July, ISIS declared the self-proclaimed capital, Raqqa, which should be the headquarter from which it will establish the Caliphate under the command of Al-Baghdadi. US, starting from June began its strategy by bombing ISIS targets in Iraq and the area around the Iraqi-Syrian border.

However, Damascus declared that any airstrike not coordinate with its government would be considered as an aggression.

On 15 August, the Council unanimously adopted resolution 2170, which condemned ISIS and the al-Nusrah Front for the recruitment of foreign terrorist fighters. <sup>(132)</sup>

The response not only came from the UN, but also from the US: on 10 September, the Obama administration announced the strategy to counter ISIS threat. It included the possibility for an air campaign to Syria. On 19 September, US Secretary of State John Kerry chaired a Council

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<sup>(129)</sup> [http://www.securitycouncilreport.org/monthly-forecast/2014-07/syria\\_9.php](http://www.securitycouncilreport.org/monthly-forecast/2014-07/syria_9.php)

<sup>(130)</sup> UNSC Syria monthly forecast: [http://www.securitycouncilreport.org/monthly-forecast/2014-08/syria\\_10.php](http://www.securitycouncilreport.org/monthly-forecast/2014-08/syria_10.php)

<sup>(131)</sup> Whatsinblue, *Iraq and Syria, Presidential Statement*, <http://www.whatsinblue.org/2014/07/iraq-and-syria-draft-presidential-statement-on-illicit-oil-trade-financing-terrorism.php>

<sup>(132)</sup> UN Press Release, *Security Council Press Statement on Murder of James Foley*, <http://www.un.org/press/en/2014/sc11531.doc.htm>

debate on Iraq whose aim was to discuss the issues of terrorist threats and the intention to form a US-led coalition against ISIS. During the debate, Mr. Al-Jaafari, Minister of Foreign Affairs in Iraq, demanded for assistance to fight back ISIS terrorist group, requiring for aerial support. <sup>(133)</sup>

On 22 September, US-led airstrikes began in eastern Syria, near Raqqa, the self-proclaimed capital of ISIS, as well as near the Syrian-Iraqi border. The targets have been the ISIS oil refineries, command and control facilities, vehicles and training compounds. The airstrikes have been welcomed by the Syrian president, who declared that he supported any international efforts to combat terrorism in his country. This means that implicitly, Assad gave the authorization to the US-led coalition to bomb inside his territory. <sup>(134)</sup> Because of ISIS consolidation along the northern region of Syria, Kurds crossed into Turkey's border. In fact, the north of Syria is the homeland of several Kurdish minorities. This is the moment when Turkey joined the anti-ISIS coalition despite serious threat for reprisal attacks.

## 21. Staffan De Mistura - the Aleppo Plan

To counter the advance of ISIS, US conducted airstrikes around the Kurdish town of Kobani in Northern Syria. ISIS manoeuvres aimed at seizing Kobane to consolidate its control along the Turkish border, implicating a serious threat to a NATO ally.

At this stage, there is no coordination nor dialogue between Damascus and US. In fact, while USA was helping in Kobane, Assad was focusing its attacks on the Syrian held position around Aleppo and Damascus, regaining control on those areas while annihilating the opposition groups.

While the new appointed Special Envoy for Syria Staffan de Mistura was seeking for ways to revive the political process by meeting key players such as Damascus, Amman, Ankara, Beirut, Cairo, Moscow, Riyadh and Tehran, the major issue continued to be Iran and Russia's support for the Assad regime. On a briefing for the SC members on 30 October, De Mistura suggested a UN mediated "freeze-zone" to be tested in Aleppo. These "freeze zones" should permit a short-time ceasefire around delimited areas, to permit aid convoys to reach those spaces during the truces. <sup>(135)</sup>

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<sup>(133)</sup> S/PV.7271, The situation concerning Iraq, [http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s\\_pv\\_7271.pdf](http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_pv_7271.pdf), page 5/43

<sup>(134)</sup> BBC, *Syria: US begins airstrikes on IS targets*: <http://www.bbc.com/news/world-middle-east-29321136>

<sup>(135)</sup> UNSC, *Syria Monthly Forecast*, [http://www.securitycouncilreport.org/monthly-forecast/2015-01/syria\\_15.php](http://www.securitycouncilreport.org/monthly-forecast/2015-01/syria_15.php)

On 10 November, Staffan De Mistura met Assad to advertise its own “Aleppo Plan”. By the way, Bashar al-Assad stressed the fact that the negotiations for these “local freeze truces” with several parties on the field could constitute a major issue for its implementation: nobody knows which kind of legitimacy one could give to the rebels on the street. A legitimate government should not recognize rebel groups who are opposing the regime. <sup>(136)</sup> <sup>(137)</sup>

On 15 December, De Mistura visited Aleppo to discuss once again the entity of the *freeze zones*. The government affirmed that they would liberate rebel-held-areas while establishing *freeze zones*. By the way, this was not consistent with the aim of De Mistura’s freeze strategy. In fact, a general cease-fire should be agreed for all the main actors on the battlefield, not only for the opposition groups. The UN was trying to extend freeze zones until the Turkish border to provide a safe humanitarian corridors for the transportation of both goods and permit human beings who are fleeing from Syria to reach safely the neighbourhood countries. <sup>(138)</sup>

While the diplomatic track was slowly retaking ground, comprehending humanitarian aids as well, a UN Secretary General report on the humanitarian situation in Syria reported that 200.000 people have died since the beginning of the conflict in March 2011; 12.2 million people required humanitarian assistance and more than a half of them are in hard-to-reach areas. 212.000 are besieged by government forces.

To improve and start the UN humanitarian aid delivery, De Mistura tried new political tracks: he encouraged Secretary US John Kerry to held talks with the Syrian government and the opposition leaders in Moscow, starting the so-called Moscow Talks. The Moscow talks were hosted in the Russian capital city in January 2015. The conference marked the efforts to shift the US policy, which would reconsider the role of Assad in case of a political transition process. <sup>(139)</sup>

Meanwhile, on 6 March, UNSC adopted Resolution 2209. This document has been adopted following the result of the OPCW-fact finding mission report. It states with a high degree of certainty that toxic chemicals have been used in the Syrian soil, thus constituting a violation of

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<sup>(136)</sup> UN News Centre, *Plan to ‘freeze’ conflict in Aleppo ‘concrete, realistic,’ says UN Syria envoy*, <http://www.un.org/apps/news/story.asp?NewsID=49308#.WKRIuTvhBPY>

<sup>(137)</sup> Al Monitor, *Staffan de Mistura's Aleppo plan*, <http://www.al-monitor.com/pulse/security/2014/11/syria-agreement-international-aleppo-homs-de-mistura.html>

<sup>(138)</sup> UNSC, *Syria Monthly Forecast*, [http://www.securitycouncilreport.org/monthly-forecast/2015-02/syria\\_16.php?print=true](http://www.securitycouncilreport.org/monthly-forecast/2015-02/syria_16.php?print=true)

<sup>(139)</sup> UNSC, *Syria Monthly Forecast*, [http://www.securitycouncilreport.org/monthly-forecast/2015-02/syria\\_16.php](http://www.securitycouncilreport.org/monthly-forecast/2015-02/syria_16.php)

Resolution 2118. According to Resolution 2209, “*chlorine has been used repeatedly and systematically as a weapon in the Syrian Arab Republic*”<sup>(140)</sup> The Security Council, as a result of non-compliance with Resolution 2118, decided to impose measures under Chapter VII of the UN Charter in the event of future non-compliance. Samantha Power, on his statement after the voting procedures, affirmed that “*only the regime of Bashar al-Assad had the capabilities to deploy and use chlorine weapons and must be accountable for its violation of international law*”. Even though Resolution 2209 shows that chemical weapons have been used in Syria without showing who is accountable for, United States are strongly pushing to blame the regime of Assad.<sup>(141)</sup><sup>(142)</sup>

## 22. The Intra-Syrian-Working Group

Although Special Envoy Staffan De Mistura was taking advantage of the new diplomatic revival, he blamed the Syrian Authority as the main obstacle to ensure a ceasefire and start a political transition. During his July briefing to the Security Council on the situation in Syria he stated that: “*For the moment, the greatest obstacle to ending the Syrian war is the notion that it can be won militarily. It is our failure to act with unified voice to perpetuates this harmful illusion and allows the Syrian parties to think that there is some alternative other than coming to the negotiating table*”.<sup>(143)</sup>

While a third Geneva conference is highly unlikely, because the parts cannot talk to each other, Staffan De Mistura proposed the creation of an *Intra-Syrian working group*. This body will address the key aspects of the Geneva Communiqué (seeking political transition in Syria) and will help to implement it. All Syrian and regional players must be committed to this plan. His plan consisted in 4 phases: the first one is to provide safety and protection for all people inside Syria. The second phase addresses the creation of a transitional governing body and elections. The third phase to combat terrorism and ensure a ceasefire implementation. The final phase will develop public institutions and will try to “*avoid what happened in Iraq [...] when institutions suddenly disappeared and the country got into major difficulties*”.

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<sup>(140)</sup> S/RES/2209 (2015), page 2/2

<sup>(141)</sup> *Adopting Resolution 2209 (2015), Security Council Condemns Use of Chlorine Gas as Weapon in Syria*: <http://www.un.org/press/en/2015/sc11810.doc.htm>

<sup>(142)</sup> SAMER N. ABBOUD, *Syria*, (Polity, 2015), 146-147

<sup>(143)</sup> S/PV.7497, *Briefing by the Secretary-General and Special Envoy for Syria Staffan de Mistura on the political situation*

New diplomatic talks have been held between US Secretary of States John Kerry and Russian Foreign Minister Sergei Lavrov in Doha, (Qatar) to agree on a political solution on Syria-related outcomes. However, this talks could be negative influenced by the US support to Turkey. <sup>(144)</sup> In an effort to create an “ISIS-free zone” in northern Syria, Ankara acted as following: as part of the anti-ISIS coalition, Turkey concluded an agreement with United States conceding them the access to the NATO Incirlik airbase. On 24 July, following a letter to the Security Council, Ankara started military action against ISIS in northern Syria (airstrikes), as the threat of terrorism in Turkish soil grew exponentially. However, it seemed Turkey was prioritizing airstrikes against Kurdish troops, instead of focusing on anti-ISIS strategies. United States seemed to be aware of that, however they did not act against Ankara. If US will complain about Turkey’s strategy, Ankara would denounce the fact that United States are deliberately supporting with weapons, money, as well as training, a terrorist group such as the Kurdish People’s Protection Unit in Syria (YPG). YPG is considered as the Syrian PKK offshoot. PKK is a political group in Turkey and Iraq listed as a terrorist group by several States and International Organizations which comprehends NATO and the EU as well. As a matter of fact, it is no news that Obama’s strategy to defeat ISIS in Syria relied on continue support of YPG troops to avoid the “*boots on the ground strategy*”. <sup>(145)</sup> Kurdish troops in Syria understood that “safe zones” for Ankara meant preventing the creation of a contiguous area under Kurdish control. <sup>(146)</sup>

### 23. Vienna Peace Talks and the ISSG Group

Russian response to the US strategy on fighting terrorist groups came on 30 September, when Moscow began airstrikes in Syrian territory. The military goal, as officially stated by Russian authorities, was to combat terrorism and supporting Bashar al-Assad troops. Secretary General Ban Ki Moon, worried about a possible escalation of the conflict inside Syria, met in October with Foreign Minister Lavrov to ensure that the targets of the airstrikes should comprehend only groups specified by the UNSC (Al-Qaida, ISIS, Al Nusra Front). In addition, the use of barrel bombs and others indiscriminate weapons should stop immediately.

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<sup>(144)</sup> Russia beyond the headlines, Russia unveils plan for anti-ISIS coalition at Doha meeting, [http://rbth.com/international/2015/08/04/russia\\_unveils\\_plan\\_for\\_anti-isis\\_coalition\\_at\\_doha\\_meeting\\_48261.html](http://rbth.com/international/2015/08/04/russia_unveils_plan_for_anti-isis_coalition_at_doha_meeting_48261.html)

<sup>(145)</sup> The Washington Times, *Kurdish Fighters, success against Islamic State makes Turkey nervous*, <http://www.washingtontimes.com/news/2015/jul/5/ypg-kurdish-fighters-success-against-islamic-state/>

<sup>(146)</sup> September 2015, Syrian Monthly Forecast, [http://www.securitycouncilreport.org/monthly-forecast/2015-09/syria\\_23.php](http://www.securitycouncilreport.org/monthly-forecast/2015-09/syria_23.php)

Unfortunately, as reported by Reuters agency, most of Russian airstrikes did not target ISIS controlled areas, but rather armed oppositions-held areas. <sup>(147)</sup>

On 30 October, a new 7-hours-long meeting between Russian Foreign Ministry Lavrov and US Secretary of States Kerry has been held in Vienna along with other foreign powers. Both parts agreed to restart the peace process with more emphasis, following the path of a political transition and keeping Syria united as a single nation. Disagreement on whether Assad should take part to this transition remained. The aim of both Russia and USA was to “demilitarize” the Syrian civil war, avoiding a cold war style-proxy-war between US and Russia’s allies and find a common plan to tackle ISIS’ threat. <sup>(148)</sup>

Finally, the International Syria Support Group (ISSG), met in Vienna on November 14. The ISSG has been established as a US initiative. The group included 20 powers and international organizations, which comprehend China, Egypt, France, Germany, Iran, Iraq, Italy, Jordan, Lebanon, Oman, Qatar, Russia, Saudi Arabia, Turkey, United Arab Emirates, the United Kingdom, the United States, the Arab League, the European Union, and the United Nations. The purpose was to find a way to accelerate an end to the Syrian Conflict, boosting the progress made on the 30 October meeting.

The 14 November meeting produced a peace-project for Syria: the parts agreed on: support the 2012 Geneva Communiqué, which calls for a Syrian-led political transition (no foreign influence, no foreign direct interference); Implement a national-wide cease fire in Syria agreed by the representatives of both the Syrian government and the oppositions; Begin the peace from 1<sup>st</sup> January 2016; Both ISIS and the Jabhat al-Nusra Front are not considered as oppositions forces, rather terrorist groups and they must be defeated. <sup>(149)</sup><sup>(150)</sup>

Within six months, all Syrian sides must establish a credible, inclusive and non-sectarian transitional government. This body will draft a new constitution. Within 18 months, elections will be held under UN supervision.

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<sup>(147)</sup> Reuters Analysis, *Four-fifths of Russia’s Syria strikes don’t target Islamic State*, <http://www.reuters.com/article/us-mideast-crisis-syria-russia-strikes-idUSKCN0SF24L20151021>

<sup>(148)</sup> The New York Times, *Agreement Reached to Restart Syria Peace Talks and Seek Cease-Fire*, [https://www.nytimes.com/2015/10/31/world/middleeast/agreement-reached-to-restart-syria-peace-talks-and-seek-cess-fire.html?\\_r=0](https://www.nytimes.com/2015/10/31/world/middleeast/agreement-reached-to-restart-syria-peace-talks-and-seek-cess-fire.html?_r=0)

<sup>(149)</sup> EEAS, *Statement of the International Syria Support Group*, [https://eeas.europa.eu/headquarters/headquarters-homepage/3088\\_en](https://eeas.europa.eu/headquarters/headquarters-homepage/3088_en)

<sup>(150)</sup> UNSC Resolution S/RES/2249 (20 November 2015), supported the ISSG statement condemning the last terrorist attacks in Ankara, Sinai and Paris, called upon Member States to take all necessary measures to put efforts on tackling Al-Qaeda, ISIL and other groups listed as terrorists.

US Secretary of State John Kerry and Russian Foreign Ministry Lavrov were discording over the political future of Bashar al-Assad: while the first argued that Assad should have no place in the ISSG plan, Russia claimed that only Syrian election decides who will be the next leader in Syria. <sup>(151)</sup>

#### 24. UNSC Resolution 2254

On 18 December, the UNSC unanimously adopted resolution 2254. The resolution endorsed the Geneva Communiqué and the ISSG Vienna Statements. Resolution 2254 set out three main goals: seeking for a ceasefire, delivering humanitarian assistance and finally pursue a political transition and run free elections.

Moreover, it stressed the initiation of the talks in early January 2016 and reiterated the need for a Syria-owned political transition. Moreover, it fully supported the ISSG as a central platform to ease the UN efforts to achieve a lasting political solution for Syria. Secretary General's Special Envoy for Syria Staffan De Mistura encouraged the representatives of both Syrian government and oppositions to engage in formal negotiations, in accordance with the Geneva Communiqué provisions. <sup>(152)</sup>

#### 25. The Geneva III Talks – Intra-Syrian Talks

Even though Geneva III talks should have started within January 2016, the meeting started on February 1<sup>st</sup>. The ISSG prepared the talks while the UN, on behalf of Staffan De Mistura, who mediated the conference. On this occasion, the High Negotiations Committee has been invited to the talks. The HNC has been prepared specifically for the talks in December 2015 during a series of opposition's conferences hosted in Riyadh.

Considered the Turkish presence within the ISSG, no main Kurdish groups have been included in the HNC. <sup>(153)</sup>

Staffan de Mistura knew that one of the main failure of the Geneva II talks (January-February 2014) was the fact that the opposition groups had limited support from armed rebels on the ground, as no one was negotiating with them. That is the reason behind the Saudi and US

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<sup>(151)</sup> Dailymail, *Diplomats set plan for political change in Syria*, <http://www.dailymail.co.uk/wires/ap/article-3318305/Syria-talks-begin-Vienna-pall-Paris-attacks.html>

<sup>(152)</sup> S/RES/2254 (18 December 2015)

<sup>(153)</sup> Carnegie Middle East Center, *Riyadh, Rumeilan, and Damascus: All You Need to Know About Syria's Opposition Conferences*, <http://carnegie-mec.org/diwan/62239?lang=en>



decision to summon the Riyadh Conferences, whose primary goal has been gathering a credible Syrian opposition-diplomatic team. Russia has been invited to attract and “infiltrate” within the HNC some secular groups allied to Moscow, making the building of the opposition group credible.

While Iran and Russia considered some representative of the HNC terrorists, leading to a delay to the beginning of the Geneva III talks, US, Saudi Arabia and other EU countries found the HNC satisfactorily representative of the Syrian opposition.

The list of invitation has been the main issue and produced the failure of the Geneva II talks. As stated by Staffan De Mistura during a Press Conference on 25 January, there will be no government delegation and an opposition delegation. No expectations around this meeting should be raised, no *face to face* consultations. First of all, the list of invitations should include the most groups as possible to make all parties satisfied, triggering a positive landscape leading to a final agreement.

The priority of the talks should be the possibility for a broad ceasefire and the tackling of terrorist groups such as ISIL. Humanitarian assistance will come after the agreement of a ceasefire.

Three main point made the Geneva III a “different” meeting.

The first one is the Proximity talks modality. No open ceremony will be held. This means that if one group representative does not come or suffered from a delay due to technical problems, he/she can easily resume the talks the day he comes. In fact, the first part of the Geneva Talks last two weeks. Flexibility is the key-object of the meeting. <sup>(154)</sup>

The second feature is informality. Delegates are invited but no one should call them delegates. The idea is that someone can come to the meeting and talk about whatever they concern.

The third one is the presence of working groups. The new version of the peace process does not propose a “single-package” agreement. Of course, the Special Envoy has to respect the mandate given by the UNSC through Resolution 2254. However, given the heterogeneous nature of the Syrian society, the participants must have the possibility and flexibility to talk about any issues

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<sup>(154)</sup> Carnegie Middle East Center, *The Road to Geneva*, <http://carnegie-mec.org/diwan/62631?lang=en>



they are concern and women as well as representatives from the civil society are warmly welcomed. <sup>(155)</sup>

The beginning of the Geneva III talks has been backed by the UNSC as well. On 26 February 2016, a Russia and US agreement brought to the adoption of Resolution 2268. The Resolution demands a cessation of hostilities in order to facilitate the Intra-Syrian Talks. This action has been seen as a major factor for the initiation of the Geneva III Talks, as the HNC group publicly stated that they will not be present if a ceasefire will not be ensured between the Syrian government and the opposing groups. <sup>(156)</sup>

## 26. Geneva III stales, Astana Talks rises

As expected, February and March rounds of Geneva III talks brought no agreement between the HNC and the Damascus government. On 24 March the first round of talks ended and brought only a “*Paper on points of commonality*”. The contents reflected what already issued with the *Geneva Communiqué*. De Mistura began a second round of talks on 13 April, however the HNC expressed concerns over the possibility to convene with the Damascus government: in fact, the government proposed a non-negotiable plan which would result in an agreement providing:

- 1- Establishment of a national unity government led by Assad’s presidency, which would avoid a transitional governing body
- 2- Hold parliamentary elections in government-controlled areas on the same day the second round of talks begins
- 3- A new draft of the Constitution will be provided within weeks and approved by a referendum. This means that it will not be approved during the Geneva III process.

This non-negotiable key-points jeopardized the entire Geneva peace process. The requests from the Syrian government were opposing the base of talks set out with Resolution 2254

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<sup>(155)</sup> Staffan De Mistura, Press Conference 25 January 2016, video available at: <http://webtv.un.org/watch/staffan-de-mistura-special-envoy-for-syria-press-conference-geneva-25-january-2016/4720343930001>

<sup>(156)</sup> UNSC Resolution 2268, (26 February 2016)

Moreover, the HNC leader, announced on 18 April the cessation of the Geneva Talks. In fact, the regime refusal to allow unhindered humanitarian aid as prescribed by Resolution 2254 was not granted. <sup>(157)</sup>

Even though Vladimir Putin announced a pull-out from Syria on 14 March, (which according to De Mistura could have had a positive impact to the ongoing Talks), the situation on the Syrian soil was still concerning: as reported by a briefing of the Office for the Coordination of Humanitarian Affairs (OCHA), attacks on Syrian medical facilities that involved casualties among sick, wounded and medical staff, display the restart of the clashes between regime, oppositions and external forces in Syria. This factor, along with the impossibility to deliver a wider humanitarian assistance, were endangering and slowing the Geneva Peace Process. <sup>(158)</sup>

While during January Syrian troops were reconquering zones from rebel held-areas, the possibility to resume political talks were remote. Staffan De Mistura clearly underlined it on 29 June, during a UNSC briefing. In fact, regime forces gained ground since October 2015, when Russia became a constant presence in Syria, Assad forces regained ground against ISIL and opposition groups. On 7 June, Assad gave a message broadcasted by state television and announced that he would win back every inch of Syria and prospected the liberation of Aleppo. <sup>(159)</sup>

US Secretary of State and Russian President Vladimir Putin met in Moscow on 14 July. US proposed a military cooperation to target a common enemy, ISIL and Al-Nusra. In exchange, Russia should pressure Syria to stop airstrikes and attacks against opposition groups, especially in Aleppo to try and restart Peace Talks. On 26 July, De Mistura met with US and Russia counterparts in Geneva to encourage the military and intelligence cooperation and announced the possibility of restoration of the Intra-Syrian talks. <sup>(160)</sup>

On 18 August, Staffan De Mistura had to suspend the regular international humanitarian taskforce meeting in Geneva. He declared a no sense in having humanitarian meeting unless

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<sup>(157)</sup> Al Jazeera Centre for Studies, *Syria: Fate of Assad Impedes a Success of Geneva III*, <http://studies.aljazeera.net/en/positionpapers/2016/04/syria-fate-assad-impedes-success-geneva-iii-160428104128240.html>

<sup>(158)</sup> S/PV.7682, Report of the SG, The situation in the Middle East, 28 April 2016

<sup>(159)</sup> Syria Monthly Forecast, July 2016: [http://www.securitycouncilreport.org/monthly-forecast/2016-07/syria\\_33.php](http://www.securitycouncilreport.org/monthly-forecast/2016-07/syria_33.php)

<sup>(160)</sup> UNSC Syria Monthly Forecast, July 2016, [http://www.securitycouncilreport.org/monthly-forecast/2016-08/syria\\_34.php](http://www.securitycouncilreport.org/monthly-forecast/2016-08/syria_34.php)

some improvements on the humanitarian side in Syria have been reached. It stressed that the only thing the Commission hears is fighting, offensive, counter offensive, rockets, barrel bombs mortars, napalm, chlorine. The fighting in Aleppo continued to escalate, no ceasefire was resisting for more than one day and no humanitarian access was granted neither in July nor in August. Due to fighting, no humanitarian convoy has reached besieged areas in August. US and Russia have to immediately broke a ceasefire in Syria to permit the passage of humanitarian aids. <sup>(161)</sup> <sup>(162)</sup>

On 12 September, a US-Russia ceasefire has been agreed. During that time a UN aid convoys should reach Aleppo and others places to deliver assistance. However, the suspension lasted barely one week, when on 17 September a US strike killed Syrian soldiers and on 19 October an UN aid convoy has been hit, allegedly by Russians. Each party blamed each other, while fighting restarted.

On 25 September, De Mistura briefed the UNSC, saying that the airstrikes reached an unprecedented level of violence. The presence of ISIL or Al-Nusra troops on Syrian soil must not justify such brutality.

Russia vetoed a Resolution tabled by France, demanding immediate end to the fight and flights over Aleppo. On 3 October, US formally announced the suspension of diplomatic contacts with Russia, marking the end of the US-Moscow talks.

On 20 October, Russia declared a unilateral ceasefire attempt in Aleppo (the eastern part, the most endangered, because of the presence of many rebel groups).

## 27. Final Remarks

For what concerns the Chemical Weapons issue, UNSC adopted Resolution 2139 on November 2016. The Resolution extended the mandate of the UN-OPCW Joint Investigative system to determine who has been responsible for the use of chemical weapons in Syria. More than three years after the Goutha attack that killed almost 1,000 people and the UNSC has not been capable to refer the situation to bodies such as the International Criminal Court or to end the investigations on alleged use of CWs. Although Resolution 2118, adopted in 2013, clearly recognizes the use of chemical weapons completely contrary to the legal norms of the

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<sup>(161)</sup> UN News Centre, *Syria: Citing lack of action*, <http://www.un.org/apps/news/story.asp?NewsID=54708#.WKQ4dzvhBPY>

<sup>(162)</sup> UN News Centre, *UN Special Envoy for Syria decries lack of humanitarian access to besieged areas*, video available at: <https://www.youtube.com/watch?v=M4PqdQzsQ8g>

international community, it seems that no progress has been made. On a letter dated November 28, Secretary General Ban Ki-Moon recognized that the poor security on the ground continues to prevent the Syrian government and the OPCW from safely accessing and sealing the remaining chemical weapons facilities. <sup>(163)</sup>

For what regards the political track, thanks to the reconciliation between Turkey and Russia, diplomatic efforts have been made to implement effectively the ceasefire agreed with UNSC Resolution 2336, adopted on 31 December 2016. The document appreciated the joint-efforts undertaken by Russia and Turkey to establish a ceasefire in Syria. Moreover, it looks forward to the Astana talks, a trilateral peace conference proposed by Iran, Russia and Turkey, to be held in the Kazakhstan capital on 23-24 January. <sup>(164)</sup> The first round of this UN-backed meeting, intended to sideline Western powers from the Syrian peace-process. In fact, following the announcement of the Assad government who managed to retake Aleppo from rebel groups and ISIL, the peace-process now needs interlocutor who do not see Assad as a threat for the Syrian Country. <sup>(165)</sup> The Astana talks produced a joint statement, which set out three main objectives. It reiterated the importance of implementing Resolution 2254 in its entirety; decided a trilateral mechanism (Iran, Turkey, Russia) to observe and ensure full compliance with the ceasefire agreed on 31 December 2016 with Resolution 2336; supported the willingness of the armed opposition group to participate in the next round in Astana and urged all the members of the international community to support a political process as agreed on UNSC Resolution 2254.

Staffan De Mistura has played the role of facilitator within these trilateral conferences and looked forward to put more emphasis to the peace process. As the ceasefire seems to last, next round of the Astana Talks could produce a new draft Constitution for Syria, implementing what requested from UNSC Resolution 2254. Special Envoy De Mistura knows that Astana is a valid platform, which could be act as a springboard for the next Geneva Talks round expected on 23 February 2017. <sup>(166)</sup>

Six years of Syrian conflict saw the participation of a variety of international actors. Terrorist groups rose from the ashes of Aleppo, ISIL became more than a simple group of mad extremists

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<sup>(163)</sup> S/2016/998, Letter from the Secretary General to the President of the Security Council, 29 November 2016.

<sup>(164)</sup> S/RES/2336 (2016)

<sup>(165)</sup> Reuters, *Putin congratulates Syria's Assad on retaking Aleppo*, <http://www.reuters.com/article/us-mideast-crisis-syria-russia-assad-idUSKBN14C1RE?mod=related&channelName=worldNews>

<sup>(166)</sup> Al Jazeera, *Astana joint statement by Iran, Russia, Turkey: in full*, <http://www.aljazeera.com/news/2017/01/astana-joint-statement-iran-russia-turkey-full-170124133951063.html>

and Al-Qaeda split in two (the Al-Nusra front). United States and Russia used Syria as a proxy-war, making the world sinking in what someone described as a new Cold War era. Other minor actors such as Iran, Turkey and the Gulf States are seeking for a role as leader in the Middle East world, sometimes collapsing with each other. The mediation efforts are not easy, especially if we consider rebel parties and terrorist, who generally do not own a central authority and are not willing to compromise. Right now, thanks to the Russian airstrikes campaign started in October 2015, Assad has been able to reconquer most of the Syrian rebel held-areas. He will likely to remain in power even after the end of the Syrian crisis. The Trilateral conference in Astana proposed by Iran, Turkey and Russia in December 2016 reduced drastically the diplomatic leverage of actors such as USA, France and UK, who always wanted the removal of the Assad regime. The main concern about this long and perilous path for a peace agreement is that civilians has not been at stake, as the conflict produced at least 300,000 victims and the worst migrant crisis since WW II.

## CHAPTER 2: THE RESPONSABILITY TO PROTECT (R2P) AND THE SYRIAN FAILURE TO PROTECT

2. Introduction: The UN system is based on the UN Charter which establishes the UN as an International Organization and defines limits and powers of the executive body, the Security Council. Thus, the relations between State actors and this international organization are regulated according to the Charter. The Syrian Crisis clearly underlined the limits and the difficulties in meeting different needs among different actors and could not find legislative shortcuts to end the massacre of civilians in a context of non-international armed conflict. In Chapter 2, I will try to show the reasons behind the inability of the UN system to provide an efficient assistance to the Syrian civilians in need. Even though the regime in Syria violated many human rights, the UN system did not prove to be successful in providing an efficient humanitarian assistance. However, a recent doctrine called Responsibility to Protect has been introduced to improve the way the UN system deals with humanitarian crisis: in the event of breaches of fundamental human rights within a State, (genocide f.e.), the international community should be able to act and intervene to fulfill the lacking behavior of that State. Concerns rise when international norms should face the right of non-interference in the internal affairs of States. In fact, the UN Charter openly prohibits the organization to intervene in matters within the domestic jurisdiction.

In this Chapter I will briefly describe the UN Charter position on the use of force and the UN Security Council power. Then, I will analyze the Responsibility to protect doctrine, which has been recalled on several Resolutions on Syria proposed by the SC during 6 years of conflict but never implemented. Moreover, I will try to deal with R2p implementations, making references to the Libyan NATO-led intervention and making a comparison with the Syrian civil war.

Libya is the first example of a military foreign intervention with humanitarian purposes approved by the Security Council. Thus, Resolution 1973, was successful to implement the *all necessary measures* clause by authorizing a NATO led operation in the context of a civil war. In contrast, a military intervention for human purposes have never been authorized in Syria. Although there are hundred of thousands civilians in needs, the indecision and inability of the Security Council led to a critical and prolonged humanitarian crisis stalemate.

### 3. The UN System: a brief overview

The UN Charter was signed on 26 June 1946. <sup>(167)</sup> The main purpose of the United Nations organization is defined in the first Article of its Charter:

#### *Article 1*

*The Purposes of the United Nations are:*

- 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;*
- 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;*

As soon as we start reading the first Chapter of the Charter we meet two fundamental principles: “*maintain international peace and security [...] through effective collective measures*”. In addition, paragraph two calls for the right of self-determination of people, which becomes an undeniable right.

The executive body, who can intervene in case of breach or threat to the international peace, is the Security Council. In this respect, I will focus on the limits of the UN Security Council. I will assess the inability to pass a resolution to permit a military intervention in Syria, which could have been justified by, for example, breaches of fundamental human rights. This would have triggered a collective response due to the alleged use of chemical weapons on Syrian soil.

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<sup>(167)</sup> Syria is a (founding) member of the UN since 1945, as it signed the San Francisco Treaty together with the 51 founding members.

### 3.1 The United Nations System and the prohibition of the use of force: Article 2(4) of the UN Charter

Before the introduction of the UN Charter and the international humanitarian law, the doctrine distinguished two distinct international provisions: international law on peace time and international law on war time. The first regulated relations between States in absence of conflicts and the second one was used once a conflict broke up between the contending. If third states were involved, the international law provided rules known as *right to neutrality*.

While the *ius ad bellum* was part of the international law during peace time and gave State actors the rights to resort to war, the *ius in bello* disciplined the relations between the opposing subjects during a conflict or the relations with neutral actors.

Once the UN Charter came to play, war and conflicts have been banned as a solution for any disputes in favor of a more modern and bloodless solution. Article 2(4) of the UN Charter prohibits the use of force, intended as military intervention against other Member States. <sup>(168)</sup>

*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.*

Not only the Charter refers to a dispute which calls for the use of force through the army, but also stress the solution of any kind of disputes through the diplomatic field, as stated by article 33 of the UN Charter:

- 1. The parties to any dispute, the continuance of which is likely to endanger the maintenance of international peace and security, shall, first of all, seek a solution by negotiation, enquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.*
- 2. The Security Council shall, when it deems necessary, call upon the parties to settle their dispute by such means.*

The use of force is avoided by *all means* and should be literally prescribed by the Security Council who is the only body which owns the power to resort to the use of force. The UN Charter aims to give the decisional monopoly on the use of force to the Security Council, which

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<sup>(168)</sup> NATALINO RONZITTI, *Diritto Internazionale dei Conflitti Armati*, (Giappichelli, 2014), pages 19-20



is the executive UN mechanism and authorizes the effective army intervention, when the circumstances require it. <sup>(169)</sup> In other words, the UN Charter has been designed to prevent the Member states to unilaterally resort to the use of army force to solve issues between other Member states. <sup>(170)</sup>

### 3.2 The UN Security Council

The UN Security Council is formed by 15 State Members, 10 are non-permanent members, while 5 consists in Permanent Members with a peculiar decisional power: the veto, a formal act which can block a binding (or non-binding) legislative measure to be adopted. The Security Council is the executive body of the UN system and receives its legitimation from Chapter VI of the UN Charter for what concerns the resolution of the controversies and from Chapter VII of the UN Charter for what regards the removal and the repression of act of aggression and other breaches to peace. What makes the Security Council such a powerful body among the international community, is that the effects of its decisions are binding even for sovereign States. <sup>(171)</sup> <sup>(172)</sup> The SC has been designed by the victorious Allies soon after the end of WW II. UK, USA, China, France and the Soviet Union reserved many competencies for themselves as the veto powers lies in the SC and is an exclusive function of the Permanent Members. The conceptualization and the use of the aims of the UN are exclusive to the willingness of the SC permanent members. In other words, even though the SC does exercise its power lawfully within the Charter's framework through the P5 Members, it results inevitable that those

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<sup>(169)</sup> According to Article 11 of the UN Charter, the General Assembly may discuss any questions related to the maintenance of international peace and security, unless it is not a matter already dealt by the Security Council. In this respect, according to Article 12, the General Assembly “*shall not make any recommendation unless the Security Council so requests*”. However, in the 50's the General Assembly tried to find a legitimation with Resolution 377-V (1950) known as “*Uniting for peace*”. During the Korean crisis, the General Assembly tried to replace the role of the Security Council in the event of a decisional stalemate regarding humanitarian assistance within the Permanent Members of the SC.

<sup>(170)</sup> CARLO FOCARELLI, *Diritto Internazionale I, Il Sistema degli Stati e I valori comuni dell'umanità*, (CEDAM, 2012), p. 710

<sup>(171)</sup> ANDREA GIOIA, *Manuale di diritto internazionale*, (Giuffrè, 2015), pp. 489-492

<sup>(172)</sup> According to Article 27 (3) of the UN Charter: “*Decisions of the Security Council on all other matters shall be made by an affirmative vote of nine members including the concurring votes of the permanent members; provided that, in decisions under Chapter VI, and under paragraph 3 of Article 52, a party to a dispute shall abstain from voting*”.

This means that the veto is implicitly permitted, as a Permanent member who votes against a legislative matter, would block its implementation. However, according to the customary law, a Permanent member who abstains itself during a voting procedure does not block a full-binding Resolution to be adopted. This is the case of a recent Resolution S/RES/2334, on the Israeli settlements on Palestinian territories, adopted on December 23<sup>rd</sup> 2016 thanks to the USA abstention. The result of the vote procedure has been 14 votes pros and 1 abstained.

members within the SC are defending their position on political issues through the UN system itself. <sup>(173)</sup>

#### 4. Humanitarian Intervention and Responsibility to Protect

In 6 years of Syrian conflict, the UNSC tried to find a way to intervene inside the country to stop the humanitarian crisis: the killing of civilians, made the conflict a bloodshed and urged a humanitarian assistance from outside. The inability to authorize an intervention through external forces was due to the limit imposed by Article 2(4) of the Charter: the prohibition of interference within a foreign State through military means. There is no exclusion to the use of force against other sovereign States except for two distinct cases: self-defense and authorization provided by the Security Council.

As I already discussed in the previous paragraph, a UNSC resolution cannot be adopted if there is at least an opposite vote casted by a Permanent Member of the UNSC body. Therefore, there is no right to authorize the use of force if the *Big 5* disagree on the provision of the text of the resolution, or simply, they want to defend their position and interests on any matters. In this regard, the UN Charter provisions on the right to intervene in case of humanitarian issues should be authorized through a Security Council vote, which is the only body who can trigger a collective intervention in foreign domestic affairs in case of violations of humanitarian rights in line with provisions outlined in Chapter VII of the UN Charter. The international law and the UN system had to find a way to limit the negative externalities of a conflict, while protecting the weakest.

The humanitarian right violations proved to be the only way possible for the UNSC to intervene lawfully inside Syria. Consequently, an intervention should be prescribed under a humanitarian intervention as a justification. Firstly, because article 2(4) refers to the prohibition of the use of force against the territorial integrity of a State and its political independence. Secondly, Article 2 (4) of the UN Charter does refer to the prohibition on the use or threat of force among international relations. Thirdly, the use of force, which would neglect the State sovereignty, is in any way in contrast with the UN Charter principles. <sup>(174)</sup> It is important to keep in mind that the Syrian legitimate government could not be blamed for have taken heavy measures against the rebel groups which have been trying to overturn an elected government. Under international

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<sup>(173)</sup> AIDAN HEHIR, ROBERT MURRAY, *Libya, The Responsibility to Protect and the Future of Humanitarian Intervention*, (Palgrave Macmillan, 2013), 50-52

<sup>(174)</sup> ANDREA GIOIA, *Manuale di diritto internazionale*, (Giuffrè, 2015), 30-32

law, it is up to the legitimate government to respond to domestic threats and to defend itself. However, it is equally true that the State is the only responsible to the protection of the non-combatants who lies inside its borders, as the Responsibility to Protect clearly recalls. <sup>(175)</sup>

#### 4.1 The past experience: Failure to prevent – F2p

The Syrian crisis stalemate unfolds as soon as a recent doctrine on intervention has been introduced. Following the failure of the UN system, unable to avoid human tragedies such as the Rwanda genocide (1994) and the Srebrenica massacre (1995), the international community moved towards a revision over its role of peacekeeper against war crimes and breaches against human rights. According to Chapter VII of the UN Charter, the Security Council owns the right to intervene not only in case of an international conflict, but also in the context of civil wars, in case the latter would consist in a matter of grave concerns for the maintenance of the international peace. Thus, the UN Security Council can authorize an operation which would consist in a foreign domestic interjection in case of grave issues such as genocides or crimes against humanity. <sup>(176)</sup>

In the Rwanda and the Srebrenica cases, the UN was leading peace-keeping operations to provide assistance to civilians, preventing them from being war targets. However, the missions resulted in a *failure to protect* and the UN has been openly criticized by the international community for being inappropriate and ineffective body to avoid civilian bloodsheds. The events in Rwanda and Bosnia worked as a stimulus, triggering a revision of the peace-keeping operations led by the UN. In 1994, the UNAMIR operation in Rwanda failed to prevent the extermination of 800,000 Tutsis and moderate Hutus. In 1995, a year later, a Dutch-led protection force, part of the UNPROFOR mission in Yugoslavia, did not manage to protect Bosniaks who were searching for protection in Srebrenica. Srebrenica was declared a safe area under the UN mandate 1993. Through the adoption of UNSC Resolution 743, the UNPROFOR peace-keeping mission has been established under Chapter VII of the UN Charter. <sup>(177)</sup> Moreover, in the same year, UNSC voted and adopted Resolution 824, which condemned and demanded to stop any forcible taking of territory, while declaring Sarajevo and other threatened areas such as Tuzla, Zepa, Gorazde, Bihac as well as Srebrenica and their surroundings as safe areas, considered free from armed attacks and from hostile act. <sup>(178)</sup> However, the Army of the

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<sup>(175)</sup> DIMITRIS LIAKOPOULOS, *L'Ingerenza umanitaria nel diritto internazionale e comunitario*, (CEDAM, 2007), 86-87

<sup>(176)</sup> NATALINO RONZITTI, *Diritto Internazionale dei Conflitti Armati*, (Giappichelli, 2014), 66

<sup>(177)</sup> S/RES/743 (1992)

<sup>(178)</sup> S/RES/824 (1993)

Republika Srpska entered the Srebrenica safe areas and with a single shot fired from the Dutch forces, forcibly separated men and boys from women and massacred them. The death toll counted more than 8,000 casualties. <sup>(179)</sup>

In 1998, Kofi Annan, the former UN Secretary General, realizing the inability of the UN to prevent human rights abuses, raised a challenging question: it is up to the international community to intervene in a country to stop grave violence and systematic abuses against human rights? In this context, several debates started and triggered the creation of a body of international norms which would eventually protect civilians and human rights in case of non-international armed conflicts. This rule will be known as the R2P (responsibility to protect) doctrine. <sup>(180)</sup>

In the following lines, I will provide an overview covering the first steps of a new doctrine called *Responsibility to protect* which has been established as an international norm and known as R2P or RtoP. The aim of the doctrine is to ensure that the UN, on behalf of the international community, will seek to avoid mass atrocities such as genocides, war crimes and crimes against humanity, by intervening in a sovereign country if this would be necessary to stop such abuses.

In respect of the Responsibility to Protect, Focarelli points out that the main ideology at the basis of R2P is that the international community as a whole should have a responsibility to prevent, to react and to rebuild whenever grave breaches against human rights occur in a State or inside a failed State. <sup>(181)</sup>

Carreau and Marrella, consider the recent development of the humanitarian interventions as a gamechanger among the rules governing the basis of international norms. They recognize that grave threats to international peace make possible a collective military intervention to put an end to those violations. These crimes are genocide, violations of the humanitarian international law (which right now has been recognized as a *jus cogens* rank rule). <sup>(182)</sup>

However, as stated by Susan E. Mayer in his stance on R2P, a fully working implementation of this discipline will not be possible with the current structure of the UN. <sup>(183)</sup> In fact, following

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<sup>(179)</sup> PETER HILPOLD (ED.), *The Responsibility to Protect (R2P), A new Paradigm of International Law?*, (Brill Nijhoff, 2014), 7-8

<sup>(180)</sup> DANIELE AMOROSO (ED.), *L'ABC delle Nazioni Unite (Basic Fact about the United Nations)*, Editoriale Scientifica, 2013), pp. 70-71

<sup>(181)</sup> CARLO FOCARELLI, *Diritto Internazionale I, Il Sistema degli Stati e I valori comuni dell'umanità*, (CEDAM, 2012), p. 736

<sup>(182)</sup> DOMINIQUE CARREAU, FABRIZIO MARRELLA, *Diritto Internazionale*, (Giuffrè Editore, 2016), 74-76

<sup>(183)</sup> RICHARD H. COOPER (ed), JULIETTE VOINOV KOHLER (ed), *Responsibility to Protect: The Global Moral Compact for the 21st Century*, (Palgrave Macmillan, 2009), 44-45

the Westphalian tradition, States are sovereign and there is no right to interfere and no case of intervention within the jurisdiction of the State. According to this principle, R2P has always been considered an erosive factor, which causes damage to the integrity of the State system, as it would give to the UN the right, the responsibility and the discretion to intervene whenever atrocity and crimes occur. In 1648, after the Westphalian treaty, the view has been that sovereignty was a license to kill: whatever happens within States' borders, nobody has the right to intervene. Any issue inside the States' borders, it is considered State's business. In a way, the UN Charter is the reflection of this "old" tradition as Article 2(7) of the UN Charter shows:  
(<sup>184</sup>)

*"Article 2*

*The Organization and its Members, in pursuit of the Purposes stated in Article 1, shall act in accordance with the following Principles.*

*[..] Nothing 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."*

The importance last words at the end of paragraph 7, are the basis on how a new doctrine should be prescribed to prevent civilians in case of non-international armed conflict (NIAC) from being killed.

The development of the R2p doctrine, required an expanded interpretation of Chapter VII provision, in order to include intra-state humanitarian crises in the options for an intervention. In fact, the UN Charter never refers to a right of individual States and the SC to militarily intervene for humanitarian purposes.

During the 90's, the Security Council authorized two interventions under Chapter VII enforcement operations. For the first time, the SC approved with Resolution 688 (Iraq Repression of Kurds in 1991) and Resolution 794 (Somalia 1992) a coercive intervention for humanitarian purposes in response to a domestic situation which did not clearly depict a threat

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(<sup>184</sup>) *supra*, 16-17

to international peace and security. Unfortunately, in other occasions, the SC did not prove to be fast in giving a response to insecurity circumstances (Rwanda and Srebrenica). <sup>(185)</sup>

#### 4.2 Key events for the creation of the R2P doctrine

In my analysis, I will illustrate key-events about the building of the R2P doctrine.

- A. The origin of the R2P and the right of intervention
- B. The 2001 report of the International Commission on Intervention and State Sovereignty
- C. 2005: The New York World Summit and the 2006 UNSC Resolution 1674
- D. The 2009 three-pillar framework of R2P:
- E. The Pillar III invoked by the UNSC: Resolution in response to atrocities in Lybia:

#### The origin of the R2P and the right of intervention

The R2p doctrine goes back to and marks the development of the so-called *droit d'ingérence*. During the 80's, the major supporters of this doctrine were the NGO sponsors' of *Médecines Sans Frontières* (in particular B. Kouchner, one of the founders), professor M. Bettati (Professor of International Public Law at the University of Paris II) and endorsed by the President of the Republic of France F. Mitterrand. According to the *droit d'ingérence*, whenever a humanitarian emergency happens and the State is not able or willing to respond by providing assistance to the subjects in need, foreign States along with NGOs and inter-governmental organizations have the right and a moral duty to enter the domestic jurisdiction and give humanitarian assistance. This kind of intervention should be performed according to the inoffensive passage right and through established humanitarian corridors. The external subject right of interference is to be considered lawful in respect of the right of the victims which have the right to receive humanitarian assistance. The concept of humanitarian intervention, according to Kouchner, will surpass the old-fashioned theory of State sovereignty, which repels any criticism on massacres against human beings inside a country. This new perspective will help people to get assistance when their belonging State is not able or willing to provide it. <sup>(186, 187)</sup>

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<sup>(185)</sup> ALAN COLLINS, *Contemporary Security Studies*, (Oxford University Press, 2013), 291-292

<sup>(186)</sup> DOMINIQUE CARREAU, FABRIZIO MARRELLA, *Diritto Internazionale*, (Giuffrè Editore, 2016), 320-322

<sup>(187)</sup> CARLO FOCARELLI, *Diritto Internazionale I, Il Sistema degli Stati e I valori comuni dell'umanità*, (CEDAM, 2012), 738

#### 4.3 The 2001 report of the International Commission on Intervention and State Sovereignty

The Responsibility to Protect doctrine has been codified for the first time by a group of important researchers with the help of the government of Canada, which constituted the ICISS, the International Commission on Intervention and State Sovereignty. <sup>(188)</sup> These people published a Report in 2001 entitled *Report of the International Commission on Intervention and State Sovereignty* on the Responsibility to protect. The aim of the Committee was to find an answer to the question posed by the UN Secretary General Kofi Annan:

*"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?"*. <sup>(189)</sup>

The report was setting the rules of a new kind of intervention which will rethink State sovereignty. Recalling the importance of State Sovereignty, the ICSS states that "*the defence of state sovereignty, [...] does not include any claim of the unlimited power of the state to do what it wants to its own people*". Moreover, it stresses the dual responsibility of the state: **externally** – to respect the sovereignty of other states; and **internally** - to respect the dignity and basic rights of all people within the state. Sovereignty as responsibility has become the minimum content of good international citizenship. <sup>(190)</sup>

Moreover, the report looks after a definition and a scope of the intervention. An intervention under R2P rule considers military intervention, including preventive and coercive measures (sanctions, embargos etc.). <sup>(191)</sup>

Therefore, the Commission made a deliberate decision not to refer to humanitarian intervention, but it preferred to use the more appropriate terminology *military intervention for human purposes*. The Commission felt the risk that the term *humanitarian intervention* would be used to justify any kind of military action, making any military intervention sound legitimate and legal. <sup>(192)</sup>

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<sup>(188)</sup> GUGLIELMO VERDIRAME, *The UN and Human Rights: Who Guards the Guardians?*, (Cambridge University Press, 2013), p. 151

<sup>(189)</sup> *ICISS Report, The responsibility to Protect*, page 2, para 1.6, available at: <http://responsibilitytoprotect.org/ICISS%20Report.pdf>

<sup>(190)</sup> *supra*, page 8, para 1.35

<sup>(191)</sup> *supra*, page 8, para 1.37-1.38

<sup>(192)</sup> *ibidem*, page 9, para 1.40-1.41

This new approach to intervention should meet at least four basic concepts: establish clear rules on whether, when and how to intervene; establish a legitimacy of military intervention only when all other approaches have failed (last resort); ensure a military intervention only for the purposes proposed, minimizing the human costs and the institutional damages that will result; and help eliminate the causes of conflict while enhancing a prospect for a sustainable and durable peace. <sup>(193)</sup>

Following, the Commission pointed out the necessity to always evaluate the issues from the point of view of those seeking or needing support, rather than those who may be consider the intervention. Attention should be drawn on the duty to protect communities from mass killing, women from systematic abuses and children from starvation. In a way, RtoP should be considered as a linking bridge which fills the vacuum between the intervention and sovereignty of States. If an intervention occurs, it must include also a “responsibility to rebuild”. The results of such interventions should include assistance, intervention and reconstruction. <sup>(194)</sup>

Most section 3 of the report is mainly addressing the importance of conflict prevention measures, outlining that early warnings and analysis of the situation inside some countries in a context of crisis will provide the UN with a successful, or at least more efficient, response. The ICISS report recalled the 1994 Rwanda case, which confirmed that the lack of analysis and a misleading translation into policy prescriptions did not permit the UN to act in a proper way. <sup>(195)</sup> Root causes and conflict prevention measures are the most effective way to assist those in need. <sup>(196)</sup>

Section 4 of the Report states that

*“the responsibility to protect implies above all else a responsibility to react to situations of compelling need for human protection. When preventive measures fail to resolve or contain the situation and when a state is unable or unwilling to redress the situation, then interventionary measures by other members of the broader community of states may be required. These coercive measures may include political, economic or judicial measures, and in extreme cases– but only extreme cases – they may also include military action. As a matter of first principles, in the case of reaction just as with prevention, less intrusive and*

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<sup>(193)</sup> *supra*, page 11, para 2.3

<sup>(194)</sup> *supra*, page 17, para 2.29

<sup>(195)</sup> *ibidem*, page 21, para 3.10

<sup>(196)</sup> *supra*, page 23, para 3.20-3.22



*coercive measures should always be considered before more coercive and intrusive ones are applied.”* <sup>(197)</sup>

Paragraph 4.10 reiterates once again the importance of the use of military intervention in extreme case only. The norm intervention should be in accordance with the *Hippocratic principle* (first do no harm). In fact, intervention in a domestic affair can destabilize the internal order nourishing civil turmoil and ethnic rivalries. <sup>(198)</sup>

#### 4.4 The *Just Cause* clause

Section 4.18-4.21 of the report illustrate the “*just cause*” clause, which defines when it is necessary to resort to military intervention for human protection purposes: the Commission found two sets of circumstances:

- *large scale loss of life, actual or apprehended, with genocidal intent or not, which is the product either of deliberate state action, or state neglect or inability to act, or a failed state situation; or*
  - *large scale “ethnic cleansing,” actual or apprehended, whether carried out by killing, forced expulsion, acts of terror or rape.*
- If either or both of these conditions are satisfied, it is our view that the “just cause” component of the decision to intervene is amply satisfied.* <sup>(199)</sup>

More precautionary criteria which define a military intervention under the “*just clause*” are: **right intention** (an intervention on a collective or multilateral level rather than a unilateral act with the primary purpose of halting or averting human suffering); **last resort** (intervention only after failures of diplomatic and peaceful measures); **proportional means** (scale, duration and intensity of the military operation should be the minimum necessary to secure the humanitarian issue. The means have to be commensurate with the ends); **reasonable prospects** (a military operation should be considered only if it stands a reasonable chance of success, meaning that it should not worsen the ongoing crisis which requires the intervention) <sup>(200)</sup>; **right authority**.

The *right authority* clause, highlighted as a principle in section 6 of the ICISS report, requires a deeper analysis. This principle tries to find a legitimation over the role of the UNSC to

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<sup>(197)</sup> *supra*, page 29, para 4.1

<sup>(198)</sup> *supra*, page 31, paras 4.12-4.13

<sup>(199)</sup> *ibidem*, page 32, para 4.19

<sup>(200)</sup> *supra*, pages 35-37, paras 4.33, 4.37, 4.39, 4.41

authorize an intervention against any State which fails to give protection or assistance for its civilians. The report recalls the UN Charter 2(4) article, which provides the non-intervention and non-aggression *bedrock* principle against the territorial integrity or political independence of any state. Moreover, it stresses the prohibition of intervention in domestic jurisdiction as to Article 2.7 of the UN Charter. <sup>(201)</sup>

However, these principles have to be considered in the light of a series of UN Charter articles, which sets out the responsibility of the UN organization. In fact, Article 24 of the UN Charter gives power to the Security Council by appointing the primary responsibility for the maintenance of international peace and security to the SC, permitting the latter to authorize a series of active measures. Chapter VII of the UN Charter describes the actions granted to the UNSC for the maintenance of international peace and security. Moreover, according to Article 39, the UNSC can determine whether any threat to peace, breach or act of aggression exist. As to article 42, the UNSC can authorize operations by air, sea or land if necessary with the scope of maintain or restore international peace and security. Thus, the SC may resort to or permit the use of military force. <sup>(202)</sup>

Moreover, there is one provision which permits explicitly the application of cross-border military force interventions: article 51 of the UN Charter. If an attack occurs against a Member of the UN, the right of individual or collective self-defense is legitimate when immediately reported to the Security Council. Thus, the Security Council authorization of action under coercion and Article 51 constitute a way to trump the domestic jurisdiction restriction. <sup>(203)</sup>

In conclusion, the report clearly suggest that the Security Council should be the only body to authorize an intervention and stresses the fact that the most difficult task is not to find alternatives to the SC, but to make it work much better. <sup>(204)</sup>

The ICISS report has been recalled when, in 2005, the UNGA approved the *Outcome Document* of the *2005 World Summit*. This marked the adoption of R2P, as a “*more than a simple doctrine*” rule, accepted by the international community.

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<sup>(201)</sup> *ibidem*, page 47, para 6.2

<sup>(202)</sup> *ibid.*, p. 47, para 6.3

<sup>(203)</sup> *supra*, para 6.4

<sup>(204)</sup> A. HEHIR, R MURRAY, *Libya, The Responsibility to Protect and the Future of Humanitarian Intervention*, (Palgrave Macmillan, 2013), 38

#### 4.5 The 2005 Outcome Document and UNSC Resolution 1674 (2006)

Kofi Annan, former UN Secretary General from January 1<sup>st</sup> 1997 until December 31<sup>st</sup> 2006 has always been particularly worried about the atrocities of the 1990's. He worked hard to make the UN system a better guardian against human rights abuses. In 2003, he constituted a High-Level Panel to develop a report on the Responsibility to Protect. The report was presented on 2 December 2004 to the Secretary General and included recommendation on definition of terrorism, rebuilding the global and public health system, revitalizing the nuclear non-proliferation regime and reforming each of the principal organs of the UN. <sup>(205)</sup> The Report did not depict the prohibition of the use of force as something illegal and unthinkable, rather it tried outline the importance of a more efficient UN system and, in particular, a Security Council who works better. This report inspired the Secretary General paper entitled “*In Larger Freedom*” published in 2005. The release stresses the importance of the UN system as a preventive-body to avoid crimes against humanity and clearly underlines to find ways on how to improve the instruments and the procedures of the Security Council to make it work better. <sup>(206)</sup><sup>(207)</sup> These in-depth studies resulted in an important resolution following the yearly UN General Assembly Summit. On September 16<sup>th</sup> 2005, the UN General Assembly adopted an historical step towards the abolition of atrocity and crimes against humanity. Unanimously, World Leaders embraced the R2P doctrine contained in the Outcome Document in the end of the World Summit 2005. The principles of this new doctrine have been clarified in Article 138 and Article 139 of the document:

***Responsibility to protect populations from genocide, war crimes, ethnic  
cleansing and crimes against humanity***

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<sup>(205)</sup> A/59/565 (2004), *A more secure world: Our Shared Responsibility*, Report of the High-Level Panel in Threats, Challenges and Change

<sup>(206)</sup> KOFI ANNAN, *In Larger Freedom*, UN Report A/59/2005, available at:

[http://www.un.org/en/ga/search/view\\_doc.asp?symbol=A/59/2005](http://www.un.org/en/ga/search/view_doc.asp?symbol=A/59/2005). Especially in para. 126, Kofi Annan outlined that:

“126. The task is not to find alternatives to the Security Council as a source of authority but to make it work better. When considering whether to authorize or endorse the use of military force, the Council should come to a common view on how to weigh the seriousness of the threat; the proper purpose of the proposed military action; whether means short of the use of force might plausibly succeed in stopping the threat; whether the military option is proportional to the threat at hand; and whether there is a reasonable chance of success. By undertaking to make the case for military action in this way, the Council would add transparency to its deliberations and make its decisions more likely to be respected, by both Governments and world public opinion. I therefore recommend that the Security Council adopt a resolution setting out these principles and expressing its intention to be guided by them when deciding whether to authorize or mandate the use of force.”

<sup>(207)</sup> PETER HILPOLD (ED.), *The Responsibility to Protect (R2P), A new Paradigm of International Law?*, (Brill Nijhoff, 2014), 12-14

*138. Each individual State has the responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. This responsibility entails the prevention of such crimes, including their incitement, through appropriate and necessary means. We accept that responsibility and will act in accordance with it. The international community should, as appropriate, encourage and help States to exercise this responsibility and support the United Nations in establishing an early warning capability.*

*139. The international community, through the United Nations, also has the responsibility to use appropriate diplomatic, humanitarian and other peaceful means, in accordance with Chapters VI and VIII of the Charter, to help to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In this context, we are prepared to take collective action, in a timely and decisive manner, through the Security Council, in accordance with the Charter, including Chapter VII, on a case-by-case basis and in cooperation with relevant regional organizations as appropriate, should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity. We stress the need for the General Assembly to continue consideration of the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity and its implications, bearing in mind the principles of the Charter and international law. We also intend to commit ourselves, as necessary and appropriate, to helping States build capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.*

The principle at the basis of this doctrine is trying to fill the vacuum between two fundamental assumptions of the international relations: a system of equally sovereign states and the balance between state sovereignty and human security (which should benefit the latter in the general vision of the R2P doctrine). The need to include the articles in a GA Document is in line with the aim of the R2p doctrine at this stage: gaining wider acceptance as a norm and being a stronger “*Just Norm*”. So far, R2p has been considered vague and it has been criticized for being a justification to interfere in domestic affairs, especially into weaker States. In this

context, the norm should be further developed. Although 150 head of State and governments unanimously approved the Outcome Document containing the R2p doctrine, they acted through a non-binding resolution which may not affect the actors of the international community. More than one question remains open despite the adoption of the Document: in which manners and which cases and how are the governments of specific countries implementing their R2P to protect their populations from atrocities? When the international community has the right intervene in other countries to stop grave violations of human rights according to the R2P rule? An answer could be found by considering the precautionary criteria outlined in the 2001 ICISS report. <sup>(208)</sup>

In 2006, the UN Security Council adopted resolution 1674 on the *protection of civilians in armed conflict*. It included within an operative paragraph, an explicit reference to the conclusion of the World Summit held in 2005, which produced the Outcome Document containing the R2p clause.

*4. Reaffirms the provisions of paragraphs 138 and 139 of the 2005 World Summit Outcome Document regarding the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity;* <sup>(209)</sup>

The reference to the R2P in a Security Council resolution is considered as an evolution from a doctrine to an international norm. In fact, the SC adopted in 2006 a new resolution on Darfur, which specifically recalled the previous resolution 1674. <sup>(210)</sup> The legitimation through a UNSC resolutions means that the R2P is trying to evolve from a broadly accepted international norm to a potential rule of customary law. However, as the R2p is growing and becoming more than a simple doctrine, many governments feared that this could result in a restriction of their domestic sovereignty.

#### 4.6 The 2009 Three-Pillars-Framework of R2P

In 2009, Secretary General Ban Ki Moon clarified that R2p is alive and *here to stay* and tried to mitigate the fears among the international society, who sees the doctrine as an erosive factor

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<sup>(208)</sup> RICHARD H. COOPER (a cura di), JULIETTE VOINOV KOHLER (a cura di), *Responsibility to Protect: The Global Moral Compact for the 21st Century*, (Palgrave Macmillan, 2009, pages 2-12)

<sup>(209)</sup> S/RES/1674 (2006), page 2, para 4

<sup>(210)</sup> S/RES/1706 (2006), page 1, para 2: “*Recalling also its previous resolutions 1325 (2000) on women, peace and security, 1502 (2003) on the protection of humanitarian and United Nations personnel, 1612 (2005) on children and armed conflict, and 1674 (2006) on the protection of civilians in armed conflict, which reaffirms inter alia the provisions of paragraphs 138 and 139 of the 2005 United Nations World Summit outcome document [..]*”

for States' sovereignty. Ban Ki Moon published in 2009 his report entitled "*Implementing the Responsibility to Protect*". Basically, he underlined the importance of the Security Council in solving humanitarian crisis. He stated that:

*"Within the Security Council, the five permanent members bear particular responsibility because of the privileges of tenure and the veto power they have been granted under the Charter. I would urge them to refrain from employing or threatening to employ the veto in situations of manifest failure to meet obligations relating to the responsibility to protect, as defined in paragraph 139 of the Summit Outcome, and to reach a mutual understanding to that effect."* <sup>(211)</sup>

Moreover, the report brought a precise definition on how R2p should work: Ban Ki Moon offered a trilateral division on how the doctrine should be implemented, recognizing it the Three Pillar approach:

- **Pillar One** stresses that States have the primary responsibility to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.
- **Pillar Two** addresses the commitment of the international community to provide assistance to States in building capacity to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity and to assisting those which are under stress before crises and conflicts break out.
- **Pillar Three** focuses on the responsibility of international community to take timely and decisive action to prevent and halt genocide, ethnic cleansing, war crimes and crimes against humanity when a State is manifestly failing to protect its populations.

In the Annex to his Report, Ban Ki Moon refers to the important role of early warning in implementing RtoP. A human rights-based approach would help to prevent crimes and violations and, more important, the empowerment of local based partners and civilians are fundamental to provide with information and resources to deeply understand the root of the crisis and helping the decision-making process at the UN level.

As argued by Rubavana, Ban Ki Moon fixed three important ideologies behind R2p: while pillar one remarks the responsibility of each state to protect its population against genocide, crimes against humanities, ethnic cleansing and war crimes, pillar two is the commitment of

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<sup>(211)</sup> A/63/677 (2009), Report of the Secretary General, Implementing the Responsibility to protect, para. 61

international community to assist States in pursuing those obligations. Pillar Three is the responsibility upon Member States to respond collectively in a timely and decisive manner whenever a State is not securing its citizens, failing to fulfill its primary scope. <sup>(212)</sup>

#### 4.7 The Responsibility to protect in Libya – A military R2p intervention under the Third Pillar

On 17 March 2011, the UNSC authorized military intervention in Libya. This is the first time that a UNSC Resolution addressed a military intervention making direct reference to Pillar Three outlined in Ban Ki Moon's 2009 Report. Resolution 1973 empowered national governments and regional organizations to "*take all necessary measures*" to protect civilians, in response to violence committed between the government forces and the rebels who opposed the regime of Muammar Gaddafi. The NATO coalition began its mission, establishing a no-fly zone and shelling the government forces. It took seven months of NATO's aerial bombing raids to permit rebels to take control over the country. The no-fly zone provided with the adoption of Resolution 1973, was intended to protect civilians in the city of Benghazi who had been threatened by the Libyan president in response to uprisings that took place since mid-February of the same year. In October 2011, anti-government forces captured and killed Gaddafi, the Libyan authoritarian ruler.

Resolution 1973 has been adopted in the aftermath of Resolution 1970 that condemned the use of violence against civilian population. Both resolutions marked a further step to the doctrine aiming at protecting civilians in case of civil wars. Moreover, the resolutions highlighted the Libyan government's responsibility to protect its citizens (R2p) and the subsequent failure, which marked the deteriorating situation in the country and led to an external intervention with the use of force.

Resolution 1973 revealed to be a test for the UNSC. R2p clause was under development and its implementation within a fully binding UNSC Resolution was legitimating the doctrine as an international norm. The Security Council has always been criticized for its inability to be quick and decisive when an international crisis occurs and major threats to human rights display. The decision to approve and enforce a no-fly zone in Libya required a wide ability to negotiate among the P5 SC Members.

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<sup>(212)</sup> ETIENNE RUBEVANA, *Prevention of Genocide Under International Law*, (Intersentia, 2014), 291-292

Resolution 1970 has been adopted following a unanimous vote. Its contents dealt with the condemnation of violence against civilians calling upon the Libyan authorities to fulfill and exercise R2p in respect of the threatened people; it referred the Libyan authorities to the International Criminal Court; adopted an arms embargo, travel bans and freezing of Libyan assets abroad. Finally, it called upon member of states to provide humanitarian assistance to Libyan civilians. <sup>(213)</sup>

Resolution 1973 was approved in a different way: obviously, no permanent members of the SC opposed the Resolution, however 5 Countries abstained. Once again, the Resolution condemned the violence and the threat to civilians, but this time it aimed at being more active to stop turmoil, calling for a ceasefire, dispatching a Secretary General envoy from the Peace and Security Council of the African Union to find a political way out from the crisis. More important, the Resolution authorize member states “*to take all necessary measures excluding a foreign occupation force of any form on any part of Libyan territory and to protect civilians and populated areas under threat of attack*”. Among the SC members, the abstentions came from Brazil, Germany, India and permanent members China and Russia. <sup>(214)</sup>

The importance of Resolution 1973 lies in the fact that for the first time, the Security Council linked military actions with at least one aspect of the R2p doctrine and, specifically, the so-called Pillar Three of the Report of the Secretary General Ban Ki Moon *Implementing the Responsibility to Protect*. However, R2p doctrine seemed to be an excessive measure, especially for the BRICS powers within the SC. <sup>(215)</sup>

In this context, it is interesting to point out briefly the reason behind the abstentions, analyzing the statements after the voting procedures of Resolution 1973:

Germany: Ambassador Peter Wittig, while affirming that the time of Colonel Gaddafi has come and its regime should relinquish power, it expresses concerns over a direct intervention. As Libya and several MENA regions are experiencing a *wind of change* regarding several political transitions, if the Resolution fails any military intervention would be protracted and inefficient. Thus, Germany did not send any military forces following the implementation of the Resolution.

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<sup>(213)</sup> The measures taken in Resolution 1970 have been in line with Chapter VII of the UN Charter (action with respect to threat to peace, breaches of the peace and acts of aggression).

<sup>(214)</sup> AIDAN HEHIR, ROBERT MURRAY, *Libya, The Responsibility to Protect and the Future of Humanitarian Intervention*, (Palgrave Macmillan, 2013), 162-174

<sup>(215)</sup> ALAN COLLINS, *Contemporary Security Studies*, (Oxford University Press, 2013), 301-302



India: Ambassador Manjeev Singh Puri complained about the lack of information on the ground situation in Libya. A lack of certainty regarding who was going to enforce the measures provided with Resolution 1973 and a prevalence on the political efforts, as the priority for solving the situation were the reason behind India's abstention.

Brazil: Ambassador Maria Luiza Riberio Viotti argued that, although the abstention should not be interpreted as condoning the lacking behavior of Libyan authorities, they prefer to give right of free expression to the protesters seeking a solution to the crisis through meaningful dialogue. A direct intervention and the use of force as an operative measure might have the unintended effect of exacerbating the current tensions causing more harm than good to the very same civilians they are committed to protect.

Russian Federation: Ambassador Vitaly Churkin argued that Russia abstained because a ceasefire would have spared much more additional lives than a direct intervention using military forces. Although Russia is clearly against violence, the Resolution is not clear about the entity of whom would be the forces acting to comply with the operative clauses of Resolution 1973.

China: Li Baodong, President of the Security Council, said that although the situation in Libya was of great concern, the UN Charter should be respected and the crisis should end through peaceful means, avoiding all necessary measures to be adopted. <sup>(216)</sup>

#### 4.8 The Responsibility While Protecting (RWP)

More than one voice criticized the foreign intervention in Libya, classifying it as humanitarian intervention covering a regime change mission. To avoid future critics on the matter, at the end of 2011, Brazil proposed a doctrine named *Responsibility while Protecting*.

Responsibility while protecting has been offered by Brazil, a State visibly divided between its desire to be recognized as the leader of the Global South and its willingness to lead a human rights' rhetoric among international relations. Responsibility While Protecting should work in parallel with the Responsibility to Protect doctrine. Responsibility while protecting has two key elements: <sup>(217)</sup>

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<sup>(216)</sup> All the SC members comments have been quoted from the UN Meetings coverage, *Security Council Approves 'No-Fly Zone' over Libya, Authorizing 'All Necessary Measures' to Protect Civilians, by Vote of 10 in Favour with 5 Abstentions*, available at: <http://www.un.org/press/en/2011/sc10200.doc.htm>

<sup>(217)</sup> ALEX J. BELLAMY, TIM DUNNE, *The Oxford Handbook of the Responsibility to Protect*, (Oxford University Press, 2016), 920-921

- 1- Before any military mandated has been granted, systematic attention should be drawn to the relevant prudential criteria for the use of coercive and military force. These provisions have been set out in the initial commission report (ICISS) more than a decade ago. The ICISS report outlined the basis of the 2005 Outcome Document and contains the rules on how to regulate the R2p doctrine. The criteria are valid and express several limitations to the use of force, making the external intervention a very last resort. These prudential criteria should be deeply debated and taken into account before the SC authorized any military intervention.
- 2- Whenever a mandate would be granted, there should be a deeper analysis on whether and how a military operation should be managed. Wide debates on how the protection of civilians would be granted without a full-scale war fighting should be undertaken. There is no reason to believe that any attempt to save human lives when the sovereign State is not fulfilling its responsibility to protect, should result in a regime-change conflict. The debate among the SC members should address on the legitimacy of the mandate implementation, to avoid future critics.

However, this doctrine is far from being adopted as there are no further development. Later in this Chapter, I will consider one more occasion through which States try to find regulations on how to implement and control the intervention under R2p clause. <sup>(218)</sup>

##### 5. The Responsibility to Protect in the Syrian case – Failure to Protect (F2P)

According to a report dated 8<sup>th</sup> October 2016, the Global Centre for the Responsibility to Protect, published a resume of the ongoing conflict. In five years, since the beginning of the conflict in 2011, five vetoes have been casted, bringing the death toll to 280,000 estimated casualties. <sup>(219)</sup> The report has been drafted soon after the decision of Russia to veto an attempt by the UNSC to reinstate the cessation of hostilities and establish a military no-fly zone over Aleppo (where the fight between Assad forces and rebels are raging) and provide unhindered humanitarian access. <sup>(220)</sup>

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<sup>(218)</sup> GARETH EVANS, *R2P Down but not out after Libya and Syria*, in Open Democracy, Publication 9 September 2013, available at: <https://www.opendemocracy.net/openglobalrights/gareth-evans/r2p-down-but-not-out-after-libya-and-syria>

<sup>(219)</sup> The Global Centre for the Responsibility to Protect is a non-profit NGO established in 2008. The organization aims at conducting researches around the R2p field to prevent mass atrocity and support populations at risk.

weblink: <http://www.globalr2p.org/>

<sup>(220)</sup> Global Centre for the Responsibility to Protect, *Syria: Five Years, Five Vetoes, 280,000 Dead*, available at: <http://www.globalr2p.org/media/files/2016-october-syria-veto-statement.pdf>

## 5.1 A humanitarian emergency

In the Syrian case, the Responsibility to protect clause (especially the Pillar One provision, *state's responsibility for the protection of civilians*) has been recalled by the UNSC 5 times since 2011. Despite this, the current humanitarian disaster is one clear example of the failure of implementing the R2P clause. Starting from mid-march 2011, the UN had evidence that the civil war in Syria resulted in a vast humanitarian crisis. The Human Rights Council conducted a special session on 29 April 2011 to investigate the allegations that Damascus was committing grave human rights violations against pro-democracy protesters. Thus, Kyung-wha Kang, the UN deputy high Commissioner for human rights, condemned the Syrian government stating that the Syrian military security forces were disregarding basic human rights against the protesters. As a result, the GA adopted resolution A/HRC/RES/S-16 on 29 April 2011, authorizing the dispatch of a fact-finding mission to Syria, which was officially refused by the Syrian government. The team of experts could gather info only from outside the country. Subsequently, in August 2011, the HRC held one special session addressing the evidences of Syrian security forces atrocities, which constitute a crime against humanity. Following the HRC'S report of September 2011 (A/HRC/18/53), the UN General Assembly passed resolution A/HRC/RES/21/26, which “*strongly condemned the continued and grave systematic human rights violations by the Syrian authorities*”.<sup>(221)</sup>

The HRC, during a commission's press conference on 16 October 2012, stated that:

*The Commission had recorded accounts for murder, arbitrary detention, sexual violence and torture, committed by both parties to the conflict – the Syrian Government forces and the Free Syrian Army. However, gross violations of human rights and international humanitarian law were more prevalent on the part of the Government.*<sup>(222)</sup>

From this point on, the Security Council tried to include the R2P clause in at least 5 occasions, but Damascus failed to implement it.

In 2014, the 22<sup>nd</sup> February UNSC Resolution 2139, states that (S/RES/2139)

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<sup>(221)</sup> JOHN JANZEKOVIC, DANIEL SILANDER, *Responsibility to Protect and Prevent: Principles, Promises and Practicalities*, (Anthem Press, 2014), 56-58

<sup>(222)</sup> Press conference, available at: <http://webtv.un.org/watch/the-latest-findings-on-the-human-rights-situation-in-syria-press-conference/1904479973001>

*“Also demands that all parties take all appropriate steps to protect civilians, including members of ethnic, religious and confessional communities, and stresses that, in this regard, the primary responsibility to protect its population lies with the Syrian authorities;”*

A second UNSC Resolution, adopted on 14<sup>th</sup> July 2014 states that: (S/RES/2165)

*“Reaffirming the primary responsibility of the Syrian authorities to protect the population in Syria”*

The third UNSC Resolution on Syria, adopted on 18<sup>th</sup> December 2015 states that: (S/RES/2254)

*“Recalling its demand that all parties take all appropriate steps to protect civilians, including members of ethnic, religious and confessional communities, and stresses that, in this regard, the primary responsibility to protect its population lies with the Syrian authorities,”*

The fourth UNSC Resolution on Syria, adopted on 22<sup>nd</sup> December 2015 states that: (S/RES/2258)

*“Reaffirming the primary responsibility of the Syrian authorities to protect the population in Syria”*

The fifth UNSC Resolution on Syria, adopted on 21<sup>st</sup> December 2016 states that: (S/RES/2332)

*“Reaffirming the primary responsibility of the Syrian authorities to protect the population in Syria and, reiterating that parties to armed conflict must take all feasible steps to protect civilians,”* <sup>(223)</sup>

## 5.2 Legal Aspects

An intervention inside Syria should be prescribed under a humanitarian intervention as a justification. Firstly, because of article 2(4) that states that the use of force against the territorial integrity of a State and its political independence is prohibited. Secondly, Article 2 (4) of the UN Charter do refer to the prohibition on the use or threat of force only among international relations. Thus, it does not consider the domestic affairs. Finally, the use of force, which would neglect the State sovereignty, is in any way in contrast with the UN Charter principles. Moreover, the legitimate government could not be blamed for have taken heavy measures

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<sup>(223)</sup> GLOBAL CENTRE FOR THE RESPONSIBILITY TO PROTECT, *R2P References in UNSC Resolutions and Presidential statement*, available at: <http://www.globalr2p.org/resources/335>

against the rebel groups which have been trying to overturn a legitimate regime. Under international law, it is up to the legitimate government to respond to domestic threats and to defend itself. <sup>(224)</sup> Thus, it is equally true that the State is the only responsible to the protection of the non-combatants who lies inside its borders, unless the same government uses uneven means of repression against peaceful protesters, resulting in violations over human rights. <sup>(225, 226)</sup>

Damascus under the Assad regime committed grave human rights violations against civilians as displayed by the Human Rights Council Report of February 2012. The report showed the crimes perpetrated by the Damascus government and the General Assembly Resolution A/HRC/RES/21/26 adopted in October 2012, condemned the grave Syrian government violations against human rights. This should have been enough to enable the activation of the R2p clause. However, the Security Council could not agree on a Resolution which would permit an international force to intervene to stop the massacre of civilians because of the veto within the Permanent Members.

### 5.3 The Responsibility not to veto – RN2V

The R2NV comes from the idea that Permanent Members within the Security Council should agree on avoiding the use or threaten their veto power in situations of mass atrocities. The origins of the RN2V are the same of R2P: 2001, when the ICISS designed the framework of the new doctrine called Responsibility to Protect. French Minister of Foreign Affairs, Hubert Védrine proposed a code of conduct addressing the P5. If an agreement among the P5 to refrain from using the veto would be found, the Security Council would be more effective in providing faster response, increasing reliability and enforcing the credibility of the whole system of the United Nations. <sup>(227)</sup>

In 2004, the High-Level Panel report requested by SG Kofi Annan, indicated “veto” as an anachronistic character, recommending that this power would not be expanded if a reform of the Security Council Would take place. Moreover, it reiterated the importance of refraining from using the veto in cases of genocide and large scale human right abuses.

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<sup>(224)</sup> NATALINO RONZITTI, *Diritto Internazionale dei Conflitti Armati*, (Giappichelli, 2014), 30-32

<sup>(225)</sup> DIMITRIS LIAKOPOULOS, *L’Ingerenza umanitaria nel diritto internazionale e comunitario*, (CEDAM, 2007), 86-87

<sup>(226)</sup> JEREMY WRIGHT, *The Modern Law of Self-Defence*, article in EjiL-Talk, January 11, 2017, available at: <http://www.ejiltalk.org/the-modern-law-of-self-defence/>

<sup>(227)</sup> ALEX J. BELLAMY, TIM DUNNE, *The Oxford Handbook of the Responsibility to Protect*, (Oxford University Press, 2016), 927

In 2009, Ban Ki Moon in his report “*Implementing the responsibility to Protect*” called for a reform of the way the Permanent Members of the SC cast their veto right. These States, not only are gifted with such an instrument of privilege, but also, they have the responsibility to refrain from employing or threatening to employ the veto in situations of genocide, war, crimes, ethnic cleansing and crimes against humanity, which are all manifest of failure to meet obligations relating to the R2p.

More recently, Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland created the small states group (S5) and claimed the RN2V in the context of issues around human rights. In May 2012, the S5 group proposed a resolution to the General Assembly which called the Permanent Members to explain their reasons behind the use of veto and refrain from using it to block Council decisions and actions aimed at preventing genocide, war crimes and crimes against humanity. As highlighted by Focarelli, even this effort ended to be a failure. In 5 years, 5 UNSC Draft Resolutions have been vetoed, thus rendering the UNSC unable and undermining its legitimacy and duty to protect civilians against mass atrocities. <sup>(228)</sup>

#### 5.4 Is this enough to recall the R2p clause?

Gareth Evans, who has been the Australian Foreign Minister between 1988 and 1996 and Co-Chair of the International Commission on Intervention and State Sovereignty 2001 (ICISS), published his opinion on whether R2p could have been invoked in the case of Syria. <sup>(229)</sup>

In his stance, the lack of consensus in the SC, which is the only body that can invoke R2p intervention measures, marked a step backward on the development of the international norm adopted in 2005. Following the 2005 Outcome Document, the 2009 Secretary General Three-Pillar report on the R2p and the practical implementation of R2p doctrine in the Libyan case with Resolution 1973, there should exist a general consensus over the fact that no state disagrees that every state has the right and the responsibility to protect their own citizens from war-crimes and human atrocities. Under no circumstances should the international society disagree over the possibility and the moral duty to intervene, whenever a state is clearly manifesting its failure to meet its responsibility to protect its own people.

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<sup>(228)</sup> PETER HILPOLD (Ed.), *Responsibility to Protect (R2P), A New Paradigm of International Law?*, (Brill Nijhoff, 2014), 425-427

<sup>(229)</sup> GARETH EVANS, *R2P Down but not out after Libya and Syria*, in *Open Democracy*, Publication 9 September 2013, available at: <https://www.opendemocracy.net/openglobalrights/gareth-evans/r2p-down-but-not-out-after-libya-and-syria>

According to Evans, R2p is down in Syria but not out. In fact, as I pointed out earlier, the Security Council is keeping its effort to implement R2p clauses, invoking the international norm in several UNSC resolutions. However, the situation in Syria became paralyzed, even though the *red line* in 2013 has been widely and deliberately surpassed. <sup>(230)</sup> Evans analyzes the possibility of a collective intervention in Syria by trying to fulfill the four criteria outlined in the ICISS document, a must goal to fully authorize an external intervention under R2p rule.

First, he sets out the *seriousness of harm* and the **prima facie justification**: hundreds of deaths occurred after the Ghouta Chemical attack in August 2013. The casualties have been caused by Chemical Weapons, no doubts on that, and this can justify a right to intervene under coercive military intervention. The Obama *red line* momentum, which shows the US foreign policy over Syria, clearly underlined that if chemical weapons would be used in the conflict, the US would intervene with no hesitations. Moreover, when the attacks happened in August 2013, not only CW have been used, but also, they targeted and killed hundreds of civilians, which constitute a war crime. According to Evans, the use of CW, like biological or nuclear weapons, is *inherently* indiscriminate, thus making difficult to target and distinguish between civilians and conflict targets. Thus, the only use of CW fulfills the first criteria.

The second criteria, *the motive* under which undertaking a foreign collective response towards Syria, has been widely satisfied. The intervention would secure the protection of civilians and it should avoid any repetition of the use of WMD and CW in a civil conflict. The SC members who oppose the implementation of R2p clauses within the Resolutions, should not think that a military intervention is required to permit a regime change, rather they should focus on the humanitarian purpose.

The third criteria known as *last resort*, means that no lesser measures (diplomacy, reference to the Criminal Court authorized by the Security Council) has been effective or not considered in a possible solution for the Syrian crisis. In Chapter 1 of my dissertation I widely discussed the diplomatic efforts to solve the crisis; however, these attempts turned to diplomatic failures. Evans underlines that, even if military interventions take place, diplomatic tracks should never be abandoned.

The fourth criterion, the *proportionality of the response*, would be fulfilled only if the intervention is justified and necessary to deter any further use of chemical weapons. In other

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<sup>(230)</sup> On the Obama doctrine and the Syria *Red Line*, read HOW RUSSIA SAW THE 'RED LINE' CRISIS, The Atlantic, available at: <http://www.theatlantic.com/international/archive/2016/03/russia-syria-red-line-obama-doctrine-goldberg/473319/>



words, the intervention should be permitted to secure chemical weapons and materials, which does not imply a full-scale war designed to achieve a regime change.

Although all the criteria have been widely satisfied, the States did not provide any humanitarian intervention. We are facing a case of *failure to protect*.

The humanitarian rights violation proved to be the only way possible for the UNSC to intervene inside Syria. The main concerns for the UN system since the beginning of the turmoil in 2011, has been to stop the massacre of civilians and protect the weakest. However, as displayed by these resolutions, the formula used in these cases recalls the responsibility of the Syrian authorities to protect the population in Syria avoiding to include a reference to a possible authorization of collective measure if Syria does not fulfil its obligations to protect the civilians.

### 5.5 Comparison between Libya and Syria

In the case of the Libyan conflict, the SC authorized the intervention just after one month since the beginning of the turmoil. In the case of Syria, 6 years have passed and the Security Council Permanent Members could not reach common grounds to send a military coalition under R2p clause. Obviously, the P5 members, when deciding whether to intervene or not, they follow their national interests. R2p, is an international norm which is applied on a case-by-case basis. In the Libyan case, we see that Resolution 1973 has been adopted and authorized an air campaign against the Gaddafi regime as a direct consequence of the failure of the responsibility of the Libyan authorities to protect the Libyan population. This is an explicit reference to the R2P clause and responsibility to authorize collective measures against the State who does not comply with the protection of its population. <sup>(231)</sup>

If we consider the results of the voting procedures of UNSC Resolution 1973, we see that it was adopted by a vote of 10 in favor to none against. <sup>(232)</sup> However, we can witness 5 abstentions (Brazil, China, Germany, India, Russian Federation). These abstentions reflect the Russian aversion of the R2p clause. In fact, in the case of the Syrian conflict, China and Russia has always rejected and vetoed UNSC and UNGA Resolutions whose text contains references to a possible intervention justified under R2p measures. Moreover, the Russian counterparts

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<sup>(231)</sup> JAMES GELVIN, *The Arab Uprisings: What Everyone Needs to Know*, 2nd Edition (Oxford University Press, 2015), 105

<sup>(232)</sup> Security Council Approves 'No-Fly Zone' over Libya, authorizing 'All Necessary Measures' to Protect Civilians: <https://www.un.org/press/en/2011/sc10200.doc.htm>



always argues that sovereignty and territorial integrity must be respected and any action must be in line with the United Nations Charter principles of non-interference in international affairs.

In several occasions, the Russian Foreign Ministry Lavrov affirmed that, “we will not allow the Libyan experience to be reproduced in Syria”, meaning that a NATO led coalition would not enter the Syrian borders. <sup>(233)</sup> This opinion reflects the vision of Vladimir Putin who argues that:

*“We are not protecting the Syrian government, but international law. We need to use the United Nations Security Council and believe that preserving law and order in today’s complex and turbulent world is one of the few ways to keep international relations from sliding into chaos. The law is still the law, and we must follow it whether we like it or not. Under current international law, force is permitted only in self-defense or by the decision of the Security Council. Anything else is unacceptable under the United Nations Charter and would constitute an act of aggression.”* <sup>(234)</sup>

This article has been published written soon after the Ghouta Chemical Weapons attack that caused the death of hundreds of civilians. It is clear that the interests of the actors within the SC are driving the dynamics of the Syrian conflict. Damascus interests in Russia have always been weapons supplies; in return, Moscow interests in Syria goes from the Tartus naval base, which is a long term strategic goal of projecting Russian influence in the Middle East and the Mediterranean to the decision of a military intervention to take out the threat of the Islamic State. Russian foreign policy in the Middle East can also be considered as a sort of proxy-war between the West part of the World to react to the *NATO side of the force*. <sup>(235)</sup> While offering diplomatic cover in the UNSC, Russia is helping the regime forces to deal with the rebels while targeting the Islamic State militias. It is impossible not to mention the Soviet intervention in Afghanistan during the final part of the Cold War period, which led to 10 years of exhausting conflict, which saw US, Pakistan and the Gulf States provide the rebels with crucial support against the Soviet-oriented government.

Until now, Resolutions on Syria have always been addressing only the so-called *Pillar 1* of the Responsibility to protect framework. Syria has the duty to protect civilians, preventing the

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<sup>(233)</sup> Russia rules out Libyan scenario in Syria, available at:

<https://sputniknews.com/russia/20121209178024186/>

<sup>(234)</sup> The New York Times, Vladimir Putin, *A plea for caution from Russia*, September 11, 2013

<sup>(235)</sup> National Interest, What does Russia really want in Syria?, available at:

<http://nationalinterest.org/feature/what-does-russia-really-want-syria-14375?page=2>

perpetrations of crimes against humanity within the State's border. No references over Pillar 3 has ever been casted. Pillar 3 would consider a military intervention if a State is manifestly violating human rights, failing to protect its people.

Moreover, while I assessed that in Syria there have been clear indications on the fact that the Damascus regime targeted and killed peaceful protesters, in Libya some voices argued on whether the Gaddafi regime perpetrated the same atrocities. The Western narratives of the conflict in Libya tended to justify the intervention as a mean to protect civilians from being slaughtered. In 2011, as a consequence of non-violent Arab Spring uprisings in Tunisia and Egypt, a third one happened in Libya as well. In mid-February, people gathered in the streets, organized peaceful sit- and protested against their dictator. Gaddafi responded by ordering his forces to shoot the unarmed protesters, resulting in a bloodbath of thousands of innocent victims, especially in the eastern city of Benghazi. But the truth was different. Human Right Watch documented that, during the initial period of protests (January-February 2011), Misurata's medical facilities reported only 257 people killed (including rebels and government forces), in a city of 400,000 people. This means that the proportion of the population killed during two months of uprisings has been very low, representing an evidence that the government did not use indiscriminate violence against the protesters.

However, according to Akande, even if the regime did not use extreme manners to push back the peaceful protesters (killings, torture etc.) and that the use of force by the Libyan government marked a rare exception, the only threat to attack should enable a preventive intervention on behalf of the civilians. <sup>(236)</sup>

Janzekovic clearly states that there are still no indications for a possible direct and forceful intervention by external actors into Syria. My analysis in Chapter 1 reflects this feeling: China and Russia continued to veto any resolution which would require or authorize forcible measures such as no-fly zones, foreign intervention and several other active provisions. In this context, the application of the RtoP is highly unlikely. R2p is with no doubts a collection of well-meaning principles and the ideals at its basis are noble. However, they are not enough to overcome the realpolitik, which constitutes an obstacle to the high aspirations and fine principles of the Responsibility to Protect. <sup>(237)</sup>

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<sup>(236)</sup> DAPO AKANDE, *What does UN Security Council Resolution 1973 permit?*, analysis in *European Journal of International Law*, available at: <http://www.ejiltalk.org/what-does-un-security-council-resolution-1973-permit/>

<sup>(237)</sup> JOHN JANZEKOVIC, DANIEL SILANDER, *Responsibility to Protect and Prevent: Principles, Promises and Practicalities*, (Anthem Press, 2014), 56-58

## 6. Final Remarks

R2P is an innovative way to rethink the bound between sovereignty and human rights. The efforts to turn R2p from a simple doctrine to a recognized international norm require a wide consensus among the sovereign States. The debate on whether a humanitarian intervention could be a justification for military intervention worries several international actors.

Moreover, the debate challenged the UN system itself from the inside. Many actors do not agree on who owns the real power to authorize materially the intervention; thus, the opinions of the SC Permanent Members are conflicting and disagree on what circumstances and context an intervention to save imperilled people is possible. However, R2p, despite the conflicting views, tries to move the debate on raising responsibility. The international society has the duty and, more important, the responsibility to prevent and react to cases of genocides, mass killing, ethnic cleansing and assisting to rebuild the society after a major humanitarian crisis.

The intervention in Libya marked a new landmark around the Responsibility to protect. Through UNSC Resolution 1973, humanitarian intervention has been related for the first time with a foreign intervention aiming at assisting people who suffered from being killed in the context of a civil war and peaceful demonstrations. The Syrian case, on the contrary, saw a more cautious view on RtoP. Within the Security Council, some Members are probably concerned about the outcome of the earlier Libyan experience, which resulted in a regime change. Thus, they are not authorizing any foreign intervention, despite the atrocities perpetrated by the Assad regime against its citizens. This could be seen as a failure to protect. From the ICISS report in 2001, the rhetoric on R2p tried to consider the humanitarian intervention as an act of responsibility, rather than an act of force. No regime-change agenda should be at stake when thinking about a military intervention for human purposes.

To encourage and to make R2p a more feasible option, other theories have been introduced (RWP and RN2V). However, political interests, sovereignty issues and legal aspects drive the adoption the abstentions or the aversion of the R2p clause. The Syrian clearly demonstrate the opposite visions of the actors within the SC. However, the inability of the SC should not be an obstacle to an intervention for humanitarian purposes. In case of grave breaches on human rights, the exclusive *veto power* should be cautiously recalled, as it would crystallize the whole UN mechanism on humanitarian assistance.

### **Chapter 3: The International Criminal Court and Syria – A way to prosecute humanitarian crimes**

1. Introduction: In Chapter 2 I analyzed the Responsibility to Protect doctrine. In particular, I assessed the inability to adopt a UNSC Resolution to authorize a military intervention for humanitarian issues in the Syrian context. In Chapter 3 I will determine whether the United Nations System can ensure at least the prosecution of crimes based on grave breaches of human rights.

I will try to address the issue by overviewing the International Criminal Court (ICC). The ICC is an independent court who has been established to prosecute individuals (State and non-State actors) who commit humanitarian abuses. Although designed as an independent body, the ICC works in contact with the UN and the national courts to help addressing and prosecuting humanitarian issues.

The ICC Rome Statute provides the Security Council with a right to refer a “situation” pursuant to Chapter VII of the UN Charter. Whenever any situation threatens international peace and security, the UNSC has the power to trigger ICC’S jurisdiction, virtually with an unlimited decisional discretion. <sup>(238)</sup>

In the past, the international community, on behalf of the Security Council, tried to address the humanitarian issues with the help of the International Criminal Court. The UNSC tried to refer situations to the ICC twice, for the Darfur region of Sudan in 2005 and the civil war in Libya in 2011. By the way, in both cases, the SC failed to activate the jurisdiction of the court. <sup>(239, 240)</sup>

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<sup>(238)</sup> On the Court’s dependency on Partnership with the Security Council, see OLYMPIA BEKOU (ED.), ROBERT CRYER (ED.), *The International Criminal Court*, (Ashgate Pub Ltd, 2005), 381-385

<sup>(239)</sup> S/RES/1593 (2005)

<sup>(240)</sup> S/RES/1970 (2011): UNSC Resolution 1970 referred the situation of the Libyan situation to the ICC Prosecutor. However, this Resolution has been rapidly followed by Resolution 1973, whose adoption permitted the direct intervention under R2p norm. See Chapter 2.

## 2. ICC and Syria – Failure to Refer

For what concerns Syria, Human Rights Watch argued that the UNSC failed to act when clear evidences of serious international crimes have been displayed. According to the NGO, the Ghouta attack on August 21 2013, represents the most significant use of chemical agents since the Iraqi government under Saddam Hussein, who used CWs targeting Iraqi Kurds in 1987-1988, during the Iran-Iraq war. <sup>(241)</sup>

That is the reason why, soon after the Ghouta tragedy in 2013, UNSC Resolution 2118 has been adopted. In particular, paragraph 1 of the Resolution affirms that the use of chemical weapons is a threat to international peace and security while paragraph 2 condemns the August 21<sup>st</sup> attack:

Paragraph 21, of the Resolution states that:

*“Decides, in the event of non-compliance with this resolution, including unauthorized transfer of chemical weapons, or any use of chemical weapons by anyone in the Syrian Arab Republic, to impose measures under Chapter VII of the United Nations Charter;”* <sup>(242)</sup>

This means that the SC could reconsider a direct intervention according to article 42 of the UN Charter, if any measures not involving the use of armed force are not giving effect on the UNSC decision.

*“Article 42: Should the Security Council consider that measures provided for in Article 41 would be inadequate or have proved to be inadequate, it may take such action by air, sea, or land forces as may be necessary to maintain or restore international peace and security. Such action may include demonstrations, blockade, and other operations by air, sea, or land forces of Members of the United Nations.”*

However, the UNSC, as demonstrated in Chapter 1 and Chapter 2, did not prove to be efficient in addressing a forcible intervention in Syria to stop the massacre of civilians. Rather, some UN Members preferred to use political means to stop the use of Chemical Weapons (CW), while others tried to refer the situation to the ICC.

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<sup>(241)</sup> Human Rights Watch report: *Syria and the International Criminal Court*, available at: [https://www.hrw.org/sites/default/files/related\\_material/Q%26A\\_Syria\\_ICC\\_Sept2013\\_en\\_0.pdf](https://www.hrw.org/sites/default/files/related_material/Q%26A_Syria_ICC_Sept2013_en_0.pdf)

<sup>(242)</sup> S/RES/2118 (2013), 27 September 2017

In fact, on 22 May 2014, the UNSC voted on Draft Resolution 348. The Draft has been put ahead by France. China and Russia vetoed the Resolution. The text, recalling Chapter VII of the UN Charter, reaffirmed the widespread of violations of human rights by the Syrian authorities as well as by non-State armed groups. In paragraph 2, the UNSC:

*“2. Decides to refer the situation in the Syrian Arab Republic described in paragraph 1 above since March 2011 to the Prosecutor of the International Criminal Court; “(243)*

Also in this occasion, China and Russia opposed their vote and used the veto option. The motivation behind should be interpreted as an attempt to avoid an escalation of events which could trigger a foreign interference.

As a matter of fact, China’s UN Permanent Representative Wang Min, although aware of 3 years-long suffering of the Syrian people, stated that China could not cast a positive vote on the Draft. He did not share the idea that the Syrian referral to the ICC would be respectful of the juridical sovereignty of States, endangering any political efforts to solve the crisis by finding a deal between the government and rebels.

Russia’s UN Permanent Representative Vitaly Churkin, although he understood the feeling of the delegations who were supporting the Draft Resolution, he could not understand the motivation which drove France to the creation of a new Draft Resolution on Syria. He called this attempt as a deliberate act to provoke an armed response against Syria as well as a hard blow against a peaceful debate within the SC. According to him, Resolutions 2118 (2013) on the destruction of Syria’s Chemical Weapons along with Resolution 2139 (2014) on humanitarian issues have already shown concrete and positive results for the Syrian crisis. (244) Moreover, he recalled the Libyan case. UNSC Resolution 1970 (2011), although ineffective, referred Tripoli’s government to the ICC. Churkin argued that Resolution 1970 has only thrown *oil on the fire*, paving the way to Resolution 1973 which triggered the following NATO-led intervention. Moreover, he affirmed that the United States should not support a Resolution containing a provision about an ICC referral, as they are not party of the Rome Statute. (245)

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(243) S/2014/348, (22 May 2014)

(244) S/RES/2139 (2014), the UNSC Resolution demanded to both the Syrian Government and the rebel groups to allow humanitarian assistance by providing food to civilians and liberate the people who wanted to evacuate from the most dangerous cities of Syria. Once again, the Resolution recalled the need to promptly allow unhindered humanitarian access for UN agencies and partners.

(245) UN MEETINGS COVERAGE, *Referral of Syria to International Criminal Court Fails as Negative Votes Prevent Security Council from Adopting Draft Resolution*, available at: <http://www.un.org/press/en/2014/sc11407.doc.htm>

## 2.1 The Legal question: ICC for Syria

However, is the ICC able to prosecute war crimes in Syria? In other words, is the external jurisdiction of the ICC consistent with the Syrian domestic jurisdiction? Yes, it is. However, this answer needs a wider consideration over the establishment and the powers of the ICC.

## 2.2 ICC origins and the UN system

On 16 November 1937, the League of Nations decided to formulate a Convention to create an International Criminal Court aiming at taking to trial perpetrators of terrorist crimes. The Convention was drafted at the Conference for the repression of Terrorism, which was held in the Geneva headquarter of the League of Nations on November 1-16, 1937. The document was proposed by the French Government following the assassination in Marseilles of King Alexander I of Yugoslavia by Croatian and Macedonian separatists. Article 1 of the Convention pursued to define the act of terrorism as a criminal act directed against a State, intended or calculated to create a state of terror in the minds of particular persons or a group of persons or the general public. The Convention has never been adopted due to disputes around the articles on extradition. <sup>(246)</sup> <sup>(247)</sup>

Later, with the end of WW II, The Nuremberg and the Tokyo Tribunals have been created to judge over crimes that have not been codified under international law. Genocide, torture, war crimes, piracy, crimes against humanity have been included in the list of grave offences. The need to establish *ad-hoc* courts derived from the question about who could prosecute and have jurisdiction over individuals in case of grave breaches against human rights. Before Nuremberg and Tokyo, there was no universal jurisdiction capable of accusing and prosecute individuals. Thus, the winning powers of WW 2 signed the London Charter (August 1945), an agreement that established a special tribunal to exercise jurisdiction over war crimes. Although both Courts (Nuremberg and Tokyo), obviously exercised their jurisdiction over targeted individual (the losing powers), they gave a tremendous impetus to the development of the general principles of humanitarian law. These tribunals paved the way to the Universal Declaration of Human Rights (1948) and many others international norms, qualified as an attempt to codify crimes against humanity and extending the jurisdiction of international law. <sup>(248)</sup>

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<sup>(246)</sup> ANIQUE H. M. VAN GINNEKEN, *Historical Dictionary of the League of Nations*, (Scarecrow, 2006), 184-185

<sup>(247)</sup> WORLD DIGITAL LIBRARY, *Convention for the Prevention and Punishment of Terrorism*, available at: <https://www.wdl.org/en/item/11579/>

<sup>(248)</sup> MARTIN DIXON, *Textbook on International Law*, (Oxford, 2013), 154-156

The main obstacle for the implementation of new humanitarian laws has been the challenged posed to the principle of States' sovereignty. In fact, according to Carreau and Marrella, human rights are a clear example of State's sovereignty erosion. The UN Charter and many others international treaties such as the 1948 Universal Declaration of Human Rights, showed that the State does not own unlimited freedom to treat its citizens or deny them human rights. Therefore, if initially the territorial sovereignty of the state had suffered a compression only with regards to the treatment of foreigners, the second half of the century saw the gradual and inexorable erosion of the State's reserved domain. The affirmation and promotion of international standards of human rights applies to the entire national community, without distinction between citizens, foreigners and stateless persons. <sup>(249)</sup>

This is the main reason behind the willingness to establish the International Criminal Court (ICC). In fact, one of the main critics to the *ad hoc* courts, (f.e. the Nuremberg tribunals), has been the so-called *selective justice*: some people guilty from grave crimes receive the right punishment, but many others end to be unpunished. Consequently, the jurisdiction exercised by these tribunals results controversial: as argued by Focarelli, the international criminal justice has been marked as the expression of "*impartial political justice*" or "*the winners' justice*", only apparently focused on providing a neutral application of the law to punish the enemy. Moreover, leaving an *ad-hoc* Court freedom to exercise powers over individuals would mean renouncing to the own national courts, mining the fundamental principle of sovereignty of the interested State.

Starting from 1994, the UN International Law Commission adopted a series of articles which would have led to a Statute for a permanent court. This constituted the basis of several diplomatic negotiations, conducted in Rome. On 17 July 1998, the Rome Statute established the International Criminal Court (ICC). The ICC Statute entered into force on July 1<sup>st</sup> 2002, following the deposit of the 60<sup>th</sup> instrument of ratification.

The ICC as an independent Court. It diverges from the *ad-hoc* tribunals established by an authorization of the Security Council or agreement between States, as it should provide with a fair and equitable process, following the consent of a sovereign State. The ICC exercises its jurisdiction upon States who ratified the Rome Statute or accepted the Statute through a written declaration filed by the ICC Registry. In general, States prefer to rely on domestic courts to repress grave humanitarian crimes. Therefore, ICC has been established as a complementary

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<sup>(249)</sup> DOMINIQUE CARREAU, FABRIZIO MARRELLA, *Diritto Internazionale*, (Giuffrè Editore, 2016), 359



Court, acting in synchrony with national courts. ICC powers are particularly articulated and prosecute individuals, regardless their political position (even the Head of States can be judged by the ICC). Personal and public immunities fall against grave violations of human rights. In fact, the ICC, if activated, exercise its jurisdiction upon any adult disregarding immunity and/or political position. <sup>(250)</sup>

The character of universality of the ICC has been recalled by some key-documents and statements. For example, the final sentence of the Nuremberg trial released on October 1<sup>st</sup> 1946 represented a turning point for the development of the humanitarian international and prosecution of war crimes. The sentence argued that the London Agreement, the document which established the Nuremberg Tribunal, shall not be interpreted as an arbitrary exercise of power against the losing powers; on the contrary, the London Charter is an expression and an exercise of the existing norms of international law. In that case, international law should focus on individuals rather than States: humanitarian issues and grave violations are not committed by States, rather by people. Violating international law on conflicts should raise the doubt of being protected by any kind of immunity. The fact that someone is acting on behalf of the State authority does not represent a justification to act or to authorize orders that are manifestly against humanitarian rights. <sup>(251)</sup>

In December 1948, the UN General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide. Article VI of the Convention declared that trial for genocide was to take place before a competent tribunal of the State in the territory of which act was committed, or by such international penal tribunal as may have jurisdiction with respect to those Contracting Parties which shall have accepted the jurisdiction. <sup>(252)</sup>

In addition, in 1950, the UN International Law Commission codified the so called “Legacy of Nuremberg”. The text is at the core of the current international criminal law, and foresaw a future for “Nuremberg-like” tribunals. John Parker, a judge of the Nuremberg Tribunal declared that the establishment of the Court following the London Agreement, could be only the

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<sup>(250)</sup> CARLO FOCARELLI, *Diritto Internazionale I, Il Sistema degli Stati e I valori comuni dell’umanità*, (CEDAM, 2012), 879

<sup>(251)</sup> *supra*, 877-878

<sup>(252)</sup> A/RES/3/260, Article VI

beginning of a foundation of a permanent court with a code defining crimes and providing for their punishment. <sup>(253,254)</sup>

### 3. Competence of the Court – Characteristics

#### 3.1 The ICC structure

The ICC is a permanent intergovernmental organization whose headquarter sits in The Hague, Netherlands. The ICC is an articulate body and comprehends four main organs:

- I- Presidency
- II- Judicial Divisions
- III- Office of the Prosecutor
- IV-Registry <sup>(255)</sup>

ICC is not part of the UN institutional framework, as it owns a separate Statute and is effective only when ratified. Thus, according to Article 112 of the Rome Statute, the ICC provides for an Assembly of States Parties. This organ elects the judges and the prosecutors. Each State Party has one representative in this Assembly and count one vote during the decisional procedures. The Assembly establishes a Bureau consisting in one President, two Vice-Presidents and 18 members elected by the Assembly for three years.

The Assembly of State Parties elects the judges who compose the ICC Court. Seen the importance of this Assembly,

*“Every effort shall be made to reach decisions by consensus in the Assembly”*

otherwise,

*“[...]decision on matters of substance must be approved by a two-thirds majority of those present and voting, while decisions on matters of procedure shall be taken by a simple majority of States Parties present and voting.” <sup>(256)</sup>*

Moreover, the Assembly can remove judges from office if,

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<sup>(253)</sup> OTTO TRIFFTERER (ED), KAI AMBOS (ED.), *The Rome Statute of the International Criminal Court: A Commentary*, (Nomos Verlagsges.Mbh + Co, 2015), pages XIII-XIV

<sup>(254)</sup> WILLIAM A. SCHABAS, *The UN International Criminal Tribunals: The Former Yugoslavia, Rwanda and Sierra Leone*, (Cambridge, 2010), 3-13

<sup>(255)</sup> Rome Statute, Article 34

<sup>(256)</sup> Rome Statute, Article 112

*“(he or she) is found to have committed serious misconduct or a serious breach of his/her duties, [...] or is unable to exercise the functions required by this Statute”* <sup>(257)</sup>

However, the decision should be taken after having received the endorsement of at least two-third majority of the remaining judges.

The Court is constituted by eighteen judges elected by the Assembly of the State Parties. They are in charge for 9 years and cannot be re-elected. Obviously, the election should be considered as a *matter of substance* and, to be elected, every judge should receive at least two-third of the votes from the Assembly of the State Parties. According to Article 36, para. 3 (a):

*“The judges shall be chosen from among persons of **high moral character, impartiality and integrity** who possess the qualifications required in their respective States for appointment to the highest judicial offices”*. <sup>(258)</sup>

Every Member State can put forward one candidate for any given election who need not necessarily be a national of that State Party, but shall in any case be a national of a State Party.

In addition, the selected judges should own

*“[...] competence in relevant areas of **international law such as international humanitarian law and the law of human rights**, and extensive experience in a professional legal capacity which is of relevance to the judicial work of the Court;”* <sup>(259)</sup>

Once elected, the judges work full-time in the Court and are independent in the performance of their functions. Article 40 and its paragraphs stress the very importance of the independence of the judges, providing that no judge shall engage in any activity likely to interfere with their judicial functions affecting their independence. In addition, judges cannot engage any other occupation of a professional nature. <sup>(260)</sup>

### 3.2 The Presidency

The President and two Vice-Presidents are elected by the absolute majority of the judges. They constitute the Presidency, responsible for the administration of the Court, except for the

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<sup>(257)</sup> *Rome Statute*, Article 46, para. 1

<sup>(258)</sup> *ibid.*, Article 6, para 3 (a)

<sup>(259)</sup> *supra*, Article 36, para. 3 (b)

<sup>(260)</sup> *ibid.*, Article 40, *Independence of the Judges*.

Office of the Prosecutor who owns *special* powers and *freedom of maneuver*. The judges are appointed in the three different sections of the Chambers: Appeals Division, Trial Division and Pre-Trial Division.

### 3.3 The Office of the Prosecutor

The Office of the Prosecutor is an independent and separate organ within the Court. The Prosecutor is the responsible and receiver of the referral as well as any others information over crimes within the jurisdiction of the Court. The Assembly of the States Parties elects (or removes) the Prosecutor through an absolute majority voting procedure. He examines the materials and he may be assisted by one or two Deputy Prosecutors. Again, both the Prosecutors and Deputies should be persons of high moral character, highly competent and experienced in the prosecution or trial of criminal cases. <sup>(261)</sup>

I will analyze the role of the Prosecutor ahead, when I will present the circumstances through which the Court can be triggered.

### 3.4 The Registry

Lastly, the Registry is headed by a Registrar, the principal administrative officer of the Court. He exercises his or her functions under the authority of the President of the Court. The Registrar is elected by the judges who considers any recommendation by the Assembly of the States Parties. He/she is backed by a Deputy Registrar. <sup>(262)</sup>

### 3.5 Jurisdiction

The competence of the ICC should be limited to the exercise of jurisdiction

*“[...] over persons for the most serious crimes of international concern, as referred to in this Statute, and shall be complementary to national criminal jurisdictions.”* <sup>(263)</sup>

The Statute gives the ICC the power to prosecute those international crimes related to the customary law, such as genocide, crimes against humanity and war crimes. The crime of aggression falls within the ICC jurisdiction as well. <sup>(264)</sup>

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<sup>(261)</sup> supra, Articles 38, 39, 42.

<sup>(262)</sup> ibid., Article 43

<sup>(263)</sup> supra, Article 1

<sup>(264)</sup> ibid., Article 5

The Rome Statute provides a brief definition of crimes under its jurisdiction.

The crime of genocide consists in a series of criminal acts aiming at killing some or the whole members of a group; or causing bodily or mental harm to them; or deliberately inflicting conditions of life calculated to bring about physical destruction on the group; or impose measures intended to prevent births; or forcible transferring children of the group to another group.

The Rome Statute defines Crimes Against humanity as acts committed which are part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack. The list comprehends murder, extermination, enslavement, deportation or forcible transfer of population, imprisonment or deprivation of physical liberty in violation of fundamental rules of international law, torture, rape, sexual slavery, enforced prostitution or sterilization, persecution against any identifiable group of collectivity, enforced disappearance of persons, apartheid or other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or mental physical health.

War crimes consist in all the grave violations of the international humanitarian law in the context of international conflicts (grave breaches of the norms codified in the 1949 Geneva Conventions and other customary laws related to international conflicts), as well as non-international armed conflict (grave violations of the common Article 3 of the 1949 Geneva Conventions and other customary laws who apply to non-international armed conflicts).

Finally, ICC's Statute tries to address the crime of aggression. In 1998, during the draft of the Rome Statute, the States could not agree on a common definition of aggression. During the 2010 Review Conference of the Rome Statute held in Kampala (Uganda), the Assembly of States Parties adopted a common definition of aggression. A *crime of aggression* is the planning, preparation, initiation or execution of an act using armed force by a State against the sovereignty, territorial integrity or political independence of another State. The person accountable to this crime is an individual in a position effectively to exercise control over or to direct the political or military action of a State. However, the Court will have the jurisdiction over this crime after a decision to be taken after January 1<sup>st</sup> 2017, by a two-thirds majority of the Assembly of States Parties. <sup>(265)</sup>

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<sup>(265)</sup> On the Evolution of crimes in the International Criminal Court Statute, see the collection of essays in, S. PERRAKIS (ED.), International Criminal Court, *A new dimension in International Justice. Question and prospects for a new humanitarian order*, (Ant. N. Sakkoulas Publishers, 2002). See also

and subject to the ratification of the amendment concerning this crime by at least 30 States Party of the Rome Statute. <sup>(266, 267, 268)</sup>

### 3.6 When and Where does the Court have jurisdiction?

In the first case, the *when clause* follows the non-retroactivity *ratione personae* rule. Unlike the UN *ad-hoc* Courts, the ICC exercises its jurisdiction over crimes committed after the entry into force of the Rome Statute. Article 24 outlines that the Court respect the *non-retroactivity ratione personae* rule. Therefore, no person shall be criminally responsible under the Rome Statute for any conduct prior the entry into force of the Statute. However, a State who ratifies the Rome Statute, can request the Court to exercise its power over crimes committed by its citizens within the State' borders. Of course, those crimes should have been committed after the entry into force of the Rome Statute.

The second case, the *where clause*, is regulated by the *ratione loci e ratione personarum* rule. the ICC exercise its jurisdiction whether some conditions are satisfied. Firstly, if the crime has been committed in the territory of a State who is part of the Rome Statute. In this case, the nationality of who is committing the crime does not matter at all.

The ICC does not find relevant whether the person accused owns the nationality of a State Party of the Rome Statute. In this event, if crimes have been perpetrated against people who own the nationality of a State Party, the place where the crime has been committed is redundant. The violation could have been committed within the territory of a State not part of the ICC Statute and this would not prevent the exercise of the jurisdiction of the Court. <sup>(269)</sup>

Thirdly, for what concerns crimes committed within a third State, or by a third State citizen, the Court can exercise its jurisdiction. However, that State should accept the jurisdiction of the Court by depositing an *ad-hoc* declaration by the Court Registry.

Concluding, normally, the Court has no universal jurisdiction over crimes required by the Rome Statute. The ICC powers work in presence of principle as **territoriality** and **active nationality**.

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<sup>(266)</sup> Status of ratification of the *Amendments on the crime of aggression to the Rome Statute of the International Criminal Court*, available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XVIII-10-b&chapter=18&clang=en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XVIII-10-b&chapter=18&clang=en) . More than 30 States ratified the Amendments, however the voting process by the Assembly of States Party has not taken place yet (January 2017).

<sup>(267)</sup> ANDREA GIOIA, *Manuale di diritto internazionale*, (Giuffrè, 2015), 419-420

<sup>(268)</sup> LUDOVICA POLI, *Il Crimine di aggressione dopo la Conferenza di Kampala*, ISPI Analysis, 19 July 2010, available at: [http://www.ispionline.it/it/documents/Analysis\\_19\\_2010.doc.pdf](http://www.ispionline.it/it/documents/Analysis_19_2010.doc.pdf)

<sup>(269)</sup> WILLIAM A. SCHABAS, *An Introduction to the International Criminal Court 4<sup>th</sup> Edition*, (Cambridge, 2011), 123-150; 187-190

However, the Court can also exercise its jurisdiction whether a State not part of the Statute has accepted the jurisdiction of the ICC through an explicit declaration. This aspect raised many critics and avoided several State (at least at the beginning) to ratify the Rome Statute. <sup>(270)</sup>

#### 4. Triggering the Court Jurisdiction – Who can activate the ICC?

The Rome Statute defines three ways of activating the Court’s jurisdiction.

*“The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:*

*(a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;*

*(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or*

*(c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15.” <sup>(271)</sup>*

##### 4.1 State Party Referral

In the first case, the peculiarity lies in the fact that a State Party can refer to the Prosecutor a situation in which international crimes have been committed. However, as outlined by William A. Schabas, since the entry into force of the Rome Statute, there has been no inter-State complaints. Rather, a State refers a criminal issue within its own borders. This behavior became known as “*self-referrals*”. Usually the State does not intend to prosecute against itself, but it usually address to the ICC to prosecute rebel groups who are acting within its borders.

According to Gioia, as of 2015, 4 States Party referred the situation to the ICC: Uganda, Democratic Republic of the Congo, Central African Republic and Mali. <sup>(272)</sup>

Article 14 of the Rome Statute outlines the terms of the referral by a State Party:

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<sup>(270)</sup> ANDREA GIOIA, *Manuale di diritto internazionale*, (Giuffrè, 2015), 421-422

<sup>(271)</sup> *Rome Statute*, Article 13, *Exercise of jurisdiction*

<sup>(272)</sup> ANDREA GIOIA, *Manuale di diritto internazionale*, (Giuffrè, 2015), 423

1. *“A State Party may refer to the Prosecutor a situation in which one or more crimes within the jurisdiction of the Court appear to have been committed requesting the Prosecutor to investigate the situation for the purpose of determining whether one or more specific persons should be charged with the commission of such crimes.*
2. *As far as possible, a referral shall specify the relevant circumstances and be accompanied by such supporting documentation as is available to the State referring the situation.”*

The referral must be in writing. <sup>(273)</sup>

#### 4.2 Security Council Referral – and Deferral: too much power?

The second case is the Security Council Referral. The Rome Statute does not give any provision concerning the referral coming from the Security Council. This act is governed by Article 13(b) of the ICC Statute and authorizes the Court to exercise its jurisdiction in accordance with the list of crimes provided with Article 5. It is useful to analyze Article 13 of the Rome Statute which consists in a great innovation in the field of the ICC jurisdiction.

*“Article 13(b)*

*The Court may exercise its jurisdiction with respect to a crime referred to in article 5 in accordance with the provisions of this Statute if:*

*(b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; [..]”*

Article 13 of the Rome Statute is entirely based on Chapter VII of the UN Charter, which contains the most important duties of the Security Council. The provision provided with Chapter VII are the basic measures for the adoption of sanctions against States who are responsible of threats against international peace. Conforti and Focarelli consider the UN collective security system a powerful mean for the maintenance of peaceful relations among States. One of the main feature of the UNSC, that legitimizes its actions under Chapter VII of the UN Charter, is to interfere within the domestic jurisdiction. Civil wars, grave breaches of

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<sup>(273)</sup> WILLIAM A. SCHABAS, *An Introduction to the International Criminal Court, 4<sup>th</sup> Edition*, (Cambridge, 2011), 161



human rights, post-conflict operations are among the main reasons behind a UN intervention. The UNSC enjoys a large discretion over the evaluation whether a threat or a breach of human rights exists and in this case the link between the ICC and UNSC is driven by complementarity. (274)

Moreover, Article 16 of the Rome Statute gives the UNSC a deferral power. The Court may be prevented from exercising its jurisdiction through the adoption of a Resolution. The UNSC shall request that no request or prosecution may be commenced or proceeded by the ICC for a period of 12 months after the request. According to Schabas, this provision has been harshly criticized during the drafting of the Rome Statute, as it could interfere with the independence and impartiality features of the Court. (275)

In late June 2002, even before the Rome Statute became operational, the United States announced its willingness to exercise its Security Council veto over ALL future peacekeeping missions unless the Council invoked Article 16 aiming at shielding United Nations missions from prosecution by the ICC. Resolution 1422 which was adopted by the UNSC on 12 July 2002, requested that:

*[...] consistent with the provisions of Article 16 of the Rome Statute, that the ICC, if a case arises involving current or former officials or personnel from a contributing State not a Party to the Rome Statute over acts or omissions relating to a United Nations established or authorized operation, shall for a twelve-month period starting 1 July 2002 not commence or proceed with investigation or prosecution of any such case, unless the Security Council decides otherwise; (276)*

According to Carsten Stahn, the Resolution sent the message that peacekeepers from non-state parties to the Statute are more equal before the law than peacekeepers from state parties, because they benefit from a 12-month exemption from war crimes and other charges under the Rome Statute. However, the measure resulted in the interference with the independent and impartial features of the ICC: every State may prosecute the crimes committed by foreign nationals on its territory, regardless of their nationalities. The Security Council justified the

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(274) BENEDETTO CONFORTI, CARLO FOCARELLI, *Le Nazioni Unite*, (CEDAM, 2010), 205-209

(275) WILLIAM A. SCHABAS, *An Introduction to the International Criminal Court 4<sup>th</sup> Edition*, (Cambridge, 2011), 183-186

(276) S/RES/1422 (2002), para. 1

decision behind the adoption of UNSC Resolution 1422, by arguing that it was a measure to counter the US threat to block the collective security system of the Charter. <sup>(277)</sup>

## 5. The Link Between ICC and the UNSC

According to Porchia, the power given to the UNSC through Article 16 raises some concerns about different weights among States and international actors. In fact, Members of the Security Council enjoy a meaningful power as they could trigger the ICC to act against State who did not ratify the Rome Statute. At the beginning, ICC has been established to give a fair and neutral mean to ensure justice when specific crimes are committed. However, it is useful to notice that if the UNSC is able to trigger the ICC against other States, in contrast, international actors who are not Members of the SC and are not State Parties of the Rome Statute cannot do the same.

The UNSC acquires an authoritarian character as the Prosecutor, following a Resolution adopted by the SC, is provided with a request to initiate an investigation without the consent of the territorial State, even if it is not an ICC State Party and did not give consent to act. This principle is in contradiction with the character of *complementarity* of the ICC. According to Article 17 (issues of admissibility) of the Rome Statute. The Court determines that a case is inadmissible where:

*“(a) The case is being investigated or prosecuted by a State which has jurisdiction over it, unless the State is unwilling or unable genuinely to carry out the investigation or prosecution;*

*(b) The case has been investigated by a State which has jurisdiction over it and the State has decided not to prosecute the person concerned, unless the decision resulted from the unwillingness or inability of the State genuinely to prosecute;*

*(c) The person concerned has already been tried for conduct which is the subject of the complaint, and a trial by the Court is not permitted under article 20, paragraph 3;*

*(d) The case is not of sufficient gravity to justify further action by the Court.”*

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<sup>(277)</sup> CARSTEN STAHN, *The Ambiguities of Security Council Resolution 1422 (2002)*, in *European Journal of International Law*, 14 (2003), pages 85-104, available at: <http://ejil.org/pdfs/14/1/410.pdf>

In addition, the Prosecutor has the duty to notify all States Party and the States who would normally exercise jurisdiction over the crimes concerned (the territorial State or the Nationality State of the citizen accused to have committed such crimes) when there is a reasonable basis to commence an investigation. (Article 18(1)).

However, Article 18 does not explain whether a notification is required following the referral to the ICC according to a UNSC Resolution.

The complementarity of the ICC with national courts is in any case safe, but requires a systematic analysis of the Rome Statute. In fact, even if the UNSC owns the peculiar power to universally triggering the Court jurisdiction against a third State, it is always up to the Prosecutor to accept the case and verify if there is already an ongoing investigation or trial by the territorial State. However, if the State is unable or unwilling to act, the Prosecutor has a personal discretion on deciding whether to act or not. <sup>(278)</sup>

### 5.1 The (special) relationship Agreement Between the ICC and the United Nations

Seen the importance of the ICC for the United Nations system to address humanitarian crimes and develop better norms of international law, the UN and the ICC signed an agreement. In 2004, ICC and the UN adopted the Relationship Agreement between the ICC and the United Nations. This is a formal act whose aim is to regulate the working relationships between both organizations. It establishes a legal basis for cooperation within the respective mandates. In fact, the ICC as an independent court with its Statute, works in relation and support of the UN Charter, by addressing crimes that constitute a threat to the international peace and security.

The Agreement covers two categories of procedures: first, it formalizes some standard procedures such as the exchange of representatives, exchange of information and documents, administrative cooperation. Secondly, it stresses the *special nature* of the cooperation between organs of the UN system and the ICC. More specifically, the agreement describes the way the Security Council should refer or defer and the methods of transmission to the Court. Moreover, the ICC would be able to inform the Security Council of a failure to cooperate between the Court and the UN. Other links between ICC and UN are provided with the Rome

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<sup>(278)</sup> ORNELLA PORCHIA, *La Corte Penale Internazionale e il Sistema della Nazioni Unite, tra Punizione dei Crimini e Sicurezza Collettiva*, in GIUSEPPE PORRO, *Studi di Diritto Internazionale Umanitario*, (Giappichelli, 2004), 35-45

Statute. This agreement finds its scope in empowering the cooperation between UN and ICC, making the permanent Court a main instrument for solving future humanitarian crisis. The character of collaboration with the UN system is even recalled by the Rome Statute Preamble: in fact, the ICC has been established in relationship with the United Nations and has its own jurisdiction over the most serious crime of concern to the international community as a whole. Even if the Rome Statute entered into force in 2002, the UN Relationships Agreement worked as a catalyst to tighten and encouraging the referral to the ICC by both States Party and the UN Security Council. <sup>(279)</sup>

### 5.2 The Prosecutor – proprio motu authority

The Prosecutor has the power to initiate an inquiry over alleges crimes. Article 15 of the Rome Statute gives the *proprio motu* right to the Prosecutor. This provision is not intended to give unlimited power to the Prosecutor, (his decision to initiate an investigation could be tackled by a denial from the Pre-Trial Chamber), rather to facilitate an investigation if the Security Council or the State Parties are not able or willing to address a situation to the ICC. <sup>(280)</sup>

If the prosecutor decides to open an investigation, he must submit a number of evidences to the Pre-Trial Chamber, in order to establish a “*reasonable basis*”. The Pre-Trial Chamber works as a *restricting factor*, limiting the individual independence of the Prosecutor. Any evidence brought by the Prosecutor shall come from United Nations organs, intergovernmental or non-governmental organizations and other appropriate and reliable sources. Once evidences have been submitted, the Pre-Trial Chamber will assess whether there is an admissibility of jurisdiction (whether or not the ICC has jurisdiction, whether a national court is not already dealing with the case, whether or not an investigation would be in the interests of justice as well as victims). If the criteria have been satisfied, the Office of the Prosecutor can start an investigation. <sup>(281)</sup>

### 5.3 The Syrian case: referral to the ICC

I analyzed the powers and the different procedures that would trigger the ICC jurisdiction. When the main criteria are satisfied, the ICC can exercise its powers over individuals in case of serious crimes of international concerns as outlined in Articles 5,6,7,8 of the Rome Statute.

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<sup>(279)</sup> WILLIAM A. SCHABAS, *An Introduction to the International Criminal Court 4<sup>th</sup> Edition*, (Cambridge, 2011), 371

<sup>(280)</sup> *ibid.*, 176-178

<sup>(281)</sup> *supra*, 179-180

However, in the Syrian case, the Country has not ratified the 1998 ICC Statute. Therefore, there are two ways that could lead to the activation of the Court: the referral through the UNSC body; and the inquiry triggered by the Prosecutor.

On a legal level, if the Security Council Members agree on referring the Syrian crimes to individuals, it results simple to summon up the accused persons: when the Prosecution requests a warrant of arrest or a summon to appear, the judges only need the name of the person, a description of the crimes the person is believed to have committed, a concise summary of the facts (or the acts alleged to be crimes), a summary of the evidence against the person and the reasons why the Prosecution believes that it is necessary to arrest the person. The Court needs to secure a warrant of arrest in order to ensure the person to appear at trial or to avoid he/she to obstruct or endanger the investigation or to prevent the person from continuing to commit crimes. <sup>(282)</sup>

Of course, the arrest enforcing process would be the most difficult part: ICC owns no police forces. In addition, as the Court is a complementary body operating with the help of national Courts any operational pillar belongs to the States, including the enforcement following a Court's order. The State's Party of the Rome Statute have a legal obligation to fulfill the commitment given by the ICC. If the State Party fails to cooperate, the Court would take action through the Assembly of States.

However, things are different when the jurisdiction of the Court is requested by the UNSC: in this case, the duty to cooperate would lie upon all the UN Member States, regardless of whether they are parties of the Rome Statute. And here it is clear the reason behind the China and Russia veto over a Resolution which would refer the Syrian situation to the ICC. According to Article 29 of the Rome Statute, the grave crimes provided by the ICC

*“The crimes within the jurisdiction of the Court shall not be subject to any statute of limitations.”* <sup>(283)</sup>

This means that a warrant of arrests lasts a lifetime. Thus, sooner or later the accused individuals should face the Court. Moreover, if the Court is triggered by the UNSC, it would be easier to enforce the ICC warrant as the responsibility falls on the shoulder of 193 States who are Members of the United Nations. According to Olásolo, when the Security Council, acting under

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<sup>(282)</sup> WILLIAM A. SCHABAS, *An Introduction to the International Criminal Court 4<sup>th</sup> Edition*, (Cambridge, 2011), 358-366

<sup>(283)</sup> Rome Statute, Article 29, **Non-applicability of statute limitations**

chapter VII of the UN Charter, refers a situation all States are required to cooperate with the Court. <sup>(284)</sup>

#### 5.4 Referral for the use of Chemical Weapons – The 2010 Kampala Conference

In this part of my analysis, I would assess whether the Syrian government could be referred to the ICC for the alleged use of CW on its territory. Dapo Akande, through an exhaustive article, analyzes the possibility for the ICC to prosecute for the use of chemical weapons in Syria. <sup>(285)</sup>

First of all, as Syria is not part of the Rome Statute, the ICC would have jurisdiction over crimes in Syria only through a Security Council referral. <sup>(286)</sup>

If the SC were to refer the Syrian issue, it is possible that the attacks involving the use of chemical weapons would be addressed and prosecuted as part of a charge of “*crimes against humanity*” or as part of the war crime of “*intentionally directing attacks against civilian population*”. Unfortunately, during the drafting process of the Rome Statute, there was no possibility to introduce an explicit provision that criminalizes the use of chemical weapons in case of a non-international armed conflict.

A reference to the prohibition of the use of chemical weapons in the Rome Statute can be found in Article 8(II)(b), which states that

##### *Article 8 - War Crimes*

*[..] 2. For the purpose of this Statute, ‘war crimes’ means:*

*(i) Torture or inhuman treatment, including biological experiments;*

*(b) Other serious violations of the laws and customs applicable in **international armed conflict**, within the established framework of international law, namely, any of the following acts:*

*[..] (xvii) Employing poison or poisoned weapons;*

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<sup>(284)</sup> HÉCTOR OLÁSOLO, *The Triggering Procedure of the International Criminal Court*, (Martinus Nijhoff, 2005)

<sup>(285)</sup> Dapo Akande, *Can the ICC Prosecute for Use of Chemical Weapons in Syria?*, European Journal of International Law Talk!, available at: <http://www.ejiltalk.org/can-the-icc-prosecute-for-use-of-chemical-weapons-in-syria/>

<sup>(286)</sup> According to Articles 12, 13 of the Rome Statute of the ICC, ratification of the Statute or an explicit declaration filed by the Registry organ of the ICC enables the Court to exercise its powers.

*(xviii) Employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices;*

As noted by Akande, this could not be enough to refer the situation to the ICC, as the previous article does not apply in case of a non-international armed conflict (NIAC). Originally, the Article just quoted is not reported in the ICC Statute when it comes to describe the crimes on which the Court have jurisdiction in case of a non-international armed conflict. In other words, originally the ICC Statute only prohibits the use of “*torture or inhuman treatment, including biological experiments*” in case of an international conflict.

Fortunately, this restriction has been correct in the Kampala Review Conference in 2010. According to Article 123 of the Rome Statute, seven years after the entry into force of the Statute, the UN Secretary General may summon a Review Conference. This would consider amendments to the ICC Statute and, in particular, it would be a useful provision to update the list of crimes in article 5 of the Rome Statute. In 2010, during the Kampala meeting, State Party of the ICC Statute decided to adopt an amendment to Article 8(2)(e) extending the list of war crimes in case of a non-international armed conflict. The extension includes the explicit prohibition “*employing poison or poisoned weapons*” and “*employing asphyxiating, poisonous or other gases, and all analogous liquids, materials or devices*”.<sup>(287)</sup>

However, Akande raises one more concern: according to the Rome Statute, the amendment would be binding only for those who ratifies it. In fact, the second sentence of Art. 121(5) provides that:

*“Any amendment to articles 5, 6, 7 and 8 of this Statute shall enter into force for those States Parties which have accepted the amendment one year after the deposit of their instruments of ratification or acceptance. In respect of a State Party which has not accepted the amendment, the Court shall not exercise its jurisdiction regarding a crime covered by the amendment when committed by that State Party’s nationals or on its territory.”*

The ICC referral, could be more than an option following the amendment of Article 8 during the 2010 Kampala Conference. The use of the Sarin Gas in the Syrian civil war would easily

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<sup>(287)</sup> According to the Final Report on the first review Conference on the Rome Statute in 2010 (Kampala, Uganda) prior to and during the meeting, the International Committee of the Red Cross, as well as some NGOs, supported the amendment on article 8 because it would promote greater protection for civilians and combatants in non-international armed conflicts and would bring the article more in line with the current status of customary international humanitarian law. This could be seen as a virtuous evolution of the ICC functions.

target President Assad for being responsible of a CW attacks in the case of Ghouta. There are no clear evidences on who committed the attacks using CWs; however, if we consider the responsibility to protect doctrine, the Syrian leader has failed to prevent atrocities happening within the Country he rules. The State is the primary organ that must secure and protect citizens within its borders.

Virtually, the Damascus government, could trigger the ICC by itself. Following a ratification of the Rome Statute and according to the **self-referral** provision, the Syrian State can refer a situation to the ICC. The accusation could be directed against one or more rebel groups who perpetrated a number of war crimes within the Syrian's borders. However, in the end it is up to the Prosecutor and the Chambers to receive the request and start a fair process. As assessed before, usually the State does not intend to prosecute against itself, but they relies on the ICC in order to prosecute rebel groups who are acting within their borders (*self-referral process*).

### 5.5 The Current Situation, the Syrian Slaughterhouse

The CW usage is one of the most manifest evidence of war crimes in the Syrian conflict. However, as I write, the NGO Amnesty International released a report on 7 February 2017 entitled "Human Slaughterhouse". This new evidences should serve as a catalyst to convince the international bodies to intervene and stop the grave breaches against human rights that are occurring in Syria.

From December 2015 to December 2016, the NGO investigated over a detention center, the Saydnaya Military Prison, where the Syrian government has been suspected to secretly kill detainees. Since 2011, the Government has extrajudicially, executed and hanged detainees, after tortured and deprived them of food, water and medical care. In the end, the bodies have been buried in mass graves. The number of executions reaches up to 13,000. The execution process at the Saydnaya does not respect the rules of a "just trial" set out in many International Treaties and Convention, constituting a war crime. Death sentences were approved by the Grand Mufti of Syria or judges who responded directly on behalf the Syrian leader. Trials were provided by a Military Field Court: the judge undergoes a two-minute process who asked to the detainees whether he/she has committed a crime. No matter the answer is yes or no, the victim would have been convicted anyway. The court issued convictions based on false confessions and detainees has no right to rely on a lawyer or to somehow defend themselves. The victims do not know anything about their death sentence until minutes before they are hanged.



This report has been issued by collecting 84 interviews. These people include detainees, former prison officials and guards, former Syrian judges and lawyers, family members of the victims and doctors. Most of these interviews have been carried out in the southern border of Turkey, as Amnesty International and his staff, has been prevented by the Damascus government to access Syria.

Since 2011, the Syrian government used torture and enforced disappearance of those opposing the legitimate government (between 13,000 and 17,000 estimated disappearance and deaths). The report investigated over “an extra” 13,000 deaths occurred in the prison of Saydnaya following death sentences signed without a just trial. <sup>(288)</sup>

### **Non-International Armed Conflict (NIAC)**

The Amnesty International report argues that several violations of international humanitarian law have been committed by the Syrian Government. The humanitarian law applies during armed conflict and provides fundamental guarantees for civilians as well as fighters and combatants who are captured, injured or unable to fight. In my analysis, I do not intend to deal with the origin and the rules of humanitarian law, however, it is interesting to underline the basis regulating international humanitarian law in case of non-international armed conflict.

Common Article 3 of the four 1949 Geneva Conventions regulates the international humanitarian rules to follow in case of a NON-international armed conflict (NIAC). This is the Syrian civil war case.

Article 3 is applicable when an armed conflict exists. Usually, an armed conflict exists when a “prolonged armed conflict” persists between the legitim government and rebel groups. An armed conflict exists when:

- Hostilities must reach a minimum level of intensity. As for the Syrian case, this may happen when the hostilities are of collective character or when the government is forced to use military forces against insurgents.
- Non-governmental groups involved in the conflict must be considered as “parties of the conflict” and they own organized armed forces. These forces have to be under a command structure and have the capacity to sustain military operations.

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<sup>(288)</sup> Amnesty International, *Report: Syria: Human Slaughterhouse: Mass Hangings and Extermination at Saydnaya Prison, Syria*, available at: <https://www.amnesty.org/en/documents/mde24/5415/2017/en/>

In this case, Article 3 assumes that all the parties participating to a conflict are “*ius contrahendi*”, meaning that legitim government as well as insurgents must be considered subjects of international law. In addition, Article 3 contains a minimum standard of treatment to be applied to civilians too:

*(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.*

According to Ronzitti, rebellions are crimes against the legitim government; thus, the State authority has the right to persecute these acts. Rebels are not to be treated as belligerents who take part to the conflict. They can be subjected to capital punishments. However, the conviction should come as a result of a fair trial and emanated by a regular court. The Amnesty International report argues that, although rebels have been arrested, they did not receive an impartial trial and they could not access to judicial guarantees. Moreover, the pronouncement of the conviction is the result of a “two-minutes” process, which cannot constitute a regular judgement. <sup>(289)</sup>

In fact, according to Article 3(a-b-c-d), it is considered as inhuman:

*“(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.”*

Moreover, Article 3(2), provides that

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<sup>(289)</sup> NATALINO RONZITTI, *Diritto Internazionale dei Conflitti Armati*, (Giappichelli, 2014), 361

“(2) *The wounded and sick shall be collected and cared for.*”

All the humanitarian principles included in Common Article 3 of the Geneva Conventions are recognized by the ICJ as “*customary law*” following the Nicaragua-United States case. Moreover, even the International Criminal Tribunal for the Former Yugoslavia (ICTY) recognized these principles as customary law while dealing with the *Tadic Case*.

The report outlines some final step to be taken. In particular, it calls for the Syrian authorities to accede the Rome Statute of the ICC and issue a declaration accepting the Criminal Court’s jurisdiction since 1 July 2002. This would permit the ICC to begin immediately an investigation, ending impunities over human rights violation.

#### 6. Final Remarks - The possible role of the ICC in Syria

The Amnesty report shows evidences of breaches against human rights in the Syrian civil war context. These evidences should act as a catalyst for the international community as a whole, representing the most powerful way to address and condemn humanitarian tragedies.

In this Chapter I analyzed the International Criminal Court and I argued that it is a valid mean to condemn and punish individuals in the context of the Syrian crisis. The aspect of universal justice and complementarity with the national governments should encourage State actors to rely on it. If the final scope of a State is to ensure civilian security, what happens when a State fails to comply with this goal? ICC is an instrument capable of surpassing the limit of national sovereignty, providing an organ for the protection of civilians and people who does not take part to the conflicts. ICC is an external body of the UN and is the

It is true that the UN represents the only limit to the ICC as the veto right prevent the ICC to be triggered. However, the Prosecutor of the ICC should investigate and act as a facilitator factor to make humanitarian crisis more prone to the international community judgment. The scope of ICC establishment is that there is no sovereignty when human rights are abused. No State should use their *domain’s right* as a justification to prevent the applications of international norms protecting civilians and military personnel during a conflict.

According to Human Rights Watch, ICC is by no means a *panacea* for the Syrian situation. Nobody can argue that the court’s involvement is going to halt the continue violations on human rights. However, a UNSC decision fully supporting a role for the ICC in Syria would end the current state of impunity and would lead towards a more “just world”. An eventual

authorization of the ICC in Syria, would mean that the international community does not tolerate and is ready to tackle any kind of human rights abuses.

The Human Rights Council Resolution dated 5 February 2013, clearly points out the problems behind the establishment of ad-hoc tribunals for trials in the Syrian case. <sup>(290)</sup>

First of all, defining a legal framework, finding appropriate facilities, recruiting competent personnel or ensuring cooperation of State represent considerable challenges, take time and it is costly. As stresses by the Resolution, ICTY and ICTR have been established as special tribunals with the character of non-compulsory financial contribution by States. Thus, it results difficult to ensure a long-term funding.

Secondarily, establishing Special Courts abroad (at least partially), would end up with endangering the impartial delivery of justice. This is described as the “*ownership effect*”.

Finally, the Resolution stresses the fact that in the Syrian case it is difficult to conceive an internationalized ad-hoc tribunal that is integrated in the national judicial system. In fact, the Syrian government is lacking willingness and capability to undertake investigations and prosecution, making unreal assuming a possible Syrian support for the establishment of such tribunals. *An international ad hoc mechanism that is imposed in Syria fails to convince.* <sup>(291)</sup>

For what concerns the investigation and prosecution by the International Criminal Court, the situation is different. The GA Resolution portrays the ICC as the most suitable option. ICC is described *as an established structure that could immediately initiate investigations regarding serious crimes in Syria.* ICC relies on highly experienced staff, a long-term funding system through mandatory contributions from the States Parties.

Even if Syria is not part of the Rome Statute, the ICC could be activated whenever Syrian authorities accepts the jurisdiction of the Court, if Syria ratifies the Rome Statute or if the UNSC refers the situation to the ICC itself. The UNSC referral is the best way to initiate a credible prosecution, as the complementarity of the ICC would fulfill the inability or unwillingness of the Syrian authority to begin an investigation.

The establishment of the ICC in Syria would result in a *deterrent effect*, a message to all State Parties involved in the conflict that the international community is not only monitoring crimes,

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<sup>(290)</sup> A/HRC/22/59, General Assembly, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 5 February 2013

<sup>(291)</sup> A/HRC/22/59, (2013), 125-126

but also is prosecuting them. The ICC would fill the gap between an ad-hoc Court and the Syrian impunity, as it is already established and is able to immediately initiate an investigation.

Moreover, the GA Resolution stresses the importance of complementarity: the jurisdiction of the ICC does in any way take out the national proceedings. According to the principle of complementarity enshrined in the Rome Statute (17(1)(a)), a case is inadmissible if national authorities carry out genuine investigations and prosecutions. ICC will never be in a position to prosecute all authors of grave crimes, but only a few.

Finally, 121 States are part the Rome Statute. This means that almost two-third of all UN Member States find the ICC a reliable organ and a legitimate system to deliver justice. If the UNSC refers the Syrian situation to the ICC will be interpreted as the willingness not only of the big 5 along with the non-permanent Members of the UNSC, rather the rightful expression of most of the international community. <sup>(292)</sup>

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<sup>(292)</sup> *supra*, 127-128

## GENERAL CONCLUSIONS

The most recent UNSC Resolution 2336, adopted on 31 December 2016, stresses a political solution to the Syrian crisis.

This means that the possibility for a direct collective intervention for humanitarian purposes on Syrian soil is now more remote than ever. The Astana Talks, a series of conferences sponsored by Russia, Turkey and Iran are the product of six years of diplomatic maneuvers, which included the hard work of different UN envoys, who tried their best to find common grounds between anti-government representatives in Syria and the Damascus regime.

However, while the diplomatic track moves forward, the humanitarian track suffers. In my analysis over the Responsibility to Protect doctrine I argued that, so far, the paralysis of the United Nations prevented a decent humanitarian assistance delivery in the Syrian civil war context. Although the purpose of the United Nations is to pursue international peace and security and take effective collective measures for the prevention or removal of those threats, the UN executive body proved to be inefficient. Since the Security Council represents the only instrument who can authorize *all necessary measures* to end violations against international peace, the UN failed to protect people in needs.

UNSC dynamics have been driven by the Russian and Chinese diplomatic protection (veto). In 6 years, the SC could adopt resolutions that only included the *Pillar One* framework of the Responsibility to Protect: urging the territorial State to fulfill its obligation to protect and secure civilians from any kind of threats (external or domestic). This proved to be inefficient, as the human rights violations have never stopped. The UNSC has never been able to adopt a Resolution containing the notorious *Pillar Three*, the so called *all necessary measures* clause, which would have been able to dispatch a military mission to end violence against civilians once for all.

So far, a direct humanitarian military intervention in Syria has been prevented. Therefore, I tried to find an instrument which can, at least, address war crimes in the Syrian context. In my analysis over ICC over crimes against humanity, I argued that the Court could be a meaningful and effective instrument to deliver, or at least address, several breaches of humanitarian and war crimes in the Syrian context. Since 1998, it was clear that the ICC would have worked in strict contact with the UN system. In fact, the Security Council capacity to refer issues whenever a threat to international peace and security manifests, dramatically widened the scope of the territorial jurisdiction of the ICC. Moreover, there are several reasons for supporting ICC to

address violations of crimes within States.

The first case is the material resources. At the beginning, *ad hoc* Courts relied on voluntarily-like funds. ICC, according to its Statute, receives funds by State Parties. Moreover, when ICC is triggered by the UNSC, the costs are distributed among the entire UN Members. It results unlikely that the SC would want to see its international judicial intervention blocked, not by a veto, but rather due to lack of material resources.

Secondarily, the Security Council, according to Article 103 of the Rome Statute, is able to empower ICC's Prosecutor and Judges. This means that ICC judicial staff results as effective as it would be in *ad hoc* Tribunal contexts.

Thirdly, as set out in my analysis, a referral under Chapter VII of the UN Charter, would prevail over conflicting provisions in the ICC Statute. In other words, ICC would prevail over conflicting obligations of UN Members under any other international agreements. <sup>(293)</sup>

The last point leads directly to one of the main concerns over ICC. Given the fact that international law can provide for a constructive partnership between ICC and the United Nations Organization, (see Chapter III, "The (special) relationship Agreement Between the ICC and the United Nations"), the question arises when the UNSC referral results in a political decision. The special power given to the ICC could seriously affect the characteristic of impartiality and neutrality of the Court. However, to fill the gap between States' sovereignty and ICC jurisdiction, the Rome Statute stresses the *complementarity* role of ICC. Provisions under Article 17 of the Rome Statute, provides that, if a case has been investigated by a Court of the State who has jurisdiction over it, ICC cannot rule out the national court. <sup>(294)</sup>

Nonetheless, some States are still reluctant to support the Rome Statute and to enforce the role of ICC as a reliable and *all-day-use* Court to address humanitarian breaches. In fact, USA never ratified the Statute, while Russia, on 17 November 2016 withdrew the signature from the International Criminal Court Statute. Although Human Rights Watch recognizes that Russia never ratified the Statute and was not a member of the ICC, the withdrawal has no legal effects. However, on an international level, Russia's act owns a symbolic significance. It shows the

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<sup>(293)</sup> UN Charter, Article 103,

"In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail."

<sup>(294)</sup> OLYMPIA BEKOU (ED.), ROBERT CRYER (ED.), *The International Criminal Court*, (Ashgate Pub Ltd, 2005), 381-385

fears among powerful States over the world: the primacy of State sovereignty is threatened by an international institution and international standards over human rights. <sup>(295)</sup> In fact, as highlighted by Carreau and Marrella, human rights consist in an erosive factor of states' sovereignty, thus limiting States' domestic political decisions. <sup>(296)</sup>

Although Maria Zakharova, Russian foreign Ministry spokesperson clearly stated that Russia has always supported ICC's development, Russia's move tackles any international efforts to enforce human rights. In my opinion, this could have repercussion on the international community efforts to make ICC a valid and recognized instrument for justice. <sup>(297)</sup>

For what concerns humanitarian issues perpetrated during the Syrian civil war, the UN General Assembly has always been firmly convinced that ICC should be the right body to address who is responsible. On 5 February 2013, the UN General Assembly adopted Resolution A/HRC/22/59, containing the *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*. <sup>(298)</sup> The Report underlined that grave crimes have been perpetrated by both Government affiliated militia as well as anti-government armed groups.

In addition, it highlighted several advantages on the exercise of the ICC jurisdiction. The first one considers ICC as a reliable Court that could immediately initiate an investigation regarding serious crimes in Syria. The second sees ICC personnel as experienced and impartial staff. The third, is that ICC jurisdiction could be triggered by the UNSC itself, even though Syria is not a State Party of the Rome Statute.

Finally, the fourth and crucial advantage lies in the fact that the establishment of ICC does in no way rule out parallel or subsequent national proceedings, which are ensured by the principle of complementarity provided with Article 17 of the Rome Statute itself.

However, whenever the Court is not activated by the territorial State, and that State is not part of the Rome Statute, the UNSC operates as a catalyst: the activation of ICC jurisdiction can be

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<sup>(295)</sup> Human Rights Watch, *Moscow Holds International Justice in Contempt*, November 17, 2016, <https://www.hrw.org/news/2016/11/17/moscow-holds-international-justice-contempt>

Russia's move came as soon as on 16 November 2016, the ICC's Office of the Prosecutor in its annual report, classified the armed conflict in eastern Ukraine and Russia's occupation of Crimea as an international armed conflict to which Russia is a party. In other terms, international armed conflict laws continued to apply making the Crimea and Sevastopol situation an occupation under those laws.

<sup>(296)</sup> DOMINIQUE CARREAU, FABRIZIO MARRELLA, *Diritto Internazionale*, (Giuffrè Editore, 2016), 359

<sup>(297)</sup> Ministry of Foreign Affairs of the Russian Federation, *Briefing by Foreign Ministry Spokesperson Maria Zakharova Moscow, January 29, 2016*, [http://www.mid.ru/en/press\\_service/spokesman/briefings/-/asset\\_publisher/D2wHaWMCU6Od/content/id/2039123#7](http://www.mid.ru/en/press_service/spokesman/briefings/-/asset_publisher/D2wHaWMCU6Od/content/id/2039123#7)

<sup>(298)</sup> The Independent International Commission of Inquiry on the Syrian Arab Republic was established on 22 August 2011 by the Human Rights Council through resolution S-17/1, with a mandate to investigate alleged violations of international human rights law since March 2011.



ensured by a UNSC referral, even though that State is not part of the Rome Statute. Sadly, the main limit of the UNSC referral to the ICC is the same limit that we found with the implementation of the Responsibility to Protect framework: the veto. ICC cannot be triggered unless a Resolution from the UNSC has been adopted through a voting procedure with no contrary vote from the Permanent Members. Thus, the adoption of a full-binding resolution needs the harmony of the whole UNSC.

Since a full-binding Resolution is the only way possible to authorize an intervention for humanitarian purposes as well as to activate the role of ICC, several ideas have been put on the table in efforts to introduce new solutions to prevent the veto to be cast by the Big 5 within the UNSC.

Originally during the draft of the report of ICISS in 2001 (the document that established the principles of the Responsibility to Protect), French Minister of Foreign Affairs, Hubert Védrine, proposed a code of conduct to be adopted, to refrain the P5 from using their veto.

In 2004, the High-Level Panel requested by Kofi Annan has indicated “*veto*” as an anachronistic option. Moreover, the document urged the importance of refraining from using veto in cases of genocide and large scale humanitarian abuses. <sup>(299)</sup>

In 2009, Ban Ki Moon in his report “*Implementing the responsibility to Protect*” called for a reform on the way UNSC Permanent Members cast their veto right. He shares the idea that these States own a powerful gift, but they also have the responsibility to refrain from employing this instrument of privilege in situations of genocide, war crimes, ethnic cleansing and crimes against humanity.

Finally, more recently, Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland formed the Small States Group (S5). They established the Responsibility Not to Veto doctrine. The R2NV comes from the idea that Permanent Members within the Security Council should agree on avoiding the use or threaten their veto power in situations of mass atrocities. Moreover, they argued that in case of a veto, the state who used it should explain their reason behind the use of it. <sup>(300)</sup>

The S5 Group has been widened by the creation of the Accountability, Coherence and Transparency Group, (ACT). This group comprehends 24 UN Member States and produced in 2015 a Document, *The Code of Conduct regarding Security Council action against genocide*,

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<sup>(299)</sup> IVO H. DAALDER (ED.), *Beyond Preemption, Force and Legitimacy in a Changing World*, (Brookings Institution Press, 2007), 157-168

<sup>(300)</sup> PETER HILPOLD (ED.), *Responsibility to Protect (R2P), A New Paradigm of International Law?*, (Brill Nijhoff, 2014), 425-427

*crimes against humanity or war crimes*. The paper has been launched on 23 October 2015 and calls upon all members of the Security Council (both permanent and elected) to not vote against any credible draft resolution intended to prevent or halt mass atrocities. In a letter addressed to the UN SG on 14 December 2015, the ACT circulated the Code of Conduct within the General Assembly. The document has been supported by 107 UN Members. <sup>(301, 302)</sup>

The Syrian crisis needs no stalemate within International Actors, the impasse in the UNSC should be immediately surpassed. In fact, the most recent report of the Office for the Coordination of Humanitarian Affairs (OCHA) published in December 2016, shows that civilians continue to bear the costs and suffering of this six-years-long conflict. Some 13.5 million people require humanitarian assistance, 4.9 million are people in need, trapped in hard-to-reach-besieged areas, exposed to grave protection threats. Half of the population has been forced out of their home and there is an entire potential lost-generation, which is formed by children and youth whom have lived nothing but a life in conflict. More important, the report outlines the fact that **ALL** Parties to the conflict acted with impunity, committing any sort of violations of international humanitarian and human rights law. That is the reason why I think that the first thing to do is to end the impunity by immediately activating the jurisdiction of the ICC to address humanitarian issues. <sup>(303)</sup>

While humanitarian violations have been perpetrated, the SC has the purpose not only to guard peace and stability, but also to protect weak and vulnerable people. During 6 years of conflict, the UNSC has not been able to authorize a proper collective military intervention, even though the UN Human Rights Council's Commission of Inquiry, as well as several NGOs, evidenced gross human right abuses widely perpetrated in Syria. It is not a matter of being anti- or pro-regime, it is a matter of human costs. Resolution 2236 adopted on 31 December, reiterated and urged the international community to rely on the principles contained in the Geneva Communiqué (2012). This document establishes an end to the Syrian civil war through a political process. Even though the international community abandoned the possibility to rely on the active framework outlined by the Responsibility to Protect doctrine, more efforts should be done at least in addressing humanitarian violations and war crimes by prosecuting who is

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<sup>(301)</sup> General Assembly and Security Council resolutions, A/70/621–S/2015/978, (14 December 2015)

<sup>(302)</sup> Global Center for The responsibility to Protect, *Accountability, Coherence and Transparency (ACT) Group Code of Conduct*, <http://www.global2p.org/resources/888>

<sup>(303)</sup> OCHA Report, *2017 Humanitarian Needs Overview*, December 2016, pdf available at: [https://docs.unocha.org/sites/dms/Syria/2017\\_Syria\\_hno.pdf](https://docs.unocha.org/sites/dms/Syria/2017_Syria_hno.pdf)

accountable for them. Therefore, ICC results a fundamental asset to end the impunity in Syria.

The future of the Syrian conflict is still full of doubts and questions. I would say that in this moment, the first goal to obtain is to implement a UNSC Resolution which would activate the role of the International Criminal Court as soon as possible. The characteristics of complementarity, impartiality and reliability of the Court, should be stressed within the United Nations system as a key factor to provide Syrians with a just delivery of justice and convincing the P5 to not cast their veto. The Court should act as an elastic and reliable instrument to deliver humanitarian justice when the territorial State is not fulfilling its main role of humanitarian rights guardian. Moreover, if the UN fails to address grave humanitarian rights, the future role of the ICC would be threatened as well. The Permanent Members of the Security Council should immediately work together to agree on common solutions and avoid the veto to be used in case of grave humanitarian crises. The Responsibility Not to Veto should work and be implemented along with the Responsibility to Protect doctrine. States have the right to protect their civilians. <sup>(304)</sup> However, the UN, has the duty to ensure the international peace and security and this cannot in any case exclude the protection of civilians and people in need, especially when a State is unable or unwilling to fulfill its fundamental role: ensure protection to its citizens.

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<sup>(304)</sup> According to Carreau and Marrella, the State's sovereignty finds its limit in the fundamental interests of the International Community. The territorial State cannot authorize or tolerate prolonged and systematic violation of human rights. Sovereignty must be exercised in accordance with the General rules of international law representing the fundamental interests of the international community as a whole. If a State failures to follow these rules (classified as *jus cogens*), the international community justifies a right and a duty of humanitarian intervention. In, DOMINIQUE CARREAU, FABRIZIO MARRELLA, *Diritto Internazionale*, (Giuffrè Editore, 2016), 320-322



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