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## ***Fighting impunity:***

**Should the International Community create an  
*ad hoc* Criminal Tribunal to prosecute violations  
of international law in Syria?**

Author: Catia Trevisani  
Supervisor: Raymond Murphy

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## *List of Acronyms and Abbreviations*

COI or the Commission	Commission of Inquiry on the Syrian Arab Republic
FSA	Free Syria Army
GC	Geneva Convention
HRC	Human Rights Council
HRL	Human Rights Law
HRW	Human Rights Watch
ICC	International Criminal Court
ICL	International Criminal Law
ICTY	International Tribunal for the Former Yugoslavia
IIIM	International, Impartial and Independent Mechanism
IHL	International Humanitarian Law
ISIS	Islamic State of Iraq and the Levant
LOAC	Law of Armed Conflict
NGO	Non Governative Organization
R2P	Responsibility to Protect
SARC	Syrian Arab Red Crescent
SC	Security Council
SNHR	Syrian Network for Human Rights Report
UN	United Nations

Within the complex and contemporary Syrian armed conflict, the aim of this thesis will be to understand the possibilities to establish a juridical mechanism in order to prosecute responsible for international violations and crimes committed since the beginning in 2011. This issue will be analysed through an analytical path. Starting from a brief examination of the main events and main actors involved, a classification of the non-international Syrian armed conflict will be provided. Afterwards, through investigations of international crimes by the United Nations Mechanisms, namely, the Commission of Inquiry on the Syrian Arab Republic (COI) and the International, Impartial and Independent Mechanism (IIIM), an evaluation of the contemporary juridical and quasi-judicial instruments will be reported. The *Syrian armed conflict case* is characterised by the interplay relations among diplomatic, economic, international and political affairs that affect the possibility to fight against impunity through juridical apparatus in order to deal with those responsible for atrocities committed.

## Introduction

After seven years of the Syrian armed conflict and after seven years of severe violations against the population, it may be necessary understand the reasons behind the failure to prosecute individuals for those gross and systematic human rights and international law violations. In other words, starting from the respect of the right of remedies for Syrian population, it may be necessary comprehend whether the International Community may intervene to create Tribunals or other juridical mechanisms to prosecute violations of human rights, War Crimes, Genocide and Crimes Against Humanity. To do so, this thesis is divided into three main parts that create a unique analytical path in order to answer and address the main question, namely, *fighting impunity: should the International Community create an ad hoc Criminal Tribunal to prosecute violations of international law in Syria?*.

In the first chapter sets out the general overview of the Syrian armed conflict background, within the analysis of main actors involved and the trend and pivotal points, the nature of the conflict will be examined and affirmed. Classification of the armed conflict will be based on handbooks and official reports by the United Nations Security Council, the Independent International Commission of Inquiry on the Syrian Arab Republic (hereto COI) as well as the International, Impartial and Independent Mechanism (hereto IIIM). The latter instrument was established by the United Nations General Assembly in 2016 with the purpose to assist investigations and prosecutions of those responsible for the most serious crimes under the International Law in Syria. The COI, on the other hand, investigates violations of International Human Rights Law and International Humanitarian Law committed during the conflict since March 2011 and establishes facts and circumstances regarding such violations and crimes perpetrated. Moreover, it identifies responsible for those violations. The Commission was established in 2011 by the Human Rights Council. These two tools have complementary mandates but different methods to collect information and to investigate the data. As Ms. Catherine Marchi-Uhel head of the IIIM recently sets out, the mandate of such apparatus is innovative and independent. On one hand, “it is tasked with collecting, consolidating, preserving and

analysing such information and evidence; on the other hand, with preparing files in order to facilitate and expedite fair and independent criminal proceedings, in accordance with international law standards, in national, regional or international courts or tribunals that have or may in the future have jurisdiction over these crimes”<sup>1</sup>.

Following the examination of the nature of contemporary armed conflict and the choice of which set of law has to be implemented, the second chapter will concern grave and systematic violations of International Humanitarian Law (here to IHL). The focus, indeed, will be on the violations of War Crime, Crimes Against Humanity and Genocide. The research will be based on international official documents, reports, books and other relevant resources. The aim of this chapter is to understand serious and widespread violations that the International Community should deal through the institution of juridical entities.

Finally, in the third chapter, differences among main tribunals and other juridical and quasi-juridical mechanisms will be reported. For the purpose of the present thesis International Criminal Court, *ad hoc* Tribunal and hybrid institutions will be described. Afterwards taking into account the Syrian context and the crucial and controversial role played by the members of the Security Council and the International Community, the best scenario realizable in Syria will be explained.

The concluding chapter will evaluate the ongoing complex Syrian situation and will analyse potential measures to address effectively the fight against impunity principle that so far has not produced any outcomes.

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<sup>1</sup> Press conference of Ms. Catherine Marchi-Uhel, Head of the 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. Geneva, 5 September 2017.  
[https://www.unog.ch/unog/website/news\\_media.nsf/\(httpNewsByYear\\_en\)/E646318F6DA509B4C1258193005150B1?OpenDocument](https://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/E646318F6DA509B4C1258193005150B1?OpenDocument)

*Leitmotiv* of this thesis is to identify effective key solutions in order to respect the principle of fighting against impunity and to punish consequently perpetrators of international law violations.

According to Sanchez, the duty of States is protection of international human rights through specific mechanisms. Likewise, one of the main characteristics of the concept of fight against impunity is the defence and preservation of IHL violations. On the contrary, whether States fail, the International Community has the duty to punish those responsible for serious crimes “for the purpose of bringing an end to impunity” with an active protection of the human rights<sup>2</sup>.

Furthermore, it is important to stress closely relation between fight to impunity and the theory of Responsibility to Protect (hereto R2P). This principle, adopted in 2005 during the UN World Summit, was designed to respond to Genocide, War Crimes and Crimes Against Humanity. Actually, main fundamental pillars of the principle are the responsibility for every State to protect their populations from atrocities; the responsibility of the International Community to assist and encourage States and, at least, a collective intervention, according with the UN Charter, where States fail such protection.

Moreover, before entering into details of further issues, it is important to define another key element linked the above mention principles, namely, the right of remedies. This vital and basic norm characterised the entire issue and debates on humanitarian protection and victims’ support. This standard was adopted in December 2005 through the General Assembly’s Resolution namely, “*Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*”<sup>3</sup>. Vital elements of this Resolution concern the recognition of the right to remedies in term of equal and effective access to justice to the victims; adequate reparations for harm suffered; and access to

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<sup>2</sup> J. M. S. Sanchez, *Doctrines regarding the fight against impunity and the victim’s right for the perpetrator to be punished*, in Pace, Law Review. Vol. 28, No. 4, 2008. Pp. 865-884.

<sup>3</sup> United Nations General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law : resolution / adopted by the General Assembly, 21 March 2006. A/RES/60/147.*

information for violations and reparation mechanisms. Moreover, identifies in States the duty to investigate, prosecute and punish responsible for gross and systematic violations of International Humanitarian Law and serious violations under International Human Rights Law. Under the Resolution victims are defined as “persons who individually or collectively suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that constitute gross violations of international human rights law, or serious violations of international humanitarian law”<sup>4</sup>. The challenge of this complex study regards the application of victims’ rights into the Syrian context.

An overview, characterised by seven years of multilateral conflict in which it may notice a variety of actors with different interest, will be explained below.

The war, began in March 2011, started as a part of the Arab Spring protest movement. According to H. Albasoos & Al-Maqbali, the initial local uprising crisis turned into a sophisticated armed conflict. Multiple players from both, national and international scenario, have immediately appeared<sup>5</sup> and influenced the conflict. During the early stages the population asked the resignation of the President Bashar Assad and the end of the authoritarian regime. The political dynamics, as well as, economic, social, ethnic and cultural claims drove these protest movements<sup>6</sup>. Syrian government armed forces responded to demonstrations by use of force. Despite these events, the International Community was reluctant to recognise this scenario as a civil war situation<sup>7</sup>. Later, with the appearance of the Free Syrian Army (hereto FSA) a rebel armed group formed by oppositional military force, insurgencies continued and increased. In 2012, the United Nations imposed the first ceasefire that was brokered after few months. The following

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<sup>4</sup> General Assembly Resolution 60/147, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law*, 21 March 200. A/RES/60/147.

<sup>5</sup> H. Albasoos & Al-Maqbali, *An overview of the conflict in Syria*, in *International Journal of Research in Business and Social Science*, Vol. 6, No 1, 2017. Pp. 47-54.

<sup>6</sup> C. Steenkamp, *The Crime-Conflict Nexus and the Civil War in Syria*, in *Stability: International Journal of Security & Development*, Vol. 6, No. 1:11, 2017. Pp. 1–18.

<sup>7</sup> T. Ruys, *The Syrian Civil War and the Achilles' Heel of the Law of Non-International Armed Conflict*, 50 *Stanford Journal of International Law*, 2014. Pp. 247-280.



escalation period of civil war, was characterised by massacres and destructions of the principal Syrian cities, such as Damascus, Aleppo, Raqqa, Palmyra and Idlib.

Thus, after early remonstrations, the Syrian armed conflict has evolved into a complex, multipolar, and highly localized struggle. Indeed, until nowadays dramatic consequences of the infraction of the UN's ceasefires may be observed. Additionally, multiple violations of Human Rights and International Law are committed.

Moreover, since the beginning, the distinction among different national and international actors, as well as, States and non-States entities was clear. In this vein, between 2013 and 2014 a crucial key actor namely, Islamic State of Iraq and the Levant (hereto ISIS) began its terror policy into the Country. It may also observe until now, numerous attacks, assaults or sieges were committed by the both sides of parties involved.

The unclear nature of the armed conflict and the general complexity has become extremely important in the academic international scenario and perspectives. According to some authors, this chaotic and confusing landscape makes conflict's classification extremely difficult and critical. For this reason, in order to have a clear picture of the situation, an analysis of the key actors involved it will be provided.

During these years, indeed, sequence of several actors may be showed. On the one hand, as mentioned before, it may observe in opposition of the Assad's regime the FSA, a rebel armed group. Despite its moderate reputation, has been accused of serious violations of human rights and war crimes, alike the Assad's regime. The rebel group is supported by the United States, Turkey, Qatar and Saudi Arabia. This alliance is also fighting against the ISIS armed group.

On the other hand, actors like Russia, Iran, Iraq and Hezbollah – a Lebanese Islamic group – through economic, arms and military equipment or military advisors, are supporting the Syrian Government force. In this vein, the emblematic and critical role of Russia has interested many scholars in the international political framework. Because of interests into the Mediterranean's affair through the Tartus Syrian port, the Russian government plays a controversial role also in the UN Security Council scenario<sup>8</sup>.

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<sup>8</sup> D. Wallace, A. McCarthy, S. R. Reeves, *Trying To Make Sense Of The Senseless: Classifying The Syrian War Under The Law Of Armed Conflict* in Michigan State International Law Review. Vol. 25, No. 3, 2017. Pp. 555-594.

According to J. Martini, E. York and W. Young, these several actors have produced an “asymmetry of interests due to different characteristics and particular specific strategies”<sup>9</sup>.

As mentioned before, in the further chapter, according to the brief explanation of the Syrian armed conflict and main actors implicated, a global definition and classification of the armed conflict will be provided. The critical and problematic process towards the international armed conflict law and the non-international armed conflict law, will be explained and solved.

In addition, the international academics community has tried to provide future perspectives and evaluations of the Syrian armed conflict based on different approaches. For instance, as Albasoos and Al-Maqbali have suggested three possible outcomes to the armed conflict. Continuation of the status quo for an undefined period; collapse of Assad’s regime and, at least, broader regional clash are main future views of the conflict<sup>10</sup>. However, according to other academics like A. Bâli and A. Rana, notwithstanding the critical background, the best way to deal with this crucial situation is to implement political transition’s processes ensuring security for all communities<sup>11</sup>. In this vein, returning to the key aim of the present thesis, one of the primarily concrete measure of humanitarian intervention may be the creation of a juridical mechanism for the atrocities committed by the parties.

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<sup>9</sup> J. Martini, E. York and W. Young, *Syria as an Arena of Strategic Competition*, in RAND corporation, 2013.

<sup>10</sup> H. Albasoos & Al-Maqbali, *An overview of the conflict in Syria*, Pp. 47-54.

<sup>11</sup> A. Bâli and A. Rana, “*Why There Is No Military Solution to the Syrian Conflict*”, in N. Hashemi and D. Postel, *The Syria Dilemma*, edited by A Boston Review Book THE MIT PRESS, Cambridge, Mass. London, England, 2013.

## Chapter One

As mentioned before, this first chapter aims to understand the nature of the Syrian armed conflict under the IHL. To do so, starting from the analysis of actors involved in this context an explanation of the nature of armed conflicts based on evidence and international laws will be provided.

Generally speaking, classification of conflicts under the International Law is fundamental and, at the same time, challenging and problematic for several reasons. In particular, due to the complexity of the Syrian context, this analysis requires to bear in mind some different aspects. According to some scholars, like Wallace, McCarthy and R. Reeves, conflicts' classification is not just an academics role, but also a *sine qua non* condition to determine legal actors' responsibilities and obligations during war and peace time. In this vein, clarifying actors' rights and duties within the law of the armed conflict may help to find those responsible and strategies to judge their violations. Thus, in order to prosecute, ensure accountability for those participants and reduce brutalities, the first critical step is to classify the nature of the Syrian conflict. Only after proving a clear legal ground, it will be possible to protect victims and prosecute perpetrators of such abuses<sup>12</sup>.

The structure of this chapter is articulated in three paragraphs. In the first, according to some scholars and international laws, main features of International Armed Conflicts will be presented. Afterwards, following same structures and methodologies, main characteristics of Non-International Armed Conflicts will be explained. In addition, in this section, principal difficulties of the field will be shown. In the last paragraph, according to previous analyses, main representative factors of the Syrian Armed Conflict will be exposed. Through these studies, the nature of such scenario will be affirmed. Moreover, implications and difficulties concerning this armed conflict will be explained.

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<sup>12</sup> D. Wallace, A. McCarthy, & S. R. Reeves, *Trying To Make Sense Of The Senseless: Classifying The Syrian War Under The Law Of Armed Conflict*, 2017. Pp. 555-594.

Before entering into details toward similarities and differences among main armed conflicts existed, it is important to report critical characteristics that regulate and describe contemporary hostilities in a worldwide scenario.

Since the Nineteen Century, scholars and specialists have questioned on the nature and definitions of armed conflicts, wars and violence in order to better understand implications and ways to deal with them. In the early stages, as Haines states reporting the idea of the Prussian military theorist Carl von Clausewitz, classification of modern hostilities was made in accordance with two labels: regular and irregular war. On the one hand, the regular war was characterised by a political relation of interests between States and involved formal armies. On the other hand, the irregular type was developed when civilians were affected directly by non-state armed groups involved. Insurrections, insurgencies and guerrillas warfare, as well as, sophisticated and advanced hybrid or criminal wars are included in this category. A state-centric criticism of this theory was arisen from the New Wars' concept. The model, based on the analysis of actors involved, has suggested a distinction between symmetrical and asymmetrical hostilities.

Following the battle of Solferino, in 1859, the development of the IHL may be observed. Since that key moment, scholars have classified armed conflict in different "generations". Academics like Lind and Hammes, indeed, have divided historical wars into four subsequent generations of conflict characterised by different strategies, technologies, armies and operations. The last Generation of Warfare (4GW) concerned modern non-international armed conflicts, in which non-state organised armed groups were included<sup>13</sup>. Nowadays, contemporary debates on the distinction of armed conflicts concern new circumstances and typologies. Indeed, as Akande reports, the primary award of armed conflicts based on the IHL legal frameworks has divided the international scenario in international and non-international armed conflict. In this framework, however, unclear

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<sup>13</sup> S. Haines, "*The Nature of War and the Character of Contemporary Armed Conflict*", in E. Wilmshurst, *International Law and the Classification of Conflicts*. Oxford University Press, United Kingdom, 2012. Pp. 9-31.

actors' position or hybrid mix of conflict methods may create a complex picture<sup>14</sup> and analysis.

Anticipating matters of the following paragraphs, according to Solis, the classification of the current Syrian armed conflict scenario presents few complications. For instance, whether two or more Geneva Conventions High Contracting Parties are fighting common Article 2 and the Additional Protocol I may be applied within this international, interstate armed conflict. On the contrary, whether such Member States are fighting against non-State armed groups, or armed groups are fighting against each other, common Article 3 of the Convention and the Additional Protocol II of the non-international conflict may be applied. Distinction of these situations may be critical for the International Community. Indeed, according to the author, reporting Yoram Dinstein's words, "drawing the line of demarcation between inter-State and intra-State armed conflict may be a complicated task"<sup>15</sup>.

Therefore, as Crowe and Weston-Scheuber affirm, IHL may be defined as the body of international law governing the conduct of participating in armed conflicts. These set of laws regulate the code of conducting of conflict and possible forms permitted. Within this setting, fundamental distinction between *jus in bello* and *jus ad bellum*, respectively law in war and law governing going to war may be taken into account, in order to prevent and regulate conduct of armed conflicts<sup>16</sup>.

In conclusion, classification of current armed conflicts may be essential. This procedure is vital in order to apply accurate set of laws ensuring jurisdiction, rights and obligations for those responsible. IHL, indeed, regulates lawful and unlawful acts of violence and it represents the only international body of law to deal with victims' and persons' protections. Hence, the key aim is not to determine winners or losers, but to guarantee equal protection of persons and objects affected by armed conflicts during war and peace

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<sup>14</sup> D. Akande, "Classification of Armed Conflicts: Relevant Legal Concepts", in E. Wilmshurst, *International Law and the Classification of Conflicts*. Oxford University Press, United Kingdom, 2012. Pp. 32-79.

<sup>15</sup> G. D. Solis, *The Law of Armed Conflict: International Humanitarian Law in war*, Cambridge University Press, New York, 2010. Pp. 149-185.

<sup>16</sup> J. Crowe and K. Weston-Scheuber, *Principles of International Humanitarian Law*, Published by Edward Elgar Publishing Limited, United Kingdom, 2013. P. 7.

time. In this vein, under IHL is fundamental to determine division between lawful and unlawful targets. As Crowe and Weston-Scheuber state, under principles of distinction and humane treatment it may also be possible differentiate civilians status from military objects<sup>17</sup>. The basic rule asserts that only combatants may be targeted and civilians must be protected. However, in certain circumstances, as Henderson suggests, when a combatant is designated as *hors de combat* any attacks are illegitimate. In fact, on one hand, combatants may be defined as a member of the armed forces involved in the conflict. In addition, they may be considered as a member of other militias and volunteer corps with distinctive signs recognisable at a distance. As combatants, moreover, they must follow war laws and war customs as well as commands from the military chiefs. Alternatively, whether combatants may be defined as a members of regular government armed forces or as *levee en masse* different aspects must be took into account. On the other hand, under IHL, *hors de combats* are persons in the power of an adverse Party, who have clearly expressed their intention of surrender or they are unable to defend their self. Military necessity and humanity's principles are on the ground of this targeting exclusion. Analogously, in case of doubts about persons' status, they shall be considered and treated as a civilian. Civilians may be described as personnel who do not belong to one of the combatant's groups. Thus, non-combatants are *de facto* civilians<sup>18</sup>.

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<sup>17</sup> *Ibidem*. P. 70.

<sup>18</sup> I. Henderson, *The Contemporary Law of Targeting: military objectives, proportionality and precautions in attack under Additional Protocol I*, International Humanitarian Law Series. Vol. 25. Published by Martinus Nijhoff publishers, Leiden, Boston. 2009. Pp. 79-124. In addition, see also *Articles 41, 44, 45, 50, 51 and 52* of the Additional Protocol I of the Geneva Convention.

## **1.1 International armed conflict**

As reported above, actors' scenario in the context of the Syrian conflict is chaotic and unclear. State and non-state participants have contributed to categorise the nature of this armed conflict. Before entering into details towards the nature of the Syrian armed conflict, general rules and peculiarities under different contemporary contexts, namely, international and non-international armed conflicts may be reported. The importance to classify armed conflicts is also originated from the importance to respect and deal with human rights violations, crimes against humanity and war crimes. To do so, in this first paragraph, statutory factors and issues characterised the International Armed Conflict will be explained.

Generally speaking the Law of Armed Conflict (hereto LOAC), otherwise known as the IHL, was established in the Nineteenth Century due to determine parties' rules and codes during wartime. Albeit during these years, armed conflicts have changed in nature and characteristics, according to some scholars the LOAC's legal frameworks have remained essential and fundamental in order to punish responsible for violations<sup>19</sup>. However, only under specific circumstances may be possible apply these provisions. These conditions are the existence of a state of war, the types of actors involved and, the ratification by States of the basic rules of war<sup>20</sup>. Under International Law, therefore, it may observe several legal documents and treaties, binding Members Parties. Operating in this vein, these legal forms ensure protection and guideline for armed conflicts scenario. International regulations, indeed, impose satisfaction of codes of conduct, rules of methods and means of war and other general principles.

According to Dinstein, one of these is the *customary international law*. A legal instrument that governs conduct of hostilities through consolidated procedures and evidence of general practices accepted as common law<sup>21</sup>. However, for the purpose of this thesis, the

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<sup>19</sup> G. D. Solis, *The Law of Armed Conflict: International Humanitarian Law in war*, 2010. Pp. 3-26.

<sup>20</sup> S. W. Preston, *Department of Defense Law of War Manual*, published by the Office of General Counsel Department of Defense, United State of America, May 2016. Pp. 70-96.

<sup>21</sup> Y. Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, Cambridge University Press, 2014. Pp. 1-26.

most important treaty body for the administration of international armed conflicts is the set of *Geneva Conventions*. This set is composed of four Conventions adopted in 1949, and two Additional Protocols adopted in 1977 toward different aspects and issues of the battlefields<sup>22</sup>. In particular, provisions applicable to the international armed conflicts are based on the common Article 2 of the GC and the Additional Protocol I. According to the common Article 2 of the Geneva Conventions,

1. [In addition to the provisions which shall be implemented in peacetime,] the present Convention shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance. Although one of the Powers in conflict may not be a party to the present Convention, the Powers who are parties thereto shall remain bound by it in their mutual relations. They shall furthermore be bound by the Convention in relation to the said Power, if the latter accepts and applies the provisions thereof<sup>23</sup>.

In this sense, according to Wallace, McCarthy and Reeves, in the light of this article an “international armed conflict exists when a state resorts to armed force against another regardless of the scope, intensity and duration of the violence”<sup>24</sup>.

Furthermore, as Solis argues, this type of armed conflict is characterised by the specific intention of the parties to engage in it. Thus, under the principle of intention, it is easy to establish and separate armed conflict from an armed incident that does not constitute armed conflict in order to apply the above Article 2<sup>25</sup>.

According to Grignon, moreover, States intention to replace a state of peace with a state of war may be defined as *animus belligerendi*. A disused legal concept to assert the parties’ expression of intention<sup>26</sup>. This principle, however, is not a unique prerequisite for

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<sup>22</sup> G. D. Solis, *The Law of Armed Conflict: International Humanitarian Law in war*, 2010. Pp. 3-26.

<sup>23</sup> *Common Article 2* of the Geneva Conventions.

<sup>24</sup> D. Wallace, A. McCarthy and S. R. Reeves, *Classifying the Syrian War under the Law of Armed Conflict*, 2017. Pp. 555-594.

<sup>25</sup> G. D. Solis, *The Law of Armed Conflict: International Humanitarian Law in war*, 2010. Pp. 149-185.

<sup>26</sup> J. Grignon, *The beginning of application of international humanitarian law: A discussion of a few challenges*, in *International Review of the Red Cross*. Vol. 96, No. 893. 2014, pp. 139-162.



the application of the International LOAC. As manuals of Armed Conflict affirm, laws have a universal application with an equal force among the parties involved<sup>27</sup>.

Nevertheless, despite the principle of intention, into the international armed conflict's laws other key tenets and criterions may be observed. For instance, main principles are a military necessity, humanity, distinction and proportionality<sup>28</sup>. Through these factors, the International Community applies rules from the IHL ensuring unnecessary suffering and protection of civilians<sup>29</sup>, as well as, proceeds against responsible of humanitarian violations.

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<sup>27</sup> United Kingdom Ministry of Defence, *The Manual of the Law of Armed Conflict*. Oxford University Press, United Kingdom, 2005. P. 34 (3.12).

<sup>28</sup> R. Kolb and R. Hyde, *An Introduction of the International Law of Armed Conflicts*. Published in North America (US and Canada) by Hart Publishing, 2008. Pp. 43-50.

<sup>29</sup> M. Sassoli, A. A. Bouvier and A. Quintin, *How Does Law Protect In War?: Cases, Documents and Teaching Materials on Contemporary Practice in International Humanitarian Law*. Vol. 1 of Outline of International Humanitarian Law, Third Edition, International Committee of the Red Cross. Pp. 2-3.

## **1.2 Non-International Armed Conflict**

Following this line, now it may be fundamental to analyse the second type of armed conflict in the current international scenario, namely, Non-International Armed Conflict. This explanation may be essential in order to have a complete picture of the entire conflict framework and for a further analysis of the Syrian conflict.

As Sivakumaran states in his book on the law of non-international armed conflict, in order to understand and define this contemporary set of violent actions, it is vital to consider regulations provided by different sources. Despite the lack of relevant jurisprudence's solutions for this new entity of armed conflict<sup>30</sup>, the author affirms, however, the existence of a clear corpus of international laws governing non-international armed conflict. This new field, indeed, is based on the combination and connection of three different approaches namely, the law of international armed conflict; the international criminal law and the international human rights law<sup>31</sup>. According to the analysis of Akande, moreover, determining what constitutes a non-international armed conflict is not an easy procedure. Under International Humanitarian Law, different criteria are used to distinguish and define this contemporary type of armed conflict. The most important are the situation of violence in the State and the specific level of threshold that has to be reached. In truth, when the above scenario reaches such precise level of intensity, International Humanitarian Law provisions shall apply to the non-international armed conflict. Factors relevant to establish the intensity situation include: duration and intensity of individual confrontations; type of weapons or other military equipment used; number of persons and type of forces involved; number of casualties and civilians fleeing from combat zones<sup>32</sup>.

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<sup>30</sup> S. Sivakumaran, *The Law of Non-International Armed Conflict*, Oxford University Press, United Kingdom, 2012. p. 2.

<sup>31</sup> S. Sivakumaran, *Re-envisaging the International Law of Internal Armed Conflict*, in *The European Journal of International Law*. Vol. 22, No. 1, 2011. Pp. 219–264.

<sup>32</sup> D. Akande, "Classification of Armed Conflicts: Relevant Legal Concepts", 2012. Pp. 32-79.

As Sivakumaran affirms, a lack of universal definition of non-international armed conflict provides to the parties flexibility to characterise their situations. This lacuna may create a shift of the debate rather than a solution. In the context of the nature of the armed conflict, the discussion will move to whether elements of the conflict have been entirely satisfied. The Geneva Conventions have adopted a broad definition of non-international conflict stated in 1995 International Criminal Tribunal for the Former Yugoslavia (hereto ICTY) during a *Tadic case*. A non-international “armed exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State”<sup>33</sup>. Thus, main criteria, namely, intensity of violence and the level of organisation of armed groups may be observed.

Despite the aforementioned intensity’s standard, the second vital criterion to bear in mind is the organisation of armed groups present on the field. Indeed, in this context, in order to evaluate armed groups some standards have to be satisfied. As the author shows, indicia to classify a group are the existence of an official command structure in pyramidal or horizontal organisation; headquarters; uniforms; specific modes of communications; the ability to carry out intense hostilities; the presence of training for the members of the group; internal regulations and disciplinary procedures<sup>34</sup>. In this vein, as Perna states, dissident armed groups in non-international armed conflict have to be characterised by organisation and coordination. In addition, they must be under a responsible command even if they may not have a rigid military hierarchy<sup>35</sup>. According to Cullen, on the basis of the *Tadic case*’s analysis, satisfaction of the principle of protracted armed violence between the parties is also extremely important in order to classify the situation as a non-international armed conflict<sup>36</sup>.

The regional influence and control by the armed group is not the fundamental and determinative prerequisite to determine the non-international nature of the conflict.

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<sup>33</sup> S. Sivakumaran, *The Law of Non-International Armed Conflict*, 2012. Pp. 156-211.

<sup>34</sup> *Ibidem*.

<sup>35</sup> L. Perna, *The Formation of the Treaty Law of Non-International Armed Conflicts*, International Humanitarian Law Series, Vol. 14. Martinus Nijhoff Publishers, Leiden, The Netherlands.

<sup>36</sup> A. Cullen, *The Concept of Non-International Armed Conflict in International Humanitarian Law*, Cambridge University Press, New York, 2010. P. 119.

However, under particular circumstances, international or external support may change the nature of armed conflicts. From a legal perspective, as stated above, regulations of international and non-international armed conflict are based on the Geneva Conventions and two Additional Protocols. These rules, moreover, are applied in case of armed conflict in the territory of one of the High Contracting Parties. More specifically, within the non-international armed conflicts sphere the Common Article 3 of GC states that

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

1. Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.

To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- a. violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- b. taking of hostages;
- c. outrages upon personal dignity, in particular humiliating and degrading treatment;
- d. the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

2. The wounded and sick shall be collected and cared for.

An impartial humanitarian body, such as the International Committee of the Red Cross, may offer its services to the Parties to the conflict.

The Parties to the conflict should further endeavour to bring into force, by means of special agreements, all or part of the other provisions of the present Convention.

The application of the preceding provisions shall not affect the legal status of the Parties to the conflict<sup>37</sup>.

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<sup>37</sup> *Common Article 3* of the Geneva Conventions.

Moreover, Article 1 of the Additional Protocol II relates to the protection of victims asserts that

1. This Protocol, which develops and supplements Article 3 common to the Geneva Conventions of 12 August 1949 without modifying its existing conditions of applications, shall apply to all armed conflicts which are not covered by Article 1 of the Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I) and which take place in the territory of a High Contracting Party between its armed forces and dissident armed forces or other organized armed groups which, under responsible command, exercise such control over a part of its territory as to enable them to carry out sustained and concerted military operations and to implement this Protocol.
2. This Protocol shall not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence and other acts of a similar nature, as not being armed conflicts<sup>38</sup>.

Consequently, according to the Geneva Conventions and the Additional Protocol II, a non-international armed conflict may be established among government forces and non-government armed groups. As well as, among different and several non-state actors within the geographic boundaries of the State<sup>39</sup>. Within the international scenario, the Additional Protocol II represents the only agreement for the regulation of non-international armed conflicts<sup>40</sup>.

According to the importance and contemporaneity assumed by the phenomenon of the armed conflict, in the Rome Statute of the International Criminal Court it may be found articles governing non-international armed conflicts alike. In this vein, Article 8 recognises specific crimes under the Court's jurisdiction that may be observed into the non-international armed conflicts. Howbeit, according to some scholars, this provision contains several interpretative problems related to the language used. Cullen, for instance, has recognised two thresholds. The first concerns the phrase "protracted armed conflict"

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<sup>38</sup> Article 1 of the Additional Protocol II.

<sup>39</sup> D. Wallace, A. McCarthy and S. R. Reeves, *Classifying the Syrian War under the Law of Armed Conflict*, 2017. Pp. 555-594.

<sup>40</sup> L. C. Green, *The contemporary law of armed conflict*, second edition published by Manchester University Press, United Kingdom, 2000. P. 61.

used here for the first time. The second affects a list of crimes observed in a non-international armed conflict. Reporting the words of Sassoli and Bouvier, Cullen, therefore, observes some differences among the provisions outlined by the GC. To mention, main contrapositions are the no requirement of command or territory control for the rebel groups, as well as, the presence of such actors into the armed conflict scenes. Besides these dissimilarities, in the Rome Statute as well as in the Geneva Conventions same principles toward armed groups organisation and conflict duration are affirmed<sup>41</sup>.

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<sup>41</sup> A. Cullen, *Definition of Non-International Armed Conflict in the Rome Statute of the International Criminal Court: An Analysis of the Threshold of Application Contained in Article 8(2)(f)*, in *Journal of Conflict & Security Law*, Vol. 12, No. 3. Oxford University Press, 2008. Pp. 419-445.

### **1.3 How it may be defined the Syrian conflict?**

The above review of different types of armed conflict has shown how difficult is to classify and define international and non-international armed conflict. Due to general legal categories and political purposes of parties involved, it may be considered that the classification of armed conflict is the main challenge of the contemporary international scenario. This problem also concerns the variability and the new forms of conflict that may be observed in the international scenario. In truth, generally speaking, ongoing conflicts are characterised by the use of different and innovative types of technologies, warfare methods and armed groups described by unique original nature.

As already explained according to the analysis of Gill, in order to distinguish different type of conflicts there are multiple factors to take into account, i.e., the number of active organised armed groups and their alignments; objectives and aims. As well as, the overall impact and influence into the territory, and, the possible intervention of main international powers on the side of the Government<sup>42</sup>.

Bearing in mind the concept of armed conflict and the above characteristics, it may be assumed that the Syrian conflict is an armed conflict fought by State armed forces and opposition armed group forces. However, due to the controversial Syrian scenario and the complexity of the analysis, evidence and studies from the international community of scholars are not massive. Authors like Wallace, McCarthy and Reeves, have described the Syrian armed conflict as a perfect Hobbesian picture of the “war of all against all”<sup>43</sup>, an asymmetrical situation among Government and non-Government forces. Since 2011, Syrian’s hostilities have progressively increased their impact. From a pacific remonstrance replaced through most organised violent forms of actions to large-scale military operations by the Government forces.

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<sup>42</sup> T. D. Gill, *Classifying the Conflict in Syria*, in International Law Studies U.S Naval War College, Vol. 92. 2016, pp. 353-380.

<sup>43</sup> D. Wallace, A. McCarthy and S. R. Reeves, *Classifying the Syrian War under the Law of Armed Conflict*, 2017. Pp. 585-594.

Within this complex framework, in addition, the appearance of several actors involved in the conflict, with both state and non-state aspects may be noticed. Naturally, as some authors have stated, not all these armed groups have met the level of organisation criteria such as size; command structure; disciplinary standards; headquarter and influence within the territory; specific functions and capacity to coordinate military operations and access to weapons or other military equipment. In the early stage of its mandate, the COI concluded that it was difficult to confirm the level of organisation of the FSA's group. However, according to further analyses based on evidence, the two fundamental armed groups, namely, ISIS and the FSA, have met prerequisite organizational criteria, already explained above<sup>44</sup>. Actually, as Vite affirms, "due to the sustained nature of the armed violence coupled with the level of organization of some of the anti-governmental armed groups it is clear that a non-international armed conflict currently exists in Syria"<sup>45</sup>.

As considered above, under the IHL conflicts between two or more states actors are classified as international in nature, while conflicts among government forces and non-state armed groups are considered non-international. However, as several scholars questioned, what happens when a foreign state intervenes in favour of one of the parties into a non-international armed conflict? As Huszti Orban and Kalandarishvili-Mueller affirm, "in case of an armed intervention on the side of government forces, the conflict retains its non-international character. If a state decides to intervene by armed force in support of the non-state armed group, however, the conflict becomes international due to having developed into an inter-state clash"<sup>46</sup>. Indeed, the international involvement remain the most controversial aspect of the armed conflict classification. The international community has generally accepted principle of invitation on the ground. Whether a Government force ask for international support the armed conflict will remain non-international, on the contrary, may change the nature in internationalised.

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<sup>44</sup>*Ibidem*.

<sup>45</sup> S. Vite, *Typology of armed conflicts in international humanitarian law: legal concepts and actual situations*, in *International Review of Red Cross*. Vol. 91, No. 873, March 2009. Pp. 69-94.

<sup>46</sup> K. Huszti Orban and N. Kalandarishvili-Mueller, *Is it a bird? Is it a plane? Is it an armed conflict? - The classification of the situation in Syria*, in *Journal of International Law* edited by Iv. Javakhishvili Tbilisi State University, International Law Institute, Faculty of Law, 2012. P. 24.



Thus, in the context of the Syrian conflict, analysing different allied States involved on both sides of the deployment an overall situation of non-international armed conflict may be confirmed. However, investigating on the relation between the United States and Syrian forces, it may be asserted a change of the nature in international type characterised by direct attacks. Thus, it may observe parallel and two simultaneous conflicts portray the Syrian scenario<sup>47</sup>.

The overall scholars' perspectives on non-international armed conflict are also confirmed by the analyses of international organisations<sup>48</sup>. In this vein, as mentioned before, the first Report of the COI in 2011, stated

97. The commission is concerned that the armed violence in the Syrian Arab Republic risks rising to the level of an “*internal armed conflict*” under international law. Should this occur, international humanitarian law would apply. The commission recalls that the International Court of Justice has established that human rights law continues to apply in armed conflict, with the law of armed conflict applying as *lex specialis* in relation to the conduct of hostilities.

98. According to the Appeals Chamber of the International Criminal Tribunal for the Former Yugoslavia, an armed conflict exists when there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups, or between such groups within a State. The Trial Chamber in Tadić and subsequent cases interpreted the test for internal armed conflict as consisting of two criteria: the intensity of the conflict, and the organization of the parties to the conflict, as a way to distinguish armed conflict from banditry, unorganized and short-lived insurrections or terrorist activities, which do not fall within the scope of international humanitarian law.

99. The commission was unable to verify the level of the intensity of combat between Syrian armed forces and other armed groups. Similarly, it has been unable to confirm the level of organization of such armed groups as the Free Syrian Army. For the purposes of the present report, therefore, the commission will not apply international humanitarian law to the events in the Syrian Arab Republic since March 2011<sup>49</sup>.

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<sup>47</sup> T. Ruys, *The Syrian Civil war and the Achilles' Heel of the Law of Non-International Armed conflict*, in *Stanford Journal of International Law*. Vol. 50, No. 2, 2014. Pp. 247-280.

<sup>48</sup> L. R. Blank and G. S. Corn, *Losing the Forest for the Trees: Syria, Law, and the Pragmatics of Conflict Recognition*, in *Vanderbilt Journal of Transitional Law*. Vol. 46, No. 3, May 2013. Pp. 693-746.

<sup>49</sup> United Nations Human Rights Council, *Report of the independent international commission of inquiry on the Syrian Arab Republic*, 23 November 2011. A/HRC/S-17/2/Add.1. Paras. 97-99.

Later, in 2012, the further Report determined even more specifically that

12. In its previous reports, the commission did not apply international humanitarian law. During the present reporting period, the commission determined that the intensity and duration of the conflict, combined with the increased organizational capabilities of anti-Government armed groups, had met the legal threshold for a *non-international armed conflict*. With this determination, the commission applied international humanitarian law in its assessment of the actions of the parties during hostilities.

3. During the period covered by this third report, the commission has determined that the intensity and duration of the conflict, combined with the increased organizational capabilities of the FSA, do, in fact, meet the legal threshold for a non-international armed conflict. With this determination, the commission applied IHL, including Common Article 3, in its assessment of the actions of the parties during hostilities<sup>50</sup>.

Furthermore, in July 2012 the International Committee of the Red Cross according to its monitoring body, observed and supported the view of the non-international armed conflict within the Syrian Arab Republic borders. The actors individuated were Government forces and some organised armed opposition groups operated in several parts of the Country<sup>51</sup>. This type of qualification means that people who order or commit attacks on civilians including murder, torture and rape, or use disproportionate force against civilian areas, may be charged in violations under IHL<sup>52</sup>.

In conclusion as Ruys affirms, a non-international armed conflict confirms the brutality and the cruelest form of violence. The Syrian armed conflict, in this sense, shows also the difficulties of the laws to solve and deal with it<sup>53</sup>. According to Blank and Corn, therefore, “the event in Syria has demonstrated that what is needed is a more pragmatic understanding of what has evolved into the determining elements test. The process of

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<sup>50</sup> United Nations Human Rights Council, *Report of the independent international commission of inquiry on the Syrian Arab Republic*, 16 August 2012. A/HRC/21/50. Para. 12 and para. 3 of Annex II.

<sup>51</sup> Syria: ICRC and Syrian Arab Red Crescent maintain aid effort amid increased fighting, in International Committee of the Red Cross, Operational Update, 2012. <https://www.icrc.org/eng/resources/documents/update/2012/syria-update-2012-07-17.htm>

<sup>52</sup> S. Nebehay, *Exclusive: Red Cross ruling raises questions of Syrian war crimes*, REUTERS, July 2012. <https://www.reuters.com/article/us-syria-crisis-icrc/exclusive-red-cross-ruling-raises-questions-of-syrian-war-crimes-idUSBRE86D09H20120714>

<sup>53</sup> T. Ruys, *The Syrian Civil war and the Achilles' Heel of the Law of Non-International Armed conflict*, 2014. Pp. 247-280.

conflict recognition must align more closely with the LOAC's goals in order to ensure the most extensive fulfilment of those goals"<sup>54</sup>.

General speaking, within the Syrian scenario and according to the above analyses, Common Article 3 to the 1949 Geneva Conventions, the Additional Protocol II, the Rome Statute and the customary IHL principles related to a non-international armed conflict may be applied. However, Syria due to its non-ratification of Additional Protocol II, the provisions are not directly applicable<sup>55</sup>. Alike, due to non-ratification of the Rome Statute also those provisions are not applicable into the territory.

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<sup>54</sup> L. R. Blank and G. S. Corn, *Losing the Forest for the Trees: Syria, Law, and the Pragmatics of Conflict Recognition*, in *Vanderbilt Journal of Transitional Law*. Vol. 46, No. 3, May 2013. P. 731.

<sup>55</sup> *Syria, applicable international law*. In *Rule of Law in Armed Conflicts Project (RULAC)*, 2012. [http://www.adh-geneve.ch/RULAC/applicable\\_international\\_law.php?id\\_state=211](http://www.adh-geneve.ch/RULAC/applicable_international_law.php?id_state=211)

## Chapter Two

The international scenario of armed conflicts is characterised by impunities of severe and systematic violations perpetrated by different type of actors. To overcome this controversial and crucial issue, a first and foremost important step may be to determine the type of crimes committed by parties involved in armed conflicts. Doing so, a general and practical definition and categorisation of those offences may be essential. Indeed, in this second chapter evaluation and analysis of war crimes, crimes against humanity and genocide will be discussed. In the Syria context both sides of the conflict, the Government force on the one hand, and the armed groups on the other hand are responsible for those serious violations of the International Humanitarian Law.

The purpose of this section is to report severe acts committed by the actors involved, in order to find a future solution for the impunity scenario in Syria. The present chapter is articulated in three main paragraphs toward the principal violations observed by the international and national monitoring bodies or reported by the local media. After a brief introduction and explanation of general theoretical definitions and legal frameworks of such crimes, concrete examples identified in the Syrian case-study will be examined.

The following list and analyses are based on the violations under the International Humanitarian Law as well as the International Criminal Law. Indeed, key aims of these legal provisions in wartime are to deal with the conduct of parties and to judge those responsible of fundamental human rights violations. In this sense, protection of persons from abusive power is guaranteed.

Bearing in mind the possibility to observe and analyse same fundamental rights violations through the International Humanitarian Law and the Human Rights Law lens, for purposes of the present thesis, gross and systematic abuses will be examined only under the IHL. Indeed, elements as protection of dignity and person's integrity, torture and ill-treatment as well as economic, social and family rights are grounded of both of these regulations. The interplay role is furthermore observed. Due to the difficulty to separate and compartmentalise these two sets of law, the international community has to take them

into account in order to confront the violations. Besides, recent treaties have incorporated elements from both legal frameworks<sup>56</sup>. Generally speaking, in order to regulate, resolve and confront serious violations, the international community uses International Humanitarian Law as a *lex specialis* principle vis-à-vis International Human Rights laws. In this vein, under specific circumstances, the special law derogates and prevails over the general one that remains in the background. Moreover, according to Meron, Human Rights Law has influenced and enriched the formation of customary rules of humanitarian law. However, the protection offered by the Human Rights Laws and the Conventions does not cease during armed conflict situations<sup>57</sup>. The most relevant dissimilarity between these regulations concerns the different outcome observed. Precisely, International Human Rights provisions are legally binding only for the State actors.

In conclusion, as mentioned before, in the specific case of Syrian armed conflict several violations committed by the parties are violating of IHL and the IHRL alike. The focus of this chapter is to understand and analyse international crimes committed in this particular scenario in the light of the IHL provisions. This analysis will be valuable for the further remedies' chapter.

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<sup>56</sup> C. Droege, *The Interplay Between International Humanitarian Law And International Human Rights Law In Situations Of Armed Conflict*, in Israel Law Review. Vol. 40, No. 2, 2007. Research paper No. 14-07. Pp. 310-355.

<sup>57</sup> T. Meron, *The Humanization of Humanitarian Law*, The Hague Academy of International Law Monographs, Martinus Nijhoff Publishers. Vol. 3, 2006. Pp. 45-50.

## **2.1 Crimes under the International Humanitarian Law**

As stated before, in the following paragraphs Syrian violations under IHL will be analysed. In this vein, Article 5 (1) of the Rome Statute, the modern provision of ICL, defines and classifies four main international crimes as follows. It is important to underline, albeit Syria is not a Member State of the Rome Statute and consequently the afterward effects are not applicable, for the point of this chapter and this thesis, definitions of these provisions will be used. Indeed, Article 5 (1) states

1. The jurisdiction of the Court shall be limited to the most serious crimes of concern to the international community as a whole. The Court has jurisdiction in accordance with this Statute with respect to the following crimes:

- (a) The crime of genocide;
- (b) Crimes against humanity;
- (c) War crimes;
- (d) The crime of aggression<sup>58</sup>.

The following paragraphs will discuss those crimes in detail. In particular, war crimes, crimes against humanity and crimes of genocide will be largely explained. The crime of aggression will be not examined due to the oncoming implementation into the jurisdiction of the Court, in accordance with the future Article 8 *bis*. In support of the Rome Statute, Member States have adopted in 2010 during the Review Conference in Kampala, the Elements of Crimes. A document that sets out and assist the Court in the interpretation and application of the Statute crimes' articles.

It is essential to affirm that crimes reported below are only a minimum part of the atrocities and the violations observed in the context of the Syrian armed conflict. A detailed and complete crimes' report within the current large-scale armed conflict may be difficult to compile, especially in accordance with the few sources available.

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<sup>58</sup> United Nations General Assembly, *Rome Statute of the International Criminal Court* (last amended 2010), 17 July 1998, Article 5 (1).

### **2.1.1 War Crimes**

The first set of violations observed is the *War Crimes*. Generally speaking, as Ratner suggests, “war crimes are those violations of the law of war, or the international humanitarian law, that incur individual responsibility”<sup>59</sup>. Additionally, according to Tan, war crimes are “criminal violations of IHL that endanger protected persons, objects or important values”. This definition stresses to the close relation between war crimes and armed conflicts under the International Humanitarian Law<sup>60</sup>. As La Haye reports, moreover, a classic definition of war crime derives from the judge M. Lachs in 1945:

“A *war crime* is any act of violence qualified as a crime, committed during and in connection with a war under specially favorable conditions, created by the war and facilitating its commission, the act being directed against the other belligerent state, its interests, or its citizens, against a neutral state, its interest, its citizens as well as against stateless civilians, unless it is justified under the law of warfare”<sup>61</sup>.

However, is not the only one remarkable description into the international scenario. Indeed, several are definitions included into main international Conventions and Statutes. According to Solis, analysing the 1948 History of the United Nations War Crimes Commission and the development of the Laws of War’s document, war crimes are “serious violation of the laws or customs of war which entails individual criminal responsibility under international law”<sup>62</sup>. Moreover, as Dinstein reports, during the past decades every violation of the law of war constituted a war crime<sup>63</sup>.

In this vein, Article 6 (b) of the 1945 Charter of the International Military Tribunal states that

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<sup>59</sup> S. R. Ratner, “*War Crimes, Categories of*”, in R. Gutman, D. Rieff and A. Dworkin, *Crimes of War: what the public should know*. W. W. Norton & Company, New York, London, 2007. Pp. 420-422.

<sup>60</sup> A. M. L. Tan, *The Duty to Investigate Alleged Violations of International Humanitarian Law: Outdated Deference to an Intentional Accountability Problem*, in *Journal of International Law and Politics*, Vol. 49, 2016. Pp. 181-238.

<sup>61</sup> E. La Haye, *War Crimes in Internal Armed Conflicts*, Cambridge University Press, United Kingdom, 2008. P. 104. The author cites the definition of the judge M. Lachs in M. Lachs, *War crimes, an attempt to define the issues*. London: Stevens, 1945. P. 100.

<sup>62</sup> G. D. Solis, *The Law of Armed Conflict: International Humanitarian Law in War*, 2010. P. 302.

<sup>63</sup> Y. Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, 2004. P. 229.

*War crimes*: namely, violations of the laws or customs of war. Such violations shall include, but not be limited to, murder, ill-treatment or deportation to Slave labour or for any other purpose of civilian population of or in occupied territory, murder or ill-treatment of prisoners of war or persons on the seas, killing of hostages, plunder of public or private property, wanton destruction of cities, towns or villages, or devastation not justified by military necessity<sup>64</sup>.

Furthermore, each of the Geneva Conventions contain own list of grave breaches. Those violations are “wilful killing, torture or inhuman treatment, including biological experiments, wilfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly”<sup>65</sup>. In this vein, under the GC crimes not mentioned are considered simple illegal acts or breaches of the non-international armed conflict. However, development of international customary law, teleological approach of the articles of Geneva Conventions<sup>66</sup> and the recent implementation of the 1998 Rome Statute have extended the application over non-international armed conflicts. Doing so “grave breaches and other serious violations” contained in the common Article 3 of the Geneva Conventions are being criminalised<sup>67</sup> by the Article 8 (2) of the Rome Statute. The article provides a detailed list of war crimes, albeit not exhaustive<sup>68</sup>

2. For the purpose of this Statute, ‘war crimes’ means:

(a) Grave breaches of the Geneva Conventions of 12 August 1949, namely, any of the following acts against persons or property protected under the provisions of the relevant Geneva Convention:

(i) Wilful killing;

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<sup>64</sup> United Nations, Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis, "London Agreement", 8 August 1945.

<sup>65</sup> International Committee of the Red Cross (ICRC), *Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field* (First Geneva Convention), 12 August 1949. Article 50.

<sup>66</sup> L. Moir, *Grave Breaches and Internal Armed Conflict*, in *Journal of International Criminal Justice*. Oxford University Press. Vol. 7, 2009. Pp. 763-787.

<sup>67</sup> G. de Beco, *War Crimes in International Versus Non-International Armed Conflicts: “New Wine in Old Wineskins”?*, in *International Criminal Law Review*. Martinus Nijhoff Publishers, Vol. 8, 2008. Pp. 319-330.

<sup>68</sup> Y. Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, 2004. Pp. 228-233.



- (ii) Torture or inhuman treatment, including biological experiments;
- (iii) Wilfully causing great suffering, or serious injury to body or health;
- (iv) Extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly;
- (v) Compelling a prisoner of war or other protected person to serve in the forces of a hostile Power;
- (vi) Wilfully depriving a prisoner of war or other protected person of the rights of fair and regular trial;
- (vii) Unlawful deportation or transfer or unlawful confinement;
- (viii) Taking of hostages.

(c) In the case of an armed conflict not of an international character, serious violations of article 3 common to the four Geneva Conventions of 12 August 1949, namely, any of the following acts committed against persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention or any other cause:

- (i) Violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- (ii) Committing outrages upon personal dignity, in particular, humiliating and degrading treatment;
- (iii) Taking of hostages;
- (iv) The passing of sentences and the carrying out of executions without previous judgement pronounced by a regularly constituted court, affording all judicial guarantees which are generally recognized as indispensable.

(d) Paragraph 2 (c) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature.

(e) Other serious violations of the laws and customs applicable in armed conflicts not of an international character, within the established framework of international law, namely, any of the following acts:

- (i) Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities;
- (ii) Intentionally directing attacks against buildings, material, medical units and transport, and personnel using the distinctive emblems of the Geneva Conventions in conformity with international law;
- (iii) Intentionally directing attacks against personnel, installations, material, units or vehicles involved in a humanitarian assistance or peacekeeping mission in accordance with the Charter of the United Nations, as long as they are entitled to the protection given to civilians or civilian objects under the international law of armed conflict;
- (iv) Intentionally directing attacks against buildings dedicated to religion, education, art, science or charitable purposes, historic monuments, hospitals

- and places where the sick and wounded are collected, provided they are not military objectives;
- (v) Pillaging a town or place, even when taken by assault;
  - (vi) Committing rape, sexual slavery, enforced prostitution, forced pregnancy, as defined in article 7, paragraph 2 (f), enforced sterilization, and any other form of sexual violence also constituting a serious violation of article 3 common to the four Geneva Conventions;
  - (vii) Conscripting or enlisting children under the age of fifteen years into armed forces or groups or using them to participate actively in hostilities;
  - (viii) Ordering the displacement of the civilian population for reasons related to the conflict, unless the security of the civilians involved or imperative military reasons so demand;
  - (ix) Killing or wounding treacherously a combatant adversary;
  - (x) Declaring that no quarter will be given;
  - (xi) Subjecting persons who are in the power of another party to the conflict to physical mutilation or to medical or scientific experiments of any kind which are neither justified by the medical, dental or hospital treatment of the person concerned nor carried out in his or her interest, and which cause death to or seriously endanger the health of such person or persons;
  - (xii) Destroying or seizing the property of an adversary unless such destruction or seizure be imperatively demanded by the necessities of the conflict;

(f) Paragraph 2 (e) applies to armed conflicts not of an international character and thus does not apply to situations of internal disturbances and tensions, such as riots, isolated and sporadic acts of violence or other acts of a similar nature. It applies to armed conflicts that take place in the territory of a State when there is protracted armed conflict between governmental authorities and organized armed groups or between such groups<sup>69</sup>.

In conclusion, it may observe Rome Statute provisions represent the only legal apparatus to deal with atrocities of the non-international armed conflicts. Furthermore, based on evidence and facts, the most important element grounded war crimes is the existence of an armed conflict, with a significant level of threshold and an active presence of armed groups organised and Government forces that use certain type of weapons.

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<sup>69</sup> Rome Statute, *Article 8*. However, for the purpose of this thesis only paragraphs (a), (c), (d), (e) and (f) of Article 2 are reported.

### **2.1.1.1 War Crimes in Syria**

Following the above brief introduction to war crimes, in this section it will be reported studies conducted in Syria during the current grave situation. This dramatic scenario has been reported by the COI since 2011. Main War Crimes registered in these years are deliberate, indiscriminate and disproportionate attacks on civilians, use of unconventional weapons and weapon systems, such as barrel bombs, cluster munitions, air-dropped incendiary weapons, poisoned and chemical weapons. Additionally, latter weapons are universally prohibited even in Syrian territory, due to the ratification in 2013 of the 1993 Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (CWC).

Another controversial violation is also the use of siege as a method of warfare. The goal of this tactic is to deteriorate enemy defences, cutting them from reinforcements and vital supplies. Indeed, as consequences of this method, it may observe the deliberate starvation of civilians and the intentional denied of humanitarian access<sup>70</sup>. Under the Article 8 (2) (b) (xxiv) of the Rome Statute, indeed, these warfare tactics are considered War Crimes. However, through a broad perspective, the provisions may not apply to situations of non-international armed conflict<sup>71</sup>. The norms have to be dissected from the general to the particular aspects.

In the recent official COI's Report, according to the IHL regulations, ongoing violations have been confirmed as War Crimes. Indeed, it has been observed during the year 2016-2017, several intentional attacks to the civilian infrastructures as hospitals and schools. As it states "the involvement of Syrian forces is confirmed by the type of ammunition and

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<sup>70</sup> B. Van Schaack, *Mapping War Crimes in Syria*, in *International Law Studies* U.S. Naval War College. Published by the Stockton Center for the Study of International Law, Vol. 92, 2016. Pp. 282-339.

<sup>71</sup> R. Bartels, *Denying Humanitarian Access as an International Crime in Times of Non-International Armed Conflict: The Challenges to Prosecute and Some Proposals for the Future*, *Israel Law review*, Vol.48, No. 3, 2015. Pp. 281-307.

aircraft used”<sup>72</sup>. Or again, the deliberate attack of the Syrian Arab Red Crescent headquarter constitutes a “war crimes of intentionally directing attacks against humanitarian relief objects and intentionally directing attacks against humanitarian relief personnel. The attack also resulted in the denial of humanitarian aid in relation to the services provided at that centre”<sup>73</sup>. “The Commission also continue to document the use of cluster munitions by pro-Government forces across the Syrian Arab Republic in addition to the attacks in Aleppo city. Syrian or Russian aircraft continued to deploy cluster munitions in airstrikes on civilian populated areas of Idlib, Douma, Dayr az-Zawr, and Aleppo Governorate. The use of cluster munitions in densely populated areas is inherently indiscriminate (given the typically wide dispersal pattern and high dud rate, which continues to endanger civilians years after a cessation of hostilities) and therefore their use in civilian populated areas constitutes the war crime of indiscriminate attacks in a civilian populated area”<sup>74</sup>. On the other hand, from the armed groups side, the Commission has observed several violations of War Crimes. For instance, indiscriminate attacks, summary executions and corporal punishments, as well as, recruitment and use of child soldiers and suicide-bombers it has been exposed<sup>75</sup>. Indeed, systematic acts of torture, abuse, inhuman and degrading treatment of the prisoners as well as mass executions, sexual slavery, rapes are numerous and committed on a massive scale by both, the armed groups and the regime<sup>76</sup>. Therefore, the Commission has also reported as a War Crimes the destruction of cultural property of Palmyra, a World Heritage Site. The attack was committed by the Government forces and by the ISIS<sup>77</sup>.

The methodology used by the COI to collect the vital information is based on the fact-finding missions, as well as, victims and witnesses’ interviews. Likewise, the Commission “collected, reviewed and analysed satellite imagery, photographs, videos

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<sup>72</sup> United Nations Human Rights Council, *Human rights abuses and international humanitarian law violations in the Syrian Arab Republic*, 21 July 2016- 28 February 2017, 10 March 2017. A/HRC/34/CRP.3, para. 30.

<sup>73</sup> *Ibidem*, para. 39.

<sup>74</sup> *Ibidem*, para. 53.

<sup>75</sup> *Ibidem*, paras. 61, 73, 74, 75.

<sup>76</sup> Y. Guçturk, *War Crimes and Crimes against Humanity in Syria*, in *Insight Turkey*. Vol. 17, No. 1, 2015. Pp. 27-40.

<sup>77</sup> A/HRC/34/CRP.3, para. 84.

and medical records. Communications from Member States and reports from the United Nations and non-government organizations were also consulted<sup>78</sup>.

### **2.1.2 Crimes Against Humanity**

The second set of violations that the international community has currently observed in the Syrian context regards the *Crimes Against Humanity* committed by both sides of the armed conflict. As deGuzman observes, crimes against humanity are severe inhumane violations committed in a context that transform the jurisdiction from the domestic to the international level<sup>79</sup>.

The history of these crimes started after the First World War. However, the first appearance of the term as a positive crime punishable under the international law<sup>80</sup> was in the International Military Tribunal Charter adopted in 1945:

*Crimes against Humanity*: namely, murder, extermination, enslavement, deportation, and other inhumane acts committed against any civilian population, before or during the war, or persecutions on political, racial or religious grounds in execution of or in connection with any crime within the jurisdiction of the Tribunal, whether or not in violation of the domestic law of the court where perpetrated<sup>81</sup>.

Furthermore, the most recent Article 7 of the Rome Statute asserts that

1. For the purpose of this Statute, “*crime against humanity*” means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack:

- (a) Murder;
- (b) Extermination;
- (c) Enslavement;
- (d) Deportation or forcible transfer of population;

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<sup>78</sup> United Nations General Assembly, *Report of the Independent International Commission of Inquiry on the Syrian Arab Republic*, 1 February 2018. A/HRC/37/72, paras. 2, 4.

<sup>79</sup> M. M. deGuzman, “*Crimes against humanity*”, in W. A. Schabas and N. Bernaz, *Routledge Handbook of International Criminal Law*. Routledge Taylor & Francis Group, 2011. P. 121.

<sup>80</sup> G. Boas, J. L. Bischoff and N. L. Reid, *Elements Of Crimes Under International: Law International Criminal Law Practitioner Library Series Volume II*. Cambridge University Press, 2008. P. 22.

<sup>81</sup> IMT, *Article 6 (a)*.

- (e) Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law;
- (f) Torture;
- (g) Rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, or any other form of sexual violence of comparable gravity;
- (h) Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court;
- (i) Enforced disappearance of persons;
- (j) The crime of apartheid;
- (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.

2. For the purpose of paragraph 1:

- (a) 'Attack directed against any civilian population' means a course of conduct involving the multiple commission of acts referred to in paragraph 1 against any civilian population, pursuant to or in furtherance of a State or organizational policy to commit such attack;
- (b) 'Extermination' includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population;
- (c) 'Enslavement' means the exercise of any or all of the powers attaching to the right of ownership over a person and includes the exercise of such power in the course of trafficking in persons, in particular women and children;
- (d) 'Deportation or forcible transfer of population' means forced displacement of the persons concerned by expulsion or other coercive acts from the area in which they are lawfully present, without grounds permitted under international law;
- (e) 'Torture' means the intentional infliction of severe pain or suffering, whether physical or mental, upon a person in the custody or under the control of the accused; except that torture shall not include pain or suffering arising only from, inherent in or incidental to, lawful sanctions;
- (f) 'Forced pregnancy' means the unlawful confinement of a woman forcibly made pregnant, with the intent of affecting the ethnic composition of any population or carrying out other grave violations of international law. This definition shall not in any way be interpreted as affecting national laws relating to pregnancy;
- (g) 'Persecution' means the intentional and severe deprivation of fundamental rights contrary to international law by reason of the identity of the group or collectivity;
- (h) 'The crime of apartheid' means inhumane acts of a character similar to those referred to in paragraph 1, committed in the context of an institutionalized regime of systematic oppression and domination by one racial group over any other racial group or groups and committed with the intention of maintaining that regime;

(i) ‘Enforced disappearance of persons’ means the arrest, detention or abduction of persons by, or with the authorization, support or acquiescence of, a State or a political organization, followed by a refusal to acknowledge that deprivation of freedom or to give information on the fate or whereabouts of those persons, with the intention of removing them from the protection of the law for a prolonged period of time.

3. For the purpose of this Statute, it is understood that the term ‘gender’ refers to the two sexes, male and female, within the context of society. The term ‘gender’ does not indicate any meaning different from the above<sup>82</sup>.

In short, according to the above definitions, it may be observed vital general elements. First of all, these specific acts are committed on behalf of States against their citizens, or even against the civilian population as a primary object. In recent decades this assertion has changed its connotation and the possibility for the non-state entities to commit those atrocities may be accepted.

Moreover, Crimes Against Humanity must be widespread and systematic regarding the number of victims and the nature of the attack. In point of fact, the large-scale nature, the number of targeted persons, the nature of the offences, as well as, the awareness of the attacks are vital elements of Crimes Against Humanity. Finally, the context in which those abuses are verified may be during both, war or peacetime<sup>83</sup>. Indeed, as Rodenhauer affirms, today Crimes Against Humanity are frequently committed into unlike international armed conflict. According to the author, Crimes Against Humanity are inhuman human rights violations that deny victims the status of human being<sup>84</sup>.

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<sup>82</sup> Rome Statute, *Article 7*.

<sup>83</sup> G. Boas, J. L. Bischoff and N. L. Reid, *Elements Of Crimes Under International: Law International Criminal Law Practitioner Library Series Volume II*, 2008. Pp. 31-56.

<sup>84</sup> T. Rodenhauer, International Criminal Court and Tribunals. *Beyond State Crimes: Non-State Entities And Crimes Against Humanity*, in *Leiden Journal of International Law*, Vol. 27, 2014. Pp. 913-928.

### **2.1.2.1 Crimes Against Humanity in Syria**

Since the beginning of its mandate the COI has investigated and drew up several Reports in which it may be possible analysed the majority of Crimes Against Humanity committed during the Syrian armed conflict. Similar to the COI, same violations are reported by international human rights organisations, as well as, several local NGOs aimed to deal with and judge those grave abuses. The 2015 Report of Human Right Watch grounded of several photographs collected has demonstrated acts of torture, illness and death in detention, as well as, enforced disappearances perpetrated in Syria's detention centres. Through those pictures, the HRW has understood prisoners' conditions and specific treatments suffered into the Governmental custody. Causes of deaths in custody underlined derived from overcrowded cells, diseases and lack of medical care and inhumane conditions. Indeed, as the HRW's Report affirms "any acts within the detention centers that were part of a state policy of murder, torture or otherwise intentionally causing great suffering, could amount to a crime against humanity, and commanders who knew or should have known about the crimes and failed to prevent or prosecute them could be criminally liable"<sup>85</sup>.

In the previously Report, the HRW denounced actions of arbitrary arrests, unlawful detentions, enforced disappearances, ill-treatment, and torture into Governmental detention facilities. In particular, prolonged beating with batons, use of electricity, burning with car battery acid, sexual assault and humiliation and the pulling of fingernails, were used. Those treatments were inflicted with escalating levels of pain<sup>86</sup>. In this regard, the COI has also adopted Reports contain evidence and testimonies from victims and

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<sup>85</sup> Human Rights Watch Report, *If the Dead Could Speak: Mass Deaths and Torture in Syria's Detention Facilities*, December 2015. Pp. 1-86.

<sup>86</sup> Human Rights Watch Report, *Torture Archipelago: Arbitrary Arrests, Torture, and Enforced Disappearances in Syria's Underground Prisons since March 2011*, July 2012. Pp. 1-78.



witnesses. For instance, the 2014 Report stressed the International Humanitarian Law violations, the immense inhuman sufferance and torture acts committed by both, governmental and non-state actors against civilians or journalists. Victims have testified about regular use of public execution or amputation, rape or other forms of sexual violence, as well as, the difficulties to conduct a healthy life afterwards<sup>87</sup>. Again, confirmed also by the Syrian Network for Human Rights Report, both sides of the armed conflict are responsible for inhumane and torture treatment. In the light of this, the Syrian Government not only has violated IHL provisions, but also the Convention Against Torture ratified in 2004 as well as, the International Covenant on Civil and Political Rights and on Economic, Social and Cultural Rights adopted both in 2001<sup>88</sup>.

Furthermore, several and most recently are the Reports toward rape and sexual violence perpetrated by Government militias, and the organised armed groups alike. Indeed, in the last COI's conference, the Commission has stressed the importance to report the gender scenario and gender-based violence issues to the Human Rights Council. In this Report, the COI describes the critical situation of sexual and gender-based violence against women, girls, men and boys since the beginning of the armed conflict. As the Commission has stated, "Parties resort to sexual violence as a tool to instil fear, humiliate and punish, or in case of terrorist groups, as part of their enforced social order"<sup>89</sup>. Indeed, it has judged acts of murder, imprisonment, rape, sexual slavery and others inhumane treatment that causes sufferance and injury to body, mental and physical health as crimes against humanity perpetrated by the conflict's actors<sup>90</sup>. Analysing also the impact, it may affirm continuum sufferance in aftermath situation. Although physical and mental shocks, feelings of shame, guilty and family's dishonour have been reported. Psychological consequence on masculinity power has been registered on the male victims of rape alike<sup>91</sup>.

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<sup>87</sup> United Nations Human Rights Council, *Selected testimonies from victims of the Syrian conflict*, 16 September 2014. A/HRC/27/CRP.1.

<sup>88</sup> Syrian Network for Human Rights Report, *About Twelve Thousand Victims Died due to Torture in Syria International Day in Support of Victims of Torture*, June 2015. Pp. 1-7.

<sup>89</sup> United Nations Human Rights Council, Conference room paper of the Independent International Commission of Inquiry on the Syrian Arab Republic, *"I lost my dignity": Sexual and gender-based violence in the Syrian Arab Republic*, 26 February – 23 March 2018, 8 March 2018. A/HRC/37/CRP.3.

<sup>90</sup> *Ibidem*, para. 109.

<sup>91</sup> *Ibidem*, paras. 93-102.

Finally, as some authors affirm, party forces are using massive rape as a military tactic and weapon of war. In this vein, indeed, some commanders use rape, sexual torture and forced sexual violence to punish enemy communities or demoralise opponents<sup>92</sup>.

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<sup>92</sup> K. F. Crawford, A. Hoover Green and S. E. Parkinson, *Wartime sexual violence is not just a 'weapon of war'*, in in M. Lynch, the Project on Middle East Political Science (POMEPS), *Syria and the Islamic State*, 2014. Pp. 35-37.

### **2.1.3 Genocide**

The third set of violent actions is *Genocide*, a separate crime of the International Criminal Law. Hence, it may be necessary further considerations. ICL is a relatively new branch of the public international law with the role to criminalise gross violations of human rights and serious violations of international humanitarian law exposing individual responsible to criminal liability. Criminal accountability for serious violations of ICL is vital in order to promote respect for the rule of law, deter future violations and prove redress and justice for victims of the most serious international crimes<sup>93</sup>. It is fundamental to note that not all IHL violations are considered as international crimes, however, the most important are War Crimes, Crimes Against Humanity, Genocide and Crime of Aggression. The crime of Genocide, within its particular seriousness and intention of communities destruction, it has been defined the “crime of crimes”<sup>94</sup>. Coined by Raphael Lemkin in 1944 from Greek and Latin words, namely, *race, nations and kill*, was later defined by W. Churchill as “the crime without name”. After the Second World War, the concept has increased its importance and success. In particular, when the General Assembly, in 1948 adopted the Convention on the Prevention and Punishment of the Crime of Genocide. The Convention entered into force in 1951<sup>95</sup> and in 1955 Syria became part of the Convention. Article II of the Genocide Convention provides a legal definition of the crime, such as

In the present Convention, *genocide* means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- (a) Killing members of the group;
- (b) Causing serious bodily or mental harm to members of the group;
- (c) Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;

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<sup>93</sup> *International Crimes and Accountability: A beginner’s introduction to the duty to investigate, prosecute and punish*, in Diakonia International Humanitarian Law Resource Centre, 2013.

<sup>94</sup> R. Cryer, H. Friman, D. Robinson and E. Wilmschurst, *An Introduction to International Criminal Law and Procedure*, Cambridge University Press, 2007. P. 165.

<sup>95</sup> W. A. Schabas, *Genocide in International Law: the crime of the crimes*, Cambridge University Press, 2000. Pp. 14-50.

- (d) Imposing measures intended to prevent births within the group;
- (e) Forcibly transferring children of the group to another group<sup>96</sup>.

In the Rome Statute alike the Convention, under Article 6 Genocide is considered as international crime. Thus, analysing the Article, it may be observed several critical and vital elements. As Schabas observes, Genocide consists in five specific acts committed with the intent to destroy a national, ethnic, racial or religious group. These five actions are killing members of the group; causing serious bodily or mental harm to the members of the group; imposing conditions on the group calculated to destroy it; preventing births within the group and forcibly transferring children from one group to another. However, several Genocide crimes are excluded from the Convention. Those crimes are cultural genocide; ethnic cleansing; ecocide and the aftermath consequences from the use of nuclear weapons. Such atrocities are prosecuted as crimes against humanity, rather than as genocide. In order to deal with these crimes, a broader vision of the Convention may be necessary<sup>97</sup>. Additionally, as Gaeta affirms, unlike others crimes, Genocide may define as “prohibited actions committed by a person with a culpable mind”<sup>98</sup>. In other words, the mental element is the fundamental principle grounded the crime. Indeed, this element is also considered as the *dolus specialis* or the special intent to destroy groups manifested through physical, biological and cultural systems. In this vein, with the words “in whole or in part” it may observe the Convention’s definition of the quantitative dimension of the crime<sup>99</sup>. The element of target of Genocide crime is important in order to classify and prosecute the crime through the fair legal provisions. In conclusion, within the crime of Genocide three essential elements namely, acts, intent and victim group targeted on the ground of national, ethnic, racial or religious origins may be recognised.

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<sup>96</sup> United Nations General Assembly, *Convention on the Prevention and Punishment of the Crime of Genocide*, 9 December 1948, United Nations, Treaty Series, Vol. 78. P. 277, Article 2.

<sup>97</sup> W. A. Schabas, *Genocide in International Law: the crime of the crimes*, 2000. Pp. 151-205.

<sup>98</sup> P. Gaeta, *Genocide*, in W. A. Schabas and N. Bernaz, *Routledge Handbook of International Criminal Law*. Routledge Taylor & Francis Group, 2011. Pp. 109-120.

<sup>99</sup> W. A. Schabas, *An Introduction of the International Criminal Court*, 4th Edition, Cambridge University Press, 2011. Pp. 99-107.

### 2.1.3.1 Genocide in Syria

The most relevant event in the Syrian Arab Republic scenario that may be considered as a crime of Genocide is related with the Yazidi. This small religious minority has been victim of atrocities committed by the ISIS during the years of the Syrian armed conflict. Indeed, according to some evidence collected by the COI, the Human Rights Council and by the ISIS's publications alike, crimes involved may constitute a genocide.

As some authors suggest material elements of Genocide such as killing, severe bodily and mental harms, specific life's conditions grounded the destruction of the group, may be noticed. *Inter alia*, they have been observed violations, namely, deprivation of food and water, slavery, rape, sexual violence and specific measures to prevent birth, as well as, forced religious conversions and deportation of children in different groups.

Furthermore, according to the ISIS's publications and records, it may be established the existence of genocidal and dehumanise plan against the Yazidi group as such<sup>100</sup>. In this vein, according to the COI's Report, crimes' evidence proves that Genocide, Crimes Against Humanity and War Crimes are verified. In particular, whether the international community considers the Yazidi as an ethno-religious group. Finally, the Commission has demonstrated key mental element of intention, central to define crimes of Genocide and group's destruction<sup>101</sup>.

In conclusion, according to the above classification and definitions, relevant final remarks may be observed. Although the critical and interconnected relation among violations under the IHL, it may be stressed challenges grounded the above crimes' classifications. In real and practical cases, distinction between them is not an easy, clear and schematic process. The interlink and the different shade assumed by single crimes may make the procedure complicated and challenging.

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<sup>100</sup> V. Dakhil, A. Zammit Borda and A. R. J. Murray, *Calling ISIL Atrocities Against the Yezidis by Their Rightful Name: Do They Constitute the Crime of Genocide?*, in Human Rights Law Review, Published by Oxford University Press. Vol. 17, 2017. Pp. 261-283.

<sup>101</sup> United Nations Human Rights Council, *"They came to destroy": ISIS Crimes Against the Yazidis*, 15 June 2016. A/HRC/32/CRP.2. Paras. 102, 165.

For instance, a controversial relation may be observed between crime of Genocide and Crimes Against Humanity. In this sense, Article I of the Genocide Convention recognises the possibility to commit this atrocity during peace and wartime, alike the Crimes Against Humanity. Despite other peculiarities, this makes the clear separation complicated to achieve. In this light, however, key difference between these two types of violations is the specific intent to group's destruction within entire dimension. Moreover, unlike the Crimes Against Humanity, Genocide does not require a certain level of scale or widespread and systematic attacks against the civilian population<sup>102</sup>. As Ristea notices, Genocide is a particular form of Crimes Against Humanity. A mass and unique crime characterised by specific dehumanizing and destruction intent, aims and victim elements<sup>103</sup>.

In addition, same interrelations and challenges are also observed with War Crimes. For instance, a practical example in the Syrian context concerns the already mention systematic use of siege and starvation as a method of war. Analysing different aspects of the same warfare tactic, it may be possible classify the single violations derived from the besieged area into all those categories, namely, War Crimes, Crimes Against Humanity and Genocide<sup>104</sup>. Generally speaking, indeed, courts or tribunals have the crucial role to evaluate and classify different crimes, as well as, to overcome this critical process.

Bearing in mind the above classification and crimes' list, the following chapter will provide the best way of accountability for those violations applicable in the Syrian scenario. In fact, those atrocities constitute a wide range of international crimes and concern all the parties involved in the armed conflict. The international community has considered urgent the creation of an effective form of legal justice to hold perpetrators and address victims' needs. This necessity is on the ground of the violence scale achieve and the current political and military situation of the Syrian armed conflict.

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<sup>102</sup> R. Cryer, H. Friman, D. Robinson and E. Wilmschurst, *An Introduction to International Criminal Law and Procedure*, Cambridge University Press, 2007. Pp. 167-168.

<sup>103</sup> I. Ristea, *The Crime of Genocide in International Criminal Law*, in *Geopolitics, History, and International Relations*. Vol. 3, No. 1, 2011. Pp. 176-181.

<sup>104</sup> S. Power, *Siege Warfare In Syria: Prosecuting The Starvation Of Civilians*, in *Amsterdam Law Forum*, VU University Amsterdam. Summer Issue Vo. 8, No. 2, 2016. Pp. 1-22.

## Chapter Three

Despite several critical aspects of the current Syrian armed conflict analysed above, the impunity issue for abuses may be considered the central theme. In this vein, the intent of this chapter is to understand key problems that affect the juridical situation in Syria. The possibility to create an *ad hoc* or specific trials and investigation bodies will be explained in the following pages. Starting from the analyses of crimes committed in Syria during the armed conflict, the focus of the present chapter, indeed, concerns the creation of international or national tribunals, courts or other juridical bodies to judge violations observed in the previous chapter. Before entering into the core of the chapter, a brief overview towards the impunity concept may be necessary.

As Hin-Yan Liu states, due to the legal specific meaning involved in the term a universal and general definition may difficult to provide. According to Amnesty International, for instance, “impunity means exemption from punishment. The term conveys a sense of wrongdoers escaping justice or any serious form of accountability for their deeds. Impunity can arise at any stage before, during or after the judicial process”<sup>105</sup>. The author agrees with the dual versions of impunity, legal and practical aspects. According to Hin-Yan Liu, an orthodox legal approach may generate and sustain impunities simultaneously. Indeed, the law organises impunity through active and passive dimensions. On the one hand, with the active mechanism, impunity is considered as the suspension of the ordinary judicial process. On the other hand, with the passive side, structural properties and law’s characteristics generate the impunity. Thus, in other words, through the active dimension access to accountability and remedy procedures may be guaranteed. On the contrary, with the passive aspect, formal restrictions may deny accountability access.

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<sup>105</sup> Amnesty International, “*Disappearances*” and *Political Killings: Human Rights Crisis of the 1990s: a Manual for Action*, 1994, in H. Y. Liu, *Law’s Impunity: Responsibility and the Modern Private Military Company*, Hart Publishing, United Kingdom, 2015. P. 12.

Likewise, included in the Liu's book, another definition of impunity is affirmed by Joyner and the UN Special Rapporteur L. Joinet. In their work, impunity is the impossibility to condemn and convict perpetrators of human rights violations, implying the lack of implementation of effective remedies<sup>106</sup>. Indeed, according to the Special Rapporteur Mr. El Hadji Guiss, "impunity may be understood as the absence or inadequacy of penalties and/or compensation for massive and grave violations of the human rights of individuals or groups of individuals. This definition is applicable to civil and political rights, as well as economic, social and cultural rights, and also to collective or communal rights"<sup>107</sup>.

In the light of this issue, Sanchez affirms "preventing impunity has become the most contemporary goal under the Criminal Law and one of the scope of traditional criminal justice principles during the last decades"<sup>108</sup>. Indeed, States and the international community have the duty to overcome this problem, stopping impunity process and punishing responsible for criminal violations. Thus, through judicial and quasi-judicial bodies States may respect the victims' right punishing crimes perpetrators. To do so, States may fulfill their duty of protection vis-à-vis their citizens. Indeed, according to the author within a negative connotation of the notion of impunity, a "general lack of investigation, persecution, detainment, prosecution and sentencing has denied fundamental victims' rights protection"<sup>109</sup>.

Therefore, based on a very long historical background, as Lauren states, the concept of the fight against impunity may be considered as a consequence of several transformation forces. Indeed, this concept is characterised by historical changes, religious beliefs and political aspects as well as by technologies developments in all life sectors. Evolution of wars, armed conflicts and consequently human rights abuses and tragedies are the costs of transformations. Within this background, the culture of impunity, especially since 1990s, has pushed further the possibility to establish international judicial systems for the trial of persons charged with human rights atrocities, Crimes Against Humanity, or War

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<sup>106</sup> H. Y. Liu, *Law's Impunity: Responsibility and the Modern Private Military Company*, Hart Publishing, United Kingdom, 2015. Pp. 9-67.

<sup>107</sup> J. E. Viñuales, *Impunity: Elements for an Empirical Concept*, in *Law & Inequality: A Journal of Theory and Practice*, Volume 25, Issue 1, Article 3, 2007. Pp. 115- 144.

<sup>108</sup> J. M. S. Sanchez, *Doctrines Regarding The Fight Against Impunity and The Victim's Right for the Perpetrator to be Punished*, *Pace Law Review*, Vol. 28, No. 4, 2008. P. 866.

<sup>109</sup> *Ibidem*. P. 867.



Crimes. Indeed, in this scenario human rights have become key part in world affairs of political, economic and legal. As well as, the rule of law and international criminal courts have developed in order to protect victims against violations and to prosecute responsible for their actions. Moreover, from the historical perspective, a consequence of the transformation processes offers a clear confirm of the human capacity to move from an impunity culture to an accountability one. In this context, the protection of international human rights is an underlying principle<sup>110</sup>.

In conclusion, bearing in mind the notion of *fight against impunity* and in order to overcome the current jurisdiction problems in Syria, the present chapter is divided as follows. Firstly, general and historical aspects as well as principal characteristics of the main international judicial and quasi-judicial forums instituted by the international powers will be explained. The organisms namely, the International Criminal Court, the *ad hoc* Tribunal and the Hybrid Tribunal, will be discussed separately. Then, the concrete possibility to establish one of them into the Syrian scenario will be analysed. Opposite arguments will be analysed alike. As several authors affirm, asymmetric warfare, proliferations of different type of armed conflicts, terrorism and militarization of counter-terrorism have imposed tribunals and courts to reshape their traditional legal borders in order to address the contemporary issues<sup>111</sup>.

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<sup>110</sup> P. G. Lauren, “*From Impunity to Accountability: Forces of transformation and the changing international Human Rights context*”, in R. Thakur and P. Malcontent, *From sovereign impunity to International Accountability: the Search for justice in a world of States*. United Nations University Press, 2004. Pp. 15-41.

<sup>111</sup> D. Jinks, J. N. Maogoto, S. Solomon, *Applying International Humanitarian Law in Judicial and Quasi-Judicial Bodies: International and Domestic Aspects*, Asser Press, Springer, 2014. P. 25.

### **3.1 The International Criminal Court**

During the 1998 United Nations Conference in Rome, States approved a Statute in order to establish the permanent International Criminal Court in The Hague. The Court is an international and independent organism that targets criminals responsible for large-scale crimes. The internal structure is articulated in six different organs, namely, the Presidency, the Appeals Chamber, the Trial Chamber, the Pre-Trial Chamber, the Office of the Prosecutor and the Registry. These departments work following their own specific mandate and the Court's aims. Key roles of the Court are to investigate over crimes committed in armed conflicts and try individuals accused of serious violations of the International Humanitarian Law and Criminal Law, such as Crimes Against Humanity, War Crimes, Genocide and Crimes of Aggression. These roles are exercised over the State Members of the Statute. Thus, states under the Statute have agreed to prosecute individuals accused of those crimes. To ensure accountability the Court produces evidence in an autonomous way from the States, through public and oral hearing as well as with the examination of the facts<sup>112</sup>. According to the Rome Statute provisions indeed, "a person who commits a crime within the jurisdiction of the Court shall be individually responsible and liable for punishment"<sup>113</sup>. However, according to the *nullun crimes sine lege*<sup>114</sup> and the non-retroactivity *ratione personae*<sup>115</sup> principles, no individuals shall be criminally responsible for the conduct prior to the entry into force of the Statute and for crimes not included into the Statute. At the same time, States have legal obligations and responsibilities from the International Criminal Law. They have the duty to investigate violations, prosecute and punish in accordance with the law, the person allegedly responsible for those crimes committed within the States jurisdiction.

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<sup>112</sup> C. E. Philip, "The International Criminal Court: a brief introduction", in A. von Bogdandy and R. Wolfrum, Max Planck Yearbook of United Nations Law, Vol. 7. Koninklijke Brill, the Netherlands, 2003. Pp. 331-339.

<sup>113</sup> Rome Statute, Article 25 (2).

<sup>114</sup> Rome Statute, Article 22.

<sup>115</sup> Rome Statute, Article 24.

Beyond the independent and international status, the Rome Statute recognises also the complementary relationship between the Court and the national criminal jurisdiction. As Benzing affirms this means that “the Court does not have primary jurisdiction over national authorities, but plays a subsidiary role and supplements the domestic investigation and prosecution of the most serious crimes of the international law”<sup>116</sup>. This relevant principle has been instituted to delineate and limit the exercise of the ICC’s jurisdiction. Through the complementary regime, the Court encourages states to exercise their jurisdiction in the system of International Criminal Law. However, it may intervene whether States have failed their duty or are unwilling to prosecute armed conflict crimes. Indeed, within the fight against impunity lens, it may observe the role of the ICC as a court of last resort<sup>117</sup>. As Rothe and Collins stress, vital purposes of the Court are to investigate and prosecute cases when States are not able or unwilling to do so, in order to fight against impunity and to contribute to prevention of crimes. This latter objective is one of the main Court’s challenges. A deterrence principle includes not only the legitimacy of the law, but also the individual perception that made it extremely variable<sup>118</sup>. Hence, according to the Article 13 of the Statute, conditions to exercise jurisdiction over the crimes mentioned before are:

- (a) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by a State Party in accordance with article 14;
- (b) A situation in which one or more of such crimes appears to have been committed is referred to the Prosecutor by the Security Council acting under Chapter VII of the Charter of the United Nations; or
- (c) The Prosecutor has initiated an investigation in respect of such a crime in accordance with article 15<sup>119</sup>.

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<sup>116</sup> M. Benzing, “*The Complementary Regime of the International Criminal Court: International Criminal Justice between State Sovereignty and the Fight against Impunity*”, in A. von Bogdandy and R. Wolfrum, Max Planck Yearbook of United Nations Law, Vol. 7. Koninklijke Brill, the Netherlands, 2003. Pp. 591-632.

<sup>117</sup> *Ibidem*.

<sup>118</sup> D. L. Rothe and V. E. Collins, *The International Criminal Court: A Pipe Dream to End Impunity?*, in International Criminal Law Review, Vol. 13, 2013. Pp. 191-209.

<sup>119</sup> Rome Statute, Article 13.

According to the article, the Court may start its jurisdiction and investigations after State Party's communications or after the Prosecutor own-initiative (*proprio motu* procedure), on the basis of information or relevant documentations. Moreover, as the Article 13 sets out, through Security Council Resolutions may refer a situation to the Court. In this vein, it may observe the vital and critical relation between the ICC and the Security Council. Since the beginning of the Court jurisdiction, the Security Council with a selectivity and uncontrolled activities, has used its authority to refer situations twice, in Libya and Darfur. However, because of political, economic and judicial tensions among the Permanent Members, the SC has recently rejected the Resolution for the Syrian case<sup>120</sup>. According to the contemporary research of Verduzco, the Council considers the Court as its own instrument. This consensus view may create obstacles to the interaction between them. Nevertheless, the Security Council should support the Court's mandate against perpetrators through sanctions, asset freezing as well as more coordination and consultation<sup>121</sup>. Finally, as C. Gegout states, despite the potential fundamental positive impact of the Court, several are the current obstacles that it has to face. Lack of legitimacy during investigations and arrest processes as well as lack of credibility for some criminals and victims, are examples of these impediments. The credibility is linked to the Court capacity to provide universal criminal justice and peace, however, in this context the Court has to deal with lack of support and cooperation from States Member. To improve the impact of the ICC the Members Parties have to create a safe environment for victims and witnesses and in order to prevent further violence<sup>122</sup>. According to Kersten indeed, supporters of the Court believe in a positive impact and effects on conflict resolution. Justice process is vital in order to establish and maintain peace. On the contrary, critics argument concerns the possibility to undermine peace operations and prolong violence<sup>123</sup>.

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<sup>120</sup> R. Dicker, "The International Criminal Court (ICC) and Double Standards of International Justice", in C. Stahn, *The law and practice of the International criminal Court*, Oxford University Press, 2015. Pp. 3-12.

<sup>121</sup> D. R. Verduzco, "The Relationship between the ICC and the United Nations Security Council", in C. Stahn, *The Law and Practice of the International Criminal Court*, Oxford University Press, 2015. Pp. 30-64.

<sup>122</sup> C. Gegout, *The International Criminal Court: limits, potential and conditions for the promotion of justice and peace*, in *Third World Quarterly*, Vol. 34, No. 5, 2013. Pp. 800-818.

<sup>123</sup> M. Kersten, *The ICC may not bring justice to Syria*, in M. Lynch, *the Project on Middle East Political Science (POMEPS), Syria and the Islamic State*, 2014. Pp. 24-25.

### **3.2 The *ad hoc* Tribunals**

Now, the comparison between the ICC and *ad hoc* Tribunals may be inevitable. Within an historical prospective, during the 1990s the *ad hoc* Tribunals have played a vital role in the ICC's creation. However, their interplay role is characterised by several dissimilarities. The most important difference between these two judicial bodies regards the relationship between the Security Council and the national court. As May states, the International Criminal Tribunal for the Former Yugoslavia was a subsidiary organ of the Security Council created in conformity with the Chapter VII of the UN Charter. Likewise, this subordinate relation may be observed in the juridical affairs<sup>124</sup>. In addition, the complementary jurisdiction role of the ICC is in contrast with the primacy relation observed between special tribunals and national judicial body. According to this standard, those tribunals may preempt a prosecution in a national jurisdiction<sup>125</sup>.

Within the Security Council Resolution 827 in 1993, the ICTY was established in order to bring to justice responsible for the atrocities committed during the Bosnia-Herzegovina armed conflict<sup>126</sup>. Main objectives were i.e., prosecute persons responsible for the International Humanitarian Law violations, bring justice for the victims, as well as, restore peace, and deterrence for the further crimes. Based on the principle of *nullum crimen sine lege*, the ICTY was created to deal with responsible for grave breaches under the 1949 Geneva Conventions as well as crimes of Genocide, War Crimes and Crimes Against Humanity, through principles of International Humanitarian Law, customary law of war and Criminal Law<sup>127</sup>.

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<sup>124</sup> R. May, "The Relationship between the International Criminal Court and the International Criminal Tribunal for the Former Yugoslavia", in H. A. M. von Hebel, J. G. Lammers and J. Schukking, Reflections on the International Criminal Court, T. M. C. Asser Press, The Hague, 1999. Pp. 155-162.

<sup>125</sup> L. E. Carter, *The Future Of The International Criminal Court: Complementarity As A Strength Or A Weakness?*, in Washington University Global Studies Law Review, Vol. 12, 2013. Pp. 451-473.

<sup>126</sup> United Nations Security Council, Security Council Resolution 827, *International Criminal Tribunal for the former Yugoslavia (ICTY)*, 25 May 1993. S/RES/827.

<sup>127</sup> C. L. Sriram, O. Martin-Ortega and J. Herman, *War, conflict and Human Rights: theory and practice*, Routledge Taylor & Francis Group, 2010. Pp. 163-179.

Following this experience, under application of Chapter VII of the UN Charter and through the SC Resolution 955, in 1994 was established the International Criminal Tribunal For Rwanda<sup>128</sup>. Likewise, key scope was to address fundamental rights violations committed at that wartime. The Statute covered, indeed, War Crimes, Crimes Against Humanity, Genocide as well as, violations of the Common Article 3 of the GC. On the light of these judicial experiences, the international community has stated several criticisms. Among others main regard the high cost of implementation, the isolated position and the consequent lack of engagement with the local communities and populations. However, both of Tribunals have achieved important legal results for populations and have highlighted the importance to recognise the new aspects and issues of the crimes, i.e., the gender-based crimes into provisions of the International Humanitarian Law<sup>129</sup>. Moreover, through those Tribunals for the first time the international community has applied the notion and the legal provisions of Crimes Against Humanity and War Crimes to a non-international armed conflict. In this vein, it may notice that Common Article 3 of the GC and the Additional Protocol II have been enforced<sup>130</sup>.

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<sup>128</sup> United Nations Security Council, Security Council Resolution 955, *Establishment of the International Criminal Tribunal for Rwanda*, 8 November 1994. S/RES/955.

<sup>129</sup> C. L. Sriram, O. Martin-Ortega and J. Herman, *War, conflict and Human Rights: theory and practice*, 2010. Pp. 163-179.

<sup>130</sup> Y. Beigbeder, *International Justice Against Impunity: Progress and New Challenges*, Martinus Nijhoff Publishers, The Netherlands, 2005. P. 108.

### **3.3 The Hybrid Tribunals**

A third possible way in to the international judicial scenario in order to prosecute international crimes is the hybrid tribunal. In the early stages of the 2000s the Security Council established this alternative and new judicial institution in order to address allegations of horrific acts of violence<sup>131</sup> and to overcome criticisms of the courts mechanisms mentioned above. Without a general and predefine guideline, hybrid tribunals are based on the cooperation and the combination between domestic and international justices, between thus national and international laws. In this vein, each hybrid tribunals are unique and they are created with their own specific characteristics in accordance with the context in which they are inserted.

Generally speaking, within hybrid tribunals, international and national judges apply domestic and *sui generis* international procedures. With a central position in the State affected by the armed conflict, the tribunal may promote a sense of local participation and reconciliation.

Supporters of this juridical way stress on the benefits of impartiality and legitimacy typical of the international tribunals, combined with the strengths and efficiency of the domestic courts<sup>132</sup>. According to Orentlicher, indeed, international and national courts work in tandem, sharing responsibilities in order to enforce the humanitarian law and to build a transnational jurisprudence<sup>133</sup>. Hence, when States are incapable, unwilling or too engage into own circumstances and affairs to prosecute crimes and violations, the creation of hybrid tribunals may be necessary. States' neutrality and impartiality in this vein, are crucial key elements in order to establish a pure effective domestic trial. Due to their vital characteristics hybrid tribunals, according to Costi, combine the strengths of the ad hoc tribunals to the benefit of local prosecutions. The internationalised nature eases

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<sup>131</sup> J. Rowen, *War Crimes Tribunals, Crimes against Humanity and Transitional Justice*, in International Encyclopedia of the Social & Behavioral Sciences, 2nd Edition, Vol. 25, 2015. Pp. 382-388.

<sup>132</sup> C. L. Sriram, O. Martin-Ortega and J. Herman, *War, conflict and Human Rights: theory and practice*, 2010. Pp. 195-213.

<sup>133</sup> D. Orentlicher, *Striking a Balance: Mixed Law Tribunals and Conflicts of Jurisdiction*, in M. Lattimer and P. Sands, *Justice for Crimes against Humanity*, Hart Publishing, 2003. Pp. 211-233.

application of the international human rights standards within a domestic structure<sup>134</sup>. However alike the *ad hoc* tribunals, the mixed national-international courts are not immune from internal and international political pressures. Established by a political body, the tribunals suffer from lack of effective powers of arrest and effective international police<sup>135</sup>. Indeed, hybrid tribunals may be established through a bilateral agreement, under a post-conflict transitional UN administration, or as a domestic court with international fundamentals, as well as, with the Security Council Resolution<sup>136</sup>. In the international scenario, most remarkable examples of hybrid tribunals are the Special Court for Sierra Leone established in 2002 through a UN SC Resolution requested by the Secretary-General, the Extraordinary Chambers in the Courts of Cambodia, the Internationalised National Courts in Ethiopia and UN-Administered Courts in Kosovo and in East Timor. Another significant hybrid tribunal is the Special Tribunal for Lebanon created to prosecute the assassination of the Former President at that time.

Finally, vital elements of this tribunal may be flexibility, financing, international and domestic legitimacy, capacity-building, as well as, accessibility for victims and local communities and conflict prevention. As Costi concludes, indeed, hybrid courts “represent a sincere and laudable effort to improve on past transitional justice experiences and to remedy many of the major shortcomings of purely international tribunals. Some of the potential advantages of hybrid courts include the ability to foster broader public acceptance, build local capacity and disseminate international human rights norms. The collaboration of national and international legal personnel helps bring international law and norms to bear in ways that can be internalized and institutionalized”<sup>137</sup>.

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<sup>134</sup> A. Costi, *Hybrid Tribunals as a Viable Transitional Justice Mechanism to Combat Impunity in Post-Conflict Situations*, in *New Zealand Universities Law Review*, Vol. 22, December 2006. Pp. 213-239.

<sup>135</sup> Y. Beigbeder, *International Justice Against Impunity: Progress and New Challenges*, 2005. P. 142.

<sup>136</sup> Public International Law & Policy Group, *Hybrid Tribunals: Core Elements*, Legal Memorandum, 2013.

<sup>137</sup> A. Costi, *Hybrid Tribunals as a Viable Transitional Justice Mechanism to Combat Impunity in Post-Conflict Situations*, 2006. P. 239.



### **3.4 The Choice of the Perfect Forum for Syria**

In this section, according to the above definitions and overviews of international, domestic and quasi-judicial mechanisms an analysis of the perfect forum in the Syrian context will be provided. The contemporary armed conflict and its essential characteristics may influence the possibility to create judicial mechanism in order to fight against impunity and judge responsible for the violations observed. Yet, as Shabas states, according to the evolution of the international tribunals and courts and the development of warfare conventions, non-state actors responsible of International Humanitarian Law crimes may be punished. In particular, whether States have established a special tribunal or they have applied the ordinary Criminal Law<sup>138</sup>. Following this vein, theoretically speaking, accountability for the Syrian crimes may be possible. However, several critical aspects and obstacles characterise the practical fulfilment. Since the beginning of this armed conflict the international community has questioned itself in order to find effective solutions against protracted impunities. Indeed, all possible juridical solutions based on international facts and evidence have been examined. Each solutions characterised by positive and negative factors, have prejudiced the outcomes.

Firstly, the international scholars' community has analysed the possibility to establish an international court. However, as already mentioned, Syria is not a member of the Rome Statute *ergo* the ICC has no jurisdiction in the Country. The only way to establish this International Court would be through the Security Council Resolution. Since the beginning of the mandate, the COI and other international organizations alike, have suggested to the Security Council resolutions in order to refer the Syrian violations to the ICC. However, two Resolutions were vetoed and consequently blocked by Russia and China since 2014<sup>139</sup>. According to some author, whether the Syrian situation would be referred to the Court, an overall positive impact on justice and accountability may be

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<sup>138</sup> W. A. Schabas, *Punishment of Non-State Actors in Non-International Armed Conflict*, in *Fordham International Law Journal*, Vol. 26, 2003. Pp. 907-933.

<sup>139</sup> For instance, the UN SC Draft Resolution, S/2014/348, 22 May 2014.

observed. Furthermore, the positive effect may be verified only whether the Court would have jurisdiction over the entire Syrian situation<sup>140</sup> without limitations. To date, according to the current geopolitical issues and the contemporary diplomatic structures, this possible solution is not practicable.

Conversely, according to recently researches, C. Kenny has demonstrated a potential jurisdiction only over the ISIS' crimes through the Rome Statute mechanism, overcoming obstacles of jurisdiction, subject matters and modes of liability. In his studies, taking into account the relevance of the Islamic State as a *sui generis* non-state armed conflict, the possibility to prosecute crimes within the International Court jurisdiction may be observed. He has highlighted the critical and controversial issue towards the possibility to refer only *a situation* to the ICC, namely, the question of whether a defined armed group or specific set of crimes may be referred. Showing main previous cases of Darfur and Libya, he has also argued that refer *a Syria situation* with certain actor, geographic and temporal limitations may be possible. However, in accordance with the UN Charter and Rome Statute and bypassing the Country geopolitical obstacles, the Court is not bound to accept those limitations and it may decide to extend its jurisdiction over the entire territory of the State<sup>141</sup>. This alternative recommendation, solving accountabilities problems in the Country, may be a double-edge sword for the international and local actors involved.

The second model that the international community has taken into account is the implementation of an *ad hoc* regional tribunal specific for Syria. According to Beth Van Schaack's research, indeed, this specific tribunal could be established through a SC's Resolution or with a regional agreement among nearby States. Main aspects of the Tribunal may regard the retroactive mandate and a national judicial system. Moreover, the directive may cover the whole stages of the conflict and punish responsible of

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<sup>140</sup> M. Lattimer, S. Mojtahedi and L. A. Tucker, *A Step towards Justice: Current accountability options for crimes under international law committed in Syria*, in Ceasefire Centre for Civilian Rights' Report, 2015. P. 13.

<sup>141</sup> C. Kenny, *Prosecuting Crimes of International Concern: Islamic State at the ICC?*, in *Utrecht Journal of International and European Law*. Vol. 33, No. 84, 2017. Pp. 120-145.

inhuman treatments and War Crimes<sup>142</sup>. In the light of this latter factor, a range of crimes prosecute may highlight the positive impact. However, main problems with this juridical mechanism are related with the SC functions observed above.

Beyond these volatile hypotheses, however, legal experts have also considered the possibility to establish a hybrid tribunal in the region or into neighbouring States. They have supposed negative and positive impacts on the Syrian scenario. Obstacles, namely, the high costs necessary to the tribunal implementation, lack of impartiality and general legal trust into a corrupt post-conflict state, have observed. However, under favorable conditions this mechanism would have an overall positive impact towards Syrian justice and accountability<sup>143</sup>. In this vein, in fact, a cooperation between domestic and international law may show effective judicial arm to prosecute crimes' responsible. Indeed, the Chautauqua Blueprint document was a noteworthy international community's step. It called for accountability for atrocity crimes and/or the domestic violations in 2013<sup>144</sup>. In the wake of previously hybrid tribunals, the international community drafted a Statute for the creation of the Syrian Special Tribunal, namely, Syrian Extraordinary Tribunal to Prosecute Atrocity Crimes. However, any further steps were taken in this direction.

In conclusion, according to different tribunal options, hybrid and *ad hoc* tribunals are the most supported by the international community of scholars, the international organizations as well as the local institutes. However, geopolitical, diplomatic and economic issues grounded key obstacles observed. Indeed, while accountability and justice mechanisms are in a standstill situation, the international community has largely adopted two International Mechanisms to investigate over the crimes. Main roles of these two tools are to prepare crimes' reports over the Syrian armed conflict situation.

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<sup>142</sup> B. Van Schaack, *Mapping War Crimes in Syria*, in in International Law Studies U.S. Naval War College. Published by the Stockton Center for the Study of International Law, Vol. 92, 2016. Pp. 329-337.

<sup>143</sup> M. Lattimer, S. Mojtahedi and L. A. Tucker, *A Step towards Justice: Current accountability options for crimes under international law committed in Syria*, 2015. P. 16.

<sup>144</sup> T. W. Waters, *The shaping flame: trials, conflict and reconciliation in Syria*, in John Wiley & Sons Ltd, 2018. Pp. 257-270.

In particular today, War Crimes, Crimes Against Humanity, Genocide and other atrocities are monitored by the COI, the IIIM, as well as local NGOs.

These mechanisms for collecting evidence and preparing reports guarantee a basis for efficient and effective future accountability forums. However, their mandates have not a prosecutorial nature. For this reason, they are not enough to satisfy the fight against impunity's principle. Indeed, their mandate may be summarised in as a fact-finding mission. In addition, whether a unique and specific tribunal would be established in this scenario, one of its main role would be to collect evidence and testimonies. Basing its research on well-known Reports, in order to maintain its high level of credibility, the tribunal would have to produce its own Reports and analyses. Moreover, potential judicial mechanisms should have a specific scope of activities and own power to prosecute and judge individuals accused of the known crimes and atrocities. National and international support in order to build peaceful settings, collect evidences, protect witnesses and re-establish rule of laws in the Country may be additional aspects of Tribunals<sup>145</sup>. To date, according to political, domestic and international affairs the international community is not able to ensure a stable situation in Syria. Consequently, tribunals and fight against impunity's debates are current unsolved into the international community, without imminent resolutions.

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<sup>145</sup> M. Radziejowska, *Awaiting Justice: Prospects for Prosecuting War Crimes in Syria*, in Policy Paper of the Polish Institute of International Affairs. Vol. 31, No. 79, 2013. Pp. 1-6.

## Conclusion

The title of this thesis, namely, *fighting impunity: should the International Community create an ad hoc Criminal Tribunal to prosecute violations of international law in Syria?*, represents the main contemporary, controversial and critical debate into the international scenario. To better understand the current Syrian situation and to address this crucial question, it has been created an analytical path divided in three main steps. Through these three chapters, analyses toward international and non-international armed conflicts, international criminal crimes and judicial or quasi-judicial mechanisms have been described. Moreover, following theoretical and practical approaches, challenges and details of IHL and of the Syrian context, in particular, have been provided.

Starting from a brief introduction of the dramatic situation of the Syrian armed conflict, in the first chapter outline the main characteristics of international armed conflicts vis-à-vis non-international armed conflicts. The importance of armed conflict classification lies behind the fundamental application of the law of the war. As Crawford states, during the last century, States have changed their armed conflict's features. The way in which armed conflicts are conducted is totally transformed. Further evolution trend has moved from the traditional international armed conflict to the new non-international ones. Legal and practical factors, namely, proliferations of internal protests and non-state actors as well as new treaties and customary laws, are grounded on the changes of the *status quo*. New technologies, new strategies and new weapons have altered during these wars involving means and methods alike. Consequently, armed conflicts have started to affect not only the militias involved but also the population indiscriminately. Despite means and methods of armed conflicts, a significant revolution concerns the type of armed conflicts that arose after the Second World War. Since that time, non-international and internationalised

armed conflicts have become more frequent. Within the legal background, indeed, provisions and laws started to address the new armed conflicts era<sup>146</sup>.

As already affirmed, since 1949 through the Geneva Conventions and the Additional Protocols, non-international armed conflicts have obtained legal relevance and regulation. As it may evince actors, scope, intensity, brutality and frequency of this new type of armed conflicts shown the necessity to implement legal frameworks. Indeed, Common Article 3 sets forth fundamental, albeit limited, principles governing conduct in non-international armed conflict and ensuring protection for combatants and civilians<sup>147</sup>. The application of these international humanitarian rules has created a new vital customary law for non-international armed conflicts. In this vein, principles of distinction, military necessity, proportionality, prohibition of indiscriminate attacks, as well as, prohibition on causing unnecessary suffering are applied alike. However, a number of international humanitarian rules are not applicable for both types of armed conflicts. Accordingly, to this critical obstacle, before to undertaking any further steps and select the application of an efficient international humanitarian law instruments, the armed conflict classification may be essential. The main aspect behind the classification into a non-international armed conflict concerns actors involved. An internal armed conflict, indeed, is characterised by the presence of non-state armed groups that fight against State parties, or against other armed groups. Non-state armed groups play, in this sense, a critical role into the contemporary armed conflicts, posing challenges to accountability processes and to apply international humanitarian provisions<sup>148</sup>.

After general and vital considerations on international and non-international armed conflicts, in chapter one it has been provided a specific classification of the Syrian situation. In such context, according to important academics like S. Vite, T. Ruys, T. D. Gill, D. Wallace, A. McCarthy and S. R. Reeves and Beth Van Schaack as well as several

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<sup>146</sup> E. Crawford, *The Treatment of Combatants and Insurgents under the Law of Armed Conflict*, Oxford University Press, 2010. Pp. 6-47.

<sup>147</sup> E. Crawford, *Unequal before the Law: The Case for the Elimination of the Distinction between International and Non-international Armed Conflicts*, in *Leiden Journal of International Law*, Vol. 20, 2007. Pp. 441-465.

<sup>148</sup> C. L. Sriram, O. Martin-Ortega and J. Herman, *War, Conflict and Human Rights: Theory and Practice*, 2010. P. 12.

international organizations' reports, a non-international armed conflict scenario has been affirmed.

In the second chapter, having classified the Syrian armed conflict and taking into account the specific legal provisions, an evaluation and analysis of crimes under IHL and Criminal Law committed in Syria have been reported. Main crimes relevant for the purpose of this topic, namely, War Crimes, Crimes Against Humanity and Crime of Genocide have been examined. After theoretical definitions of those, a practical observation into the country has been provided. Evidence of these crimes are based on international organizations and UN Mechanism's Reports.

The choice to not include International Human Rights violations arose from the need to focus on international humanitarian crimes exclusively. Doing so, the possibility to recognise the same crimes into both legal frameworks has been taken into account and explained. As some scholars state, comparison between Humanitarian Law and Human Rights Law is more varied and has more diverse branches of legal sources on the ground. HRL applies within States territorial effective control and whether the States have ratified relevant Conventions and Treaties. Furthermore, the Human Rights Law addresses a wide range of individuals' actions<sup>149</sup>. Alike the Human Rights Law, the International Humanitarian Law aims to protect human life, prevent and punish violations and ensure fundamental juridical prosecutions. However, both laws establish different types of obligations and rights, and different legal consequences for states or individuals. Despite their specific matters, it may be affirmed that the Human Rights Law and the Humanitarian Law operate concurrently, complementing and reinforcing each other. Moreover, during internal armed conflicts, the international community has accepted the International Humanitarian Law as a *lex specialis* to Human Rights Law. In this chapter, in order to report international crimes and violations perpetrated into the Syrian context, definitions of the international crimes under the Rome Statute have been reported, albeit Syria is not a Member State of the ICC Statute. In this sense, Crime Against Humanity

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<sup>149</sup> O. A. Hathaway, R. Crotoft, P. Levitz, H. Nix, W. Perdue, C. Purvis, and J. Spiegel, *Which Law Governs During Armed Conflict? The Relationship Between International Humanitarian Law and Human Rights Law*, in *Minnesota Law Review, Law of Armed Conflict*, Vol. 96, 2012. Pp. 1883-1943.

has been defined as a unique category of crime. These are characterised by widespread or systematic attacks on the civilian population. Murder, enslavement, deportation, imprisonment, torture, rape, sexual slavery, persecution, apartheid are few of the crimes included<sup>150</sup>. Likewise, definitions of War Crimes and Genocide have been stated. Genocide, indeed, has been defined as a specific intent to destroy a particular national, ethnic, racial or religious group in whole or in part through different methods<sup>151</sup>. In addition, the critical interplay and relationship among these international crimes was observed. Following the same structure of the previous chapter, agreeing with the COI and the IIIM's Reports, a framework of the current Syrian situation has been considered. The critical scenario in which incessant and current international crimes has been demonstrated. The relevance of fact-finding mechanisms is closely related to the third chapter of this thesis.

Within the current critical Syrian framework, national or international accountability must be necessary. Chapter three represents the core of the international community's challenge of contemporary Century. Indeed, after a brief clarification of the current judicial bodies into the international scenario, a specific analysis of the Syrian context has been described. The possibilities to refer the situation to the ICC or to establish *ad hoc* or hybrid tribunals are affected by the crucial geopolitical and diplomatic issues of the Country. Generally speaking, according to M. Small, after the numerous mass atrocities and fundamental rights violations perpetrated during the 1990s the UN has created a program to allow states to hold those responsible for those inhumane acts. This instrument, namely R2P, is constituted by three pillars that ensure people's protection from mass atrocities crimes by the intervention of the international community. To date, however, it has not been utilised to its full potential<sup>152</sup>. The necessity to establish mechanisms and tribunals is based on the essential calls for human and humanitarian

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<sup>150</sup> C. L. Sriram, O. Martin-Ortega and J. Herman, *War, Conflict and Human Rights: Theory and Practice*, 2010. P. 48-64.

<sup>151</sup> L. van de Herik, "The Schism between the Legal and the Social Concept of Genocide in Light of the Responsibility to Protect", in R. Henham and P. Behrens, *The Criminal Law of Genocide: International, Comparative and Contextual Aspects*, Ashgate, 2007. Pp. 75-95.

<sup>152</sup> M. Small, *An Analysis of the Responsibility to Protect Program in Light of the Conflict of Syria*, in Washington University Global Studies Law Review, Vol. 13, 2014. Pp. 179-200.



rights of protection and prevention. Additionally, on the ground of these instruments it may observe the victims' right to know, fight against impunities and the responsibility to protect principles. The interplay role of these principles has been paid close attention among the international scholars and advocates. In this vein, as Bellamy observes, the responsibility to protect and international criminal justice are close related. These two instruments have complementary and mutually supportive roles toward the State. However, they have different purposes and basis. Both tools deal with the IHL and massive atrocities perpetrated into the State, nevertheless, the different legal and political nature make the relationship critical. Indeed, while the R2P focuses on crimes prevention through a forward-looking and proactive direction, the ICC on the other hand, through a backwards-looking and reactive direction, prosecutes perpetrators of those crimes. In addition, the R2P protection populations' role is obtained through a victim centred lens. On the contrary, the ICC is characterised by a prosecutor-centred view<sup>153</sup>. Under the shadow of the successes of the previous examples in which the international community has applied R2P or ICC instruments, conversely, in the Syrian context both of them have failed. Geopolitical considerations, economic interests and strategic investments of China and Russia have made the situation problematic, serious and unsolved<sup>154</sup>.

Thus, as explained in the third chapter, under the overall current Syrian scenario, implementation of international courts, *ad hoc* entities or hybrid tribunals, as well as, military or diplomatic interventions are impossible and difficult to verify. According to the current geopolitical and economic interests, the international community is unable to adopt any type of effective resolutions to stop impunities. However, as some scholars agree, Syrian Investigation Mechanisms may be considered the first step for criminal accountability and the first effective solution to this impasse situation until further considerations and developments.

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<sup>153</sup> A. J. Bellamy, “*Responsibility to Protect: Justice and Responsibility: Related but Not Synonymous*”, in J. Waterlow and J. Schuhmacher, *War Crimes Trials and Investigations: a Multi-Disciplinary Introduction*, Palgrave MacMillan, 2018. Pp. 263-292.

<sup>154</sup> A. Birdsall, *The Responsibility to Prosecute and the ICC: a Problematic relationship?*, in *Criminal Law Forum*, Vol. 26, 2015. Pp. 51-72.

In this vein, according to Whiting, the COI and the IIIM within a simply fact-finding role rather than a prosecutorial role, may represent a bridge to the future political stability in which the international community may establish tribunals and accountability instruments<sup>155</sup> to deal with international crimes.

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<sup>155</sup> A. Whiting, *An Investigation Mechanism for Syria: the General Assembly Steps into the Breach*, in *Journal of International Criminal Justice*, Vol. 15, 2017. Pp. 231-237.

## *Bibliography*

- **Primary sources**

Human Rights Watch Report, *If the Dead Could Speak: Mass Deaths and Torture in Syria's Detention Facilities*, December 2015.

Human Rights Watch Report, *Torture Archipelago: Arbitrary Arrests, Torture, and Enforced Disappearances in Syria's Underground Prisons since March 2011*, July 2012.

International Committee of the Red Cross (ICRC), *Geneva Convention*, 12 August 1949. And, International Committee of the Red Cross (ICRC), *Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II)*, 8 June 1977, 1125 UNTS 609.

M. Lattimer, S. Mojtahedi and L. A. Tucker, *A Step towards Justice: Current accountability options for crimes under international law committed in Syria*, in Ceasefire Centre for Civilian Rights' Report, 2015.

Press conference of Ms. Catherine Marchi-Uhel, Head of the 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. Geneva, 5 September 2017. [https://www.unog.ch/unog/website/news\\_media.nsf/\(httpNewsByYear\\_en\)/E646318F6DA509B4C1258193005150B1?OpenDocument](https://www.unog.ch/unog/website/news_media.nsf/(httpNewsByYear_en)/E646318F6DA509B4C1258193005150B1?OpenDocument)

Public International Law & Policy Group, *Hybrid Tribunals: Core Elements*, Legal Memorandum, 2013.

*Syria, applicable international law*. In Rule of Law in Armed Conflicts Project (RULAC), 2012. [http://www.adh-geneve.ch/RULAC/applicable\\_international\\_law.php?id\\_state=211](http://www.adh-geneve.ch/RULAC/applicable_international_law.php?id_state=211)

Syria: ICRC and Syrian Arab Red Crescent maintain aid effort amid increased fighting, in International Committee of the Red Cross, Operational Update, 2012. <https://www.icrc.org/eng/resources/documents/update/2012/syria-update-2012-07-17.htm>

Syrian Network for Human Rights Report, *About Twelve Thousand Victims Died due to Torture in Syria International Day in Support of Victims of Torture*, June 2015.

United Nations, Charter of the International Military Tribunal - Annex to the Agreement for the prosecution and punishment of the major war criminals of the European Axis, "London Agreement", 8 August 1945.

United Nations General Assembly, *Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law : resolution / adopted by the General Assembly*, 21 March 2006. A/RES/60/147.

United Nations General Assembly, Convention on the Prevention and Punishment of the Crime of Genocide, 9 December 1948, United Nations, Treaty Series, Vol. 78.

United Nations General Assembly, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 1 February 2018. A/HRC/37/72.

United Nations General Assembly, Rome Statute of the International Criminal Court (last amended 2010), 17 July 1998.

United Nations Human Rights Council, Conference room paper of the Independent International Commission of Inquiry on the Syrian Arab Republic, *"I lost my dignity": Sexual and gender-based violence in the Syrian Arab Republic*, 26 February – 23 March 2018, 8 March 2018. A/HRC/37/CRP.3.

United Nations Human Rights Council, *Human rights abuses and international humanitarian law violations in the Syrian Arab Republic*, 21 July 2016- 28 February 2017, 10 March 2017. A/HRC/34/CRP.3.

United Nations Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 16 August 2012. A/HRC/21/50.

United Nations Human Rights Council, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, 23 November 2011. A/HRC/S-17/2/Add.1.

United Nations Human Rights Council, Selected testimonies from victims of the Syrian conflict, 16 September 2014. A/HRC/27/CRP.1.

United Nations Human Rights Council, *"They came to destroy": ISIS Crimes Against the Yazidis*, 15 June 2016. A/HRC/32/CRP.2.

United Nations Security Council, Security Council Resolution 955, Establishment of the International Criminal Tribunal for Rwanda, 8 November 1994. S/RES/955.

United Nations Security Council, Security Council Resolution 827, International Criminal Tribunal for the former Yugoslavia (ICTY), 25 May 1993. S/RES/827.

- **Secondary sources**

- **Books**

- A. Cullen, *The Concept of Non-International Armed Conflict in International Humanitarian Law*, Cambridge University Press, New York, 2010.

- C. L. Sriram, O. Martin-Ortega and J. Herman, *War, conflict and Human Rights: theory and practice*, Routledge Taylor & Francis Group, 2010.

- D. Jinks, J. N. Maogoto, S. Solomon, *Applying International Humanitarian Law in Judicial and Quasi- Judicial Bodies: International and Domestic Aspects*, Asser Press, Springer, 2014.

- E. Crawford, *The Treatment of Combatants and Insurgents under the Law of Armed Conflict*, Oxford University Press, 2010.

- E. La Haye, *War Crimes in Internal Armed Conflicts*, Cambridge University Press, United Kingdom, 2008.

- G. Boas, J. L. Bischoff and N. L. Reid, *Elements Of Crimes Under International: Law International Criminal Law Practitioner Library Series Volume II*. Cambridge University Press, 2008.

- G. D. Solis, *The Law of Armed Conflict: International Humanitarian Law in war*, Cambridge University Press, New York, 2010.

H. Y. Liu, *Law's Impunity: Responsibility and the Modern Private Military Company*, Hart Publishing, United Kingdom, 2015.

J. Crowe and K. Weston-Scheuber, *Principles of International Humanitarian Law*, Published by Edward Elgar Publishing Limited, United Kingdom, 2013.

L. C. Green, *The contemporary law of armed conflict*, second edition published by Manchester University Press, United Kingdom, 2000.

R. Cryer, H. Friman, D. Robinson and E. Wilmshurst, *An Introduction to International Criminal Law and Procedure*, Cambridge University Press, 2007.

R. Kolb and R. Hyde, *An Introduction of the International Law of Armed Conflicts*, Published in North America (US and Canada) by Hart Publishing, 2008.

S. Sivakumaran, *The Law of Non-International Armed Conflict*. Oxford University Press, United Kingdom, 2012.

S. W. Preston, *Department of Defense Law of War Manual*, published by the Office of General Counsel Department of Defense, United State of America, May 2016.

UK Ministry of Defence, *The Manual of the Law of Armed Conflict*. Oxford University Press, United Kingdom, 2005.

W. A. Schabas, *An Introduction of the International Criminal Court*, 4th Edition, Cambridge University Press, 2011.

W. A. Schabas, *Genocide in International Law: the crime of the crimes*, Cambridge University Press, 2000.

Y. Beigbeder, *International Justice Against Impunity: Progress and New Challenges*, Martinus Nijhoff Publishers, The Netherlands, 2005.

Y. Dinstein, *The Conduct of Hostilities under the Law of International Armed Conflict*, Cambridge University Press, 2014.

- **Chapter of Books**

A. Bâli and A. Rana, “*Why There Is No Military Solution to the Syrian Conflict*”, in N. Hashemi and D. Postel, *The Syria Dilemma*, edited by A Boston Review Book THE MIT PRESS, Cambridge, Mass. London, England, 2013.

Amnesty International, “*“Disapperances” and Political Killings: Human Rights Crisis of the 1990s: a Manual for Action*”, 1994, in H. Y. Liu, *Law’s Impunity: Responsibility and the Modern Private Military Company*, Hart Publishing, United Kingdom, 2015.

A. J. Bellamy, *Responsibility to Protect: Justice and Responsibility: Related but Not Synonymous*, in J. Waterlow and J. Schuhmacher, *War Crimes Trials and Investigations: a Multi-Disciplinary Introduction*, Palgrave McMillan, 2018. Pp. 263-292.

C. E. Philip, “*The International Criminal Court: a brief introduction*”, in A. von Bogdandy and R. Wolfrum, *Max Planck Yearbook of United Nations Law*, Vol. 7. Koninklijke Brill, the Netherlands, 2003. Pp. 331-339.

D. Akande, “*Classification of Armed Conflicts: Relevant Legal Concepts*”, in E. Wilmshurst, *International Law and the Classification of Conflicts*. Oxford University Press, United Kingdom, 2012. Pp. 32-79.

D. Orentlicher, “*Striking a Balance: Mixed Law Tribunals and Conflicts of Jurisdiction*”, in M. Lattimer and P. Sands, *Justice for Crimes against Humanity*, Hart Publishing, 2003. Pp. 211-233.

D. R. Verduzco, “*The Relationship between the ICC and the United Nations Security Council*”, in C. Stahn, *The Law and Practice of the International Criminal Court*, Oxford University Press, 2015. Pp. 30-64.

L. van de Herik, “*The Schism between the Legal and the Social Concept of Genocide in Light of the Responsibility to Protect*”, in R. Henham and P. Behrens, *The Criminal Law of Genocide: International, Comparative and Contextual Aspects*, Ashgate, 2007. Pp. 75-95.

M. Benzing, “*The Complementary Regime of the International Criminal Court: International Criminal Justice between State Sovereignty and the Fight against Impunity*”, in A. von Bogdandy and R. Wolfrum, *Max Planck Yearbook of United Nations Law*, Vol. 7. Koninklijke Brill, the Netherlands, 2003. Pp. 591-632.

M. M. deGuzman, “*Crimes against humanity*”, in W. A. Schabas and N. Bernaz, *Routledge Handbook of International Criminal Law*. Routledge Taylor & Francis Group, 2011. Pp. 121-137.

P. Gaeta, “*Genocide*”, in W. A. Schabas and N. Bernaz, *Routledge Handbook of International Criminal Law*. Routledge Taylor & Francis Group, 2011. Pp. 109-120.

P. G. Lauren, “*From Impunity to Accountability: Forces of transformation and the changing international Human Rights context*”, in R. Thakur and P. Malcontent, *From sovereign impunity to International Accountability: the Search for justice in a world of States*. United Nations University Press, 2004. Pp. 15-41.

R. Dicker, “*The International Criminal Court (ICC) and Double Standards of International Justice*”, in C. Stahn, *The law and practice of the International criminal Court*, Oxford University Press, 2015. Pp. 3-12.

R. May, “*The Relationship between the International Criminal Court and the International Criminal Tribunal for the Former Yugoslavia*”, in H. A. M. von Hebel, J. G. Lammers and J. Schukking, *Reflections on the International Criminal Court*, T. M. C. Asser Press, The Hague, 1999. Pp. 155-162.

S. Haines, “*The Nature of War and the Character of Contemporary Armed Conflict*”, in E. Wilmshurst, *International Law and the Classification of Conflicts*. Oxford University Press, United Kingdom, 2012. Pp. 9-31.

S. R. Ratner, “*War Crimes, Categories of*”, in R. Gutman, D. Rieff and A. Dworkin, *Crimes of War: what the public should know*. W. W. Norton & Company, New York, London, 2007. Pp. 420-422.



- ***Journals' Articles***

A. Birdsall, *The Responsibility to Prosecute and the ICC: a Problematic relationship?*, in *Criminal Law Forum*, Vol. 26, 2015.

A. Costi, *Hybrid Tribunals as a Viable Transitional Justice Mechanism to Combat Impunity in Post-Conflict Situations*, in *New Zealand Universities Law Review*, Vol. 22, December 2006.

A. Cullen, *Definition of Non-International Armed Conflict in the Rome Statute of the International Criminal Court: An Analysis of the Threshold of Application Contained in Article 8(2)(f)*, in *Journal of Conflict & Security Law*, Vol. 12, No. 3. Oxford University Press, 2008.

A. M. L. Tan, *The Duty to Investigate Alleged Violations of International Humanitarian Law: Outdated Deference to an Intentional Accountability Problem*, in *Journal of International Law and Politics*, Vol. 49, 2016.

A. Whiting, *An Investigation Mechanism for Syria: the General Assembly Steps into the Breach*, in *Journal of International Criminal Justice*, Vol. 15, 2017.

B. Van Schaack, *Mapping War Crimes in Syria*, in *International Law Studies U.S. Naval War College*. Published by the Stockton Center for the Study of International Law, Vol. 92, 2016.

C. Droege, *The Interplay Between International Humanitarian Law And International Human Rights Law In Situations Of Armed Conflict*, in *Israel Law Review*. Vol. 40, No. 2, 2007. Research paper No. 14-07.

C. Gegout, *The International Criminal Court: limits, potential and conditions for the promotion of justice and peace*, in *Third World Quarterly*, Vol. 34, No. 5, 2013.

C. Kenny, *Prosecuting Crimes of International Concern: Islamic State at the ICC?*, in *Utrecht Journal of International and European Law*. Vol. 33, No. 84, 2017.

C. Steenkamp, *The Crime-Conflict Nexus and the Civil War in Syria*, in *Stability: International Journal of Security & Development*, Vol. 6, No. 1:11, 2017.

D. L. Rothe and V. E. Collins, *The International Criminal Court: A Pipe Dream to End Impunity?*, in *International Criminal Law Review*, Vol. 13, 2013.

D. Wallace, A. McCarthy and S. R. Reeves, *Classifying the Syrian War under the Law of Armed Conflict*, in *Michigan State International Law Review*. Vol. 25, No. 3, 2017.

D. Wallace, A. McCarthy, S. R. Reeves, *Trying To Make Sense Of The Senseless: Classifying The Syrian War Under The Law Of Armed Conflict* in *Michigan State International Law Review*. Vol. 25, No. 3, 2017.

E. Crawford, *Unequal before the Law: The Case for the Elimination of the Distinction between International and Non-international Armed Conflicts*, in *Leiden Journal of International Law*, Vol. 20, 2007.

G. de Beco, *War Crimes in International Versus Non-International Armed Conflicts: "New Wine in Old Wineskins"?*, in *International Criminal Law Review*. Martinus Nijhoff Publishers, Vol. 8, 2008.

H. Albasoos & Al-Maqbali, *An overview of the conflict in Syria*, in *International Journal of Research in Business and Social Science*, Vol. 6 No 1, 2017.

*International Crimes and Accountability: A beginner's introduction to the duty to investigate, prosecute and punish*, in *Diakonia International Humanitarian Law Resource Centre*, 2013.

I. Henderson, *The Contemporary Law of Targeting: military objectives, proportionality and precautions in attack under Additional Protocol I*, *International Humanitarian Law Series*. Vol. 25. Published by Martinus Nijhoff publishers, Leiden, Boston, 2009.

I. Ristea, *The Crime of Genocide in International Criminal Law*, in *Geopolitics, History, and International Relations*. Vol. 3, No. 1, 2011.

J. E. Viñuales, *Impunity: Elements for an Empirical Concept*, in *Law & Inequality: A Journal of Theory and Practice*, Volume 25, Issue 1, Article 3, 2007.

J. Grignon, *The beginning of application of international humanitarian law: A discussion of a few challenges*, in *International Review of the Red Cross*. Vol. 96, No. 893, 2014.

J. Martini, E. York and W. Young, *Syria as an Arena of Strategic Competition*, in RAND corporation, 2013.

J. M. S. Sanchez, *Doctrines Regarding The Fight Against Impunity and The Victim's Right for the Perpetrator to be Punished*, in *Pace Law Review*, Vol. 28, No. 4, 2008.

J. Rowen, *War Crimes Tribunals, Crimes against Humanity and Transitional Justice*, in *International Encyclopedia of the Social & Behavioral Sciences*, 2nd Edition, Vol. 25, 2015.

K. F. Crawford, A. Hoover Green and S. E. Parkinson, *Wartime sexual violence is not just a 'weapon of war'*, in M. Lynch, the Project on Middle East Political Science (POMEPS), *Syria and the Islamic State*, 2014.

K. Huszti Orban and N. Kalandarishvili-Mueller, *Is it a bird? Is it a plane? Is it an armed conflict? - The classification of the situation in Syria*, In *Journal of International Law* edited by Iv. Javakhishvili Tbilisi State University, International Law Institute, Faculty of Law, 2012.

L. E. Carter, *The Future Of The International Criminal Court: Complementarity As A Strength Or A Weakness?*, in *Washington University Global Studies Law Review*, Vol. 12, 2013.

L. Moir, *Grave Braches and Internal Armed Conflict*, in *Journal of International Criminal Justice*. Oxford University Press. Vol. 7, 2009.

L. Perna, *The Formation of the Treaty Law of Non-International Armed Conflicts*, *International Humanitarian Law Series*, Vol. 14. Martinus Nijhoff Publishers, Leiden, The Netherlands.

L. R. Blank and G. S. Corn, *Losing the Forest for the Trees: Syria, Law, and the Pragmatics of Conflict Recognition*, in *Vanderbilt Journal of Transitional Law*. Vol. 46, No. 3, May 2013.

M. Kersten, *The ICC may not bring justice to Syria*, in M. Lynch, the Project on Middle East Political Science (POMEPS), *Syria and the Islamic State*, 2014.

M. Radziejowska, *Awaiting Justice: Prospects for Prosecuting War Crimes in Syria*, in Policy Paper of the Polish Institute of International Affairs. Vol. 31, No. 79, 2013.

M. Small, *An Analysis of the Responsibility to Protect Program in Light of the Conflict of Syria*, in *Washington University Global Studies Law Review*, Vol. 13, 2014.

O. A. Hathaway, R. Crotoof, P. Levitz, H. Nix, W. Perdue, C. Purvis, and J. Spiegel, *Which Law Governs During Armed Conflict? The Relationship Between International Humanitarian Law and Human Rights Law*, in *Minnesota Law Review, Law of Armed Conflict*, Vol. 96, 2012.

R. Bartels, *Denying Humanitarian Access as an International Crime in Times of Non-International Armed Conflict: The Challenges to Prosecute and Some Proposals for the Future*, in *Israel Law Review*, Vol. 48, No. 3, 2015.

S. Power, *Siege Warfare In Syria: Prosecuting The Starvation Of Civilians*, in *Amsterdam Law Forum, VU University Amsterdam*. Summer Issue Vo. 8, No. 2, 2016.

S. Sivakumaran, *Re-envisaging the International Law of Internal Armed Conflict*, in *The European Journal of International Law*. Vol. 22, No. 1, 2011.

S. Vite, *Typology of armed conflicts in international humanitarian law: legal concepts and actual situations*, in *International Review of Red Cross*. Vol. 91, No. 873, March 2009.

T. D. Gill, *Classifying the Conflict in Syria*, in *International Law Studies U.S Naval War College*, Vol. 92, 2016.

T. Meron, *The Humanization of Humanitarian Law*, The Hague Academy of International Law Monographs, Martinus Nijhoff Publishers. Vol. 3. 2006.

T. Rodenhauer, International Criminal Court and Tribunals. *Beyond State Crimes: Non-State Entities And Crimes Against Humanity*, in Leiden Journal of International Law, Vol. 27, 2014.

T. Ruys, *The Syrian Civil War and the Achilles' Heel of the Law of Non-International Armed Conflict*, in Stanford Journal of International Law, 2014.

T. W. Waters, *The shaping flame: trials, conflict and reconciliation in Syria*, in John Wiley & Sons Ltd, 2018.

V. Dakhil, A. Zammit Borda and A. R. J. Murray, *Calling ISIL Atrocities Against the Yezidis by Their Rightful Name: Do They Constitute the Crime of Genocide?*, in Human Rights Law Review, Published by Oxford University Press. Vol. 17, 2017.

W. A. Schabas, *Punishment of Non-State Actors in Non-International Armed Conflict*, in Fordham International Law Journal, Vol. 26, 2003.

Y. Gucturk, *War Crimes and Crimes against Humanity in Syria*, in Insight Turkey. Vol. 17, No. 1, 2015.

- **Article**

S. Nebehay, *Exclusive: Red Cross ruling raises questions of Syrian war crimes*, REUTERS, July 2012. <https://www.reuters.com/article/us-syria-crisis-icrc/exclusive-red-cross-ruling-raises-questions-of-syrian-war-crimes-idUSBRE86D09H20120714>