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Negotiating the Implementation of Children’s Right to Life with Bashar al-Assad Regime: International Law and the Syrian Humanitarian Crisis

YURI MANTILLA¹

Introduction

As a result of intense ethnic and religious conflicts, children have been among the main victims of the Syrian civil war. Because of this, there is a humanitarian crisis that especially threatens the survival of children. Consistent with international law norms, the Syrian government has the legal obligation to ensure respect for fundamental human rights including the right to life in its jurisdiction. Considering Bashar al-Assad’s regime inability to do it, and its violations of the right to life of children, there is a normative imperative for a global humanitarian effort to implement fundamental norms of international human rights law and international humanitarian law in Syria. An international diplomatic negotiating effort, with the participation of the Syrian government, countries members of the International Syria Support Group, and developing nations, can be an effective mechanism to safeguard respect for the right to life of children.

The Magnitude of the Syrian Humanitarian Crisis

Even though the Syrian government is in control of most of its territory, the consequences of crimes against humanity continue to affect the Syrian population and its most vulnerable members.² How did this

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2. *Rigging the System, Government Policies Co-Opt Aid and Reconstruction Funding in Syria*, HUMAN RIGHTS WATCH (June 23, 2019), <https://www.hrw.org/report/2019/06/28/rigging-system/government-policies-co-opt-aid-and-reconstruction-funding-syria> (“Now,

humanitarian catastrophe start? Regarding the events of 2011 that led to the Syrian civil war, Christopher Phillips writes:

In early March a group of teenagers from Deraa had been arrested for scrawling on their school wall ‘doctor, your turn next’ — referring to Assad — and, ‘down with the regime.’ . . . They were taken to Damascus and tortured . . . The next day, at the funerals of those killed, thousands more took to the street, chanting anti-regime slogans and smashing up regime symbols . . . As protests continued . . . security forces had launched a harsher crackdown and surrounded the city, cutting off electricity, water and mobile phone networks. But technology had already allowed the news to spread.³

The Syrian civil war started with teenage children protesting Bashar al-Assad’s regime. Unfortunately, after several years, children have become among the main victims of widespread violations of the right to life. Similarly, in another historical context, the Nazi regime was responsible for crimes against civilian populations including children. The Nazi crimes against children included medical experiments such as the ones on genetics performed by doctor Mengele on Gypsy twin children.⁴

Despite the Syrian government retaking control over most of its territory, in the current historical context, violations of fundamental norms of international human rights law and international humanitarian law continue to happen. According to Carla E. Humud:

In March 2019, Syrian and Russian strikes in Idlib reportedly intensified to their highest level in months. U.N. officials have described Idlib as a “dumping ground” for fighters and civilians — including an estimated one million children — evacuated or displaced from formerly opposition-held areas in other parts of the country. U.N. officials have warned that a mass assault on Idlib could result in “the biggest humanitarian catastrophe we’ve seen

with the exception of Idlib, most of Syria appears to be moving into a low intensity or even post-conflict phase. The Syrian government has regained most of the territory. But the scale of destruction and devastation is crippling in most of the country, and in the face of poverty, corruption, and continuing insecurity, the humanitarian and reconstruction needs of Syrians both within and outside of Syria are immense.”).

3. CHRISTOPHER PHILLIPS *THE BATTLE FOR SYRIA* 49 (2016).

4. *See generally* GEORGE J. ANNAS & MICHAEL A. GRODIN, *THE NAZI DOCTORS AND THE NUREMBERG CODE: HUMAN RIGHTS IN HUMAN EXPERIMENTATION* 15-16 (1992) (analyzing history of Nazi atrocities against children in the field of medicine).

for decades.⁵

Ms. Bachelet, U.N. High Commissioner for Human Rights, in a September 2019 statement, indicated that her office "had verified 1,089 men, women and children killed in the war-torn country's north-west . . . A total of 1,031 of these civilian deaths are reportedly attributable to the airstrikes and ground-based strikes carried out by Government forces and their allies on Idlib and Hama governorates."⁶ The U.N. High Commissioner's statement of facts shows the importance of finding a solution to extreme violations of human rights by the Bashar al-Assad regime. Regarding the situation of children in Syria, Jasmine M. El-Gama writes:

In the northwestern Sinjar region, children born as a result of ISIS' systematic rape of Yezidi women have been declared unwelcome in the community by religious decree. To the south, in the Rukban camp close to the Jordanian border, 27,000 displaced Syrians, many of them children, are hungry, sick, and cut off from the world around them... In an ugly war that has torn apart a country and destabilized an entire region, the ravaged childhoods and uncertain futures of innocent children are perhaps the most devastating consequences.

The war in Syria has resulted in one of the largest humanitarian crises of our time. The 2019 figures are staggering: 5.6 million registered refugees; 6.2 million people displaced internally; 700,00 children out of school in the region. Massive waves of displacement have accompanied the indiscriminate barrel bombs, torture, rape, mass execution and chemical attacks that stole the lives of children as they slept."⁷

The facts mentioned above demonstrate the ongoing threats to the right to life of children in Syria. Considering the current political strength of the Bashar Al-Assad regime, its prevalent violations of human rights and the crimes against humanity that took place in Syria, should the international community engage in an effort to negotiate with the Syrian

5. CARLA E. HUMUD, CHRISTOPHER M. BLANCHARD & MARY BETH D. NIKITIN, CONG. RESEARCH SERV., RL33487, ARMED CONFLICT IN SYRIA: OVERVIEW AND U.S. RESPONSE (2019).

6. *Human rights are everyone's business, amid relentless crises around world: UN's Bachelet*, U.N. NEWS (Sept. 4, 2019), <https://news.un.org/en/story/2019/09/1045602>.

7. Jasmine M. El-Gamal, *Innocent Victims of a Brutal War, Syria's "Lost Generation" can Still be Saved*, ATLANTIC COUNCIL (July 2, 2019), <https://www.atlanticcouncil.org/blogs/syriasource/innocent-victims-of-a-brutal-war-syria-s-lost-generation-can-still-be-saved/>.

regime a solution for the protection of Syrian children's right to life? To answer this question, first it is necessary to understand the historical, political, ethnic and religious origins of the Syrian conflict.

Civil War, Ethnic Conflicts and Violations of Children's Right to Life

According to the Syrian Observatory for Human Rights, over half a million people have died in the Syrian civil war.⁸ Similar to other wars, ethnic and religious issues were the main reason for the intensity and extreme violence in armed conflicts in Syria.⁹ The violent conflicts among Alawi, Shia, Sunni, Christian and other communities are the result of the implementation of political, cultural and religious ideas that have dehumanized perceived enemies.¹⁰ Countries that have intervened in Syria, such as The Russia Federation and the United States, have also brought their own cultural and political presuppositions regarding solutions for the Syrian conflict. As was seen in the case of the American intervention in Iraq, rather than helping resolve civil wars, often outside military intervention can increase the level of fragmentation and violence.¹¹

The Syrian civil war is the result of a history of ethnic and religious divisions that have become more prevalent and violent because of the actions of terrorist organizations such as the Islamic State of Iraq and Syria (ISIS).¹² It is also the result of failed efforts of the Syrian government to reform its economic system and its illegitimate use of force to suppress opposition movements.¹³ Regarding the creation of Syria, Christopher Phillips says:

The new state was far from homogenous, with its ethnic make-up reflecting the ebbing and flowing of peoples and religions in the region. The people newly labelled 'Syrians' practiced different religions and belonged to different confessions. Under the

8. Angus McDowall, *Syrian Observatory Says War has Killed More Than Half a Million*, REUTERS, Mar. 12, 2018, <https://www.reuters.com/article/us-mideast-crisis-syria/syrian-observatory-says-war-has-killed-more-than-half-a-million- idUSKCN1GO13M>.

9. See generally DONALD L. HOROWITZ, *ETHNIC GROUPS IN CONFLICT* (2nd ed. 2000) (the influence of ethnic identity on armed conflicts).

10. See Omar M. Dajani, *Responding to Ethnic and Religious Conflict in the Emerging Arab Order: The Promise and Limits of Rights*, 17 UCLA J. INT'L. FOREIGN AFF. 29, 74 (2013) (analyzing the religious and ethnic conflicts in the Middle East including Syria).

11. See generally Thomas M. Franck, *What Happens Now? The United Nations after Iraq*, 97 AM. J. INT'L L. 607, 620 (2003) (the use of force in Iraq and international law).

12. See, e.g., MALCOLM NANCE, *DEFEATING ISIS* (2016).

13. See, e.g., REESE ERLICH, *INSIDE SYRIA: THE BACKSTORY OF THEIR CIVIL WAR AND WHAT THE WORLD CAN EXPECT* (2016).

previous Ottoman rulers, the Sunni Muslim majority had periodically persecuted the non-Sunni Muslim sects, often leading to their concentration in remote, defensible areas. Alawis dominated the coastal western mountains, while Druze clustered around a mountain in the south. A small number of other Shia sects, such as Ismailis and Twelvers, were concentrated in isolated villages. Syria's (mostly Orthodox) Christians had a second-class status under the Ottomans but were largely free from persecution and came to thrive in certain trades and businesses in the urban centers.¹⁴

During the Cold War era, Syria was a close ally of the Soviet Union.¹⁵ From 1971 to 2000, Hafez al-Assad was president of Syria. The Alawite ethnic group dominated the members of his government. Even though the Alawites are an ethnic and religious minority group, they were able to hold on to power in Syria.¹⁶ On June 10, 2000, President Hafez al-Assad died of a heart attack. On July 10, 2000, his son Bashar al-Assad was elected president of Syria.¹⁷

Encouraged by the Arab Spring, in 2011, opposition movements to the Syrian government increased their political influence and their will to act against the Bashar al-Assad regime. As an answer to the pressure of those movements, the Syrian government started a process of economic reform that failed.¹⁸

Syrian grassroots movements went to the streets to express their frustrations and their desire to transform the country.¹⁹ The Syrian government decided to use force to control these movements and several innocent people including children were killed. Regarding the Syrian civil war, Christopher Phillips writes:

The Syrian civil war is the greatest human disaster of the twenty-first century. Since conflict broke out in 2011, over 470,000 have been estimated killed and 1.9 million wounded. Over 4.8 million have fled the country and 6.6 million more are internally displaced, more than half the pre-war population of 21 million. A United Nations report estimated that by the end of 2013 Syria had already regressed 40 years in its human development.

14. PHILLIPS, *supra* note 2, at 10-11.

15. *Id.* at 12-13.

16. *Id.*

17. *Id.*

18. *Id.*

19. *Id.*

Two years later half of its children were attending school and over 80% of Syrians were living in poverty, a third in abject poverty.²⁰

The Syrian government systematically has violated fundamental norms of international humanitarian law and international human rights law including the right to life of children. However, it is not only the Syrian government that has broken these norms. ISIS and other terrorist organizations have indiscriminately killed innocent human beings including children.²¹ Regarding the main reasons for the establishment of ISIS in Syria, Christopher Phillips writes:

The weakening of the Iraqi state after the US-led invasion of 2003 created political and physical space for ISIS' predecessors, AQI and ISI. The Syrian civil war, itself heavily shaped by external actors, created similar space for ISI to expand. The Assad regime, having facilitated AQI and ISI's activities before 2010, effectively helped the newly declared ISIS to triumph over more moderate opposition. However, the regime was far from alone, with Turkey, Qatar and Saudi Arabia each culpable in their own way. Weapons and support found their way to ISIS relatively easily, with no one actively trying to prevent their rise.²²

The Syrian government has preserved its power and has been defeating both the pro-democracy forces and Islamic fundamentalist movements. However, it is important to remember that during the Syrian civil war, there were widespread violations of the right to life of children. Regarding this, a United Nations' Secretary General Report said:

The present report highlights that the use of weaponry and military tactics that are disproportionate and indiscriminate by Government forces and associated militias has resulted in countless killings and the maiming of children, and has obstructed children's access to education and health services. Government forces have also been responsible for the arrest, arbitrary detention, ill treatment and torture of children. Armed opposition groups have been responsible for the recruitment and use of children both in combat and support roles, as well as for conducting military operations, including using terror tactics, in civilian-populated

20. PHILLIPS, *supra* note 2, at 1.

21. See generally JOBY WARRICK, BLACK FLAGS: THE RISE OF ISIS (2016) (historical account of ISIS's atrocities).

22. PHILLIPS, *supra* note 2, at 205.

areas, leading to civilian casualties, including children.²³

According to UNICEF, around 650 children were killed in Syria in 2016 alone. The report indicates that “in less than one week in Aleppo, 223 children were injured and 96 were killed. Doctors were forced to leave children with low chances of survival to die because of limited capacity and lack of basic medical supplies.”²⁴ Children were killed by direct military actions and because of the spread of diseases. This was a direct result of the use of force by the Syrian government and by opposition groups including terrorist movements. Their actions created unsanitary and dangerous conditions with very limited access to medical care for children. Regarding children in armed conflicts, a UNICEF report indicates:

More than 1.7 million children inside Syria are out of school. One in three schools cannot be used because they are destroyed, damaged, sheltering displaced families or being used for military purposes. In 2016, at least 87 attacks on schools and education personnel were recorded and more than 255 children were killed while at school or near school. Some schools were attacked repeatedly like in Idlib, where 26 children and six teachers were killed in the heaviest attack on a school last year.²⁵

UNICEF reports that child casualty rates are the highest recorded in any recent conflict in the region.²⁶ It is estimated that “since March 2013, the number of children affected by the crisis has more than doubled from 2.3 million to more than 5.5 million. The number of children displaced inside Syria has more than tripled from 920,000 to almost 3 million. The number of child refugees has more than quadrupled from 260,000 to more than 1.2 million. Of these children, 425,000 are under the age of five.”²⁷

As a result of the civil war, there is a humanitarian crisis that sustains widespread violations of children’s rights including the right to life, right to education, right to health, right to food, right to freedom of expression and others.²⁸ These actions are contrary to Syria’s international legal

23. U.N. Secretary-General, S.C. *Report of the Secretary-General on children and armed conflict in the Syrian Arab Republic*, U.N. Doc. S/2014/31 (Jan. 27, 2014).

24. UNICEF, *Hitting Rock Bottom: How 2016 Became the Worst Year for Syria’s Children* (Mar. 2017), <https://www.unicef.org/mena/hitting-rock-bottom-syria>.

25. *Id.*

26. UNICEF, *Under Siege: The Devastating Impact on Children of Three Years of Conflict in Syria* (Mar. 2014), https://www.unicef.org/publications/files/Under_Siege_March_2014.pdf.

27. *Id.* at 3.

28. *See generally* CHILD RIGHTS, THE MOVEMENT, INTERNATIONAL LAW, AND

obligations.

Syrian's International Legal Obligations and the Right to Life

At the Nuremberg trials, Professor Hersch Lauterpacht described the actions of the Nazi regime as crimes against humanity.²⁹ Professor Raphael Lemkin defined the killings of the Nazi regime as genocide.³⁰ One focused on widespread crimes against individuals, and the other focused on crimes against groups.³¹ In the current historical context of Syria, the international crimes of genocide, and crimes against humanity describe well what has happened in that country.³²

The modern international human rights law system emerged as a reaction to extreme violations of the right to life committed by the Nazi regime.³³ The Nazi regime was responsible for the killings of millions of innocent human beings including children. As a response to the historical context of World War II, the international community recognized the importance of the legal protection of the right to life which is the most important human right. Without respect for this *jus cogens* norm, all other legal norms are irrelevant and meaningless.³⁴

Several international legal instruments were created to protect fundamental human rights including the right to life and rights of children.³⁵ These include, among others, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Genocide Convention, and the Convention on the Rights of the Child.³⁶ All these normative instruments acknowledge the legal obligation to respect the right to life.

The right to life is also recognized, as a fundamental human right, in a

OPPOSITION(Clark Butler ed., 2012) (analysis of children's rights).

29. See PHILIPPE SANDS, EAST WEST STREET, ON THE ORIGINS OF "GENOCIDE" AND "CRIMES AGAINST HUMANITY"(2016).

30. *Id.*

31. *Id.*

32. See BILL KISSANE, NATIONS TORN ASUNDER: THE CHALLENGE OF CIVIL WAR(2016) (analyzing causes and consequences of civil wars, including the one in Syria).

33. See, e.g., MICHELINE R. ISHAY, THE HISTORY OF HUMAN RIGHTS, FROM ANCIENT TIMES TO THE GLOBALIZATION ERA(2004).

34. Elizabeth Wicks, *The Meaning of Life: Dignity and the Right to Life in International Human Rights Treaties*, 12 HUM. RTS. L. REV. 199, 220 (2012) (analyzing the right to life in international law).

35. See generally MARY ANN GLENDON, A WORLD MADE NEW: ELEANOR ROOSEVELT AND THE UNIVERSAL DECLARATION OF HUMAN RIGHTS(2001) (historical analysis of the creation of the Universal Declaration of Human Rights and the context of the creation of the modern human rights law system).

36. See BLACKSTONE'S INTERNATIONAL HUMAN RIGHTS DOCUMENTS (Alison Bisset ed., 10th ed. 2016).

number of regional agreements including the African Charter on Human and Peoples' Rights (Art. 4)³⁷; the American Convention on Human Rights (Art.4)³⁸; the American Declaration of the Rights and Duties of Man (Art.1)³⁹; Arab Charter on Human Rights (Arts.5-8)⁴⁰; and the European Convention for the Protection of Human Rights and Fundamental Freedoms (Art.2).⁴¹

The Universal Declaration of Human Rights is considered an expression of customary international law. Syria is one of the original forty eight countries that voted for its adoption at the General Assembly of the United Nations.⁴² According to Article 3 of the UDHR: "Everyone has the right to life, liberty and security of person."⁴³ On July 15th, 1993, Syria ratified the Convention on the Rights of the Child. According to Article 6.1, and 6.2 of that international treaty: "States Parties recognize that every child has the inherent right to life. States Parties shall ensure to the maximum extent possible the survival and development of the child."⁴⁴

On April 21st, 1969, Syria ratified the International Covenant on Civil and Political Rights. According to article 6.1 of ICCPR: "Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life."⁴⁵ The accession to the Convention on the Prevention and Punishment of the Crime of Genocide by the Syrian Arab Republic took place on June 25, 1955. According to article II: "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; (d) Imposing measures intended to prevent births within the group; (e) Forcibly transferring

37. African Charter on Human and Peoples' Rights art. 4, June 27, 1981, 1520 U.N.T.S. 217.

38. American Convention on Human Rights art. 4, Nov. 22, 1969, 1144 U.N.T.S. 123.

39. American Declaration of the Rights and Duties of Man art. 5, Apr. 1948, OEA/Ser.L./V.II.23, doc. 21, rev. 6.

40. League of Arab States, Arab Charter on Human Rights, May 22, 2004, Apr. 1948, OEA/Ser.L./V.II.23, doc. 21, rev. 6, 12 INT'L HUM. RTS. REP. 893 (2005).

41. Convention for the Protection of Human Rights and Fundamental Freedoms art. 2, Mar. 20, 1952, 213 U.N.T.S. 221.

42. 1948-1949 U.N.Y.B. 535.

43. Universal Declaration of Human Rights, G.A. Res. 217(III) A, U.N. Doc. A/RES/217(III), at art. 3 (Dec. 10, 1948).

44. Convention on the Rights of the Child art. 6, Nov. 20, 1989, 1577 U.N.T.S. 3.

45. International Covenant on Civil and Political Rights art. 6, Dec. 16, 1966, 999 U.N.T.S. 171.

children of the group to another group.”⁴⁶

In Syria, both the government and terrorist entities, such as ISIS, have murdered members of racial and religious groups with the intent to destroy them. Children were among the main victims of the actions of terrorist movements and the Syrian government.⁴⁷ Children are members of ethnic and religious groups which have been targeted. Because of their inherent dependent status, children continue to be the most vulnerable group in Syria.⁴⁸

Consistent with its legal obligations under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, and the Genocide Convention, Syria has the legal obligation to ensure that the right to life of children is respected. Under international positive law and customary international law, the obligation to respect the right to life of children also applies to non-state actors. According to the Preamble of the Universal Declaration of Human Rights:

Therefore the General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the peoples of Member States themselves and among the peoples of territories under their jurisdiction.⁴⁹

Pro-democracy opposition forces, and Islamic fundamentalist terrorist entities in Syria are also part of the society in that country. Therefore, consistent with the Preamble of the Universal Declaration of Human

46. Convention on the Prevention and Punishment of the Crime of Genocide art. 2, Dec. 9, 1948, 78 U.N.T.S. 277.

47. See HUMUD, *supra* note 4.

48. UNICEF, *Syria Crisis April 2019 Humanitarian Results* (Apr. 2019), https://www.unicef.org/appeals/files/UNICEF_Syria_Crisis_Humanitarian_Situation_Report_April_2019.pdf (“In north-west Syria, the security situation deteriorated with continuous shelling on villages in northern Hama and southern Idleb, resulting in the displacement of 152,210 individuals (7,993 households) to different communities in Aleppo and Idleb Governorates between 29 April and 5 May 2019. Between mid-February and the beginning of May, the death toll among civilians spiked up to 351 people, including 92 children and four humanitarian workers (one UNICEF partner).”).

49. Universal Declaration of Human Rights, *supra* note 42, at preamble.

Rights, they have the legal obligation to respect fundamental human rights, including the right to life. Regarding the obligation of non-state actors to respect international human rights law, Professor Andrew Clapham writes:

The Security Council has long called upon various groups which Member States do not recognize as having the capacity to do so to formally assume international obligations to respect human rights. It is especially appropriate and feasible to call for an armed group to respect human rights norms when it exercises significant control over territory and population and has an identifiable political structure⁵⁰

In violation of fundamental norms of international humanitarian law and international human rights law, the Syrian government has used military force against children. Fundamental principles of international humanitarian law (distinction and proportionality) were systematically violated by the Syrian government and by non-state actors. Common Article 3 of the Geneva Conventions apply to all parties to a conflict including non-state actors. According to that article, “Persons taking no active part in the hostilities 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.”⁵¹

Even though most children did not take active part in the military hostilities, they were targets of the Syrian government. This is a violation of Articles 77.1 and 77.2 of the additional protocol I to the Geneva conventions, according to which:

Children shall be the object of special respect and shall be protected against any form of indecent assault. The Parties to the conflict shall provide them with the care and aid they require, whether because of their age or for any other reason. The Parties to the conflict shall take all feasible measures in order that children who have not attained the age of fifteen years do not take a direct part in hostilities and, in particular, they shall refrain from recruiting them into their armed forces.⁵²

50. Andrew Clapham, *Human Rights Obligations of Non-State Actors in Conflict Situations*, 88 INT’L. REV. RED CROSS 491, 506 (2006).

51. Geneva Convention Relative to the Treatment of Prisoners of War art. 3, Aug. 12, 1949, 6 U.S.T. 3316, 75 U.N.T.S. 135.

52. Protocol Additions to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts art.77, June 8, 1977, 1125 U.N.T.S. 3.

The Syrian government and non-state actors have systematically violated international legal norms regarding respect for the right to life of children. Although this is not the focus of this work, it is important to know that those violations are international crimes that can be prosecuted by the International Criminal Court, by *ad hoc* tribunals, and by national courts.⁵³ The consequences of widespread violations of the right to life of children are disastrous. Children, in Syria, continue to be victims of a humanitarian crisis that is characterized by the lack of access to food, healthcare, and education which are essential elements for their survival.⁵⁴

The Syrian government is responsible for widespread violations of the right of life and other fundamental human rights of children. The international community has a legal and moral responsibility to ensure that the rights of children are respected. Without this, there will not be a lasting peace in that part of the world, and children will continue to be victims of ethnic and religious conflicts.

In theory, the military use of force could be justified to end the Bashar al-Assad regime and ensure that the people responsible for crimes against humanity are prosecuted and punished. However, considering the fact that the Syrian regime has regained control over its territory, it is very unlikely that a regime change will take place in Syria.⁵⁵ Considering this reality, it seems that a negotiated solution is the best alternative to ensure respect for children's rights to life. However, considering the extreme actions of political evil that have taken place in Syria, would it be just, and the best political strategy to negotiate with the Bashar al-Assad regime?

The Problem of Political Evil and the Bashar al-Assad Regime

Harvard Law School Professor, Robert Mnookin, has analyzed the challenges regarding the decision to negotiation in cases where extreme unjust actions have taken place. He believes that the word "evil" properly describes actions of extreme political violence. Regarding this, he writes:

I do not believe that the concept of evil is incoherent or meaningless. In my view, intentionally inflicting grievous harm on human beings without a compelling justification is evil. The Nazis' persecution of the Jews, the Hutus' slaughter of the Tutsi, and the Taliban's penchant for throwing acid in the face of girls who dare

53. See, e.g., WAYNE MCCORMACK, INTERNATIONAL CRIMINAL LAW, CASES AND MATERIALS (2015).

54. See HUMAN RIGHTS WATCH, *supra* note 2.

55. See HUMUD, *supra* note 4.

to go to school — all of these are evil acts. So were the attacks of September 11, 2011, when suicidal terrorists intentionally and without justification killed nearly thousand innocent civilians.⁵⁶

The main question that Professor Mnookin addresses, in his writings, is how to know when it is a good decision to negotiate with your enemies, even with those that can be objectively characterized as evil such as the Nazi regime or the South African Apartheid government. Professor Mnookin highlights the cases of Nelson Mandela's decision to negotiate a political settlement with the racist South African government, and Winston Churchill's decision to reject a negotiating agreement with the Nazi regime.⁵⁷ In the current international political context, political leaders, diplomats, international lawyers, and others are facing similar decisions regarding the case of Syria.

Professor Mnookin properly recognizes the importance of carefully using the concept of evil to describe action that are inherently unjust such as the Nazi regime's genocidal acts against the Jewish community.⁵⁸ Hannah Arendt's description of the trial of the Nazi war criminal, Adolf Eichmann, explains the problem of political evil and why any human being is capable of committing horrendous crimes.⁵⁹ Regarding this, Patrick Hayden writes: "This brings us to a fundamental insight of Arendt's concept of the banality of evil. For Arendt, it was 'sheer thoughtlessness' that made Eichmann 'perfectly incapable of telling right from wrong' in the sense that he chose not to exercise the capacity to think about and judge his actions in light of the ends of the social system within which he functioned as an agent."⁶⁰ The inability of the Syrian military to distinguish right from wrong in its use of force against innocent children is the result of similar motivations as the ones mentioned in Arendt's analysis.

Augustine's perspective is also helpful in understanding the problem of extreme political evil actions such as the ones that have been taking place in Syria.⁶¹ Charles T. Matthews describes Augustine's perspective on evil as follows:

56. ROBERT MNOOKIN, *BARGAINING WITH THE DEVIL: WHEN TO NEGOTIATE, WHEN TO FIGHT* 1-2 (2010).

57. *Id.*, at 83-136.

58. *Id.*

59. See HANNAH ARENDT, *EICHMANN IN JERUSALEM, A REPORT ON THE BANALITY OF EVIL* (2006).

60. Patrick Hayden, *Superfluous Humanity: An Arendtian Perspective on the Political Evil of Global Poverty*, 35 (2) *MILLENNIUM* 279, 285 (2007).

61. See, e.g., ENRIQUE DE GANDIA, *FRANCISCO DE VITORIA Y EL NUEVO MUNDO, EL PROBLEMA TEOLÓGICO Y JURÍDICO DEL HOMBRE AMERICANO Y DE LA INDEPENDENCIA DE AMÉRICA* 60-74 (1952).

The Augustinian tradition interprets evil's challenge in terms of two distinct conceptual mechanisms, one ontological and the other anthropological. Ontologically, in terms of the status of evil in the universe, it understands evil as nothing more than the privation of being and goodness — "evil" is not an existing thing at all, but rather the absence of existence, an ontological shortcoming. Anthropologically, in terms of the effect of evil on a human being, it depicts human wickedness as rooted in the sinful perversion of the human's good nature-created in the *imago Dei* — into a distorted, misoriented, and false imitation of what the human should be. Privation and perversion: together these capture the conceptual contours within which the tradition proposes its practical response to evil.⁶²

The extreme political evil actions of the Syrian regime are acts of privation and acts of perversion. The killing of innocent children in the bombings of schools and hospitals shows the perversion and wickedness of the Assad regime. These crimes against humanity should shock the conscience of humankind. These actions are contrary to a rational standard of human behavior. Augustine believe that the free will of human beings capable of choosing between good and evil was the reason for the existence of evil actions in the world. Regarding this, G. R. Evans opined: "The only creature capable of acting against the good and brining about an evil happening is a creature with a mind of its own."⁶³

If the Syrian regime is using its free will to choose to commit acts of extreme political evil such as bombing hospitals and schools that result in widespread violations of the rights to life of children, should the international community seek a peaceful negotiated solution to ensure protection of children's right to life? How can the Syrian regime be convinced that it is in its best interests not to use force against innocent civilian populations, especially children? To ensure respect for children's rights to life, it would be necessary to influence the political will of Syrian leaders and ensure that they embrace rational policies and respect fundamental universal normative standards regarding the protection of human dignity. Regarding Augustine's analysis of will and reason, G.R. Evans writes:

... evil arises in the will of rational creatures and makes itself

62. CHARLES T. MATHEWES, *EVIL AND THE AUGUSTINIAN TRADITION* 6-7 (2001).

63. G. R. EVANS, *AUGUSTINE ON EVIL* 95 (1994).

felt by clouding their reason and making it impossible for them to think clearly or to see the truth. They then act upon the world in such a way as to twist everything they touch out of its proper and good nature into something diminished or perverted . . . It is in the mind, then, and specifically in the will (which together with the memory and the understanding, makes up the mind) that we must look for signs of evil.⁶⁴

Applying this concept to the case of Syria, it can be said that the reasoning of the Syrian regime is clouded by ideology, ethic biases, political ambitions and the dehumanization of innocent human beings including children. This distorted view of reality is influencing the Bashar al-Assad regime's actions that disregard international human rights norms and international humanitarian law. As a result of this, there is an unjust and disproportionate use of force against innocent civilian populations including children. Because of this, thousands of innocent children have been killed in the Syria. According to Augustine:

. . . there are traits like the love of praise and fame, and the will to power. When that drive is not subject to reason it makes us wretched . . . When these impulses of the soul are ruled by reason, a human being is said to be ordered. Therefore, when reason, mind, or spirit controls the irrational impulses of the soul, a human being is ruled by the very thing that ought to rule according to the law.⁶⁵

To end the unjust and irrational Syrian actions that have resulted in the widespread killing of innocent human beings including children, it is necessary to ensure the implementation of fundamental norms of international human rights law and international humanitarian law which have the objective to protect the right to life.

An Integrative Perspective for the Protection of Human Dignity in Syria

Consistent with its international and domestic obligations, the government of Syria has the legal obligation to ensure respect for the right to life of all people under its jurisdiction. However, in the current political context in Syria, the Bashar al-Assad regime seems to be incapable to do

64. *Id.* at 104.

65. AUGUSTINE, ON FREE CHOICE OF THE WILL 14 (Thomas Williams trans., Hackett Publishing Company, Inc. 1993) (387-395).

it.⁶⁶ Therefore, the possibility of a global humanitarian effort, with the consent of the Syrian government, should be considered as a political and legal response to end widespread violations of fundamental human rights including the children's right to life.⁶⁷ This response should be based on the application of international human rights law and international humanitarian law for the protection of children's rights, and the moral obligation to respect the human dignity of children as one of the main foundations of the international normative order in the 21st century.

Crimes against humanity consist of “‘a widespread or systematic attack against a civilian population.’ The words ‘widespread’, ‘systematic’ and ‘population’ together signify the essence of crimes against humanity and seek to describe, in legal terms, what shocks the conscience of mankind.”⁶⁸ The widespread and systematic violations of the right to life of children that has been happening in Syria are crimes against humanity. Considering this reality, it is essential to build up a culture of life, in Syria, that embraces the idea of respecting fundamental human rights and human dignity as a foundation for human development.

All human lives are worthy and should be respected and protected in Syria. However, the protection of children's right to life should be a priority. Children are the most vulnerable members of humankind because they cannot defend themselves and they have been disproportionately affected by the civil war.⁶⁹ Children's rights are recognized as an essential component of the international human rights law system. Widespread and systematic violations of their right to life are violations of *jus cogens* norms of international law.⁷⁰

Despite this reality, the international legal analysis of the situation in Syria, it is necessary to consider both the importance of respect for the national sovereignty of Syria and the legal obligation of the international community to intervene to end crimes against humanity. Regarding the principles of respect for national sovereignty, Steven R. Ratner writes:

66. See, e.g., ERLICH, *supra* note 12.

67. See SIMON CHESTERMAN, JUST WAR OR JUST PEACE?: HUMANITARIAN INTERVENTION AND INTERNATIONAL LAW(2002), (for an analysis of the idea of international and humanitarian intervention).

68. THE OXFORD COMPANION TO INTERNATIONAL CRIMINAL JUSTICE 286 (Antonio Cassese ed., 2013).

69. See, e.g., SYRIAN NETWORK FOR HUMAN RIGHTS, THE ANNUAL REPORT FOR MOST NOTABLE VIOLATIONS OF HUMAN RIGHTS IN SYRIA IN 2017 (2018), https://reliefweb.int/sites/reliefweb.int/files/resources/The_Annual_Report_f_or_Most_Notable_Violations_of_Human_Rights_in_Syria_in_2017_en.pdf.

70. See UNICEF, IMPLEMENTATION HANDBOOK FOR THE CONVENTION ON THE RIGHTS OF THE CHILD (2002), (for an in-depth analysis children's rights as a component of the international human rights law system).

A state's sovereignty-based claims encompass more than protection of its territorial integrity. States, and the people in them, are also interested in maintaining independence, and not merely independence in the most formal of terms, but a more robust idea in which a state is not controlled by or subservient to another state. The norm that international law has developed to address this claim is that of non-intervention.⁷¹

Although it is important to respect the national sovereignty of Syria, the ongoing humanitarian crisis requires a global response. Considering the magnitude of the atrocities against children's rights in general and the right to life in particular, the resolution of the situation concerns not only the Syrian people, but the entire international community.⁷² A complex global response should include the participation of countries members of the International Syria Support Groups (ISSG) in the resolution of the Syrian humanitarian crisis. The ISSG was established to facilitate a peaceful resolution of the Syrian civil war. The Arab League, Australia, Canada, China, Egypt, the European Union, France, Germany, Iran, Iraq, Italy, Japan, Jordan, Lebanon, The Netherlands, the Organization of Islamic Cooperation, Oman, Qatar, Russia, Saudi Arabia, Spain, Turkey, the United Arab Emirates, the United Kingdom, the United Nations, and the United States are members of the ISSG.⁷³

Because of this, an effective response to end the Syrian humanitarian crisis should consider diverse aspects of the application of normative standards in international relations. An integrative jurisprudential perspective provides analytical tools to do this. Regarding Professor Jerome Hall's definition of integrative jurisprudence, Professor Harold Berman writes:

He defines law as a type of social action, a process, in which rules and values and facts — all three — coalesce and are actualized. It is, in my view, the actualizing of law that is its most essential feature. If law is defined as the activity, the enterprise, of

71. STEVE R. RATNER, *THE THIN JUSTICE OF INTERNATIONAL LAW: A MORAL RECKONING OF THE LAW OF NATIONS* 126 (2015).

72. *See, e.g.*, ANTHONY CLARK AREND & ROBERT J. BECK, *INTERNATIONAL LAW AND THE USE OF FORCE* (1993), (for an analysis of issues regarding the use of force and humanitarian intervention).

73. *See* United Nations Secretary General, *Note to Correspondents: Statement of the International Syria Support Group* (May 17, 2016), <https://www.un.org/sg/en/content/sg/note-correspondents/2016-05-17/note-correspondents-statement-international-syria-support>.

legislating, adjudicating, administering, and otherwise — through unofficial as well as official conduct — giving a legal order to social relations, then its political, its moral, and its historical aspects can be brought together.⁷⁴

The application of integrative jurisprudential principles to the analysis of the Syrian conflict requires the consideration of positive law, natural law and the political and historical contexts. Consistent with a policy-oriented approach, international law can be understood as a process of authoritative decision making.⁷⁵ This definition of international law enables one to see diverse aspects of international law including its political dimension. This requires the consideration of concepts such as power and force not only from a legal perspective, but also from a political understanding. The natural law aspect of an integrative approach is seen in one of the fundamental objectives of the international normative system, which is the protection of human dignity and fundamental inherent natural rights including the right to life.⁷⁶

High-ranking government officials, international judges, United Nations leaders and other influential decision makers have the authority to contribute in the process of ending the Syrian humanitarian crisis. They should make effective decisions and take actions to end the Syria humanitarian crisis including widespread violations of the right to life of children. These actions should be taken consistent with fundamental norms and principles of international human rights law and international humanitarian law.⁷⁷

Despite the human tendency to dehumanize the “other,” there are international legal instruments that recognize the universality of fundamental human rights and the existence of human dignity.⁷⁸ The idea of universal respect for the inherent dignity of all human beings is essential in the resolution of ethnic and religious conflicts such as the one in Syria. This discourse should not be used to justify geopolitical interests of powerful countries. On the contrary, it should be used consistently with one

74. HAROLD J. BERMAN, FAITH AND ORDER: THE RECONCILIATION OF LAW AND RELIGION 292 (1993).

75. See LUNG-CHU CHEN, AN INTRODUCTION TO CONTEMPORARY INTERNATIONAL LAW: A POLICY-ORIENTED PERSPECTIVE (3d. 2015).

76. See, e.g., UNDERSTANDING HUMAN DIGNITY (Christopher McCrudden ed., 2014).

77. See generally ANDREA BIANCHI, INTERNATIONAL LAW THEORIES (2016), (for an analysis of the New Haven School and the importance of authoritative decision making in implementing international law norms).

78. See NICHOLAS WOLTERSTORFF, JUSTICE: RIGHTS AND WRONGS (2008), for a historical and philosophical analysis of the idea of human dignity as the foundation for human rights.

of the fundamental objectives of the international normative order which is the protection of inherent human rights of all human beings especially children who are one of the most vulnerable groups.

The Reasonableness of Negotiating with Bashar al-Assad

In the history of international law, there has been efforts to justify the use of military force to protect the right to life of children. For example, Francisco de Vitoria, who is considered one of the founders of the discipline of international law, justified the Spanish use of force to end the practice of human sacrifice of children by the Aztecs and other indigenous communities of the New World.⁷⁹ Since then, there have been diverse legal ideas that have justified the use of military force to save the lives of innocent human beings in humanitarian interventions.⁸⁰ Consistent with the idea of humanitarian intervention, there are instances in which members of the international community can justify the use military force to end crimes against humanity anywhere in the world.⁸¹

The Syrian government's use of military force and its disregard for international humanitarian law and human rights standards has resulted in the killing of many children. This could justify the use of military force against the Assad regime. However, the intervention of foreign countries in the resolution of civil wars, such as the one in Syria, rather than resolving the problem, it can increase the level of ethnic conflicts and create conditions for greater violations of international law.⁸²

There are other options that can be more effective in resolving the humanitarian crisis affecting children in Syria. To understand them, it is first necessary to analyze the interactions and interrelations between power and the use of force. Regarding this, Hans Morgenthau writes:

Political power, however, must be distinguished from force in the sense of the actual exercise of physical violence. The threat of physical violence in the form of police action, imprisonment, capital punishment, or war is an intrinsic element of politics. When

79. See JAMES BROWN SCOTT, *THE SPANISH ORIGINS OF INTERNATIONAL LAW: FRANCISCO DE VITORIA AND HIS LAWS OF NATIONS* (1934).

80. See A. P. V. Rogers, *Humanitarian Intervention and International Law*, 27 HARV. J.L. & PUB. POL'Y 725, 730-33 (2004) (for an analysis of humanitarian intervention).

81. See Joshua M. Kagan, *The Obligation to Use Force to Stop Acts of Genocide: An Overview of Legal Precedents, Customary Norms, and State Responsibility*, 7 SAN DIEGO INT'L L.J. 461, 478 (2006), for an analysis of the use of military force in cases of genocide.

82. This was seen in the cases of Iraq, Libya and other civil wars. See, e.g., Thomas M. Franck, *What Happens Now? The United Nations after Iraq*, 97 AM. J. INT'L L. 607, 610-17 (2003) (analyzing the legality of the use of force against Iraq).

violence becomes an actuality, it signifies the abdication of political power in favor of military or pseudo-military power.⁸³

The international community can use all forms of political power to protect the right to life of children, and end crimes against humanity in Syria. The legitimacy of international political actions is sustained by following normative standards. In the case of the Syrian conflict, the members of the international community should use their political power to end systematic violations of the right to life of children. This can be done by a negotiating process with the objective of implementing international human rights and international humanitarian law norms. Regarding the interactions between the concepts of power and law, Michael Byers writes:

However, a legal system such as the international legal system does more than simply create expectations and promote stability. It also fulfils the essential social function of transforming applications of power into legal obligations, of turning 'is' into 'ought' or, within the context of customary international law, of transforming State practice into customary rules.⁸⁴

For international law to serve as a discourse that has a real influence in the Syrian context, it is important to understand the instruments of policy that influence the implementation of international norms. According to professor Lung-Chu Chen:

The strategies employed in global constitutive process can be conveniently examined by reference to the basic instruments of policy: diplomatic, ideological, economic, and military. These instruments, or strategies, involve the management of two critical components: communications (symbols) and resources. The diplomatic instrument refers to communications from elite to elite, and the ideological instrument involves communications directed to general audiences.⁸⁵

In the process of implementing international norms, political negotiations are one of the best means to achieve concrete results. In the case of Syria, the international legal discourse regarding the protection of the right to life of children should be prevalent in a diplomatic negotiation

83. HANS J. MORGENTHAU, *POLITICS AMONG NATIONS: THE STRUGGLE FOR POWER AND PEACE* 13-14 (1951).

84. MICHAEL BYERS, *CUSTOM, POWER AND THE POWER OF RULES* 6 (2001).

85. LUNG-CHU CHEN, *supra* note 74.

process for the resolution of the Syrian humanitarian crisis. It should also serve as an ideological instrument to mobilize international public opinion on behalf of Syrian children.⁸⁶

However, similarly as in the first main conflict between the U.S. and the Taliban regime in Afghanistan, the option of a negotiated solutions for armed conflicts and humanitarian crisis is always challenging. Regarding the surprising invitation of the Taliban to the George W. Bush administration to negotiate on the closing of al Qaeda's terrorist training camps and allowing the U.S. to capture Bin Laden, Professor Mnookin writes:

The Taliban, surprisingly, had responded by inviting President Bush to negotiate. In addressing a council of clerics on September 19, the Taliban leader Mullah Mohammed Omar said, "If the American government has some problems with the Islamic Emirate of Afghanistan, they should be solve through negotiations."⁸⁷

Although the Syrian regime has not offered the international community a negotiated solution to end school and hospital bombings and ensure protection for the right to life of children, a similar challenge, as the one faced by the Bush administration in deciding whether to negotiate or not with the Taliban, exists today. Is it possible to find a negotiated solution with the Syrian government? Would this be legally and morally just?

Regarding his discussion with Professor Roger Fisher about the possibility of negotiating with the Taliban regime, Professor Mnookin writes:

Roger took the position . . . that President Bush was wrong to issue an ultimatum and that the United States should accept the Taliban's invitation to negotiate. His argument was consistent with his view, expressed in many of his books, that one should always try to resolve conflict through a problem solving approach to negotiation based on the interests of the parties.⁸⁸

Applying Roger Fisher's views on negotiation, it would be a mistake not to try to find a negotiated solution to the Syrian humanitarian crisis.

86. See e.g., M. Shervin Majlessi, *Use of Economic Sanctions under International Law: A Contemporary Assessment*, 39 CAN. Y.B. INT'L L. 253, 255-62 (2001) (analyzing economic sanctions).

87. MNOOKIN, *supra* note 55, at 2.

88. *Id.* at 3.

Therefore, it seems logical to find a way to negotiate with Bashar al-Assad. However, considering the widespread violations of the right to life of children in Syria, including the bombing of hospitals and schools, it seems unjust to negotiate with him. Regarding a perspective that rejects negotiations in cases of extreme political evil actions, Professor Mnookin writes:

The Faustian parable suggests you must never negotiation with the Devil. He's clever and unscrupulous. He will temp you by promising something that you desperately want. But no matter how seductive the possible benefits, negotiating with evil is simply wrong; it would violate your integrity and pollute your soul.⁸⁹

Regarding September 11 and the Taliban, professor Mnookin writes:

On the basis of this cost-benefit analysis, I concluded that Bush would be wise not to negotiate with the Taliban... [F]or me, my pragmatic analysis led to the same conclusion that my moral intuition did. Both said, 'No negotiation,' albeit for different reasons.⁹⁰

Professor Mnookin regarding the importance of considering the costs and benefits of negotiations highlights the necessity of considering interests, alternatives, potential negotiated outcomes, costs, and implementation of the negotiating process.⁹¹ Besides a pragmatic cost benefit analysis, Professor Mnookin also recognizes the importance of considering the legitimacy and the moral justification of decisions to negotiation with enemies.⁹² Regarding the importance of legitimacy, he writes:

My own preference is for a process that recognizes that moral judgments both do and should involve an interaction between intuition and analysis. When fully explored by the analytic part of the brain—that is, when the analytical side is acting as a dispassionate judge weighing all the arguments, not a lawyer defending a foregone conclusion — I believe that moral values should, and in some cases must, be factored into decision-

89. MNOOKIN, *supra* note 55, at 3.

90. *Id.* at 7.

91. *Id.* at 27-28.

92. *Id.* at 7.

making.⁹³

Professor Mnookin highlights the tension and conflicts between the pragmatic and the ethical elements of negotiations.⁹⁴ Applying his approach and considering the Syrian political context in which the Bashar al-Assad regime has control over most of the Syrian territory, it seems that a negotiated solution is the best alternative to end widespread violations of the right to life of children. It seems that because of both pragmatic reasons, the Syrian control of its territory, and ethical reasons, the imperative to use the best and realistic strategy to protect the right to life of children, a negotiated resolution is the best option.

Diplomatic Efforts for the Resolution of the Syrian Humanitarian Crisis

One of the most important diplomatic efforts for the resolution of the Syrian crisis was the establishment of the International Syria Support Group (ISSG). Describing the efforts of the group, the United Nations Secretary- General said:

Meeting in Vienna on May 17, 2016, as the International Syria Support Group (ISSG), the Arab League, Australia, Canada, China, Egypt, the European Union, France, Germany, Iran, Iraq, Italy, Japan, Jordan, Lebanon, The Netherlands, the Organization of Islamic Cooperation, Oman, Qatar, Russia, Saudi Arabia, Spain, Turkey, the United Arab Emirates, the United Kingdom, the United Nations, and the United States reaffirmed the ISSG's determination to strengthen the cessation of hostilities, to ensure full and sustained humanitarian access in Syria, and to ensure progress toward a peaceful political transition.⁹⁵

Considering that Bashar al-Assad has regained control of Syria's territory, the International Syria Support Group (ISSG) should lead an initiative to negotiate with his regime and political opposition groups, an

93. MNOOKIN, *supra* note 55, at 35-36.

94. *Id.* at 49.

95. United Nations Secretary General, *supra* note 72. *See also* European Union External Action, *Statement of the International Syria Support Group* (November 14, 2015), https://eeas.europa.eu/headquarters/headquarters-homepage/3088_en ("The members of the ISSG expressed a unanimous sense of urgency to end the suffering of the Syrian people, the physical destruction of Syria, the destabilization of the region, and the resulting increase in terrorists drawn to the fighting in Syria.").

international effort to protect the right to life of children. This is an issue that all parties to the Syrian conflict should agree with. Considering the diverse composition of the ISSG, they are uniquely positioned to lead a humanitarian effort that focuses on the protection of children's rights.

The United States is a member of the ISSG and continues to be one of main contributors of humanitarian aid in Syria. According to the Congressional Research analysis:

The United States is the largest donor of humanitarian assistance to the Syria crisis, drawing from existing funding from global humanitarian accounts and some reprogrammed funding. As of March 2019, total U.S. humanitarian assistance for the Syria crisis since 2011 had reached more than \$9.5 billion. Of this total, roughly \$4.7 billion has gone towards meeting humanitarian needs inside Syria, while the remainder has supported host communities in Lebanon, Jordan, Turkey, Iraq, and Egypt that host Syrian refugees.”⁹⁶

Considering the complexity of the Syrian political context, the United States and all other countries, that are committed to finding a solution to the humanitarian crisis that affects Syrian children, should be willing to negotiate, using foreign aid as a bargaining tool, with a regime that is responsible for crimes against humanity.⁹⁷ This includes the wiliness to use humanitarian aid as a bargaining tool to ensure protection of children's right to life. This should include the creation of a special humanitarian global aid fund designed to protect the right to life of children and to restore the conditions for their access to healthcare services and education. The Syrian government should stop bombing schools, hospitals and other places where children are victims of the use of military force.

The United Nations Security Council Resolution 2254 is considered a framework for the resolution of the Syrian crisis. However, it says very little about children's rights. According to resolution:

96. Humud, *supra* note 4, at 18.

97. *See id.* at 18-19 (“[The Humanitarian Response Plan, global multilateral plan for humanitarian aid,] for Syria is designed to address the crisis inside the country through a focus on humanitarian assistance, civilian protection, and increasing resilience and livelihood opportunities, in part by improving access to basic services. This includes the reconstruction of damaged infrastructure (water, sewage, electricity) as well as the restoration of medical and education facilities and infrastructure for the production of inputs for sectors such as agriculture. In 2019, U.N. officials warned that the Syria conflict was not over, and that significant humanitarian needs remain.”).

Calls on the parties to immediately allow humanitarian agencies rapid, safe and unhindered access throughout Syria by most direct routes, allow immediate, humanitarian assistance to reach all people in need, in particular in all besieged and hard-to-reach areas, release any arbitrarily detained persons, particularly women and children.⁹⁸

Consistent with the United Nations Security Council Resolution, one of the main U.S. objectives is to reach a negotiated solution to the political and military conflicts between the Syrian regime and opposition forces. The objective of this process is to have free elections in Syria and the drafting of a new constitution.⁹⁹ However, with help from its Russian and Iranian allies, the Bashar al-Assad regime has regained control over most of Syrian's territory.¹⁰⁰ Considering the bargaining strength of the Syrian government, it is unlikely that a regime change will happen in Syria. Because of this, it is essential to focus on the humanitarian aspect of the Syrian crisis.

All sides to the Syrian conflict, including the Assad regime and opposition forces, should agree to engage in negotiations with the objective of resolving the situation of children as one of the main victims of the Syrian humanitarian crisis. This agreement should be independent of any other negotiating process.

According to Congressional Research: "The Trump Administration has stated its intent to refrain from supporting reconstruction efforts in Syria until a political solution is reached in accordance with UNSCR 2254, which calls for constitutional reform and U.N.-supervised elections."¹⁰¹ Contrary to this strategy, the United States should negotiate, with Bashar al-Assad's regime, a solution to the humanitarian crisis to address specifically the protection of children's rights to life. This should include a commitment by the Syrian regime to stop the bombing of hospitals, and school as a result of which children are the main victims. The negotiations should also include humanitarian aid directed to protect children's right to life and their general wellbeing. The negotiations should be done not only

98. S.C. Res. 2254, ¶ 12 (Dec. 18, 2015).

99. *Id.*

100. See Humud, *supra* note 4, at 2 ("The U.N. has sponsored peace talks in Geneva since 2012, but it is unclear when (or whether) the parties might reach a political settlement that could result in a transition away from Assad. With many armed opposition groups weakened, defeated, or geographically isolated, military pressure on the Syrian government to make concessions to the opposition has been reduced. U.S. officials have stated that the United States will not fund reconstruction in Assad-held areas unless a political solution is reached in accordance with U.N. Security Council Resolution 2254.").

101. *Id.* at 7.

because it is in the national interest of the United States to protect children's rights globally, but because it is a humanitarian universal interest to ensure the survival of children.

Regarding the negotiations of the Syrian government with opposition forces, under the Geneva Communiqué, the Congressional Research analysis says:

The last formal round of Geneva talks, facilitated by then-U.N. Special Envoy for Syria Staffan de Mistura, closed in late January 2018. While the United States continues to call for a political settlement to the conflict, the U.S. intelligence community has assessed that Asad is "unlikely to negotiate himself from power" or make meaningful concession to the opposition.¹⁰²

Besides the Geneva process, there are other negotiating efforts led by Russia, Iran and Turkey. Regarding the current status of the Astana process, the Congressional Research analysis says: "In February 2019, the presidents of Russia, Iran, and Turkey held a trilateral summit at the Russian Black Sea resort of Sochi to discuss the future of Idlib, anticipated changes to the U.S. military presence in Syria, and how to move forward on the formation of a constitutional committee."¹⁰³ Another negotiating process is taking place between the Syrian Regime, Kurdish groups and Turkey. Regarding this, the Congressional Research analysis says:

In July 2018, the Syrian Democratic Council (SDC), the political wing of the U.S.-backed Syrian Democratic Forces (SDF), opened formal discussions with the Syrian government. The Kurdish-held areas in northern Syria, comprising about a quarter of the country, are the largest remaining areas outside of Syrian government control. Asad has stated that his government intends to recover these areas, whether by negotiations or military force.¹⁰⁴

Despite the clear political differences and conflicts of interests between the Syrian government, Kurdish opposition forces, and Turkey, all the sides to the conflict can reach a basic agreement to ensure protection of children's right to life.

One of the latest negotiation efforts, took place on September 2019, in the city of Ankara, Turkey. Regarding this, the Reuters News Agency

102. Humud, *supra* note 4, at 15.

103. *Id.* at 16.

104. *Id.* at 17.

reported: “The leaders of Turkey, Russia and Iran meeting in Ankara on Monday agreed to try to ease tensions in northwest Syria’s Idlib region, but disagreements between the countries appeared to linger, especially over the threat from Islamic State.”¹⁰⁵

The negotiated process proposed in this article focuses on the participation of all parties to the conflict to make a commitment to ensure respect for the right to children by not using military forces against hospitals and schools and by providing humanitarian assistance to ensure protection of children’s right to life and their overall wellbeing.

The Syrian Humanitarian Crisis Concerns all Humankind

What are the legal justifications, consistent with the *jus ad bellum*, for the international community to intervene in the Syrian conflict? Regarding the application of *jus ad bellum* norms in Syria, I agree with Professor Fernando Teson, who said: “The only available just cause is rescuing large numbers of persons from deadly attacks (by their government or others).”¹⁰⁶ In the case of Syria, it is essential to rescue children that are victims of a humanitarian crisis and are the survivors of crimes against humanity. Regarding a full-fledged intervention in the Syrian conflict, Professor Teson said:

In contrast, a full-fledged intervention that would overthrow Al-Assad while neutralizing Al-Qaeda *could* be justified under the doctrine if it complied with the principle of proportionality. Given the predictable dire consequences of a full invasion for the region and the world, such action is unlikely to be proportionate.¹⁰⁷

A similar normative analysis could be applied to the current humanitarian crisis in Syria. An alternative to a large military intervention in Syria is a global humanitarian effort with the consent of the Syrian government to protect children’s right to life. This humanitarian action, under the leadership of the International Syria Support Group (ISSG) group, should include the engagement of both developing and developed

105. Vladimir Soldatkin, Tuvan Gumrukcu & Ece Toksaba, *Turkey, Russia, Iran agree steps to ease tensions in Syria's Idlib despite lingering differences*, Reuters (Sept. 16, 2019), <https://www.reuters.com/article/us-syria-security-summit-putin/turkey-russia-iran-agree-steps-to-ease-tensions-in-syrias-idlib-despite-lingering-differences-idUSKB N1W11R7>.

106. Fernando Teson, *Syria and the Doctrine of Humanitarian Intervention*, BLEEDING HEART LIBERTARIANS (Sept. 2, 2013), <http://bleedingheartlibertarians.com/2013/09/syria-and-the-doctrine-of-humanitarian-intervention/>.

107. *Id.*

countries in providing humanitarian aid and ensuring compliance with international norms regarding respect for the right to life.

This type of effort should focus on negotiations to end violations of children's right to life and ensure the end of the humanitarian crisis in Syria. The Syrian government should consent to a diplomatic effort by the members of the international community. Besides the leading efforts of the International Syria Support Group, this should also include the participation of developing countries, and all other members of the U.N. General Assembly that have the commitment to ensure respect for the right to life of Syrian children.¹⁰⁸ The United Nations Security Council could also be part of a negotiated solution.

Consistent with the law of international organizations, the United Nations Charter grants authority to the Security Council to decide measures to restore international peace. According to Article 39 of the U.N. Charter:

The Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken in accordance with Article 41 and 42, to maintain or restore international peace and security.¹⁰⁹

Therefore, the Security Council could determine that a global diplomatic humanitarian effort is necessary to end widespread violations of the right to life of children in Syria. The humanitarian crisis in Syria and the potential of new emerging conflicts in the regions are threats to international peace in the region. In the current historical context in Syria, there have been interventions by some members of the U.N. Security Council including the United States and Russian Federation. The Bashar al-Assad regime has consented to Russia's intervention to help end its military struggle with ISIS and with pro-democratic opposition groups.¹¹⁰

A better approach for the Syrian government would be to negotiate with members of the International Syria Support Group and request the international community through the U.N. General Assembly and the

108. See Oona A. Hathaway, Julia Brower, Ryan Liss & Tina Thomas, *Consent-Based Humanitarian Intervention: Giving Sovereign Responsibility Back to the Sovereign*, 46 CORNELL INT'L L.J. 499 (2013) (for a comprehensive analysis of the idea of humanitarian intervention by consent).

109. Charter of the United Nations and Statute of the International Court of Justice, June 26, 1945, 59 Stat. 1031; T.S. No. 993; 3 Bevans 1153.

110. See Sahar Al-Trawneh, *Russian Intervention Strategy in Syria*, 75 J.L. POL'Y & GLOBALIZATION 1 (2018) (for an analysis of the causes for the Russian intervention in Syria).

Security Council, to provide political and economic support for the wellbeing of children including building up a culture of life, in Syria, that respect their inherent dignity.

Despite the great differences in legal systems and interpretations of international law, the United States, Iran, Russia, and other members of the International Syria Support Group (ISSG) should make a commitment to facilitate a negotiated solution to ensure respect for the rights of children. Developing countries should also contribute to ending violations of the right of children and the humanitarian crisis in Syria.

Historically the concept of humanitarian intervention has been associated with developed countries that have used their power to intervene in developing countries.¹¹¹ Often the idea of humanitarian intervention was used to justify colonial and geo-political interest of powerful countries.¹¹² Even if the concept of humanitarian intervention may be discredited, in the 21st century, it is necessary to have global diplomatic efforts to help end humanitarian crisis such as the one in Syria. Widespread violations of the right to life of children is a case that should concern not only the permanent members of the U.N. Security Council, but all sovereign states including developing countries that are members of the U.N. General Assembly.

Considering the magnitude of the humanitarian crisis in Syria, regional organizations including the Organization of American States, the African Union and the Arab League, could also participate in coordinating a global effort to support diplomatic efforts in Syria to end widespread violations of the right to life of children.¹¹³

The recognition of the legal norm regarding the equality of all sovereign states, under international law, provides a strong foundation for developing countries not only to defend their international rights, but also to exercise their international obligations by contributing to resolve international humanitarian crises, such as the one in Syria, by diplomatic means.¹¹⁴ Even though, respect of the right to life of children should be the central objective of any humanitarian effort in Syria, it is essential to also ensure respect for other fundamental human rights such as the right to

111. See Waseem Ahmad Qureshi, *International Law and Military Intervention: U.S. Action in Syria*, 40 U. HAW. L. REV. 115 (2018) (analyzing the U.S. use of force in Syria).

112. See Eric Engle, *Humanitarian Intervention and Syria*, 18 BARRY L. REV. 129, 166 (2012) (for an analysis of humanitarian intervention in Syria).

113. See generally Mahdi Abdolmaleki & Parastou Esmailzadeh Molabashi, *International Regional Organizations and Responsibility to Protect Theory*, 11 INT'L STUD. J. 147 (2014) (for an analysis of international regional organizations and the responsibility to protect).

114. See generally George J. Mitchell, *Peacemaking: The Interaction of Law, Politics, and Diplomacy*, 97 AM. SOC'Y INT'L. L. PROC. 173, 180 (2003) (for historical examples of the interactions of law and diplomacy).

health, access to food, and access to water. Without the implementation of these human rights, children will continue to be vulnerable to actions against their survival. This requires diplomatic initiatives and global aid programs that should be implemented without political hindrances.¹¹⁵

Conclusions

International law recognizes the importance of protecting the rights of the child including the right to life. Crimes against humanity are extreme violations of that fundamental human right. In Syria, children are one of the main victims of a civil war that has resulted in the current humanitarian crisis. Considering the magnitude of the violations of children's rights and their vulnerability, there is a legal and moral imperative to resolve this situation.

There are three main approaches that could influence the situation in Syria and could contribute to protect the right to life of children. The first approach is to recognize that respect for Syrian territorial integrity and national sovereignty above all other international norms is the foundation to build up a society that respects the rights of children. The application of this norm implies the recognition that any foreign involvement, in Syria, will not contribute to resolve the current humanitarian crisis. This approach focuses on the hope that the Syrian government, by itself, will choose to restore the rule of law and will ensure respect for children's rights in its territory.

The second option is a humanitarian military intervention focused on ensuring respect for the right to life of children in Syria, including preventing further military armed violence against children, ensuring access to basic health, food, and psychological help. Considering that crimes against humanity have been committed in Syria, the international community could legally intervene to protect children's right to life. However, it is unlikely that an international military intervention in Syria will resolve the humanitarian crisis and widespread violations of children's rights.

A third option is a synthesis of the previous two possibilities. This option is based on a negotiated agreement between the Syrian government, opposition forces, countries members of the International Syria Support Group, and developing nations, to resolve the humanitarian crisis that affects Syrian children's survival. This negotiating process will result in a global humanitarian diplomatic effort to ensure that the rights of children will be respected and that the Syrian government will fulfill its

115. See *Rigging the System*, *supra* note 2 (for facts about the humanitarian needs, including access to food and water, of children in Syria).

international legal obligations to protect the right to life of children in its territory including ending all bombings of hospitals and schools.

Considering the inability of the Syrian government to end widespread violations of the right to life of children, a global diplomatic humanitarian effort is necessary. This type of diplomatic action should respect the national sovereignty and territorial integrity of Syria and should be done with the consent of the Syrian government.

The countries members of the International Syria Support (ISSG) group, and developing nations have the diplomatic, economic, and political means to lead this global effort. Regional powers including Iran, Saudi Arabia, and Turkey should be part of the resolution of the Syrian humanitarian crisis and should make legal commitments to contribute to ensure respect for children's human rights including respect for their right to life. Even though these countries have deep religious and political differences, in the 21st century context, these differences cannot justify disregard for the right to life of children. Similarly, members of the United Nations Security Council, including the United States and the Russian Federation, should be engaged in a global humanitarian effort, without only focusing on their narrow national political interests, to ensure the survival of Syrian children.

Syrian children are Sunni, Shia, Alawi and Christian. Most importantly, they are human beings who share a common human dignity. They are innocent victims of religious and ethnic conflicts, and sufferers of the political interests of foreign countries that have used the Syrian civil war to promote their own national interests and political and religious ideologies.

If the international community is incapable or reluctant to contribute to protect the right to life of innocent children in cases of widespread humanitarian disasters, such as the one in Syria, what is the relevance of discourses regarding the protection of fundamental human rights in the 21st century?

There is no doubt that the right to life of all human beings should be respected. However, if even the right to life of children, the most vulnerable members of any society, cannot be protected in our century, can we really celebrate the technological and economic progress of our times? Without respect for fundamental international human rights and human dignity of children, there cannot be real human progress. Because of this, international law in general, and the norms of international human rights law and international humanitarian law, in particular, are exceptionally relevant in the 21st century. Often, negotiated agreements are the best mechanism to implement these norms and end acts of extreme political evil.