

## Rule of International Law With Regards to the Current Situation in Syrian Arab Republic

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### Abstract

The paper deals with the subject “Rule of International Law with regards to the current situation in Syrian Arab Republic”. This research focuses mainly on the intervention by other States in the ongoing conflict in the Syrian Arab Republic and seeks to explore different legal aspects of the issue in accordance with International Law. This research discusses the scope of the Responsibility to Protect (R2P), the implementation of International Humanitarian Law by different parties involved in the conflict and the application of the *Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction* by the Syrian Arab Republic. The case of the conflict in Syrian Arab Republic reflects how International Law comes into effect during times of conflict in present times and how States violate some of the fundamental principles of International Humanitarian law through the actions they take during the course of the conflict.

**KEYWORDS:** Armed conflict, Chemical weapons, International Humanitarian Law.

### Introduction

The current situation in Syria has become one of the biggest conflicts in the last century, what started out as peaceful protests against the government in 2011 turned into a civil war and has now become an armed conflict under international law<sup>1</sup> involving several states and non-state actors some of which include terrorist groups like the Islamic State and Al-Nusra Front (Al-Qaeda in Syria).

With the rise of the Islamic state in 2014 the situation has only worsened. The expansion of the organization into Syria and gaining control of territories changed the way in which the internal armed conflict was taking place, thus making it more violent. In the current situation there is very little territory in control of the Bashar Al Assad government and majority of it is in the hands of the opposition forces and other terrorist organizations working in the region.

The Major Parties of the conflict at this point are:

- The Bashar Al-Assad government and their armed forces with help from the Russian and Iranian government and other small groups allied with them.

<sup>1</sup> Syria: ICRC and Syrian Arab Red Crescent maintain aid effort amid increased fighting, ICRC Operational Update, (17 July 2012), <http://www.icrc.org/eng/resources/documents/update/2012/syria-update-2012-07-17.htm>.

- Opposition forces which include several armed groups including the Free Syrian Army and the Al-Nusra Front
- Islamic State of Iraq and the Levant (Islamic State as they refer to themselves)
- An alliance of Nations led by the United States of America conducting airstrikes in the area.

There are several issues regarding the rule of international law in the present conflict which this paper seeks to address:

1. The classification of the current situation as an armed conflict
2. Use of Chemical Weapons in the conflict
3. Whether the measures taken by the United States led alliance are in accordance with the principles of International Law
4. The scope of implementation of the Responsibility to Protect Doctrine in the present conflict.

### **Classification of the Current Situation as an Armed Conflict**

Common Article 2 of the Geneva Conventions of 1949 defines the criteria for a conflict to be classified as an international armed conflict. One of the main criteria laid down in the article is that the conflict must involve two or more state parties on opposing sides.<sup>2</sup> The present conflict does involve more than one state party however it is tough to say if they are on opposing sides. The US led alliance is conducting operations against ISIS and other terrorist organizations<sup>3</sup>, not against the Bashar Al-Assad regime although there have been instances where there were attacks on Syrian Forces as well.<sup>4</sup> The Russian and Iranian Forces are allied with the Syrian government fighting against the terrorist groups and the opposition. It is tough to classify the current situation as an international armed conflict even with the participation of many States which are party to the Geneva Conventions of 1949.

In the case of a non-international armed conflict, two instruments apply namely common article 3 of the Geneva Conventions of 1949 and the 1977 Additional Protocol II.<sup>5</sup> Common Article 3 applies in the case where there exists an armed conflict not of an international character in the territory of one of the States party to the convention. In the *Tadić case* of the ICTY the tribunal affirmed that a non-international armed conflict exists where “protracted armed violence between governmental authorities and organized armed groups or between such groups within a State”<sup>6</sup>. Two criteria’s that emerged from this holding are: i) Intensity of hostilities; and ii) involvement of an armed organizational group (OAG).<sup>7</sup>

<sup>2</sup> Louise Arimatsu & Mohbuba Choudhury, *The Legal Classification of the Armed Conflicts in Syria, Yemen and Libya*, Chatham House (2014)

<sup>3</sup> United Nations Security Council Letters S/2014/695; S/2014/688; S/2015/745; S/2015/693; S/2015/928; S/2015/946; S/2016/34; S/2016/513; S/2016/523

<sup>4</sup> Syrian government says US-led coalition hit army camp killing three soldiers, The Telegraph (7 December 2015), <http://www.telegraph.co.uk/news/worldnews/middleeast/syria/12036836/Syrian-government-says-US-led-coalition-hit-army-camp-killing-three-soldiers.html>

<sup>5</sup> Arimatsu & Choudhury, *supra* note 2.

<sup>6</sup> Prosecutor v. Tadić, IT-94-1 (2 October 1995).

<sup>7</sup> Arimatsu & Choudhury, *supra* note 2.

In other ICTY cases, these factors have been considered in order to classify a specific conflict as a non-international armed conflict.<sup>8</sup> The ICRC in 2012 concluded that there existed a non-international armed conflict in the state of Syria.<sup>9</sup> The Human Rights Council took into consideration the test laid down in the *Tadić case*<sup>10</sup> and in its 3<sup>rd</sup> report on the matter for the period ending 20 July 2012 concluded that the situation in Syria satisfied the conditions of the test laid down and applied in International Humanitarian Law.<sup>11</sup>

The situation has only worsened with the intensity of the hostilities increasing and the groups becoming more organized and receiving aid and training from other states and thus the conflict in Syria remains a non-international armed conflict where International Humanitarian Law applies.

### Use of Chemical Weapons in the Conflict

In 2013 after the alleged use of chemical weapons<sup>12</sup> in the conflict the United Nations launched a fact-finding mission to investigate the possible use of chemical weapons in Syria. The report concluded that chemical weapons had indeed been used in Syria<sup>13</sup> however the report did not conclude which party to the conflict used the chemical weapons.

On 14<sup>th</sup> September 2013 Syria deposited its instrument of accession to the Chemical Weapons Convention with the Secretary General of the United Nations.<sup>14</sup> The Convention came into force for Syria starting 14<sup>th</sup> October 2013.<sup>15</sup> Following this the Syrian Arab Republic has worked along with the OPCW to destroy its chemical weapons production facilities and the chemical weapons produced by them.<sup>16</sup> The Syrian Arab republic may be working in accordance with OPCW after acceding to the Chemical Weapons Convention however there still remains the question of what provisions of international law were applicable in the situation before Syria acceded to the CWC.

The use of chemical weapons is prohibited in armed conflicts in a series of treaties, including the Hague Declaration concerning Asphyxiating Gases, the Geneva Gas Protocol, the Chemical Weapons Convention and the Statute of the International

<sup>8</sup> Prosecutor v. Haradinaj, IT-04-84-T (3 April 2008); and Prosecutor v. Limaj, IT-03-66-T (30 November 2005).

<sup>9</sup> ICRC, Supra note 1.

<sup>10</sup> United Nations Human Rights Council, A/HRC/S-17/2/Add.1 (23 November 2011).

<sup>11</sup> United Nations Human Rights Council, A/HRC/21/50 (16 August 2012).

<sup>12</sup> Alleged chemical attack kills 25 in northern Syria, Reuters (19 March 2013), <http://www.reuters.com/article/us-syria-crisis-chemical-idUSBRE92I0A220130319>.

<sup>13</sup> Final Report of the United Nations Mission to Investigate Allegations of the Use of Chemical Weapons in the Syrian Arab Republic (2013).

<sup>14</sup> Syria's Accession to the Chemical Weapons Convention Enters into Force, OPCW News (14<sup>th</sup> October 2013) <https://www.opcw.org/news/article/syrias-accession-to-the-chemical-weapons-convention-enters-into-force/>

<sup>15</sup> Ibid..

<sup>16</sup> 31<sup>st</sup> Monthly Report of the OPCW on the Progress in the Elimination of the Syrian Chemical Weapons Programme, OPCW (22 April 2016).

Criminal Court<sup>17</sup>. Syria may not have been a state party to most of these conventions however state practice establishes the prohibition of chemical weapons in an armed conflict as a norm of customary international law applicable in both international and non-international armed conflicts.<sup>18 19</sup> After the famous *Tadić case*<sup>20</sup> of the International Criminal Tribunal for the Former Yugoslavia there was a general consensus among the international community that the use of chemical weapons was also prohibited in internal armed conflicts.<sup>21</sup> The production, stockpiling and use of chemical weapons in Syria is in clear violation of these principles of international law, however since there is no substantive evidence pointing towards any one party regarding the use of such weapons it further brings in the question of accountability for these actions.

The first question that needs to be dealt with before attributing state responsibility for an internationally wrongful act<sup>22</sup> is whether there exists an obligation on Syrian Arab Republic under international law to prohibit the use of chemical weapons during the armed conflict. As discussed above there exists a non-international armed conflict at present in the Syrian Arab Republic where International Humanitarian Law applies and there exists an obligation on the part of the Syrian Arab Republic to prohibit the use of chemical weapons during the armed conflict.<sup>23</sup>

Article 12 of the ILC's Draft Articles on State Responsibility for Internationally Wrongful Acts states<sup>24</sup>:

*'There is a breach of an international obligation by a State when an act of that State is not in conformity with what is required of it by that obligation, regardless of its origin or character.'*

In the present scenario, what was required by the state of Syria was the prohibition of the use of chemical weapons in the armed conflict and as the report of the UN fact-finding mission<sup>25</sup> shows, the actions of the Syrian Arab Republic were not in conformity with what was required of it by that obligation<sup>26</sup>.

In the "Rainbow Warrior" arbitration, the tribunal said that "any violation by a State of any obligation, of whatever origin, gives rise to State responsibility and consequently, to the duty of reparation".<sup>27</sup>

It could be concluded therefore that there was a breach<sup>28</sup> by the Syrian Arab Republic of its obligation under international law to prohibit the use of chemical weapons and

<sup>17</sup> ICRC, "Customary International Humanitarian Law – Volume I Rules" (2009).

<sup>18</sup> Ibid.

<sup>19</sup> Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (1992).

<sup>20</sup> Tadić case, Supra note 6.

<sup>21</sup> ICRC, Supra note 17.

<sup>22</sup> ILC's Draft Articles on State Responsibility for Internationally Wrongful Acts (2001)

<sup>23</sup> ICRC, Supra note 17.

<sup>24</sup> ILC, Supra note 22.

<sup>25</sup> UN Mission in Syria, Supra note 13.

<sup>26</sup> ILC's Draft Articles on State Responsibility for Internationally Wrongful Acts with commentary, Report of the International Law Commission on the work of its fifty-third session (2001)

<sup>27</sup> France-New Zealand Arbitration Tribunal, 82 I.L.R. 500 (1990)

this breach occurred<sup>29</sup> during the duration in which chemical attacks took place in the armed conflict and this could give rise to a duty of reparation on Syrian Arab Republic.

### **Whether the measures taken by the United States led alliance are in accordance with the principles International Law?**

The United States started by providing opposition groups in Syria with humanitarian aid however over the course of time the United States started providing cash, intelligence, training<sup>30</sup> and arms<sup>31</sup> to selective opposition forces. Later a group of countries came together and decided to support anti-ISIS groups. Members of the alliance soon began airstrikes in Iraq and Syria against Islamic State with many citing Article 51 of the United Nations Charter to justify their actions.<sup>32</sup>

The permanent representative of the Syrian Arab Republic to the United Nations in a letter addressed to the Secretary General of the UN<sup>33</sup> talked about how the import of humanitarian aid into Syria, without prior consent of the state is in violation of Article 2(7) of the United Nations Charter. Further pointing out that coordinating with terrorist organizations without consultation of the Syrian State would violate General Assembly resolution 3034 of 18 December 1972.

The first question that needs to be addressed regarding the actions of the US led alliance is whether the measures taken by them are in violation of Article 2(4) of the UN Charter.

Article 2(4) of the UN Charter states:

*“All members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations”*

There are 3 important questions which need to be evaluated before any action is said to be in compliance with or in violation of Article 2(4) of the UN Charter.

1. Whether the actions of the alliance constitute the use of force or threat of force?
2. Whether the actions of the alliance can be said to be against the territorial integrity of Syria?
3. Whether the actions of the alliance can be said to be against the political independence of Syria?

The Vienna Convention on the laws of treaties lays down the method for interpreting treaties.<sup>34</sup> The *travaux préparatoires* of the United Nations Charter demonstrates that

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<sup>28</sup> ILC, Supra note 26.

<sup>29</sup> ILC, Supra note 22.

<sup>30</sup> UK to give military training to 'moderate Syria forces', BBC News (26 March 2015), <http://www.bbc.com/news/uk-32064130>

<sup>31</sup> House grudgingly approves arms for Syrian rebels, New York Post (17 September 2014), <http://nypost.com/2014/09/17/house-grudgingly-approves-arms-for-syrian-rebels/>

<sup>32</sup> United Nations Security Council, Supra note 3.

<sup>33</sup> United Nations Security Council Letter S/2014/426

<sup>34</sup> Vienna Convention on the Law of Treaties (1969)

the prohibition on the threat or use of force is only directed to military force.<sup>35</sup> Taking a look at the *Travaux Préparatoires* of Article 2(4) it can be seen that these actions can only be said to be against the territorial integrity of the state if they bring a change in the frontiers of the nation.<sup>36</sup>

The Declaration on the Inadmissibility of Intervention in the Domestic Affairs of States and the Protection of Their Independence and Sovereignty<sup>37</sup> affirms that no state has the right to intervene in the internal or external affairs of another state, directly or indirectly. The Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations<sup>38</sup> pronounces such interference to be in breach of international law.<sup>39</sup>

Addressing first the issue raised by the permanent representative of the Syrian Arab Republic to the United Nations in his letter addressed to the Secretary General of the UN<sup>40</sup> that importing aid in coordination with terrorist organizations and without consultation with the Syrian State would amount to an attack on the Syrian State and on its territorial integrity and political independence and would be in violation of the charter. This letter is evidently talking about Article 2(4) of the United Nations Charter in this case.

As discussed above the threat or use of force is considered to constitute mainly of military force, and providing aid does not seem to come directly under the ambit of military force. It can also be said that this action is not against the territorial integrity of the Syrian Arab Republic however since the action was taken without the authorization of the Syrian Government it can be said to be against the political independence of the state and even if this action is not in violation of Article 2(4) of the Charter of the United Nations, it can be said to be in violation of International Law solely on the basis of it violating the independence and sovereignty of Syria.

There are exceptions in the United Nations Charter regarding the threat or use of force<sup>41</sup> one of them being the inherent right of a state to act in self-defence laid down in Article 51 of the UN Charter.

Article 51 states:

*“Nothing in the present Charter shall impair the inherent right of individual or collective self-defence if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to*

<sup>35</sup> Bruno Simma, *The Charter of the United Nations: A Commentary*, (2<sup>nd</sup> Edition Oxford University Press, New York 2002)

<sup>36</sup> Anthony D'Amato, *The Meaning of Article 2(4) in the U.N. Charter* (September 6, 2013). Revised from Chapter 3 in *International Law: Process and Prospect* (Anthony D'Amato, 2d ed. 1995); Northwestern Public Law Research Paper No. 13-30

<sup>37</sup> United Nations General Assembly Resolution 2131 (1965)

<sup>38</sup> United Nations General Assembly Resolution 2625 (1970)

<sup>39</sup> Leung Fiona Nga Woon, *Resolving the Conundrums in Articles 2(4) and 51 of the Charter of the United Nations – A Matter of treaty Interpretation* (2011)

<sup>40</sup> United Nations Security Council, *supra* note 33.

<sup>41</sup> Simma, *Supra* note 35.

*maintain international peace and security. Measures taken by Members in the exercise of this right of self-defence shall be immediately reported to the Security Council and shall not in any way affect the authority and responsibility of the Security Council under the present Charter to take at any time such action as it deems necessary in order to maintain or restore international peace and security.”*

On 23<sup>rd</sup> September 2014, the Permanent Representative of the United States of America to the United Nations in a letter to the Secretary General informed the Security Council that the United States is initiating necessary and proportionate military actions in Syria<sup>42</sup>.

Article 51 lays down some restrictions on the right of self-defence of a state:

1. An armed attack needs to occur against the member state invoking Article 51
2. Measures taken under this article need to be immediately reported to the Security Council of the UN

A major question which is raised is whether Article 51 can be invoked to take actions against terrorists or not. Looking at state practice on the use of self-defence by states against non-state actors<sup>43</sup> it can be seen that there is now a general acceptance that self-defence can be used against non-state-actors. Another aspect that needs to be covered is the scale of the armed attack that took place. In the *USA v. Nicaragua* case at the International Court of Justice<sup>44</sup> the Court used the definition of aggression<sup>45</sup> and determined that the acts by armed groups need only to have the same gravity as those by States, not a greater gravity, in order to be armed conflicts.<sup>46</sup>

It is to be seen that even though the United States is invoking their right to self-defence to conduct military operations against ISIS, these operations are being conducted on the territory of the Syrian Arab Republic and it brings a question of whether this is to be allowed under International Law. One way in which this action can be justified is by showing that these actions can be attributed to the state<sup>47</sup> however that can only be done when such group is an organ or an agent of the state, which in this case it is not. The United States argues that the very presence of such terrorist groups in a state is enough to permit another state to engage in self-defence against that state. This claim is at odds with the judgment of the ICJ's *USA v. Nicaragua*<sup>48</sup> case.<sup>49</sup>

It can be seen that the United States did immediately inform the United Nations regarding its actions taken under Article 51 as stated in the article itself. The United

<sup>42</sup> United Nations Security Council Letter S/2014/695

<sup>43</sup> Christian J. Tams, 'The Use of Force Against Terrorists', *European Journal of International Law*, Vol. 20 (2010), 359

<sup>44</sup> *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, International Court of Justice, Merits, Judgment (27 June 1986)

<sup>45</sup> United Nations General Assembly Resolution 3314 (1974)

<sup>46</sup> Steven R. Ratner, *Self Defense against Terrorists: The meaning of Armed Attack*, Michigan Law, Public Law and Legal Theory Working Paper Series, Working Paper No. 270 (May 2012)

<sup>47</sup> ILC, Supranote 22.

<sup>48</sup> *USA v. Nicaragua*, Supranote 44.

<sup>49</sup> Ratner, Supranote 46.

States led alliance is using Article 51 against ISIS in Syria, and before these nations invoked Article 51, there are no reported cases of direct armed attacks on most these nations, which would be attributed to ISIS, which could be said to constitute an armed attack of such a nature, which would give these nations to use their inherent right of self-defence against ISIS. Article 51 does provide scope for actions to be taken under collective self defence and it was Iraq which asked for Intervention in the conflict against ISIS and it can be said, that under the pretext of collective self-defense these actions may be justified howsoever there still lies the question whether this request by Iraq gives these States the right to conduct military operations in the territory of Syria, and if they do not have this right, this action cannot be justified under Article 51 of the United Nations Charter, would be in breach of Article 2(4) of the Charter of the United Nations and would be in violation of the principle of non-intervention.<sup>50</sup>

### **The Scope of Implementation of the Responsibility to Protect Doctrine in the present Conflict**

The Responsibility to Protect (R2P) is a new norm of international law according to which each state has the individual responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>51</sup> It also lays down the responsibility on states to use proper diplomatic, humanitarian and other peaceful means in accordance with Chapter VI and VII of the UN Charter, to help protect populations from genocide, war crimes, ethnic cleansing and crimes against humanity, and to take collective action, through the Security Council, in cooperation with regional organizations' should peaceful means be inadequate and national authorities are manifestly failing to protect their populations from genocide, war crimes, ethnic cleansing and crimes against humanity.<sup>52</sup>

The report of the Secretary General of the United Nations lays down the framework for the implementation for the R2P.<sup>53</sup> To see whether the Responsibility to Protect is applicable in the present conflict in the Syrian Arab Republic it needs to be seen whether there have been case of genocide, war crimes, ethnic cleansing and crimes against humanity. There have been evident instances of war crimes<sup>54</sup>, crimes against humanity<sup>55</sup>, genocide<sup>56</sup> and ethnic cleansing<sup>57</sup> and it can be evidently seen that the

<sup>50</sup> United Nations General Assembly Resolution 2625 (1970)

<sup>51</sup> 2005 World Summit Outcome, UNGA Resolution A/Res/60/1 (2005)

<sup>52</sup> United Nations General Assembly, *supra* note 51.

<sup>53</sup> Implementing the Responsibility to Protect, Report of the Secretary General, United Nations General Assembly Resolution A/63/677 (2009)

<sup>54</sup> U.N. investigators tell states to stop Syria war crimes, Reuters (11 May 2016),

<http://www.reuters.com/article/us-mideast-crisis-syria-warcrimes-idUSKCN0Y212P>

Syrian Conflict: Government Forces, Rebels Committing War Crimes, U.N. Says, The World Post (15 August 2012), [http://www.huffingtonpost.com/2012/08/15/syria-conflict-war-crimes\\_n\\_1778724.html](http://www.huffingtonpost.com/2012/08/15/syria-conflict-war-crimes_n_1778724.html)

<sup>55</sup> Syria Crisis: Ban Ki-Moon Sees Crimes Against Humanity, The World Post (16 February 2012),

[http://www.huffingtonpost.com/2012/02/16/syria-ban-ki-moon-crimes-against-humanity\\_n\\_1281295.html](http://www.huffingtonpost.com/2012/02/16/syria-ban-ki-moon-crimes-against-humanity_n_1281295.html)

<sup>56</sup> Islamic State committing genocide against Yazidis: U.N., Reuters (16 June 2016),

<http://www.reuters.com/article/us-mideast-crisis-syria-yazidi-idUSKCN0Z20WR>

<sup>57</sup> Kurdish fighters 'carry out ethnic cleansing' in Syria, Al-Jazeera (15 February 2016),

<http://www.aljazeera.com/news/2016/02/kurdish-fighters-carry-ethnic-cleansing-syria-160215041944504.html>

state has been failing in its responsibility to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity.

According to the first pillar of R2P<sup>58</sup> the primary responsibility is of the state to protect its populations from genocide, war crimes, ethnic cleansing and crimes against humanity. In their responsibility to protect their populations, the document on Implementing the Responsibility to Protect suggests States should become parties to the relevant international instruments on human rights, international humanitarian law and refugee law, as well as to the Rome Statute of the International Criminal Court.<sup>59</sup>

The Rome Statute defines genocide, war crimes, ethnic cleansing and crimes against humanity however it hasn't been signed or ratified by Syrian Arab Republic.<sup>60</sup> Syria is also not a party to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol<sup>61</sup> or the Convention relating to the Status of Stateless Persons<sup>62</sup>. It can be evidently seen that the Syrian Arab Republic did not properly undertake measures under pillar one of the R2P to fulfill its responsibilities.

Pillar two of the R2P covers the assistance which is to be provided to the state by the international community to help meet its obligations. Pillar one and two of the R2P together form the preventive aspect of the Responsibility to Protect.<sup>63</sup>

If the political leadership of the State is determined to commit crimes and violations relating to the responsibility to protect, then assistance measures under pillar two would be of little use and the international community would be better advised to begin assembling the capacity and will for a "timely and decisive" response, as stipulated under paragraph 139 of the Summit Outcome.<sup>64</sup>

Pillar three is the responsibility of Member States to respond collectively in a timely and decisive manner when a State is manifestly failing to provide such protection. A reasoned, calibrated and timely response could involve any of the broad range of tools available to the United Nations and its partners. These would include pacific measures under Chapter VI of the Charter, coercive ones under Chapter VII and/or collaboration with regional and sub regional arrangements under Chapter VIII. The process of determining the best course of action, as well as of implementing it, must fully respect the provisions, principles and purposes of the Charter. In accordance

<sup>58</sup> Implementing the Responsibility to Protect, Report of the Secretary General, UNGA Resolution A/63/677 (2009)

<sup>59</sup> *Id.*

<sup>60</sup> List of States Party to the Rome Statute

[http://www.iccnw.org/documents/APIC\\_EN\\_chart\\_updated\\_25\\_September\\_2012.pdf](http://www.iccnw.org/documents/APIC_EN_chart_updated_25_September_2012.pdf)

<sup>61</sup> List of States Party to the 1951 Convention relating to the Status of Refugees and the 1967 Protocol

<http://www.unhcr.org/protect/PROTECTION/3b73b0d63.pdf>

<sup>62</sup> List of States party to the Convention relating to the Status of Stateless Persons

[http://www.unhcr.org/cgi-](http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3bbb0abc7&query=1954%20convention)

[bin/texis/vtx/search?page=search&docid=3bbb0abc7&query=1954%20convention](http://www.unhcr.org/cgi-bin/texis/vtx/search?page=search&docid=3bbb0abc7&query=1954%20convention)

<sup>63</sup> Implementing the Responsibility to Protect, Report of the Secretary General, UNGA Resolution A/63/677 (2009)

<sup>64</sup> *Id.*

with the Charter, measures under Chapter VII must be authorized by the Security Council.<sup>65</sup>

Chapter VI of the Charter of the United Nations talks about the pacific settlement of disputes and this was the initial approach of the international community<sup>66</sup> towards the problem and still remains a possible solution to the problem<sup>67</sup>. However this approach having continued for almost 5 years now hasn't had a positive impact on the conflict mainly because of the disagreement on the future of the Bashar Al-Assad government.<sup>68</sup> During the Arab League peace talks and the current Geneva talks, several other meetings have taken place in order to find a peaceful and effective solution to the problem in Syria but none of these talks have been successful in bringing a notable change as can be seen from the current situation.

Apart from peace talks, a possible solution suggested in the document regarding the Implementation of the R2P is the referral of the situation to the International Criminal Court<sup>69</sup>. The Security Council in a resolution did refer the situation in Syria to the International Criminal Court<sup>70</sup> however this was vetoed by the Russian Federation and People's Republic of China.

The document also suggests sanctions<sup>71</sup> as an effective means to control the situation. On two occasions the Russian Federation and People's Republic of China vetoed resolutions which were to impose sanctions on Syria<sup>72</sup> under Article 41 of the Charter of the United Nations. However sanctions have been imposed on Syria by states independently<sup>73</sup> and by other International Organizations<sup>74</sup>.

The use of coercive military action is also allowed under Pillar Three of the Responsibility to Protect<sup>75</sup>. Article 42 of the Charter of the United Nations allows the

<sup>65</sup> Ibid.

<sup>66</sup> Arab League Says Syria Accepts Its Plan for Talks; Protesters Are Skeptical, The New York Times (2 November 2011), [http://www.nytimes.com/2011/11/03/world/middleeast/arab-league-says-syria-accepts-plan-for-talks.html?\\_r=0](http://www.nytimes.com/2011/11/03/world/middleeast/arab-league-says-syria-accepts-plan-for-talks.html?_r=0)

Syria 'positive' on Arab League monitors plan, Al-Jazeera (6 December 2011),

<http://www.aljazeera.com/news/middleeast/2011/12/2011125104346498827.html>

<sup>67</sup> U.N. announces start of Syria peace talks as government troops advance, Reuters (1 February 2016), <http://www.reuters.com/article/us-mideast-crisis-syria-idUSKCN0VA2OT>

<sup>68</sup> Syria crisis: Russia and US disagree over political solution in Geneva talks, The Guardian (29 June 2012), <https://www.theguardian.com/world/2012/jun/29/syria-crisis-russia-us-disagree-political-exit>

<sup>69</sup> United Nations General Assembly, *supra* note 63.

<sup>70</sup> United Nations Security Council, S/2014/348.

<sup>71</sup> United Nations General Assembly, *supra* note 63.

<sup>72</sup> United Nations Security Council, S/2012/538; United Nations Security Council, S/2011/612.

<sup>73</sup> Syria Sanctions Program, Office of Foreign Assets Control, United States of America Department of The Treasury (2013), <https://www.treasury.gov/resource-center/sanctions/Programs/Documents/syria.pdf>

<sup>74</sup> Syria: EU extends sanctions against the regime by one year, Council of the European Union, Press Releases (27 May 2016), <http://www.consilium.europa.eu/en/press/press-releases/2016/05/27-syria-eu-extends-sanctions/>

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<sup>75</sup> United Nations General Assembly, *supra* note 63.

Security Council to take action by air, sea or land forces which might be needed to restore international peace and security in an area, however no such action has been taken yet by the Security Council although individual action by nations has been taken. However Article 53 of the UN Charter allows the Security Council to allow regional organizations to take enforcement measures.

It can be seen that the measures under the Responsibility to Protect have not been exhausted yet and there is still scope for action to be undertaken under Pillar Three of the R2P, by the International Community to ensure that genocide, war crimes, ethnic cleansing and crimes against humanity do not take place in the area.

## Conclusion

The present situation in the Syrian Arab Republic is recognized under international law as a non-international armed conflict and therefore International Humanitarian Law is to be applied by all parties of the conflict however as is evident from the facts, the parties of the conflict have little or no regards for the principles of customary international humanitarian law and there have been cases of violations of it, such as the violation of Rule 74 of Customary International Humanitarian Law. There has been violation of international law by the Syrian Government, the United States led alliance and the armed groups working against the Syrian government. The matter has worsened to such an extent that there is evidence of genocide, war crimes, ethnic cleansing and crimes against humanity and with Syria not being a party to the Rome Statute, the only way the Prosecutor can start investigation and bring charges against persons for violation of international criminal law is if there is a referral by the United Nations Security Council, which seems highly unlikely taking into consideration that such a proposal was discussed in the Security Council but was vetoed.

The Rule of International Law seems to become weaker as we move forward in time and the concept of an armed conflict weakens and if subjects of International Law continue to act against the principles of International Law without any criticism it might lead to the establishment of a wrong state practice and this would have severe consequences on the rule of International Law, not just in Syria but in the world as well.

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