

Syria: The War within and the Challenges of International Law

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ABSTRACT: *The Syrian situation is one which defies many solutions proffered and thus, it lingers for more than two years, taking different dimensions. The greatest challenge to the international community is how both sides to the conflict are persistently violating international humanitarian law, as well as human rights. This paper qualifies Syrian conflict into non-international armed conflict and stresses challenges before international law. As the conflict lasts for this long, its resultant effect is, colossal loss of lives and properties, while the UN allows foreign interference. Three possible scenarios deducible from the conflict could be; the regime may succeed in quashing the opposition; or the opposition may topple the government. The last could be, settlement reached through negotiations. However, one fundamental question is what happens to the violations of international law?*

KEYWORDS: *Armed conflict, Challenges, humanitarian law, human rights and violation.*

I. INTRODUCTION

International law has emerged from an effort to deal with conflicts among states, since rules provide order and help to mitigate destructive conflict; it is developed in a number of ways. First, the law comes out of international agreements and treaties between states, being treaties the most important source of international law. The existence of law does not mean that conflict is any easier to resolve.¹

However, states have rallied on treaties and other international agreements for security against war. The first important move beyond laws of war was the Kellogg-Briand Pact, signed by 63 countries in 1928, which condemned recourse to war for solutions of international controversies and foreswore war as an instrument of policy. Beyond this, many core principles of international law related to conflict prevention, have been incorporated in to the UN Charter, which include (but not limited to);

- The prohibition of use of force unless in self defence - article 2(4);
- The primacy of national sovereignty- article 2(7);
- The advancement of human rights; etc.

One of the clearest appeals to international law emerges with respect to Syrian conflict which started in March 2011. This paper therefore addresses the challenges before international law, with the growing violation of both international humanitarian law as well as international human rights law. This could therefore be possible, regards being had to the history and legal qualification of the conflict, principles of distinction and proportionality, the problem of displacement, as well as the recruitment and conscription of child soldiers in the execution of the conflict, means and method of warfare in the said conflict, to the different dimensions the conflict has been metamorphosing in to.

II. HISTORY OF SYRIAN CONFLICT

The Syrian civil war also known and referred to as the Syrian uprising, is an ongoing armed conflict in Syria, being fought between forces loyal to the Ba'ath Party government and those seeking to oust it. The conflict

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¹ Schabas W. A, International Law and Response to Conflict, in Turbulent Peace: Challenges of Managing International Conflict, in Chester A., Croker et al (ed), Washington DC, United State Institute of Peace Press, 2001, p. 603 – 618.

began on 15th March 2011, with public demonstrations, as part of the Arab Spring. In April, 2011, Syrian government deployed its army to quell the uprising and soldiers were ordered to open fire on civilians.²

After months of military sieges the protests evolved in to an armed rebellion, as opposition forces became increasingly armed and organized as they unified in to larger groups as well as receiving military aids from several foreign countries.³ However, the main opposition remained fractured without organized structure, although with the defection of some military officers, the Free Syrian Army came under the command of Riad Assad, who announced on 22 September, 2012 that the rebel forces are unified and the Command Centre is being moved from Turkey to inside Syria, to enable them capture the capital city of Damascus, according to ALJAZEERA News of 22 September 2012. The Syrian government characterizes the insurgency as “armed terrorist group”.

The Arab League, US, EU, GGC states and other countries have condemned the use of violence against the protesters. China and Russia have opposed attempts to agree to UN Resolution, condemning Assad’s actions and advised against sanctions, saying that, the method could escalate in to foreign intervention.⁴ Subsequently, the Arab League suspended Syria’s membership over the government’s response to the crisis, but sent an Observer Mission in December 2011, as part of its proposal for peaceful resolution of the crisis.⁵ In the last desperate attempt to reverse the fate of Syrians, the Arab League at its meeting in Cairo on 12 February 2012, adopted a resolution asking the Security Council to authorise joint Arab-UN forces to supervise the execution of ceasefire and it urged all its members to halt all forms of diplomatic cooperation with Syrian government.⁶ As a result, the former UN Secretary General, Kofi Annan was appointed as UN-Arab League Special Envoy. His efforts to broker peace between the opposition and the Syrian government proved abortive, thus he resigned his appointment. Lakhdar Brahimi, a Tunisian, was subsequently appointed.⁷ It is worthy of note that the situation in Syria is taking a lot of dimensions, with some countries already cutting ties with Assad’s government, among which are Libya, Tunisia, Britain , Turkey, Canada US, Belgium.⁸ As a result, many countries have already recognised the rebels as the true representatives of Syria. And presently, there are other scenario attached to it, examples of which could be the issue of biological weapons’ inspection and destruction by the UN and the proposed meeting of Syrian representatives and the opposition due to take place in Geneva What could have worsen the situation was the statement made by NATO on 1 November, 2011 of its intention of taking military action in Syria, after closing seven month campaign in Libya. Notwithstanding the position of Russia and China in disagreeing with sanctions, as a method that could escalate foreign intervention, Libyan government offered weapons, money and potential volunteers, who, right now are fighting alongside the opposition. In addition to this, the American Central Intelligence Agency is distribution of assault rifles, anti tank rockets’ launchers and other ammunitions to the Syrian opposition.⁹ This showcases why America has insisted on attacking Syria on an allegation of the use of biological weapons, if not for the pact reached between it and Russia.

III. LEGAL QUALIFICATION OF THE CONFLICT

In Syria the situation is one of fundamentally an armed and unarmed insurrection against the government, which is, the people are fighting the state, not each other. This position was held one month before the Red Cross declaration that, the conflict in Syria constituted a civil war. Joe Fearon, a Professor of political science at Stanford University, defines civil war as an armed conflict within a country between organized groups, who are fighting to

² Syrian Civil War, available at www.en.wikipedia.org/wiki/Syria-civil-war, last visited 19 September 2012.

³ *Ibid.*

⁴ *Ibid.*

⁵ *Ibid.*

⁶ Parah, L., Humanitarian Crises as a fresh Justification for international action in Syria, available at [www.iss.europa.eu/.../humanitarian crises-as-a fresh-jus](http://www.iss.europa.eu/.../humanitarian%20crises-as-a%20fresh-jus), last visited 23 September 2012.

⁷ Reasons behind Anan’s resignation were that, parties were not willing to cooperate with him in solving the crises .

⁸ As the conflict goes on, other countries followed suit in cutting diplomatic ties, while others may likely reestablish it, which is not probable.

⁹ Sterlin J., Is Syria in a Civil War? Available at <http://www.bestthinking.com/tramendingtopic/relate>, last visited 19 September 2012

control the central government or over a control of a region.¹⁰ To solve the problem that the above definition might create, towards qualifying the Syrian situation, was the statement of Jakob Kellenberger that, the conflict in Homs and the Province of Idlib, this year met the agency's three criteria of a non-international armed conflict- namely, intensity, duration and the level of organisation of rebels fighting government forces.¹¹ He went further to say that, 'it can be a situation of internal armed conflict in certain areas, such as the fighting in Bab Amru. What should be realized in qualifying Syrian situation in to non-international armed conflict is the fact that, there is protracted armed violence between governmental authorities and organized armed group. This is so, regards being had to the intensity and the duration of the hostility and the degree of the organisation by the parties.

It is however now clear that certain acts committed by both sides in those places can qualify to war crimes, for example, attack on civilian and civilian objects. It therefore suffices to say that the importance of this qualification is to imply future prosecutions for war crimes.

IV. CHARACTERISTIC OF THE CONFLICT

There is no gainsaying the fact that, in the Syrian conflict there is gross violation of humanitarian law, on the one hand, and on the other, human rights. This however suggests that, both humanitarian law and human rights law, apply during armed conflict and that the two bodies of law are complementary and influence each other. Thus, the various organs of the United Nations, along with international jurisprudence and doctrines, affirm that principle that, "fundamental human rights, as accepted in international law and laid down in international instruments, continue to apply fully in situation of armed conflict."¹² While the international humanitarian law remains the special law applicable during armed conflict, conflicting norms or standards sometimes require interpretation to determine whether a rule of humanitarian law or human rights law prevails in concrete setting. It is however worthy of note that in international humanitarian law, the main principles reigning in the use of force are the principles of distinction and proportionality, in order to avoid incidental loss of civilian life or damage to civilian objects.¹³ The principle of proportionality in humanitarian law is different from proportionality in human rights law. Whereas human rights law require that the use of force be proportionate to the aim to protect life, humanitarian law requires that the incidental loss of civilian life, injury or damage to civilian objects, caused by an armed attack must not be excessive, 'in relation to the concrete and direct military advantage anticipated.¹⁴ There is however the growing position that even under humanitarian law, the ability to use lethal force is limited not only by the principle of proportionality protecting incidental loss or damage to civilian objects, but also by other limitations inherent to humanitarian law, in particular, the principle of military necessity and the principle of humanity.¹⁵ Having identified that the situation in Syria is a non international armed conflict, it should be noted that, the treaty-based humanitarian law of non-international armed conflict contains very few rules on the conduct of hostilities. The most important one is the protection of civilian against attack, unless for such times as they take a direct part in hostilities, enshrined in Article 13(3) of APII. In Syria, the conflict is taking a lot of dimensions with many non-state parties to the conflict, ranging from Shahiba¹⁶ (a notorious Alawite paramilitary, who are accused of acting as unofficial enforcers for Assad's regime); the Free Syrian Army, most of who are defectors, to the Syrian National Council, which is the stage of the revolution of Syrian people. There is also the semblance of sectarianism, as some accused the government of fomenting sectarianism. In addition to this, there is the Kurdish stance in the conflict. Syrian Kurds represent 10% population and suffered decades of discrimination and neglect, and above all, since 1962, have been denied Syrian nationality.¹⁷

¹⁰ *Ibid*, the above definition by Joe Fearon, was considered to be an expired academic definition, but reasons for such are not farfetched hence it points some sense in the qualification of the conflict.

¹¹ Some Syrian Violence amongst to civil War, available at www.reders.com/syria-redcross-iduSL5E8687ICJ2012050, last visited 20 September 2012.

¹² Pfaner, T., Editorial of the International Review of the Red Cross Vol. 90, No 871, September 2008, p. 485.

¹³ Droege, C., 'Elective Affinities? Human Rights and Humanitarian Law', IRRC, Vol 90, No 871, September 2008, p. 525.

¹⁴ *Ibid*, p.526.

¹⁵ *Ibid*.

¹⁶ Gunmen loyal to Assad, which have created the secretive military, for the government, in times of crises.

¹⁷ Above note 9, to neutralize potential Kurdish opposition 200,000 were granted citizenship, but on 19 July 2012, Kurdish Democratic Party and Kurdish National Council forced out government forces from several areas.

In the same vein, there is foreign involvement. The conflict is interpreted as part of proxy war between Sunni states of Saudi Arabia, Turkey and Qatar- who support the Sunni led opposition. While Iran and Hezbollah in Lebanon support Alawite led government in Syria.¹⁸ Being that what it may, all armed forces in the hostility, including the non-state armed groups are required to abide by international humanitarian law as well as human rights law.

However, due to violations of both humanitarian law and human rights, the Human Rights Watch has repeatedly documented and condemned violations by Syrian government security including extra judicial killings, unlawful killings of civilians, enforced disappearances, use of torture and arbitrary detention. On the part of the opposition, they have subjected detainees to ill-treatment, torture and extra-judicial or summary executions in Aleppo, Latakia, Idlib, reported the Human Rights Watch on 12 September 2012.¹⁹ Torture and extra judicial or summary executions of detainees in the context of an armed conflict, are war crimes, and may constitute crimes against humanity, if they are widespread and systematic.

V. INTERNATIONAL LAW QUESTION

There are series of violations of international law regards being had to specificities of issues bordering on the requirements of international law and the standard setting, whereby the two factions in the violence supposed to have undertaken. This ranges from attack on civilians and civilian properties, treatment of detainees, the principle of proportionality, the issue of displacement, either internal displacement or refugees, conscription of children as soldiers, to the involvement of neighboring countries of, for example Turkey, Lebanon, and Iran in the crisis, to say the least.

a) Attack on civilian persons and their properties

Article 50 of API defines civilians as ‘persons who are not members of the armed forces’, being that they are non-combatants who do not take part in hostilities and thus under no circumstance could a civilian person or his properties be attacked. In this connotation however, it is worthy of note that the principle of distinction dictates that civilians in the hands of the enemy must be shielded from abuses of power and must also be spared of military operation. This is an important obligation expressed by APII thus:

The civilian population and individual civilians shall enjoy general protection against the dangers arising from military operations...shall not be the objects of attack. Acts or a threat of violence the primary purpose of which is to spread terror among the civilian population is prohibited.²⁰

In the same vein, objects that are indispensable for the survival of the civilian population are to be protected and as such, it is therefore prohibited to attack, destroy, remove or render useless for the purpose, objects indispensable to the survival of civilian population, such as foodstuff agricultural areas for the production of foodstuffs, crops, livestock, drinking water installations and irrigation works.²¹

It is however worthy of note that, there are certain acts that are prohibited, at any time and in any place, with respect to protected persons, which a civilian is part and parcel. These acts which shall not be meted on civilian persons include:

- (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 carrying out of execution without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized persons.²²

¹⁸ Above note 9.

¹⁹ Available at [http://www.hrw.org/news/2012/09/17, Syria-end-opposition-use-Syria](http://www.hrw.org/news/2012/09/17/Syria-end-opposition-use-Syria): End opposition use of torture, execution, last visited 19 September 2012.

²⁰ Article 13, AP II.

²¹ *Ibid.*

²² Article 3(1), Geneva Convention IV.

In as much as civilians shall not be object of attack, acts or threats of violence, the primary purpose of which is to spread terror against the civilian population are prohibited, the same way, attack on civilian population, by way of reprisals, are prohibited.²³

With regards to civilian objects, attacks shall be limited to military objectives, which by their nature, location, purpose or use, make an effective contribution to military action whose total or partial destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage.²⁴ This suffices to say that in the conduct of military operations, constant care shall be taken to spare the civilian population and civilian objects. The civilian objects include, but not limited to, cultural objects and places of worship, objects that are indispensable to the survival of the civilian population (meaning that starvation as a method of warfare is prohibited), the natural environment and works and installations containing dangerous forces.²⁵ The violation of all the aforesaid shall not release the parties to the conflict from their legal obligations under whatever name a party to a conflict is operating.

In the case of Syrian conflict, it should be stated categorically that, events unfolding themselves prove that civilians are not protected on the part of both government forces and the rebel forces. And by so doing, acts committed by both sides qualify to war crimes while torture, extra judicial killings, unlawful killings of civilians and arbitrary detention, are also by their nature, constitute war crimes and crimes against humanity, by the time they become widespread and systematic.²⁶ An example could be traced in the mortar strike from within Syria to a Border town of Akcakale, in Turkey, which killed a woman and her four children. This was followed by a retaliatory shelling of some towns within Syria by Turkey and all these events coincided with four explosions in Aleppo, which killed 34 people, most of whom were civilians.²⁷

(b) Displacement

The conflict in Syria has caused thousands to flee their homes with many seeking safety in nearby countries. According to the UN, about 1.5 million Syrians are displaced within the country. Turkey has seen the largest influx of refugees, Lebanon and Jordan with a significant number. On 11 September 2012, the United Nations High Commissioner on Refugees (UNHCR) has reported that a number of Syrian refugees have reached over 250, 000, exceeding the UNHCR estimate of 185,000 for the entire year.²⁸ And now with the September, 2013 report of UNCHR the number has reached an alarming rate of 2.1 million persons, originating from the country and over 1.9 million registered refugees.

It is however worthy of note that, as a result of the above fact and figure, the UN High Commission for Refugees is in a delicate situation, considering the fact that Syria is the third most important host for refugees in the world, with close to half a million Palestinians and more than 100, 000 Iraqi registered refugees.²⁹ There is however internal displacement caused by the direct or indirect action of both government forces and the armed groups of Free Syrian Army and generally the rebels. Faced by this threat, people either remains in their homes at the risk of losing their lives, live in fear or move to another part of the country. It should be noted however that the number of internally displaced persons presently is over 6.5 million with over one hundred thousand lives lost.

(c) Conscription of Child Soldiers

There are 250,000 children that are thought to be involved in the armed conflicts. Some estimates put the figure at 300, 000, with 40, 000 of child soldiers as girls. Many are recruited by force- stolen from their families and

²³ Article 50(2) and (6) of AP I.

²⁴ Article 52, *ibid*.

²⁵ See generally Article 53, 54, 55 and 56, *ibid*.

²⁶ See above note 19.

²⁷ Reported Syrian State TV and Aljazeera, on 3 October, 2012. See Ajenglish.com. As a result of the mortar strike, Turkey immediately called on NATO Secretary General and US on the need to convene an emergency NATO meeting, while Turkish Parliament also met and considered response as within the rule of engagement. It should be noted that the issue of cross border hostility may introduce another dimension to the conflict in Syria.

²⁸ Syrian Refugees top 25,000, Associated Press, 11 September 2012. See above note 2, *op cit*.

²⁹ Above note 19 and <http://www.internal-displacement.org/countries/Syria>, visited 11 November, 2013.

forced to fight. Sometimes children are made to kill their relatives, so they can never return home. Others join voluntarily, driven by poverty and the hope for regular meal. Not all of them fight; some may be given jobs such as couriers, while girls are often forced in to sexual slavery.³⁰

Human Right Watch reported that armed opposition groups in Syria are using children in combat and other military purposes as remarked:

Children as young as 14 have served in at least three opposition brigades, transporting weapons and supplies and acting as lookouts... children as young as 16 have carried arms and taken active roles against government forces.³¹

In addition to the above, male children of Syrian refugees, in neighboring countries remain prone to conscription and engagement in fights. This is so as HRW saw older men encouraging young boys to join the opposition armed forces. The organisation also checked several pieces of video footage online including clips from Free Syrian Army brigades, showing child fighters and ‘martyrs’ and others as children saying they want to die as martyrs. A clip showed a boy beheading captives as ‘cleansing’ process, taking place at a crime scene. Decapitated heads were picked up and placed on top of their bodies for swap deals, as victims were abducted individuals or prisoners.³²

Several laws are clear on this point and explain the minimum year of conscription and enlistment in to armed forces. In Syria, article 40 of the constitution under the Service of the Flag Law, Decree no. 115 of 5th October 1953, the minimum age of conscription, was the first day of January in which a Syrian citizen reaches 19. Although the law reserved the right, to lower the recruitment age to 18, in times of “war or emergency”. However there is no known domestic legislation that criminalises the age of recruitment of under 18, but Syrian government said it monitored the ages of recruitment and held that all international legal instruments signed by the government, including Optional Protocol are treated as domestic laws, so that there no need to enact a special law to incorporate such a domestic law. The report of the Committee on the Right of the Child was considered in Oct 2007 and the Committee appreciated Syria’s legal commitment on child recruitment but urged Syria to enact a legislation explicitly prohibiting the recruitment of children.

It is worthy of note that, Syria worked with ICRC to train a number of military officials in international humanitarian law, as part of efforts to integrate international humanitarian law in to theoretical and practical military training. It ratified the International Labour Organisation Convention No. 182 on Child Labour.³³ It was in this sense that, Syria, in 2003 amended some legislation.

An array of instruments speaks volume of protection afforded to children during armed conflict. The 1977 Additional Protocols to the Geneva Conventions provide that, children shall be subject of special respect and shall be protected against any form of indecent assault.³⁴

Preamble to the Committee of the Right of the Child also provides that:

The child shall be fully prepared to live an individual life in society and brought up in the spirit of the ideals proclaimed in the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity.³⁵

³⁰ Child Soldiers- The fact, available at www.peacedirect.org/lending-page/childsoldie, last visited 19 December 2012. The Aljazeera report of 23 February, 2013 is that not only children are conscripted; there are about 50, 000 women that are now enlisted in the Syrian Armed Forces mainly guarding check-points.

³¹ Human Right watch: Child Soldiers fighting in Syrian opposition, available at www.al-monitor.com/pulse/politics/2012/hrw-accuses-syrian-opposition-of-enlistingchild-soldiers, last visited 19 December 2012.

³² *Ibid.*

³³ Available at www.childsoldiersglobalreport.org/content/syrian, last visited 19 December 2012.

³⁴ Muhri, D. B., International Legal Standers, available at www.digitalcommons.uga.edu, last visited 19 December 2012.

³⁵ See generally preamble of Committee on the Rights of the Child.

The Rome Statute of the International Criminal Court made the practice of conscripting, enlisting and using children under age of 15, in hostilities, a war crime.³⁶ The African Charter on the Rights and Welfare of the Child, though regional treaty also established 18 as minimum age of for recruitment and participation in hostilities.³⁷ To be specific, Additional Protocols to the Geneva Conventions were the first international instruments to regulate the role of children in armed conflict. Thus API obligates parties to conflict to:³⁸

In recruiting among those persons who have attained the age 15years but who have not attained the age of 18 years, the parties to the conflict, shall endeavor to give priority to those who are oldest.³⁹

The above explains that any child conscripted, recruited or enlisted in to any armed forces and used in the conduct of hostilities, before attaining the acceptable age of 18 years, the party that does so is in violation of the law and as such a war crime.

(d) Means and Method of Warfare

Each party to the conflict must take all feasible precaution in the choice of the means and method of warfare with a view to avoiding, and in any event to minimizing incidental loss of civilian life, injury to civilian and damage of civilian object. In international armed conflict the duty of taking feasible precaution is set forth in Article 57(2)(a)(ii) of Additional Protocol I. The obligation is included in many military manuals. The APII does not make an explicit reference to the obligation to take all feasible precaution in the choice of means and method of warfare, but more recent treaty law applicable in non-international armed conflict does so, namely the Second Protocol to the Hague Convention for the Protection of Cultural Property.⁴⁰ This rule is set forth in the Military Manuals which are applicable in or have been applied in non-international armed conflicts.⁴¹

Weapons are nevertheless an integral feature of every armed conflict and the use of weapons is as old as the war itself. The earliest warriors were armed with clubs, spears and daggers. The iron revolution three thousand years ago led to the spread of weaponry, giving military power to the peasantry and townspeople of the world's fertile regions. Technological advances aimed at increasing firepower and the development of nuclear were the logical culmination and the ultimate refutation of the adage that war is, or might be, a continuation of politics by other means⁴².

It is however worthy of note that the aim of arms-control measures is to maintain peace and security and reduce the destructive potential of war. In many ways, arms control measures overlap with international humanitarian law. Rules of international humanitarian law are designed to moderate the hardships of war by attempting to confine hostilities to armed forces⁴³.

Under modern law, weapons used should not be of a nature to cause greater injury or suffering than is necessary for military purposes, military objectives and civilians or civilian property. Thus, it suffices to say that, it is up to each individual State or party to a conflict to determine whether new weapons comply with international humanitarian law or not. The law of the conduct of hostilities is composed of a variety of rules designed primarily to protect the civilian population against the effects of hostilities. However, the law also prohibits the abuse of protection, in particular by using civilians or civilian objects to shield military objects⁴⁴. In the same vein, the general principle of proportionality inherent in all international law, prescribes that, action by the parties to a conflict must not be beyond what is necessary to achieve. In its advisory opinion on the legality of the threat or the use of nuclear weapons, the International Court of Justice stated that, proportionality has to be upheld in both *jus ad bellum* and *jus in bello*. It stated:

³⁶ Article 8, Rome Statute of the ICC.

³⁷ OAU DOC. CAB/LEG/24.9/49 (1990).

³⁸ Art 72(2) API

³⁹ Art 145, *ibid*.

⁴⁰ Article 7, Second Optional Protocol to the Hague Convention, for the Protection of Cultural Property.

⁴¹ See for example Military Manuals of Benin, Croatia, Germany, Italy, etc.

⁴² See the editorials of IRRC, vol.87, No. 859, September 2005, pp413-417.

⁴³ *Ibid*.

⁴⁴ See the editorial of IRRC, VOL. 88, No. 864 of December 2006.

Use of force that is proportionate under the law of self-defence, must, in order to be lawful, also meet the requirement of the law applicable in armed conflict, which comprises in particular the principles and rules of humanitarian law⁴⁵.

Now the question is, whether in Syrian conflict there is arm control measures put in place in the conduct of the hostility or not.

(e) Different Dimensions of the Conflict

The Syrian armed conflict is one that defies all foreseeable solution, having been there for getting to two years now. There was however discussions as to whether to intervene in Syria on the basis of (R2P) right to protect, that is on whether the most heinous crimes are being committed or have committed by the regime against its people. The UN Security Council has of course applied this relatively new concept in relation to Libya, but with a different outcome⁴⁶. It is however argued that R2P becomes another political exercise of Permanent Five.

It is however worthy of note that, Rights to Protect have contributed to the politicization of the interpretation of international crimes as ILC pointed out in 2000, responsibility for states for gross violations of fundamental international obligations and criminal responsibility under international law, may exist in parallel, but should not be mistaken for one another⁴⁷. What should have been done is for UN Security Council to refer Syrian situation to International Criminal Court, which should have jurisdiction to investigate violations, by both government forces as well as the rebels. In this sense, it is expected that even Russia and China will most likely support. This is more so with the agitation of US to attack Syria on the allegation that, it used chemical weapons on its citizens, the claim which has been denied by the Syrian government. Had US attacked Syria, the following question, of international law principle, could have been apt – what prerequisites would an external party/parties need to satisfy, in order to legally use force, in Syria, since the use of force or military intervention is, in principle, contrary to Article 2(4) of the UN Charter? However America argued that, the “doctrine of humanitarian intervention” allows military action without the authorisation of the UN.

Another fundamental dimension to the Syrian conflict is how it turned in to a sectarian affair. The UN Independent International Commission of Inquiry has finally admitted sectarian civil war is raging in Syria.⁴⁸

The UN Panel led by Paulo Pinheiro of Brazil, states that the conflict has evolved from being a battle for political change into one that is:

Overtly sectarian in nature...mounting tensions have led to clashes between different armed groups along a sectarian divide, with some minority communities notably the Alawites and Christians forming armed self-defence groups to protect their neighborhoods from anti-g fighters...⁴⁹

The report produced, is a devastating indictment of US and other western powers, who have worked with Turkey, Saudi Arabia and Qatar to depose Assad, by recruiting and aiding a Sunni insurgency, overwhelmingly made up of Muslim Brotherhood supporters, Salafist and Al-Qaida-style groups. Many are foreign fighters brought to Syria with the specific aim of waging a jihad against what they conceive as heretical government. With sectarian divisions affecting Sunnis, Alawites, Armenians, Christians, Druze, Palestinians, Kurds and Turkmen, the entire communities are at risk of being forced out of the country or of being killed. For example about 800, 000 Christians who once lived in Homs, where Jabhat al- Nusra has a large presence, have fled to Damascus or Beirut.⁵⁰

Besides the sectarian nature of the conflict, there is also propaganda machinery mounted by mostly those who want to see to the end of Assad’s government. There is the growing propoganda by US against Syrian government of firing scud missiles against the opposition. US alleged that the Syrian military had fired six scud missiles at Sheikh Sulaiman base near Aleppo, occupied by the FSA. Syria denied this claim as ‘untrue rumours’.⁵¹

⁴⁵ Ibid.

⁴⁶ Parah. Op cit, above note 6.

⁴⁷ Ibid.

⁴⁸ UN admits Syria Wrecked by Sectarian Civil War, available at <http://www.guardian.co.uk/middle-east-live>, last visited 21 December, 2012.

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Ibid.

VI. CONCLUSION

It is worthy of note that international humanitarian law must be respected independent of any argument of *jus ad bellum*, regard being had to the legality of use of force. In this sense, the claim of self-defence is immaterial. The above also postulates that the conflict in Syria is violent with a shift in the paradigm of the war. Thus, a conflict of Syrian type is multi faceted with different interest groupings, but the most unfortunate situation is that the UN is being bastadised to look like a lame duck, with its Special Envoy remarking that the conflict if not ended, could lead to the death of another one hundred thousand people by in the year 2013, coupled with the already 40, 000 lives lost in the last twenty months, as at 30 November 2012. This figure has escalated, given the lukewarm attitude of UN in allowing foreign interference, like that of US, by supplying arms to the opposition – a very dangerous precedent.

It is worthy of note that, arming the opposition by Washington and its allies will continue, in anticipation that Assad's downfall will weaken Iran and consolidate US hegemony over the oil riches of the region. This argument has repeatedly been made by the advocates of war that only decisive intervention can ensure that Assad's downfall will see his regime replaced by a democracy and prevent the danger of chemical weapons falling in to the hands of jihadist groups. The truth of this position leaves much to be desired.

The sectarian nature of Syrian conflict is part of the crisis that engulfs the Middle East or particularly the Arab world. It is hard to determine who the winner could be, but even after the civil war a lot of issues bordering on the challenges before the international law will remain. One of such challenges is the respect of human rights and humanitarian law. This is because both parties to the conflict are accused of violations, but could the opposition win, they could be held in high esteem by the West and US. The problem attached to this is that the culture of impunity will be perpetrated, since a precedent is set in Libya. With rebels in government, all the atrocities committed by them will never be made mention of. On the other hand, members of the deposed government will be made to answer charges of international crimes, either before international Criminal Court or at home.

The Syrian conflict may have three possible theoretical scenarios. One is that, the regime security policy proves successful as it manages to quash the uprising before implementing a package of reforms, and in some cases, new laws. However, it is noteworthy that the regime is bankrupt and has lost every shred of its legitimacy and is only able to maintain its unity, courtesy of its military and security forces, which is still obedient to the regime, unlike the case of Libya or Egypt. The second scenario is that the uprising manages to topple the regime. A rational approach to the current balance of power does not support this conclusion. It is only likely in the event of outside intervention, which is not certain presently.⁵² The third scenario may be settlement reached by negotiation, between the representatives of the popular opposition groups and the regime. This has proved to be difficult, with Syrian National Council pulling out of all international talks, but the hope will not be lost entirely, since there could be more windows for negotiations, only if all Syrians come to term with reality that, they are doing harm than good to the country and not any other place. The Syrian conflict is a situation that defies all possible solutions and scenario. This is so, with the Arab League authorizing the Syrian National Council's chairman, to occupy the Syrian seat at the Arab League Summit held in Doha in March, 2013. Nobody would say what will happen next, since international law's capacity to remedy the crisis in Syria, is fraught, but time will tell.

⁵² Ibid. However, peace talk dubbed as Geneva II, aimed at bringing the opposition and the regime of Syrian President, Assad, is slated for November, 2013. The Arab League has urged the opposition to attend.