SYRIA:

NO JUSTICE WITHOUT ACCOUNTABILITY

A Thesis

Presented to

The Faculty of Law and Political Science

At Notre Dame University-Louaize

In Partial Fulfillment

Of the Requirements for the Degree

of Master of Arts in International Affairs and Diplomacy

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by

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CHAPTER ONE: **Introduction**

"Today, we live in a world where a man has more chances to be judged if he kills only one person than if he kills 100,000."

Kofi Annan[1]

The conflict in Syria has been witness to atrocities committed by all parties involved. Every day, tens of people die as a result of the ongoing civil war. Almost half a million people have been killed and another six million displaced by the conflict that began in March 2011.

A revolution that began with peaceful protests has now entered its eighth year of violence and has become a militarized confrontation – a proxy war. The conflict exists not only between the Assad regime and several opposition forces, but also among diverse multiple factions including, but not limited to, ISIS, the Kurds, Russia, Iran, Lebanon, Turkey, and the US[2], all of which have done their fair share of contribution to the war somehow.

The Assad Regime has committed numerous brutal and vicious war crimes and crimes against humanity, many of which have been documented by Non-governmental Organizations (NGOs) and the United Nations (UN) for accountability later on. Russia has been actively involved and has supported the Assad government both militarily and politically. It has blocked international action on Syria by vetoing Security Council propositions to try to restore peace and has helped sway the war back into Assad's favor in 2015 by commissioning a military intervention in the region.

[1] Stadler, Liliane, 2013, The politics of International Criminal Law, St Andrews Foreign Affairs Review
[2] Lucas, Scott, 2018, Syria: who's involved, and what do they want, The conversation

Throughout the course of the war, many crimes have been committed that violate International Humanitarian Law (IHL). Chemical weapons have been used more than once (with the worst occurring in Ghouta in August 2013, where death tolls ranged from 200 – 2,000). Though there is significant proof to pin the blame on the regime; it has denied doing so and has been backed by Russia. The blame has been placed on the opposition to a point where it has been said that the whole debacle was a set up by the opposition to victimize themselves. The US has been repeatedly reluctant about its intervention, stating publicly that the reason of intervention was to join the fight against ISIS. The Turks are also a part of the equation, fearing the Kurds that are trying to form their own independent state.

Syrians have endured human rights abuses for decades and this has been severely aggravated by the ongoing eight-year conflict. Within the past few years alone, Syrians have suffered aerial bombardment, sexual and gender-based violence, chemical weapon attacks, unjust imprisonment, among other war crimes that violate International Humanitarian Law. International Humanitarian Law exists to limit the effects of armed conflict and to protect those not participating in hostilities[3]. IHL only applies during armed conflicts[4]. States have moderately agreed to abide by its laws to protect their own people.

In the case of Syria, since the government itself is the perpetrator of many of the war crimes being committed, an external force would be needed in order to restore peace. Typically, for countries that are party to the Rome Statute (and therefore party to the International Criminal Court - ICC), the Court would be the main actor responsible for the restoration of justice. It would have

[3] International Committee of the Red Cross, 2004, What is International humanitarian Law

[4] Diakonia, Understanding IHL, What is IHL? What does it apply? Is IHL different from human rights law? Who has responsibilities under IHL?

the responsibility to conduct preliminary examinations via evidence presented to it and then to investigate.[5]

As it stands today, Syria is not party to the Rome Statute and therefore the ICC has no jurisdiction. President Assad's regime has survived politically and militarily but many in the international community believe that he and his associates need to be put on trial for the large number of human rights violations they have willfully committed. Other forces (such as opposition fighters, Hezbollah, Russia, and others) that have been party to the violations need to be prosecuted too, however this study will focus mainly on the regime's crimes in order to analyze the prospects of Syria's future, whether Assad were to remain in power or to step down. This thesis will explore the possibility of Assad and his regime being prosecuted and held accountable in a court of law, as well as the different possible scenarios of Syria's future, should Assad remain in power or step down.

The accountability and prosecution of Bashar al-Assad, his regime and other war criminals is essential in order to begin the process of restoring peace to the region. It is also important to assess the credibility of International Law and the International Criminal Court. The regime has violated tens of IHLs and has been single-handedly responsible for the deaths of thousands of civilians. Desperate calls for justice have been heard from both the Syrian and international community. Punishing the perpetrators and bringing them to justice will be the first step of many in the healing process of Syria. Punishing the regime should not be about intervening in the Syrian War, but instead needs to make a point about deterring war crimes in the rest of the world and restoring justice to all victims of the war.

[5] International Criminal Court, How the Court Works

Literature Review

The literature review carried out for this thesis will cover previous research on International Criminal Law (ICL), the International Criminal Court (ICC), the Responsibility to Protect (R2P) and prospects of Syria's future. The review begins by showing different research on ICL and its credibility and then moves on to discuss the ICC. Following that, there is a discussion on R2P and how it is relevant to Syria. R2P's authority is also debated and the section is finalized by briefly touching on the forecasts of Syria's future.

The review will support the proposed research of this paper by deliberating on prior research done on the topics mentioned above. The topics that will be discussed aim to illustrate the relevance of the research question, and the conclusion of this section will discuss how the research conducted for this thesis will differ from those carried out by others.

International Criminal Law

The International Committee of the Red Cross defines international criminal law as *"the body of law that prohibits certain categories of conduct deemed to be serious crimes, regulates procedures governing investigation, prosecution and punishment of those categories of conduct, and holds perpetrators individually accountable for their commission."*[6]

However, some scholars believe that there is no generally accepted definition of international criminal law. It is said that the only clear distinction that can be made is between international crimes that are based on international customary law (and so apply universally) and

[6] International Committee of the Red Cross, General Principles of Criminal Law

crimes that are a result of specific treaties which criminalize precise conduct and require criminal prosecution in contracting states local legal systems.[7]

Georg Schwarzenberger writes that the main problem with international criminal law is that it is so greatly affected by politics and that makes it compellingly challenging, especially when in comparison with domestic criminal laws.[8] Be so as it may, criminal accountability for serious crimes is of vital importance with regard to respect for the rule of law, deterrence of future violations, and the provision of compensation and justice for victims.[9]

In his paper on *The Rise of International Criminal Law: Intended and Unintended Consequences*, Kenneth Anderson states that the emergence of international criminal law was partly due to great powers that saw it as an alternative to forceful action in circumstances of immense human rights violations, but in which they could not see their own interests in intervening directly[10].

There exists no information on how the term "crimes against humanity" came to be chosen by the framers of the Nuremberg Charter[11]. Cherif Bassiouni writes about crimes against humanity in his paper for the Washington University, stating that *"…in the past 100 years, more people have been killed in various types of conflicts and regime victimization than at any other time in history."* Reflecting on this, he discusses the global concern that the international community has failed to adopt a specialized convention on Crimes Against Humanity. During the first World War, almost

[7] Peace Palace Library, International Criminal Law
[9] Schwarzenberger, Georg, 1950, The Problem of an International Criminal Law, Current Legal Problems, Oxford Academic, Volume 3, Issue 1: 263–296
[9] Diakonia, International Criminal Law
[10] Kenneth, Anderson, 2009, The Rise of International Criminal Law: Intended and Unintended Consequences, The European Journal of International Law, Vol. 20 no.2.
[11] Luban, David, 2004, A Theory of Crimes Against Humanity, Yale Journal of International Law, Volume 29, Issue 1, Article, 3.

20 million people were killed – most of whom were combatants. The second World War resulted in the death of around 60 million people, most of whom were civilians. Unlike the repercussions of WWI where crimes against humanity were not prosecuted, the end of WWII saw the Nuremburg Trials where 18 defendants of 22 were indicted. [12]

The International Criminal Court

On 17 July 1998, 120 States adopted the Rome Statute which led to the establishment of the International Criminal Court[13]. The International Criminal Court (ICC) *"brings individuals to trial who commit large-scale political crimes – genocide, war crimes and crimes against humanity[14]."*

Tom Buitelaar believes the problem with the ICC is that many who work there assume that punishing offenders will prevent crimes – a common belief among many humanitarians[15]. However, 17 years after it was first established, the ICC still faces a swarm of dictators, rebel groups, and others who continue to disregard and break laws that the ICC was created to uphold[16]. From a distance, the belief that the ICC can deter crimes may seem harmless[17]. But, short-term failure of justice to end hostilities may decrease perceptions of the value of justice in the long

[12] Bassiouni, Cherif, 2010, Crimes Against Humanity: The Case for a Specialized Convention, Washington University Global Studies Law Review, Volume 9, Issue 4
[13] International Criminal Court, Understanding the International Criminal Court
[14] Global Policy Forum,2005, The International Criminal Court.
[15] Bosco,2010, Byproduct or Conscious Goal? 19; Mullins, Christopher W, and Rothe, Dawn L, The Ability of the International Criminal Court to Deter Violations of International Criminal Law: A Theoretical Assessment, International Criminal Law Review 10, no. 5: 771–772
[16] Buitelaar, Tom, 2015, The ICC and the Prevention of Atrocities, Criminological Perspectives, The Hague Institute for Global Justice.
[17] Ibid.

run[18]. A potential offender will usually only commit a crime if the benefits outweigh the losses[19]. Likewise, the threat of legal punishment can be a significant disincentive for potential criminals[20].

Another point to consider is that different individuals respond differently to legal sanction threats[21]. Building on the above, the experiential effect states that: *"Potential offenders update their perception of the chance of being caught for a certain crime by looking at the number of times they or one of their peers got away with it relative to the times they did not[22]."*

Some scholars have been skeptic that perpetrators of international crimes would actually engage in rational cost-benefit analyses. Mark Drumbl wonders whether *"genocidal fanatics, industrialized into well-oiled machineries of death, make cost-benefit analyses prior to beginning work."*[23] Most often, people who engage in mass atrocities are supported by a belief that is based on feelings of some sort of (ethnic) superiority[24].

The evidence that the ICC deters crime is far from definitive[25], as Tom Buitelaar argues. Certain studies that have used criminological knowledge to study the ICC have identified very

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[18] Kastner, Philipp, 2014, Armed Conflicts and Referrals to the International Criminal Court: From Measuring Impact to Emerging Legal Obligations, Journal of International Criminal Justice 12, no. 3, July 1: 479

[19] Bonanno,Anna,2006, The Economic Analysis of Offender's Choice: Old and New Insights, Rivista Internazionale Di Scienze Economiche E Commerciali 53, no. 2: 196–198; J. Robert Lilly, Cullen Francis, and Ball Richard,2011, Criminological Theory: Context and Consequences, Thousand Oaks, CA: Sage Publications,5th Edition, 20–22; Paternoster, Raymond,2010, How Much Do We Really Know About Criminal Deterrence? The Journal of Criminal Law and Criminology 100, no. 3: 770–772.

[20] Bonanno, Economic Analysis, 197; Paternoster, Criminal Deterrence:782–787

[21] Nagin, Individual Differences and Rational Choice Theories: 467–473; Nagin and Pogarsky, A Model of General Deterrence:866.

[22] Julie, Horney, and Ineke Haen, Marshall,1992, Risk Perceptions Among Serious Offenders: The Role of Crime and Punishment, Criminology 30, no. 4: 575–577, 587–590.

[23] Drumbl, Mark A, 2007, Punishment and International Law, Cambridge: Cambridge University Press, 2007: 171; Mennecke,Martin, Punishing Genocidaires: A Deterrent Effect or Not?, Human Rights Review 8, no., July 4: 319–339; Rothe and Collins, A Pipe Dream:194–195; Wippman,David,1999, Atrocities, Deterrence, and the Limits of International Justice, Fordham International Law Journal 23, no. 2: 476

[24]Alvarez, Alex, 2008, Destructive Beliefs: Genocide and the Role of Ideology, in Supranational Criminology: Towards a Criminology of International Crimes, ed. Smeulers, Alette and RoelofHaveman, 2008, Antwerp: Intersentia: 215

[25] Buitelaar. Op.Cit, p.09.

small certainty of the legal sanction threat of the ICC, which is the main reason that it does not effectively deter[26]. Looking at its history, 27 cases have presented before the court, 34 arrest warrants have been issued by ICC judges, 8 convictions have been made and 3 acquittals.[27]

Even though the ICC has actually encouraged domestic trials under complementarity procedures, most perpetrators are not prosecuted and this has left what Janine Clark calls an impunity gap[28]. In its inherent design, the ICC does not have its own police force and relies on the cooperation of states for the apprehension of suspects it actually does prosecute, which Christine Chung believes further contributes to its weaknesses[29]. Ultimately, it is important to note that raising the chances of arrest for ICC crimes is not necessarily enough to increase chances for deterrence; the awareness of the certainty of punishment also needs to be increased.[30]

Cherif Bassiouni discredits the ICC by discussing the Darfur situation which was referred to the ICC by the Security Council and still no steps were taken to enforce the ICC's arrest warrants against President al-Bashir and eleven others. In his opinion, it reveals something about the political will of the international community to prosecute crimes against humanity and reveals the weaknesses in the practice of states for purposes of consolidating customary international law. He concludes his study by reiterating that the international criminal justice is still a work in progress which needs to be developed further, facing visible and invisible obstacles.[31]

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[26] Mullins and Rothe, The Ability: 776–78
[27] International Criminal Court, Op. Cit., p. 06
[28] Nouwen, Sarah, 2014, Complementarity in the Line of Fire: The Catalyzing Effect of the International Criminal Court in Uganda and Sudan Cambridge: Cambridge University Press; Clark, Janine, Natalya, 2011, Peace, Justice and the International Criminal Court, Journal of International Criminal Justice 9: 535
[29] Chung, Christine H, 2008, The Punishment and Prevention of Genocide: The International Criminal Court as a Benchmark of Progress and Need, Case Western Reserve Journal of International Law 40, no. 1/2: 2399
[30] Bassiouni, Cherif, 2010, Crimes Against Humanity: The Case for a Specialized Convention, Washington University Global Studies Law Review, Volume 9, Issue 4.
[31] Ibid.

Responsibility to Protect

In customary international law, law is based on state practice and opinion juris, and it develops where states perceive a need. Though a huge number of states agree that there is the need to interfere in Syria and in other instances where the Responsibility to Protect (R2P) is applicable, Elizabeth Wilmshurst deliberates that there has been widespread resistance to the idea that human intervention could happen without the UNSC approval.[32]

Erfaun Norooz writes that R2P's legal status has been subject to debate as a non-binding political concept, soft law, a general principle of international law or an emerging legal norm[33]. Other scholars like Thomas Weiss believe that R2P is already well-grounded in international law (IL) and does not really add anything new to the primary rules of international law[34]. According to Jared Genser and Irwin Cotler though, the power of the R2P doctrine lies in its ability to generate political pressure and, to date, history has shown that even international law is not inviolable so even the legal codification of R2P would offer zero guarantees of human security and legal compliance[35].

Rajan Menon debates the credibility of R2P and how the doctrine is flawed in and of itself: states rarely take military action to support humanitarian principles except if their own interests can be met, the risks are small and the cost is bearable. The main problem is that countries differ on too many dimensions (power, wealth, ethnicity, etc.) to allow for one common standard that authorizes military coercion in the moral and international support for human rights[36]. Some

[32] Wilmshurst, Elizabeth,2013, Syria and International Law: Use of Force and State Responsibility, Associate Fellow, International Law Programme, Chatham House.
[33] Norooz, Erfaun, Responsibility to Protect and its applicability in Libya and Syria, ICL Journal.
[34] Weiss, Thomas G, 2007, R2P AFTER 9/11 AND THE WORLD SUMMIT,24 Wisconsin International Law Journal, No. 3:750.
[35] Genser, Jared & Cotler, Irwin, 2012, The Responsibility to Protect, The Promises of Stopping Mass Atrocities in our Time, Oxford University Press 2012: 36.
[36] Menon, Rajan, 2013, The Fatal Flaws of R2P, Atlantic Council

scholars, such as Daniel Wagner and Daniel Jackman, view the R2P doctrine as a "cloak for regime change" or as "Western neo-imperialism" (for example, the shift from civilian protection to regime change which occurred in Libya)[37].

In general, Neville Dastoor reasons that the R2P doctrine is missing an essential component: what the international community should do when the UNSC is blocked by a veto. There is general agreement that there needs to be another way to ensure the protection of vulnerable populations. Some have recommended veto modifications to the doctrine, while others call for the establishment of a Security Council Committee on the R2P.[38]

In summary, the Responsibility to Protect is still gravely flawed as the entire concept becomes somewhat unnecessary once the UNSC is deadlocked by a veto[39] and in an attempt to adapt to new political realities, Member States of the UN gathered in November 2018 to discuss the removal of the veto power and permanent seats in the UNSC[40].

Jennifer Welsh, the UN Secretary-General's Special Advisor on the Responsibility to Protect, discusses that the problem with the R2P regarding Syria is not in the principle itself, but that states are unsure whether force is appropriate and whether it will achieve any good and that strategic interests are always at play.[41]

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[37] D. Wagner and D. Jackman, 2011, BRICS from unstable foundation for multilateral action Foreign Policy Journal, 57.
[38] Neville F. Dastoor, 2009, The Responsibility to Refine: The Need for a Security Council Committee on The Responsibility to Protect,22, Harvard Human Rights Journal: 25-62
[39] Citizens for Global Solutions,2010, The Responsibility Not to Veto: A Way Forward.
[40] Member States Call for Removing Veto Power,2018, Expanding Security Council to Include New Permanent Seats, as General Assembly Debates Reform Plans for 15-Member Organ, Seventy-Third Session, 36th & 37th Meetings.
[41] Lupel, Adam, 2013, The Responsibility to Protect Principle is Not the Problem: Interview with Jennifer Welsh, Global Observatory.

Dr. Simon Adams states that there was nothing inevitable about the international community's failure to protect Syria. In his paper on *"Failure to Protect: Syria and the UN Security Council,"* he posits that the Security Council carries a special burden of responsibility for their failure to protect the Syrian people: *"The Security Council has not only failed to fulfill its basic function – the maintenance of international peace and security – it has also dismally failed to uphold its Responsibility to Protect (R2P) the Syrian people."*[42]

David Nersessian, a School of Law visiting assistant professor who teaches courses in legal ethics and human rights law, expresses that going beyond verbal condemnation to protect Syria is unlikely at this point. He explains that intervention requires serious political will and strong international consensus that no other alternative exists, all the while acknowledging that intervention is very economically and politically expensive. Nersessian believes that the situation would need to be similar to that of Rwanda in 1994 (where half a million were killed in four months) for the world to push for tougher action on Syria. But he recalls that even during the Rwandan crisis, there was extreme resistance in putting a label on it, let alone actually intervening to stop the killings.[43]

A report by Carnegie Europe tackles three main reasons to use force against Syria. The first reason is that the chemical attacks are a game changer in Assad's terror strategy. The first reason is justified by the purpose of restoring the taboo on the use of chemical weapons. Secondly, the report states that the West needs to restore credibility to itself which it has lost due to the fact that no state has acted as required following the use of chemical weapons in Syria – which is a cause for action. Not acting against Syria means the US, France and other allies would be sending

[42] Adams, Dr. Simon, Failure to Protect: Syria and the UN Security Council, Global Center for the Responsibility to Protect.
[43] Seligson, Susan, Syria: What Can or Should the World Do?, Boston University Alumni.

a terrible signal to others that have been watching their inability to act, such as Iran and North Korea. Thirdly, *"a limited, short-term strike involving cruise missiles would have limited risks, as it would be proportionate with the seriousness of the chemical weapons attack without starting a protracted air campaign."* Strikes like this are encouraged as they could restore some balance to the military situation on the ground and diminish the regime's military capabilities. The report concludes that the purpose of the cruise missiles would not be to remove the Assad regime, but instead to reiterate that the use of chemical weapons is prohibited.[44]

Prospects of Syria

Brian Michael Jenkins and Joseph Holiday who have both studied the dynamics of Syria's civil war, believe that Assad will not be able to restore his authority over the country anymore. But even if Assad falls, Jenkins sees that the opposition forces cannot impose authority either. In all cases, Assad's fall would be a "strategic blow" to Iran, which would be losing an important ally in the region, one it believes has been helping them avoid a domestic movement aimed at bringing down Iran itself. He notes that Russia's motives are complex but they clearly honor a long alliance and maintain a strategic position. Jenkins anticipates that a settlement is unlikely in the near future and that the most likely scenario is that the current armed conflict will drag on for many years – even the fall of Assad will not end the conflict.[45] Joseph Holliday deduces that Assad is more likely to destroy certain regions, no matter how big, than to abandon them to the opposition, and that he is unlikely to control all of Syria once again.[46]

[44] Dempsey, Judy, 2013, Judy Asks: Why Bomb Syria? Carnegie Europe.
[45] Jenkins, Brian, 2014, The Dynamics of Syria's Civil War, and Corporation.
[46] Holliday, Joseph, 2013, The Assad Regime, Middle East Security Report.

The literature discussed above reflects that the main problem of the ICL, ICC and R2P is that they are intensely linked to politics and this makes it hard for them to be reliable. Though the general view is that the international community should intervene in Syria, this paper will illustrate that the appropriate criteria for R2P and the right to intervene have not actually been met, and that intervention will most probably cause more damage than good. The lack of credibility of the ICC to indict criminals is heavily reiterated throughout the paper, as neither the ICC nor international law have stirred fear within the Syrian regime and other perpetrators. This thesis will add data to the above literature via interviews, surveys and additional research on the ICL, ICC, R2P, specific crimes committed, lack of accountability and prospects of Syria' future.

Thesis Purpose

This thesis aims to discuss the prospects of criminal accountability of the perpetrators in Syria, even though Syria is not party to the ICC. The fact that the government itself is the offender makes matters much more challenging and especially difficult for the ICC to be effective. Throughout the thesis, the war crimes that have been committed by the regime are listed and the R2P Syria is debated.

To better understand the regime and the political situation in Syria, this thesis also studies the Assad regime and the recent history of Syria, as the country is immensely diverse in its ethno-religious and linguistic groups, and this plays a major role in the conflict today.

The purpose of this thesis is to come to a conclusion on the options that exist today in terms of accountability of the Assad and others in the regime, and how realistic they are. It deliberates the possibility to indict Assad and many high-ranking officials which are contributing to the crimes

against humanity occurring in Syria. The prospects of Syria's future are also outlined and there is a discussion on transitional justice and its applicability in Syria.

This thesis will generally address one main question:

Can Syria find sustainable peace and security without proper accountability for the war crimes committed?

The question will be answered via an inductive approach through research on accountability as applicable in Syria and the personal opinion of Syrians in general through survey and in-depth interviews with activists involved in accountability processes.

Sub-questions include:

- *Should perpetrators of war crimes in Syria be tried?*
- *Would Syrians be willing to testify in a court of law?*
- *How far can we go in terms of accountability to crimes committed by war criminals of all sides?*
- *Can the perpetrators be held accountable one day?*
- *What are the prospects moving forward?*

Methodology

Research Methodology

Given the nature of the research question, qualitative research methods were used to collect and analyze data. Data on the background and political views of Syrians were collected through an anonymous survey which mainly addressed questions on accountability, transitional justice, and war crimes they have endured. The aim of the survey was to gain a better and more realistic understanding of the opinion of Syrians on how they see the accountability processes playing out

and what they would expect in terms of transitional justice. The survey also served to reiterate the commonality of the crimes being committed on the ground in order to shed light on how possible it would be for the regime to remain in power following such undeniable proof of its crimes. Such data are considered to be sensitive, hence respondents were more inclined to share information about their political views since they were guaranteed anonymity. To increase the validity and accuracy of the study, the surveys were translated from English to Arabic as most participants were able to express better in their first language, Arabic.

The respondents were mainly Syrians who work Civil Society Organizations. Acknowledging bias and putting it into perspective, it is important to clarify that the purpose of the survey was not to pin the blame on a certain party, but instead to get a general opinion of how anti-regime Syrians would feel if Assad remained in power, what they would expect in terms of restitution, whether they would be willing to testify or not, and where they believed the war criminals should be tried – all just for the sake of deliberation throughout this thesis.

On the other hand, data on technical International Law and International Criminal Court issues related to Syria were collected through in-depth interviews with five Syrians actively involved in accountability processes. The interviews were conducted in Arabic and led to detailed answers that helped develop a sense of the reality of the situation today in Syria and prospects of accountability that are also discussed throughout the thesis. Given the objectives of this study, qualitative research yielded the most relevant data and reiterated existing insights that were discovered through general research for the thesis.

Sampling Process

The sample for the survey included Syrians ranging from ages 25-54. Syrians from different backgrounds and different regions were included in the sample population. A total of 255 respondents (located in Syria, Turkey, Jordan and Lebanon) participated in the survey.

In regard to the interviews, five Syrian activists worked in accountability processes or advocacy for accountability were interviewed. Interviewees were chosen based on the following criteria:

- Syrian nationality
- In depth familiarity of Syrian context
- Resided in Syria throughout a period of conflict
- Actively working in a field related to development, international law or humanitarian
- Previous experience working with Civil Society Organizations

Similarly, as mentioned above, the purpose of the interviews was not to prove any party is less guilty than the other, but just to gather information from activists on how accountability processes are moving forward and what they believe the next few years in Syria are going to be like. For this reason, bias is not a factor to consider because the data deduced from the interviews is not to support or oppose a certain party, but to deliberate prospects and different scenarios.

Potential respondents of the survey were reached through social media and CSO networks. The survey explained the objective of the study and the importance of their contribution. All respondents were assured anonymity and were asked to answer the questionnaire via Survey Monkey, a website that provides statistics which help with the analysis needed to present survey findings.Interviewees were selected through a network of CSOs as well. They were contacted via Skype or over the phone. All participants had no issues with publicly responding to all questions

and thus anonymity was not required. The interviews resulted in extensive textual data, which were analyzed and reflected throughout the paper, when relevant.

Sequence

This thesis begins with a geographical assessment of the region and goes on to describe events in history that may have led to the Syrian civil war of 2011. Following a description of the events of the war, Chapter Two provides a background on the armed conflicts in Syria for better understanding of the political and religious dynamics in the war. The chapter then outlines war crimes and crimes against humanity in the context of international law. The theoretical and legal frameworks are debated and there is an in-depth discussion of the international community's Responsibility to Protect and its applicability in Syria. Building on that, specific crimes of the regime are listed in detail, with examples to support each accusation of a violation.

The third chapter illustrates the findings of surveys conducted for this thesis in an effort to evaluate the trends of the Syrian population's general opinion on Bashar al-Assad's ruling and the prospects of accountability and prosecution. The chapter that follows delves into the possibilities of criminal accountability for Bashar al-Assad's regime and other perpetrators. The discussion is based on the potential options: international, local or ad-hoc courts. Subsequently a comparison of the potential options results in the conclusion that no accountability is possible without transitional justice. Ultimately, the prospects of Bashar al-Assad remaining in power are debated. In conclusion, the result is that Syria has changed too much to go back to how it was before the war. True changes can happen only if the ruling party steps down and makes way for accountability and justice, and even this would take decades.

CHAPTER TWO: **The Syrian Civil War: War Crimes & Crimes Against Humanity**

This chapter will provide an area profile of Syria and discuss the different armed conflicts occurring on the ground. Local and international actors are listed throughout the chapter, along with the large amount of war crimes that were committed by the regime and other perpetrators involved in the war.

Today, the civil war in Syria is not merely the result of an individual event, as may be argued internationally. It is instead a mix of disheveled historical moments. Several events in Syria's history have led to the current situation it is in today and they include, but are not limited to: sectarian division, oppression, the ultimate rise of the Assad family to power and the Arab Spring[47].

Area Profile & Geographical Assessment

Syria is home to 19.5 million people (estimated figure, as of July 2018[48]) with a geographical size of 185,180 square kilometers. Syria, a country that many felt was relatively stable under the Assad regime a few years ago, has deteriorated massively in the past eight years. The civil war has led to a mass withdrawal of Syrians seeking safety. With an estimated 5.6 million people having fled Syria, the refugee crisis has become an international political debate concerning the Middle East and other countries that have similarly been affected. As a result of the war, 13

[47] Baltes, Chelsea Marie, 2016, Cause and consequences of Syrian Civil War, University of South Carolina, Colombia.
[48] Congressional Research Service using data from U.S. State Department; Esri; CIA, The World Factbook; and the United Nations.

million people are in dire need of humanitarian assistance, 6.2 million have been internally displaced, the unemployment rate has reached a miserable rate of 50% (estimated figure, as of July 2017) and an estimated 69% of the population is living in extreme poverty (estimated figure UNOCHA, 2018).[49] Syria has fallen to a cataclysmic point as a result of its raging civil war. The country is marked by its diverse ethnic and religious groups which have contributed to its rich culture, but also to its violence and instability.[50]

In his paper on the Syrian Civil War, Arnav Mariwala noted that scholars have stated that the borders of the Arab world were once drawn by European colonialists who did not know much about the ethno-religious structures of the Arab society. One could argue that Syria and Lebanon are among those with improperly drawn borders. There is immense diversity in the ethno-religious and linguistic groups in Syria; around 74% of the population is Sunni Muslim, 13% are various forms of Shi'a (including Alawites), 3% are Druze, and 10% are Christian; Arabs make up 90% of the population, 9% are Kurds, and the remaining 1% are composed of Armenians, Circassians and Turkmen.[51]

In the past, many of the minority ethnic and religious groups sought to be secluded in order to abstain from the rule of law of the government. Due to this, the Alawites found themselves concentrated in Latakia where they constituted a local majority of around 75% of all Syrian Alawites[52]. The urban population, mostly Sunni, grew increasingly dominant in the rural areas. The Alawites, politically defeated, deprived and poor, grew distrust and anger towards the Sunnis.[53]

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[49] Congressional Research Service, 2019, Armed Conflict in Syria: Overview and U.S. Response.
[50] Dam, Nikolaos,1996, Van the struggle for power in Syria
[51] Ibid.
[52] Ibid.
[53] Ibid.

Since the rise of the Assad regime and Ba'ath party in 1963, circumstances changed for the Alawites. Education became highly sought after, permitting them to raise their status to doctors, lawyers, engineers and university professors. Gradually rising in power, the Alawites began replacing Sunni and Christian intelligentsia, and Syria witnessed a transfer of power under Alawite dominated Ba'athist rule, also known as "Alawisation".[54] The reality of the diverse ethnicities and religions in Syria makes it impossible to isolate sectarian, regional or socio-economic categories *"when they show a strong overlap and apparently form an inseparable whole"*[55]. Syria made many irrational decisions in the past few decades, burning bridges with allies of the West and fellow Middle Eastern countries.[56]

Bashar al-Assad's father, Hafiz, began to rise in power in 1970; he was the minister of defense at the time and this gave him a lot of power[57]. Hafiz al-Assad captured and arrested prominent leaders that did not support him and in turn, many high political members fled the country in fear of arrest, making room for a political vacuum and the perfect opportunity for Assad to monopolize his newfound power in November 1970, marking the start of a new era: the Assad dynasty. He became the first Alawite president in Syria in the year 1971[58].

He visibly favored his Alawite community, granting them most positions of power over the years. He used his position and power to suppress the people or any uprisings. An example is the Hama Massacre in 1982 in which an estimated 30,000 were killed[59]. President Hafiz, a father of six, had appointed his oldest son, Basil next in line. However, Basil was unexpectedly killed in

[54] Ibid.
[55] Ibid.
[56] Baltes, Op. Cit., p. 22
[57] Quilliam, Neil, 2015, Syria: The rise of the Assads, Chatham House, BBC.
[58] Smith, Amelia, 2015, Profile: Hafiz Al-Assad (12 March 1971-10 June 2000), Middle East Monitor.
[59] Khan, Azmat,2012, On 30th Anniversary of Hama Massacre, Syrian Troops Lock Down City, Frontline, PBS.

a car accident in 1994. At the time, Bashar al-Assad was studying to be an eye doctor in London; he was asked to go back home following the death of his brother[60].

To date, the Assad family has been in power for over 40 years. Upon Hafiz's death in the summer of the year 2000, his son Bashar al-Assad took control at the age of 34[61] following a constitutional amendment which lowered the minimum age for a president from 40 to 34 to allow Bashar to take office[62]. The transition of power from Hafiz to Bashar was relatively smooth. Bashar al-Assad represented the people's desire for both continuity and change, stepping into the shoes of his father while still being considered a modernizer and gaining support from the younger generations[63]. At the start of his rule, he gradually chose a more liberalizing strategy than was previously there. However, as he grew more corrupt by power and wealth, he rapidly increased the gap between the rich and the poor[64].

The Syrian Civil War and the Different Armed Conflicts in Syria

Jones identifies three key factors that he believes increased the likelihood of the Arabic Spring: poverty, lack of economic opportunity and a repressive and disliked regime. The Arab Spring was a democratic revolt that began in Tunisia and spread throughout the Middle East. Initially, it spread to Egypt, Libya, Bahrain and Yemen before it finally reached Syria. *"This*

[60] Al Jazeera, 2018, Profile: Bashar Al-Assad, President Assad has ruled Syria with an iron fist for nearly two decades. We take a look at his life and legacy.
[61] Kifner, John, 2000, Syrians Vote to Confirm Assad's Son As President, Archives, The New York Times.
[62] Qais, Fares, 2014, The Syrian Construction: Assad's Magic Wand, Syria in Crisis, Carnegie Middle East Center.
[63] Ibid.
[64] Mc Hugo, John, Syria: Recent History.

outbreak of democratic cries was the event that finally broke Syria into a civil war; something it had been on the verge of for nearly its whole history."[65]

The uprisings began in Dara'a, a town in South Syria, in March 2011 when a group of school children wrote "Freedom. Down with the regime. Your turn, Doctor,'" as graffiti on their school walls[66]. The children, all under 15 years of age, were arrested and taken to the city for interrogation and torture. After their release was denied, demonstrations broke out and as a result four civilians were shot dead at what were initially peaceful demonstrations. This only further fueled people and increased the protestor turnout. Events quickly escalated and government offices were attacked as well as local Ba'ath headquarters.[67]

After the protests spread, numerous political and armed opposition groups emerged. In August 2011, President Obama called for Bashar al-Assad to step down. During November 2011, members of the Al Qaeda affiliated Islamic State of Iraq (ISI) formed the Nusra Front in Syria. The increasing death toll from the conflict and the use of chemical weapons by the regime was a major reason for the United States and other countries to get involved in the conflict and support the opposition. In May 2012, the US began providing nonlethal aid to Syrian rebels.[68]

In September 2014, the US began strikes inside Syria and Congress authorized the Syria Train and Equip Program[69]. Russia began airstrikes in Syria in September 2015, and in October of the same year, Kurdish YPG fighters merged with other groups to form the Syrian Democratic Forces (SDF), which became a key US partner in the campaign to counter the Islamic State (IS).

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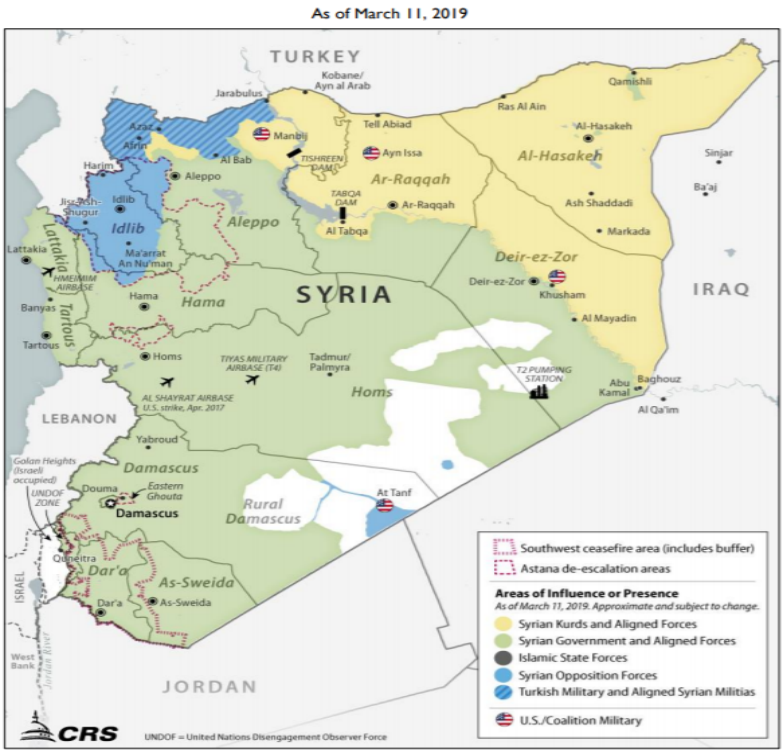
[65] Jones, Annika, 2013, Seeking International Criminal Justice in Syria, 89 Int'l L. Stud. 802, Ser. US Naval War Col: 804–805.
[66] Agence France-Presse, Graffiti boys who sparked Syria uprising brace for regime attack, The National.
[67] Baltes, Op. Cit., p. 22
[68] Congressional Research Service, Op. Cit., p. 22

In the same year the US announced the first deployment of Special Operation Forces to Syria. During the summer of 2016, Turkey began operations in northern Syria against IS and YPG forces, and later that year, the Syrian government recaptured Aleppo (Syria's largest city) from the opposition[70]. Today, Idleb is the final opposition stronghold – it has been in rebel control since 2015[71].

Figure 1 - Syria Areas of Influence 2019:
https://fas.org/sgp/crs/mideast/RL33487.pdf



Source: CRS using area of influence data from IHS Conflict Monitor, last revised March 11, 2019. All areas of influence approximate and subject to change. Other sources include U.N. OCHA, Esri, and social media reports.

Notes: U.S. military officials have acknowledged publicly that U.S. forces are operating in select areas of eastern Syria to train, advise, assist, and equip partner forces. On March 25, 2019, President Trump issued a proclamation recognizing the Golan Heights as part of the state of Israel.

Turkey has had military presence in northern Syria since 2016, and now has forces in Aleppo and Idleb. They have conducted operations against IS and other jihadist groups, meanwhile also targeting Syrian Kurdish forces. The Kurdish-held areas in north Syria (around one quarter of the country) are the largest remaining areas outside of the Syrian government's control.[72]

[70] Congressional Research Service, Op. Cit., p. 22
[71] The Washington Post, 2019, Syria Rebels Repel Government Forces in Northwest.
[72] Ibid.

Israel has also been involved in strikes in Syria where it has mostly targeted locations near the Lebanese border associated with weapon shipments to Hezbollah. However, recently, strikes were mostly directed at Iranian facilities and personnel in Syria.

The United Nations has been hosting peace talks since 2012, but results have been minute. As part of the Geneva Process, UN Security Council Resolution 2254 was adopted in 2015. It recommended a political settlement in Syria which included the drafting of a new constitution and UN supervised elections.[73]

The war in Syria has grown ever more complex since the protestors took to the streets to challenge the government eight years ago. The President and his factions aim to reassert control, while mainly Sunni forces seek to seize the state from him. Interestingly, these diverse opposition groups differ greatly in their visions of a post-Assad state, with many aiming to shift from "liberal democracy" to theocracy.[74]

The intervention of outside powers that have funded and armed fighters has further complicated the situation. Finding themselves outgunned by pro-regime forces, a large number of opposition groups have united with Jihadi factions[75]. Listed below are the main networks that predominantly exist. The aim of listing them is not to conduct an extensive analysis of the conflict and different players involved, but simply to provide an overview and clarify the large number of actors actively engaged in the conflict.

[73] United Nations, Security Council Unanimously Adopts Resolution 2254 (2015), Endorsing Road Map for Peace Process in Syria, Setting Timetable for Talks, Ministers, Other Speakers Agree Terrorism Must End, Differ over Role for Assad, SC/12171.
[74] Laub, Zachary, 2017, Who's Who in Syria's Civil War, Council on Foreign Relations.
[75] Ibid.

Local Players

a. Pro-government Forces

Syria's armed forces and security services, also known as *Mukhabarat*, have been an essential source for the Assad family's control over Syria. Alawites also make up most of the army's top ranks, while Sunni Arabs make up nearly two-thirds of the army. Conscription is obligatory for all Syrians and many Syrian men of fighting-age have been swept up at government checkpoints. After thousands of casualties in the pro-regime forces, they went on to rely on external powers for support. Since the fall of East Aleppo in December 2016, they once again took control of Syria's five most populated cities. They are mainly fighting the Sunni-majority opposition and withdrew from Kurdish-majority areas in the north at the onset of the conflict.[76]

b. Opposition Forces

Three predominantly Sunni forces exist; they are fluid in nature due to memberships that shift often, driven by group ideologies and support from external backers. The Free Syrian Army (FSA) was the main group that emerged when the regime first cracked down on protestors. It was mainly led by defected army officers and was made up of many former Syrian army conscripts. It had very scarce resources and received light arms from regional backers as well as nonlethal aid from the US. They are the main opposition force in the south of Syria with around 30,000 fighters. In the north however, where there is a large mix of fighters, the FSA tends to be subordinate to jihadi groups with stronger resources. They have mainly fought regime forces but have also clashed with ISIS and the Kurds.[77]

[76] Ibid.
[77] Ibid.

The FSA advocates towards a more democratic and pluralistic Syria, and is consequently not supported by many Islamist militants who instead speak of remaking the state to adhere to fundamentalist rules of Islam. Other Jihadi groups such as Jaish al-Islam and Ahrar al-Sham are comprised of tens of thousands of fighters and are the most militarily capable in the opposition. They emerged on the Syrian battlefield in mid-2011 when Assad released more than 1,000 insurgents from prison. In some areas, they have allied with the former al-Qaeda affiliate Jabhat al-Nusra or Jabhat Fatah al-Sham (JFS). JFS has benefitted from official support from the Gulf and has been effective in fighting regime forces; many of its members gained experience fighting US forces in Iraq.[78]

International Players

a. Pro-government Forces

Lebanon's Hezbollah plays a supportive role for the regime. Syria provides them with a pipeline for arms from Iran to Lebanon as well as areas to train. Primarily in secret, Hezbollah answered Iran's call to put down the Syrian revolt; a Sunni-led successor state could be problematic for Iran which hopes to keep a Shiite-dominated presence in the region. Hezbollah has played a vital role in the fighting, with close to 8,000 fighters engaged to support the weakened Syrian infantry. It has besieged pro-opposition towns like Madaya and Zabadani. Some analysts view the evacuation of these areas as a project of demographic engineering to install Shia

[78] Ibid.

majorities in strategic areas. Hezbollah has also been reinforced by other Shia militants from Afghanistan, Pakistan, Iran and Iraq. Their ranks are estimated as high as 25,000.[79]

Similarly, Iran has contributed greatly economically to keep the regime afloat. Russia has also been a primary actor in diplomatically shielding the Assad regime at the United Nations. Throughout the course of the war, Russia has also intervened militarily with the purpose of "fighting ISIS" but analysts have found that most of Russia's operations have essentially concentrated on anti-government groups.[80]

b. Opposition Forces

The US has been taking the lead in assembling a multinational coalition to counter the Islamic State, and has supported ground operations carried out by the Syrian Democratic Forces (SDF). By allying with Kurdish groups and limiting its presence on the field, the US has left room for Russia to remain dominant in the region.[81]

Turkey has also been part of the conflict; through actively supporting the opposition, its primary interest lies in blocking the emergence of an autonomous Kurdish region in north Syria. Initially, Turkey believed the ruling party would quickly be overthrown and was an early backer of the opposition at the onset of the conflict. Besides suppressing a Kurdish emergence, Turkey's secondary interests include pushing for political transition in Syria and defeating IS. Turkey has also given permission to the US to fly missions from its Incirlik Air Base, giving itself an essential bargaining chip with the US.[82]

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[79] Ibid.
[80] Ibid.
[81] Ibid.
[82] Ibid.

Gulf states' key concern has been to avoid Iranian expansionism in the Arab world. Though they support the overthrow of Assad, they don't care much for a more democratic order taking over[83]. Most Gulf states have played critical roles in the conflict; Saudi Arabia, UAE and Qatar have been among the opposition's chief backers (Yemen, Kuwait and Bahrain also discretely lined up behind Saudi Arabia), Iran and Iraq backed the regime with arms and men on the ground. Before Russia's major intervention in 2015, Saudi Arabia, Qatar, Turkey and Iran were the dominant players. The recent decision to gradually withdraw American troops from Syria has accelerated coordination between Russia and some Gulf states.[84]

c. Islamic State & Kurdish People's Protection Units

Islamic State (IS), more commonly known as ISIS (Islamic State of Iraq and Syria), is the successor of al-Qaeda in Iraq; it seeks to erase the border between Iraq and Syria and establish a state of its own. As of June 2016, according to the US envoy Brett McGurk, the group was estimated to comprise around 22,000 fighters. Some of its fiercest fighting has been against the Kurdish YPG in the north, but it has also clashed with Jabhat al-Nusra and other opposition groups. Many analysts believe that at the start of the war the regime maintained a nonaggression pact with the group, but as IS expanded, the regime took action against it.[85]

The YPG is the militia arm of the Democratic Union Party (PYD), the Kurdish party that de facto governs the Kurdish-majority cantons of northern Syria. The Syrian Observatory for Human

[83] Ibid.
[84] Gulf International Forum, 2019, Post War Syria: Factors Inhibiting Arab Gulf Influence.
[85] Laub, Op. Cit., p. 27

Rights estimated that their forces amounted to around 50,000 in 2015. Its main enemies have been IS and Turkey.[86]

All parties that have engaged in the conflict in Syria have been actively involved and have committed war crimes and crimes against humanity – there is undeniable proof of that. In this sense, not only the regime, but every perpetrator, needs to be held accountable in the future. However, for this to happen, realistically, all countries and parties involved need to willingly be part of the accountability processes, otherwise the prospects of actual accountability occurring will be impossible.

Many states have acknowledged that Assad has the R2P his citizens. At the start of the war, key regional powers like Turkey and Saudi Arabia were inactive. Though they were clearly not satisfied with the ruling regime, at the time, they preferred to *"subscribe to a policy of the devil we knew."*[87]

Sometime later into the war, Saudi Arabia and other Arab states became actively involved when they viewed the crisis as a chance to engage in a proxy war against Iran[88]. On the other hand, the US and the EU imposed economic sanctions and arms embargoes on the Assad regime[89]. In parallel, the UNSC was rather stagnant when it came to Syria, mainly because it was deeply involved in the Libyan crisis[90] and Russia/China's vetoes had created a deadlock in the Security Council.

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[86] Ibid.
[87] Itamar Rabinovich, 2011, The Devil We knew,New York Times.
[88] T. Lister,2012, How Syria differs from Libya CNN World, February 10.
[89] McNair Chambers, 2012, Updates on Syria and Sanctions, Overview of UN, US and EU Sanctions and recent events in Syria.
[90]Norooz, Op. Cit., p. 12

The response to the war in Syria by the international community was rather different than the response that Libya got. After unrest broke out in Libya in 2011, it was only a matter of months before Gaddafi, his son and his intelligence chief were charged by the ICC with crimes against humanity. Alternatively, the UNSC has been paralyzed with regards to Syria. This is due to a few factors, one of which is relevant to the different geopolitical interests at play in Syria.[91]

On the 4th of October 2011, a Security Council resolution was drafted regarding Syria. The resolution was a reminder to the regime about its R2P its citizens and it condemned the major human rights violations in Syria. In August 2011 the President of the SC issued a statement on Syria whereby he expressed great concern on the worsening conditions in Syria[92]. On the 4th of February 2012, Russia and China vetoed a draft resolution that condemned the violence in Syria and supported the Arab League's decision to facilitate a Syrian-led political transition[93]. On the 14th of April 2012, Resolution 2042 was passed[94]. On the 21st of April 2012, another Resolution (2043) was approved unanimously[95]. In July 2012, the UNSC once again failed to pass a resolution which was due to impose sanctions on Syria as China and Russia exercised their right to veto[96].

When chemical weapons were used, the West condemned Syria but the UNSC remained paralyzed and unable to hold Assad accountable[97]. UN Secretary General labeled the attack as a "war crime" and stated that the global community had a responsibility to hold the attackers

[91] Whiting, Alex, 2017, An Investigation Mechanism for Syria: The General Assembly Steps into the Breach, Journal of International Criminal Justice, Volume 15, Issue 2, May: 231-237.
[92] Statement by the President of the Security Council, 2011, UNSCOR, 66th session, 6598th mtg, UN Doc S/PRST/2011/16, August 3.
[93] Draft Res. S/2012/77, 2012, Security Council fails to adopt Draft Resolution on Syria as Russian Federation, China Veto Text Supporting Arab League's Proposed Peace Plan, UN Doc SC/10536;6711th Meeting.
[94] UN Security Council, 2012, Security Council resolution 2042 [on authorization of the deployment of an advance team of up to 30 unarmed military observers to the Syrian Arab Republic], S/RES/2042.
[95] UN Security Council, 2012, Security Council resolution 2043, [on the establishment of a UN Supervision Mission in the Syrian Arab Republic (UNSMIS)], S/RES/2043.
[96] Draft Res. S/2012/538, 2012, Security Council fails to adopt Draft Resolution on Syria that would have threatened sanctions, due to negative votes of China, Russian Federation, UN Doc, 6810th Meeting, S/2012/538.
[97] Contrast the White House, 2013, Statement by the President on Syria.

accountable[98], but unfortunately no action pursued. While Obama was discussing a military intervention against the Syrian government, Russia brokered a deal with Syria to have their chemical weapons destroyed by 2014[99]. Once again, the international community witnessed the pursuit of diplomacy in dealing with Assad.

War Crimes & Crimes Against Humanity

Theoretical Framework

International Humanitarian Law (IHL) is *"a set of rules which seek, for humanitarian reasons, to limit the effects of armed conflict. It protects persons who are not or are no longer participating in the hostilities and restricts the means and methods of warfare. International Humanitarian Law is also known as the law of war or the law of armed conflict."*[100] It only applies during armed conflicts. The majority of IHL can be found in the Geneva Conventions of 1949 and almost all states in the world have agreed to be bound by these Conventions. IHL and human rights law are two bodies of law that have been developed separately and the latter applies in peacetime.[101]

IHL protects those who are not taking part in the conflict and aims to restrict the means and methods of warfare. It protects civilians, medical personnel, religious military personnel, and - as long as they are no longer taking part in hostilities- the wounded, shipwrecked, sick combatants and prisoners of war. When it comes to the means and methods of warfare, IHL restricts methods

[98] United Nations, 2013, Identical letters dated 13 December 2013 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, General Assembly Security Council.
[99] BBC News, 2013, Viewpoints: Can Russia's chemical weapons plan for Syria work?
[100] International Committee of the Red Cross, 2004, What is International Humanitarian Law?
[101] Ibid.

which may cause severe or long-term damage to the environment, superfluous injury or unnecessary suffering, and means that do not discriminate between those taking part in the fighting and those that are not.[102]

IHL also protects civilian objects like hospitals, ambulances and cultural properties, including but not limited to, places of worship, works of art and historic monuments. It is also illegal under IHL to destroy *"infrastructure necessary for the survival of the civilian population (such as drinking water supplies) and work containing dangerous forces (such as nuclear power stations or dams)."*[103]

Similarly, IHL limits the type of weapons and military tactics that can be used during armed conflict: *"It is prohibited to use weapons or methods of warfare which do not distinguish between those taking part in the fighting (combatants) and those that are not (civilians as well as civilian property)."*[104]

IHL, as it is known today, has stemmed from two main sources: the Law of Geneva, i.e. a body of rules which protect victims of war, and the Law of The Hague, i.e. those provisions which affect the conduct of hostilities.[105] The ICRC has been the main actor in giving rise to the Law of Geneva; its contribution to the development and implementation of the Hague Law has been less explicit, but both are now inseparable parts of modern international humanitarian law.[106]

According to the ICRC, war crimes are characterized as serious violations of IHL that are committed during international or non-international armed conflicts. A few examples are willful

[102] Ibid.
[103] Australian Red Cross, 2011, International Humanitarian Law and the Responsibility to Protect.
[104] Ibid.
[105] University Nebraska Lincoln, International Humanitarian Law and Human Rights Laws.
[106] Bugnion, François, 2011, Law of Geneva and law of the Hague,31-12, Article International Committee of the Red Cross, no.844.

killings of a protected person (wounded, civilian, prisoner of war), torture or inhumane treatment of a protected person or attacking the civilian population. Other types of crimes exist under International Law (IL), such as crimes against humanity and genocide.[107]

When states become party to the Geneva Conventions or Additional Protocol I, they accept to enforce the legislation necessary to punish those that are guilty of breaching the Conventions or Protocol.

States must punish any person who breaches IHL, regardless of their nationality or the location in which the crime was committed. This principle is known as universal jurisdiction.[108]

In July 2002, the International Criminal Court (ICC) was set up under the Rome Statute. The historic events that led to the creation of the ICC and the evolution of International Criminal Law (ICL) began at the Nuremburg Trials in 1945. At Nuremburg, German Officials were subject to criminal trials for violations they had committed under International Law during World War II[109].

After having set the base for individual accountability for crimes committed during WWII, efforts to build on this legislation and enforce the law waned in the face of the misconducts during the 20th century, mainly due to the politics used in the Cold War[110].

In the 1990s, the United Nations Security Council (UNSC) established the International Criminal Tribunals for the Former Yugoslavia (ICTY) and for Rwanda (ICTR) as a response to the horrors of the Yugoslav Wars and the Rwandan Genocide. At this point in time, the

[107] International Committee of the Red Cross, Op. Cit., p. 57
[108] International Committee of the Red Cross,2014, Universal Jurisdiction over War Crimes.
[109] Ibid.
[110] Ali, Nada, 2014, The Effects and the effectiveness of the international criminal court: A Game-Theoretical analysis, University of east Anglia.

international criminal justice project resumed[111]. The purpose of these tribunals was to try people accused of committing war crimes in their countries.[112]

Whether these ad-hoc tribunals had the intended impact or not, their establishment prompted a very active evolution of International Criminal Law which resulted in the creation of a permanent International Criminal Court in 2002.[113]

According to the Rome Statute of the ICC, the ICC is a permanent institution and has the power to exercise its jurisdiction over people who have committed the most serious crimes of international concern. The Court has jurisdiction with respect to crimes of genocide, crimes against humanity, war crimes and crimes of aggression.[114]

Referring to Article 7 of the Rome Statute, many crimes committed in Syria fall under "crimes against humanity," namely murder, torture, rape, enforced disappearance and other inhumane acts of similar character. Similarly referring to Article 8, grave breaches of the Geneva Conventions of 12 August 1949 have also been committed (war crimes), such as taking of hostages, extensive destruction of property, compelling war prisoners or other protected persons to serve in the forces of a hostile power, willful causing of suffering and willful killing[115].

The ICC only has jurisdiction with respect to crimes committed after the entry into force of the Rome Statute. Once a State becomes party to the statute, only then can the Court exercise its jurisdiction.[116]

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[111] Ibid.
[112] International Committee of the Red Cross Blog, 2017, How are suspected war criminals prosecuted under international law?
[113] International Criminal Court, Op. Cit., p. 06
[114] Ibid.
[115] International Criminal Court, Rome Statute of the International Criminal Court.
[116] Ibid.

The ICC has a wide jurisdiction to try individuals for the crimes mentioned above[117]. Sudan, for example, is not party to the Rome Statute and has not provided consent for any ICC jurisdiction but still, the Sudanese Head of State; Omar Al Bashir, finds himself indicted today for crimes committed in the region of Darfur pursuant to UN Security Council Resolution No.1593[118].

As it stands today, Syria is not party to the Rome Statute of the ICC.[119] Being that Syria has not ratified the treaty, the Court does not legally have jurisdiction over it. It would be susceptible to investigation at the ICC if the UNSC referred the case, but even when an attempt to do this occurred, Russia used its veto power to prevent this from happening.

In the case of Syria, the state itself is among those engaging in the atrocities and therefore is not in the right capacity to protect its people. Many violations have been committed during the conflict and the state has not been held accountable. Hundreds of civilians have been killed in Syria as a result of chemical weapons despite the fact that the UNSC has unanimously adopted a resolution on Syria and the destruction of chemical weapons.[120]

Legal Framework

International Humanitarian Law is found in international treaties/conventions and in customary law[121]. The main elements of IHL are available in the four Geneva Conventions of 1949

[117] Rome Statute of the International Criminal Court,1998, July 17, 1998, 37 I.L.M. 1002, art. 1: 12-14.
[118] 2 UNSC Res 1593,2005, UN Doc S/RES/1593.
[119] International Criminal Court, The States Parties to Rome Statute.
[120] UN Security Council, 2013, Security Council resolution 2118, Security Council Requires Scheduled Destruction of Syria's Chemical Weapons, 27 September 2013, S/RES/2118
[121] Customary Law: rules that develop over time due to consistent State practice accompanied by the belief that the practice is legally required.

as well as the 1977 Additional Protocols. The duty to implement IHL lies with states. During conflict, IHL applies to all sides equally.

States that are party to IHL treaties are required to do everything in their power to respect and ensure respect for IHL, they are legally bound by its rules. A person that violates IHL is considered to have committed a war crime and any individual at any given level of society can be held criminally responsible. The ICC is the first permanent body to have jurisdiction over serious international crimes (regardless of whether committed in an international or non-international armed conflict).[122]

Gradually, countries are coming up with mechanisms to prosecute people accused of war crimes that are part of the domestic jurisdiction but also incorporate international support[123]. Four international instruments ratified by Syria and that apply to the civil war include: the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child; and the UN Convention Against Torture. Syria is not a party to the International Convention for the Protection of All Persons from Enforced Disappearance, although it is bound by the provisions of the ICCPR that also prohibit enforced disappearances.[124]

[122] Australian Red Cross, Op. Cit. p. 58
[123] Human Rights Watch, These are the Crimes we are Fleeing, Justice for Syria in Swedish and German Courts.
[124] Report of the United Nations High Commissioner for haggadistic, 2011, Human Rights on the situation of human rights in the Syrian Arab Republic (PDF). UN Human Rights Council. September 15.

Responsibility to Protect and its Applicability in Syria

Since the state has not attempted to protect its people, the international community has a responsibility to step in and can legally do so in accordance with Chapter VII of the UN Charter. In this case, the Responsibility to Protect and legality of use of force under Article 2(4) of the UN Charter are still relevant,[125] even though there has been no united decision within the UNSC to date to take action.

In contrast to IHL and the Geneva Conventions of 1949, the idea of R2P is relatively new. For centuries, the idea of non-interference in the domestic affairs of states was more prevalent. However, after the end of the Cold War and the paralysis of the international community to act in the face of the genocides in Rwanda and Srebrenica, along with the NATO action in Kosovo, a general realization occurred that states had a responsibility to act in the face of such atrocious crimes. From this moral standpoint, the R2P emerged. The R2P doctrine is the end result of several years of diplomatic negotiations about the circumstances under which the international community has the right to intervene in another state to protect citizens[126].

The Responsibility to Protect (R2P) doctrine is the *"enabling principle that first obligates individual states and then the international community to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity.*" R2P is based on the notion that sovereignty is not a privilege, but a responsibility. R2P was universally endorsed at the 2005 World Summit and then re-affirmed in 2006 by the UN. The paragraphs that were unanimously adopted (138-

[125] Wilmshurst, Elizabeth, Op. Cit., p. 12
[126] Norooz, Erfaun, Op. Cit., p. 12

140) stated the responsibility to protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity; this includes protection, prevention and responsibility.[127]

Although the three paragraphs did not come with any legal obligations, the simple mention of the R2P doctrine in the outcome document was a major breakthrough in international law[128]. In reports produced by the UN Security General, a three-pillar strategy was outlined[129]:

1. **Pillar One**: The Protection Responsibilities of the State – to protect its population from the four major crimes[130].
2. **Pillar Two**: International Assistance and Capacity Building – empower and assist other states to fulfill R2P obligations[131].
3. **Pillar Three**: Timely and Decisive Response – refers to Chapter VI and VII, when a state clearly neglects to afford protection and to fulfill its obligations in case of mass atrocities[132].

The origin of R2P is in a report prepared by the International Commission on Intervention and State Sovereignty (ICISS) in 2001 entitled "A Responsibility to Protect". The ICISS recognized that when a state was failing or unwilling to protect its people the international community had a responsibility to do it.[133]

The ICISS specified three instances in which the external responsibility of states would be required: when a certain state is unwilling/unable to fulfill its responsibility to protect, when the

[127] UN, 2005, Un Summit Document, UN doc, A/Res. /60, UN Summit Outcome Document, October 24 : 138-140
[128] Norooz, Erfaun, Op. Cit., p. 12
[129] Secretary-General, 2010 Report: Early Warning, Assessment and the Responsibility to Protect.
[130] Norooz, Erfaun, Op. Cit., p. 12
[131] Secretary-General, 2009, UNSG Report: Implementing the Responsibility to Protect.
[132] Norooz, Erfaun, Op. Cit., p. 12
[133] Australian Red Cross, Op. Cit. p. 58

state itself is the perpetrator or crimes/atrocities, or where people living outside a particular state are directly threatened by actions taking place there. Precautionary principles were also introduced, ensuring that intervention is only legal when there is (1) the right intention (primary purpose must be to halt or avert human suffering), (2) it is the last resort (military intervention can only be justified when every non-military option for the prevention or peaceful resolution of the crisis has been explored), (3) proportional means are used (scale, duration and intensity of the planned military intervention should be the minimum necessary to secure the defined human protection objective) and (4) a reasonable chance of success. The UNSC is the only body that can authorize actual humanitarian military intervention, but the ICISS report did not exclude the possible intervention of the UN General Assembly, regional organizations or coalitions of states to protect citizens in case the UN Security Council failed to act.[134]

Humanitarian intervention has evolved over the years to what we call today the R2P[135]. The failure of the international community to act in many humanitarian crises has led to a deep division about the morality, efficacy and consequences of humanitarian intervention[136].

When comparing IHL to R2P, it is important to note that: (1) though R2P is derived from bodies of international law, it is not in and of itself a legal concept, and (2) R2P only protects vulnerable populations from the four crimes mentioned above. Both IHL and R2P have a large role to play in the protection of vulnerable populations.[137]

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[134] Norooz, Erfaun, Op. Cit., p. 12
[135] Evans, Gareth, 2008, Responsibility to protect: Ending mass atrocity crimes once for all, Washington DC, *Brookings Institution*: 56.
[136] Policy Analysis Brief, 2009, Sudan and the implications for Responsibility to Protect, October, *The Stanley Foundation*:7.
[137] Australian Red Cross, Op. Cit. p. 58

One of the biggest misunderstandings about the R2P is that it is synonymous with humanitarian intervention[138]. While it is undoubtable that humanitarian intervention paved the way for R2P, they are two different concepts: the former is about military response and the latter is more nuanced and multidimensional[139]. Also, humanitarian intervention has legally binding treaties and conventions, whereas R2P does not. However, in terms of crimes connected to R2P, states are legally bound through other conventions and treaties (the Convention on the Prevention and Punishment of the Crime of Genocide of 1948).[140]

When it comes to the authorization of the UNSC, humanitarian intervention does not require this as a prerequisite, unlike the R2P[141]. Under R2P, states are the primary duty bearers. The international community, though never clearly defined, also has a large moral responsibility to protect. R2P applies both during armed conflicts and in peace time.[142]

The R2P was referenced in Libya in 2011 and ignited a debate at the UN about the relationship between R2P and actual "regime change". The UN continued to conduct its duty by passing resolutions, but meanwhile the Security Council remained paralyzed. Some scholars believe that the absence of accountability over the years has only encouraged more extreme forms of deadly violence.[143]

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[138] Evans, Op. Cit., p. 65
[139] Norooz, Erfaun, Op. Cit., p. 12
[140] Lee, Shin-Wha, 2012, The Responsibility to Protect in Humanitarian Emergencies: From Libya to North Korea?, *AI Asia Security Initiative*, Working Paper 22:14.
[141] Norooz, Erfaun, Op. Cit., p. 12
[142] Australian Red Cross, Op. Cit. p. 58
[143] Adams, Dr. Simon, Failure to Protect: Syria and the UN Security Council, Global Center for the Responsibility to Protect

Specific Crimes of the Regime

The crimes of the regime date back to long before the civil war, but for the purpose of this thesis the focus will only be directed at crimes committed from March 2011 and onwards. Unable to suppress the protests in Syria, the army launched a military attack on Dara'a, Tal Kalakh, Baniyas and Latakia in 2011. Other major offensives were launched in 2012 in Homs and Hama.

There has been no adherence to the norms of international law[144] in Syria and the vast majority of abuses have been committed by the Syrian government[145]. Hundreds of thousands of Syrians have lost their lives since the onset of the conflict and everyday people are detained, raped, tortured and killed; attacks on homes, hospitals, bakeries and schools are common incidents[146].

In spring 2012, Amnesty International documented *"gross violations of human rights on a massive scale"* which had been carried out by the Syrian military and Shabiha[147]. The violations had been against armed opposition, civilians perceived to be supporting the opposition and indiscriminately against people who were not connected in any way with the opposition.

Stated below are examples of laws that have been violated by the Syrian regime since the start of the war. The list of violations stated below is not exhaustive. The purpose behind mentioning the laws broken is to later debate whether such violations can ever be forgotten or ignored by the international community.

1. Unlawful Killing of Children, Medical Personnel and Hospital Patients, and

[144] United Nations, General Assembly, 2015, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, Human Rights Council.
[145] Global Post, UN must refer Syria war crimes to ICC: Amnesty.
[146] Kassab, Op. Cit., p. 34
[147] Amnesty International, 2012, Deadly Reprisals: Deliberate killings and other abuses by Syria's armed forces.

2. **2.** Torture of Children, Medical Personnel and Hospital Patients (including sexual and psychological torture)

Eight medical facilities were attacked in Eastern Ghouta in February 20, 2018. At least 200 civilians were killed and over 700 wounded during a period of two days; many of the victims are women and children[148].

A British surgeon who volunteered at hospitals within Syria's conflict zone in 2013 reported that he treated civilians that had wounds which indicated that snipers were targeting particular parts of civilians' bodies on different days in a bid to entertain themselves. Pregnant women were also purposely shot on their uterus in an attempt to kill their unborn children.[149]

Amnesty reported that medical personnel were tortured[150] and the UN stated that medical personnel were often complicit in the killing and torture of patients[151].

3. Illegal Use of Barrel Bombs

HRW reported that between 2014 and 2015, "at least 450 major damage sites" in Syria "showed damage consistent with barrel bomb detonations"[152]. Similarly, a UN investigation in 2016 showed that the Syrian air force dropped barrel bombs from helicopters on a United Nations humanitarian

[148] Union of Medical Care and Relief Organizations, 2018, UOSSM Staff Killed, 8 Medical Facilities Attacked, Illegal Barrel Bombs Used.
[149] NOW, 2013, Syria Snipers Targeting Pregnant Women.
[150] Amnesty International ,2012, Syria: Detained medics tortured and killed amid Aleppo crackdown.
[151] UN Human Rights Council, 2011, Report of the independent international commission of inquiry on the Syrian, Arab Republic.
[152] Human Rights Watch, 2016,World Report 2016, Syria Events of 2015.

aid convoy at Urum al-Kubra headed to Aleppo. In the process, 14 aid workers were killed through an event that was meticulously planned and deliberate, therefore causing it be a war crime[153].

4. Arbitrary Arrests, Enforced Disappearances, Torture, and Ill-Treatment

Evidence smuggled out of Syria by defectors illustrates and proves the systematic killing of about 11,000 detainees. Human Rights Watch published a report in 2018 that stated that the Assad regime has forcibly disappeared more than 90,000 people since the onset of the civil war[154]. Another report in 2016 by the Syrian Observatory for Human Rights mentioned that at least 60,000 people have been killed via torture or from terrible humanitarian conditions in the government jails since March 2011[155].

Human Rights Watch has documented more than 20 different ways in which detainees (including children) were tortured; they include: prolonged and severe beatings, often with objects such as batons and wires; painful stress positions; electrocution; burning with car battery acid; sexual assault; pulling out fingernails; mock execution; and sexual violence. Many detainees who required urgent medical assistance were held in brutal and overcrowded conditions where they consequently died. [156]

The Syrian Network for Human Rights released a report that documented at least 357 cases of arbitrary arrests in March 2019 alone, including 162 cases of enforced disappearances. *"Arbitrary arrests and enforced disappearances have been amongst the most common and*

[153] Cumming-Bruce, Nick, and Barnard, Anne 2017, U.N. Investigators Say Syria Bombed Convoy and Did So Deliberately, New York Times.
[154] Human Rights Watch, Op. Cit., p. 34
[155] Al Jazeera, 2016, Monitor: 60,000 dead in Syria government jails.
[156] Solvang, Ole,2016, New York, N.Y: Human Rights Watch, Torture archipelago: arbitrary arrests, torture, and enforced disappearances in Syria's underground prisons since March 2011(PDF), Human Rights Watch, World Report 2016, Syria Events of 2015.

widespread violations since the early days of the popular uprising for democracy in Syria in March 2011."[157]

It has been reported in the International Commission of Inquiry that *"since March 2011, a countrywide pattern emerged in which civilians, mainly males above the age of 15, were arbitrarily arrested and detained by the Syrian security and armed forces or by militia acting on behalf of the government during mass arrests, house searches, at checkpoints, and in hospitals."*[158].

The arrests that were made targeted civilians who were perceived to be connected to the opposition or simply lacked loyalty to the government[159]. At least 12,679 people have died in custody between March 2011 and June 2016; the causes of death have included starvation, torture, abuse, beatings and disease[160]. By August 2016, the Syrian Network for Human Rights found that 96 percent of the estimated 75,000 forced disappearances were perpetrated by the government[161].

5. Sexual Violence & Rape

Only two years into the war, the UN had treated 38,000 victims in Syria and others who had fled the country[162]. The Human Rights Council established the UN Independent International Commission of Inquiry on the Syrian Arab Republic (COI) in August 2011 with a mandate of

[157] Syrian Network for Human Rights, At least 357 Cases of Arbitrary Arrests Documented in Syria in March 2019: Including 162 Cases of Enforced Disappearance.
[158] U.N. Human Rights Council,2016, Out of Sight, Out of Mind: Deaths in Detention in the Syrian Arab Republic, 4, U.N. Doc. A/HRC/31/CRP.1.
[159] Kassab, Op. Cit., p. 34
[160] Human Rights Watch, Op. Cit., p. 34
[161] Syrian Network for Human Rights, 2016, The Prolonged Pain.
[162] 26th Session of the UPR Working Group of the HRC, 2016, Human Rights Violations Against Women and Girls in Syria at 6.

investigating violations of International Human Rights Law in Syria since March 2011[163]. The commission has verified that regime forces have used sexual violence as a war weapon, occurring during raids, at checkpoints, and in detention centers and prisons[164]. Findings from a report by the Syrian Accountability Project report that 62% of incidents of rape and sexual violence were committed by the regime between 2011 and 2012 and 23% were committed by Shabiha[165].

HRW reported sexual crimes being committed by Syrian government forces[166]; Syrians who fled to Turkey reported mass rape by Syrian soldiers[167]. Other testimonies have reported sexual torture of male detainees; former detainees reported beatings of genitals, forced oral sex, electroshocks and cigarette burns to the anus. Some men have reported being raped by batons and having witnessed the rape of boys[168]. A sergeant in the Syrian special forces who defected in 2012 claimed that Alawite officers would order the rape of teenage girls and then shoot them afterwards. Soldiers that refused to do this were shot too.[169]

A report by the International Rescue Committee in 2013 stated that one of the main reasons Syrians fled was because of fear of rape[170]. There is no confirmed number of victims of sexual violence and/or rape as of yet, nevertheless the United Nations Human Rights Council estimates

[163] United Nations Human Rights Office of The High Commission, Indep. Int'l Commission of Inquiry on the Syrian Arab Republic.
[164] Rep. of the Indep. Int'l Comm'n of Inquiry on the Syrian Arab Republic: 95-100
[165] Levrant, Peter, 2015, Looking through the Window Darkly, A Snapshot Analysis of Rape in Syria, Syrian Accountability Project.
[166] Salvang, Op. Cit., p.37
[167] Abou Zeid, Rania,2011, Syria: In Search of the Rape Victims Among the Refugees, Time, November.
[168] UN Human Rights Council, Op. Cit., p. 37
[169] Ya Libnan, 2012, Syrian Army Accused of Vicious, Systematic Rape.
[170] International Rescue Committee, 2013, Syria: A Regional Crisis. The IRC Commission on Syrian Refugees.

thousands of women, girls, men and boys have been subject to sexual and gender-based violence[171].

6. Prevention of Medical Treatment

The Syrian government has denied wounded civilians' impartial medical treatment. It has also invaded, attacked and misused hospitals, impeded medical transport, detained and tortured doctors who treated wounded civilians[172]. Assad's government is said to have killed almost 700 medical personnel[173].

In government hospitals, pro-regime staff *"routinely performed amputations for minor injuries, as a form of punishment."* Government-run hospitals were functioning as a tool for the regime; demonstrators who went to be treated were targeted. Admission was required for patients with complicated medical issues, in which case the administration of the hospital would need to be notified. When this news reached security, wounded protestors were taken from wards by security and intelligence agents, often still under the influence of anesthesia. Some never made it to the hospital as security agencies "*commandeered ambulances and took the patients straight to intelligence branches, where they were interrogated and often tortured and killed.*"[174]

In 2011, there were more than 30,000 doctors in Syria. Today, more than 16,000 have left, and those who remain are in hiding[175].

7. Unlawful Air Strikes in Civilian Areas

[171] OHCHR, 2011, UN Commission on Inquiry on Syria: Sexual and gender-based violence against women, girls, men, and boys a devastating and persuasive feature of the conflict and must end now.
[172] Physicians for Human Rights, 2011, Syria: Attacks on Doctors, Patients, and Hospitals.
[173] Taub, Ben, 2016, The Shadow Doctors, The New Yorker.
[174] Ibid.
[175] Sparrow, Annie, 2013, Syria's Assault on Doctors, The New York Review.

This violation is in regard to the high frequency of government air strikes in Syria that have targeted and struck civilians and civilian objects in populated areas using highly explosive munitions. The air strikes have been carried out intentionally and recklessly. Though the Free Syrian Army (FSA) unlawfully contributed to civilian casualties, this still would not give government forces the right to conduct the unlawful attacks stated above. In its report on the armed conflict in Syria, the ICRC documents many of the attacks carried out by the regime, all of which were done with unguided munitions dropped without precision by jets and helicopters. The high destruction that would occur from such weapons causes indiscriminate and disproportionate harm to civilians and civilian property as they are highly populated areas. So, even if the purpose were a military objective, they would still be ruled as disproportionate.[176]

Human Rights Watch found proof of the use of OFAB 250-270 unguided, highly explosive bombs, which could cause harm to people within a 155-meter radius from where it would strike[177]. Even though there are no documented cases of bombs larger than 250-kilogram sized weapons, videos posted on YouTube illustrate that the government has used larger bombs, such as vacuum bombs.

HRW carried out interviews with Syrian Air Force defectors; the interviews verified that the Syrian Air Force did not in fact have the capacity to conduct precise air attacks as pilots do not have accurate spotting technology. They explained that it would be difficult for a pilot to target a specific spot – strikes are 300 to 400 meters within range. They mentioned it was to their advantage to randomly strike and scare civilians, as their endgame was to get them to flee these areas. One

[176] Human Rights Watch, Op. Cit., p. 34
[177] Human Rights Watch, Deadly Cargo: Explosive Weapons in Populated Areas, World Report 2015.

of the interviewees, a general who served for 40 years in the air force, told HRW that *"the point of the strikes is to get people to hate the FSA*[178]*."*

8. Deliberate Attacks on Bakeries

Eight air strikes on bakeries have been documented in Aleppo city, al-Bab and Mareh. These strikes have killed at least 35 civilians who were waiting in line for bread. The patterns documented suggest that government forces deliberately target civilians. Through its research and site visits, HRW found that there were no FSA bases in the vicinity of these attacks. Their presence in the area was only to maintain order at bread lines. However, if one were to consider that these individuals were armed, they would be doing so as a policing function and therefore would not be subject to attacks. Considering that they were regular fighters, targeting them by air strike in an area full of civilians would still be an unlawful disproportionate attack.[179]

9. Deliberate Attacks on Hospitals

Many hospitals have been purposely targeted since March 2011. HRW alone documented repeated attacks on two hospitals in Aleppo (at least eight attacks were directed at one of the hospitals which were powerful enough to destroy it significantly and in turn disabled its ability to function). Since no warning was provided before the attack and disproportionate civilian harm was caused, the laws of war were violated. Dar al-Shifa hospital, an established medical facility with a clearly marked Red Crescent emblem on the front, located in Aleppo city is one of these hospitals. A deliberate attack on a person, building or equipment that carries a protective emblem is considered a war crime under International Law. Additionally, through documented research from

[178] Human Rights Watch, 2013, Death from the skies: Deliberate and Indiscriminate Air Strikes on Civilians.
[179] International Committee of the Red Cross, Rule 9, Proportionality in Attack.

HRW on the ground, the only FSA presence in the vicinity was two-armed persons at the entrance of the hospital who "appeared to be guarding the hospital."[180]

10. Deliberate Attacks on Schools, and

11. Targeting Civilians and Indiscriminate Attacks:

On September 14, 2012 a school in al-Bab was struck with two bombs and on November 4, 2012 another four bombs struck the school. Though the regime was targeting civilian council members who would meet at the school, the laws of war necessitate the parties involved to do everything feasible to verify that the targeted areas are clear military objectives and not civilians or civilian objects. Following its investigation on the ground, HRW found that the council members were indeed civilians and did not carry weapons, therefore rendering the attack unjust.[181]

12. Restricting Humanitarian Assistance

The Assad regime has prohibited humanitarian assistance, such as medical treatment items and food, from reaching besieged areas. Between 2012 and 2016, the government blocked UN convoys carrying food and medicine to 4,000 civilians in Daraya.[182]

13. Chemical Weapon Attacks

Since 2011, the Syrian government has used chemical weapons multiple times against opposition forces and civilians – this has been confirmed by expert teams affiliated with the UN[183]. On April 4, 2017, Idleb was hit with several airstrikes of chemical nerve agents. The strikes killed between 80 – 100 people. On April 7, 2018, Syrian government forces launched a chemical attack

[180] International Committee of the Red Cross, Armed Conflict in Syria.
[181] Rome Statute of the International Criminal Court,1998, art 7-8, U.N. Doc. A/CONF.183/9 of 17 July 1998.
[182] U.S. Dep't of State, Bureau of Democracy, 2016, Syria 2016 Human Rights Report.
[183] OPCW, Fact-Finding Mission.

on Douma. This resulted in the death of at least 40 people and the injury of hundreds more. The French, British and US responded by targeting three chemical weapons storage and research sites. The largest-scale use of chemical weapons so far in Syria was on August 21, 2013 when more than 1,400 people were killed in Ghouta. Though Syria agreed to give up its chemical weapons and join the Chemical Weapons Convention in 2013, the continued use of chemical weapons after that has raised serious questions about Syrian compliance.

In August 2011, the UN Human Rights Council established an Independent International Commission of Inquiry which would document human rights abuses and violation of IL in the Syrian conflict[184]. The Commission's 2017 report states that between March 2013 and March 2017, 25 incidents of chemical weapon use have been documented, 20 of which were carried out by government forces and used against civilians[185].

The proof that the Syrian Air Force dropped cluster bombs in populated areas is undeniable; HRW conducted site visits and interviews were conducted with witnesses and YouTube videos illustrated the use of the cluster bombs. Syria is condemned by HRW as it opposes any use of cluster munitions at any given time. HRW presumes the use of cluster munition in or near civilian populations to be indiscriminate and thus a violation of International Law, regardless of whether the nation has joined the convention or not.[186]

14. Sieges & Starvation and

15. Systematic Denial of Food and Water

[184] The Human Rights Council is the primary intergovernmental U.N. body charged with addressing human rights situations worldwide. The United States is currently a Council member.
[185] United Nations, General Assembly, Op. Cit., p. 36
[186] Human Rights Watch, Op. Cit., p. 34

Government forces inflicted sieges on many different parts of Syria. The sieges imposed on certain regions completely blocked the entry of all goods and supplies. Markets and shops ran out of stock, forcing people to starve and thus exposing themselves to government snipers while in search of food[187].

17. Medical Workers, Medical Services and the Health of the Besieged

Many medical workers have reportedly been detained, the International Commission of Inquiry has also discovered that the government detained many Red Crescent volunteers and medical staff on grounds of "having supported terrorists." Additionally, the government continues to bombard healthcare facilities in opposition-held areas, including in Hama and Aleppo[188].

Today, it is estimated that between 250,000 and 1 million civilians have been arrested and/or detained by government forces and other affiliated forces since 2011. Detainees are held unlawfully or arbitrarily and many have died in detention, as is recorded in the Caesar Files (a collection of tens of thousands of photos revealing more than 11,000 deaths in regime prisons)[189].

The severity of the crimes committed by the regime is unlikely to go unpunished and the possibility of the Syrian people forgiving such crimes is near impossible. The survey that follows in the next chapter reiterates the undeniable crimes that have occurred in Syria over the past few years and how the Syrian people feel about punishing the perpetrators.

[187] Madaya, Khaled, Life Under Siege: Hunger, Break the Sieges.
[188] United Nations, General Assembly, Op. Cit., p. 36
[189] International Federation of Human Rights, 2018, French judges issue international arrest warrants against three high-level Syrian regime officials, Worldwide Movement for Human Rights.

Evidence Implicating the Assad Regime

"History will not be kind when it judges the effectiveness of this council in relieving the suffering of the Syrian people."

US Ambassador to the UN, Nikki Haley, 2018[190]

There is no shortage of war crimes and crimes against humanity occurring in Syria by the multiple forces fighting for power. The majority of these crimes, though, are being committed by the Assad regime,[191] which on many occasions has shown that it is willing to defy international law and disregard any sense of humanity in order to triumph and quell the opposition.

The crimes that have been committed in Syria have been documented by the UN and other human rights organizations over the years with future prosecution efforts in mind. In the past few years, the Commission for International Justice and Accountability (CIJA), an independent investigative body founded in 2012 in response to the Syrian war, has smuggled more than 600,000 government documents out of Syria. These documents provide further solid proof that link the Assad regime to war crimes and crimes against humanity, namely the systematic torture and murder of hundreds of thousands of Syrians. [192] The documents implicate many levels within the government, ranging from local intelligence branches to the highest in Assad's security committee, the Central Crisis Management Cell (Crisis Cell)[193].

[190] CNN, 2018, Nikki Haley berates Russia, *UN colleagues* over Syria: This should be a day of shame.
[191] Taub, See Ben, 2016, The Assad Files, The New Yorker.
[192] Kassab, Op. Cit., p. 34
[193] Wa'el Alzayat et al., 2016, Prosecuting Assad: War Crimes, Mass Atrocities, and U.S. Policy, The Washington Institute.

The Crisis Cell is composed of Assad's most trusted confidants: members of the Ba'ath party and his family. It was created after 2011 with the purpose of suppressing the opposition. The members met every day and devised plans to launch daily raids against protest organizers, cleanse certain areas of opposition and establish a joint investigation committee to interrogate detainees. The documents from the Crisis Cell's meetings illustrate that detailed information was passed both up and down the chains of command. It was so to the extent that every piece of anti-government graffiti reached the Crisis Cell to the very top of the chain. The documents revealed the degree to which high level officials were aware of everything happening on the ground and they exposed the extremely systematic policies operated by the regime. Following every meeting, Assad himself reviewed the proposed strategies, signed off on them, and returned the orders to the Crisis Cell for implementation. Assad's required approval of every policy is direct evidence that he and all the high-level officials in the government had knowledge of all the atrocities being committed by his forces.[194]

Smuggled documents prove Assad personally signed policies that involved arbitrary arrests and sexual violence in detention centers, among many other crimes.[195]

The documents of the Crisis Cell were leaked to the opposition by a man named Abdelmajid Barakat, who became the mole within the government. Besides the documents, thousands of photographs portraying emaciated, mutilated, burned, shot, beaten, strangled, broken, and melted bodies were also smuggled out of Syria. The photos were smuggled out by a military defector most commonly known by the alias, Cesar in August 2013. A total of 53,275 photographs revealed the

[194] Kassab, Op. Cit., p.34
[195] Ibid.

torture, starvation, beatings and illnesses that were visibly present in government detention facilities.[196]

CIJA interviewed around 250 victims across several provinces and found government defectors to obtain witness statements. Investigators claim that the evidence that exists today linking the Assad regime to war crimes and crimes against humanity is more comprehensive and incriminatory than any evidence gathered in other conflicts. Stephen Rapp, who led the prosecutions at the international criminal tribunals in Rwanda and Sierra Leone, stated that CIJA's documentation is *"much richer than anything I've seen, and anything I've prosecuted in this area."* [197]

Unfortunately, all documented reports remain useless so long as there is no international action to stop crimes against the Syrian people.[198] In its 2017 report titled "Human Slaughterhouse", Amnesty International documented various ways of mass executions of Syrian detainees by the regime in Saydnaya Prison. The report said that between 2011 and 2015, the regime had committed mass executions by hanging 13,000 detainees; the majority of them opposition civilians. These were occurring on a weekly basis, and sometimes twice a week. The executions were done in "secret," where groups of sometimes up to 50 people were taken out of their cells and hanged to death. The report is based on a thorough investigation and it includes interviews and testimonies of 84 people, including former prison guards, officials, detainees, judges, lawyers, as well as local and international experts. Amnesty International quoted a former judge who witnessed the executions as saying: *"They were being left hanging there for 10 to 15 minutes. Some didn't die because they are light. For the young ones, their weight wouldn't kill*

[196] Stories Behind Photos of Killed Detainees, 2015, *Human Rights Watch*.

[197] Ben Taub, 2016, Does Anyone in Syria Fear International Law, *The New Yorker*.

[198] Enab Baladi, Al-Assad's crimes in millions of documents: When will accountability start?

them. The officers' assistants would pull them down and break their necks. Two officers' assistants were in charge of this."[199]

The IIIM has announced that it has collected more than 700,000 pages documenting abuses committed since 2011. The horrendous pictures sparked outrage in the human rights community and demands amplified to hold the regime accountable. As a reaction, the US House of Representatives passed the Caesar Syria Civilian Protection Act which called for the cessation of massacres against Syrians and the penalization of those providing support to al-Assad's regime[200]. According to the Director of the Syrian Center for Legal Research and Studies, Lawyer Anwar al-Bunni, passing the Act by the *Congress "reinforces the principle of accountability, although its use is limited to the political aspect."*[201]

In the end, it is important to note that the regime is not the only perpetrator of war crimes in Syria. All parties involved have contributed to the violence and violation of international laws. Crimes committed by all parties need to be punished and there is documented proof via news agencies and reporters that all forces on the ground have committed grave war crimes and crimes against humanity. Though there exist strong forces that try to distort the realities of the Syrian conflict, the availability of social media puts the world in a position where it cannot deny crimes against humanity that are being documented via the same platforms we use in our everyday lives.

[199] Ibid.
[200] Congress,2018, H.R.1677 - Caesar Syria Civilian Protection Act of 2018, 115th Congress.
[201] Enab Baladi, Op. Cit., p. 49

Survey Results & Analysis

Presentation of Results

The remote survey conducted for this paper in early 2019 provided data on the background and political views of Syrians. As mentioned before, the survey was conducted anonymously from Syrian respondents living in different areas in the region. The aim of the survey was to gain further insight on Syrian citizen's opinion on accountability, transitional justice, to validate the commonality of crimes and to get a better understanding of where they would want trials against perpetrators to happen. The survey was limited in its findings given that the majority of the respondents were part of the Syrian opposition, but since the goal of the survey was not to pinpoint the blame on a specific party, bias has been evaded as best as possible. The survey helped answer the research sub-questions and supported most data found online. The data was collected through an anonymous survey. 255 Syrians living in different areas in the region (Syria, Lebanon, Turkey and Jordan) participated in the survey (Annex A). The ages of the participants ranged between 25 to 54, with the majority between 25 to 34 years (58.33%). 195 out of 255 of the respondents were male.

21% of the participants were refugees, 34% IDPs, 6% fled Syria to avoid military conscription, 8% immigrated to other countries and the remaining 31% are still residing in Syria. When asked on how they would feel if Bashar al-Assad were to remain in power, 3% answered that they would be "satisfied," 12% would feel "indifferent," 29% would be "dissatisfied" but continue to live in Syria and the majority (56%) stated that they would permanently leave Syria.

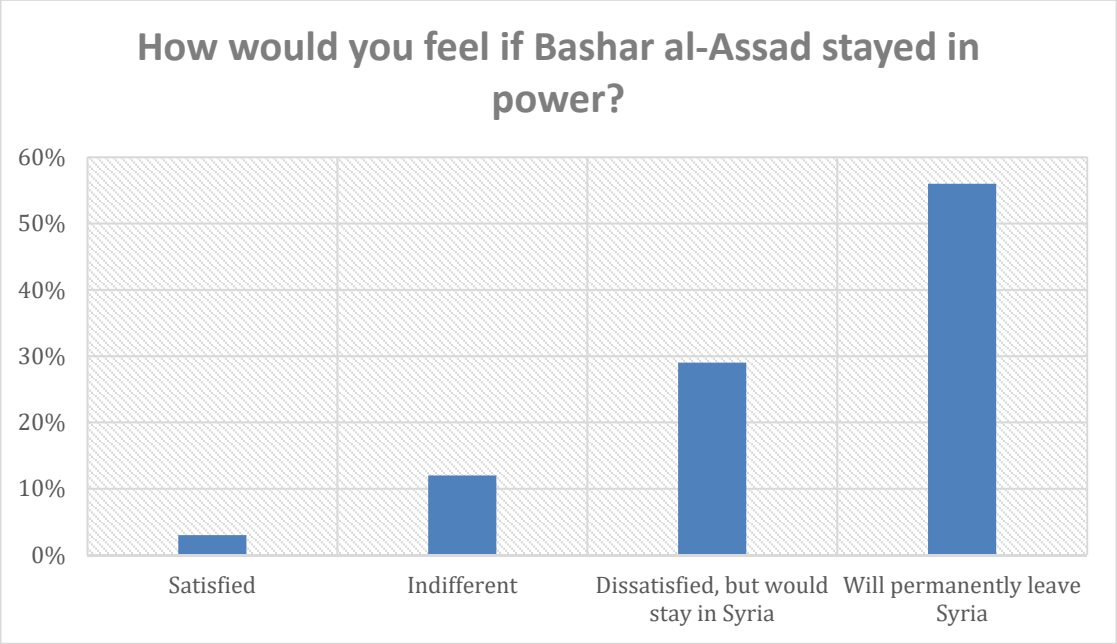

Figure 2 - Graph illustrating respondent answers to " How would you feel if Bashar al-Assad stayed in power?"

No Justice Without Accountability field survey results, 2019

In relation to war crimes and crimes against humanity, the statistics of the answers are stated below:

- 27% have, or know someone who has, been subject to at least one chemical weapon attack.
- 80% have, or know someone who has, been subject to shelling at least once.
- 44% have, or know someone who has, been imprisoned unjustly.
- 38% have, or know someone who has, been subject to at least one form of torture, at least once.
- 8% have, or know someone who has, been raped at least once.
- 27% have, or know someone who has, been kidnapped at least once.
- 61% have, or know someone who has, lived under siege in at least once location in Syria.

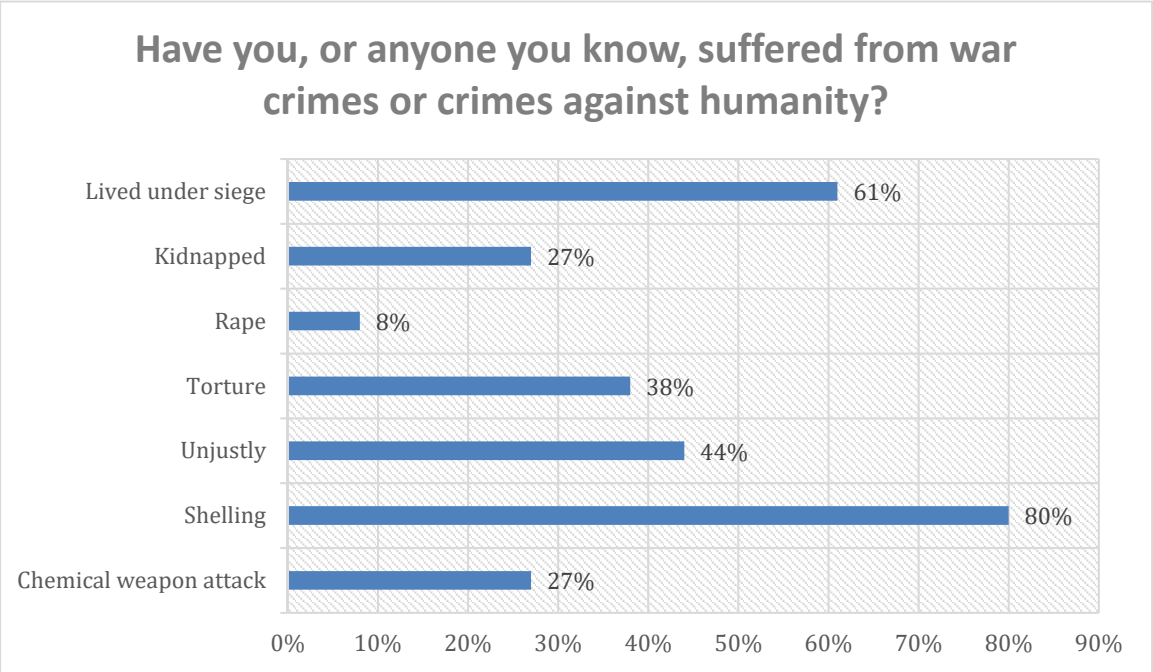

Figure 3- Graph illustrating respondent answers to "Have you, or anyone you know, suffered from war crimes or crimes against humanity?"

No Justice Without Accountability field survey results, 2019

When asked about the action that needs to be taken against perpetrators of war crimes in Syria, 17% of the respondents stated that they should be tried in Syrian courts, 48% that they should be tried in an international court, and 30% believe that the perpetrators should be executed

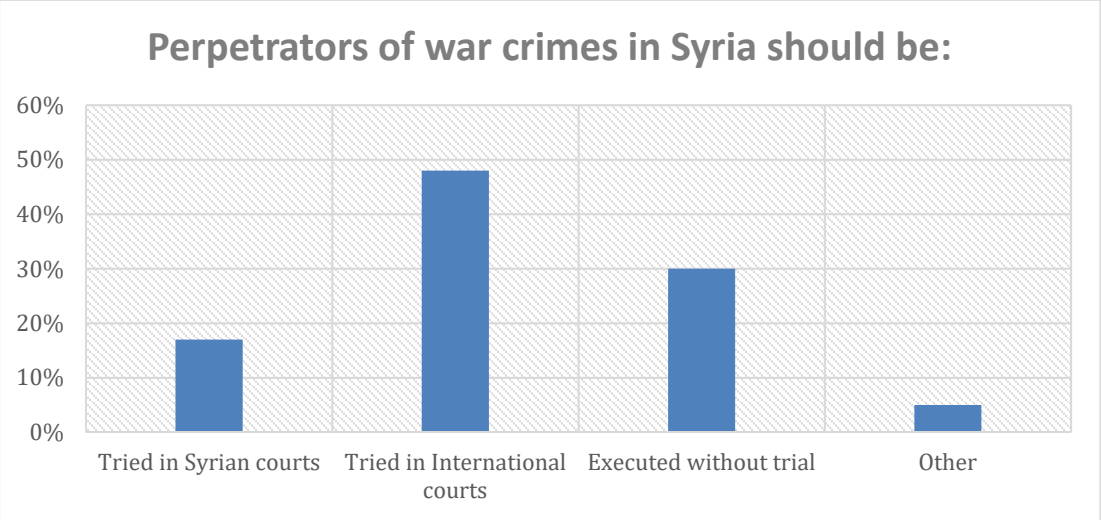

Figure 4- Graph illustrating respondent answers to "Perpetrators of war crimes in Syria should be:"

No Justice Without Accountability field survey results, 2019

without trial. The remaining 5% either believe that there is no need for trial or that neither of the above stated options will provide the justice that they deserve.

87% of the participants would be willing to testify against perpetrators of war crimes in a legal court, 9% would not and 3% have not been witness to any crimes or fear retribution.

If war criminals are to be put on trial and are found guilty, 10% of the participants expect monetary compensation for themselves and their families, 13% expect some form of restitution, 17% want rehabilitation, 4% expect "symbolic gestures such as apologies or memorials," and 33% have no expectations at all.

The remaining 23% want the indicted criminals to be executed.

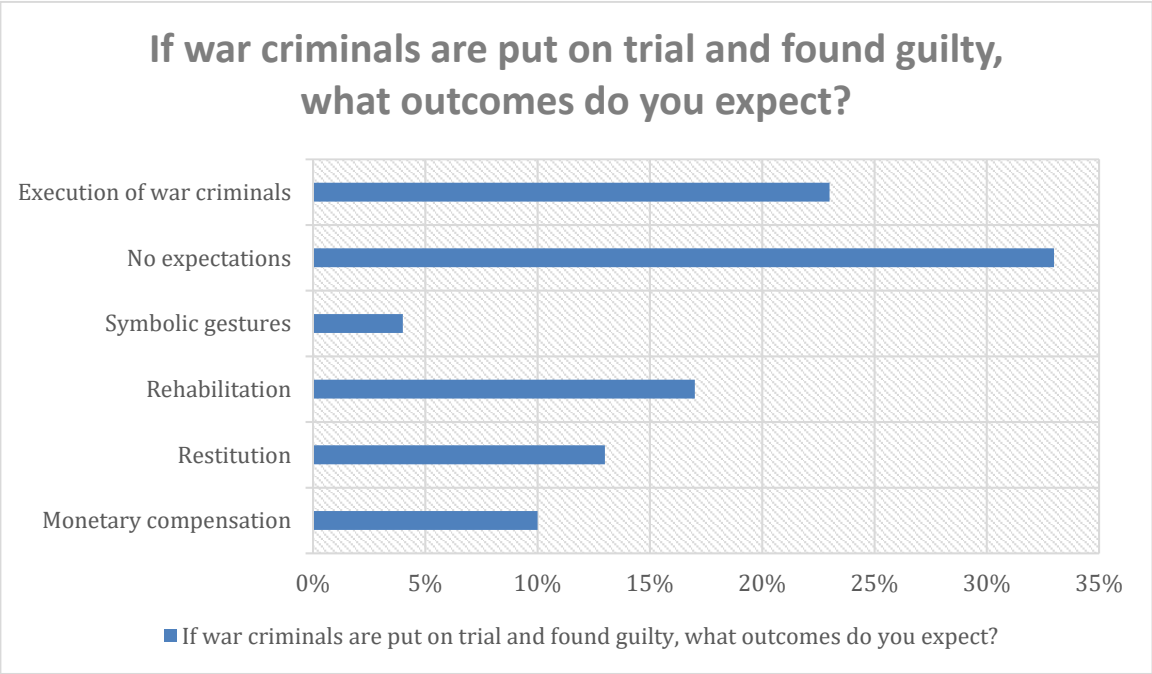

Figure 5 - Graph illustrating respondent answers to "If war criminals are put on trial and found guilty, what outcomes do you expect?"

No Justice Without Accountability field survey results, 2019

Analysis of Results

According to the data presented above, the general lack of trust by the participants in their ruling government and the international community is irrefutable. With very low hopes of actual prosecution, a large majority simply don't see the Assad government being prosecuted at all. All participants have been, or either know someone who has been, subject to a war crime or crime against humanity, at least once. A whole generation of Syrians has been born into the *"worst man-made disaster since World War II."*[202]

Deduced throughout the paper, the prospects of Assad staying in power are relatively high. The survey results show that if he does stay, 56% of the respondents will permanently leave Syria. Assuming 56% of the population in Syria will leave may seem drastic to some, so if one were to leave room for bias, it could still be assumed that a very large percentage of people will be leaving if Assad stays.

17% of the participants answered that they want the perpetrators to be tried in Syrian courts. When asked why they prefer that, many said they wouldn't be content unless they were able to see the criminals being tried "in front of their eyes." They felt that international law doesn't really protect anyone and that it is just an illusion which is only used when practical to the permanent five members of the UNSC. The people want to make sure that the laws will be implemented; if the trials were to happen at an international court, there would be no guarantee for the people on where amnesty may occur, and many Syrians fear they will not get the closure they need if trials took place outside Syria. However, 48% of the participants responded that they want to see the

[202] UN rights chief, UN News Centre, 2017, Syria: *Worst man-made disaster since World War II*.

criminals tried in some form of an international court. A predictable 30% would like the perpetrators to be executed without trial – understandably as a form of vengeance.

Any court for Syria will be useless without the testimonies of victims, and this survey provided further insight that a high number of people would be willing to testify; 87% of the participants answered that they would be willing to do so in a court of law.

If transitional justice were to occur, 10% expect monetary compensation. Around 34% want some form of restitution – be it rehabilitation, restoration of something lost or even just symbolic gestures like apologies or memorials. However, these numbers remain low, as a miserable 33% have given up and have no expectations at all.

With high prospects of Assad remaining in power, the predictions are that thousands of people living in Syria today will leave. The people have generally lost trust in their government and the international community, giving International Law and the UN a bad name. One day when the conflict is over, many Syrians will be testifying in a court of law, whether pro or against the government and their testimonies will support the process of transitional justice, which will be essential in the restoration of a semblance of peace and order to the country.

CHAPTER THREE: **Accountability for War Criminals**

Given the present circumstances, the ICC is would be the most ideal channel for the regime to be indicted through[203], but unfortunately, it would not be feasible due to the UNSC veto and the fact that Syria is not party to the court. Other options include diplomatic pressure or unilateral sanctions (both which have already been done). An ad-hoc tribunal like the International Criminal Tribunal for the former Yugoslavia is also not a possibility due to the fact that, historically, such an approach would require a UNSC resolution and the prospects of that happening are near nil.

Establishing hybrid courts would be a feasible option[204]. They function on a mix of national and international law and have both local and international lawyers. Proposals for a Syrian model have already been put forth; however, these courts usually cannot be created without the consent of the state itself. Since the government is not likely to submit itself in the near future, this option seems rather far-fetched. A more practical approach could be to create these courts in countries neighboring Syria, such as Lebanon, Jordan or Turkey – but this would still require cooperation from the Syrian government.

The first case against Assad was submitted to the ICC by human rights lawyers in March 2019. The lawsuits were submitted on behalf of 28 Syrian refugees in Jordan who claimed they were forced to leave Syria. The lawyers used a precedent set by an ICC ruling on Rohingya refugees in Bangladesh to launch two lawsuits. Recently, judges ruled that even though Myanmar is not a member of the ICC, Bangladesh is, and since part of the crimes happened on Bangladeshi territory that the prosecutor actually does have jurisdiction. The lawsuits that were filed against

[203] Reuters, 2011, Q&A: Syria and the International Criminal Court, *Human Rights Watch*.
[204] Trahan, Jennifer, 2015, Accountability for Crimes in Syria: Lessons Learned, *The Field of International Justice*.

Assad were done based on the same principle (Jordan falls under the ICC's jurisdiction).[205] As it stands today, President Bashar al-Assad could be charged with the illegal use of chemical weapons, detaining civilians and prisoners and torturing them, as well as massive displacement of civilians.[206]

International Courts

The UN created the "International, Impartial and Independent Mechanism" (IIIM) in 2016 with the purpose of collecting and compiling files that could be used by any jurisdiction (local or international) that are supposedly capable of prosecuting alleged war criminals in Syria. By pursuing its mandate, the IIIM seeks to support accountability aimed at bringing justice to the victims of vile international crimes committed in Syria since March 2011.[207]

As mentioned before, since the government itself is the perpetrator of many of the crimes and is therefore unable to prosecute in its authority, an external force is needed. Since Syria is not party to the Rome Statute, the ICC has no jurisdiction, and since the UNSC has not referred the case to the ICC, the prospects of the ICC taking action is low. The UNSC has referred situations to the ICC only twice, once for Sudan and one other time for Libya. Ultimately, only the Security Council has the authority to establish tribunals, so the IIIM only exists as a mechanism to collect and preserve data for future use[208].

[205] BBC, 2019, Syria War: Lawyers submit first war crimes cases against Assad.
[206] Schneider, Tobias, and Lutkefend, Theresa, 2019, Nowhere to Hide: The Logic of Chemical Weapons Use in Syria, *Global Public Policy Institution.*
[207] United Nations, International, Impartial and Independent Mechanism, *To Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes under International Law Committed in the Syrian Arab Republic since March 2011*.
[208] Ibid.

Powerful leaders such as Slobodan Milosevic, Charles Taylor, and Ratko Mladic never thought that they would be held accountable for the war crimes they committed, however they eventually found themselves being tried at The Hague[209], so if the past is any indicator, this must bring the slightest bit of hope for the Syrian people and their wishes to have perpetrators tried one day.

Alex Whiting, a former prosecutor at the ICC and Harvard Law professor, who is part of the Commission for International Justice and Accountability and has spoken about the preparations being made for the day when a tribunal will be set up. He discussed the importance of collecting evidence when it's fresh and says that it will be difficult for perpetrators to escape accountability when there are mountains of evidence (nearly one million documents). Syrian civil society actors and victims have been very dynamic in documenting violations.[210]

During an interview conducted with Yasmin Benshi, a Syrian activist and founder of the Yasmin Al Horiya organization, the prospects of using the evidence mentioned above were discussed. Yasmin, like many other Syrians, has lost faith in the ICC and power of international law. She was detained without trial by the regime for over a year in 2013; she was caught working with opposition activists, providing them with support, and was witness to a kidnapping. She described her detainment as *"tough - I was beaten often, but my experience was much better than other women who were with me in that prison who suffered electric shocks or broken backs…"*[211]

Today, Yasmin works with lawyers and human rights activists to gather legitimate information in the hope of one day achieving accountability. She also lost her brother in prison during the period of the civil war but cannot provide an exact date of death as she was only

[209] Council on Foreign Relations, Leaders Facing Justice 1945-2013.
[210] National Public Radio, 2018, Could Syrian President Bashar al-Assad be Tried as a War Criminal.
[211] Yasmin Benshi, Interview with the author

informed recently "by accident"; and his body has not been seen or heard of yet. Yasmin has lost trust in international law and claims that prosecuting people and holding them accountable is all part of a political game of which many powerful people are exempt.

> "There will be no accountability…we know of cases against high-ranking officials that have been won, yet we still see those people travelling around Europe as if nothing has happened… We have lost faith in the system. I don't think any of the refugees will be returning to Syria before, at least, another ten years. How can we change the mindset of thousands of ignorant people fighting on the ground? This will take decades."[212]

Though hefty documentation on the violations exists, nothing can be done as of yet. Even if the ICC were to get involved, the limited resources that exist would not allow every single perpetrator in Syria to be prosecuted. ICC jurisdiction requires legality and it is not enough for a cause to be "legitimate". As it stands, the ICC does not have jurisdiction over crimes occurring in Syria.

Though the majority of the research conducted for this thesis mentions the importance of prosecuting Assad and high-ranking officials, some Syrians believe that even the less known officials deserve to be prosecuted more than the others. In an interview with Said Seif, a Syrian activist and war reporter who focused most of his journalistic work on ISIS battles and has witnessed firsthand the death of hundreds, stated the following:

> *"If there truly existed a will to hold perpetrators accountable, then this would have happened already. There have been tens of massacres and chemical weapon attacks and the world has stood idly by. Nobody cares about Assad anymore, there are now hundreds of Assads – pilots, security officials, medical personnel. These people have all participated*

[212] Yasmin Benshi, Interview with the author

in random killings, bombings, rape, and much more. Assad has not killed thousands physically with his own hands, the generals and others who work for him have."[213]

Said, like many other Syrians, believes that when the war is over, Assad and other high-ranking officials will be granted political asylum. He iterates that lower ranking officials, whose names have not been made public and are thus harder to reach, deserve to be punished more than Assad and his high-ranking staff as they have committed just as many war crimes, if not more, while Assad sits in his palace. It is true they are just taking orders but Said believes *"it is better to be killed than to kill."*

Since the end of WWII, around 313 conflicts have taken place worldwide with an estimated 92 million casualties (mostly civilians). Only 1% of the perpetrators of international crimes have been brought to justice. Human Rights Watch is one of the many international organizations that believes the UNSC should refer the case of Syria to the ICC considering the evidence of serious crimes being committed and the inescapable climate of impunity that exists there today. Efforts to refer the case to the ICC have been made before, namely in 2013 by Switzerland when it presented a letter to the UNSC on behalf of 58 countries pleading the SC to refer Syria to the ICC. The Syrian National Coalition[214] has even called for an ICC referral several times[215].

A referral would give the ICC jurisdiction to investigate war crimes, genocide and crimes against humanity committed by all sides of the conflict and it would send a clear message that grave crimes will not be tolerated and will have serious consequences. Pursuing justice through the ICC can actually pave the way to a peace deal; this is deduced by looking at the record from

[213] Said Saif, Interview with the author
[214] The Syrian National Council (SNC) is a coalition of opposition groups formed in October 2011 to offer a credible alternative to the Syrian government and serving as a single point of contact for the international community.
[215] United Nations, 2014, Referral of Syria to International Criminal Court Fails as Negative Votes Prevent Security Council from Adopting Draft Resolution, Security Council, SC/11407.

other conflicts, such as those in the Balkans[216]. In many countries in Europe, Syrian lawyers and experts have been intimately involved in conceptualizing, encouraging and proving cases that have been recorded by organizations over the years, demonstrating the emergence of a new form of hybridity[217].

Local Courts

a. Syria

In the long run, even if the ICC gained jurisdiction, it would only be able to try a limited number of senior officials; therefore, national trials will be necessary to achieve full accountability. Reforms will surely be needed to help equip the Syrian judicial system to proceed with credible and independent domestic proceedings.[218]

This avenue is the least viable, given that the situation in Syria is still unstable and that the likelihood of Syrian authorities investigating and prosecuting international crimes on Syrian territory is very low. Even after the conflict ends, it is unlikely that local courts will have the capacity to oversee the investigations and prosecutions of complex international crimes. Also, one needs to take into consideration the internal conflict itself which has broken Syria up into different regions which are controlled by several parties on the ground. It is uncertain what Syria's governance will look like post-conflict and for this reason, the capacity and ability of Syria's domestic courts to investigate and prosecute crimes is basically unknown.[219]

[216] Human Rights Watch, 2013, Syria and the International Criminal Court, Questions and Answers.
[217] Schaak, Beth, Van, Domestic Courts Steps Up: *Justice for Syria One Case at a Time*.
[218] Human Rights Watch, Op. Cit., p. 72
[219] Jones, Op. Cit. p. 25

b. Local Courts of **Other Country**

The creation of an ad hoc tribunal would be similar to those created for the former Yugoslavia and Rwanda. It could be an option, but the UN Commission of Inquiry Syria has concluded that the ICC is the most appropriate judicial mechanism to address impunity in Syria[220]. For this option to succeed, it would be dependent on the Security Council – so the prospects are pretty low at this point. In terms of efficiency, the ICC would be a better option than an ad hoc tribunal as the entire purpose of the ICC is to prosecute the types of crimes being committed in Syria today.[221]

Since there are certain crimes that are so severe, they affect the whole international community, the concept of universal jurisdiction was created. This principle allows any state to prosecute perpetrators even in the absence of links between the crime and said state. The rationale behind universal jurisdiction is the avoidance of impunity for those who have committed serious crimes and prevention of a safe haven in third countries for those offenders. For this principle to be effective, states are required to establish universal jurisdiction for war crimes in their own national legislation[222]. For example, Germany could prosecute U.S. officials for crimes committed in Iraq and Afghanistan.

Applying the principle of universal jurisdiction, Sweden, Finland, Germany and Switzerland have been prosecuting Syrian refugees that have been suspected of committing international crimes[223]. These types of trials will be discussed later throughout this thesis as they are the most viable legal channel to prosecute international criminals today, given the

[220] Reuters, Op. Cit., p. 67
[221] Kassab, Op. Cit., p. 34
[222] International Committee of the Red Cross, 2014, Universal Jurisdiction over War Crimes.
[223] Human Rights Watch, These are the Crimes we are Fleeing, *Justice for Syria in Swedish and German Courts.*

circumstance. However, unfortunately, these trials have their own challenges, especially in terms of acquiring evidence and they are quite limited in their reach. They also do not usually target high-ranking state officials, leaving the most serious crimes an unresolved issue.[224]

Some countries, such as Germany, have already begun prosecuting international crimes committed in Syria. As per the concept of universal jurisdiction, certain categories of grave crimes that violate International law give legal authority to domestic judicial systems of state to investigate and prosecute, regardless of where the crimes were committed. The extent to which cases under universal jurisdiction can be pursued in reality depends on the domestic criminal system and local laws of that country, as well as the evidence that would be admissible in the said country's courts.[225]

According to Article 146, Convention (IV) relative to the Protection of Civilian Persons in Time of War (Geneva, 12 August 1949):

"The High Contracting Parties undertake to enact any legislation necessary to provide effective penal sanctions for persons committing, or ordering to be committed, any of the grave breaches of the present Convention… Each High Contracting Party shall be under the obligation to search for persons alleged to have committed, or to have ordered to be committed, such grave breaches, and shall bring such persons, regardless of their nationality, before its own courts…"[226]

In October 2018, a French judge issued international arrest warrants against three high-level Syrian regime officials for crimes against humanity and war crimes: Ali Mamlouk, Jamil Hassan, and Abdel Salam Mahmoud. This was considered a "*landmark step towards accountability*". They were charged with complicity to crimes in connection with the disappearance, torture and death of dual Syrian-French nationals, Mazen and Patrick Dabbagh.

[224] Ibid.
[225] Reuters, Op. Cit., p. 67
[226] International Committee of the Red Cross, Convention (IV) relative to the Protection of Civil Persons in the Time of War, Geneva, August 12, 1949.

Father and son were both arrested by Syrian Air Force Intelligence officers in November 2013 and detained at the notorious Mezzeh military airport. In July 2018, the Dabbagh family gained access to documents from the regime that indicated that Mazen and Patrick had died in November 2017 and January 2014 respectively. [227]

The warrants target three regime officials at the top of the regime's hierarchy. Ali Mamlouk is the director of the National Security Bureau and one of Bashar al-Assad's most trusted advisors (Lebanon has also issued an arrest warrant for his alleged involvement in a bomb plot[228]). Jamil Hassan is the head of the Syrian Air Force Intelligence (he was also subject to an arrest warrant issued in Germany early 2018). Abdel Salam Mahmoud is in charge of the Air Force Intelligence Investigative Branch at Mezzeh military airport in Damascus, a detention site with one of the highest mortality rates in Syria according to the UN's Commission of Inquiry.[229]

Ali Mamlouk's whereabouts are unknown today, but he did make a very public visit to Cairo at the end of 2018,[230] after the arrest warrant was issued against him, showing the entire world that he was not affected by the legal implications of his arrest warrant. He is also said to have been secretly transported to Turkey by Russians on a boat to meet with members of Turkish intelligence at the end of 2018[231].

Anwar al-Bunni is one of the Syrian human rights lawyers in Europe working to open the files of war criminals in Syria and transitional justice. He was head of the short-lived European Union-funded human rights training center in Syria called the Center for Legal Research and

[227] International Federation of Human Rights, Op. Cit., p. 46
[228] Al Jazeera, Lebanon issues warrant for Syrian spy chief, *Judges issues arrest warrant for top Syrian intelligence official Ali Mamlouk for his alleged involvement in a bomb plot.*
[229] International Federation of Human Rights, 2018, French judges issue international arrest warrants against three high-level Syrian regime officials, *Worldwide Movement for Human Rights*; Rollins, Tom and Clark, Justin,2018, Prosecutors issue arrest warrants for Ali Mamlouk, other high-ranking Syrian officials over crimes against humanity, November 6; Trial International, 2018, Ali Mamluk.
[230] Middle East Monitor, 2018, Syrian intelligence chief Ali Mamlouk makes rare visit to Cairo.
[231] Al-Modon, 2019, Ali Mamlouk Meets Turkish Intelligence, *The Syrian Observer*.

Studies until it was shut down by the government following his 2006 arrest[232]. He continues to defend detainees to this day. In an interview with Anwar, he explained that, with the help of international and local organizations, he has won cases against several violators of international law, including Ali Mamlouk in Germany.

Building on this, all of the interviews that were conducted throughout this thesis yielded the same response regarding prosecution of officials: all interviewees have lost faith in the system and the international community. They acknowledge that, even though high-ranking officials have been exposed and warrants for their arrests have been issued, ultimately, nothing really happens. These officials continue to travel, paying little or no attention to international law and universal jurisdiction.

This is similar to the case of Sudanese President Omar al-Bashir who was the only sitting president with an outstanding arrest warrant from the ICC. He had been accused of genocide against innocent civilians in Darfur and an arrest warrant was issued against him in 2009 and 2010. Bashir continued to rule with impunity all the while attacking innocent people and traveling freely to other countries[233] until he was finally caught in April 2019[234].

Individual Criminal Liability

Ultimately, the most important question to be asked concerning the documentation of violations of the regime, is why the countries responsible for these reports are ignoring them, and not being able to do much politically, especially those sponsored by the United Nations. When asked how important and effective the documentation of violations is going to be, the interviewees for this thesis all answered almost the same thing, which is basically that, in spite of the poor

[232] Front Line Defenders, Anwar Al-Bunni.
[233] Bashir-Watch, The Case Against Bashir.
[234] National Public Radio, 2019, Sudan's Military Says It Has Taken Control and Arrested President Omar Al-Bashir

reactions that the documentation has encountered, the opposition must document all the committed violations so that they can be ready when the courts in Syria resume their activity and only then will there be real hope that justice will be brought.

The head of the Syrians for Truth and Justice Organization, Bassam Ahmed, stated that three steps must be taken in order to establish justice. The first one is to document crimes and violations in Syria, no matter who the perpetrators are and then to resort to the countries that abide by international jurisdiction and the establishment of special courts. The third step is the formation of an independent and impartial international tribunal to investigate war crimes in Syria.[235]

An opinion poll conducted by Enab Baladi revealed that 57 percent of the survey participants believed that the files documenting the crimes would one day contribute to establishing justice and a political solution. The remaining 43 percent claimed that these files will never be able to establish justice.

When looking at past cases like Bosnia, the Syrian people may be comforted in knowing that, eventually, perpetrators will be brought to justice. Radovan Karadžić, who was responsible for massacres particularly the Srebrenica massacre, which took the lives of around 8,000 people, was free for more than 12 years until he was arrested in 2008. In 2016, the International Criminal Court sentenced Karadžić to 40 years in prison. Another case, such as Rwanda, where the International Criminal Tribunal for Rwanda was established at the request of the Government of Rwanda, held the former military commander, Augustin Bizimungu, accountable and sentenced him to 30 years in prison and sentenced many other officials involved in the genocide to prison.[236]

The substantial amount of evidence that exists today regarding the war crimes committed by the Syrian government is the *"strongest collected since the Nazis were tried in Nurembourg,"*

[235] Enab Baladi, Op. Cit., p. 49
[236] Enab Baladi, Op. Cit., p. 49

according to the chairman of Commission for International Justice and Accountability, Stephen Rapp. The regime is very meticulous in recording its work (like the Nazis); they have taken photographs of thousands of people who have died. The photos make it hard to deny that the individuals have been tortured, as it is impossible to ignore eyes that have been gouged out and acid that has eaten away at people's bodies. Rapp continued to add, *"I prosecuted Charles Taylor, President of Liberia, for war crimes; I prosecuted those responsible for the Rwandan genocide. We had nowhere near the extensive records we've been able to obtain out of Syria."*[237]

Of course, the existence of international laws and all the evidence in the world do not carry significant weight, if the law itself isn't enforced. But Rapp remains convinced that eventually the pressure will build, and if Assad makes it through the next few decades, then there will come a time when he'll be under international arrest warrant. He may never be caught, but Rapp states that these types of crimes are the kind that *"the world doesn't forget."*[238]

If the ICC acquired jurisdiction over Syria, Assad and high-ranking officials under his command could be found individually liable under Rome Statute Article 25 (individual criminal responsibility) and Article 28 (responsibility of commanders and other superiors)[239]. Article 25(3) in the Rome Statute systemizes modes of participation into six different levels[240]: (1) direct and indirect commission, (2) individual liability to those who order crimes, (3) aiders and abettors, (4) any contribution to a group crime, (5) directly and publicly provoke others to commit genocide in

[237] Middle East Monitor, 2018, US prosecutor: Evidence of Syria regime war crimes strongest since Nuremberg Trials.
[238] Ibid.
[239] The Rome Statute, supra note 5, arts. 25 and 28.
[240] The Rome Statute, supra note 5, art. 25.

particular, and (6) covers individuals who are willing to commit a crime but due to external circumstances, the crime doesn't actually occur[241].

A substantial amount of incriminating evidence exists that is very likely sufficient enough to attribute individual criminal liability to Assad and his officials. If things move forward, witness testimonies, the UN, CIJA, media reports and social media will all be very valuable to international war crime prosecutors. Previous cases can be used as blueprints in those leading on the prosecution of Assad as they can be helpful in developing theories of individual criminal 3liability, though there is no doubt that the case against Assad is stronger than any of the previous cases that the ICC has tried.

[241] Gerhard Werle, 2007, Individual Criminal Responsibility in Article 25 ICC Statute, 5 J. INT'L CRIM. JUST: 953, 957.

CHAPTER FOUR: **Intervention & its Prospects**

Intervention in Syria

The conflict in Syria transitioned from a revolution to a civil war swiftly in the first year of the conflict. At the beginning, Bashar al-Assad relied mostly on his father's counterinsurgency approach, but his campaign eventually failed to put down the 2011 revolution and sped up the path to civil war. Hafiz al-Assad quieted the Muslim Brotherhood uprising in the early 1980s through a campaign that relied on *"carefully selecting and deploying the most trusted military units, raising pro-regime militias, and using those forces to clear insurgents out of major urban areas and then hold them with a heavy garrison of troops."* Bashar al-Assad attempted to employ the same strategy in 2011-2012, but failed miserably. His reliance on minimal trusted military units limited his ability to control all of Syria and in the way that he intended to. He attempted to dodge defections by deploying only his most loyal troops (one-third of the Syrian army) but by doing so, he weakened his ability to properly utilize a counterinsurgency campaign because he couldn't use all his forces. The consequence of the high number of defectors is a weakened army, but on the plus side, Bashar rests assured knowing that what remains of his armed forces is composed of regime supporters. Regime fighters, mostly Alawite "Shabbiha[242]" mafias have been responsible for the worst brutality against the Syrian opposition.

According to the International Commission of Inquiry (COI), the situation in Syria is a tangible case of R2P. Clearly, Syria has violated international humanitarian and human rights instruments to which is it party. For example, Syria is party to some human rights treaties,

[242] Shabbiha are armed criminal gangs sponsored by the Syrian state.

including the International Covenant on Civil and Political Rights (ICCPR) and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – treaties which it has violated.[243]

Some argue that the UNGA could authorize use of force and that this could be consistent with the UN Charter, albeit this would not be widely accepted by many state actors, especially the Permanent Five members of the UNSC (China, UK, US, Russia, France). This rests on the idea that members of the UNSC are supposed to act as delegates for UN members as a whole and therefore have shared responsibility for peace and security. In order for there to be an intervention, the case needs to fit the below criteria:

1. **Right Intention**: The intervention must be carried out in a cooperative manner and backed by the people of Syria. Support from other states in the region is also required.[244]
2. **Last Resort**: Many experts believe that all the peaceful and diplomatic options have been exhausted with regards to Syria. All diplomatic measures to date have failed to put an end to the human rights violations and the atrocities being committed on a daily basis in Syria. This leaves the last resort, which is military intervention.
3. **Proportional Means**: Many have proposed a no-fly zone in Syria. Assad's regime has not halted direct attacks against unarmed civilians and it is said that a no-fly zone could be a proportional military measure, as was imposed in Libya (Resolution 1973)[245]. Another option is to establish safe heavens near the Turkish and Jordanian borders where civilians can be sheltered[246].

[243] Human Rights Watch, 2012, Q&A on Laws of War Issues in Syria
[244] Star, Stephen, 2012, Syria: to intervene or not to intervene?, Global Post.
[245] Chivers, C. J., 2012, Syria Unleashes Cluster Bombs on Town, Punishing Civilians, New York Times
[246] Ostrander, Sam, The Responsibility to protect the Syrian people, *International Affairs Review*

4. **Reasonable Prospects**: The prospects of success of a military intervention need to be fair and result in more good than harm. With the complexity of forces on the ground today, it has become very difficult for the international community to intervene.
5. **Right Authority**: The SC, which is the most rightful body to authorize use of force in Syria, has been paralyzed due to the P5 disunity, as mentioned earlier. In this case, the criterion of "right authority" is missing[247].

United Nations Security Council Lack of Action

To gain better understanding on some of the reasons as to why the SC did not take action on Syria, this section will briefly compare the cases of Libya and Syria. In Libya, the SC authorized "all necessary measures" to protect Libyan civilians within one month of the start of the protests. Now, eight years into the Syrian conflict, despite a death toll of almost half a million people, the permanent five members of the UNSC (P5) have not been able to unite in collective action on Syria. Even the latest UNSC Resolution doesn't call for military intervention.

Unlike Libya, the Syrian army is strong and well-equipped[248], but, also different from Libya, the opposition fighters are less well-armed and very heterogenous. Ethnic and sectarian divides in Syria and the link to Al-Qaeda militants is stronger than in Libya. Also, the risk of a regional proxy war in case of intervention in Syria has the international community hesitant in its decision-making process. Gaddafi was also relatively isolated with almost no allies[249]. One

[247] Hashemi, Nader, and Postel, Danny,2013, Syria Dilemma, Boston: The MIT Press 2013: 184-186
[248] Bellamy, Alex J. ,2012, Responsibility to Protect on Trial-or Assad, Ethnics and International Affairs.
[249] Ibid.

also cannot forget to consider that the population of Syria is almost three times larger than that of Libya. This creates higher prospects for post-intervention violence[250].

Though active in the case of Libya, regional actors have been more passive with Syria because of fear of regime change and further regional instability[251]. Many have come to the conclusion that "Libya has given R2P a bad name[252]." It is generally agreed upon that the NATO intervention in Libya made it much harder to intervene in Syria[253], even though a few argue that Libya may be a successful R2P case[254]. With Russia abstaining in the UNSC vote on the resolution authorizing use of force in Libya to protect civilians, there is very little hope that Russia will one day authorize intervention in Syria. Though there is no direct NATO presence in Syria, the coalition has made substantial efforts to call for a political solution. Scholars believe that NATO involvement in Syria will not be initiated in any way and that it's action in Libya actually escalated and prolonged the violence.[255]

Russia specifically believes that intervention in Syria would not only lead to regime change but would result in violence in other countries in the Middle East as well. The US has abstained from military action for a number of reasons: it took into consideration its geopolitical interests (Israel), and this was not an issue in Libya. Similarly, the US is reluctant on what regime change may occur if Assad were to step down – would that be more or less favorable to US interests?

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[250] Edul, Dalal Nadir,2013, The R2P is Dead, Long Live the R2P. Libya, Syria, and the Responsibility to Protect.
[251] Penketh, A. Anne, 2011, Whatever happened to Responsibility to Protect? *The Foreign Desk* - International dispatches from Independent correspondents.
[252] Pommier, Bruno, 2011, The use of force to protect civilians and humanitarian action: the case of Libya and beyond, *International Review of the Red Cross*, Volume 93, Number 884.
[253] Cronogue, Graham, Responsibility to Protect: Syria The Law, Politics, and Future of Humanitarian Intervention Post-Libya: 125
[254] Nuruzzaman, Mohammed, 2013, The Responsibility to Protect Doctrine: *Revived in Libya, Buried in Syria*, Insight Turkey, nr. 2: 57.
[255] Kuperman, Alan J. ,2013, 'A Model Humanitarian Intervention? Reassessing NATO's Libya Campaign', *International Security*, nr. 1: 134

Last but not least, the restoration of access to oil in Libya was of crucial interest to the US and EU, unlike the case of Syria.[256]

In summary, though the criteria for military intervention in Syria under R2P exists, only sanctions and diplomatic measures have been imposed by the global community[257]. The P5 have shown that R2P is selective and only invoked on a case by case basis and when their own interests are at play. The assessment of the R2P doctrine in the case of Syria lacks the right intention and reasonable prospects. Even military intervention does not seem justified to many as it would not help overcome all the challenges of the country. It is important to advocate that the R2P is not about regime change but about the protection of civilians and prevention of mass human rights violations. Many would agree that the failure to take action with regard to Syria will vastly undermine the credibility of the UNSC and R2P doctrine, which will become a "hypocritical and exploited political instrument"[258].

Transitional Justice

"I can't sit by the mother of a dead soldier and understand her sorrows for the sake of unity. Her son killed my family and forced me out of my country, as I lived in a state of fear at having my asylum rejected and being sent back to my death. Before any type of reconciliation, I want justice."

- Sawsan[259]

At the start, few anticipated that the peaceful demonstrations in Syria would turn into what is the "largest international calamity in recent history[260]." The conflict has changed the face of

[256] Norooz, Erfaun, Op. Cit., p. 12
[257] Reuters, 2013, Fact box: *Sanctions imposed on Syria*.
[258] Weiss, Thomas G., 2003, The Illusion of UN Security Council Reform,Washington Quarterly 26, no. 4: 147- 151
[259]Sawsan is a Syrian urban planner in her late twenties and one of the participants of the Syrian Leaders Disapora programme
[260] Human Rights Watch, Syria Events of 2018.

Syria and will doubtlessly influence how the international community will proceed to deal with political and humanitarian crises in the future. It is said that the Syrian war is the most documented conflict in history. Eight years into the conflict, information and stories have piled up unused in withered databases and files. There exist thousands of pictures, videos and testimonies– most of which are fully accessible on the internet or through social networks. In short, there have been at least 182,422 confirmed deaths (verified by victim identification)[261], with some sources estimating the number of total deaths something close to 511,000[262]. More than 6.2 million have been displaced (many for the second or third time), including 2.5 million children[263], and an estimated 90,000[264] (at least) have been forcibly disappeared and tortured. One in four schools has been damaged, destroyed or used for shelter and a minimum of 454 hospitals have been attacked at least once.[265]

With such extreme atrocities, are there any justice measures that will do justice to the victims? Do these measures exist in a context where they can be complementary to the longer-term goal of criminal prosecution that be implemented using the data that exists? Is criminal prosecution the sole avenue of justice for alleged crimes in Syria? What about acknowledgement, fulfilling victims' right to truth and transitional justice processes?

Transitional justice is a *"framework for confronting and redressing the legacies of mass atrocities and human rights abuses. It includes measures such as criminal prosecutions, reparations programs, truth commissions, memorialization, and institutional reforms (such as*

[261] Kabawat, Nousha, and Travesi, Fernando, 2018, Justice for Syrian Victims Beyond Trials: The need for New Innovative Uses for Documentation of Human Rights Violations in Syria, Justice Truth Dignity.
[262] Human Rights Watch, Op. Cit., p. 84
[263] The UN Refugee Agency (UNHCR), Internally Displaced People.
[264] Human Rights Watch, Op. Cit., p.84
[265] Ibid.

vetting of government officials and military personnel). These mechanisms can be combined to promote accountability, stability, and rule of law in post-conflict societies."[266]

In an ideal circumstance when the conflict comes to an end, the country will need to go through a transitional phase, in this case referred to as transitional justice. Transitional justice concentrates on five central issues: seeking the truth, achieving justice, paying indemnities, national reconciliation and taking precautions to avoid human rights violations in the future. This type of justice differs from one country to another, although it is essential for countries to learn from each other's experiences. But no two societies are the same and therefore no two transitional justice processes can be the same[267]. When the conflict ends, the Syrian people need to ask themselves many questions: should trials for human rights violations include crimes that started in 2011, or 2000, when Bashar al-Assad first became president? Or even in 1971 when his father, Hafiz al-Assad's rule started? Should there be a general amnesty law? Should those who fought with the opposition also be held accountable? Should a special court be formed? Should there be an investigation committee? If yes, on what issues should it concentrate? How will they be appointed? Will victims be paid indemnities? How will they be funded? Will there be other forms of restitution?[268]

A successful transitional process needs to begin with addressing social divisions, building trust between social groups and government institutions and advance security and development goals[269]. The documentation of violations discussed throughout the paper plays a crucial role in transitional justice. They could be used in criminal prosecutions, truth-seeking, memorialization and human rights advocacy efforts. Even in cases such as Syria, where many fear transition will

[266] Syria Justice and Accountability Centre, About Transitional Justice.
[267] Dawlaty, Transitional Justice in Syria, Heinrich Boll Stiftung, Middle East
[268] Institute for War and Peace Reporting, *Transitional Justice*, 2013
[269] Syria Justice and Accountability Centre, About Transitional Justice.

only come in the distant future, documentation projects provide the preparation and push for accountability and rule of law.

Documenting violations is a massive challenge during conflict. Many dedicated activists on the ground risk their lives every day to collect and document violations with limited resources and training under tremendously hostile conditions. The documentation recorded needs to be in line with certain international standards in order to be used in future accountability processes, so international organizations and Syrians who left the country provide these activists with as much support as is feasible (such as providing material which outlines best practices and the ethics of documentation).[270]

In an interview with Sumaiyah from the Syrian Network for Human Rights, she explains the difficulty in collecting information on the the ground. Sumaiyah herself used to be in Syria collecting information. She started with the Senior Network for Human Rights in June 2011 where she started documenting violations in Syria, regardless which side the perpetrators were on. She also previously worked with IIIM. Sumaiyah and her team have been threatened many times due to the nature of their job. They are officially wanted by ISIS and Hayat Tahrir al-Sham– this means if they find them, they will be captured and killed. She explained that the team and herself operate under aliases to evade capture and danger. She says that there is a significant amount of crimes that don't get recorded due to the fact that there isn't enough proof to back them up. She shares that the most commonly recorded offences are killing and detainment. When asked about transitional justice, this was her response:

> *"Transitional justice will not be enough; people have suffered too much. Thousands are missing and families are devastated and extremely frustrated. Wives have lost husbands and they can't even get remarried or move on with their lives as their husbands'*

[270] Ibid.

whereabouts are unknown. People have not stopped to think about transitional justice, there are much more important things to worry about. A whole generation is lost."[271]

Justice, however, arguably goes beyond accountability in a court of law. Trials are more than often limited to the gravest crimes and high-ranking perpetrators. This would mean that millions of Syrians will not be able to testify or have their rights vindicated in court – be it local or international. Redressing the psychological state of thousands of victims of torture and ill-treatment requires accountability, community-based healing, truth telling and reparations – to say the minimum. Most Syrians want their voices to be heard and a holistic transitional justice approach may provide them with this opportunity. *"Previous transitions from mass atrocity situations to peace demonstrate that criminal accountability must be taken together with other elements that allow for truth-telling to assist survivors in rebuilding their lives and communities and to assist an emerging state in the effort to rebuild institutions."*[272]

There are certain goals that would need to be achieved for a successful transition through justice and accountability. These would remain applicable in case the regime steps down or is still there, but surely, they would be much more difficult to put into practice if the government itself is the main perpetrator. The goals they include (but are not limited to)[273]:

- Identifying those responsible for crimes and human rights violations
- Prosecuting them
- Breaking cycles of violence that have resulted in instability in the past
- Reforming institutions and restoring society's confidence in them
- Removing violators from state institutions
- Establishing an official record of abuses
- Identifying the fate and location of missing people

[271] Sumaiyah al-Haddad, Interview with the author
[272] Soueid, Marie, 2017, The Time to Address Transitional Justice in Syria is Now, The Center for Victims of Torture.
[273] Dawlaty, Op. Cit., p. 85

- Preventing private acts of revenge
- Providing reparation to victims
- Restoring the integrity and dignity of victims
- Promoting national reconciliation and national unity

A factor that can help in reaching the abovementioned objectives is to make sure that they contain input from the affected population and therefore ensure a genuinely transparent and inclusive process. However, it is important to note that, though Syria should choose the most appropriate mechanisms and objectives, it is still bound by international legal obligations that include: (1) the obligation not to allow impunity, (2) the obligation to provide reparations to victims, and (3) the prohibition against pardons for war crimes, crimes against humanity and genocide.[274]

Providing compensation to victims will be very challenging; reparations are never capable of providing full restitution – nothing can compensate for the loss of a loved one. However, there exist international guidelines[275] that stress that meaningful reparations can actually play a significant role in restoring dignity to victims.[276]

At the end, transitional justice cannot begin if accountability isn't taken seriously - and it might as well start at the top of the chain. Transitional justice is inextricably linked to achieving sustainable peace. It appears today that the international community has transitioned from condemnation to acceptance; regime propaganda is ignored, the severity of its crimes remains unaccounted for and the chances of comprehensive justice for Syrians still seems elusive.

[274] Ibid.
[275] In 2005, the UN General Assembly adopted the UN Basic Guidelines on the Right to a Remedy and Reparation for Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law, These guidelines outline the right that victims of serious abuses have to prompt, adequate and effective reparations.
[276] Dawlaty, Op. Cit., p. 85

Prospects

Taleb Ibrahim, former professor at Auburn University, believes that the military aspect has been "won" by Assad. Assad controls around 70% of the country today. While other analysts say the war is coming to an end, some believe it isn't over yet - the future of Idleb still remains blurry. Idleb is home to the final rebel stronghold in the northwest. Almost three million people live in the province, many of whom are regime opponents. Mainstream media mentions the high presence of "terrorists" in Idleb, but there is a large number of civilians there too. Brett McGurk, U.S. envoy to the coalition against the Islamic State, called Idleb "the largest al-Qaeda safe haven since 9/11"[277].

But will the regime use force or diplomacy to liberate Idleb? If the past is any indicator, the regime, with its supporters, will isolate all remaining restless areas and use the age-old strategy to "cleanse" them, as they did with Homs, Hama, Aleppo and Dara'a. There has been stipulation that they will make their way into Idleb and force all opposition fighters to the move as close to the Turkish borders as possible in order to pressure Turkey into brokering a deal with the regime for mutual interests.

The first option for Idleb is the unconditional surrender of the opposition – this is very unlikely. The second is the surrender of local militants and their agreement to join the reconciliation with the regime and distance themselves from jihadists, similar to what happened in Dara'a and Eastern Ghouta. The third option, which is the most credible one, is that fighting will continue until the end of the battles.

[277] International Crisis Group, The Best of Bad Options for Syria's Idleb, Report 197.

Similarly, the fate of the northeast remains unknown. It is a region that the regime wants to gain full access to as well. This area is mostly populated by Kurds and the US has a presence in the vicinity. The northeast is said to be very rich in oil, and some believe this is the main reason the US decided to set up camp there. President Trump took a decision in late 2018 to pull all American troops out of Syria, but then later changed his mind so as not to leave a political vacuum in the region.

According to the Institute for the Study of War, Russia, Iran and other armed groups, such as Hezbollah, will be able to seize territory in the northeast of Syria if the US were to withdraw. With the regime having gained back control of most territory in Syria, the country's future remains uncertain in terms of reconstruction, with Western funding tied to President Bashar's departure.

The liberation of the northeast of Syria from Islamic State will not be sufficient to facilitate a large-scale return of refugees. Rising Arab-Kurdish tensions have severely reduced the prospects of return and eastern Syria is essential in the regime's efforts to regain territory. A Syrian political settlement should not be addressed separate from the refugee crisis. A return without settlement will eventually lead to local conflicts between traditional leaderships and ones that emerged during the war[278]. National reconciliation will also be very challenging; the reason behind the protests in 2011 has become much stronger today. The regime has grown greedier and its monopoly on income sources has grown. Ultimately, if President Bashar stays, one is to wonder how effective this old leadership will be, and who is it actually supposed to serve?

[278] Carnegie, 2018, Back to What Future?

Though it is not one hundred percent clear yet that the regime has won, the losers of the war can be clearly identified: all those who opposed Assad. At the end of the day, the losers are not those who rose up against the regime – the entire country has lost. Many of those who fled Syria include people from the Syrian middle class. The oppositionists ran from the bombs and the loyalists fled from forced conscription and/or the country's devasted economic state.

The biggest challenge for Syria today is how the ongoing civil war is going to end and how the country will be rebuilt to bring home millions of refugees and internally displaced people. To achieve this, a state in which people can trust their government to provide safety and security must be reshaped. Though the aforementioned scenario is unlikely to happen soon, one still needs to consider the prospects of Syria's civil war, and ask the inevitable question: can Bashar al-Assad continue to be in power?

The nature of Syria's war foretells an empty peace and many further years of suffering. To date, almost half the population has been displaced and loss to the gross domestic product from 2011 through the end of 2016 has been estimated by the World Bank to total $226 billion. The people living in Syria today suffer from surging prices and stagnant salaries. They continue to endure the consequences of the Syrian Pound that is now one tenth as valuable as it was before 2011[279]. There have been no conclusive estimates on the cost of reconstruction, though the Syrian government puts it at $400 billion[280]. But the cost of reconstruction is not the only obstacle to rebuilding Syria, and the fear of return by refugees, imprisonment, abuse and mistrust in leadership will not disappear with the physical reconstruction of the country.

[279] Spiegel Online, 2018, Syria's Uncertain Future under Bashar Assad.
[280] Shatz, Howard J., 2019, The Syrian Civil War is Coming to an End, Rand Corporation.

Undoubtedly, the reconstruction of Syria is a huge concern. With most of the country lying in ruins, an essential question to ask is who will be paying for the needed reforms? The West has offered to help, but only if Assad steps down. Money is their last bargaining chip, and the prospects are that the chip will not be put to use.

Scholars estimate that as long as Bashar remains in power, "reconstruction will be piecemeal." It is predicted that the government will provide support projects only in favored areas. In ideal circumstances, Syria would benefit from international assistance – indeed Syria and Russia have already made it clear that they would like the US and EU to contribute substantial financial support. Unfortunate for Syria, the US, Germany and France have basically said no, unanimously committed to the United Nations Security Council Resolution 2254, which calls for *"credible, inclusive and nonsectarian governance… free and fair elections… to the highest international standards of transparency and accountability,"* all of which are very unlikely if the Assad government remains in power.[281]

In any case, another significant challenge will occur in case the West decides to take further steps to block any activity on Syria if Assad stays. Early 2019, the EU added 11 well-known businesspeople and five entities to its sanctions list based on the fact that they were building on land expropriated from displaced Syrians.[282]

Assad's political future depends on how much fear his regime can continue to instill in its people. Fear is often a guarantor of power and it has had a successful history in Syria. However, fear will not leave room for national reconciliation, true political change or any semblance of

[281] Ibid.
[282] Ibid.

free elections. Diplomats responsible for Syria in embassies in Europe and elsewhere believe that no credible change will happen as long as Assad stays. Embassies in Damascus remain closed and the sanctions have not been lifted. Ultimately, though, with the opposition so fragmented and military power practically in the hands of Russia and Iran, the predictions are that Assad will not be stepping down soon.

National reconciliation will also be very challenging; the reason behind the protests in 2011 has become much stronger today. The regime has grown greedier and its monopoly on income sources has grown. Ultimately, if President Bashar stays, one is to wonder how effective this old leadership will be, and who is it actually supposed to serve?

Ultimately, many argue that President Assad has basically won the war. While some believe he has only done so militarily, others acknowledge that it is about time to accept otherwise. Throughout almost a decade of unrest, many rebel groups have disappeared and others have emerged, while in parallel an intact regime has remained coherent, strong and persistent (more confidently so after the Russian intervention in 2015).[283]

Assad's military win does not come as a surprise to many – with calculated and consistent support from Russia and Iran, the Syrian government has focused on small-scale, but rewarding, gains over the last eight years. It appears that Syria has turned into a classic survival of the fittest, whereby the most powerful and savage will win. At the end of the day, many will agree with the previous statement as military strength is one of the main determining factors in conflict resolution. Similarly, many accept Assad's rule simply because there is lack of a better alternative and they believe it may put an end to all the suffering. With some media outlets claiming that the opposition

[283] Tammas, Rifaie, Accepting Assad's Rule won't end Syrian's suffering, Middle East Eye.

is fragmented and extremist, there seems to be no room left for moderate voices. Though it holds true that a large amount of opposition fighters is extremist, the assumption that all of them are is an unfair statement. The political and armed opposition are not the same as average Syrians that have not engaged in hostilities – the same average Syrians who make up most of the casualties of Syrian government shelling.[284]

If one were to consider that Assad remained in control, what guarantees would there be that his regime will not retaliate against anti-government communities? So many people have fought against the government and many reports have illustrated that government forces have arrested civilians after they would gain control of new areas. It is a primary belief that if Assad is one day able to quash the resistance, he will very certainly make sure they do not have the opportunity to rise again.

Sadly, after the loss of thousands of lives, in Syria, Middle East analysts project that the country's future is a much more fragile than it was before. It is predicted that President Assad will be leading an oppressed nation with Russia and Iran making the calls behind the scenes. By involving themselves in the war, be it militarily or economically, they have deeply embedded themselves into the conflict. Although their involvement has come at a price, the inevitable withdrawal of the US from the region gives them comfort that America would no longer be a reliable partner in the Middle East.

Analysts say that Iran and Russia are already in competition, even before the war has ended: Russia is eager to withdraw and allow Syria to govern itself and Iran would prefer a weaker situation for Syria. Israel, which has made it clear that it will not tolerate any more threats from Syria, remains wary of an ambitious Shiite unification (Iran, Syria and Hezbollah) aimed at

[284] Ibid.

increasing military presence the Golan Heights, an area that was annexed by Israel in 1967. In the end, the Iranian-led Shiite partnership in Syria continues to face an obvious disadvantage: the country still remains Sunni dominated.[285]

The impact of the war on Syria will linger for many years to come, perhaps even decades. Syrians from all backgrounds argue that unity and national belonging are going to be necessary to rebuild the country – both of which are out of reach in the state that Syria is in with its sectarian and ethnic divides today. Return will not be easy for the millions living in exile. Regardless of their political views, the majority do not actually have homes to return to – whether they are pro-Assad or not. The failure of the uprising has shattered the hopes of a more inclusive government and active civil society for millions of Syrians. Even for those who speak favorably of the regime, many now hold expired passports and are too afraid to return to Damascus for renewal. They fear that they will only go back to see their homes destroyed or taken over by new families.[286]

In general, a large number of Syrians agree that the events that followed March 2011 brought to surface topics that were forbidden to talk about for years, such as religion and politics outside the Ba'ath ideology. They believe that 2011 was an epiphany: the monopoly that the regime held over deliberations of identity for years is now broken and, for the first time, people are able to discuss and see different identities.[287]

Can Assad continue to be part of Syria's future? There are no simple answers when it comes to Syria. While some believe that Assad is a hero who fought against ISIS and other terrorist groups,

[285] The New York Times, 2018, Syria Faces Brittle Future, Dominated by Russia and Iran.
[286] The Century Foundation, 2017, A "Nation in Pieces": Views from Syrians in Exile.

a larger majority are convinced that there is no option of peaceful stability under his regime, and that his victory would only preserve the conditions in which the violence and suffering began years ago.

In the expectations of any semblance of peace, Syria requires physical and moral reconstruction that should bring the country together, but with Assad in control, those prospects seem unlikely. Alternatively, Syrians will once again live through the kind of strict internal security measures that prompted revolts in the first place, paving the path to more unrest and security challenges to the region for many years to come[288]. Syrians who have fled their country are confused about how they should feel towards the unwelcoming nation to which they once belonged. Many people are depressed and don't know if return will ever be an option. With no safety or security guaranteed, it is impossible for many to return. They have lost too much that the craving to return is not the same as it was initially and nothing will ever be the same.[289]

[288] Syrian Observatory for Human Rights, 2019, The Syrian Civil War is Coming to an End.
[289] Khaled Hassan Ahmad, interview with the authors.

CHAPTER FIVE: **Conclusion**

There is undeniable proof of the crimes that have been committed by Assad and his regime and this is thanks to the extensive ongoing documentation of all the violations that victims have recorded throughout the years. The advanced technology and social media that exist today have given the world a front row seat to witness the atrocities firsthand. The surreal events taking place on the ground and the testimonies being recorded by victims seem almost far-fetched, due to their distressful nature. Nobody wants to believe that such atrocious crimes are happening while the international community continues to turn a blind eye.

A man who has been ruling with an iron fist for 19 years will seemingly continue to do so for many years to come. An uprising that began with thousands of Syrians full of hope has evolved into a relentless massacre. Almost half of the Syrian population has been internally displaced from their homes, millions have left in fear, and thousands have gone missing – their fate unknown. Hundreds of Syrian children don't even know whether they are orphans or not, as their parents' bodies are nowhere to be found.

The International Criminal Court has not been able to do anything due to its lack of jurisdiction and the United Nations Security Council has dodged every chance to intervene. Neighboring countries have contributed, but mostly contributions that have increased the violence.

Many Syrians feel as though the whole world has abandoned them and they have lost hope in the United Nations and the rule of law. The "Responsibility to Protect" has become a meaningless concept in the minds of many and the word "justice" has completely lost all credibility. Delaying justice is denying justice to victims who are in search of the slightest shred of hope. The R2P Syria may seem like a lost cause given that, theoretically, the case doesn't meet

the conditions for others to intervene. Though the right intention may exist and military intervention truly is the last resort following years of diplomatic pressure, sadly the prospects of intervention resulting in less harm than good are relatively low and the rightful body to authorize use of force in Syria has been paralyzed due to the disunity of the five permanent members of the UNSC.

The Security Council's failure to react to grave crimes has caused an obstruction to the R2P doctrine. In the past, the world has also witnessed the failure of the UNSC in situations like Bosnia, Rwanda and Darfur. It appears that gaining legal consent for the use of force, even when mass human rights violations are being committed, has become a superhuman task.

In due course, when the conflict comes to a close, no proper transition can occur without transitional justice. Transitional justice is a vital prerequisite for accountability and the Syrian people will not get half the justice they deserve if the appropriate transitional process is not put into place. Holding the perpetrators of war crimes and crimes against humanity accountable for their violations is of significant importance to deter future breaches.

The prospects of Assad stepping down in the next few years remain unlikely. The international community has taken comfort in the concept of the "devil we know," fearing a potential theocratic government that could be even worse than the current regime. A win for Assad would probably stop the shelling of civilian areas but other forms of violence are not likely to diminish (such as mass arrest campaigns, torture and more forced disappearances). Additionally, the refugee crisis will not be resolved so long as Assad is in power.

The nature of the majority of the crimes that are occurring under Assad's rule (killing, detainment and forced disappearances) are conveyed in unrealistic numbers to the public because these forms of violence are mostly unreported and unseen. The UN stopped counting deaths in

2014, unable to accurately update its death toll due to the chaotic conditions on the ground. This may lead many to believe that the war is coming to an end and less people are being tortured and detained, but in reality, the regime has actually grown stronger and more manipulative over the years, gradually learning better techniques in concealing violations and silencing anyone who opposes them. They have learned that the international community is nothing to be afraid of and, with Russia's backing, they are untouchable.

Yes, if Assad stays in power, the shelling of civilians will most probably stop. And while people may think the regime has stopped killing people, accepting Assad's rule will result in more unreported deaths than ever before as his updated methods of oppression will ensure that the cycle of violence continues. Innocent civilians will continue to be raped, tortured and unjustly detained – the only difference will be that this will be done in complete privacy, in all of Assad's prison cells.

If the current regime remains in power, millions of Syrians cannot go back to Syria. Prior to 2011, there existed a functioning government and social service network. Syrian citizens reaped the benefits of the government and the safety that came with it, but only at the expense of being apolitical and pretending to have a common identity with everyone. For the alternative voices in Syria, those who are neither pro nor anti-regime, the uprising has denied them of their dignity and their homes. It has imposed politics on them that they don't want to be a part of and has handed them a burden they never asked to carry. They have lost so much to the war that they never get back. Many of the activists who participated in the revolution and the movement have now left Syria and this has created an ambiance of abandonment. The opposition is so fragmented at this point that activists have been unable to regroup.

Syrians have learned the hard way not to have unrealistic dreams and some understand that it will be very long before matters stabilize in Syria. Even if the regime were to step down, there exist endless social differences that are remnants of the civil war, and overcoming these would take a minimum of two decades.

The findings of this thesis conclude that the prospects of social cohesion if Bashar al-Assad stays will be very difficult. This study has presented examples of the serious violations committed on the ground by the regime (and others) and it finds that, without accountability, no justice will be restored to any Syrian. It will be very difficult for Bashar al-Assad to continue ruling Syria, and though this thesis acknowledges that he has survived to this day, there is very little hope for sustainable stability in Syria if the current regime remains in power. In the hope of restoring justice and peace, the current regime either needs to be held accountable, along with all other forces that have committed war crimes, or it needs to step down – both of which remain unlikely.

The Syrian people have experienced social change, they have experienced what it would be like to have a semblance of freedom of expression and identity. The future of Syria looks very grim. So many people have died, lost their homes or fled the country. All sides have committed too many crimes to count to the point that it has become impossible to have a united country in the near future. It will take years to forgive, but the people will never forget.

"The dead cannot cry out for justice. It is a duty of the living to do so for them."[290]

[290] Quote by Lois McMaster Bujold.

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Annex A: "No Justice Without Accountability" Sample Survey Questions

Justice for Syria

Survey

April 2019

Thank you for agreeing to take part in this survey. This survey should only take five minutes to complete. All data is collected in a confidential manner; no uniquely identifiable information about survey respondents will be gathered and/or shared at any time.

1. **Age:**

2. **Gender:**

3. **Hometown:**

4. **Status:**
    a. **Refugee**
    b. **Internally displaced person**
    c. **Fled Syria to avoid military conscription**[291]
    d. **Immigrated to another country at my own expense and risk**
    e. **Other; please specify:** _____

5. **If Bashar al-Assad continues to be in power, how would you feel?**
    a. **Satisfied**
    b. **Indifferent**

291 **Conscription** is the compulsory enlistment of people in a national service, most often a military service.

   c. **Dissatisfied, but would continue to live/visit Syria**
   d. **Would permanently leave Syria**

6. **Have you, or anyone you know, suffered from war crimes[292] or crimes against humanity? If applicable, please highlight/circle below:**
   a. **Chemical weapon attack**
   b. **Shelling**
   c. **Unjust imprisonment**
   d. **Torture**
   e. **Rape**
   f. **Kidnapping**
   g. **Lived under siege**

7. **In your opinion, the perpetrators of war crimes in Syria should be:**
   a. **Tried in a Syrian Court**
   b. **Tried in an International Court**
   c. **Executed without trial**
   d. **Not tried**
   e. **Other, please specify:** _____

8. **Would you be willing to testify against perpetrators of war crimes in a legal court?**
   a. **Yes**
   b. **No**
   c. **If not, please state why:** _____

9. **If war criminals are put on trial and found guilty, what outcomes do you expect?**
   a. **Monetary compensation**

292 **War crimes** are "serious violations of the laws and customs applicable in international armed conflict" and "serious violations of the laws and customs applicable in an armed conflict not of an international character"; **Examples of war crimes** include intentionally killing civilians or prisoners, torturing, destroying civilian property, taking hostages, performing a perfidy, raping, using child soldiers, pillaging, declaring that no quarter will be given, and seriously violating the principles of distinction and proportionality

b. **Restitution**[293]
c. **Rehabilitation**
d. **Symbolic measures such as apologies or memorials**
e. **Nothing**
f. **Other, please specify:** _____

Annex B: "No Justice Without Accountability" Sample Interview Questions

The individuals that were interviewed for this thesis come from diverse backgrounds and so there was no standard format of questions. Listed below are the most common questions that were asked:

1. Briefing on professional background of interviewee.
2. Do you face any threats in your line of work?
3. From a legal perspective, how far do you think can we go in terms of accountability to the crimes done by Assad's regime?
4. Do you think that we can actually hold Assad accountable one day?
5. What do you believe are the next steps moving forward?

293 **Restitution** is the restoration of something lost or stolen to its proper owner.