

Justice in Syria: The Potential of New Technologies in Documenting Violations of International Law

MASTER'S THESIS

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Abstract

For years, Syria has been in a state of armed conflict involving multiple armed groups. Syrians have had to face many violations of international humanitarian law at the hands of the regime and its allies. In particular, civilian infrastructure such as medical facilities have been attacked time and time again. The international community has not been able to stop these attacks from occurring. In addition, the UN Security Council has often been impeded from passing resolutions to mitigate the situation, due to Russian vetoes. Notably, the UN Security Council has not yet referred the armed conflict to the International Criminal Court. In sum, the Syrian armed conflict has exposed shortcomings of the international justice system. Nonetheless, these developments have not stopped the Syrians from seeking justice. For instance, new technologies and methodologies have led to the wide documentation of international crimes by civil society actors.

This master's thesis, therefore, examined how technology and digital evidence helped to strengthen the documentation of violations of international law. The study comprised desk-research of a wide range of sources, including articles, books, and other documents. In particular, the thesis focuses on an investigation of the Syrian Archive, Bellingcat and other NGOs on attacks against medical facilities in Idlib.

Ultimately, this thesis comes to the conclusion that new technologies and methodologies strengthened documentation possibilities in Syria. These new documentation possibilities not only better prepare Syrians for future justice mechanisms, but also contribute to current justice efforts, including informal truth-seeking practices. Both these elements, as well as the international stalemate, have helped to advance the use of universal jurisdiction in Western countries. Additionally, this thesis underlines the importance of transitional justice and key role of actors from the Syrian and international civil society, the UN's Commission of Inquiry and International, Impartial, Independent Mechanism to advance this kind justice in Syria.

Syrië bevindt zich al jarenlang in een gewapend conflict tussen meerdere gewapende groepen. Syriërs zijn geconfronteerd met vele schendingen van het internationaal humanitair recht door het regime en zijn bondgenoten. Met name civiele infrastructuur zoals medische voorzieningen worden keer op keer opnieuw aangevallen. De internationale gemeenschap is er echter niet in geslaagd deze aanvallen te stoppen. Bovendien wordt de VN-Veiligheidsraad belemmerd om resoluties aan te nemen die de situatie kunnen verzachten, als gevolg van Russische veto's. Het Syrische gewapende conflict heeft dus het falend internationaal rechtssysteem blootgelegd. In het bijzonder heeft de VN-Veiligheidsraad het gewapende conflict nog niet kunnen doorverwijzen naar het Internationaal Strafhof. Toch hebben deze ontwikkelingen de Syriërs er niet van weerhouden naar gerechtigheid te zoeken. Nieuwe technologieën en methodologieën hebben het bijvoorbeeld mogelijk gemaakt voor actoren uit het maatschappelijk middenveld om de internationale misdaden te documenteren.

Deze masterproef onderzoekt daarom hoe technologie en digitaal bewijsmateriaal de documentatie van schendingen van het internationaal recht hebben versterkt. Het onderzoek bestond uit desk-research van een breed scala aan bronnen zoals artikelen, boeken en andere documenten. Bovendien focuste deze masterproef op het onderzoek naar aanvallen op medische voorzieningen in Idlib van the Syrian Archive, Bellingcat en andere NGO's.

Uiteindelijk komt dit proefschrift tot de conclusie dat nieuwe technologieën en methoden de documentatiemogelijkheden in Syrië hebben versterkt. Deze nieuwe documentatiemogelijkheden bereiden Syriërs niet alleen beter voor op toekomstige justitiële mechanismen, maar dragen ook bij aan de huidige justitiële inspanningen, waaronder informele truth-seeking praktijken. Deze beide elementen, alsmede de internationale impasse, hebben ook geholpen om het gebruik van universele jurisdictie in westerse landen te bevorderen. Bovendien, legt deze masterproef de nadruk op de belangrijke rol van transitional justice and de actoren uit het Syrische en internationale maatschappelijk middenveld, de Commission of Inquiry en het International, Impartial, Independent Mechanism, om het gerechtvaardigheid in Syrië te bevorderen.

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Abbreviations

BOI	Board of Inquiry
CIJA	Commission for International Justice and Accountability
COI	Commission of Inquiry on the Syrian Arab Republic
CWC	Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction
ECCHR	European Centre for Constitutional and Human Rights
FSA	Free Syrian Army
HTS	Hay'at Tahrir al-Sham
ICC	International Criminal Court
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRC	International Committee of the Red Cross
ICTJ	International Centre for Transitional Justice
ICTY	International Criminal Tribunal for the former Yugoslavia
IIIM	International, Impartial, Independent Mechanism
IRC	International Rescue Committee
ISIL	Islamic State of Iraq and the Levant, also known as IS, ISIS, and DAESH
MOU	Memorandum of understanding
NDF	National Defence Forces
NGO	Non-Governmental Organisation
NIAC	Non-international armed conflicts
OCHA	Office for the Coordination of Humanitarian Affairs
OPCW	Organisation for the Prohibition of Chemical Weapons
SDF	Syrian Democratic Forces
SJAC	Syria Justice and Accountability Centre
SSA	Surveillance system for Attacks on Health Care
UNGA	UN General Assembly
UNSC	UN Security Council
YPG	Kurdish People's Unit

Introduction

“As soon as we heard the roar of the warplanes, I rushed inside with some visitors, and then the warplanes began to target the area and hit the hospital. Although the hospital was established in an underground cave, the rockets were able to penetrate it and caused considerable damage to the medical equipment.”

Medical Facilities under Fire report¹

“There is always the fear that the facility you are in will be targeted. There is a joke that says the armed opposition groups don’t build their bases near hospitals because they know that hospitals will be targeted”

A Decade of Destruction: Attacks on health care in Syria²

For more than a decade now, Syria has been in a situation of armed conflict.³ What turned into a civil war, originally started out as a peaceful uprising against the authoritarian Syrian regime.⁴ In March 2011, Syrian oppositional activists and citizens started peaceful protests in Da’ra, that quickly spread throughout Syria. However, the Syrian regime met these peaceful protests with violent repression, leading to the escalation of the conflict.⁵ In the second half of the year, the opposition transformed into a range of anti-regime armed groups without a unified commandment.⁶ Finally, in the summer of 2012, the conflict in Syria was officially declared as a non-international armed conflict.⁷

In addition, in 2012, the opposition faced growing sectarianism and radicalisation, first with Islamist groups, then with extremist jihadi groups, such as the al-Nusra Front and later the Islamic State of Iraq and the Levant (ISIL).⁸ These more organised and experienced groups quickly gained some ground and became an important force in Syria. ISIL, in particular, gained territory to expand its caliphate but not necessarily to

¹ ‘Medical Facilities Under Fire’ (Syrian Archive) <<https://syrianarchive.org/en/investigations/Medical-Facilities-Under-Fire>> accessed 19 March 2022.

² *A Decade of Destruction: Attacks on health care in Syria* (International Rescue Committee, 3 March 2021) 8.

³ Ziad Majed, ‘Syrie: Révolution, Barbarie et occupations’ (2020) 115 *Confluences Méditerranée* 49.

⁴ Ziad Majed, *Syrie, la Révolution Orpheline* (Actes Sud, L’Orient des Livres 2014) 41.

⁵ Beth Van Schaack, *Imagining Justice for Syria* (OUP 2020) 29-30.

⁶ Robin Yassin-Kassab and Leila Al-Shami, *Burning Country: Syrians in Revolution and War* (Pluto Press 2018) 98.

⁷ Independent International Commission of Inquiry on the Syrian Arab Republic, *Civilians under attack in Syria: Towards Preventing Further Civilian Harm* (Policy Paper, 2022) 2.

⁸ Charles Lister, *The Syrian Jihad: Al-Qaeda, the Islamic State and the Evolution of an Insurgency* (OUP 2015) 2-4.

overthrow the regime, thus fighting all parties to the conflict, including jihadi groups that did not entirely adhere to their thinking.⁹ ISIL quickly became the international community's centre of attention, overshadowing the opposition's demands and struggles.¹⁰

From the start of the revolution, different states had supported the regime or the opposition. However, as the conflict escalated, international involvement expanded.¹¹ Regional states including Saudi Arabia, Qatar, and Turkey, as well as, Western countries assisted the opposition by sending weapons and giving other logistical support, while Iraq, Iran, and most notably Russia backed the regime.¹² The situation evolved again with the rise of extremist groups, when some external states further involved themselves.¹³ At that time, the US and Russia, became militarily involved. The US, on the one hand, primarily bombed certain ISIL-held areas. Russia, on the other hand, targeted zones held by the opposition, thus leading the regime towards success.¹⁴

Today, ISIL has nearly been destroyed, even if radical pockets remain. The regime is still in power as a result of its allies' support, that have managed to regain most of its lost territory.¹⁵ Nonetheless, opposition groups and other extremist armed groups remain in Idlib, Aleppo and Northern parts of the country, and continue to fight the regime. Therefore, in 2023, Syria is still divided in multiple frontlines and involves numerous armed groups.¹⁶

Throughout the revolution and then the armed conflict, the regime has continued to disregard human rights and international humanitarian law. From the beginning people were arrested, tortured and murdered by the regime. This violence later escalated in sieges, raids, and other war crimes against the civilian population.¹⁷ Still, while the regime remains the main perpetrator of international crimes, it is important to note that all parties have committed international crimes.¹⁸ In its latest report, the Syrian Network for Human Rights calls

⁹ *Supra* (nr.6) Yassin-Kassab and Al-Shami 139-140.

¹⁰ *Supra* (nr.6) Yassin-Kassab and Al-Shami 120-121 and 150-153.

¹¹ Dana Moss, *The Arab Spring Abroad: Diaspora Activism against Authoritarian Regimes* (CUP 2022) 211-212.

¹² *Supra* (nr.4) Majed 88.

¹³ *Supra* (nr.11) Moss 214-218.

¹⁴ *Supra* (nr.5) Van Schaack 43.

¹⁵ *Supra* (nr.43) Ashraph 87.

¹⁶ UNGA 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' HRC 52nd session (7 February 2022) UN Doc A/HRC/52/69, nr.5 and annex II.

¹⁷ *Supra* (nr.11) Moss 8.

¹⁸ Hilly Moodrick-even Khen and Yael Siman, 'Scorched earth Syria: Between Crimes against Humanity and Genocide' in Hilly Moodrick-Even Khen, Nir Boms and Sareta Ashraph (eds), *The Syrian War: Between Justice and Political Reality* (CUP 2020) 107.

attention to more than 230 thousand documented civilian deaths, approximately 112 thousand enforced disappearances, and 14 million displaced Syrians.¹⁹

Indeed, during the entirety of the conflict, civilians and civilian infrastructure, in particular, have been a military target of the regime and the Russian military.²⁰ This master's thesis focusses especially on attacks against medical facilities. The regime has weaponized access to medical care by conducting systematic attacks and airstrikes on medical facilities and personnel in Syria, even though, during armed conflicts, the protection of medical staff and facilities is a key aspect of international humanitarian law.²¹ These attacks led to the destruction of hospitals, the death of patients and medical staff, and moreover, the exodus of doctors and others, thus leaving Syrian civilians with little access to medical care.²²

However, the regime is still in power, thus, the possibilities to one day hold the regime and its allies accountable for their crimes seem very limited.²³ Furthermore, in terms of international criminal accountability, Syria does not have many options either, as the International Criminal Court has no jurisdiction for the perpetrated crimes in Syria.²⁴ In addition, the international community has not yet been able to stop or prosecute attacks against civilians because the involvement of different states in the Syrian armed conflict has led to an international stalemate that has hindered any actions towards these goals. Russia, in particular, has vetoed many resolutions of the UN Security Council.²⁵ This situation, enabled the Assad regime to continue to commit mass violations of international law against the opposition and Syrian population.²⁶ In sum, the Syrian conflict exposed certain weaknesses of the international justice system to resolve issues concerning the access to justice when key international actors, such as Russia, are involved in the conflict.

In the face of this accountability gap, creative alternatives have been embraced to advance justice in Syria. In particular, instead of focussing on criminal accountability alone, the civil society turned to transitional justice.²⁷ This transitional justice approach encompasses first of all different forms of legal accountability,

¹⁹ Syrian Network for Human Rights, *On the 12th Anniversary of the Popular Uprising: A Total of 230,224 Civilians Documented as Dead, including 15,275 Who Died due to Torture, 154,871 Arrested and/or Forcibly Disappeared, and Roughly 14 Million Syrians Displaced* (12th annual report SNHR, 15 March 2023) 1 and 29.

²⁰ Independent International Commission of Inquiry on the Syrian Arab Republic, *Civilians under attack in Syria: Towards Preventing Further Civilian Harm* (Policy Paper, 2022) 4-7.

²¹ See 3.1 Attacks on Medical Facilities and the Law.

²² *Supra* (nr.2) *A Decade of Destruction: Attacks on health care in Syria* 4ff.

²³ Annika Jones, 'Seeking International Criminal Justice in Syria' (2003) 89 *International Law Studies* 802, 804-805.

²⁴ Stephen Rapp, 'Overcoming the Challenges to Achieving Justice for Syria' (2015) 30 *Emory International Law Review* 155.

²⁵ See Institutional Blockages and International Stalemate.

²⁶ *Supra* (nr.5) Van Schaack 53ff.

²⁷ Brigitte Herremans and Tine Destrooper, 'Moving Beyond Formal Truth Practices and Forensic Truth in the Syrian Conflict: How Informal Truth Practices Contribute to Thicker Understandings of Truth' (2022) 0 *Social & Legal Studies* 1, 2.

including proceedings before the International Criminal Court or universal jurisdiction cases. In addition, transitional justice recognizes other mechanisms such as truth-seeking initiatives, and memorialisation. The common goal of these judicial and non-judicial mechanisms is to promote justice to aid societies in progressing and reconciling after great past abuses.²⁸

In Syria, documentation, has been paramount for the realization of transitional justice.²⁹ Social media, fast internet access, and other technologies have provided accessible instruments and new methods to create, share and analyse information. Therefore, these technologies have made it possible to widely document international crimes and mass atrocities in Syria.³⁰ In addition, the accountability gap encouraged the civil society to take advantage of this development, and thus, to focus on collecting, archiving and sharing this documentation with the world.³¹ At the time, it was assumed that the documentation and publicising of the many violations of international law would pressure the parties to stop and the international community to act.³² Additionally, the civil society prepared and promoted the utilization of this vast amount of documentation for prospective transitional justice mechanisms.³³ For instance, many NGO's successfully worked towards universal jurisdiction procedures in Western countries and have, therefore, been able to use their documentation in these procedures.³⁴

In this master's thesis, I examine how technology and digital evidence can help to strengthen the documentation of violations of international law. I based my findings on a variety of sources including NGO reports, articles and books. In addition, to put this into perspective, I, thoroughly, analysed research done by the Syrian Archive, Bellingcat and others on attacks on medical facilities, in Idlib, by the Syrian regime and Russian forces.³⁵ These NGOs verified and processed information from social media, satellites, and testimonies to come to conclusions concerning the damage and perpetrators resulting from these attacks.³⁶ The question rises whether these new types of documentation, reinforce evidence for accountability processes, and if this documentation advances justice.

²⁸ Sema Nassar and Iavor Rangelov, *Documentation of Human Rights Violations and Transitional Justice in Syria: Gaps and Ways to Address Them* (Conflict Research Programme London School of Economics and Political Science, 2020) 4.

²⁹ Noha Aboueldahab, *Writing Atrocities: Syrian Civil Society and Transitional Justice* (Brookings 2018) 2ff.

³⁰ Molly Land and Jay Aronson, 'The Promise and Peril of Human Rights Technology' in Molly Land and Jay Aronson (eds), *New Technologies for Human Rights Law and Practice* (CUP 2018) 1ff.

³¹ Joshka Wessels, *Documenting Syria: Film-making, Video Activism and Revolution* (Bloomsbury Publishing 2019) 241.

³² *Supra* (nr.28) Nassar and Rangelov 4.

³³ *Supra* (nr.29) Aboueldahab 1 and 4.

³⁴ Wolfgang Kaleck and Andreas Schüller, 'Universal Jurisdiction Gains New Momentum' (2019) 96 TOAEP.

³⁵ *Supra* (nr.1) 'Medical Facilities Under Fire'.

³⁶ *Ibid*; see 3.2 Investigations on Attacks against Medical Facilities.

Consequently, this thesis will be divided in four main chapters.

In chapter 1, I will first give background information about the armed conflict in Syria and the attacks against civilian infrastructures. In the same chapter, I will then present the general legal framework. To do so, I will explain whether the Syrian war constitutes an international or non-international armed conflict, and thus, which elements of international humanitarian law and international human rights law are applicable. Furthermore, when violations of international humanitarian law occur, international criminal law comes to play. Therefore, I will define the different international crimes applicable to the Syrian conflict. Once the international legal frame is determined, I will examine to which extent the international justice system has failed Syria. I will not only be interested in the traditional accountability mechanisms, but also take a look at different transitional justice avenues such as universal jurisdiction procedures and truth-seeking. (Chapter 1: Contextualisation)

In chapter 2, I will examine which new technologies, methodologies and actors are important to document the aforementioned violations of international law. To start with, I will give background information concerning the new types of technologies and their benefits for accountability purposes. The researched technologies include open-source data such as information on social media and satellites. In the next section, different actors that have developed their work around these new technologies in Syria will be presented. These actors are not only limited to civil society actors but also several UN bodies established specifically for the Syrian armed conflict. Only then, will I have a look at the difficulties that are encountered when documenting violations of international law with new technologies and digitalization. In doing so, I will keep my focus on the Syrian armed conflict and the different organisations that have developed around these new documentation techniques. Indeed, different stakeholders, including the UN, are attempting to solve these problems by giving tools to find, analyse, and present digital evidence. Along these lines, I will examine the emerging field of practice created by Forensic Architecture: 'Investigative Commons'. (

Germany, especially, is at the forefront of the universal jurisdiction movement. Indeed, the Federal Public Prosecutor can open structural investigations for international crimes, to later use the evidence from these investigations for individual prosecutions, or even share that evidence with foreign or international jurisdictions. In addition, the Federal Public Prosecutor can also prosecute individuals in present Germany for international crimes in Syria. Furthermore, some civil society actors in Germany, such as the ECCHR, are particularly involved in the prosecution of international crimes in Syria. These civil society actors coordinate with Syrian civil society actors, in order to build cases and submit complaints concerning these crimes.

Chapter 2: Documentation and the Role of Digital Technology)

Chapter 3 will allow me to focus on the attacks against medical facilities in Syria. This chapter will begin with the specific legal framework concerning attacks against medical facilities in times of armed conflict. Similarly, to the first chapter, I will apply international humanitarian law, international human rights law and international criminal law to the attacks. Afterwards, I will concentrate my research on a report by Bellingcat and Mnemonics (former Syrian Archive) concerning the bombing of medical facilities in Idlib in 2017. I will bring attention to all the featured attacks in the report, and underline the different signs of intentionality that indicate the attacks amount to war crimes. Furthermore, the new documentation techniques and the methodology used to investigate these attacks will be examined. Lastly, I will supplement this investigation with a short study of the follow up report and Dataset created by Mnemonics for attacks throughout the Syrian armed conflict. (Chapter 3: The Attacks on Medical Facilities)

Chapter 4 will be more dedicated to research the potential of new technologies, taking into account what effect the above-mentioned investigations might have had on attacks against medical facilities. Therefore, the different actions concerning the attacks against medical facilities taken by the international community will be observed. The focus of this chapter will try to assess the value of documentation for violations of international humanitarian law. I will therefore present different effects of documentation via new technologies. For instance, I will take a look at the possibility that the great amount of documentation has increased the general awareness towards the issue of attacks against medical facilities and what consequences might have ensued from this increased awareness. In addition, the effects of documentation on other transitional justice avenues, especially truth-seeking, is observed. Lastly, I look at the potential of the investigations for possible legal accountability. At the moment, the most promising developments are the universal jurisdiction cases, among other cases, in Germany. (Chapter 4: Effects of investigations on the attacks on medical facilities)

Chapter 1: Contextualisation

1.1 The Syrian Armed Conflict

From a Peaceful Revolution to a Decade Long Armed Conflict

Fase 1: The revolution

In 2011, the Arab world was marked by popular uprisings against authoritarian and corrupted regimes in many states.³⁷ These revolutions made the Syrians hope for change and realize that they could challenge the Assad regime.³⁸ Therefore, in March, demonstrations against the authoritarian Syrian regime emerged. The regime responded by incarcerating and abusing the dissidents. However, the revolution really started in Dar'a, after schoolboys, who had spray-painted anti-regime graffiti on their school walls, were arrested and tortured by the regime.³⁹ On 18 March 2011, after several days asking and protesting for the release of the schoolboys, many people assembled at Dar'a's central Umari Mosque to peacefully demand the boys' release and denounce the regime and its repression, as well as the deteriorating quality of life of many Syrians.⁴⁰ The regime responded aggressively by using water cannons, tear gas and by opening fire on the protestors, killing four men.⁴¹

These repressions ignited peaceful protests in Dar'a and the surrounding areas, that then spread to different regions in Syria. The protestors demanded political reform and the fall of the regime, in order to have more freedom and dignity. Each protest was met with violence and shootings. The regime even besieged Dar'a, in order to squash down the rebels. Despite the circumstances, the opposition primarily remained non-violent: they organized sit-ins, sang songs, created slogans, wrote on walls, and destroyed portraits of the Assad family.⁴²

Fase 2: Escalation

The following months, manifestations continued to grow, whilst the regime intensified its reactions to the protests with shootings, bombings, torture, mass-arrestations and disappearances.⁴³ This escalation met a

³⁷ Ex. Egypte, Libia or Yemen; Dana Moss, *The Arab Spring Abroad: Diaspora Activism against Authoritarian Regimes* (CUP 2022) 7.

³⁸ Reinoud Leenders, 'Social Movement Theory and the Onset of the Popular Uprising in Syria' (2013) 35 *Arab Studies Quarterly* 274, 275.

³⁹ *Supra* (nr.37) Moss 6-8.

⁴⁰ Reinoud Leenders, 'Collective Action and Mobilization in Dar'a: An Anatomy of the Onset of Syria's Popular Uprising' (2020) 17 *Mobilization* 419, 420-421.

⁴¹ Ziad Majed, *Syrie, la Révolution Orpheline* (Actes Sud, L'Orient des Livres 2014) 40-41.

⁴² *Supra* (nr.41) Majed 41-43.

⁴³ Sareta Ashraph, 'All the Red Lines: The Syrian Conflict and Its Assault on International Humanitarian Law' in Hilly Moodrick-Even Khen, Nir Boms and Sareta Ashraph (eds), *The Syrian War: Between Justice and Political Reality* (CUP 2020) 81-82.

turning point in the summer of 2011, when regime tanks began to occupy cities and the military multiplied assaults and aerial attacks against cities such as Homs.⁴⁴ At that moment, an unorganised opposition began to take arms and managed to gain control over certain parts of Damas and Aleppo.⁴⁵

However, the various groups in opposition still debated the use of violence. Some accepted that violence had become a necessary mean, while others argued that peaceful protests maintained a moral high ground in comparison to the regime's violent reactions. In addition, Syrians feared that the start of violence would further escalate the conflict and prompt the regime to engage in even more violence. People also anticipated that the militarization of the opposition would cause a split within the opposition, leading to a community divided conflict.⁴⁶ In the end, the Syrian's need for self-defence and the realisation that peaceful actions wouldn't overthrow the regime, made it inevitable to avoid the militarization of the opposition.⁴⁷ The regime riposted by attacking with heavier weaponry, including rockets and bombs, killing civilians and destroying civilian homes.⁴⁸ By February 2012, the uprising escalated to the point of an armed conflict.⁴⁹

In 2011 still, a number of soldiers started to desert the regime army and created different mostly local anti-government armed groups. This plethora of independent armed groups engaged in asymmetrical warfare against the Assad regime with the goal to create a democratic state in Syria.⁵⁰ The Free Syrian Army (FSA) was used as umbrella term to refer to these groups, but the FSA had no unified commandment, nor funding to lead the coalition of these armed groups.⁵¹ The divide of the FSA made it difficult to impose a code of conduct and thus, led to some groups committing war crimes. Despite this, regional states, such as Saudi Arabia and Qatar, supplied weapons to these armed groups, and therefore, enabled the FSA to occupy large swaths of the Syrian territory.⁵²

Fase 3: International involvement

The Syrian revolution, which turned into an armed conflict, revealed a division within the international community as external states sided with the different parties involved in the conflict. As already mentioned,

⁴⁴ *Supra* (nr.41) Majed 47.

⁴⁵ Ziad Majed, 'Syrie: Révolution, Barbarie et occupations' (2020) 115 *Confluences Méditerranée* 49, 52 ; *Supra* (nr.37) Moss 211.

⁴⁶ *Supra* (nr.41) Majed 45-46.

⁴⁷ Robin Yassin-Kassab and Leila Al-Shami, *Burning Country: Syrians in Revolution and War* (Pluto Press 2018) 92-93; Yassin Al-Haj Saleh, *The Impossible Revolution* (Haymarket Books 2017) 67-68 and 70-72.

⁴⁸ *Supra* (nr.43) Ashraph 83.

⁴⁹ Independent International Commission of Inquiry on the Syrian Arab Republic, *Civilians under attack in Syria: Towards Preventing Further Civilian Harm* (Policy Paper, 2022) 2; see also Categorization of the Armed Conflict.

⁵⁰ *Supra* (nr.47) Yassin-Kassab and Al Shami 98.

⁵¹ *Supra* (nr.41) Majed 49-50.

⁵² *Supra* (nr. 47) Yassin-Kassab and Al Shami 99.

the opposition was supported by various regional Arab states,⁵³ Turkey, Western countries⁵⁴ and the US. Initially, their support was limited to sanctions against the regime and the sponsoring of relief work.⁵⁵ Due to the escalating of the conflict, their involvement expanded to financial and logistical support such as training people to fight or sending light and medium weaponry.⁵⁶

On the other hand, the Syrian regime was supported by different actors, such as Iraq, Hizbollah (Lebanese Islamic political party), and Iran. For these states, the regime had to retain as much power as possible, mostly for religious and economic reasons.⁵⁷ In particular, Russia continuously supported the regime at an international level by defending Syria's sovereignty. For instance, as further explained below, Russia vetoed several UN Security Council resolutions. In addition, Russia invested into the regime and supplied it with heavy armament, such as shelling weapons and bombs.⁵⁸ The reason for this support is rooted in Russia's long standing diplomatic and economic ties with Syria.⁵⁹ For Ziad Majed, Russia's involvement was also a form of rejection of the Western ideals, as well as, a powerplay to consolidate their power and influence on the international scene.⁶⁰

Fase 4: Radicalisation and ISIL

In 2012, the opposition had to face a growing sectarianism and radicalisation from within.⁶¹ Indeed, Islamism flourished among certain armed groups, which received more support from countries like Qatar.⁶² The more organised and experienced radical Islamist groups quickly gained military ground, becoming one of the most important forces against the regime by the end of 2012.⁶³ In November 2013, several large Syrian radical Islamist groups formed a new coalition called the Islamic Front.⁶⁴ This coalition still chose to fight alongside the FSA for the dignity and freedom of Syrians.⁶⁵

At the same time, the warring situation provided an opportunity for other Islamic extremist groups, often referred to as jihadist groups, to infiltrate the conflict.⁶⁶ However, although these jihadist groups shared a

⁵³ Saudi Arabia, Qatar, and, the United Arab Emirates.

⁵⁴ France and the United Kingdom.

⁵⁵ *Supra* (nr.37) Moss 211-212.

⁵⁶ Beth Van Schaack, *Imagining Justice for Syria* (OUP 2020) 41; Raymond Hinnebusch 'Syria: from 'authoritarian upgrading' to revolution' (2012) 88 *International Affairs* 95, 111.

⁵⁷ *Supra* (nr.41) Majed 88.

⁵⁸ Ohannes Geukjian, *The Russian Military Intervention in Syria* (McGill-Queen's University Press 2022) 110-166.

⁵⁹ *Supra* (nr.58) Geukjian 117.

⁶⁰ *Supra* (nr.41) Majed 85.

⁶¹ *Supra* (nr.41) Majed 49-50.

⁶² Charles Lister, *The Syrian Jihad: Al-Qaeda, the Islamic State and the Evolution of an Insurgency* (OUP 2015) 99.

⁶³ *Supra* (nr.41) Majed 51.

⁶⁴ *Supra* (nr.62) Lister 99.

⁶⁵ *Supra* (nr.50) Yassin-Kassab and Al-Shami 133.

⁶⁶ *Supra* (nr.56) Van Schaack 30.

common enemy with the opposition, they did not support the Syrian revolutionary ideals, and thus, did not align themselves with the opposition.⁶⁷ An example of a jihadist group was the al-Nusra Front, which originated from the Islamic State of Iraq and was later funded by al-Qaeda.⁶⁸ Originally, though, many jihadists in Syria were Syrian prisoners who were released and then joined Syrian Islamist factions or the al-Nusra Front.⁶⁹

In 2013, the self-proclaimed Islamic State of Iraq arrived in the conflict and tried to regain control of the al-Nusra Front, under the name of the Islamic State of Iraq and the Levant (ISIL).⁷⁰ However, the al-Nusra Front refused to reintegrate the Islamic State, thus causing a jihadist split.⁷¹ The Islamic State's goal was to gain territory to expand their califate, and thus, not necessarily to overthrow the regime. Therefore, they not only fought the opposition forces, but also jihadist armed groups that didn't adhere perfectly to their thinking.⁷² This armed group immediately gained international attention by enforcing strict Islamic law and sharing images of executions and other crimes. In addition, ISIL quickly grew in numbers, especially due to foreign fighters.⁷³ At some point, ISIL forces had taken 25 percent of the country.⁷⁴ At that point, the regime, helped by the international community, started to attack ISIL and to regain territory.⁷⁵ Therefore, some scholars, such as Charles Lister, believe that the regime may have welcomed the arrival of jihadists and terrorist groups, as it enabled them to scare Syrians and lead the international community into accepting the Assad regime.⁷⁶

Fase 5: Further international involvement

The appearance of ISIL in this armed conflict, led to a fundamental shift of attention from the international community. With time, the support for the anti-regime efforts disappeared in favour of the destruction of ISIL.⁷⁷ Indeed, ISIL pushed external states to involve themselves a step further in the Syrian armed conflict. The US and Russia, especially, started to militarily involve themselves in the conflict by bombing certain 'ISIL held' areas. The US's involvement only really focussed on the destruction of ISIL and counter-terrorism.⁷⁸ In addition, aside from their military actions, the US also helped the Kurdish People's Unit (YPG) and other anti-government armed groups to found the Syrian Democratic Forces (SDF) and form a united front against

⁶⁷ *Supra* (nr.56) Van Schaack 30.

⁶⁸ *Supra* (nr.62) Lister 58.

⁶⁹ *Supra* (nr.62) Lister 54.

⁷⁰ Later known as ISIS or DAESH, its Arabic acronym.

⁷¹ *Supra* (nr.62) Lister 119.

⁷² *Supra* (nr.50) Yassin-Kassab and Al-Shami 139-140.

⁷³ *Ibid.*

⁷⁴ *Supra* (nr.56) Van Schaack 31-32.

⁷⁵ *Supra* (nr.50) Yassin-Kassab and Al-Shami 146.

⁷⁶ *Supra* (nr.62) Lister 53.

⁷⁷ *Supra* (nr.37) Moss 214-218.

⁷⁸ *Supra* (nr.41) Majed 87.

ISIL.⁷⁹ Russia, on the other hand, had a leading role in the reclaiming territory and power by the regime.⁸⁰ On an international level, Russia stated that their military involvement only meant to counter ISIL forces and jihadist groups. However, practice showed that the Russian primarily targeted the zones that were held by the opposition, thus, helping the regime to regain lost territory.⁸¹

The conflict in 2023

Since 2015, the different parties to the armed conflict have gained and lost territory. ISIL was more or less destroyed, even if some are still loyal to them. The regime has continued to survive, and eventually, even dominate, thanks to external intervention and support. Russia, especially, has had a crucial role in supporting the regime.⁸² In 2023, Syria is, thus, still divided between mainly government-controlled forces, the SDF and YPG. The regime has managed to nearly push back the opposition to the north-east and has regained most of its territory. In addition, other non-state armed groups such as ISIL, Hay'at Tahrir al-Sham (HTS), the former al-Nusra Front, as well as certain external actors, such as the Turkish Armed Forces, the Russian armed forces and the United States military, are also still involved.⁸³ In terms of hostilities, ground and aerial operations continue as the regime has intensified its attacks on multiple frontlines. Therefore, a risk of escalation cannot be excluded. In particular, in the north west of the country, front lines between HTS and the regime divide the governate of Idlib and western Aleppo, in which civilians still face bombings and attacks. Alternatively, regime held territories, such as the governate of Dar'a are still characterised by instability and killings.⁸⁴

Violations of International Law and Atrocity Crimes

The Syrian conflict saw the regime especially, carry out massive human rights and international humanitarian law violations, thus committing war crimes and crimes against humanity.⁸⁵ The regime's actions include arbitrary detentions, unfair trials, enforced disappearances, executions, attacks on civilians and civilian infrastructure, sieges to starve the population, and use of chemical weapons.⁸⁶ In addition, the regime has used Shabbiha paramilitary groups to engage in illegal acts of violence against civilians and thus force their submission. These pro-government clandestine or irregular armed groups carry out property crimes, torture, kidnappings and mass-murder. Initially, the regime only condoned and incited the attacks, but later on, the

⁷⁹ *Supra* (nr.56) Van Schaack 30.

⁸⁰ *Supra* (nr.50) Yassin-Kassab and Al-Shami 233ff.

⁸¹ *Supra* (nr.56) Van Schaack 43.

⁸² *Supra* (nr.43) Ashraph 87.

⁸³ UNGA 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' HRC 52nd session (7 February 2022) UN Doc A/HRC/52/69, annex II.

⁸⁴ *Ibid* nr.5, 12-14.

⁸⁵ See 1.2 The Applicable Law

⁸⁶ *Supra* (nr.41) Majed 51-52; *Supra* (nr.37) Moss 8.

regime organised the Shabbiha for its own gains, transforming them in the National Defence Forces (NDF).⁸⁷ The regime's tactics of extreme violence and mass imprisonment against the opposition and the non-loyalist population has aimed to subdue the remaining population.⁸⁸

Well understood, the regime and its allies are not the only ones to have committed international crimes. ISIL, also directed mass attacks against civilians, used child soldiers, enslaved people and turned women into sex slaves. Many of their crimes targeted Yazidi people specifically, an ethno-religious group with its own religion and with Kurdish associations.⁸⁹ Therefore, ISIL's crimes not only amount to war crimes and crimes against humanity, but possibly to genocide as well.⁹⁰ On the other hand, non-governmental armed groups, such as the Al-Nusra Front⁹¹ or certain FSA members, also committed and still perpetrate war crimes and crimes against humanity such as kidnapping, torture, executions and the use of child soldiers.⁹²

However, for the feasibility of this master's thesis, the following sections will focus on the regime's crimes and more specifically on the attacks against medical facilities.⁹³ Indeed, from the start of the revolution, medical personnel and facilities have been targeted. Medical personnel have disappeared and hospitals have regularly been destroyed by government or Russian air raids. More generally, thus, medical aid has been refused and weaponized by the regime.⁹⁴ These attacks have had a great impact on the people in Syria as it has prohibited injured civilians to access medical care and led to thousands of doctors to flee Syria. Syrian civilians, on the other hand, have been forced to leave to safer places where they have access to medical care if needed.⁹⁵

⁸⁷ Üngör Uğur Ümit, 'Shabbiha: Paramilitary groups, mass violence and social polarization in Homs' (2020) 1 *Violence: An International Journal* 59, 60-61.

⁸⁸ *Supra* (nr.45) Majed 55-56.

⁸⁹ Hilly Moodrick-even Khen and Yael Siman, 'Scorched earth Syria: Between Crimes against Humanity and Genocide' in Hilly Moodrick-Even Khen, Nir Boms and Sareta Ashraph (eds), *The Syrian War: Between Justice and Political Reality* (CUP 2020) 131-132.

⁹⁰ Wolfgang Kaleck and Patrick Kroker, 'Syrian Torture Investigations in Germany and Beyond: Breathing New Life into Universal Jurisdiction in Europe' (2018) 16 *JICJ* 165, 166.

⁹¹ An Al-Qaeda affiliate with Islamist connections: Jabhat al-Nusra. *Supra* (nr.37) Moss 214.

⁹² *Supra* (nr.83). UN Doc A/HRC/52/69; *Supra* (nr.56) Van Schaack 34-35; 'Syria: Armed Opposition Groups Committing Abuses - End Kidnappings, Forced Confessions, and Executions' (*Human Rights Watch*, 20 March 2012) < <https://www.hrw.org/news/2012/03/20/syria-armed-opposition-groups-committing-abuses>> accessed 1 April 2023.

⁹³ This dimension of the conflict will be further explained in Chapter 3: The Attacks on Medical Facilities .

⁹⁴ 'Saving Lives Underground: The Case for Underground Hospitals in Syria' (*Syria Campaign*, May 2017) 14-16 <<https://d1p8u7ytneu6qui.cloudfront.net/Saving%20Lives%20Underground%20report.pdf>> accessed 8 March 2023.

⁹⁵ Syrian Network for Human Rights, *On the 11th Anniversary of the Popular Uprising: 228,647 Syrian Civilians Documented Killed, Including 14,664 by Torture, with 151,462 Arbitrarily Detained/Forcibly Disappeared, and 14 Million Others Displaced* (11th annual report SNHR, 15 March 2022) 23.

1.2 The Applicable Law

Categorization of the Armed Conflict

As stated above, every party to the conflict committed violations of international humanitarian law and international human rights law. However, to understand which law is applicable, the Syrian armed conflict must first be labelled. An armed conflict has been defined as 'a resort to armed force between states or protracted armed violence between governmental authorities and organised armed groups or between such groups within a state'.⁹⁶ Initially, thus, even though the regime acted violently, the peaceful revolution in Syria did not amount to an armed conflict. This changed when the opposition took up arms and organized themselves as armed groups. In February 2012, the revolution turned into an armed conflict.⁹⁷ Eventually, in the summer of 2012, more than a year after the protests initiated, the International Committee of the Red Cross (ICRC)⁹⁸ identified the Syrian civil war as a non-international armed conflict between governmental and non-governmental armed groups.⁹⁹

Nonetheless, since the military involvement of states such as Russia, the United States of America, Turkey, Israel and Iran, it can be argued that the Syrian conflict is a series of non-international and international armed conflicts, thus, altering the initial classification of the conflict. These armed conflicts have sometimes been limited in time and have been occurring between the Syrian government and opposition armed groups, between various armed groups in Syria, between foreign states and armed groups on the Syrian territory, as well as, between the Syrian state and other states.¹⁰⁰ However, this master thesis focusses on the conflict between the Syrian forces, its allies, and opposition armed groups. Therefore, the law of non-international conflicts is the most relevant.

⁹⁶ *Tadic Case* (Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction) ICTY-94-1-AR72 (2 October 1995) para 70.

⁹⁷ *Supra* (nr.41) Majed 45; *Supra* (nr.43) Ashraph 85.

⁹⁸ The ICRC is the official organization ensuring the humanitarian protection and assistance for victims of armed conflict and other situations of violence. This organization led to the development of the Geneva conventions. 'History of the ICRC' (*International Committee of the Red Cross*) <<https://www.icrc.org/en/document/history-icrc>> accessed 25 November 2022.

⁹⁹ 'Syria: ICRC and Syrian Arab Red Crescent maintain aid effort amid increased fighting' (*International Committee of the Red Cross*, 17 July 2012) <<https://www.icrc.org/en/doc/resources/documents/update/2012/syria-update-2012-07-17.htm>> accessed 23 March 2022; Tom Ruys, 'The Syrian Civil War and the Achilles' Heel of the Law of Non-International Armed Conflict' (2014) 50 *Stanford Journal of International Law* 247, 252.

¹⁰⁰ Adil Haque, 'The United States is at War with Syria (according to the ICRC's New Geneva Convention Commentary)' (*EJIL:Talk!*, 8 April 2016) <<https://www.ejiltalk.org/the-united-states-is-at-war-with-syria-according-to-the-icrcs-new-geneva-convention-commentary/>> accessed 23 March 2022; Tom Gal, 'Legal Classification of the Conflict(s) in Syria' in Hilly Moodrick-Even Khen, Nir Boms and Sareta Ashraph (eds), *The Syrian War: Between Justice and Political Reality* (CUP 2020) 29-55.

International Humanitarian Law

The International Criminal Tribunal for the former Yugoslavia (ICTY) interpreted non-international armed conflicts (NIAC) through the Geneva Conventions and their additional protocols as 'protracted armed violence *between* governmental authorities and organised groups or *between* such groups *within* a State'.¹⁰¹ Still, to qualify a conflict as a NIAC, there must be a minimum degree of intensity, as well as a minimum degree of organisation of the non-state armed groups.¹⁰² Both criteria are met in the armed conflict between the Syrian government armed forces and the opposition led armed groups.¹⁰³ Accordingly, the relevant treaties of international humanitarian law are applicable.

For this master thesis, the Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War¹⁰⁴ and the second additional protocol to the Geneva Conventions¹⁰⁵ are the most relevant treaties. However, for these treaties to be applicable, the Syrian Arab Republic must have ratified them, and this is not the case for the second additional protocol.¹⁰⁶ Instead, customary international humanitarian law applies in Syria. Indeed, all parties to the armed conflict, thus, every involved State and all armed groups are bound by international customary law, even when the concerned states have not ratified the Geneva Conventions and their protocols.¹⁰⁷ Furthermore, customary international humanitarian law has an added value as it regulates more aspects of non-international armed conflicts than the Second Additional Protocol, especially concerning the principles of distinction and proportionality.¹⁰⁸

International Human Rights Law

In addition to international humanitarian law, international human rights law stays applicable in the context of armed conflicts. In fact, human rights should be applied at all times as they are complementary and mutually

¹⁰¹ *Supra* (nr.96) *Tadic Case* para 70.

¹⁰² Jan Wouters and others, *International Law: A European Perspective* (Hart Publishing 2019) 645; International Committee of the Red Cross, *Comment le terme « conflit armé » est-il défini en droit international humanitaire ?* (Position paper, 2008).

¹⁰³ UNCHR, *Periodic Update Independent International Commission of Inquiry on the Syrian Arab Republic* (Periodic Update, 24 May 2012) 5; Laurie Blank and Geoffrey Corn, 'Losing the Forest for the Trees: Syria, Law, and the Pragmatics of Conflict Recognition' (2013) 46 *VJTL* 693, 729.

¹⁰⁴ Geneva Convention Relative to the Protection of Civilian Persons in Time of War (adopted 12 August 1949, entered into force 21 October 1950) 75 UNTS 285 (Geneva Convention IV).

¹⁰⁵ Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (adopted 12 December 1977, entered into force 7 December 1978) 1125 UNTS 609 (Protocol II).

¹⁰⁶ 'Treaties, States Parties and Commentaries: Syrian Arab Republic' (*International Committee of the Red Cross*) < https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/vwTreatiesByCountrySelected.xsp?xp_countrySelected=SY > accessed 21 November 2022.

¹⁰⁷ Jean-Marie Henckaerts and others, *Customary International Humanitarian Law* (CUP 2005) XVI.

¹⁰⁸ Jean-Marie Henckaerts, 'Study on customary international humanitarian law: A contribution to the understanding and respect for the rule of law in armed conflict' (2005) 87 *International Review of the Red Cross* 175, 188-190.

reinforcing to international humanitarian law.¹⁰⁹ However, according to a general principle of law, when different opposing rules are applicable, the more general rule should be set aside in the benefit of the more specific rule. As a result, some specific international humanitarian provisions could take precedence over other general international human rights laws.¹¹⁰

Nonetheless, article 4 of the International Covenant on Civil and Political Rights (ICCPR) recognises that in times of public emergency which threatens the life of the nation, the state Parties may take derogating measures from their obligations. Even so, armed conflicts do not automatically equate to 'times of public emergency which threatens the life of the nation'.¹¹¹ Furthermore, certain obligations remain non-derogable at all times such as the right to life (art. 6) and the prohibition of torture or cruel, inhuman or degrading treatment or punishment (art.7).¹¹² Alternatively, the International Covenant on Economic, Social and Cultural Rights (ICESCR) contains no general derogation mechanism that might apply in case of an armed conflict.¹¹³ On the contrary, the Committee on Economic, Social and Cultural Rights has confirmed that, even in times of armed conflict, State parties should ensure minimum protection of at least the essential elements and core aspects of each right.¹¹⁴

International Criminal Law

Lastly, international criminal law must also be taken into account. As already stated above, in the case of the Syrian armed conflict, the pro-government forces, as well as the different armed groups, all committed international crimes. However, these crimes cannot easily be prosecuted by the International Criminal Court (ICC) as the Syrian Arab Republic has not ratified the Rome Statute.¹¹⁵ Still, some possibilities to prosecute still exist and will be further developed in 1.3 Failures of the International Justice System in Syria. In the context of the Syrian armed conflict, mostly, three international crimes are relevant.

¹⁰⁹ UNGA Res 2675 (9 December 1970) UN Doc A/RES/2675 para 1; UNGA 'Annual report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General: Outcome of the expert consultation on the issue of protecting the human rights of civilians in armed conflict' HRC 11th session (4 June 2009) UN Doc A/HRC/11/31 para 5.

¹¹⁰ *Lex specialis derogat legi generali*; *Supra* (nr. 109) UNGA 'Annual report on the issue of protecting the human rights of civilians in armed conflict' para 5.

¹¹¹ UNGA 'Report of the United Nations High Commissioner for Human Rights' (19 May 2015) UN Doc E/2015/59 (Protection of economic, social and cultural rights in conflict) para 11.

¹¹² International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR) art 4, ratified by the Syrian Arab Republic.

¹¹³ International Covenant on Economic, Social and Cultural Rights (adopted 16 December 1966, entered into force 3 January 1976) 999 UNTS 3 (ICESCR) ratified by the Syrian Arab Republic.

¹¹⁴ UNCESCR 'General comment no. 14' (11 August 2000) UN Doc E/C.12/2000/4 para 12; UNGA 'Protection of economic, social and cultural rights in conflict' (see 111) para 13-15.

¹¹⁵ *Supra* (nr. 116) Rome Statute.

War crimes, in article 8 of the Rome Statute, can be defined as serious violations of international humanitarian law committed in times of armed conflict.¹¹⁶ The Rome Statute lists different crimes for international or non-international armed conflicts. For NIACs, these crimes include, murder, mutilation, torture, humiliating and degrading treatment, intentionally directing attacks against civilians, and so on.¹¹⁷ The different parties to the Syrian armed conflict have perpetrated these crimes the most.¹¹⁸ For instance, the regime has largely ignored the principle of distinction, and intentionally attacked civilians or civilian objects, thus, committing war crimes against its population.¹¹⁹

Crimes against humanity, listed in article 7 of the Rome Statute, are certain acts such as murder, enslavement, torture, and rape, committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.¹²⁰ Therefore, if the regime's attacks on civilians are considered widespread and systematic enough, they not only amount to war crimes, but crimes against humanity as well. Furthermore, crimes against humanity do not necessarily need to occur in times of armed conflict.¹²¹ Therefore, actions such as torture or the enforced disappearances by the regime, before 2012, when the situation was not yet an armed conflict, can also be prosecuted as crimes against humanity, but not war crimes. In fact, the prosecution of crimes against humanity which took place before 2012 has already occurred in Germany.¹²²

Finally, the *crime of genocide* is committing specific acts with the intent to destroy, in whole or in part, a national, ethnical, racial or religious group.¹²³ These specific acts include: killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group; forcibly transferring children of the group to another group.¹²⁴ As already stated above, in the Syrian armed conflict, Islamist groups, especially ISIL, have targeted the Yazidi ethno-religious group.¹²⁵ Indeed, ISIL detained, deported, enslaved and exterminated thousands of Yazidis in Iraq

¹¹⁶ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 (Rome Statute) art 8.

¹¹⁷ *Supra* (nr. 116) Rome Statute art 8 2(c)-(f).

¹¹⁸ *Supra* (nr.56) Van Schaack 34-35.

¹¹⁹ The intentionality of these attacks has been proven by multiple NGO and UN body's reports; see 3.1 Attacks on Medical Facilities and the Law.

¹²⁰ *Supra* (nr. 116) Rome Statute art 7.

¹²¹ *Supra* (nr.102) Wouters and others 748.

¹²² E.g. the conviction Anwar R and Eyad A for mass torture between 2011 and 2012; see The Light at the End of the Tunnel.

¹²³ *Supra* (nr. 116) Rome Statute art 6.

¹²⁴ *Ibid.*

¹²⁵ See Violations of International Law and Atrocity Crimes.

and Syria.¹²⁶ However, this master's thesis focuses on the international crimes perpetrated by the regime and its allies, and, therefore, not the possible genocide of the Yazidi by ISIL.

1.3 Failures of the International Justice System in Syria

Justice and Accountability

International law prohibits certain actions during armed conflicts. However, the law is much more effective, when those responsible for violations of the law are held accountable.¹²⁷ Accordingly, justice and accountability mechanisms for crimes perpetrated in times of armed conflict, are primordial for the society that had to face these crimes. The attention to justice is especially important in Syria, where international humanitarian law and international human rights law have been disregarded time and time again. Indeed, as already stated in a previous section, the Syrian regime, has carried out many war crimes, and crimes against humanity.¹²⁸ For Syrians, who already faced repression before the revolution, mass violence and atrocity crimes became a common occurrence during the armed conflict. For them to eventually move forward and possibly reconcile, it is clear that justice, accountability and recognition of this violence is paramount.¹²⁹

Legal accountability can, first of all, be sought through international criminal justice. To do so, the individuals responsible for international crimes such as war crimes and crimes against humanity, are brought before a court and convicted for their crimes. As a result, the perpetrators of these crimes are punished, and therefore, discouraged to commit new crimes. In addition, international criminal justice serves a societal purpose when it condemns and punishes certain crimes and thus shapes what is considered morally acceptable or not.¹³⁰ Therefore, holding perpetrators of international law accountable, not only impacts the convicted, but also deters potential perpetrators to commit similar crimes afterwards. Lastly, the evidence in criminal proceedings confirms certain narratives and acknowledges the suffering of victims.¹³¹ These mechanisms impact the broader society, that will more readily forgive, and thus, lay the foundation for peace and reconciliation.¹³²

¹²⁶ 'Yazidis in Syria: Decades of Denial of Existence and Discrimination' (*Syrians for Truth and Justice*, 5 September 2022) <<https://stj-sy.org/en/yazidis-in-syria-decades-of-denial-of-existence-and-discrimination/>> accessed 4 April 2023.

¹²⁷ Beth Van Schaack, 'Mapping war crimes in Syria' (2016) 92 *International Law Studies* 282, 329.

¹²⁸ See *Violations of International Law and Atrocity Crimes*.

¹²⁹ Brigitte Herremans and Tine Destrooper, 'Moving Beyond Formal Truth Practices and Forensic Truth in the Syrian Conflict: How Informal Truth Practices Contribute to Thicker Understandings of Truth' (2022) 0 *Social & Legal Studies* 1, 2.

¹³⁰ Brigitte Herremans and Tine Destrooper, 'Stirring the Justice Imagination: Countering the Invisibilization and Erasure of Syrian Victims' *Justice Narratives* (2021) 15 *International Journal of Transitional Justice* 577, 579.

¹³¹ Annika Jones, 'Seeking International Criminal Justice in Syria' (2003) 89 *International Law Studies* 802, 803.

¹³² *Ibid.*

International criminal justice can be reached in different ways. First of all, if mandated to do so, some national courts can prosecute these crimes.¹³³ The Syrian domestic courts are internationally obligated to take on this role. However, no Syrian legal code contains provisions for the prosecution of international crimes. Nonetheless, this type of prosecution would be the most beneficial for the Syrian population in terms of agency, public support and possible reconciliation.¹³⁴ Still, the prosecution in Syria is also the most unlikely, while the conflict still goes on and the regime denies and obfuscates the crimes and evidence. Especially, since the regime has committed most crimes, and it remains in power.¹³⁵ In addition, even when the conflict ends, and if the regime is overthrown or if it accepts to prosecute the international crimes, Syria's capacity to do so, after a decade long conflict, will be limited. In sum, Syrian national courts are not a plausible option to prosecute the huge number of crimes committed in Syria.

Alternatively, other national courts could also bring actions against violators of international law in Syria. Nevertheless, these courts must have jurisdiction to prosecute these crimes. Most often, foreign courts only have jurisdiction if they have a certain link with the crime. For instance, a foreign court can prosecute its own nationals for crimes committed in another state.¹³⁶ Additionally, some foreign courts prosecute serious universally recognized crimes, without any close link to the crime, on the basis of universal jurisdiction. These types of universal jurisdiction procedures have been the most prominent form of criminal justice for Syria.¹³⁷ Still, at the moment, many universal jurisdiction laws require the perpetrator to be in their territory for prosecution.¹³⁸ Furthermore, the crimes in Syria occurred at such a large scale, that no national court is apt to bring systematic action against those responsible for these crimes.¹³⁹

The International Criminal Court (ICC) was created to prosecute international crimes, when national courts do not or cannot take action. For the Syrian armed conflict, prosecution by the ICC, would therefore be the best alternative to investigate the complex Syrian cases. However, as already mentioned in International Criminal Law, Syria has not ratified the Rome Statute.¹⁴⁰ Nonetheless, it could be possible for Syria to accept the jurisdiction of the ICC for the armed conflict. But once again, it is highly unlikely the regime will do so, as main perpetrator. On the other hand, under chapter VII of the UN Charter, the UN Security Council can refer the Syrian situation to the ICC. As explained in the following section, the referral is blocked by China and Russia's vetoes, in part due to Russia's involvement in the Syrian armed conflict.¹⁴¹

¹³³ *Supra* (nr.127) Van Schaack 330.

¹³⁴ *Supra* (nr.131) Jones 804-805.

¹³⁵ *Supra* (nr.56) Van Schaack 274-277.

¹³⁶ *Supra* (nr.127) Van Schaack 329-330.

¹³⁷ In the subsection *The Light at the End of the Tunnel* an example of a universal jurisdiction procedure in Germany is provided.

¹³⁸ *Supra* (nr.127) Van Schaack 329-330.

¹³⁹ *Supra* (nr.131) Jones 804-805.

¹⁴⁰ See International Criminal Law.

¹⁴¹ See Institutional Blockages and International Stalemate.

Lastly, an ad hoc tribunal, like the former Yugoslavia and Rwanda tribunals, could be erected. Once again, though, the creation of such a tribunal is dependent on the UN Security Council, in which Russia has a veto power.¹⁴² Another option could be a hybrid criminal tribunal. Often these tribunals are established by agreements between the host states and multilateral organizations and therefore, have international and national elements.¹⁴³ For instance, neighbouring countries affected by the conflict such as Turkey or Jordan could host the tribunal, and regional organisations such as the Arab League or even NATO could play a part in it as well.¹⁴⁴ A hybrid tribunal has the advantage of being close to Syria and its victims, which allows for greater ownership and participation in the justice process.¹⁴⁵ However, at the moment, this option has not yet been attempted.¹⁴⁶

Nonetheless, international criminal justice is not the only way to achieve justice and accountability. Indeed, international criminal justice is only a pillar of the broader transitional justice concept. Transitional justice is defined, by the UN, as the full range of processes and mechanisms associated with a society's attempt to come to terms with a legacy of large-scale past abuses.¹⁴⁷ It encompasses a broad definition of justice, that includes judicial, as well as non-judicial processes. Transitional justice, thus, involves a wide range of measures such as criminal justice prosecutions, truth-seeking initiatives, reparations and restitution processes, institutional and legislative reform, and memorialization efforts.¹⁴⁸ In Syria, in light of the criminal justice impasse, the other pillars of transitional justice have been embraced.¹⁴⁹ However, with the regime remaining in power, the use of other transitional justice mechanisms is particular in the Syrian context, as Syria has not yet had a significant political transition. Still, even without a transition in view, transitional justice has had a great influence in Syria.¹⁵⁰

Institutional Blockages and International Stalemate

Since the start of the revolution in Syria, the UN Security Council (UNSC) has been blocked by an international stalemate. The UNSC's struggle to take much needed actions towards the violations of international law and the resolution of the Syrian armed conflict is due to Russia's (and China's) continued resistance against any detrimental action towards the Syrian regime. Russia has indeed continued to back the regime on an international level by using its veto powers. Among other reasons, this backing stems from

¹⁴² *Supra* (nr.131) Jones 811-813.

¹⁴³ Stephen Rapp, 'Overcoming the Challenges to Achieving Justice for Syria' (2015) 30 *Emory International Law Review* 155, 160.

¹⁴⁴ *Supra* (nr.127) Van Schaack 333.

¹⁴⁵ *Supra* (nr.131) Jones 812.

¹⁴⁶ *Supra* (nr.56) Van Schaack 6.

¹⁴⁷ Sema Nassar and Iavor Rangelov, *Documentation of Human Rights Violations and Transitional Justice in Syria: Gaps and Ways to Address Them* (Conflict Research Programme London School of Economics and Political Science, 2020) 4.

¹⁴⁸ *Ibid.*

¹⁴⁹ *Supra* (nr. 129) Herremans and Destrooper 2.

¹⁵⁰ See *The Light at the End of the Tunnel*.

Russia's heavy involvement in the armed conflict.¹⁵¹ In total, Russia vetoed 17 resolutions and China 10, even if these resolutions were vague and used undifferentiated language.¹⁵²

Accordingly, the first statement of the UNSC that condemned the violence in Syria, only came in August 2011, five months after the start of the uprisings.¹⁵³ The first resolution concerning the armed conflict in Syria was then taken in April 2012.¹⁵⁴ Furthermore, Syrians had to wait till February 2014, for a resolution focused on the violations of human rights and international humanitarian law.¹⁵⁵ However, the UN General Assembly (UNGA) sometimes countered this inaction by adopting vetoed Security Council resolutions and condemning the Council's inaction.¹⁵⁶ In particular, as will be further explained in the next sub-section, the UNGA established the International, Impartial and Independent Mechanism (IIIM) to advance justice efforts. Even so, the UNGA only has limited powers, in terms of peace and security.¹⁵⁷

Still, the UNSC did manage to take some demarches. For instance, the UNSC allowed humanitarian access across borders, behind the conflict lines and in besieged areas. However, Russia often threatened to withdraw its approval for border crossings, when it was time to renew the authorisation.¹⁵⁸ In addition, the UNSC adopted a resolution for the destruction of Syria's chemical weapons stockpiles.¹⁵⁹ Indeed, in 2013, Assad agreed to hand over the country's chemical weapons, to ratify the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and their Destruction (CWC) and to destroy Syria's stockpile. Nonetheless, that did not stop the regime from continuing to use chemical weapons in hundreds of attacks.¹⁶⁰

¹⁵¹ For more details on Russia see From a Peaceful Revolution to a Decade Long Armed Conflict; China's vetoes, on the other hand, were primarily used to refrain from interfering in the sovereign affairs of Syria; *Supra* (nr.41) Majed 86.

¹⁵² https://www.un.org/depts/dhl/resguide/scact_veto_table_en.htm

¹⁵³ *Supra* (nr.56) Van Schaack 60-61.

¹⁵⁴ UNSC Res 2042 (14 April 2012) UN Doc S/RES/2042; The resolutions authorises the deployment of 30 military observers to Syria.

¹⁵⁵ UNSC Res 2139 (22 February 2014) UN Doc S/RES/2139. Two other resolutions were taken in between these resolutions. One of these resolutions concerns the chemical attack in 2013, see further.

¹⁵⁶ *Supra* (nr.56) Van Schaack 64; Ved Nanda, 'The Future Under International Law of the Responsibility to Protect after Libya and Syria' (2013) 21 Michigan State International Law Review 1, 20-24.

¹⁵⁷ Art. 11 of the UN Charter does not permit the UNGA to take actions concerning peace and security. The UNGA must refer any actions and recommendations to the UNSC; Charter of the United Nations (adopted 26 June 1945) 1 UNTS XVI (UN Charter) art 11. The "Uniting for Peace" resolution, on the other hand, which was designed to circumvent the veto, allows the General Assembly to "make recommendations concerning international peace and security—up to and including the use of force" in the face of deadlock in the Council; *Supra* (nr.56) Van Schaack 64.

¹⁵⁸ *Supra* (nr.56) Van Schaack 54ff.

¹⁵⁹ UNSC Res 2118 (27 November 2013) UN Doc S/RES/2118.

¹⁶⁰ *Supra* (nr.43) Ashraph 93-105; Tobias Schneider and Theresa Lütkefend, 'Introduction: The Syrian Regime's Approach to Chemical Warfare' (*GPPi*, April 2014)

<<https://chemicalweapons.gppi.net/analysis/introduction/>> accessed 24 April 2023.

However, the situation in the UNSC changed when ISIL gained more traction in the conflict. At that time, the Security Council took resolutions every few months, focused on fighting terrorism, ISIL and Al-Nusra.¹⁶¹ Later, a few resolutions concerning chemical attacks were also adopted, including a resolution for the establishment of an Investigative Mechanism of the Organisation for the Prohibition of Chemical Weapons (OPCW).¹⁶² On top of that, UNSC resolutions more often promoted accountability for international crimes and human right abuses. Nonetheless, from a general point of view, the attention towards terrorism overshadowed other issues, such as the attacks against civilians.¹⁶³ For these attacks and other international crimes, not enough necessary actions have been undertaken to advance justice.¹⁶⁴ In particular, the UNSC has been unable to refer the Syrian armed conflict to the ICC.¹⁶⁵

Additionally, apart for the establishment of the IIM, the UN General Assembly has not been able to fill in this gap. UNGA resolutions did stress the need for practical steps towards accountability and called on the UNSC to refer the situation to the ICC.¹⁶⁶ However, only the UNSC is mandated to do so by the UN Charter.¹⁶⁷ Furthermore, the international community was somewhat reticent to establish an accountability mechanism, because they feared it would complicate the hoped-for peace negotiations and future processes of reconciliation. They were also hesitant to involve themselves further in the conflict. In addition, some states were wary to create a tribunal outside the UNSC and without the Syrian consent, which could create a precedent that would be used against them in other situations.¹⁶⁸

Alternatively, the Arab League has taken surprising resolutions calling for accountability and other coercive actions. Indeed, on a regional level, the League of Arab States took action in 2011 by demanding a ceasefire, the withdrawal of tanks from the streets and the release of prisoners. However, the Syrian regime did not comply. Therefore, in November 2011, Syria's membership of the League was suspended and its regime accused of crimes against Syrian citizens.¹⁶⁹ On an international level, in 2012, the UN and the League of Arab States sought a solution to the conflict through Kofi Annan, the office of the UN Secretary-General appointed Special Envoy. This partnership eventually led to resolutions of the Security Council, endorsing a

¹⁶¹ E.g. UNSC Res 2170 (15 August 2014) UN Doc S/RES/2170, UNSC Res 2178 (24 September 2014) UN Doc S/RES/2178, UNSC Res 2199 (12 February 2015) UN Doc S/RES/2199, all adopted in less than a year time.

¹⁶² E.g. UNSC Res 2209 (6 March 2015) UN Doc S/RES/2209 or UNSC Res 2235 (7 August 2015) UN Doc S/RES/2235; the OPCW and its mechanisms are explained in *The Light at the End of the Tunnel*.

¹⁶³ *Supra* (nr.56) Van Schaack 60.

¹⁶⁴ *Supra* (nr.56) Van Schaack 5.

¹⁶⁵ *Supra* (nr. 116) Rome Statute art 13.

¹⁶⁶ The UNGA also established the IIM, this is discussed in the next sub section: *The Light at the End of the Tunnel*.

¹⁶⁷ *Supra* (nr.157) UN Charter.

¹⁶⁸ *Supra* (nr.56) Van Schaack 6.

¹⁶⁹ *Supra* (nr.41) Majed 46; *Supra* (nr.56) Van Schaack 26.

six-point plan created by Annan and establishing the UN Supervision Mission in Syria, to support the implementation of the plan. However, since then, not much of this plan has been achieved.¹⁷⁰

In sum, for years now, civilians have had to face every possible international crime by the hands of the regime, without much hope that these crimes will be prosecuted. Furthermore, as the Syrian regime has regained most of its territory with the help of its allies, the government's crimes and impunity hereof will most likely persist.¹⁷¹ Indeed, the international community has been hindered from taking concrete actions to prevent further civilian harm and to advance justice. This statement is especially true for the UN Security Council, that is blocked by Russian vetoes. The UN was powerless to refer the Syrian situation to the ICC.¹⁷² Therefore, even though the UN General Assembly has had an essential role in the Syrian armed conflict, by establishing the IIM and adopting blocked resolutions, the stalemate within the UNSC, as well as UNGA's inability to take certain resolution marks the failure of the international justice system.¹⁷³

The Light at the End of the Tunnel

The international stalemate and therefore, the unwavering impunity of the Syrian regime led to creative solutions to start to bridge the accountability gap. First of all, *UN bodies* were created to document the violations of international human rights law and international humanitarian law.

In August 2011, the Human Rights Council created the Independent International Commission of Inquiry (COI), to investigate certain crimes and violations committed during the Syrian armed conflict and then report about it. Accordingly, the COI was mandated to investigate all alleged violations of international human rights law, since March 2011, in the Syrian Arab Republic. In doing so, the COI had to determine the facts, the circumstances leading to these violations, and, the people responsible for these violations.¹⁷⁴ In particular, the COI was mandated to identify those responsible of violations of human rights and international crimes to ensure they are held accountable.¹⁷⁵ However, for their investigations, the COI is not allowed to investigate inside Syria. Therefore, it has had to conduct interviews and review documentation, such as photographs, satellite imagery, and forensic reports from all kinds of sources, including the Syrian civil society.¹⁷⁶

An important realization of the COI are their biannual regular mandated reports of the situation in Syria, as well as their special mandate reports concerning particular events or specific thematic.¹⁷⁷ These reports have

¹⁷⁰ All special envoys: Kofi Annan, Lakhdar Brahimi, Staffan de Mistura, and now Geir O. Pedersen; *Supra* (nr.41) Majed 48.

¹⁷¹ *Supra* (nr.56) Van Schaack 443.

¹⁷² *Supra* (nr.56) Van Schaack 55.

¹⁷³ *Supra* (nr.56) Van Schaack 1.

¹⁷⁴ 'Mandate' (*UN Human Rights Council*) <<https://www.ohchr.org/en/hr-bodies/hrc/iici-syria/co-i-mandate>> accessed 22 February 2023.

¹⁷⁵ *Ibid.*

¹⁷⁶ 'About the Commission of Inquiry' (*UN Human Rights Council*) <<https://www.ohchr.org/en/hr-bodies/hrc/iici-syria/about-co-i>> accessed 22 February 2023.

¹⁷⁷ *Ibid.*

been very useful to keep up to date with the events of the Syrian armed conflict. At the moment, the COI has made multiple reports denouncing attacks on civilians and their infrastructures such as medical facilities.¹⁷⁸ However, in terms of legal accountability, the COI's reports are not ideal. Indeed, their reports' standard of proof is only met when there are 'reasonable grounds to believe' that a certain incident took place.¹⁷⁹ Therefore, their standard of proof is lower than in criminal cases, where the standard requires that it is proven 'beyond reasonable doubt' that the accused is guilty.¹⁸⁰ In short, the COI's main task is to document and inform, not to pursue criminal accountability.

Therefore, in 2016, after a failed attempt in the UN Security Council to refer the Syrian situation to the International Criminal Court, the UN General Assembly created the International, Impartial and Independent Mechanism (IIIM).¹⁸¹ The task of the IIIM is to collect, preserve, analyse, and prepare evidence for future criminal proceedings in national, regional or international courts or tribunals. However, the IIIM is not a tribunal and cannot bring a case to court. It can only help competent jurisdictions to investigate and prosecute core international crimes. As far as the Syrian armed conflict is concerned, the IIIM has mainly documented violations of international human rights law and international criminal law such as war crimes, crimes against humanity, and genocide, from March 2011 and onwards.¹⁸² Among other things, they have focussed on unlawful attacks, such as attacks against medical facilities. Furthermore, contrary to the COI, that mainly reports on the ongoing situation in Syria and human rights violations, the IIIM does not report publicly on its work but reports to the UN General Assembly.¹⁸³

The IIIM collects evidence from several sources such as states, international and regional organisations and UN entities (including the COI). They collect materials such as videos, pictures, satellite imageries, internal

¹⁷⁸ UNGA 'Human rights abuses and international humanitarian law violations in the Syrian Arab Republic, 21 July 2016- 28 February 2017' HRC 34th session (10 March 2017) UN Doc A/HRC/34/CRP3; UNGA '13th Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' HRC 34th session (2 February 2017) UN Doc A/HRC/34/64; UNGA '14th Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' HRC 36th session (8 August 2017) UN Doc A/HRC/36/55; UNGA '19th Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' HRC 43rd session (28 January 2020) UN Doc A/HRC/43/57; UNGA '20th Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' HRC 44th session (3 September 2020) UN Doc A/HRC/44/61; UNGA '21st Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' HRC 45th session (14 August 2020) UN Doc A/HRC/45/31.

¹⁷⁹ *Supra* (nr.176) 'About the Commission of Inquiry'.

¹⁸⁰ Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 (Rome Statute) art 66, 3.

¹⁸¹ See Categorization of the Armed Conflict.

¹⁸² 'At A Glance' (*International, Impartial and Independent Mechanism*) <<https://iiim.un.org/who-we-are/at-a-glance/>> accessed 22 March 2022; 'What We Do' (*International, Impartial and Independent Mechanism*) <<https://iiim.un.org/what-we-do/>> accessed 22 February 2023.

¹⁸³ *Ibid.*

documentation and statements from victims and witnesses.¹⁸⁴ However, as the IIIM does not have access to Syria, one of its most important contributors is the Syrian civil society. The evidence that the IIIM receives is gathered and systematically organized in the Central Repository of Information and Evidence, a searchable and findable record.¹⁸⁵ In addition to the collection function of the IIIM, the Mechanism can also conduct targeted investigations and analyse the evidence collected.¹⁸⁶ Finally, the IIIM shares information to competent jurisdictions. The materials they share are raw information and evidence that they have collected, as well as analytical products and case files developed by the IIIM.¹⁸⁷ In August 2022, the IIIM had already been able to support 113 investigations from competent jurisdictions, certain of which have led to trials, including the Koblenz trials.¹⁸⁸ The UNGA's body, the IIIM, thus, has a leading role in the pursuit of accountability, even without prosecutorial powers.

Outside of the UN, on a more local level, civil society actors have found other solutions to strengthen accountability. To do so, many turned to *transitional justice*, even though no real political transition was in view.¹⁸⁹ The attention to transitional justice translated into three broad developments. Firstly, a great number of actors in the Syrian justice scene focussed on documentation efforts.¹⁹⁰ Secondly, some actors started privileging truth-seeking initiatives.¹⁹¹ Lastly, eventually, universal jurisdiction cases started to flourish.¹⁹² Each development is further detailed in the following paragraphs.

In Syria, technological advancements, such as smart phones and satellites, have enabled the Syrian civil society to widely document violations of international law and international humanitarian law, including of attacks against civilians and civilian infrastructure.¹⁹³ *Documentation* has, indeed, become a powerful tool of

¹⁸⁴ 'Bridging Syrian and international justice efforts' (*Justice Visions*, 30 August 2022) <<https://justicevisions.org/podcast/bridging-syrian-and-international-justice-efforts/>> accessed 22 February 2023.

¹⁸⁵ *Ibid*; *Supra* (nr.182) 'What We Do'.

¹⁸⁶ *Supra* (nr.182) 'At A Glance'.

¹⁸⁷ *Ibid*.

¹⁸⁸ *Supra* (nr.184) *Justice Visions*.

¹⁸⁹ *Supra* (nr. 129) Herremans and Destrooper 2; *Supra* (nr. 228) Aronson 130-131 and 134-145.

¹⁹⁰ Noha Aboueldahab, *Writing Atrocities: Syrian Civil Society and Transitional Justice* (Brookings 2018) 11-12.

¹⁹¹ *Supra* (nr.129) Herremans 2ff.

¹⁹² See further; Wolfgang Kaleck and Andreas Schüller, 'Universal Jurisdiction Gains New Momentum' (2019) 96 TOAEP.

¹⁹³ For more information see

Germany, especially, is at the forefront of the universal jurisdiction movement. Indeed, the Federal Public Prosecutor can open structural investigations for international crimes, to later use the evidence from these investigations for individual prosecutions, or even share that evidence with foreign or international jurisdictions. In addition, the Federal Public Prosecutor can also prosecute individuals in present Germany for international crimes in Syria. Furthermore, some civil society actors in Germany, such as the ECCHR, are

resistance and a way for victims to put their own narratives forth. It lays the foundation to future justice processes and enables a victim-centred approach.¹⁹⁴ By documenting violations, the Syrian civil society ensures that victimization is acknowledged, recorded and remembered.¹⁹⁵ Furthermore, documentation influences whether justice is pursued, what form it takes and how effective and legitimate it is.¹⁹⁶ Therefore, documentation defines future justice and accountability mechanisms.¹⁹⁷ Some scholars even argue that human rights documentation should be considered a transitional justice mechanism of its own right. For instance, Aboueldahab contends that, in the Syrian context especially, “writing atrocities is, in and of itself, a healing process, as it ensures that victimization is acknowledged, recorded and remembered.”¹⁹⁸

Additionally, documentation has enabled the civil society to expose evidence and contribute to truth-seeking concerning international crimes. This *truth-seeking* process is especially important in a context, such as the Syrian armed conflict, where different points of view and beliefs continue to fuel uncertainty and where evidence is erased.¹⁹⁹ Indeed, the Syrian regime has led a narrative warfare against the opposition, to keep the international communities’ favours.²⁰⁰ To push its own narrative forth, the regime claims and counters certain narratives, disseminating sometimes huge amounts of false information and distorted facts. Typically, when the regime violates an international humanitarian law, for instance by attacking medical facilities, it first denies the attack ever occurred. If claims against the regime persist, the regime then manipulates information and evidence to blame the opposition.²⁰¹

These techniques, exacerbate the climate of uncertainty in the post-truth era. Thus, even when there is factual evidence to prove certain violations of international law, it is not simple to discern the truth from lies.²⁰² In addition, the spread of disinformation and the censorship by the regime lead to the erasure of the

particularly involved in the prosecution of international crimes in Syria. These civil society actors coordinate with Syrian civil society actors, in order to build cases and submit complaints concerning these crimes.

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¹⁹⁴ *Supra* (nr.462) Aboueldahab 11 and 30.

¹⁹⁵ *Supra* (nr.130) Herremans and Destrooper 587 and 592.

¹⁹⁶ *Supra* (nr.147) Nassar and Rangelov 5.

¹⁹⁷ *Supra* (nr.33) Aboueldahab 2ff.

¹⁹⁸ *Supra* (nr.462) Aboueldahab 30.

¹⁹⁹ *Supra* (nr.130) Herremans and Destrooper 588-592.

²⁰⁰ Üngör Uğur Ümit, ‘Narrative war is coming’ (*Al-Jumhuriya Collective*, 7 June 2019) <<https://aljumhuriya.net/en/2019/06/07/narrative-war-coming/>> accessed 20 February 2023.

²⁰¹ Scott Edwards, ‘Open Source Investigations for Human Rights: Current and Future Challenges’ in Sam Dubberley, Alexa Koenig and Daragh Murray (eds), *Digital Witness: Using Open Source Information for Human Rights Investigation, Documentation, and Accountability* (OUP 2019) 101.

²⁰² Matthew Fuller and Eyal Weizman, *Investigative Aesthetics: Conflicts and Commons in the Politics of Truth* (Verso 2021) 25-34; Lisa Wedeen, *Authoritarian Apprehensions: Ideology, Judgment and Mourning in Syria* (UCP 2019) 77-80.

experience or perspective of victims and to the exclusion of certain voices and topics in the media.²⁰³ Therefore, truth-seeking initiatives can help to overturn false state narratives and create more transparency.²⁰⁴ That means that, in situations where information and data is deliberately withheld or even tampered with, witnesses, victims, organisations and others bring information into light, through social media, traditional media or even just their websites, and supplement it with evidence, to claim their own narrative. Furthermore, documentation leads to the preservation of various narratives and claims to truth about violations from different parties, that can be use in other truth-processes.²⁰⁵ Thus, documentation and truth-seeking processes empower a lot of people by giving them the tools to present their narrative.²⁰⁶

Finally, the international community sought other ways to pursue *individual criminal accountability* for the international crimes committed in Syria. Firstly, many people from Tunisia, Russia, Western European countries and the US travelled to Syria to join extremist groups, such as ISIL and fight in the Syrian armed conflict.²⁰⁷ Therefore, foreign national jurisdictions can prosecute the crimes of their own nationals, who might have committed a crime while in Syria. Some of these trials have already occurred in the US, Germany and the Netherlands for crimes such as terrorism or sometimes for international crimes.²⁰⁸

Furthermore, especially in some European countries, international crimes are brought to court through universal jurisdiction laws.²⁰⁹ Accordingly, war crimes committed in Syria, by Syrians, to Syrians are prosecuted in foreign countries. Universal jurisdiction has often been contested by the international community. However, the accountability gap in Syria, combined with the Syrian and European civil societies activism towards strategic litigation, has led to its rise in popularity.²¹⁰ In Germany, for example, Anwar R, a senior Syrian intelligence official, has already been convicted of crimes against humanity for at least 4000 cases of torture against detained prisoners, the murder of 27 people and cases of sexual violence.²¹¹ This conviction is the first case in which a member of the Syrian regime was trialled for state torture and crimes

²⁰³ *Supra* (nr.130) Herremans and Destrooper 588-592.

²⁰⁴ *Supra* (nr. 227) D'Alessandra and Sutherland.

²⁰⁵ *Supra* (nr.462) Aboueldahab 9-10.

²⁰⁶ *Supra* (nr. 228) Aronson 131.

²⁰⁷ Syria Justice and Accountability Centre, *The State of Justice in Syria 2022* (3rd annual report SJAC, 10 March 2022) 18-20.

²⁰⁸ *Supra* (nr.56) Van Schaack 267.

²⁰⁹ *Supra* (nr.131) Jones 814.

²¹⁰ *Supra* (nr.90) Kaleck and Kroker: No-safe haven v Global enforcer approach.

²¹¹ 'UN panel welcomes landmark guilty verdict in Germany's prosecution of former Syrian intelligence officer for crimes against humanity' (UNHRC, 13 January 2022) < <https://www.ohchr.org/en/2022/01/un-panel-welcomes-landmark-guilty-verdict-germanys-prosecution-former-syrian-intelligence> > accessed 27 November 2022.

against humanity against its own people.²¹² Most of the other universal jurisdiction cases prosecute terrorist crimes from extremist armed groups.²¹³

Germany, especially, is at the forefront of the universal jurisdiction movement. Indeed, the Federal Public Prosecutor can open structural investigations for international crimes, to later use the evidence from these investigations for individual prosecutions, or even share that evidence with foreign or international jurisdictions. In addition, the Federal Public Prosecutor can also prosecute individuals in present Germany for international crimes in Syria. Furthermore, some civil society actors in Germany, such as the ECCHR, are particularly involved in the prosecution of international crimes in Syria. These civil society actors coordinate with Syrian civil society actors, in order to build cases and submit complaints concerning these crimes.²¹⁴

²¹² Patrick Kroker and Felix Lüth, 'One Year On – Remembering the Al-Khatib Syrian Torture Case and Reflecting on the Documentation of International Crimes Cases in German Courts' (*EJIL:Talk!*, 12 January 2023) <<https://www.ejiltalk.org/one-year-on-remembering-the-al-khatib-syrian-torture-case-and-reflecting-on-the-documentation-of-international-crimes-cases-in-german-courts/>> accessed 5 April 2023.

²¹³ Syria Justice and Accountability Centre, *The State of Justice in Syria 2023* (4th annual report SJAC, 9 March 2023) 29-33.

²¹⁴ *Supra* (nr.192) Kaleck and Schüller.

Chapter 2: Documentation and the Role of Digital Technology

2.1 Documentation and Technological Solutions for the Accountability Gap

Traditionally, to prove that an international crime or human right violation has been committed, investigators use documentation such as testimonies and material evidence. This material evidence can include official documents, financial or medical records, maps, photographs, physical items...²¹⁵ However, when violations of international humanitarian law or international human rights arise during an armed conflict, it is never straightforward to ascertain facts, nor to identify and then hold the perpetrators responsible. These intricacies are inherently linked to the nature of armed conflicts.²¹⁶ In such cases, it is often difficult to obtain balanced, diverse and reliable information, as certain members of the implicated states often control essential information and are not keen on sharing it. Additionally, investigators do not usually have access to the country of the armed conflict. Lastly, individuals who might have witnessed or experienced a crime may be hesitant to share information due to concerns about possible retaliation.²¹⁷

However, the 21st century marks the rise of digitalization in the world. Today, stakeholders develop and redesign new technologies, software, and methodologies in every sector. Among others, digitalization has a great impact on the legal world.²¹⁸ In the context of armed conflicts, technology has given new opportunities and challenges for human right defenders and activists by offering new methods to document and safeguard evidence of violations of international human rights law and international humanitarian law. As already mentioned in the previous chapter, documentation plays a significant role in facilitating accountability-mechanisms and the prosecution of international crimes.²¹⁹ Therefore, by supplementing more traditional forms of evidence, new technologies have the potential to enhance criminal accountability efforts.²²⁰

New Digital Technologies

One of the most important new sources of evidence is digital open-source data such as satellite images, blogs and websites. This form of data is publicly available on the internet and accessible to all by request,

²¹⁵ *Documenting international crimes and human rights violations for accountability purposes: Guidelines for civil society organisations* (Eurojust and International Criminal Court) <<https://www.eurojust.europa.eu/sites/default/files/assets/eurojust-icc-csos-guidelines.pdf>> accessed 4 April 2023.

²¹⁶ Théo Boutruche, 'Credible Fact-Finding and Allegations of International Humanitarian Law Violations: Challenges in Theory and Practice' (2011) 16 *Journal of Conflict & Security Law* 105, 121.

²¹⁷ Diane Orentlicher, 'Bearing Witness: The Art and Science of Human Rights Fact-Finding' (1990) 3 *Harvard Human Rights Journal* 83, 95.

²¹⁸ Molly Land and Jay Aronson, 'The Promise and Peril of Human Rights Technology' in Molly Land and Jay Aronson (eds), *New Technologies for Human Rights Law and Practice* (CUP 2018) 1.

²¹⁹ See *The Light at the End of the Tunnel*.

²²⁰ *Supra* (nr.220) Land and Aronson 28ff.

purchase or observation.²²¹ Therefore, accessing open-source data does not require anyone to break laws or policies, nor to obtain a warrant, or engage in unethical practices.²²² Alternatively, technology has also made it possible to create documenting tools, such as specialized software, algorithms and apps, that help the people collect, as well as interpret, evidence.²²³ These tools can, for instance, store metadata including the time and location of when a photo is taken, which can be helpful for the authentication of the photo in court.²²⁴ Other tools such as algorithms might be developed to recognize certain objects or backgrounds, or to organize extensive list of materials.²²⁵

In the more recent situations of armed conflict, still within digital open-source data, geospatial intelligence and remote sensing has been used to provide evidence of passage, attacks and destruction by comparing before-and-after images.²²⁶ This kind of data comes for example from commercial satellite imagery such as Google Earth, USGS EarthExplorer, LandViewer, Copernicus Open Access Hub and NASA's Earthdata Search.²²⁷ Another valuable type of digital open-source data for armed conflicts is user-generated content created by civilians with their mobile phones. This type of data takes the form of video recordings, photographs or interactions, that are posted on social media platforms such as YouTube, Facebook or WhatsApp.²²⁸ This data can provide context information, as well as immediately capture testimonies and images of violations.²²⁹ Therefore, in armed conflicts, human rights activists often complement satellite imagery with user-generated content.²³⁰

²²¹ Sam Dubberley, Alexa Koenig and Daragh Murray 'Introduction: The Emergence of Digital Witnesses' in Sam Dubberley, Alexa Koenig and Daragh Murray (eds), *Digital Witness: Using Open-Source Information for Human Rights Investigation, Documentation, and Accountability* (OUP 2019) 9.

²²² *Supra* (nr.220) Land and Aronson 13.

²²³ Frederica D'Alessandra and Kirsty Sutherland, "The The Promise and Challenges of New Actors and New Technologies in International Justice" (2021) 19 *Journal of International Criminal Justice* 9, 13; Example: 'eyeWitness to Atrocities' ensures photos and videos can be used to seek justice, <<https://www.eyewitness.global/>> accessed 22 February 2023.

²²⁴ John Emerson, Margaret Satterthwaite, and Anshul Vikram Pandey, 'The Challenging Power of Data Visualization for Human Rights Advocacy' in Molly Land and Jay Aronson (eds), *New Technologies for Human Rights Law and Practice* (CUP 2018) 168 and 172.

²²⁵ Scott Edwards, 'Open Source Investigations for Human Rights: Current and Future Challenges' in Sam Dubberley, Alexa Koenig and Daragh Murray (eds), *Digital Witness: Using Open Source Information for Human Rights Investigation, Documentation, and Accountability* (OUP 2019) 103; Jay Aronson, 'Mobile Phones, Social Media and Big Data in Human Rights Fact-Finding: Possibilities, Challenges, and Limitations' in Philip Alston and Sarah Knuckly (eds), *The Transformation of Human Rights Fact-Finding* (OUP 2016) 455.

²²⁶ Eyal Weizman, *Forensic Architecture: Violence at the Threshold of Detectability* (Zone Books 2017) 98.

²²⁷ *Supra* (nr.223) D'Alessandra and Sutherland 13.

²²⁸ Jay Aronson, 'The Utility of User-Generated Content in Human Rights Investigations' in Molly Land and Jay Aronson (eds), *New Technologies for Human Rights Law and Practice* (CUP 2018) 130.

²²⁹ Rebecca Hamilton, "User-Generated Evidence" (2018) 57 *Columbia Journal of Transitional Law* 1, 4.

²³⁰ *Supra* (nr.226) Weizman 98-99.

Benefits of New Documentation Techniques

The documentation techniques developed with new technologies can benefit evidence seeking for human rights violations and international criminal justice in many ways. In the following section, a few of these benefits are listed.

First of all, new documentation techniques are *accessible*, and therefore, widen the possibilities to produce evidence. Indeed, phones make it possible for pretty much anyone, everywhere, even in remote areas where media reporters or official investigators might not have access, to document crimes and post their documentation online.²³¹ This documentation then often becomes open-source data, that is accessed by anyone online. The wide access to technology, thus, potentially transforms everyone in an evidence creator and democratises human rights fact-finding.²³² To assist beginners in the creating of evidence, some NGOs provide resources and guidance for the gathering and storage of documentation.²³³ However, it is important to understand that, even though technology has the potential to reach many people, it may sometimes still remain inaccessible to remote areas of the world. For instance, differences in internet access can prevent information sharing and limit access to open-source data.²³⁴

In addition, evidence created by new technologies is often very *accurate*, when gathered in a methodical and correct way. For example, user-generated content, such as a photo or video, is made on the spot, and thus, showcases the situation, as it is at the moment it its creation.²³⁵ Furthermore, the images that were created by technology will not alter with time.²³⁶ This contrasts with testimonies, which rely on the not so precise human memory.²³⁷ Indeed, witnesses who have experienced an armed conflict, are usually biased and influenced by their own views and emotions, that are themselves possibly biased by propaganda.²³⁸ Moreover, witnesses can be bribed, deceived or scared to provide a testimony, especially before a court.²³⁹ Most importantly, though, memory can quickly get distorted through time and witnesses may experience memory loss. Therefore, testimonies are not always objective and reliable. Nonetheless, digital

²³¹ *Supra* (nr. 227) D'Alessandra and Sutherland 14; *Supra* (nr.218) Land and Aronson 9-10.

²³² *Supra* (nr. 227) D'Alessandra and Sutherland 14.

²³³ In the following section, 2.2 Actors in New Documentation and Digital Technology in Syria, more information will be provided on different actors in Syria that assist the documentation efforts.

²³⁴ *Supra* (nr. 227) D'Alessandra and Sutherland 22.

²³⁵ *Supra* (nr.228) Aronson 131.

²³⁶ Fred Abrahams and Daragh Murray, 'Open Source Information: Part of the Puzzle' in Sam Dubberley, Alexa Koenig and Daragh Murray (eds), *Digital Witness: Using Open-Source Information for Human Rights Investigation, Documentation, and Accountability* (OUP 2019) 323-325.

²³⁷ Nikita Mehandru and Alexa Koenig, 'ICTS, Social Media, & the Future of Human Rights' (2019) 17 *Duke Law & Technology Review* 131, 136-138.

²³⁸ Théo Boutruche, 'Credible Fact-Finding and Allegations of International Humanitarian Law Violations: Challenges in Theory and Practice' (2011) 16 *Journal of Conflict & Security Law* 105, 117-122; UNCHR 'Monitoring during Periods of Armed Conflict' in '*Professional Training Series No. 7: Training Manual on Human Rights Monitoring*' (2001) para 19, 23-25.

²³⁹ *Supra* (nr.237) Mehandru and Koenig 136-138.

documentation can also be manipulated, and is, thus, not always a reliable source.²⁴⁰ To avoid collecting corrupted material, investigators try to authenticate useful documentation with metadata.²⁴¹

Finally, digital evidence is *useful in court*. Often, when a crime is brought before a court or tribunal, the main source of evidence comes from testimonies.²⁴² However, as already explained, testimonies are not entirely reliable. Digital evidence can therefore, supplement the more traditional forms of evidence, in order to provide a more complete view of the situation.²⁴³ Open-source documentation is especially useful to connect evidence and provide contextual information, such as where and when a violation might have happened. Furthermore, this type of evidence can also verify or corroborate existing information. Finally, digital evidence generates leads on potential evidence, such as witnesses or other documents.²⁴⁴

2.2 Actors in New Documentation and Digital Technology in Syria

Due to the above-mentioned benefits of digital technologies, a growing number of stakeholders rely on these technologies to document and expose international crimes. This is also the case in Syria. The Syrian armed conflict is, in fact, one of the most documented conflicts in history.²⁴⁵ In light of these developments, a plethora of Syrian activists, media reporters and NGO's have flourished to gather, sort and process evidence of violations of international humanitarian law and international human rights law with the help of new technologies.²⁴⁶ In addition, the two impartial UN bodies: the Independent International Commission of Inquiry on the Syrian Arab Republic (Commission of Inquiry or COI) and the International, Impartial and Independent Mechanism (IIIM), assist the Syrian and international civil society in this undertaking. As already mentioned in a previous chapter, these UN bodies help to monitor, document and prosecute the violations of international law occurring in Syrian armed conflict. The COI mainly informs the world about the committed atrocities. The IIIM collects evidence in accordance with international criminal law standards and methodology.²⁴⁷

²⁴⁰ See 2.2 Actors in New Documentation and Digital Technology in Syria.

²⁴¹ *Supra* (nr.224) Emerson, Satterthwaite and Vikram Pandey 172.

²⁴² Sema Nassar and Iavor Rangelov, *Documentation of Human Rights Violations and Transitional Justice in Syria: Gaps and Ways to Address Them* (Conflict Research Programme London School of Economics and Political Science, 2020) 9-10.

²⁴³ Lindsay Freeman, 'Prosecuting Atrocity Crimes with Open Source Evidence: Lessons from the International Criminal Court' in Sam Dubberley, Alexa Koenig and Daragh Murray (eds), *Digital Witness: Using Open Source Information for Human Rights Investigation, Documentation, and Accountability* (OUP 2019) 49.

²⁴⁴ *Supra* (nr.237) Mehandru and Koenig 130-131

²⁴⁵ *Supra* (nr.242) Nassar and Rangelov 51.

²⁴⁶ Karolina Aksamitowska, 'Digital Evidence in Domestic Core International Crimes Prosecutions' (2021) 19 *Journal of International Criminal Justice* 189, 191; Zara Rahmen, 'DatNav: New Guide To Navigate and Integrate Digital Data in Human Rights Research' (The Engine Room, 24 August 2016) <<https://www.theengineroom.org/datnav-digital-data-in-human-rights-research/>> accessed 19 March 2022.

²⁴⁷ *Supra* (nr.182) 'At A Glance'.

However, the Syrian regime has denied access to Syria to both of the UN bodies. Therefore, the UN bodies heavily rely on the Syrian civil society to gather documentation.²⁴⁸ Accordingly, the COI encourages individuals, groups, organizations and Member States to send them information and documentation related to its mandate.²⁴⁹ The IIM, on the other hand, works with Syrian NGOs, victim/survivor groups, family associations, towards documentation for the crimes committed in Syria. The IIM not only asks these actors to contribute to the documentation efforts, but also invites them to share their preoccupations and criticize its work and perspective.²⁵⁰ The cooperating civil society actors, who experience the armed conflict or reach out to Syrian witnesses and victims, have a unique access and understanding of the context of the crimes and the reality on the ground in Syria.²⁵¹ Their cooperation is, thus, crucial for the UN bodies.

Furthermore, the COI's and IIM's coordination efforts to collect the civil society's documentation is particularly beneficial, as many different organisations and stakeholders do document diverse violations of international human rights law and international humanitarian law, but they all have different documentation techniques and standards.²⁵² Indeed, each documenting NGO will collect and preserve data in a different manner. These organizations do not coordinate their strategies, nor do they necessarily know which standards to follow, since they are often unsure of how their documentation will be used.²⁵³ The impartial UN bodies, especially the IIM, however, harmonises, centralises and identifies evidence gaps for prosecution. In addition, both bodies coordinate their work.²⁵⁴ Therefore, as Elliott explains 'collaboration means improved documentation quality, better evidence and better potential justice outcomes.'²⁵⁵

The Syrian Civil Society

In Syria, many actors contribute in documenting initiatives, including *individual people and activists*. An example of such an actor is a defected regime military photographer, nicknamed Caesar. Between 2011 and 2013, he collected approximately 55 thousand of photographs, proving the killing and torture of thousands of detainees of the Syrian regime.²⁵⁶ His photographs have been shared with Human Rights Watch, the UN

²⁴⁸ Beth Van Schaack, *Imagining Justice for Syria* (OUP 2020) 361 and 370; Ingrid Elliott, "A Meaningful Step towards Accountability? A View from the Field on the United Nations International, Impartial and Independent Mechanism for Syria" (2017) 15 *Journal of International Criminal Justice* 239, 243 and 251.

²⁴⁹ 'Independent International Commission of Inquiry on the Syrian Arab Republic' (*UN Human Rights Council*) <<https://www.ohchr.org/en/hr-bodies/hrc/iici-syria/independent-international-commission>> accessed 22 February 2023.

²⁵⁰ *Supra* (nr.184) Justice Visions; 'Who We Work With' (*International, Impartial and Independent Mechanism*) <<https://iim.un.org/who-we-work-with/>> accessed 22 February 2023.

²⁵¹ Espen Stokke and Eric Wieblehaus-Brahm, 'Syrian diaspora mobilization: vertical coordination, patronage relations, and the challenges of fragmentation in the pursuit of transitional justice' (2019) 42 *Ethnic and Racial Studies* 1930, 1932 and 1934.

²⁵² Abdulkarim Ekzayez, *Attacks on healthcare in the Syrian conflict* (Chatham House, November 2021) 16.

²⁵³ *Supra* (nr.248) Van Schaack 357.

²⁵⁴ *Supra* (nr.248) Elliott 252-255.

²⁵⁵ *Supra* (nr.248) Elliott 252.

²⁵⁶ 'About' (*Caesar Files Group*) <<https://caesar-fsg.org/author/caesar/>> accessed 20 February 2023.

Security Council, and displayed around the world.²⁵⁷ Furthermore, the files have been used in several criminal proceedings.²⁵⁸ These photographs that proved the torture and death of Syrians, also inspired the formation of the Caesar files group. This group consists of a number of peaceful activists that document and collect evidence of serious violations of human rights, especially on detainees and enforced disappearances.²⁵⁹

Other important actors are the many Syrian and international NGOs that work with new technologies to document violations of international human rights law and international crimes. Most of these organisations often have a broad mission to defend human rights and help with the accountability mechanisms. These organisations are sometimes only focussed on Syria, but by building up their expertise, many of these organisations also end up being internationally active.

Syria Justice and Accountability Centre (SJAC) is greatly invested in the use of technology to defend human rights. They provide users with solutions to collect, store and analyse massive amounts of data, using artificial intelligence and open-source collaboration. SJAC, itself, collects documentation of violations of human rights law or international humanitarian law, to then facilitate current and future transitional justice and accountability efforts, or even to build cases against particular suspects. SJAC safeguards and analyses this documentation, to consequently publish reports.²⁶⁰ In addition, SJAC assists other human rights groups and shares data to UN and Governmental agencies including the IIIM and European prosecutors.²⁶¹

Mnemonics is currently a global NGO, that 'helps human rights defenders effectively use digital documentation of human rights violations and international crimes to support advocacy, justice and accountability'.²⁶² Formerly, Mnemonics was known as 'the Syrian Archive', a project that helped to preserve digital information.²⁶³ However, Mnemonics was eventually created to adapt the Syrian Archive's methods to other situations of human rights violations. Today, Mnemonics also archives digital information and evidence for conflicts in Sudan, Yemen and Ukraine.²⁶⁴ This platform was established in 2014 and is a "Syrian led project, that aims to preserve, enhance and memorialise documentation of human rights violations and other crimes committed by all parties to conflict in Syria, for use in advocacy, justice and accountability". In addition, Mnemonics trains

²⁵⁷ *Supra* (nr.248) Van Schaack 349.

²⁵⁸ *Supra* (nr.248) Van Schaack 295.

²⁵⁹ *Supra* (nr.256) 'About'.

²⁶⁰ 'Documentation' (*Syria Justice and Accountability Centre*)

<<https://syriaaccountability.org/documentation/>> accessed 20 February 2023.

²⁶¹ 'Justice Policy' (*Syria Justice and Accountability Centre*) <<https://syriaaccountability.org/justice-policy/>> accessed 20 February 2023 'About SJAC' (*Syria Justice and Accountability Centre*)

<<https://syriaaccountability.org/about/>> accessed 10 March 2022.

²⁶² 'Our Work' (*Mnemonic*) < <https://mnemonic.org/en/our-work> > accessed 10 March 2022.

²⁶³ See Medical Facilities Under Fire.

²⁶⁴ Sudanese Archive at <https://sudanearchive.org/>, Yemeni Archive <https://yemeniarchive.org/>, Ukrainian Archive <https://ukrainianarchive.org/>.

human right defenders, and, build and support the development of open-source tools and methods. Their work has, for instance, contributed to criminal proceedings,²⁶⁵ parliamentary inquiries in multiple countries, and a change in Swiss laws. Much like SJAC, Mnemonics shares its documentation with the UN bodies.²⁶⁶

Syrians for Truth and Justice is a Syria-based independent organisation, that is dedicated at “uncovering human rights violations committed in Syria, in order to promote inclusiveness and ensure that all Syrians are represented, and their rights fulfilled”. The enterprise started as a project to uncover the perspective of Syrians experiencing enforced disappearances and torture. However, it now works on all human rights violations. Its main goal is to respect the Syrian population’s diversity and dignity, and thus, ensure equal human rights for all Syrians.

Justice for Life was initially established in 2015, in Syria, in the province of Deir Ezzor, by human rights defenders and actors, but has since then relocated in Germany. This organisation works on “promoting human rights, advocacy, and peace-building in Syria”. Much like the previous organisations, Justice for Life also works towards justice and accountability, and therefore, collects and preserves documentation to participate or initiate legal actions before courts. In addition, they do capacity building, group discussions and advocacy campaigns.

Bellingcat is ‘an independent international collective of researchers, investigators and citizen journalists, using open source and social media investigation to probe a variety of subjects’.²⁶⁷ The organisation was created by Elliott Higgins, who previously held a blog based on open-source research on the Syrian armed conflict.²⁶⁸ Bellingcat’s main work are investigations on human right abuses and international crimes. These investigations paved the way to the use of open-source documentation in Syria. Their endeavour led them to collaborate with the ICC and the IIIM. In addition, they work in partnership with the above-mentioned Syrian Archive (Mnemonics).²⁶⁹ Furthermore, Bellingcat has a separate unit for Justice and Accountability. This unit investigates atrocity crimes, by following a specific methodology that would meet evidentiary standards. Their main goal is to ‘demonstrate the viability of online open-source information in judicial processes’.²⁷⁰

²⁶⁵ Their investigations into the Syrian chemical supply chain resulted in the conviction of three Belgian firms who violated European Union sanctions.

²⁶⁶ *Supra* (nr.262) ‘Our Work’.

²⁶⁷ ‘About’ (*Bellingcat*) <<https://www.bellingcat.com/about/>> accessed 8 April 2023.

²⁶⁸ Brown Moses at <http://brown-moses.blogspot.com/>.

²⁶⁹ *Supra* (nr.267) ‘About’.

²⁷⁰ ‘What is Bellingcat's Justice and Accountability Unit?’ (*Bellingcat*, 15 December 2022) <<https://www.bellingcat.com/what-is-bellingcats-ja-unit-december-2022/>> accessed 8 April 2023.

All aforementioned organisations, except SJAC, have leading roles in the researched investigation of the following chapter.²⁷¹

Lastly, some of Syrian and international organisations have mounted *specific projects* to document international crimes with the help of technologies. For instance, some organisations create interactive maps to document certain violations.²⁷² Physicians for Human Rights is one of those organisations, that has mapped the assaults on health care facilities in Syria. Other interactive maps include the Carter Center's Syria Conflict Mapping Project or the Syria Tracker Crisis Map.²⁷³ Alternatively, organisations such as the Syrian Archive and Benetech have tried to develop intelligent software to search cluster-munitions. These machine learning programs are labour intensive, expensive and require expertise to make. In addition, source material to configure these programs, such as images of bombs and shelling in different angles, is not readily available.²⁷⁴ Therefore, these projects have not yet yielded the expected results.²⁷⁵ However, artificial intelligence, is certainly becoming an option to help documentation efforts.²⁷⁶ The IIIM, for instance, has developed a program that identifies patterns across data sets to cluster data and reduce the time-consuming manual review of this data by investigators.²⁷⁷

2.3 Challenges of New Documentation and Digital Technology

New technologies create new documentation techniques that could advance the accountability efforts in situations of armed conflict. However, in Syria, despite the new opportunities created by these new digital documentation techniques, accountability and justice, even in the broadest sense of the term, is still not evident.²⁷⁸ Indeed, a series of challenges concerning digital documentation still exist. Nonetheless, actors from the previous section attempt to create solutions for these challenges.

²⁷¹ See 3.2 Investigations on Attacks against Medical Facilities.

²⁷² Patrick Meier, 'Crisis Mapping in Action: How Open Source Software and Global Volunteer Networks Are Changing the World, One Map at a Time' (2012) 8 *Journal of Map & Geography Libraries* 89, 98-99. Patrick Meier, 'Big (Crisis) Data: Humanitarian Fact-Finding with Advanced Computing' in Philip Alston and Sarah Knuckey (eds), *The Transformation of Human Rights Fact-Finding* (OUP 2016) 486-489.

²⁷³ 'Syria' (Carter Center) <<https://www.cartercenter.org/countries/syria.html>> accessed 20 February 2023.

²⁷⁴ Raja Abdulrahim 'AI Emerges as Crucial Tool for Groups Seeking Justice for Syria War Crimes' (*The Wall Street Journal*, 13 February 2021) <<https://www.wsj.com/articles/ai-emerges-as-crucial-tool-for-groups-seeking-justice-for-syria-war-crimes-11613228401>> accessed 03 April 2023; 'JusticeAI: Turning Conflict Data into Actionable Evidence' (*Benetech*) <<https://benetech.org/lab/ethical-ai-to-promote-justice/>> accessed 03 April 2023.

²⁷⁵ *Ibid.*

²⁷⁶ Enrique Piracés 'The Future of Human Rights Technology: A Practitioner's View' in Molly Land and Jay Aronson (eds), *New Technologies for Human Rights Law and Practice* (CUP 2018) 296-299.

²⁷⁷ Elena Radeva, 'The Potential for Computer Vision to Advance Accountability in the Syrian Crisis' (2021) *Journal of International Criminal Justice* 131, 146.

²⁷⁸ See Categorization of the Armed Conflict.

Collection and Storage

A first challenge concerns the *volume* of documentation produced with new technologies. The Syrian armed conflict has been immensely documented for over 10 years. YouTube, Facebook and many other websites present millions of conflict-related contents.²⁷⁹ In fact, Google considers there are “more hours of footage of the Syrian civil war on YouTube than there actually are hours of the war in real life”.²⁸⁰ This enormous amount of documentation increases the possibilities to find evidence of crimes. However, this overload of information also means that the general public and therefore investigators are faced with too much documentation. For the general public, this complicates their understanding of the conflict. For investigators, this means they can spend hours researching before finding any relevant information.²⁸¹

In addition to the great amount of documentation, investigators have to sort through: the online data they might find often *disappears* as websites change and accounts are closed. Social media algorithms, especially, filter and remove content that does not align with their policies, including content that glorifies violence, incites hate, recruits for violence, dehumanizes, exploits, and so on.²⁸² By doing so, open-source data becomes inaccessible to investigators. Most often, it is impossible to acquire the removed material again. Unfortunately for the collection of evidence of violations of international human rights law or international humanitarian law, the content that is most often deleted by social media moderators, is also often the most explicit, and thus, the most useful.²⁸³ When this removal happens, evidence is often destroyed forever.

Therefore, documentation should be stored in secure databases. However, for the evidence to be of use in future proceedings, this documentation must be *correctly stored* and organized. Indeed, when open-source documentation is used in criminal procedures, it is crucial to preserve the metadata, to establish the chain of custody and to hash the evidence. Metadata is automatically collected with digital documentation and often without the knowledge of the user or creator of the content. It can contain information concerning the time and date when the documentation was created, as well as additional information concerning the device the file was created on or any edits. Nonetheless, metadata must be put in context for it to be useful.²⁸⁴ The chain of custody, on the other hand, is a useful procedure to enhance transparency around the acquiring of the

²⁷⁹ *Supra* (nr.228) Aronson 134.

²⁸⁰ *Supra* (nr.) Van Schaack 339.

²⁸¹ *Supra* (nr.225) Edwards 89.

²⁸² *Supra* (nr.225) Edwards 96.

²⁸³ Digital Human Rights Fact-Finding and Advocacy 202-203

²⁸⁴ *Supra* (nr.237) Mehandru and Koenig 141-143.

documentation.²⁸⁵ Lastly, the hash value uniquely identifies data, and thus, confirms that the data has not been manipulated.²⁸⁶

In Syria, different organizations, such as the above-mentioned NGOs and UN bodies emerged to contribute to the documentation efforts.²⁸⁷ Most of these actors have in common that they filter through documentation and store evidence in databases. However, due to the volume of data collected by these organisations, human analysis and preservation is not always enough. These organizations, thus, use new technologies to help them collect and manage documentation efforts.²⁸⁸ For instance, in 2020, SJAC released an open-source data management software to preserve documentation.²⁸⁹ This user-friendly platform provides different tools. For instance, it allows its users to quickly upload large amounts of data or activists to verify the time and location when they take videos. Subsequently, the software manages the documentation, by identifying and categorizing the data, so that activists can easily access the information they need. This technology, thus, allows for easy and effective data analysis and sharing, that can then be used in investigations and trials.²⁹⁰

In court use

Once useful information is collected and secured, most NGOs analyse their finds and then publish their conclusions online. The evidence, then, remains in their secure databases, ready to be used in criminal proceedings.²⁹¹ Yet, the question rises how and if the scattered evidence on private databases will ever *reach the right prosecutors and courts*. Fortunately for Syria, the COI, but especially the IIIM, were created to collect information and evidence themselves and do so in tight cooperation with the civil society. Therefore, most NGOs that make reports, not only publish them online, but also present their reports and documentation to the COI and the IIIM.²⁹² However, others, such as the Commission for International Justice and Accountability or the ECCHR, prefer to work in direct contact with prosecuting institutions. Still, they provide information to international justice actors.²⁹³

Nonetheless, even if digital evidence reaches the court, it is not automatically admissible. Indeed, technology and digitalization enable not only new forms of documentation gathering, but also new *forgery* techniques.

²⁸⁵ *Ibid*; *Supra* (nr.243) Freeman 14; Alexa Koenig and Lindsay Freeman 'Open Source Investigations for Legal Accountability: Challenges and Best Practices' in Sam Dubberley, Alexa Koenig and Daragh Murray (eds), *Digital Witness: Using Open Source Information for Human Rights Investigation, Documentation, and Accountability* (OUP 2019) 335 and 338.

²⁸⁶ *Supra* (nr.243) Freeman 14.

²⁸⁷ See 2.2 Actors in New Documentation and Digital Technology in Syria.

²⁸⁸ *Supra* (nr.225) Edwards 98.

²⁸⁹ <https://bayanat.org/>.

²⁹⁰ 'Tech and Human Rights' (Syria Justice and Accountability Centre) <<https://syriaaccountability.org/tech-and-human-rights/>> accessed 20 February 2023.

²⁹¹ *Supra* (nr.229) Hamilton 43.

²⁹² See The Syrian Civil Society.

²⁹³ 'What we do' (CIJA) <<https://cijaonline.org/model-of-work>> accessed 8 April 2023.

Online documentation, specifically, can be altered or falsified without much difficulty.²⁹⁴ Furthermore, most documentation was not gathered with the intention to be used for criminal accountability purposes, and therefore, lacks accuracy and authenticity.²⁹⁵ In Syria, especially, the different opposing parties, notably the regime, instrumentalized the new digital forms of documentation to spread their own narrative on social media and other platforms.²⁹⁶ These manipulations can vary from false or oversimplified framing of an issue to outright staging or fabrication of materials.²⁹⁷ By doing so, the regime tries to sow doubt and covers up their crimes in order to push its own narrative and affect beliefs and perceptions.²⁹⁸

Furthermore, even when documentation is authentic, it is still often created and then used in a certain context and by certain people with an agenda in mind.²⁹⁹ For instance, an individual taking a video or a photo in the aftermath of an indiscriminate attack, and thus, a violation of international humanitarian law will probably focus on the destruction and human suffering, while a human rights activist or an investigator might prioritise certain information that furthers their case, such as evidence of the use of certain weapons or location markers. Documentation at its source is, thus, *never entirely neutral*, nor does it encapsulate the wider context of the war, but rather individual motives and actions.³⁰⁰

This bias is also present in digital evidence, and probably even more in open-source data. Indeed, open-source data is not created by investigators, who are *prima facie* bound by neutrality. Alternatively, when the great number of non-readily discoverable documentation is analysed by an organisation or an activist, they look and filter through the available information with a biased perspective.³⁰¹ This subjectivity can impact the credibility of the source, and then, be countered by opposing parties.³⁰²

Thus, digital documentation is often questioned in court. Indeed, this type of evidence might conflict with the right to a fair trial or other conflicting rights of the accused, the victims, or even the witnesses, such as the right to privacy.³⁰³ Nonetheless, for criminal accountability, international courts and tribunal statutes often have limited rules regarding evidentiary matters, thus, leaving judges a wide discretion to judge

²⁹⁴ Frederica D'Alessandra and others, *Anchoring Accountability for Mass Atrocities: The Permanent Support Needed to Fulfil UN Investigative Mandate* (Oxford Institute for Ethics, Law, and Armed Conflict, 2022) 60.

²⁹⁵ *Supra* (nr.216) Boutruche 117.

²⁹⁶ See *The Light at the End of the Tunnel*; Joshka Wessels, *Documenting Syria Film-making, Video Activism and Revolution* (Bloomsbury Publishing, 2019) 247.

²⁹⁷ *Supra* (nr.225) Edwards 101.

²⁹⁸ Lisa Wedeen, *Authoritarian Apprehensions: Ideology, Judgment and Mourning in Syria* (UCP 2019) 89; *Supra* (nr.225) Edwards 99.

²⁹⁹ *Supra* (nr. 227) D'Alessandra and Sutherland 22.

³⁰⁰ *Supra* (nr.243) Freeman 54.

³⁰¹ *Supra* (nr. 227) D'Alessandra and Sutherland 22-23; *Supra* (nr.229) Hamilton 41-42.

³⁰² *Supra* (nr.229) Hamilton 17-20; *Supra* (nr.243) Freeman 63-66.

³⁰³ *Supra* (nr.301) Hamilton 39-40.

admissibility.³⁰⁴ Still, the ICC has judged that “open sources should primarily be used as lead information or to corroborate other items of evidence”.³⁰⁵ As already explained above, supplementing traditional evidence with digital evidence is still promising in terms of accountability.³⁰⁶

However, to increase the chance of admissibility, NGOs verify and authenticate their sources. For instance, in a video, the location will be verified using street signs or prominent landmarks. From the position of the sun, some will deduct the time. Metadata will further certify both elements.³⁰⁷ An unbroken chain of custody and a hash value will help to confirm the authenticity of the data.³⁰⁸ Furthermore, to assure more neutrality, it is important that the entities compiling evidence and making reports are as impartial as possible.³⁰⁹ Most NGOs conducting investigation assure this on their websites, including the Commission for International Justice and Accountability (CIJA).³¹⁰ Still, non-private entities should also collect and store documentation of the international crimes in Syria. The two impartial mechanisms implemented by the UN for the Syrian armed conflict, the COI and IIM, take on that role.

2.4 Investigative Commons

A New Field of Practice

The expansion of new technologies prompted creative actions to support documentation efforts for international crimes and violations of human rights. In particular, several organisations developed a new field of practice, to investigate the involvement and complicity of state and corporate agencies in a variety of human right struggles and violations. For instance, these investigations study violations of labour rights, cyber surveillance or gender-based violence. In addition, but of greater interest for this master’s thesis, Investigative Commons’ teams also work on violations of international human rights law and international humanitarian law during armed conflicts.³¹¹ These investigations departed from the field, where incident happened.

³⁰⁴ *Supra* (nr.243) Freeman 4; *Supra* (nr.301) Hamilton 46; Margherita Melillo, “Forms of Evidence” (2021) 3571 MPEiPro para 10-14.

³⁰⁵ *Prosecutor v Jean-Pierre Bemba Gombo* (Decision on the admission into evidence of items deferred in the Chamber’s ‘Decision on the Prosecution’s Application for Admission of Materials into Evidence Pursuant to Article 64(9) of the Rome Statute’) ICC-01/05-01/08 (27 June 2013) para 22 and 25.

³⁰⁶ See Benefits of New Documentation Techniques.

³⁰⁷ *Supra* (nr.237) Mehandru and Koenig 143-144.

³⁰⁸ *Supra* (nr.243) Freeman 14.

³⁰⁹ *Supra* (nr.225) Edwards 5-6.

³¹⁰ ‘CIJA is apolitical and carries out its investigative activities independently of any government.’; ‘Commission for International Justice and Accountability’ (*Commission for International Justice and Accountability*) <<https://cijaonline.org/>> accessed 22 February 2023.

³¹¹ Forensic Architecture, ‘About’ (*Forensic Architecture*) <<https://forensic-architecture.org/about/agency>> accessed 17 February 2022.

Afterwards, a group of diverse people with diverse qualifications processed the evidence found in the field. And finally, the evidence was presented in a variety of forums.³¹²

The aim of this new field of practice is to 'combine the situated knowledge of communities at the forefront of political struggle, with the toolkits of investigative reporters, whistle-blowers, activists, lawyers, scientists, artists, architects and other cultural practitioners.'³¹³ The founders of this new field of practice, Forensic Architecture, FORENSIS and ECCHR, refer to this new field as 'Investigative Commons'.

Forensic Architecture is a multidisciplinary research group at Goldsmiths, University of London. This group concentrates its efforts on architectural techniques and technologies, as well as open-source investigation and other techniques. Their team includes architects, software developers, filmmakers, investigative journalists, artists, scientists and lawyers, and is led by Eyal Weizman, an architect.³¹⁴

FORENSIS is a non-profit association, founded by Forensic Architecture, in Berlin. The association is an interdisciplinary team of researchers 'with expertise in spatial and visual investigation, time-based 3D reconstruction, cartographic platforms and open-source investigation'. It collaborates with different actors to support their demands for justice, reparations, and accountability.³¹⁵

The European Centre for Constitutional and Human Rights (ECCHR) is a global NGO that advocates for human rights. It was founded by Wolfgang Kaleck, an international human rights lawyer.³¹⁶ ECCHR investigates human rights violations and uses legal means to counter injustice. Among other thematic, they work around international crimes.³¹⁷

The investigative teams base their investigations on the *open verification methodology*. This methodology creates on open processes between people who experience violence first-hand and seek justice, activists who defend these people, and a network of open-source investigators, scientists and other experts, such as architects, lawyers and artists. In sum, all these diverse actors come together in the pursuit of justice. In practice, the investigators collect, analyse and reconstruct evidence through technology and other innovative

³¹² Matthew Fuller and Eyal Weizman, *Investigative Aesthetics: Conflicts and Commons in the Politics of Truth* (Verso 2021) 182.

³¹³ 'Investigative Commons' (*Investigative Commons*) <<https://investigative-commons.org/>> accessed 8 April 2023.

³¹⁴ 'Who we are' (*Investigative Commons*) <<https://investigative-commons.org/#who-we-are>> accessed 22 February 2023.

³¹⁵ *Ibid*; 'Who we are' (*Forensis*) <<https://counter-investigations.org/about/association>> accessed 22 February 2023.

³¹⁶ *Supra* (nr.314) 'Who we are' (*Investigative Commons*); 'Who we are' (*ECCHR*) <<https://www.ecchr.eu/en/about-us/>> accessed 22 February 2023.

³¹⁷ 'What Motivates Us: Protecting Human Rights' (*ECCHR*) <<https://www.ecchr.eu/en/ecchr/protecting-human-rights/>> accessed 8 April 2023.

techniques, while also focussing on the social relations that made the acquisition of evidence possible.³¹⁸ Throughout their investigations, Investigative Commons' teams try to avoid biases.³¹⁹ For instance, when evidence is presented, even in a simple exhibition, the reason behind the use of certain documentation or not, is always explained.³²⁰

Investigative Commons' projects differentiate themselves from other forensic investigations, because they "sense" a wide range of sources such as animals, plants, materials and technological devices. This sensing goes beyond human perception and includes different signals, which must be interpreted. For instance, when a medical facility is bombed, through videos, testimonies and satellite images, it is possible to observe cracks and fissures in the building materials. By integrating these cracks or other 'sensings' in a wider perspective, it is possible to find other information such as the possible projectile that the attackers used, the number of projectiles used and the time at which the facility was attacked, all information that can be used as evidence.³²¹ This technique is called investigative aesthetics and requires a multidisciplinary approach.³²²

In order to draw conclusions from this 'sensing', the Investigative Commons' tools have to be quite technological. Indeed, for their investigations, the Investigative Commons' teams often use machine learning, virtual and augmented reality, animation techniques, repurposed game engines or innovative architectural ideas. These technologies are also the reason why Investigative Commons require a *multidisciplinary* approach, as they often necessitate specific skills. In line with this multidisciplinary approach, Investigative Commons use diverse methodologies, such as research methods from investigative and data journalism.³²³

Once, the investigative teams have finished their investigation, the information that they compiled, is used in national and international courts, civil tribunals and truth commissions, as well as in the media, in art and cultural venues. Therefore, their work, that exposes the truth in a variety of forums, raises awareness and contributes to legal accountability processes. Furthermore, this new field of practice encourages critical debate about contemporary political challenges, technology, human rights, media and aesthetics, through

³¹⁸ 'Methodology: Open Verification' (*Investigative Commons*) <<https://investigative-commons.org/#methodology>> accessed 22 February 2023.

³¹⁹ 'Methodology: Critical Introspection' (*Investigative Commons*) <<https://investigative-commons.org/#methodology>> accessed 22 February 2023.

³²⁰ 'Methodology: Socializing Evidence' (*Investigative Commons*) <<https://investigative-commons.org/#methodology>> accessed 22 February 2023.

³²¹ 'Methodology: Investigative Aesthetics' (*Investigative Commons*) <<https://investigative-commons.org/#methodology>> accessed 22 February 2023.

³²² Matthew Fuller and Eyal Weizman, *Investigative Aesthetics: Conflicts and Commons in the Politics of Truth* (Verso 2021) 25 and 129-130.

³²³ 'From museum to courtroom: Investigative Commons reinvents legal investigations' (*ECCHR*) <<https://www.ecchr.eu/en/case/investigative-commons/>> accessed 22 February 2023.

lectures, workshops, and conferences.³²⁴ Thus, Investigative Commons do not solely focus on legal accountability, but contribute to broader transitional justice mechanisms.

Investigative Commons in Syria

The Investigative Commons methodology has been adapted to the Syrian armed conflict and its many violations of international humanitarian law and international human rights law. Indeed, the original creators of this field of practice have investigated a number of unlawful attacks in Syria. Some of these attacks concern the use of unlawful weapons such as chemical attacks, other attacks include, the targeting of civilians and civilian infrastructure, such as hospitals.³²⁵ To investigate incidents in Syria, the original Investigative Commons Organisations work with certain actors of the Syrian civil society, including Bellingcat and Mnemonics.

For example, Forensic Architecture published an investigation in 2017, about the bombings between June and December 2016 of the Omar Bin Abdul Aziz Hospital (M2 hospital). For this investigation, Forensic Architecture collaborated with Bellingcat. They identified the Syrian military as the perpetrator of the attacks and determined which weapons had been used. By combining the images of photographs and videos, Forensic Architecture reconstructed a 3D model of the M2 hospital to then identify the impact sites and damages caused by the attacks. With this information, they were able to produce a cohesive narrative of the building's destruction. This investigation led to a report by the Atlantic Council and was integrated in multiple exhibitions.³²⁶

Furthermore, the Investigative Commons methodology has inspired other actors. For instance, the New York Times published an article proving, via the analysis of radio transmissions, that the Russian military bombed civilians in Syria.³²⁷ Other actors, such as NGOs active in Syria, have used detailed sensing and technology for their own investigations, including Bellingcat and Mnemonics. Bellingcat, in particular, has conducted open-source investigation and focused on technology and forensic research to advance justice. Their investigations are specific and transparent, much like the Investigative Commons investigations.³²⁸ Both organisations have launched different investigations concerning attacks against civilians and civilian

³²⁴ 'Investigative Commons' (*Investigative Commons*) < <https://investigative-commons.org/> > accessed 22 February 2023.

³²⁵ E.g. Chemical Attack in Khan Sheikoun and Airstrikes on M2 Hospital or the on AL-Hamidiah Hospital; 'Syria' (*Forensic Architecture*) < <https://forensic-architecture.org/location/syria> > accessed 8 April 2023.

³²⁶ 'Airstrikes on M2 Hospital' (*Forensic Architecture*, 13 February 2017) < <https://forensic-architecture.org/investigation/airstrikes-on-m2-hospital> > accessed 8 April 2023.

³²⁷ Evan Hill and Christiaan Triebert, '12 Hours. 4 Syrian Hospitals Bombed. One Culprit: Russia' *New York Times* (New York, 13 October 2019) < <https://www.nytimes.com/2019/10/13/world/middleeast/russia-bombing-syrian-hospitals.html> > accessed 23 February 2022; Evan Hill and others, 'Sent Candy': Cockpit Tapes Show Russian Pilots Bombing Syrian Civilians' *New York Times* (New York, 1 December 2019) < <https://www.nytimes.com/video/world/middleeast/10000006818506/russia-bombs-syria-civilians.html> > accessed 23 February 2022.

³²⁸ *You Can't Camouflage Facts: 2021 Annual Report* (Bellingcat 2021).

infrastructure, such as, hospitals and medical facilities, in Syria. These attacks will be further explained in the following chapter.³²⁹ In this same chapter, a specific investigation of the Syrian Archive, a division of Mnemonics, and Bellingcat is analysed, following certain techniques from the Investigative Commons methodology.³³⁰

³²⁹ See Chapter 3: The Attacks on Medical Facilities.

³³⁰ See 3.2 Investigations on Attacks against Medical Facilities.

Chapter 3: The Attacks on Medical Facilities

3.1 Attacks on Medical Facilities and the Law

Attacks Against Civilians

In Syria, the Syrian regime and, later, the Russian forces have targeted civilians on multiple occasions. At the beginning of the conflict, the regime forces arrested, tortured, executed, attacked and besieged people on a massive scale. Later on, when the opposition started to militarize, the regime and its allies increased the use of artillery and airstrikes. Airstrikes can be used to specifically target military objectives. However, the regime's airstrikes were often conducted in a way that did not differentiate the military objectives from civilians. Therefore, these attacks led to the destruction of urban areas and civilian infrastructures, such as homes, schools and hospitals, and to the death of hundreds of thousands of civilians.³³¹

Yet, the Syrian regime and its allies are not the only ones to have indirectly or directly attacked civilians. Anti-government armed groups have carried out indiscriminate attacks, including bombing and firing rockets or mortars in government-controlled areas.³³² Some attacks of the non-state armed group directly targeted civilian areas. Furthermore, non-state armed groups failed to distinguish themselves from the civilian population, and used civilians and civilian infrastructure as human shields.³³³ Lastly, the United States-led coalition also conducted airstrikes that caused damage to civilian objects and infrastructure. However, there are much less investigations into these attacks, and the US-led coalition itself has minimized the impact of their own attacks.³³⁴

In particular, medical facilities, as well as medical personnel, have systematically been the target of shelling and bombings by the regime. This started early on in the uprising. During the peaceful demonstrations, in March 2011, the regime seized the Dar'a National Hospital to deny access to non-Assad supporters. The regime, then, began arresting wounded protestors in hospital emergency rooms and threatening medical staff who treated them. In 2012, the regime introduced a new counter-terrorism legislation, which made it illegal to provide medical aid to the opposition, thus rendering the medical facilities in opposition held territory

³³¹ Independent International Commission of Inquiry on the Syrian Arab Republic, *Civilians under attack in Syria: Towards Preventing Further Civilian Harm* (Policy Paper, 2022) 2-3.

³³² Armed groups such as Da'esh, Hay'at Tahrir Al-Sham and the Kurdish People's Protection Units; *Supra* (nr.331) 5; Sareta Ashraph, 'All the Red Lines: The Syrian Conflict and Its Assault on International Humanitarian Law' in Hilly Moodrick-Even Khen, Nir Boms and Sareta Ashraph (eds), *The Syrian War: Between Justice and Political Reality* (CUP 2020) 92.

³³³ *Supra* (nr.331) 5.

³³⁴ *Ibid*; Sema Nassar and Iavor Rangelov, *Documentation of Human Rights Violations and Transitional Justice in Syria: Gaps and Ways to Address Them* (Conflict Research Programme London School of Economics and Political Science, 2020) 9.

de facto unauthorized.³³⁵ Since then, the regime has denied medical access to civilians, attacked hospitals, hindered medical transportation, as well as, detained and tortured medical personnel for treating wounded civilians.³³⁶

From 2016, when Russia was already militarily involved in the conflict, the regime's strategy against medical facilities took a different dimension. The regime then started to massively bomb and attack medical facilities. In April 2017 alone, 25 medical facilities were targeted, with an attack occurring on average every 29 hours.³³⁷ From March 2011 to March 2022, the Syrian Network for Human Rights recorded the death of 869 medical personnel, of which 84% happened at the hand of the Syrian Russian alliance forces.³³⁸ Physicians for Human Rights, on the other hand, have recorded 601 attacks on Medical Facilities and attributed 542 of these attacks to Syrian Government Forces and Russian Forces.³³⁹ Other attacks have been attributed to anti-government armed groups, ISIL or international Coalition Forces.³⁴⁰ These events eventually led to the development of underground hospitals, which were less inclined to collapse and cause damage to the patients and staff. However, these underground hospitals in turn became new targets for attacks.³⁴¹ In 2022, still, only 59 percent of hospitals and 57 percent of public health care centres were fully functioning.³⁴²

International Humanitarian Law and Human Rights

Civilians have, thus, repeatedly faced attacks from all parties in Syria. However, civilians and civilian infrastructure, especially medical facilities, should be protected by customary international humanitarian law. Indeed, within international humanitarian law, the principle of distinction should protect civilians from attacks. This principle entails that "the parties to the conflict must at all times distinguish between civilians and combatants. Attacks may only be directed against combatants. Attacks must not be directed against civilians".³⁴³ Civilians only lose this protection if they take a direct part in hostilities.³⁴⁴ Furthermore,

³³⁵ 'Saving Lives Underground: The Case for Underground Hospitals in Syria' (Syria Campaign, May 2017) 14-16 <<https://d1p8u7ytnu6qui.cloudfront.net/Saving%20Lives%20Underground%20report.pdf>> accessed 8 March 2023.

³³⁶ *Ibid.*

³³⁷ *Ibid.*

³³⁸ *Supra* (nr. 350) 11th annual report SNHR 10 and 24.

³³⁹ Physicians for Human Rights corroborate reported attacks on medical facilities through online and field sources. However, they only confirmed 30% to 40% of the reported attacks, and thus, consider these numbers to be an absolute minimum. 'Illegal Attacks on Health Care in Syria' (PHR) <<https://syriamap.phr.org/#/en>> accessed 1 March 2023. Syrian Archive has documented similar numbers; 'Targeting Health: Attacks Against Medical Facilities in Syria' (Syrian Archive, 9 March 2021) <<https://medical.syrianarchive.org>> accessed 8 April 2023.

³⁴⁰ UNGA '20th Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' HRC 44th session (3 September 2020) UN Doc A/HRC/44/61 5; *Supra* (nr.339) 'Illegal Attacks on Health Care in Syria'.

³⁴¹ *Ibid* para 36-47.

³⁴² UN Office for the Coordination of Humanitarian Affairs, 2023 *Humanitarian Needs Overview: Syrian Arab Republic* (HNO, 22 December 2022).

³⁴³ *Supra* (nr.107) Henckerts and others 3, rule 1.

³⁴⁴ *Ibid* 19, rule 6.

humanitarian law also distinguishes between civilian objects and military objectives. Equivalent to the above-mentioned rule, civilian objects cannot be targeted by the different warring parties.³⁴⁵ Therefore, all parties to the Syrian armed conflict should distinguish between military or lawful targets, and civilian or unlawful targets.³⁴⁶

Other important aspects that provide an extra protection for civilians and civilian objects are the principles of proportionality,³⁴⁷ precaution,³⁴⁸ and the prohibition of indiscriminate attacks.³⁴⁹ As explained before, both state and non-state actors have disregarded the international laws protecting civilians, nonetheless the great majority of the attacks are attributable to the regime and its allies. According to the last annual report of the Syrian Network for Human Rights, the Syrian-Russian-Iranian alliance is responsible for nearly 86% of these attacks.³⁵⁰ In this regard, by massively destroying the civilians' infrastructures and cities or towns, it can be argued that the regime and especially their Russian allies are applying a scorched earth military strategy.³⁵¹

Furthermore, in addition to the general protection of civilians in armed conflicts, more specific provisions of international humanitarian law ensure the protection of civilian infrastructures. For instance, article 18 of the Geneva Convention IV, and article 11 of the second additional protocol both secure the status of medical personnel and medical formations. Still, as already mentioned before, the Syrian Arab Republic has not ratified the second additional protocol. Therefore, Syrians must rely on customary international humanitarian law. In this case, the protection of medical facilities is perceived as *ius cogens* and remains thus applicable

³⁴⁵ *Ibid* 25, rule 7.

³⁴⁶ Beth Van Schaack, 'Mapping war crimes in Syria' (2016) 92 *International Law Studies* 282, 294.

³⁴⁷ *Supra* (nr.107) Henckerts and others 46, rule 14: Launching an attack which may be expected to cause incidental loss of civilian life, injury to civilians, damage to civilian objects, or a combination thereof, which would be excessive in relation to the concrete and direct military advantage anticipated, is prohibited.

³⁴⁸ *Supra* (nr.107) Henckerts and others 51, rule 15: In the conduct of military operations, constant care must be taken to spare the civilian population, civilians and civilian objects. All feasible precautions must be taken to avoid, and in any event to minimise, incidental loss of civilian life, injury to civilians and damage to civilian objects.

³⁴⁹ *Supra* (nr.107) Henckerts and others 40, rule 12: Indiscriminate attacks are those: (a) which are not directed at a specific military objective; (b) which employ a method or means of combat which cannot be directed at a specific military objective; or (c) which employ a method or means of combat the effects of which cannot be limited as required by international humanitarian law; and consequently, in each such case, are of a nature to strike military objectives and civilians or civilian objects without distinction.

³⁵⁰ Syrian Network for Human Rights, *On the 11th Anniversary of the Popular Uprising: 228,647 Syrian Civilians Documented Killed, Including 14,664 by Torture, with 151,462 Arbitrarily Detained/Forcibly Disappeared, and 14 Million Others Displaced* (11th annual report SNHR, 15 March 2022) 10 and 24; see also

Further the Syrian Archive Reports .

³⁵¹ 'Scorched earth policy is a strategy of warfare whereby the retreating armed forces destroy or devastate whole towns, facilities, agriculture, transport routes and general infrastructure in order to deprive the advancing enemy forces or the belligerent population of food, shelter, fuel, communications and other valuable resources that may be useful for them.' Alexander Schwarz and Maria Grigat, 'Scorched Earth Policy' in Frauke Lachenmann and Rüdiger Wolfrum (eds.) *The Law of armed conflict and the use of force: the Max Planck encyclopedia of public international law* (OUP 2017) 1113.

in the Syrian context.³⁵² In sum, medical personnel, units and facilities must be protected in all circumstances. Medical units only lose their protection, if they are being used outside their humanitarian function, to commit acts harmful to the enemy.³⁵³ It is worth noting that some have tried to defend the legality of certain attacks against hospitals and medical centres in Syria on the grounds that these facilities were allegedly being used to shield armed group fighters from attacks. Nonetheless, no information has been found to support this view.³⁵⁴

Lastly, international human rights law comes into play. In the ICCPR, attacks against civilians and civilian infrastructure, such as sieges and aerial attacks, can entail violations of the right to life.³⁵⁵ In addition, when access to medical care and other services is denied, due to the attacks and destruction of civilian facilities, such as hospitals, the right to protection against cruel, inhuman or degrading treatment or punishment is also disregarded.³⁵⁶ Furthermore, these attacks, especially attacks against medical facilities violate the ICESCR's right for everyone to an adequate standard of living and the right for everyone to the enjoyment of the highest attainable standard of physical and mental health.³⁵⁷

Indeed a study reported that 49 percent of people in Syria are afraid to access medical care for fear of an attack and 24 percent reported being unable to receive medical treatment, due to an attack.³⁵⁸ The biggest challenges, according to health workers, include access to enough medicine, attacks on medical facilities, and a shortage of specialists.³⁵⁹ As mentioned previously, the regime targeted many doctors, and as a result, many had to flee the country.³⁶⁰ The overall situation has, thus, resulted in a significant deterioration of the Syrian health care system, with many preventable diseases becoming more common and treatment becoming increasingly difficult to access.³⁶¹

International Criminal Law

Finally, and most important in terms of accountability, international criminal law is applicable. The attacks on civilians can either amount to war crimes or crimes against humanity. As a reminder, war crimes are violations

³⁵² *Supra* (nr.107) Henckearts and others 79-104 and 119.

³⁵³ *Supra* (nr.107) Henckearts and others 91, rule 28.

³⁵⁴ Independent International Commission of Inquiry on the Syrian Arab Republic, *Civilians under attack in Syria: Towards Preventing Further Civilian Harm* (Policy Paper, 2022) 6.

³⁵⁵ ICCPR art 6.

³⁵⁶ ICCPR art 7.

³⁵⁷ ICESCR art 11 and art 12; UNCESCR 'General Comment no. 14' para 34 in fine.

³⁵⁸ *A Decade of Destruction: Attacks on health care in Syria* (International Rescue Committee, 3 March 2021) 2.

³⁵⁹ The list continues: not enough medicines; attacks on health facilities; not enough specialists; insufficient equipment; not enough trained doctors, nurses, other health staff; fighting of armed groups impacting access to health facilities; not enough health facilities; *Ibid* 13.

³⁶⁰ *Supra* (nr.335) *Saving Lives Underground* 15.

³⁶¹ *Supra* (nr.358) *A Decade of Destruction* 12-14.

of international humanitarian law, listed in the Rome Statute.³⁶² In the context of non-international armed conflicts, attacks against civilians and civilian infrastructure are listed as war crimes in art 8, 2 (c) and (e) (i) (ii) of the Rome Statute. Attacks against medical facilities, on the other hand, appear in art 8 2 (e) (iv) of the Rome Statute. Both types of attacks are, thus, considered to be war crimes.³⁶³ However, for individual criminal responsibility, the mental element of the crime is of importance. Therefore, to prosecute war crimes, the violations of humanitarian law must have been committed intentionally or 'recklessly'.³⁶⁴

The attacks on medical facilities, especially when perpetrated by the regime forces and its allies, often indicate signs of intentionality.³⁶⁵ For instance, the location of many attacked medical facilities was often known or should have been known by the main parties to the conflict, as they were established facilities, or on the 'no strike' UN deconfliction mechanism. Furthermore, many facilities were repeatedly attacked, what indicates that their geographic location was known. In addition, some of the attacked facilities were in remote positions, where nothing else was worth targeting. Finally, the characteristics of the attacks often showed some sense of organisation and intentionality. For instance, many attacks directly hit and damaged the medical facility, other attacks were double-tap strikes.³⁶⁶ Sometimes, multiple facilities of a certain area were attacked in a short period of time.³⁶⁷

Additionally, the question raises whether such attacks can qualify as crimes against humanity. Article 7 of the Rome Statute describes crimes against humanity as "any of the following acts, when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack".³⁶⁸ The difference with the war crimes, lies in the widespread and systematic aspect of the attack. The acts include murder, deportation or forcible transfer of the population, and other inhumane acts of a similar character, intentionally causing great suffering or serious injury to body or to mental or physical health. Attacks against medical facilities would fall under the last category.³⁶⁹

According to various NGOs, the regime has been identified as the alleged perpetrator of the attacks on medical facilities in 90 percent of cases.³⁷⁰ Furthermore, these attacks were widespread, as they occurred in

³⁶² See International Criminal Law.

³⁶³ *Supra* (nr. 107) Henckearts and others 568-603, rule 156: Serious violations of international humanitarian law constitute war crimes; Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3 (Rome Statute) art 8, 2(a)(iv) and (e)(iv).

³⁶⁴ *Supra* (nr. 107) Henckearts and others 574.

³⁶⁵ See Incidents for concrete examples.

³⁶⁶ In this situation a first location is attacked and when the casualties have been transported to a nearby hospital, the hospital is then also bombed in order to eliminate the injured of the first attack. 'Hunting the Wounded: Double-Tap Strikes on Healthcare Facilities' (*Syria Justice and Accountability Centre*, 19 October 2022) <<https://syriaaccountability.org/hunting-the-wounded/>> accessed 10 February 2023.

³⁶⁷ *Supra* (nr.339) 'Targeting Health'.

³⁶⁸ *Supra* (nr.) Rome Statute art 7, 1.

³⁶⁹ *Supra* (nr.) Rome Statute art 7, 1 (k).

³⁷⁰ *Supra* (nr.340) 'Illegal Attacks on Health Care in Syria; *Supra* (nr.339) 'Targeting Health'.

12 of the 14 Syrian governorates.³⁷¹ As already demonstrated above, these attacks often had an intentional character. The Commission of Inquiry, for instance, has determined that attacks against medical facilities, conducted by the regime forces have been used systematically as a weapon of war by the Syrian regime.³⁷² At first glance the definition of crimes against humanity, thus, seems to fit the description of the attacks on medical facilities. Accordingly, the Commission of Inquiry concluded, multiple times, that these attacks could amount to crimes against humanity.³⁷³

3.2 Investigations on Attacks against Medical Facilities

In light of the violations of international humanitarian law against medical facilities, using the huge number of new technologies documenting the whole conflict, and thus, these attacks, and considering the aforementioned failures of the international justice system, different civil society actors started their own investigations and published their findings.³⁷⁴ For instance, the International Rescue Committee (IRC) published 'A Decade of Destruction: Attacks on health care in Syria', alternatively, the Chatham House published 'Attacks on healthcare in the Syrian conflict'.³⁷⁵ However, in this section, a specific investigation from the Syrian Archive is analysed.

Medical Facilities Under Fire

The Syrian Archive, a branch of the more recently created Mnemonic, has documented 410 separate attacks between 2011 and 2020 against a total of 270 medical facilities.³⁷⁶ In particular and with the help of Syrians for Truth and Justice, Justice for Life, and Bellingcat, the Syrian Archive published an investigation in July 2017, named 'Medical Facilities Under Fire' that documented 8 attacks on medical facilities in Idlib.³⁷⁷

The 'Medical Facilities Under Fire' investigation indeed studied attacks in April 2017 on 8 different medical facilities in Idlib, that served approximately 1.3 million people in total.³⁷⁸ At the time of these attacks, Idlib was held by nongovernmental forces, and was thus an opposition-held area. Medical Facilities Under Fire followed an interdisciplinary approach and investigated multiple sources, which required different methodologies for its analysis. More concretely, in order to draw conclusions, this investigation used primary sources such as witnesses, flight data and verified video footage, as well as, secondary sources, such as

³⁷¹ *Supra* (nr.339) 'Targeting Health'.

³⁷² See

Further the Syrian Archive Reports .

³⁷³ Ex. UNGA Report of the Independent International Commission of Inquiry on the Syrian Arab Republic UN Doc A/HRC/36/55.

³⁷⁴ See Chapter 1: Contextualisation.

³⁷⁵ *Supra* (nr.358); Abdulkarim Ekzayez, *Attacks on healthcare in the Syrian conflict* (Chatham House, November 2021).

³⁷⁶ *Supra* (nr.339) 'Targeting Health'.

³⁷⁷ 'Medical Facilities Under Fire' (*Syrian Archive*, 28 July 2017)

<<https://syrianarchive.org/en/investigations/Medical-Facilities-Under-Fire>> accessed 19 March 2022.

³⁷⁸ *Supra* (nr.377) 'Medical Facilities Under Fire'.

other reports by human rights organisations and media outlets. The Syrian Archive considers the cross-reference and contextualization of all these sources to value to other existing publications.³⁷⁹ The following section details the methodology used in this investigation.

This investigation confirms, in most cases, the attack and damage on the medical facilities, geolocates the attacked facilities and identifies the most probable perpetrators of the attack. For all eight medical facilities, the data collected indicates that either Syrian or Russian forces are responsible for the attacks. Indeed, often, Russian aircrafts are identified as responsible for the aerial attacks on the medical facilities. However, sometimes Russian aircrafts are operated by the Syrian, and not the Russian Air Force. Therefore, when a Russian aircraft is identified as responsible for an attack, either the Syrian regime, or the Russian government can be responsible for the attack, depending on the party that is operating the air force.³⁸⁰

Methodology

Firstly, Syrians for Truth and Justice and Justice for Life, both *inspected the impact sites* and communicated with *witnesses*. On site, they collected material evidence, as well as accounts of the survivors and eyewitnesses, such as those of the injured and the medical staff. In addition, these organisations also conducted semi-structured interviews, in Idlib, using standardised questionnaires.³⁸¹ Alternatively, the Syrian Archive acquired *flight observation data* by an organisation enlisting a network of spotters of aircrafts departing from military air fields in north-western and central Syria. By comparing where, when and the direction flights were heading and pairing this data with other visual content, the Syrian Archive was able to check if flights had been in the vicinity of these facilities at the time of the attacks.³⁸² Lastly, the Syrian Archive examined *visual content*, to which they applied their classic methodology on user-generated content, based on the Electronic Discovery Reference Model.³⁸³ This methodology consists of 5 stages: identification; collection and secure preservation; processing, verification and analysis; review; and finally, publication.³⁸⁴

³⁷⁹ *Supra* (nr.377) 'Medical Facilities Under Fire'; It is indeed important to keep in mind that while this investigation focused on these eight specific facilities in Idlib, other attacks occurred, some in other areas than Idlib, and that these other attacks also deserve to be acknowledged and investigated. Medical Facilities Under Fire, itself succeeded reports from other organisation. For instance, at that time, multiple attacks happened in Aleppo as well. Other reports on the attacks in Idlib are for example: Syria Campaign (May 2017): "Saving Lives Underground"; Medecins Sans Frontieres (Feb. 2017): "At Least 25 Killed in Attack on MSF-Supported Hospital in Northern Syria (Updated)"; Human Rights Watch (May. 2017): "Hospitals, Health Workers Under Attack"; Organisation for the Prevention of Chemical Weapons (June 2017): "OPCW Fact-Finding Mission Confirms Use of Chemical Weapons in Khan Shaykhun on 4 April 2017".

³⁸⁰ *Supra* (nr.377) 'Medical Facilities Under Fire' 9

³⁸¹ *Supra* (nr.377) 'Medical Facilities Under Fire' 10

³⁸² *Supra* (nr.377) 'Medical Facilities Under Fire' 10ff

³⁸³ From the Duke University School of Law.

³⁸⁴ *Supra* (nr.377) 'Medical Facilities Under Fire' 10.

- 1) To start, the Syrian archive must **identify** the right materials. They, therefore, establish a database of credible sources for visual content, including - but not limited to - individual journalists and field reporters, local and international news agencies, human rights organizations and local field clinics and hospitals. Most of this content is found on social media such as Facebook, Twitter and YouTube.³⁸⁵
- 2) Once data has been identified, it can be **collected and preserved**. To avoid any loss of open-source documentation, the Syrian Archive securely preserves the collected data in an external backend server.³⁸⁶ At the same time, to ensure possible future evidence is not tampered with and questioned, the Syrian Archive and an independent and impartial third-party hash and timestamp the collected data.³⁸⁷
- 3) The next step is to process, verify and analyse the data. The **processing** concerns the automatic and sometimes manual extraction of the metadata in accordance with a metadata scheme. This metadata scheme was developed in consultation with different members of international investigative bodies and human rights organisations, in order to increase the chances that the collected evidence is admissible in courts.³⁸⁸ The Syrian Archive will, for example, try to identify specific landmarks, the weather and languages to locate the video.
Verification then consists of three elements: verify the credibility of the source of the video uploader; verify the location of the video by comparing reference points such as buildings, trees and gravel with Google Earth and other programs; verify the dates of capturing by cross referencing with information in the video or reports from media outlets, human rights organisations and others.
Analysis is an in-depth open-source investigation, as it is the case for this investigation.³⁸⁹
- 4) Then, once digital materials have been collected, processed, verified and analysed, they are **reviewed** for accuracy.³⁹⁰
- 5) Finally, once the Syrian Archive has reliable information, the data is made available in the Syrian Archive database and **published** in investigations.³⁹¹

³⁸⁵ Syrian Archive employs different methods to determine the credibility of its sources. For instance, to determine where the source of a social media channel is based, and thus, its authenticity and credibility, they evaluate whether videos are consistent and taken from a specific location where the source is based.

³⁸⁶ Syrian Archive used Littlefork software (now they use Sugarcube).

³⁸⁷ *Supra* (nr.377) 'Medical Facilities Under Fire' 12.

³⁸⁸ *Supra* (nr.377) 'Medical Facilities Under Fire' 10.

³⁸⁹ *Supra* (nr.377) 'Medical Facilities Under Fire' 13.

³⁹⁰ *Supra* (nr.377) 'Medical Facilities Under Fire' 14.

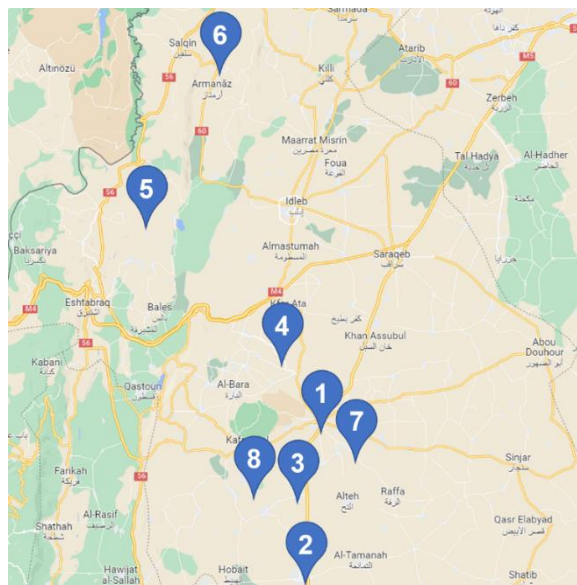
³⁹¹ *Supra* (nr.377) 'Medical Facilities Under Fire' 14.

Incidents

In this section, all eight documented attacks of the Syrian Archive's Medical Facilities Under Fire investigation are briefly presented. The eight attacks occurred in April 2017, in Idlib. Following these attacks, most medical facilities had to be put out of service, because the structural damages were too significant. Geolocation and flight observation data was found for all the attacked medical facilities. In addition, each investigated attack evidence demonstrates that the Syrian or Russian air force were the perpetrators.³⁹²

The fact that all attacks happened in April 2017, each time at a few days of interval and that the attacks happened at a relatively close distance, as shown on the map, indicates these were intentional clustered attacks.³⁹³

In addition, the location of most facilities was known or should have been known, because most facilities already existed before the armed conflict, and other facilities were in remote locations. Furthermore, the intentionality can be deduced from the characteristics of the attacks. **Table 1** shows all medical facilities were attacked multiple times, some airstrikes were direct attacks, and in one case, the double-tap strategy was used. Not to mention that many attacks occurred shortly after or simultaneously as another attack against civilians.³⁹⁴ Lastly, the similar and repeated strategy to destroy the eight medical facilities in the Idlib governate demonstrates the systematic of the attacks. In terms of international criminal accountability, this investigation, thus, provides evidence of possible war crimes and crimes against humanity for the repeated attacks of the regime and its allies against medical facilities in Idlib in April of 2017.³⁹⁵



³⁹² *Supra* (nr.377) 'Medical Facilities Under Fire'.

³⁹³ The map shows the main locality in which the medical facilities are located, not the position of the facility in itself.

³⁹⁴ The different signs of intentionality were developed by Syrian Archive; *Supra* (nr.339) 'Targeting Health'.

³⁹⁵ Each attack and its indicators of intentionality are further detailed in this sub-section, after table 1.

	LOCATION	DATE	Pre-existing hospital	Remote location³⁹⁶	Direct hit³⁹⁷	Double tap strikes³⁹⁸	Multiple strikes³⁹⁹	Repeated attack⁴⁰⁰	Clustered attacks⁴⁰¹	Alleged perpetrator
1	Marret Numan	2 April	Yes		Yes		3			Syrian-Russian
2	Khan Shaykhoun	4 April		Yes			9		Yes	Syrian-Russian
3	Heish	7 April					10+		Yes	Syrian-Russian
4	Shanan	17 April	Yes			Yes	3			Syrian-Russian
5	Abadeen	22 April		Yes			2	Yes		Syrian-Russian
6	Kafar Takharim	25 April	Yes				2		Yes	Syrian-Russian
7	Deir Sharqi	<u>27 April</u>	Yes		Yes		5		Yes	Syrian-Russian
8	Mar Zita	<u>27 April</u>					2		Yes	Syrian-Russian

Table 1.

³⁹⁶ 'The medical facility is situated distinctly separate from main centers of population; it is not near to or surrounded by many other, unrelated (non-medical) structures.' *Supra* (nr.339) 'Targeting Health'.

³⁹⁷ 'In these instances, at least one munition or missile used hit the medical facility, resulting in direct, physical impact on the structure or building being used for medical purposes.' *Supra* (nr.339) 'Targeting Health'; holes in ceilings indicate a direct hit.

³⁹⁸ 'This is an attack tactic used to target first responders in that there are multiple, distinct strikes at strategically relevant locations and at time intervals that indicate the subsequent strikes are intended to cause harm to responding humanitarian personnel.' *Supra* (nr.339) 'Targeting Health'.

³⁹⁹ 'An attack tactic used to ensure successful targeting and maximum damage to the targeted site in that there are multiple strikes on the same coordinates or site, in quick succession.' *Supra* (nr.339) 'Targeting Health'.

⁴⁰⁰ 'Repeated attacks on the same geographic coordinates, building structure, or facility grounds over time indicates intent for the subsequent attacks.' *Supra* (nr.339) 'Targeting Health'.

⁴⁰¹ In this table, clustered attacks are groups of documented attacks, one on a medical facility, another on a different object, close in time and space. However, as already mentioned, all eight attacks are close in time and space with each other, and thus, clustered attacks.

Incident 1: The national hospital of Marret Numan on the 2 April 2017. The national hospital of Marret Numan is one of the largest hospitals in the area and served approximately 500 000 people. It was attacked with three airstrikes on the 2nd of April 2017, between 19:30 and 20:30. The footage of destruction and damage, figuring holes in ceilings, correlates with damage resulting from direct airstrikes. From the witness statements taken by Syrians for Truth and Justice and by Justice for Life, it is believed a Russian aircraft launched three airstrikes on the hospital using six thermobaric bombs.⁴⁰²

Incident 2: The medical point of Khan Shaykhoun on the 4 April 2017. The medical point of Khan Shaykhoun is an underground cave in a remote area, as shown by the geolocation. At 11:00 on the 4th of April 2017, approximately 4.5 hours after the widely reported and confirmed chemical attack targeting Khan Shaykhoun, and thus, when the medical point had already received injured civilians from the chemical attack to treat, this medical point was bombed simultaneously with a Civil Defense centre.⁴⁰³ Witness statements suggest that in an hour, 9 airstrikes hit the facility. A video showing remnants of the weapon used in the attack, enabled the Syrian Archive to identify a weapon as a S-5M rocket, a Soviet Air Force developed weapon.⁴⁰⁴

Incident 3: The health centre in the town of Heish on the 7 April 2017. Civilian houses and the health centre in the town of Heish were attacked in the night of the 7th of April 2017, at 4:15, by several airstrikes. Civilians were killed and the medical centre was destroyed, thus, completely out of service. It, therefore, moved to another place. Again, witness statements provided by Syrians for Truth and Justice and by Justice for Life, describe Russian planes targeting the centre with two thermobaric missiles.⁴⁰⁵

Incident 4: The hospital in Shanab on the 17 April 2017. The fourth attack targeted Shanab hospital for women and children on the 17th of April 2017. This hospital is another important target, as it served 60 000 people. The Civil Defense Centre claims that a first airstrike happened in Sarej, followed by three airstrikes on Shanab hospital, at about 12:25, in order to target rescued civilians, doctors and the Civil Defense rescuers. Idlib Health Directorate published a statement and the Union of Medical Care and Relief Organizations (UOSSM) published a press release about the attack. Witness statements claim that the hospital was targeted by seven sustained Sukhoi SU-24 affiliated to the Syrian regime.⁴⁰⁶

Incident 5: The hospital in Abadeen on the 22 April 2017. The hospital in Abadeen, also known as the cave hospital, was attacked twice on the 22 of April 2017, at 14:30 and 17:15. Once again, geolocation shows that the hospital is in a remote location. For this attack, the Hama Health Directorate published a report, and the United Nations Office for the Coordination of Humanitarian Affairs made a statement about the attack. The

⁴⁰² *Supra* (nr.377) 'Medical Facilities Under Fire' 18-28.

⁴⁰³ The Organisation for the Prohibition of Chemical Weapons published a report about this on 30 June 2017, confirming the use of chemical weapons in Khan Shaykhoun.

⁴⁰⁴ *Supra* (nr.377) 'Medical Facilities Under Fire' 29-49.

⁴⁰⁵ *Supra* (nr.377) 'Medical Facilities Under Fire' 50-54.

⁴⁰⁶ *Supra* (nr.377) 'Medical Facilities Under Fire' 55-64.

Syrian Archive confirmed the nearby location of images of a nearby cluster munition attack. For the second attack, the Syrian Archive identified a Russian made Tochka series missile, that was found in the surrounding area. This missile is more often launched from the ground and indicates a ground-to-ground attack.⁴⁰⁷

Incident 6: Kafar Takharim hospital on the 25 April 2017. The sixth hospital, Kafar Takharim hospital, located in a residential area far from combat areas, was attacked on the 25th of April 2017 at 02:00. This hospital is another important medical facility for the region, as it served 200 000 people. It was attacked after it had received patients from a previous attack in the Duwailah area. Flight observation data determined that Russian or Syrian flights, that could potentially be responsible for the attack, were observed. These events were confirmed by witness statements.⁴⁰⁸

Incident 7: The university hospital in Deir Sharqi on the 27 April 2017. Another big facility, the university hospital in Deir Sharqi, serving 600 000 people, was attacked on the 27th of April 2017 at 05:15 in the morning. The attack led to the damage of the interior of the hospital, its roof, its equipment, medical stock and oxygen-tank supply. Witness statements describe that the hospital was hit by two airstrikes. The damage of the roof, as well as the crater shown in videos, confirm these statements.⁴⁰⁹

Incident 8: The Shamna medical point in Mar Zita on the 27 April 2017. The last incident happened on the same day as the previous attack. Indeed, at 7:15, on the 27th of April 2017, the Shamna medical point in Mar Zita was hit by two airstrikes and severely damaged. Witness statements explained that the Russian warplanes targeted the fuel stores of the Shamna Ambulance System and therefore, caused fires that weren't easily extinguished.⁴¹⁰

Further the Syrian Archive Reports

Medical Facilities Under Fire, the investigation led by the Syrian Archive that was published the 28th of July 2017, only investigates eight attacks on medical facilities in April 2017. However, a few months after the Medical Facilities Under Fire report, little had changed in practice: medical facilities, even in de-escalation zones, continued to be targeted by the regime. Therefore, a follow up report was published on the 17th of February 2018: 'Six Months On'. This report explains which actions were taken after the numerous reports and articles concerning the systematic attacks on medical facilities in 2017, and investigates four new attacks in Idlib.⁴¹¹

⁴⁰⁷ *Supra* (nr.377) 'Medical Facilities Under Fire' 65-80.

⁴⁰⁸ *Supra* (nr.377) 'Medical Facilities Under Fire' 81-89.

⁴⁰⁹ *Supra* (nr.377) 'Medical Facilities Under Fire' 90-99.

⁴¹⁰ *Supra* (nr.377) 'Medical Facilities Under Fire' 100-109.

⁴¹¹ 'Six Months On: Medical Facilities in Syria Still Under Fire' (*Syrian Archive*, 28 July 2017) <<https://syrianarchive.org/en/investigations/Six-Months-On>> accessed 8 March 2023.

The international actions are further detailed in the following chapter. They include a report of the Commission of Inquiry, the establishment of de-escalation zones and a statement of the Russian Ministry.⁴¹² This statement, published in a press release by the Russian Embassy to the United Kingdom the 15th of February 2018, denies the Russian responsibility in the bombing of medical facilities, and instead, claims that Western media led a misinformation campaign.⁴¹³

The Syrian Archive and its partners investigated four new attacks in the 'Six Months On' report. On the 29th of January 2018, the Oudai Hospital in Saraqib was attacked, shortly after an attack against civilian infrastructure. The Oudai Hospital had already been attacked on the 21st of January 2018.⁴¹⁴ Secondly, on the 3rd of January 2018, the Al Salam Medical Facility in Marret Numan was attacked.⁴¹⁵ Two days later, on the 4th of February 2018, the third attack, composed of 6 airstrikes, occurred against the National Hospital, also in Marret Numan. This medical facility is the same hospital as the one from incident 1 in Medical Facilities Under Fire.⁴¹⁶ Lastly, on the 5th of February 2018, the Orient Hospital in Kafranbel was attacked, by 4 airstrikes, some being a direct hit. This hospital was previously attacked in September.⁴¹⁷ 'Six Months On' report concludes that the 'findings regarding these attacks were characterised by repeated bombardments, lack of warnings, and an absence of active military hostilities in the vicinity of the attack.'⁴¹⁸ For these attacks, the signs of intentionality, are thus, demonstrated as well.

After these reports, the Syrian Archive continued to document and investigate attacks on medical facilities.⁴¹⁹ The Syrian Archive Dataset on attacks on medical facilities summarizes key elements that the Syrian archive observed, by documenting these attacks. They found that over 90% of the documented attacks against medical facilities show at least one indicator of an intentional attack. Two thirds of these attacks show characteristics of a targeted attack. For many of these attacks, the exact location of the medical facility was known or should have been known to parties to the conflict beforehand. From May 2017, the majority of the attacks happened inside the officially designated de-escalation zones.⁴²⁰

⁴¹² See 4.2 Reactions of the International Community to the Attacks Against Medical Facilities.

⁴¹³ *Supra* (nr.411) 'Six months On'.

⁴¹⁴ 'Bombing the Oudai Hospital' (*Syrian Archive*, 19 February 2018)
<<https://syrianarchive.org/en/investigations/SMO-oudai>> accessed 8 April 2023.

⁴¹⁵ 'Bombing Al Salam Medical Facility' (*Syrian Archive*, 19 February 2018)
<<https://syrianarchive.org/en/investigations/SMO-salam>> accessed 8 April 2023.

⁴¹⁶ 'Bombing the National Hospital' (*Syrian Archive*, 19 February 2018)
<<https://syrianarchive.org/en/investigations/SMO-national>> accessed 8 April 2023.

⁴¹⁷ 'Bombing the Orient Hospital' (*Syrian Archive*, 19 February 2018)
<<https://syrianarchive.org/en/investigations/SMO-orient>> accessed 8 April 2023.

⁴¹⁸ *Supra* (nr.411) 'Six months On'.

⁴¹⁹ One other report in February 2018, 16 different incidents from May 2019 to July 2021, and a Dataset in March 2021 summarizing information from 410 attacks from 2011 to 2020; see <https://syrianarchive.org/>.

⁴²⁰ See 4.2 Reactions of the International Community to the Attacks Against Medical Facilities.

Attacks on medical facilities have not only been intentional, but have also had a great impact on civilians. These attacks were widespread, as they occurred in 12 of the 14 Syrian governates. They often happened in areas serving large populations of displaced people and further contributed to civilian displacement. At least, half of the attacks led medical facilities to be out of service or gravely reduce their service capacity. In 90% of the attacks against medical facilities, in which the Syrian Archive was able to identify a perpetrator, the Syrian government and Russian forces have been responsible for the attack. These attacks have been repeated, frequent, and widespread since 2011.⁴²¹ In 2020 still, following a special inquiry into events in Idlib, the COI recognized a consistent pattern of attacks and believed the regime continued to target medical facilities, as part of a warring strategy.⁴²² Additionally, the COI observed that these types of attacks, destroyed the facilities and kill or injure civilians, and rendered these regions uninhabitable, thus leaving the civilians no choice but to flee.⁴²³ The COI, therefore, concluded that the regime committed crimes against humanity⁴²⁴

The last part of the Syrian Archive dataset concerns the documented patterns and tactics of attacks by the Syrian regime and Russian forces. As explained before, the Syrian government enacted anti-terrorism law, which made medical facilities in opposition-held areas illegal. The Syrian regime attacked and occupied medical facilities. It even carried out same-day targeting on facilities within the same governate. Medical care providers have also been attacked and stalked throughout the conflict. For all these reasons, the Syrian Archive concludes that the Syrian government and the Russian forces have demonstrated 'an apparent, underlying strategy of deliberate harm and destruction' towards medical care in Syria.⁴²⁵

⁴²¹ *Supra* (nr.339) 'Targeting Health'.

⁴²² *Supra* (nr.340) 20th report para 36 and 71.

⁴²³ *Supra* (nr.340) 20th report para 76.

⁴²⁴ *Supra* (nr.340) 20th report para 81.

⁴²⁵ *Supra* (nr.339) 'Targeting Health'.

Chapter 4: Effects of investigations on the attacks on medical facilities

4.1 Effects of the Medical Facilities Under Fire reports

The Medical Facilities Under Fire report identified meaningful information and cross-referenced important data on eight attacks against hospitals and medical points in Idlib, Syria. The reporting NGOs of this investigation used new technologies such as satellites and open-source data from social media to draw conclusions. All attacks, which displayed signs of intentionality and systematic, were allegedly carried out by the Russian or Syrian air force.⁴²⁶ This report was significant in and of itself, to strengthen justice efforts towards the investigated facilities and their personnel. However, it is difficult to ascertain to which extent this particular report has been able to impact other investigations, decisions and actions. Therefore, this section presents different articles that cite the Syrian Archive's investigations. In addition, the Medical Facilities Under Fire report advanced accountability and truth processes, in a general sense, when combined with other reports and documentation efforts.⁴²⁷ In light of this approach, the next sections detail the effects of documentation and investigations of attacks on medical facilities, in general.

First of all, the Medical Facilities Under Fire report led to several articles featuring the investigation. For instance, the German GQ magazine, Al Jazeera, Middle East Eye, and the Syrian Center for Media and Freedom of Expression referred to the investigation.⁴²⁸ In addition, other media companies used the Medical Facilities Under Fire report, as an example in an article about open-source investigations, including, Medium and the State Crime Journal.⁴²⁹ Most importantly, the Syrian Archive also explicitly stated, in their 2017

⁴²⁶ See 3.2 Investigations on Attacks against Medical Facilities.

⁴²⁷ See 1.3 Failures of the International Justice System in Syria for more details on accountability and truth processes.

⁴²⁸ Sonja Penderl, 'The Syrian Archive rekonstruiert Luftangriffe auf Krankenhäuser' (GQ 28 July 2017) <<https://www.gq-magazin.de/auto-technik/article/syrien-krankenhaeuser-kriegsverbrechen-syrian-archive-open-source>> accessed 6 April 2023; 'منظمات: تدمير ممنهج للمرافق الطبية في إدلب' (Al Jazeera, 29 July 2017) <<https://www.aljazeera.net/news/2017/7/29/%D9%85%D9%86%D8%B8%D9%85%D8%A7%D8%AA-%D8%AA%D8%AF%D9%85%D9%8A%D8%B1-%D9%85%D9%85%D9%86%D9%87%D8%AC-%D9%84%D9%84%D9%85%D8%B1%D8%A7%D9%81%D9%82-%D8%A7%D9%84%D8%B7%D8%A8%D9%8A%D8%A9-%D9%81%D9%8A>> accessed 6 April 2023; MEE Staff, 'Syrian and Russian forces 'targeted medical facilities after gas attack'' (Middle East Eye 28 July 2017) <<https://www.middleeasteye.net/news/syrian-and-russian-forces-targeted-medical-facilities-after-gas-attack>> accessed 6 April 2023; 'Syria: Medical Facilities Under Fire' (Syrian Center for Media and Freedom of Expression) <<https://scm.bz/en/fifth-estate/syria-medical-facilities-under-fire>> accessed 6 April 2023; for more articles about Syrian Archive see 'About: Press' (Mnemonic) <<https://mnemonic.org/en/about/press>> accessed 6 April 2023.

⁴²⁹ Wafaa Heikal, 'How Syrian Archive use open source investigation to support accountability in Syria' (Medium 2 February 2018) <<https://medium.com/meedan-updates/how-syrian-archive-use-open-source-investigation-to-support-accountability-in-syria-5a39ecfe3db8>> accessed 6 April 2023; Jeff Deutch and Habi Habal, 'The Syrian Archive: A Methodological Case Study of Open-Source Investigation of State Crime Using Video Evidence From Social Media Platforms' (2018) 7 State Crime Journal 46, 74.

investigation report, that they provided the IIM with a more detailed report of the attacks.⁴³⁰ Furthermore, the Syrian Archive's other reports concerning attacks against medical facilities, such as Six Months on, but especially the dataset, had comparable effects. Indeed, these reports were also mentioned in articles and presented to the UN bodies.⁴³¹ In sum, the Medical Facilities Under Fire investigations and the Syrian Archive dataset drew some media and UN attention towards the attacks against medical facilities.

4.2 Reactions of the International Community to the Attacks Against Medical Facilities

As explained above, the international community was faced by reports and media investigation detailing attacks against medical facilities in Syria.⁴³² As a result, the international community was pushed to respond to these attacks, and these responses took various forms. This section, thus, explains these various responses from the UN and other actors. However, first of all, a timeline, that indicates the Syrian Archive's Medical Facility Under Fire report and its documented attacks, summarizes the international community's reactions. Nonetheless, despite these mostly positive actions, attacks against medical facilities still continued to be documented by NGOs and the Commission of Inquiry.⁴³³ In fact, the COI reports from 2023 and 2022 still mention attacks against medical facilities.⁴³⁴

⁴³⁰ 'Medical Facilities Under Fire' (Syrian Archive, 28 July 2017) 9

<<https://syrianarchive.org/en/investigations/Medical-Facilities-Under-Fire>> accessed 19 March 2022.

⁴³¹ Elise Baker and Gissou Nia, 'Attacks on Hospitals from Syria to Ukraine: Improving Prevention and Accountability Mechanisms' (Atlantic Council June 2022) 4 <<https://www.atlanticcouncil.org/wp-content/uploads/2022/06/Attacks-on-Hospitals-from-Syria-to-Ukraine-Improving-Prevention-and-Accountability-Mechanisms.pdf>> accessed 6 April 2023; Daniel Gerstle, 'A decade of attacks on Syria's hospitals, and the medical workers who learned to survive' (Syria Untold 6 April 2021)


<<https://syriauntold.com/2021/04/06/a-decade-of-attacks-on-syrias-hospitals-and-the-medical-workers-who-learned-to-survive/>> accessed 6 April 2023; Joseph Hincks, 'Syrian Medics Lay Out the Devastating Scale of Attacks on Healthcare Facilities Over 10 Years of War' (Time 3 March 2021) <<https://time.com/5943719/syria-medics-irc/>> accessed 6 April 2023.

⁴³² See 4.1 Effects of the Medical Facilities Under Fire reports.

⁴³³ 'The failure of UN Security Council resolution 2286 in preventing attacks on healthcare in Syria' (Syrian American Medical Society Foundation, 11 January 2017) <<https://www.sams-usa.net/reports/failure-un-security-council-resolution-2286-preventing-attacks-healthcare-syria/>> accessed 8 March 2023.

⁴³⁴ UNGA 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' (7 February 2023) 52nd session (2023) UN Doc A/HRC/52/69, 11; UNGA 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' (17 August 2022) 51st session (2022) UN Doc A/HRC/51/45, 63 and 37-39 annex III; UNGA 'Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' (8 February 2022) 49th session (2022) UN Doc A/HRC/49/77, 25 and 80.

Timeline of the international actions and the Syrian Archive report



2011	May	Start of the conflict
2014	July Sept	UNSC Res 2165 on humanitarian Assistance Humanitarian Notification System or Deconfliction list
2016	May	UNSC Res 2286 on attacks against civilians and civilian infrastructure
2017	April May July Sept	<i>Eight attacks against medical facilities in Idlib</i> De-escalation zones <i>Syrian Archive: Medical Facilities Under Fire Report</i> COI Report about the Attacks in April in Idlib
2018	Febr Febr	Denial statement Russia for attack in April Syrian Archive: Six Months on Report
2019	Aug	Board of Inquiry: attacks against civilian infrastructure on the deconfliction list
2020	April	Summery Report Board of Inquiry
2023	Febr	Attack against health care facility and personnel according to WHO

To begin, the documentation of the attacks against medical facilities, such as the report 'Medical Facilities Under Fire, led to several actions taken within the UN framework.

First of all, the UN Security Council took resolutions addressing the humanitarian needs and the indiscriminate attacks on civilian infrastructures. In Resolution 2165, adopted in July 2014, the Security Council mentioned the importance to hold those who had committed international crimes, responsible and authorized humanitarian assistance.⁴³⁵ In Resolution 2286, adopted in May 2016, the Security Council condemned attacks against medical facilities and medical personnel, demanded that all parties to the conflict comply with their obligations under international humanitarian law and urged all states to take effective measures to prevent, address and investigate these attacks.⁴³⁶ Prior to these UNSC Resolutions, the UN General Assembly had already condemned the attacks on medical facilities multiple times, and it continued to do so after these resolutions as well.⁴³⁷

In light of the continued attacks on medical facilities and other civilian infrastructures, in 2014, the UN created the Humanitarian Notification System in Support of Access and Protection in Syria, also known as the deconfliction list. This list has been managed by the Office for the Coordination of Humanitarian Affairs (OCHA). It is an information-sharing mechanism, to help warring parties know the location of protected

⁴³⁵ UNSC Res 2165 (14 July 2014) UN Doc S/RES/2165.

⁴³⁶ UNSC Res 2286 (3 May 2016) UN Doc S/RES/2286.

⁴³⁷ UNGA Res 67/262 (4 June 2013) UN Doc A/RES/67/262, UNGA Res 69/189 (29 January 2015) UN Doc A/RES/69/189; UNGA Res 76/288 (10 January 2021) UN Doc A/RES/76/228.

facilities like hospitals, and the movements of humanitarian staff, to help the parties avoid targeting these locations.⁴³⁸ As of December 2022, this list comprised 716 facilities, including 271 Health Facilities, mostly located in Idlib and Aleppo.⁴³⁹ The Deconfliction list was confidential, and was not shared directly to the Syrian government or the armed groups, but through other states such as Russia and the Turkey⁴⁴⁰

Nonetheless, the Syrian regime and other armed groups still targeted many of these protected locations. Data from SAMS and the Syrian Archive proves that approximately 25 facilities on the deconfliction list have been attacked since 2014.⁴⁴¹ Since the list is confidential, these numbers only account for the facilities that SAMS and the Syrian Archive have self-reported to the UN's deconfliction list. Most probably, the number of attacked facilities on the deconfliction list has been higher.⁴⁴² In fine, thus, the information-sharing seems to have aided the regime to know which facilities it should target, rather than protect these facilities.⁴⁴³ However, in terms of criminal accountability, the intentionality of the targeting of facilities on the deconfliction list can easily be proven, as attacks against such a facility should have been easily avoided, because the location of the facility should have been known.

On the 1st of August 2019, the UN Secretary-General Antonio Guterres created a Board of Inquiry (BOI) to investigate attacks against civilian infrastructure on the deconfliction list in Hama, Idlib and Aleppo. The BOI's mandate was to examine seven incidents in Syria since September 2018, involving medical facilities and schools on the UN deconfliction list and UN supported facilities.⁴⁴⁴ In April 2020, a summary of the report by the BOI was released. For most of the attacks, it was found highly probable that the government of Syria and/or its allies conducted the attacks. Only one attack was 'probably carried out' by an opposition group.⁴⁴⁵ The summary concluded with a few recommendations to improve humanitarian aid and the deconfliction mechanism.

However, the civil society and media agencies responded to this report with many criticisms. First of all, the Russian government's responsibility in these attacks was not mentioned, in spite of strong evidence of its

⁴³⁸ *A Decade of Destruction: Attacks on health care in Syria* (International Rescue Committee, 3 March 2021) 22.

⁴³⁹ Humanitarian Notification System (HNS): Notified Humanitarian Static Sites and Movements.

⁴⁴⁰ 'UN Fails to Acknowledge Own Failures in Hospital Attacks Inquiry' (SJAC, 16 April 2020) <<https://syriaaccountability.org/un-fails-to-acknowledge-own-failures-in-hospital-attacks-inquiry/#:~:text=Deconfliction%20is%20an%20information%2Dsharing,such%20as%20hospitals%20and%20schools>> accessed 8 March 2023.

⁴⁴¹ 'Targeting Health: Attacks Against Medical Facilities in Syria' (Syrian Archive, 9 March 2021) <<https://medical.syrianarchive.org>> accessed 8 April 2023; *Lessons from International Courts for Documenters of Attacks on Medical Facilities in Syria* (SAMS July 2022) 12.

⁴⁴² *Supra* (nr.441) 'Targeting Health'.

⁴⁴³ *Supra* (nr.440) 'UN Fails to Acknowledge Own Failures in Hospital Attacks Inquiry'.

⁴⁴⁴ *Supra* (nr.438) 'A Decade of Destruction' 23.

⁴⁴⁵ UNSC, 'Summary by the Secretary-General of the report of the United Nations Headquarters Board of Inquiry into certain incidents in northwest Syria since 17 September 2018 involving facilities on the United Nations deconfliction list and United Nations supported facilities' (6 April 2020) UN Doc S/2020/278.

involvement. More importantly still, the BOI's report overlooked the UN's deconfliction mechanism's role, in facilitating the attacks against the protected facilities.⁴⁴⁶ Instead, the report encouraged information sharing to all parties of the conflict, including to the Syrian government and the opposition groups. In case of attacks, the BOI also recommended to implement a better incident reporting system.⁴⁴⁷

Similarly, but not within the UN, on the 4th of May 2017, Russia, Turkey and Iran signed a memorandum of understanding (MOU) for the establishment of de-escalation zones in Syria for six months.⁴⁴⁸ These zones included the Idlib province, parts of the northern Homs' province, some parts of adjacent provinces and other regions. The main goal of these zones was to cease all hostilities to prevent attacks in civilian areas.⁴⁴⁹ However, only four days after the establishment of these zones, on the 19th of September 2017, three Idlib medical facilities were attacked by airstrikes attributed to Syrian or Russian forces.⁴⁵⁰ Russia, thus, did not honour the MOU's provisions, while Turkey and Iran failed to enforce the de-escalation zones.⁴⁵¹

In addition, to actions within the UN framework, certain statements and reports were published. The Commission of Inquiry has often documented the attacks on medical facilities and health workers in Syria. As detailed hereafter, in a September 2017 report, the COI concluded that attacks on medical facilities amounted to war crimes, and noted the frequency, as well as the intentionality of the of the attacks, thus, alluding to crimes against humanity.⁴⁵² The International, Impartial and Independent Mechanism's conclusions, on the other hand, are not public as it only reports to the UNGA.⁴⁵³ However, the IIIM has opened a case file for 'unlawful attacks, involving use of chemical and conventional weapon, including those against medical facilities', for incidents that allegedly took place in 2017.⁴⁵⁴

In September 2017, a fact-finding mission led the Commission of Inquiry to report that medical facilities were being systematically targeted by the Syrian Government. The COI confirmed that between March and April 2017, the Syrian and Russian forces carried out a surge of air strikes on medical facilities in northern Hamah

⁴⁴⁶ *Supra* (nr.440) 'UN Fails to Acknowledge Own Failures in Hospital Attacks Inquiry'.

⁴⁴⁷ *Supra* (nr.445) 'Summary Secretary-General'.

⁴⁴⁸ *Memorandum on the creation of de-escalation areas in the Syrian Arab Republic* (Iran, Russia, Turkey) (6 May 2017).

⁴⁴⁹ Gregor Jaecke and David Labude, 'De-escalation zones in Syria' (Country Report Konrad-Adenauer-Stiftung, June 2020) <<https://www.kas.de/documents/252038/7938566/De-escalation+zones+in+Syria.pdf/4a717753-1fff-352b-b6ff-1abba5f7fdb8?version=1.1&t=1592814733641>> accessed 6 April 2023.

⁴⁵⁰ 'Three Idlib Medical Facilities Attacked' (*Syrian Archive* 19 February 2018) <<https://syrianarchive.org/en/investigations/Three-Idlib-Medical-Facilities-Attacked>> accessed 6 April 2023.

⁴⁵¹ *Supra* (nr.449) Jaecke and Labude.

⁴⁵² UNGA '14th Report of the Independent International Commission of Inquiry on the Syrian Arab Republic' (6 September 2017) 36th session (2017) UN Doc A/HRC/36/55, 66.

⁴⁵³ 'At A Glance' (International, Impartial and Independent Mechanism) <<https://iiim.un.org/who-we-are/at-a-glance/>> accessed 22 March 2022.

⁴⁵⁴ 'Bulletin N°6: Collection' (*International, Impartial and Independent Mechanism*, July 2021) <<https://iiim.un.org/wp-content/uploads/2021/12/Bulletin-06-En-7-July-2021-HA-tweaks.pdf>> accessed 22 March 2023.

and southern Idlib. The report also linked these attacks with chemical attacks, and therefore, a strategy of the regime to prevent victims of chemical attacks to access medical treatment. The COI then described 8 attacks against different medical facilities, including a few from the 'Medical Facilities Under Fire' report of the Syrian Archive. The COI, finally, stated:

“The number and frequency of attacks against health-care facilities, particularly repeated bombardments of the same facilities and routine lack of warnings, clearly indicate that pro-Government forces continue to intentionally target such facilities as part of a warring strategy, amounting to the war crime of deliberately attacking protected objects. Deliberate attacks against health-care workers further constitute the war crime of intentionally attacking medical personnel.”⁴⁵⁵

Finally, the Syrian regime and Russia's reaction to these attacks is noteworthy. Following most attacks, nor the regime, nor Russia reacted to the claims brought against them. However, for certain attacks against medical facilities and other linked events, the Syrian regime and Russia did refute their responsibility and involvement,⁴⁵⁶

For instance, after the chemical attack and the following attack on the medical point in Khan Sheikhoun, on the one hand, the Syrian government published a statement, in which they denied to have ever used chemical or toxic substances.⁴⁵⁷ President Bashar al-Assad said that the incident was a fabrication to justify a US strike on Syria's Shayat airbase on the 7th of April and even questioned if the attack had really occurred.⁴⁵⁸

On the other hand, a Russia's Defence Ministry stated that “Russian military aircraft carried out no air strikes near Khan Sheikhoun in the Idlib province”. However, Russia did say that a Syrian aircraft launched an airstrike on an ammunition warehouse in the vicinity of Khan Sheikhoun.⁴⁵⁹

⁴⁵⁵ UNGA Report of the Independent International Commission of Inquiry on the Syrian Arab Republic UN Doc A/HRC/36/55 66.

⁴⁵⁶ In the case of the attacks, in April 2017, against medical facilities in Idlib, no specific statement from the Syrian regime, nor Russia, directly mentions the attack on the medical point.

⁴⁵⁷ Manar and Mazen, 'Army general Command categorically denies using chemical materials in Khan Shaikhoun' (SANA, 4 April 2017) <<https://sana.sy/en/?p=103554>> accessed 8 March 2023.

⁴⁵⁸ 'Syria chemical 'attack': What we know' (BBC, 26 April 2017) <<https://www.bbc.com/news/world-middle-east-39500947>> accessed 8 March 2023.

⁴⁵⁹ 'Russia says did not carry out air strikes on Syria's Idlib: RIA' (Reuters, 4 April 2017) <<https://www.reuters.com/article/us-mideast-crisis-syria-idlib-russia-idUSKBN1761BX>> accessed 8 March 2023; 'The Khan Sheikhoun Chemical Attack, The Evidence So Far' (Bellingcat, 5 April 2017) <<https://www.bellingcat.com/news/mena/2017/04/05/khan-sheikhoun-chemical-attack-evidence-far/>> accessed 8 March 2023; Elliott Higgins 'Summary of Claims Surrounding the Khan Sheikhoun Chemical Attack' (Bellingcat, 4 July 2017) <<https://www.bellingcat.com/news/mena/2017/07/04/summary-claims-surrounding-khan-sheikhoun-chemical-attack/>> accessed 8 March 2023.

4.3 The Impact on Justice and Accountability Mechanisms

The Importance of Documentation

New technologies enabled Syrian civil society actors, such as the Syrian archive, to widely document and analyse widespread abuses in Syria, including the attacks against medical facilities. By documenting abuse and sharing their findings online, Syrian civil society actors drew the attention of the international community to these attacks and the governments or armed groups responsible for these crimes.⁴⁶⁰ Therefore, the Syrian civil society has continued to fight back against the impunity and marginalization of victims resulting from the international justice system's failures. This documentation has, thus, become a tool of resistance, with which the Syrian civil society has reappropriated justice debates.⁴⁶¹ This resistance through documentation has manifested in multiple forms and resulted in different benefits for Syrians, as well as the justice system in Syria.

First of all, the civil society's documentation has facilitated the two UN bodies' tasks to investigate, document, report and help prosecute the violations of international human rights law and international humanitarian law. Indeed, as already explained in a previous chapter, both the IIM and the COI have no on ground access in Syria for their investigations. Therefore, both UN Bodies have had to rely on Syrian civil society actors to supplement their documentation.⁴⁶² In the case of the attacks against medical facilities, the civil society investigations have most certainly helped the COI for its 2017 report, that condemned the attacks and in which the COI came to the conclusion that the attacks amounted to crimes against humanity.⁴⁶³

Additionally, by documenting the attacks against medical facilities, the Syrian civil society has drawn the attention of local actors, internal and external parties, to these unlawful acts and the perpetrators of these crimes. Accordingly, by exposing the details of these attacks to the world, the civil society has initiated the naming and shaming of the international crimes committed by the regime and its allies.⁴⁶⁴ In addition, the NGO's that documented the attacks against medical facilities, publicly signalled that they have readily available evidence for future criminal accountability processes. Therefore, it is hoped that the increased attention towards the unlawfulness of these crimes, as well as the extensive documentation of these crimes will discourage future offenders from repeating such acts.⁴⁶⁵ However, the deterring function of documentation is diminished, if the documented crimes are not eventually prosecuted, as it has currently

⁴⁶⁰ Beth Van Schaack, *Imagining Justice for Syria* (OUP 2020) 340.

⁴⁶¹ Habib Nassar, 'Justice as Resistance: How Post-Arab Spring Experiences Are Reshaping the Global Transitional Justice Landscape' (2022) 16 *International Journal Of Transitional Justice* 181, 182-183.

⁴⁶² Noha Aboueldahab, *Writing Atrocities: Syrian Civil Society and Transitional Justice* (Brookings 2018) 21.

⁴⁶³ See 4.2 Reactions of the International Community to the Attacks Against Medical Facilities.

⁴⁶⁴ Jay Aronson, 'The Utility of User-Generated Content in Human Rights Investigations' in Molly Land and Jay Aronson (eds), *New Technologies for Human Rights Law and Practice* (CUP 2018) 131.

⁴⁶⁵ *Supra* (nr.460) Van Schaack 343.

been the case for the attacks against medical facilities in Syria.⁴⁶⁶ Nonetheless, this increased attention towards certain violations keeps the questions of justice and accountability alive.⁴⁶⁷

Moreover, the documentation and increased attention towards the attacks has aided local actors to deal with these attacks. Accordingly, with the information from civil society reports, local actors have been able to find solutions to practical problems resulting from these crimes. For instance, it has encouraged the development of risk mitigation measures, such as the fortification of health facilities, the creation of alarm networks and the establishment of evacuation plans.⁴⁶⁸ The underground and cave hospitals that developed in Syria are a perfect example of this information put into use.⁴⁶⁹

Alternatively, the documentation of international crimes has also drawn the attention of the international community. This attention could then be translated in concrete actions from the international community.⁴⁷⁰ These actions can contribute to the reduction of these crimes or advance justice. For instance, as explained above, for the attacks against medical facilities, mechanisms such as the deconfliction list or the de-escalation plan, were put in place, in order to reduce the number of attacks against civilian objects. However, in practice, not all these actions have been successful to deter these attacks. On the contrary, the deconfliction list is said to have contributed to more attacks.⁴⁷¹ Still, some actions, such as the establishment of the UNGA's International, Impartial and Independent Mechanism, have undeniably strengthened the justice system in Syria.⁴⁷²

Furthermore, the increased attention towards certain crimes, due to the documentation of these crimes, made it possible to introduce other transitional justice initiatives, such as reparations, memorialisation and cultural interventions, like art.⁴⁷³ For instance, in the case of attacks against medical facilities, the efforts of the Syrian and international health care workers, who risked their lives to treat and aid the sick and wounded in their time of need, could be memorialized, and the regime could eventually apologize for its actions, as a form of compromise towards peace.⁴⁷⁴ This kind of transitional justice would acknowledge the attacks against medical facilities, and the resulting suffering of the Syrian people. However, with the authoritarian Bashar al-

⁴⁶⁶ *Ibid.*

⁴⁶⁷ *Supra* (nr.462) Aboueldahab 21.

⁴⁶⁸ *Supra* (nr.438) 'A Decade of Destruction' 31.

⁴⁶⁹ 'Saving Lives Underground: The Case for Undergorund Hospitals in Syria' (*Syria Campaign*, May 2017) 17ff <<https://d1p8u7ytnu6qui.cloudfront.net/Saving%20Lives%20Underground%20report.pdf>> accessed 8 March 2023.

⁴⁷⁰ *Supra* (nr.438) 'A Decade of Destruction' 31.

⁴⁷¹ See 4.2 Reactions of the International Community to the Attacks Against Medical Facilities.

⁴⁷² See *The Light at the End of the Tunnel*.

⁴⁷³ *Supra* (nr.462) Aboueldahab 4.

⁴⁷⁴ 'Documenting Attacks on Medical Facilities in Syria' (*SJAC*, 23 February 2016) <<https://syriaaccountability.org/documenting-attacks-on-medical-facilities-in-syria/>> accessed 8 February 2023.

Assad still in power, it is unlikely that holistic and robust transitional justice mechanisms will become a priority for the remaining regime.⁴⁷⁵

In accordance hereof, and often seen as the most important aspect of documentation, civil society reports and evidence of attacks against medical facilities laid the foundation for a wide variety of future justice processes.⁴⁷⁶ Indeed, accountability, truth-telling and restorative mechanisms all require documentation to proceed. Therefore, the reports, such as the Medical Facilities Under Fire report, that collected information and evidence, and demonstrated the intentionality and systematic of the attacks, are primordial.⁴⁷⁷ This aspect of documentation are especially important in the Syrian context, where the regime benefits of a culture of impunity.

Finally, attacks on medical facilities occur in many conflicts.⁴⁷⁸ The attention to these attacks in Syria has increased the awareness towards the phenomenon on a more general point of view. The Syrian Archive itself extended its expertise to other armed conflicts and has already reported on attacks against medical facilities in Yemen and against civilian infrastructure in Ukraine.⁴⁷⁹ The World Health Organisation launched a Surveillance system for Attacks on Health Care (SSA) in 2018, to document attacks across the globe.⁴⁸⁰ Lastly, the UNSC Resolution 2286 addresses the issue of attacks against medical facilities and medical workers in general.⁴⁸¹

Truth-seeking

With the rise of technology and documentation, the focus on the truth and acknowledgement of crimes and victims has become an important part of the transitional justice efforts in Syria.⁴⁸² In fact, a right to truth has arisen from violations of international human rights or international humanitarian law. This human right requires states to look into those violations, to ensure that victims, as well as the entire community, know the circumstances and the truth about past events.⁴⁸³ Accordingly, documentation efforts on attacks against medical facilities, such as the Syrian Archive reports, have advanced justice, by preparing information for formal truth processes like, possible future truth commissions and other institutional efforts, including the COI

⁴⁷⁵ Beth Van Schaack 'Transitional Justice Without Transition: The International Community's Efforts in Syria' in Hilly Moodrick-Even Khen, Nir Boms and Sareta Ashraph (eds), *The Syrian War: Between Justice and Political Reality* (CUP 2020) 246.

⁴⁷⁶ *Supra* (nr.441) SAMS 27-28.

⁴⁷⁷ See Incidents.

⁴⁷⁸ *Unrelenting Violence: Violence Against Health Care in Conflict* (Safeguarding Health in Conflict, 2021).

⁴⁷⁹ 'Medical Facilities Under Fire' report in 2019; <https://ukrainianarchive.org/en/investigations>.

⁴⁸⁰ <https://extranet.who.int/ssa/Index.aspx>.

⁴⁸¹ UNSC Res 2286 (3 May 2016) UN Doc S/RES/2286.

⁴⁸² Nousha Kabawat and Fernando Travesi 'Justice for Syrian Victims Beyond Trials: The Need for New, Innovative Uses for Documentation of Human Rights Violations in Syria' (*ICTJ briefing*, February 2018) 6.

⁴⁸³ 'Truth: OHCHR and transitional justice' (*UNOHCHR*) <https://www.ohchr.org/en/transitional-justice/truth> accessed 22 March 2023.

and the IIIM.⁴⁸⁴ However, at the moment, in Syria, the formal institutions have not yielded the awaited results in terms of accountability. Therefore, the Syrian civil society has developed informal processes to further advance justice.⁴⁸⁵ Nonetheless, all these different kinds of truth have in common that they contribute to the establishment of a common narrative.⁴⁸⁶

Informal truth initiatives are fulfilled by NGO's, academic institutions, international collectives and community initiatives.⁴⁸⁷ Example of informal truth practices in Syria include the Truth and Justice Charter of the Association of Detainees and Missing of Sednaya Prison (ADMSP) or the Caesar Families Association. Both are Syrian initiatives, primarily focused on detainees, torture and enforced disappearances.⁴⁸⁸ Another Syrian project, more closely related to the attacks on medical facilities, is a project led by ten organisations and facilitated by the International Centre for Transitional Justice (ICTJ), concerning justice and the long-term impacts of the attacks on schools in Syria.⁴⁸⁹ These informal truth practices, departing from Syrian organizations, are characterized by a deep understanding of the context and have attracted attention, support and recognition from the Syrian and international community.⁴⁹⁰

In line with these projects, the Syrian civil society's documentation efforts have also been collective endeavours, that have uncovered certain truths, which might otherwise never be exposed.⁴⁹¹ Accordingly, the investigations of the attacks on medical facilities have documented the victims' experiences and narratives, that could be found on the internet. Then, a number of people with different expertise have added value to these narratives, by carefully analysing and putting into context this information, to create the investigation. For instance, organisations, such as the Syrian Archive, have combined narratives from open-source data and witness interviews, with geolocation, weapon recognition, and flight observation data, thus establishing a common truth for the people involved and others, who have read their investigation.⁴⁹² Therefore, these new documentation efforts can be considered as an informal truth-telling process, as such.

Informal truth initiatives are often valuable transitional justice tools, as they more often depart from a victim centred approach, by focussing on interviews, witnesses, and on the ground created open-source data. As

⁴⁸⁴ Brigitte Herremans and Tine Destrooper, 'Moving Beyond Formal Truth Practices and Forensic Truth in the Syrian Conflict: How Informal Truth Practices Contribute to Thicker Understandings of Truth' (2022) 0 *Social & Legal Studies* 1, 2.

⁴⁸⁵ See 1.3 Failures of the International Justice System in Syria.

⁴⁸⁶ Meryll Lawry-White, 'The Reparative Effect of Truth Seeking in Transitional Justice' (2015) 64 *International and Comparative Law Quarterly* 141, 143.

⁴⁸⁷ *Supra* (nr.484) Herremans and Destrooper 8.

⁴⁸⁸ Brigitte Herremans and Veronica Bellintani, 'Overcoming the Justice Impasse in Syria' in Tine Destrooper, Line Gissel and Kerstin Carlson (eds) *Transitional Justice in Aparadigmatic Contexts: Accountability, Recognition, and Disruption* (Routledge 2023) 14.

⁴⁸⁹ *Supra* (nr.482) Kabawat and Travesi 8.

⁴⁹⁰ *Ibid.*

⁴⁹¹ Matthew Fuller and Eyal Weizman, *Investigative Aesthetics: Conflicts and Commons in the Politics of Truth* (Verso 2021) 18-19.

⁴⁹² See 3.2 Investigations on Attacks against Medical Facilities.

an example, the Syrian Archive's Medical Facilities Under Fire report brings attention to the casualties of each attack. In addition, many witnesses of the investigation are doctors and bystanders of the attack.⁴⁹³ Therefore, observers and victims are involved in agenda-setting, and have a central role in justice processes.⁴⁹⁴ These processes, that voice the victims' experiences and demands, are paramount in the pursuit of dignity, recognition, and accountability, thus helping victims find closure.⁴⁹⁵

However, truth-telling initiatives not only advance justice mechanisms by recognizing the victims' suffering; they also expose the truth to the domestic and international community.⁴⁹⁶ For instance, the documentation on attacks against medical facilities has led to awareness-raising concerning these deliberate, widespread and systematic attacks carried out by the Syrian regime and its Russian allies.⁴⁹⁷ This search of the truth has been particularly important in the Syrian armed conflict, in which the regime has led a narrative warfare to legitimize its actions and inactions, and fuelled mistrust throughout the armed conflict.⁴⁹⁸ Therefore, documentation, as an informal truth process, enables Syrians to counter these false regime narratives.

Legal Accountability

Lastly, from a legal point of view, the reports on the attacks against medical facilities have not yet led to the awaited criminal accountability processes. As an example, no one has been prosecuted yet for an attack in the Medical Facilities Under Fire report. In fact, not a single case against perpetrators of attacks against medical facilities in Syria has been brought before an international or national court! However, the prosecution of such attacks has always been rare, and never on a standalone basis, but rather in addition to many other crimes.⁴⁹⁹

Nonetheless, at the moment, the judicial justice avenues in Syria are still greatly limited. Only universal jurisdiction cases in European countries have been started. Some of these cases have already convicted perpetrators of international crimes and terrorism crimes. However, these universal jurisdiction cases mainly focus on terrorism, and thus, people affiliated with ISIL, other terrorist organizations, or armed groups. Only a few proceedings concerning perpetrators linked to the Syrian Government have happened at the moment. In practice, men associated with the Syrian Government have only been convicted by a German court in

⁴⁹³ *Supra* (nr.430) 'Medical Facilities Under Fire'.

⁴⁹⁴ *Supra* (nr.486) Lawry-White 151.

⁴⁹⁵ 'Truth and Memory' (ICTJ) <<https://www.ictj.org/truth-and-memory>> accessed 22 March 2023.

⁴⁹⁶ *Supra* (nr.462) Aboueldahab 12.

⁴⁹⁷ For example: *supra* (nr.452) 14th Report of the COI, 66.

⁴⁹⁸ See 1.3 Failures of the International Justice System in Syria.

⁴⁹⁹ For instance, the International Criminal Tribunal for the former Yugoslavia prosecuted these attacks in the Sarajevo cases; Example: *Prosecutor v. Galić* (Judgement) ICTY-98-29 (5 December 2003). The ICC, on the other hand, convicted Bosco Ntaganda for this crime; *Prosecutor v. Ntaganda* ICC-01/04-02/06 (8 July 2019) paras.1134-1148. Finally, on a domestic level, not much more has been achieved. *Lessons from international courts for documenters of attacks on medical facilities in Syria* (SAMS, 2022) 6.

Koblenz. Additionally, a court in Netherlands is still investigating another man associated with the Syrian Government and a terrorist organisation for terrorism crimes.⁵⁰⁰

However, investigations on attacks against medical facilities, such as the Medical Facilities Under Fire investigation, provide witnesses and other credible sources for these prosecutions. Therefore, this kind of documentation could contribute to structural investigations on attacks against medical facilities and potentially find individuals that could be held accountable. In that sense, new documentation techniques can become of use, in future universal jurisdiction proceedings.⁵⁰¹ Accordingly, the Commission of Inquiry has urged state and non-state actors to take meaningful steps to increase accountability, especially national jurisdictions via universal jurisdiction.⁵⁰² Finally, it is important to note that documentation efforts do not only facilitate criminal processes, but also other judicial processes, including reparation and compensation claims for the attacked hospitals and other victims of the attacks.⁵⁰³

⁵⁰⁰ Anwar Raslan and Eyad Al-Gharib in Germany for a series of crimes, including crimes against humanity, and Mohamad Anas Haitham Soueid in the USA for unlawfully acting as an agent of a foreign government; Syria Justice and Accountability Centre, *The State of Justice in Syria 2023* (4th annual report SJAC, 9 March 2023) Annex II.

⁵⁰¹ *Supra* (nr.462) Aboueldahab 11.

⁵⁰² Independent International Commission of Inquiry on the Syrian Arab Republic, *Civilians under attack in Syria: Towards Preventing Further Civilian Harm* (Policy Paper, 2022) 11.

⁵⁰³ *Supra* (nr.488) Herremans and Bellintani 13.

Conclusion: The Potential of New Technologies

“All this highlights that the main aim of bombing is to destroy the infrastructure of all hospitals in the opposition areas”

*Medical Facilities under Fire report*⁵⁰⁴

“Before we had hope that the situation would improve. Now everyone’s main concern is getting out of this situation safely. And most of the doctors I know think like that, because the situation, honestly, is hopeless.”

*A Decade of Destruction: Attacks on health care in Syria*⁵⁰⁵

In conclusion, since 2012, the Syrian armed conflict has been fought between a number of internal and external parties, including the regime, diverse armed groups, jihadist factions, and states such as Russia and the US.⁵⁰⁶ After more than a decade of fighting, large parts of Syria have been completely destroyed due to unlawful attacks against civilians and civilian infrastructures. The Syrian population has endured a wide range of atrocities, including bombings, airstrikes, forced displacement, plundering, detention, enforced disappearance, torture, sexual violence, and so much more.⁵⁰⁷ These crimes and acts of violence have predominantly been perpetrated by the Syrian regime and its allies.⁵⁰⁸ Medical facilities, in particular, have been systematically targeted and destroyed.⁵⁰⁹

However, throughout the Syrian conflict, the international community has been hindered to provide effective assistance to the Syrian population, due to Russia’s veto power in the UN Security Council.⁵¹⁰ Consequently, as the international community failed to stop the attacks against civilians, Syrian civilians have had to continue to face the consequences of these attacks, as well as new attacks from the regime and other

⁵⁰⁴ ‘Medical Facilities Under Fire’ (Syrian Archive, 28 July 2017)

<<https://syrianarchive.org/en/investigations/Medical-Facilities-Under-Fire>> accessed 19 March 2022.

⁵⁰⁵ *A Decade of Destruction: Attacks on health care in Syria* (International Rescue Committee, 3 March 2021) 22.

⁵⁰⁶ Robin Yassin-Kassab and Leila AL-Shami, *Burning Country: Syrians in Revolution and War* (Pluto Press 2018) 193ff.

⁵⁰⁷ Syria Justice and Accountability Centre, *The State of Justice in Syria 2022* (3rd annual report SJAC, 10 March 2022) 5-14.

⁵⁰⁸ Wolfgang Kaleck and Patrick Kroker, ‘Syrian Torture Investigations in Germany and Beyond: Breathing New Life into Universal Jurisdiction in Europe’ (2018) 16 JICJ 165, 166.

⁵⁰⁹ *A Decade of Destruction: Attacks on health care in Syria* (International Rescue Committee, 3 March 2021).

⁵¹⁰ Beth Van Schaack, *Imagining Justice for Syria* (OUP 2020) 13-15.

parties.⁵¹¹ Accordingly, even if different mechanisms were put into place to avoid the targeting of medical facilities, the systematic attacks against these facilities continued.⁵¹² Furthermore, despite the international community's condemnation of the war crimes committed, most perpetrators have not yet had to face any sort of criminal accountability, except in some cases of universal jurisdiction.⁵¹³

Therefore, the prevailing view is that the international justice system has failed to protect Syrian civilians and enforce international humanitarian law during armed conflicts.⁵¹⁴ In Syria, this justice impasse inspired the civil society to explore alternative transitional justice mechanisms beyond criminal accountability, including universal jurisdiction cases and truth-seeking processes.⁵¹⁵ These efforts have not only raised awareness of transitional justice worldwide but also underscored the need for systemic reforms and more effective laws to prevent future civilian harm. A revision of international humanitarian law and its enforcement mechanisms could strengthen the international justice system for other armed conflicts, while contributing to the present justice efforts in Syria.

Another key development in Syria concerns the great amount of documentation linked to new technologies and methodologies.⁵¹⁶ The democratization of mobile phones, satellites, and the internet has facilitated the collection, preservation, and analysis of evidence related to international crimes.⁵¹⁷ For instance, open-source data - data that is available to all on the internet - has become a primary source of documentation in Syria.⁵¹⁸ These new forms of documentation are beneficial, because they are accessible, accurate in comparison with testimonies, and, they can supplement the more traditional forms of evidence in court.⁵¹⁹ Therefore, in Syria new technologies and methodologies have strengthened documentation possibilities of violations of international law.

Furthermore, the use of such documentation advances justice in a number of ways. It enables civil society and UN bodies to prepare for future transitional justice processes, including criminal accountability procedures, such as universal jurisdiction procedures in Western countries.⁵²⁰ In fact, these procedures have become paramount for Syria. Documentation also draws attention to violations of international humanitarian

⁵¹¹ *Supra* (nr.510) Van Schaack 2-3.

⁵¹² 'Illegal Attacks on Health Care in Syria' (PHR) <<https://syriamap.phr.org/#/en>> accessed 22 March 2023.

⁵¹³ Stephen Rapp, 'Overcoming the Challenges to Achieving Justice for Syria' (2015) 30 *Emory International Law Review* 155.

⁵¹⁴ *Supra* (nr.513) Rapp 157-158; see also 1.3 Failures of the International Justice System in Syria.

⁵¹⁵ *Supra* (nr.510) Van Schaack 284, 400 and 440-442.

⁵¹⁶ Noha Aboueldahab, *Writing Atrocities: Syrian Civil Society and Transitional Justice* (Brookings 2018) 3ff.

⁵¹⁷ Alexa Koenig and Lindsay Freeman 'Open Source Investigations for Legal Accountability: Challenges and Best Practices' in Sam Dubberley, Alexa Koenig and Daragh Murray (eds), *Digital Witness: Using Open Source Information for Human Rights Investigation, Documentation, and Accountability* (OUP 2019) 336ff.

⁵¹⁸ Jay Aronson, 'The Utility of User-Generated Content in Human Rights Investigations' in Molly Land and Jay Aronson (eds), *New Technologies for Human Rights Law and Practice* (CUP 2018) 129ff.

⁵¹⁹ See Benefits of New Documentation Techniques.

⁵²⁰ *Supra* (nr.516) Aboueldahab 1.

law, human rights and international crimes, and therefore, maintains the questions of justice and accountability relevant.⁵²¹ Moreover, it sheds light on certain narratives, contributing to informal truth-seeking mechanisms.⁵²² However, as the regime has regained the control of most of Syria, it remains to be seen, how the Syrian society will effectively utilize the amassed documentation in practice.

In light of these developments, many NGOs have documented the attacks against medical facilities. Among others the Syrian Archive conducted investigations that used methodologies from the new field of practice called 'Investigative Commons'.⁵²³ By combining diverse skill sets and using documentation from open-source media platforms, such as social media and satellites, as well as witness testimonies and flight observation data, the Syrian Archive has produced detailed observations regarding the attacks on medical facilities. These observations, in turn, confirmed the narratives of attacked facilities and other witnesses.⁵²⁴ This master's thesis specifically focussed on a Syrian Archive investigation into eight attacks on various hospitals and medical points in Idlib, in April 2017. This investigation indicates the intentional and systematic nature of all eight attacks, and therefore, demonstrate that these attacks likely amount to war crimes and crimes against humanity.⁵²⁵

Thus, as a response to the lack of results on the international level, and the huge amount of documentation made possible by new technologies, the civil society has turned its focus towards documenting crimes and violations of international law, and then seeking and promoting criminal prosecution, as well as, other transitional justice alternatives.⁵²⁶ Additionally, two UN bodies play a key role in these developments. The Commission of Inquiry and the International, Impartial and Independent Mechanism, both investigate and document international crimes. However, only the IIIM helps to prosecute these crimes.⁵²⁷ Nonetheless, the COI's reports are still valuable to advance justice. For instance, the COI published a report concerning some of the attacks against medical facilities in Idlib, concluding that these attacks amounted to crimes against humanity.⁵²⁸

⁵²¹ *Ibid* 4.

⁵²² Brigitte Herremans and Veronica Bellintani, 'Overcoming the Justice Impasse in Syria' in Tine Destrooper, Line Gissel and Kerstin Carlson (eds) *Transitional Justice in Aparadigmatic Contexts: Accountability, Recognition, and Disruption* (Routledge 2023) 16.

⁵²³ Matthew Fuller and Eyal Weizman, *Investigative Aesthetics: Conflicts and Commons in the Politics of Truth* (Verso 2021) 182ff.

⁵²⁴ *Supra* (nr.504) 'Medical Facilities Under Fire' 81.

⁵²⁵ See Incidents.

⁵²⁶ Nousha Kabawat and Fernando Travesi 'Justice for Syrian Victims Beyond Trials: The Need for New, Innovative Uses for Documentation of Human Rights Violations in Syria' (*ICTJ briefing*, February 2018) 5ff; *Supra* (nr.510) Van Schaack 339ff.

⁵²⁷ Sema Nassar and Iavor Rangelov, *Documentation of Human Rights Violations and Transitional Justice in Syria: Gaps and Ways to Address Them* (Conflict Research Programme London School of Economics and Political Science, 2020) 6-7.

⁵²⁸ UNGA Report of the Independent International Commission of Inquiry on the Syrian Arab Republic UN Doc A/HRC/36/55 66.

Finally, the emergence of digital documentation is relevant in other contexts, where widespread violations of international law occur. Indeed, the knowledge and expertise, that has been acquired in the Syrian armed conflict, can be put to use in similar situations. However, new technologies and methodologies evolve constantly. Today, for instance, artificial intelligence has become a key factor of development.⁵²⁹ Additionally, digital documentation is created at an incredibly high rate, it can be forged or disappear, and is not always admitted into court.⁵³⁰ Due to these factors, the use of digital evidence remains a complex issue for numerous justice actors.⁵³¹ Therefore, it is paramount to develop unified and up-to-date methodologies to deal with this kind of documentation.

In sum, the documentation created by new technologies and methodologies has the potential to significantly impact the international justice and accountability system. This master's thesis not only arrives at this conclusion, but also underlines the value of such documentation in transitional justice settings. Furthermore, the thesis highlights the systematic attacks against Syrian civilians, the role of the regime in Syria's destruction, and the international community's incapacity to take appropriate actions. However, despite the many obstacles in the pursuit of justice in Syria, there is reason to be hopeful. The emerging tools provided by new technologies and methodologies, combined with the civil society's determination, form a foundation to advance justice and uphold international law.

⁵²⁹ Elena Radeva, 'The Potential for Computer Vision to Advance Accountability in the Syrian Crisis' (2021) *Journal of International Criminal Justice* 131; Raja Abdulrahim 'AI Emerges as Crucial Tool for Groups Seeking Justice for Syria War Crimes' (*The Wall Street Journal*, 13 February 2021) <<https://www.wsj.com/articles/ai-emerges-as-crucial-tool-for-groups-seeking-justice-for-syria-war-crimes-11613228401>> accessed 03 April 2023.

⁵³⁰ See 2.3 Challenges of New Documentation and Digital Technology.

⁵³¹ Frederica D'Alessandra and others, *Anchoring Accountability for Mass Atrocities: The Permanent Support Needed to Fulfil UN Investigative Mandate* (Oxford Institute for Ethics, Law, and Armed Conflict, 2022) 59ff.

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