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Abstract

The Syrian Civil War (2011-present) is one of the great humanitarian disasters of the modern age. The unprecedented involvement of foreign volunteers in the conflict, the complex and multi-layered nature of the war, and the allegations of war crimes against nearly all participants have made the conflict convoluted and complicated. If Syrians are to ever move on from the barbarism of this war, there must be a transitional justice process that addresses the wrongs committed against them. While transitional justice is an ever-evolving practice, it faces unique challenges in the Syrian theater. This thesis seeks to analyze and suggest possible post-conflict scenarios for a war with no clear end in sight, which involves thousands of citizens from around the world participating in alleged war crimes. The Syrian conflict requires a unique iteration of transitional justice in order to instill and maintain peace, as well as deter future mobilizations of massive foreign fighter forces.

Keywords: Syria, foreign fighters, transitional justice, truth commissions, extradition, war crimes, reconciliation, restorative.

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Chapter I: Introduction & Methodology

A. Introduction

Syria is in the midst of a civil war that began in March of 2011. It is partly the result of the destabilizing Arab Spring movement that swept through the Middle East and North Africa (MENA). The initial protests against the government of Bashar al-Assad were soon met with a violent crackdown by regime forces, rapidly escalating the protest movement into that of an armed rebellion. As the conflict escalates, the forces involved are become increasingly stratified along sectarian and political lines which have calcified justifications for why and how the fighting continues. There are various actors present in the conflict, including, but not limited to, forces loyal to the Assad regime, the Syrian Kurds (YPG), the Free Syrian Army (FSA), numerous independent militias, Jabhat al-Nusra Front (an al-Qaeda affiliate), and the Islamic State group (hereafter, ISIS). The latter two forces have taken advantage of the destabilized nature of the state and its porous borders, seeking an opportunity to establish a foothold for their respective ideologies through the use of a diverse fighting force.

With a multi-actor civil war, human rights atrocities, and the inundation of foreign fighters, the situation in Syria has become exceedingly complex. While the complete picture is impossible to obtain in a war that is so convoluted, the presence of thousands of foreign actors has created a situation wherein a global war is being played out on a local stage. This influx of foreign fighters, in concert with the murky ethical practices within the conflict, has posed substantial questions about what justice will mean in a post-conflict Syria. Never before has the world seen such an expansive and geographically diverse coalition of extranational fighters engaged in a single regional or state conflict.

This inundation has roused complex questions about what the nature of post-conflict justice will entail when addressing an absence of many perpetrators who have since returned home from the battlefield of such a labyrinthine war.

As mass atrocities have been perpetrated upon various groups and individuals by numerous parties to the conflict, the scars upon Syria's geographic, institutional, and human landscape are deepening. In order for a society to transition successfully from a state of post-conflict destruction to a state of stabilization, productivity, and normalcy, it must engage in restorative measures. This is a process commonly known as transitional justice. Through transitional justice, societies are able to address the brutality of their experience, discover the truth about what occurred, compensate victims, punish perpetrators, engage in institutional reforms, and move forward without the threat of a reignition of violence. As Syria moves through this period of violence, considerations must be made for how post-conflict restoration and reconstruction will be undertaken. Special consideration for this process must be given to the history of Syrian institutions and customs, as well as the ever-evolving field of transitional justice itself. While some methods have been developed in recent years to address the contemporary nature of violence involving non-state actors, heretofore the issue of large-scale, geographically diverse foreign fighter involvement has not been significantly addressed. Without further strategic development to address the absence of foreign fighters who have returned to their countries of origin after engagement in Syria the post-conflict transitional justice process in Syria will be incomplete, and therefore may be rendered largely ineffective or even a complete failure outright.

B. Research Question

After examining the scope of Syria's conflict, the breadth of foreign fighter involvement, and the established methods of transitional justice, it is clear that the issue of post-conflict restoration is going to be as complex as it is necessary. While prior research has examined both the issue of foreign fighters as well as post-conflict transitional justice, the implications that the former have on the latter in post-war Syria has seen little substantial consideration. Due to this gap in understanding, this thesis will attempt to answer the following questions: *Are the current international frameworks effective enough to fundamentally address the problem of absent foreign fighters in Syria's transitional justice endeavor, and if not, what methods should be undertaken to ensure a complete and successful transitional justice process?* By answering these questions this thesis will contribute to the development of approaches and strategies regarding what the transitional justice process in Syria should look like in the scope of an ever-evolving and intricate topic. Sooner, rather than later, it is hoped that the war in Syria will come to a close, and this research may be utilized to aid the creation of a well-rounded and effective implementation of transitional justice.

As a result of the novelty of many of the concepts in this research, it is important to define certain key terms in order to better facilitate comprehensive understanding. This thesis will utilize the definitions and understandings delineated by the International Center for Transitional Justice (ICTJ) and the work of Sandra Kraehenmann. In an effort to retain clarity, consistency, and understanding, I will be utilizing their classifications as my foundation.

Foreign Fighter: "A foreign fighter is an individual who leaves his or her country of origin or habitual residence to join a non-state armed group in an armed conflict abroad and who is primarily motivated by ideology, religion, and/or kinship" (Kraehenmann, 2014).

Transitional Justice: "Transitional justice is a response to systematic or widespread violations of human rights. It seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse" (ICTJ, 2009).

Truth Commissions: "These commissions of inquiry have the primary purposes of investigating and reporting on key periods of recent abuse. They are often official state bodies that make recommendations to remedy such abuse and to prevent its recurrence" (ICTJ, 2009).

Criminal Prosecutions: "These are judicial investigations of those responsible for human rights violations. Prosecutors frequently emphasize investigations of the 'big fish': suspects considered most responsible for massive or systematic crimes" (ICTJ, 2009).

Reparations Programs: "These are state-sponsored initiatives that help repair the material and moral damages of past abuse. They typically distribute a mix of material and symbolic benefits to victims, benefits that may include financial compensation and official apologies" (ICTJ, 2009).

Gender Justice: "These efforts challenge impunity for sexual and gender-based violence and ensure women's equal access to redress of human rights violations" (ICTJ, 2009).

Institutional Reform: "These efforts seek to transform the military, police, judiciary and related state institutions from instruments of repression and corruption into instruments of public service and integrity" (ICTJ, 2009).

Memorialization Initiatives: "These include museums and memorials that preserve public memory of victims and raise moral consciousness about past abuse, in order to build a bulwark against its recurrence" (ICTJ, 2009).

The scope of this research will focus solely on the current status of transitional justice measures in the context of how they may be applied in Syria to address the post-conflict reconstruction process. The period in question is limited to that of the current Syrian Civil War, which began in 2011 and continues through present day. This time-frame will allow for the consideration of several events in the conflict's timeline, including the development of ISIS, Jabhat al-Nusra Front, and other groups, the evolution of the foreign fighter element in the region, and the commission of atrocities as defined by International Humanitarian Law (IHL). All of these elements inform the nature and makeup of the future post-conflict transitional justice process.

The entirety of this research will be an inductive study focusing on the research question above. There are several objectives and facilitating guidelines that will aid the answering of this question:

1. To curate a rounded understanding of the unique issues in Syria's civil war and what that means for the country's post-conflict process;

2. To develop a thorough understanding of established methods and utilizations of transitional justice;

3. To address potential pitfalls and gaps in current transitional justice mechanisms, methods, and policies in the context of Syria's unique situation and conflict factors;

4. To formulate recommendations for how to best bridge the gaps in established thought in order to ensure a complete and satisfactory transitional justice process in post-conflict Syria.

C. Methodology

Design

This study will be exclusively qualitative in nature. It will examine pre-existing and established transitional justice implementations, methods, and theories in an attempt to ascertain how they might best lend themselves to the post-conflict process in Syria. This study will also examine treaties, laws, and precedents that have already been established in the international community that may possibly lend themselves to the cause of addressing Syria's foreign fighter problem, and how it relates to transitional justice. With these two approaches, this thesis will seek to discover methods by which Syria can address its unique transitional justice challenges, focusing specifically on holding foreign fighters accountable, with an auxiliary focus on broader transitional justice approaches.

Operationalization

For the purpose of this study, the operational definition for transitional justice will be taken from the fact sheet issued by ICTJ in 2009, "Transitional justice is a response to systematic or widespread violations of human rights. It seeks recognition for victims and promotion of possibilities for peace, reconciliation and democracy. Transitional justice is not a special form of justice but justice adapted to societies transforming themselves after a period of pervasive human rights abuse" (ICTJ, 2009). Transitional justice will be understood to include any and all possible methods of post-conflict restorative measures used to solidify the state of peace, heal societal wounds, and move the country and its people forward into reconstruction efforts and, eventually, normal life. For the purposes

of this study, transitional justice will be understood as solely post-conflict justice, and not any other form of justice emanating from other societal conditions.

Due to the inherently subjective nature of this research, a substantial amount of interpretation will have to be undertaken in regard to methods that may best work in the unique Syrian post-conflict process. However, that bias will be mitigated with the understanding that the goal of the post-conflict process is utilitarian, and aims to move the whole of society forward, including both victims and perpetrators, in the most profoundly impactful manner possible. Due to the fact that the researcher spent a little over two months in the summer of 2015 in Gaziantep, Turkey, working with an entirely Syrian staff at the Center for Civil Society and Democracy in Syria (CCSD), it is pertinent to acknowledge the possibility of bias toward the plight of the Syrian civilian (non-combatant) population. That bias will be largely inconsequential, however, as the study is designed to address the post-conflict needs of all Syrians as a whole, regardless of affiliation or involvement. As the research and analysis are continued, the researcher will work to ensure reliable and credible sources are utilized, and any obvious biases are mitigated.

Method

In terms of this study, the population frame will be the whole of Syrian society impacted by the current conflict. In regard to the research conducted, the entirety of pertinent international agreements will be considered. The scope of transitional justice research as a whole will be limited to the instances that lend themselves to situations similar to that which Syria itself is in.

Data Collection

Data for this study is qualitative. Data will be collected from the utilization of Concordia University library and its online databases, as well as scholarly articles and reports from reputable organizations and experts. Careful consideration will be taken to ensure all data collected is gathered from sources relevant, knowledgeable, and reliable to each respective matter.

Analysis

Collected data will be analyzed in a qualitative manner, cross referenced, and compared with all elements of the study in order to gain a better understanding of the complete picture. Information on the situation in Syria as well as Syrian perspectives and considerations will be analyzed, and then compared with the data collected on transitional justice methods. The study will then attempt to reconcile those perspectives, the unique problems of the current conflict, and the current state of transitional justice with possible policy recommendations to fill the most essential gaps.

Ethical Considerations and Safeguards

In order to ensure that this study will not raise any ethical concerns, a full review was conducted in spring of 2015 by the IRB, and subsequent approval was granted for the conducting of interviews. All questions and parameters were deemed to pose no significant ethical concern, and therefore the study was allowed to continue. The only elements of research that still remain in regard to this study is the further examination of established policy and current conditions in the Syrian Civil War. My IRB approval was granted under the understanding that I would undertake the interviews as well as engage

in archival examination of Syria's conflict and measures of post-conflict justice. Those

interviews have since become irrelevant to the research in this publication and therefore

have been stricken from this thesis so as to ensure that the focus of the research is not

muddled.

Chapter II: Literature Review

A. Foreign Fighters

Throughout history, many conflicts have had levels of foreign engagement, to varying degrees. Those foreign elements have been both state-sponsored, as well as independent, and they have involved monetary influence, intelligence, and/or physical presence. When transnational fighters have been involved they have done so under a myriad of motivations, be it monetary, ideological, national interest, or many other possible factors that drew them in. The foreign fighters in question will be held against a certain criteria so as to differentiate them from other extranational fighters, such as mercenaries. For the purposes of this study, an individual known as a contemporary "foreign fighter" will be understood as they have been defined by Hegghammer (2011), Malet (2013), and Kraehenmann (2014): as an individual that is engaged in an insurgency, unaffiliated with an established military organization, within a society other than that of their citizenship, and receives little to no monetary compensation as their primary motivation.

That being understood, it is important to examine the history that has led to the contemporary understanding of foreign fighters. While previous incarnations of transnational fighters that engaged in conflicts foreign to their own state of citizenship may not fit the current understanding of a foreign fighter, in regard to the conflict in Syria their existence, actions, and evolution hold important clues as to the development of a contemporary foreign fighter and foreign fighter force. With a long and convoluted history, foreign engagement in conflict produces countless case studies; however, for the purposes of this section, which serves as a brief examination of the concept and history of

foreign fighters, I will examine the more modern, and pertinent conflicts of the Muslim

world, such as the Soviet engagement in Afghanistan of the 1980s, the Yugoslav Wars of

the 1990s, the conflicts that resulted from the US-led invasions of Iraq and Afghanistan

in the early 2000s, and the contemporary conflicts in Iraq and Syria, among others. But

before this history is examined, the concept of what exactly a foreign fighter is in the

context of contemporary middle-eastern conflict must be unpacked.

There are many variants of foreign fighter. As Hegghammer (2011) noted, they

reside somewhere between local rebels and international terrorists, resulting in a lack of

official nomenclature. Throughout history, conflict participants who were not native to

the country, or the force in which they were fighting have fallen under many categories.

One such instance, historically, has been that of mercenaries. Mockler (1970) and

Burmester (1978) both defined as foreign individuals who engage in combat for monetary

gain, rather than enjoying personal or national stakes in a conflict. Whereas mercenaries

fight for pay with a variety of forces, both state-sponsored and not, the more

contemporary understanding of foreign fighters, as noted by Hegghammer (2011), is that

they can be broken into different categories: state-sponsored or independent, and can

draw fighters from either a regional or global pool. Hegghammer (2011) classifies a

foreign fighter mobilization as state-supported if "a government agency directly supplies

the foreign fighters with material resources" (p. 59), while independent mobilizations

operate with indirect state support, or without any state sponsorship entirely. Motivation

for engaging in warfare also tends to differ between mercenaries and foreign fighters.

The contemporary understanding of foreign fighters shows that they have tended to fight

for little to no pay, but rather under the auspice of a larger shared identity, such as that of

a sociopolitical religious grouping (Hegghammer, 2011; Malet, 2013; Kraehenmann, 2014).

The concept of identity is one that has become central to the modern concept of the foreign fighter. In referencing the foreign fighter component in the Yugoslav Wars of the early 1990s, Mustapha (2013) explored the idea of "cosmopolitical citizenship," which the author believes the foreign fighters involved in the conflict attained by abandoning their national identity and adopting the "transnational cause of pan-Islamism." This concept of pan-Islamism is linked to the concept of the Muslim *umma* which Lund (2013), Mustapha (2013), and Kraehenmann (2014) noted is a global community of Muslims; many Salafists, especially radicals in groups such as ISIS, believe the *umma* is the only "nation" to which they hold allegiance and to which traditional borders do not apply. The transnational identity bond that pulls foreign fighters together, specifically Islamist foreign fighters, was examined by Hegghammer (2011):

> "The foreign fighter phenomenon represents a violent offshoot of a qualitatively new subcurrent of Islamism – populist pan-Islamism – which emerged in the 1970s as a result of strategic action by marginalized elites employed in nonviolent international Islamic organizations. Seeking political relevance and increased budgets, these activists – who were mostly based in the Hijaz region of Saudi Arabia – propagated an alarmist discourse emphasizing external threats to the Muslim nation. They also established a global network of charities for the provision of inter-Muslim aid. The norms and networks established by the Hijazi pan-Islamists then enabled Arab activists in 1980s Afghanistan to recruit foreign

fighters in the name of inter-Muslim solidarity. The 'Arab Afghan' mobilization, in turn, produced a foreign fighter movement that still exists today, as a phenomenon partly distinct from al-Qaida" (p. 56-57).

This creation, endorsement, and propagation of a shared identity that transcends national boundaries is a substantial force drawing contemporary Islamist foreign fighters still today. As Malet (2009) noted, throughout history recruiters of foreign fighters, regardless of the ethnic and religious background, attempted to frame the conflicts as battles in defense of a transnational community in which the potential recruit belongs. The success of the cause of pan-Islamism in recruiting foreign fighters has been evident; however, there have been many other types of foreign fighter movements.

In the history of foreign fighter mobilizations there have been many different variations. Some forces have received degrees of state-sponsorship, while some have operated wholly independently; some forces have been made up of regional volunteers, and some, as in the case of contemporary Syria and Iraq, have drawn from a more global pool of fighters. Throughout history variants of transnational fighters have permeated conflicts around the globe in one form or another. As Malet (2009) found, of the 331 civil conflicts documented in the last 200 years, there is evidence of a foreign fighter presence in 67 cases, or more than 20 percent of them. Hegghammer (2011) found, in 70 post-1945 conflicts, there were 18 with a private global fighter element (which can be seen in Figure 1), 16 of which occurred after 1980. That number has no doubt risen with the use of foreign fighters in contemporary Syria and Iraq. Despite the increased relevance and focus in recent years, foreign fighters are not a modern phenomenon. Malet (2009) noted the utilization of foreign combatants during the American

Revolutionary War and the use of mercenaries even before the invention of the nation-state. Williams (2011) found that in the Middle East there is a "long history of borderless jihadi volunteerism that went all the way back to the *ghazis* (holy warriors) and *murabitun* (wandering fighters) of Medieval Muslim states of North Africa and the Middle East" (p. 217). Still, the growing prevalence of foreign fighters in conflicts in the Muslim world displays a clear lineage and an interconnected pattern of recruitment that appears to be intensifying. The modern foreign fighter movement, present in current-day Iraq and Syria on a heretofore unprecedented scale (as seen by figure 1), can in part be traced back to the Soviet incursion into Afghanistan in the 1980s and the *mujahidin* that opposed them.

Figure 1. History of Conflicts Involving a Private Foreign Fighter Component

Table 1. Confirmed Cases of Private Global Foreign Fighter Mobilization in the Muslim World, 1945–2010

Location	Date	Local Conflict Parties (simplified)	Foreign Fighter Entry Date	Number of Foreign Fighters	Confirmed Nationalities
Israel	1967	Arab coalition vs. Israel	1968	<100	Sudan, Syria, Egypt, Yemen
Lebanon	1975–90	PLO vs. Israel; Miscellaneous Factions	1978	<50	Egypt, Syria, Jordan
Afghanistan	1978–92	Mujahideen vs. Soviet Union /Kabul	1980–92	5,000–20,000	Most Arab countries, Turkey, Pakistan, Bangladesh, Indonesia, Philippines, United States/Europe
Bosnia	1992–95	Bosnians vs. Serbs/Croats	1992–95	1,000–2,000	Most Arab countries, United States/Europe
Tajikistan	1992–97	Islamists vs. Communists	1992–94	100–200	Saudi Arabia, Yemen
Algeria	1991–	Islamists vs. Government	1994	<10	Saudi Arabia
Chechnya	1994–	Chechens vs. Russia	1995–2001	200–300	Most Arab countries, Turkey, United States/Europe
Philippines	1968–	Moro National Liberation Front/Moro Islamic Liberation Front vs. Manila	1997–2000	20–100	Several Arab countries
Kashmir	1989–	Pakistan vs. India	1997–2000	20–100	Several Arab countries
Somalia	1991–05	Various militias	1992	<50	Saudi Arabia, Egypt
Afghanistan	1992–2001	Masud vs. Hekmatyar, Taliban vs. Northern Alliance	1996–2001	1,000–1,500	Most Arab countries, United States/Europe, Central Asia, Pakistan, Turkey
Kosovo	1998–99	Albanians vs. Kosovars	1999	20–100	Several Arab countries, United States/Europe
Eritrea	1998–2000	Eritrea vs. Ethiopia	1998	<10	Saudi Arabia
Palestine	2000–	Palestinians vs. Israel	2000–	<10	Saudi Arabia
Afghanistan	2001–	Taliban vs. United States/NATO/Kabul	2001–	1,000–1,500	Most Arab countries, United States/Europe
Iraq	2003–	Sunnis vs. United States/Baghdad	2003–	4,000–5,000	Most Arab countries, United States/Europe, Turkey
Somalia	2006–	Shabab vs. Transitional Federal Government/Ethiopia	2006–	200–400	Several Arab countries, United States/Europe
Lebanon	2007	Fath al-Islam vs. Government	2007	<50	Saudi Arabia

Note. Retrieved from The Rise of Muslim Foreign Fighters: Islam and the Globalization of Jihad. Copyright 2011 by International Security. Reprinted with permission.

Afghanistan in the late 1970s was a country attempting to modernize. The regime of Mohammed Zahir Shah, and later his brother-in-law Mohammed Daoud, tied the state to the Soviet Union side of the Cold War's bipolar system (Malet, 2009). Just as there were ardent supporters of the pro-Soviet Afghanistan government, so too was there vehement resistance. The pro-government Marxist supporters regularly clashed with the resistance, which held its roots as an Islamic fundamentalist response to the Soviet-backed government (Malet, 2009). In 1978 the Daoud government was facing growing opposition by fundamentalist groups and was consequently overthrown by communist elements, supported by the Afghanistan military, and subsequently replaced with the People's Democratic Party of Afghanistan (PDPA) (Malet, 2009). After the PDPA began to lose more ground, due largely to its attempts to implement more Soviet-inspired policies of land reform, women's rights, and other progressive projects that flew in the face of the fundamentalist opposition, the USSR decided to launch "Operation Agat," in which they began to directly intervene and prop-up a new leader in Babrak Karmal (Malet, 2009).

The Soviet intervention in Afghanistan was only expected to last a short time, but in invading the country, the USSR invigorated the fundamentalist opposition. For one of the first times, the world began to see the narrative of a transnational Muslim community, or *umma*, in calls for foreign fighters (Hegghammer, 2011; Malet, 2009; Williams, 2011). In his work on the conflict, Malet (2009) noted that the Islamist opposition had a golden recruiting narrative in defending one of Islam's holy lands from an incursion by an atheist Soviet regime, comparing it to the narrative surrounding the Communist threat to Catholicism used by recruiters of foreign fighters during the Spanish Civil War. While

Osama bin Laden is the most recognizable household name associated with the *mujahidin* struggle in Afghanistan, the foreign fighter movement of the 1980s, and its cascading future engagements, was heavily bolstered by Abdullah Azzam, whom the Brookings Institution referred to as "The Father of Global Jihad" (Riedel, 2011).

Disappointed by a lack of participation from the larger Muslim community, Azzam, who was teaching in Islamabad at the time of the Soviet invasion, created an organization called Makhtab al-Khadamat (MAK) by exploiting his connections in the wealthy Wahhabi Saudi community. He began to publish recruitment and fundraising magazines (Malet, 2009). Azzam distributed MAK publications globally, and the message of recruitment and support was further spread by the organization's leaders traveling internationally in order to speak to sympathetic groups around the world (Hegghammer, 2011; Malet, 2009). In the era of increasing globalization, Azzam and other recruiters, such as Islamic NGOs, were able to reach larger groups of people faster and more effectively than ever before, which is why the foreign fighter force in Afghanistan may have had so much recruiting success when compared to previous movements (Hegghammer 2011; Karagiannis, 2013; Malet, 2009).

While Hegghammer (2011) would classify the insurgency in Afghanistan as one that enjoyed tacit, if not explicit state support from the covert operations of Saudi Arabia, the US, Egypt, and Pakistan, there was also a parallel "*grass-roots*, mosque-based movement" led by figures such as Azzam, bin Laden, and other local Muslim leaders (Williams, 2011). The movement centered on the idea of the *umma,* and the idea of a transnational, or 'cosmopolitical', identity that called Muslims to fight regardless of their state of origin (Hegghammer, 2011; Malet, 2009; Mustapha, 2013; Williams, 2011).

Recruiters' exploitation of this concept of a shared transnational identity was key in recruiting volunteers to fight in Afghanistan in the 1980s, just as it has been in every conflict in the Muslim world involving foreign fighters since. The effectiveness of appealing to a global community of Muslims, and how that community differs from that of Christianity is articulated well by Karagiannis (2013):

> "Unlike Catholicism, the Muslim faith lacks a centralised leadership and a monolithic doctrine. In fact, Islam resembles Protestantism which is a polycephalous branch of Christianity made up of many churches and interpretations. Although politically and economically divided, the Muslim world still forms a large interconnected religious–cultural system. Therefore, individuals can claim and benefit from a global identity as members of the ummah (that is the community of believers) that functions as a complex system of transnational networks fostering solidarity and cooperation." (p. 120-121).

This leaderless solidarity allows for vast interpretation and exploitation. Azzam, al-Qaeda, ISIS, and countless other groups that have called for Muslims to take up arms in defense of Islam have used the ambiguity and breadth surrounding this community to pull fighters in from around the world for decades.

This proposition of allegiance to only the cause of the Muslim community served as an effective tool in Afghanistan, particularly in recruiting regional forces to the fight, which saw thousands come, due more to the work of local leaders to recruit than due to that of incentives created by state-sponsors (Lund, 2013; Williams, 2011). While there is no definitive statistic as to the total number of participants in the Afghanistan insurgency against the Soviets, most estimates put the number of foreign fighters somewhere

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between 5,000-20,000 participants, with some believing that as many as 35,000 volunteers may have cycled through in some capacity by the end of the conflict (Hegghammer, 2011; Malet, 2009; Williams, 2011). A hallmark of the 1980s Afghanistan transnational insurgency was the use of regional fighters. Whereas other conflicts may have included recruits from many places around the world, the *mujahidin* foreign fighter force was largely made up of volunteers from the surrounding states, such as Turkey, Pakistan, Egypt, Saudi Arabia, Yemen, and other nearby locales, in spite of some exceptions (Hegghammer, 2011; Malet, 2009; Williams, 2011).

The message had gone out, and foreign volunteers had flooded the insurgent force with enough bodies to repel the Soviet invasion. But with those volunteers came unpredictability. In fact, some of the most brutal elements utilized in the current era of global jihad may have begun with the foreign fighter force in Afghanistan. Through the course of his interviews with various commanders involved in the conflict, Williams (2011) found that the "Arab volunteer mujahideen" in the late 1980s were the first to propose self-martyrdom against the Soviets, through methods such as suicide bombings (p. 220). The coalescence of the unpredictable and effective *mujahidin* foreign fighters in Afghanistan would become a watershed moment for the nature of conflict, especially within the Muslim world. With all the effort required to pull together such a diverse transnational force in the name of defending Islam, and the cause of a Muslim state of Afghanistan, a Soviet withdrawal did not mean dissolution, it was in fact just the beginning.

The foreign fighter force of "Arab Afghans" had seen success in their bout against one of world's two superpowers, so much success, in fact, that they continued on to other

conflicts after their adventure in Afghanistan had concluded. Whereas some of the

mujahidin force joined al-Qaeda or went home, many of the transnational Islamist

fighters went on to other battlefields. A large portion of the fighters moved on to join the

Muslim struggle in Kashmir for independence from India, a Hindu country (Garner,

2013). The Mujahidin entered into the conflict serving as "shock-troops and eventually

fidayeen (suicide) fighter-terrorists" and waging an all-out assault against Indian Security

forces (Garner, 2013; Williams, 2011). This transportation of violence by foreign fighter

populations to other battlefields is a common occurrence, as Malet (2009) found that

veteran foreign fighters often travel to new conflicts and set up an "organizational

infrastructure" in order to wage an effective front. The impact that veteran foreign

fighters have on conflicts extends to the efficiency of the violence. Lister (2015) and

Hegghammer (2013) found that the odds of a successful attack from a terrorist cell

increase when there is even one veteran foreign fighter, calling this the "Veteran Effect."

The movement of veteran foreign fighters from the Soviet incursion in

Afghanistan to the battlefield of the Yugoslav Wars of the 1990s became the next chapter

in the solidification of the Muslim transnational identity. When the six republics of

Yugoslavia began to break apart in 1991, Serbian President Slobodan Milošević presided

over what amounted to a genocide in Bosnia, with Serbian troops targeting civilians as a

means to accelerate an ethnic cleansing of Muslim Bosniaks (Power, 2013). This assault

on the Muslim population, as Power (2013) and Mustapha (2013) noted, which was

largely defenseless, provoked a response from the *mujahidin* in the form of military

assistance.

The participation of foreign fighters in Bosnia came shortly after the conflict began. Malet (2009) estimated approximately 5,000 veterans of Afghanistan's war participated in the Bosnian conflict. The composition of the foreign fighter force, as Mustapha (2013) found, included fighters from places such as Egypt, Syria, Russia, Iraq, Algeria, and Afghanistan, among other places; this made the conflict much more of a global transnational insurgency, than the slightly more regional conflict in Afghanistan a few years prior. Bosnia was not the only side in the conflict to see transnational volunteers. Arielli (2012) and Malet (2009) noted that Serbian forces gained hundreds of Greeks, Romanians, Ukrainians, and Russians, and Croatian forces are estimated to have had over 450 volunteers from as many as 35 different countries participate in different military formations. The prevalence of foreign fighters in Bosnia was profound. Hegghammer (2011) and Kraehenmann (2014) noted that the conflict was one of only five engagements since the Soviet incursion in Afghanistan that has attracted more than 1,000 foreign fighters, with three of the others being post-2001 Afghanistan, post-2003 Iraq, and the ongoing conflict in Syria.

Transnational insurgency in the Yugoslav Wars, specifically in the case of Bosnia, blossomed as yet another manifestation of Muslims protecting a global identity. Some foreign fighters in the conflict fell under what Malet (2009) and Hockenos (2003) found to be a "diaspora transnationalism," wherein Balkan peoples that had migrated to the United States and Canada and refrained from participating in their host countries' communities in favor of being active in their own immigrant communities traveled back to participate in their home countries' civil wars; there was also a "non-diaspora transnationalism" which saw individuals without any ties to the Balkan states join the

fight because they saw themselves to be a part of a larger community, exterior to the concept of nationality. This cause of pan-Islamism, and the foreign fighters' endeavor to fight for it, as Mustapha (2013) postulated, granted the participants something different than "state-centered citizenship," which she refers to as "acts-citizenship": "citizenship *as* acts or as action. In this sense, citizenship can be understood in terms of any 'political' activity that creates or commemorates collective identities" (p. 745).

Many of the veterans of the war in Afghanistan were unable to return to their home countries, as Malet (2009) and Mustapha (2013) noted, which is why they moved on to the Yugoslav battlefield where they were more welcome. The hospitality was extended even by the Bosnian government, which absorbed the fighters into the military in 1992. They created an all *mujahidin* force in 1993; Sarajevo even went so far as to grant many of the Muslim foreign fighters Bosnian citizenship and passports. This legitimization of the foreign fighter element became problematic in the post-9/11 age, when the *mujahidin* appeared to be a global threat to security.

Despite their participation in conflicts in Afghanistan, Kashmir, and Bosnia, the transnational fighter phenomenon continued to permeate other conflicts throughout the world. When the Soviet Union broke apart and countries began to assert their status as independent states, Chechnya came into violent open conflict with Russia and saw the participation of between 200-300 foreign fighters after the country was inundated with numerous Islamic NGOs and organizations (Bakke, 2015; Garner, 2013; Hegghammer, 2011). The Chechen conflict held deep meaning for the same *mujahidin* force that has dipped its hand in so many other ethnic conflicts around the world; Malet (2009) noted that Chechnya was a priority for leaders such as bin Laden, and saw Afghanistan veterans

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working as advisors, with many eventually acting as separatist leaders. Despite the comparatively low number of foreign fighters, the influence of Muslim organizations, transnationals, and renewed religious expression quickly turned the conflict from one of nationalist origin into that of a religiously motivated war (Garner, 2013). The allegiance to the idea of the *umma* drew fighters to the conflict and continues to do so throughout others around the world.

The insurgency in Somalia has also drawn comparatively few foreign fighters, but merits acknowledgement due to the central focus on Islamic identity, nonetheless. The violent conflict between *al-Shabaab* and the Transitional Federal Government, as well as Ethiopia, drew between 200-400 fighters according to Hegghammer (2011), with the US House of Representatives Committee on Homeland Security (2011) estimating that 40 American Muslims ventured to Somalia to fight with the insurgency, and Freeman and Rayment (2012) estimating that as many as 50 British Muslims may have been recruited. While the conflict has pulled diaspora transnationals back to Somalia, Western governments have become concerned with the non-diaspora elements that have joined the insurgency and may return to their home countries with deadly new skills (Karagiannis, 2013; Malet, 2009). The conflict with *al-Shabaab* has illustrated the increasingly global reach of the transnational concept of the *umma*. In the age of globalization reaching potential recruits has become much easier than it was in the days of Azzam's jihad in Afghanistan.

The post-9/11 US invasion of Afghanistan and Iraq in 2001 and 2003 respectively, saw some of the largest numbers of foreign combatants since the Soviets' 1980 foray into Afghanistan, with an estimated 1,000-1,500 fighters in Afghanistan and

4,000-5,000 in Iraq (Hegghammer, 2011). Afghanistan had the added benefit of a pre-established terror network, in the form of al-Qaeda, through which to recruit. This was led by one of the original *mujahidin* of the Soviet incursion into the country: Osama bin Laden. The insurgency in Afghanistan drew most of its Western fighters from Germany, Britain, and the US, with many of the other fighters coming from other regional Arab countries. Many more joined when the conflict intensified in 2007 (Hegghammer, 2011; Karagiannis, 2013). The framework that had been put into place during the *mujahidins'* first conflict in the country had leaned itself out to include only the most dedicated jihadists, as Williams (2011) noted, consolidating the foreign fighter element to become al-Qaeda. There were notable foreign additions to the insurgency, as Karagiannis (2013) noted, with people such as American Adam Pearlman joining as a high-profile spokesperson. The transnational fighter movement was not only bolstered in Afghanistan due to al-Qaeda, but Iraq as well, which saw an influx of 4,00 to 5,000 foreign fighters during the US invasion and occupation of the early 2000s (Zelin, 2014).

The US war in Afghanistan in many ways primed the insurgency that was to come when the country invaded Iraq a mere two years later. Abu Musab al-Zarqawi, a Jordanian associate of bin Laden, moved his own insurgent group, which was made up of Jordanians, Syrians, and some Kurdish Iraqis, to Iraq in 2002, just prior to the 2003 US-led invasion; that group would soon become known as al-Qaeda *in Iraq* (AQI) (Berger & Stern, 2015; Malet, 2009). While the effectiveness of the foreign fighter element has been in dispute, the presence was noticeable. Naylor (2009) noted that US officials estimated that in July of 2007 as many as 60-80 foreign fighters crossed the border into Iraq each month. Despite these numbers, the transnational fighters still only made up

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around 10 percent of the overall insurgent force. They did, however, commit 90 percent

of the deadliest attacks (Malet, 2013B). This deadly propensity could appeal to an

insurgency and frighten a government that might see those fighters return to their home

countries and carry out attacks. Those possibilities were further broadened as the conflict

rolled into a new stage with the rise of ISIS.

The current situation in Iraq and Syria is unprecedented as far as insurgencies go.

The group known as ISIS, among many other names, has taken over large swaths of both

countries, and lays claim to fully operational cells in at least 18 different states worldwide

(Baker 2016). The group that started as AQI morphed into ISIS. Eventually it took

advantage of the destabilized nature of Syria. In the wake of the 2011 rebellion and

ensuing civil war, ISIS was born (Filliu, 2015; Berger & Stern, 2015). ISIS has been able

to compose an incredibly violent and brutal force, with transnational volunteers

representing a substantial portion of their operations, both on the battlefield and in the

media. Some estimates put the number of foreign fighter component in ISIS at over

30,000 participants (Barrett, et al., 2015). In an analysis of the transnational component

from the Brookings Institution, Lister (2015) found that the amount of foreign fighters

that have poured into Iraq and Syria has been unprecedented, with the closest incident

being the *mujahidin* force in 1980s Afghanistan. As of December 2015, Barrett, et al.

(2015) found that between 25,000 and 31,000 volunteers, from as many as 86 different

countries, have traveled to Iraq and Syria in order to participate in the conflict through

one of the areas insurgent groups. The exact demographics of ISIS are difficult to

determine, given the hostility the group holds towards outside fact-finders and journalists

(Laub, 2016). The countries that have contributed the most foreign fighters to the

conflict in Iraq and Syria are not relegated to one corner of the globe (as illustrated in

Figure 2), with the most foreign fighters coming from Tunisia, Russia, Saudi Arabia,

Turkey, Jordan, France, and Morocco (Lister, 2015; Barrett, et al., 2015). This is truly a

global conflict on a local stage, representing the largest coalescence yet of violent

transnational fighters from the furthest reaches of the globe, with essentially no oversight,

and tied together primarily by identity.

Figure 2. Foreign Fighter Origins in Iraq and Syria
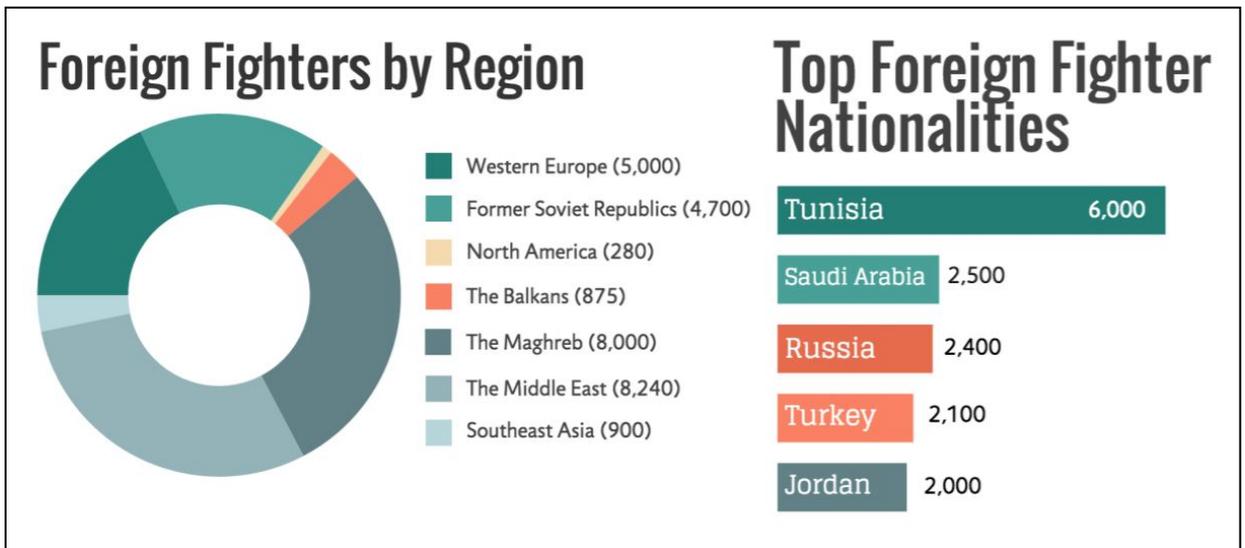
Note. Retrieved from Foreign Fighters: An Updated Assessment of the Flow of Foreign Fighters into Syria and Iraq. Copyright 2015 by the Soufan Group. Reprinted with permission.

Insurgent groups in Iraq and Syria, such as the YPG, Jabhat al-Nusra Front, and

ISIS have all pulled in foreign volunteers, but none have done so to such an efficient

degree as ISIS has. While the call for recruits in 1980s Afghanistan saw men such as

Azzam publishing magazines and scheduling speaking tours around the world in hopes of

attracting volunteers, the age of globalization has reduced all of that to a mouse click.

ISIS recruiters can take their time appealing to potential recruits, convincing them

through sustained internet contact until they find success (Berger & Stern, 2015; Lister, 2015). Recruitment of foreign fighters throughout history, as Barrett (2014), Berger and Stern (2015), and Malet (2009) noted, has taken place through social networks, which is still the same today. Today these are internet social networks, with groups such as ISIS utilizing Facebook and Twitter to reach out to vulnerable persons in hopes of pulling them to the cause in Iraq and Syria. While the cause is still loyalty to the *umma*, groups such as ISIS are advertising what al-Qaeda and others never did: the *caliphate*, a true Islamic State, realized in present day. They are calling on the global Muslim community to protect it (Berger & Stern, 2015). Despite widespread condemnation from the Muslim community around the world, ISIS is seeking to place itself as a true interpretation of Islam. Recruiters reach out to potential volunteers and offer them a solution to what they believe ails them, luring them to the fight in order to radicalize them once they arrive, rather than radicalize before they leave home, as has been the tactic of prior Islamist insurgent groups (Berger & Stern, 2015).

The use of foreign fighters in insurgencies is a tactic that has only become more accessible in the age of globalization. With the amount of barbarism that can potentially come from an unaccountable transnational force, it is important to understand that the trend is on the rise, as Malet (2009) noted:

"An increased number of civil conflicts has raised the overall number of insurgencies that successfully recruit transnationally, and that process of globalization makes it easier for recruiters to convince target audiences that they share common interests with distant populations" (p. 36).

The globalized world has allowed people to connect to each other in ways that they have never been able to before and that allows for the creation of an "imagined community" wherein members feel more connected to people in a far off land, speaking a language they do not know, and fighting a fight they have never been a part of, than they do to their own nation (Hegghammer, 2010; Karagiannis, 2013; Malet, 2009). These transnational volunteers, who are as Arielli (2012), Berger & Stern (2015), and Williams (2011) noted, typically unmarried men in their 20s and 30s who do not have a career important enough for them to stay home for, venture to a foreign battlefield and engage in violent barbarism in the name of a global stateless community. The question, however, is: What happens next?

Foreign fighters join the fight and engage in a unique portion of the campaign waged by ISIS. Berger and Stern (2015) found that foreign fighters are heavily featured in ISIS propaganda, often overrepresented in things such as decapitation videos widely distributed online. In an interview with Holland (2014), Thomas Hegghammer noted that foreign participants may help to radicalize the jihad even more. The fighters that come from afar also tend to engage in brutal acts that native fighters do not, bringing an increased violence to the group (Berger & Stern, 2015; Holland, 2014). Individuals willing to leave their home and travel to a foreign land in order to engage in a violent conflict are committed to the cause, and that commitment to ideology may be what brings out such barbarism from the foreign fighter population in the ranks of ISIS. Berger & Stern (2015) noted that many fighters may be motivated by the prospect of adventure. They may continue to engage other conflicts or return home with a record of violence and war crimes under their belts.

The prospect of war criminals returning home to possibly carry out attacks on their native soil is a dangerous dilemma for a government. Furthermore, if these fighters scatter back to their homes following the conclusion of their role in the conflict or move on to another battlefield somewhere else, they may never be held accountable for their crimes, their victims may never know justice, and the lands in which they operated may never truly know peace as a result. An important component of the post-conflict process is seeking justice, and one of the most crucial aspects of obtaining justice for those impacted by the conflict is addressing the perpetrators of the violence, whether through prosecutions or amnesty and reintegration programs. The absence of such a large component of the fighting force in Syria's post-conflict process could severely infringe upon processes integral to transitional justice.

Transitional justice is made up of measures to end the cycles of violence, and it involves a lot of reconciliation between victim and perpetrator. One key process is Disarmament, Demobilization, and Reintegration (DDR) (ICTJ, 2009). DDR is a process that requires heavy involvement by national institutions in order to regain a semblance of control over what happened to the country in question (Nilsson, 2005). Foreign fighters need to be present in order for that process, and the rest of the transitional justice process to work correctly. If the post-conflict justice initiatives are hindered by such an absence, then chaos and violence may soon again return, even after this brutal war has found a conclusion.

B. Contemporary Syria

The situation in Syria changes almost every day. Since the outset of the conflict in 2011 the violence in the country has only become more prevalent and its people more stratified. Stability in Syria has continued to deteriorate. Many of the UN's strategic goals, such as the protection of civilians, are now classified as failures (Bowen et al., 2015). There have been reports of mass killings, ethnic cleansing, chemical weapons use, torture, indiscriminate dropping of barrel bombs, and various other breaches of common wartime practices. After widespread accusations of chemical weapons use, the United Nations (2013) found in an official investigation "that chemical weapons have been used in the ongoing conflict between the parties in the Syrian Arab Republic, also against civilians, including children, on a relatively large scale" (p. 3). Reports of atrocities have been commonplace in the current conflict since it began. In 2013, Human Rights Watch (2013) found that pro-government forces entered the town of al-Bayda, moving from house to house rounding up and executing the town's men in the street. There are also widespread accusations of forced conversions. Amnesty International (2014) reported that, along with their assaults in Iraq, ISIS pushed "dozens of Yezidi border guards and soldiers" into Syria, where they were forced to convert to Islam (p. 25). The breadth of abuses purported to have been committed, outlined by Kraehenmann (2014), Human Rights Watch (2013), and Lister (2016) include summary executions, ethnic cleansing, slavery, sexual abuse, pillaging, kidnapping, and torture. Heinous practices such as these amount to only a sampling of the complex situation currently unfolding in Syria.

In the spring of 2011 Syria was swept up in the destabilizing Arab Spring movement. The outcome of the movement in Syria was more uncertain and extended

than that of other countries touched by the movement. March of 2011 brought resistance in the towns of Derra and Damascus. That resistance quickly spread to the rest of the country following a violent crackdown by government forces, with the first incidents of armed insurrection occurring in the city of Homs in April of that same year (Berger & Stern, 2015; Lister, 2016). The crisis in Syria that began as a revolutionary uprising rapidly became a humanitarian disaster unlike any that the world had seen in some time. Syria has become a hotbed for human rights violations, with Seils (2013) noting that there have been ongoing reports of systemic abuses throughout the entirety of the now approximately six-year war.

The civil war began in 2011 as a grassroots movement demanding political and socio-economic reforms. After President Bashar al-Assad attempted to suppress the movement with a violent response, outright war broke out (ARK, 2016). At the time of the uprising there was already a tense climate in regard to the ruling Assads. After decades of crackdown by Bashar and his father Hafez, a large portion of the country turned on their government in response to the violent reaction to protests (Al Jazeera, 2016). While the conflict was originally non-sectarian in nature, eventually sectarian elements began to arise and factions began to develop (Al Jazeera, 2016). The uprising was initially divided into pro-government vs. anti-government forces, but as time went on, five main players began to take shape in the conflict: FSA, Jabhat al-Nusra Front, YPG, ISIS, and forces loyal to the government of Bashar al-Assad.

FREE SYRIAN ARMY

Shortly after armed rebellion began to take place, many soldiers in the Syrian military began to refuse government orders to fire on their own citizens, and defected, despite the fact that defection meant execution if caught by the regime. In a video released on June 9th 2011, Lieutenant Colonel Hussein Harmoush and 150 of the soldiers under his command publicly defected in the village of Bdama in Idlib, creating the Free Officers Movement (FOM). This event effectively ignited the formation of organized resistance (Lister, 2016). The FOM would eventually merge with the FSA following the kidnapping and execution of Harmoush by the Syrian regime; the September merger was initiated by FSA founder and leader Colonel Riad al-Assad in July of 2011 (Lister, 2016). Within a year of the uprising, 60,000 soldiers had defected from the pro-regime forces. Many joined the FSA, as well as several other resistance groups (Lister, 2016; Spyer, 2012).

The Free Syrian resistance movement continued to grow and organize, establishing a formal relationship with the exiled Syrian National Council (SNC) in December 2011 (O'Bagy, 2013; Lister, 2016). The fledgling movement required exterior support, and due to mixed results in Libya, governments in the West were hesitant to offer broad support. Regional states (Qatar, Saudi Arabia, and Turkey) began to step up and offer support in place of the West (ARK, 2016; Lister, 2016). Due to the fact that the FSA was made up of competent defecting officers, the movement began to see military successes, and quickly became the *de-facto* force of the revolution (Lister, 2016). With the formal leadership residing in Turkey, forces on the ground in Syria had difficulty

communicating with official command, and many factions began acting independently
(ARK, 2016; Lister, 2016).

With a lack of accountability, the FSA began to veer off into questionable tactics.
Accusations of war crimes emerged as early as a year after the organization's formal
creation (Weaver, 2012). These matters were complicated by the involvement of foreign
actors, namely that of western powers, leaving a sense that the FSA was not being held
accountable for some of the more nefarious acts that it had undertaken (Weaver, 2012).
The FSA ran into further issues as it attempted to become a preeminent force in the war,
as it proved unable to unite the various factions in Syria. This opened the door for Salafi
Islamist fighting groups, and despite maintaining some semblance of partnership with
said groups, the inability of the FSA to operate independently and effectively severely
limited its potential for future success (Berger & Stern, 2015; Lister, 2016). Regime
forces also began to regain territory and authority beginning in 2013 as a result of the
FSA's failures. Several FSA leaders pointed to the lack of significant assistance from
western governments as a factor that contributed heavily to their inability to grow and
maintain the force and its successes (Lister, 2016). The introduction of ISIS as a force
attempting to usurp all competitors made FSA supremacy and gains an even more distant
dream. The Free Syrian movement began to lose ground on even more fronts (Berger &
Stern, 2016; Lister 2016). In fact, western aid was largely what sustained the FSA.
Islamist and regime forces were wary of any possible "limited strikes" by US forces, the
FSA attempted to take advantage of that fear as much as possible (Cafarella, 2014; Lister,
2016). The regime's fear of US-led strikes in response to alleged chemical weapons use
by the Assad government ended when a deal was struck that saw the regime's chemical

weapons stockpile turned over to avoid confrontation, dashing the revolution's hopes of a western intervention against the state's forces (Lister, 2016; United Nations, 2013).

Russian intervention on behalf of the Assad regime targeted the mainstream opposition, complicating matters further for the FSA (ARK, 2016; Lister, 2016). Yet, in 2015 the struggle continued, with the FSA making gains with the help of additional foreign aid, as well as the intermingling of independent Islamist forces (Lister, 2016). By this point, the "Free Army" banner had become a broad encompassing label that included many different factions and forces, so long as they adhered to the main components of the revolution (Lister, 2016). In 2016, as Lister (2016) noted, the tentative relationship between the FSA and Jabhat al-Nusra Front fell apart, and even more elements of the conflict began to surface. The current state of the FSA is up for debate. With the US still offering support to certain "vetted" factions, but Lister (2016) sums the organization's present incarnation as follows:

> "By late-2016, the FSA had come to represent an expansive, socially and
> symbolically powerful but complex umbrella movement, composed of dozens of
> semi-autonomous armed opposition groups (AOGs) that are united by the original
> moderate ideals of Syria's revolution. The FSA is a decentralized insurgent
> movement that continues to represent the core ideals of Syria's revolution:
> dignity, justice, freedom and liberty" (p. 24-25).

With Syria's "moderate" force unified in name only, presenting a reasonable, western-backed alternative to the Assad regime and the violent Islamist groups became extremely

difficult. The only other alternative seems to be that of the Kurdish YPG, and regional

authorities would rather it fail.

KURDS

Before the onset of hostilities in Syria in 2011, Kurdish Syrians living in the north

of the country along the border with Turkey were largely marginalized by Assad's

government (ARK, 2016). Ethnic Kurds made up approximately 10% of Syria's pre-war

population of 23 million, making their marginalization a significant impediment to a just

Syria (BBC, 2011; ICG, 2013). The Kurdish population's struggle has historically been

about rights and autonomy, and the group saw an opening in the upheaval following the

Arab Spring. The Kurds in Syria, however, are taking advantage of the instability and

unpredictable future of the state, as ICG (2013) reported:

> "As occurred in Iraq in 1991 and again in 2003, the current acute crisis presents
>
> Kurds with an opportunity to rectify – or at least start rectifying – what they
>
> consider an historic wrong: the decision by the French and British Mandatory
>
> powers to divide the Near East in a way that left them as the largest non-state
>
> nation in the region" (p. i).

The Kurds saw the crisis in Syria as an opening through which they might be able to

seize their sovereignty. The largest Kurdish political party in the region, the Partiya

Yekîtiya Demokrat (Democratic Union Party, PYD), is an armed group that is the Syrian

Kurdish offshoot of the PKK (Kurdistan Workers' Party) which operates in Turkey

(ARK, 2016; Berger & Stern, 2015; ICG, 2013). After the regime forces pulled out of

Kurdish areas in July 2012, the PYD utilized its trained fighting force to expel

government officials and erect Kurdish flags in place of those of the regime (ICG, 2013).

Despite the pro-Kurdish independence approach, the PYD, and also the grouping of

Kurdish factions known as the Kurdish National Council (KNC), shied away from

espousing an all-out anti-regime stance, and instead chose to propagate a pro-Kurdish

image (ICG, 2013).

The PYD established a militant wing, the People's Defense Corps (Yekîneyên

Parastina Gel, YPG), which began patrolling Kurdish controlled areas, as well as entering

into confrontations with other groups (ARK, 2016; ICG, 2013). The YPG has had

significant success fighting against groups such as ISIS, taking hold of a number of towns

from the group (Barbarani, 2015). Foreign fighters have served a significant role in the

Kurdish efforts to defeat ISIS and take control of towns under the control of the radical

group. The "Lions of Rojava" is a group made up of volunteer western fighters that fight

alongside the YPG in an attempt to defeat ISIS (Barbarani, 2015). The YPG and its

associated forces have proven to be an effective fighting force against ISIS (BBC

Monitoring, 2016).

Despite the relative strength and success of the YPG, the militia has had

difficulties. Amnesty International (2015) issued reports alleging that "A fact-finding

mission to northern Syria has uncovered a wave of forced displacement and home

demolitions amounting to war crimes carried out by the Autonomous Administration led

by the Syrian Kurdish political party Partiya Yekîtiya Demokrat (PYD) controlling the

area." Evidence of possible razing of homes was obtained through satellite images

captured by Amnesty International (2015) that showed a distinct reduction in standing

structures. The possibility of war crimes on the part of the Kurdish forces raises

questions about yet another actor in the Syrian war, which is troubling, concerning the fact that the other main forces have even more evidence of war crimes against them.

JABHAT AL-NUSRA FRONT

The creation of the Jabhat al-Nusra Front (full name Jabhat al-Nusra li-Ahl al-Sham min Mujahidi al-Sham fi Sahat al-Jihad, or The Support Front to the People of the Levant by the Mujahideen of the Levant on the Fields of Jihad) has extensive ties to the mujahedeen movement that fomented groups such as al-Qaeda (Cafarella, 2014; Lister, 2016b). The group began as an extension of the Islamic State of Iraq (ISI) which itself was born out of AQI; ISI leader, Abu Bakr al-Baghdadi, sent a Syrian, Abu Mohammed al-Jolani, and several of his companions into Syria in an attempt to establish a Syrian wing for ISI (Berger & Stern, 2015; Lister, 2016b). After receiving some support from ISI, Nusra Front broke with the group in April 2013 and entered into direct confrontation with ISIS, the renewed and expanded ISI, in 2014 (Lister, 2016b). Nusra Front operated as a Syrian wing of al-Qaeda central command, which itself came into direct conflict with ISIS (Chulov, 2016; Lister, 2016b).

Nusra Front quickly established itself as a force in the Syrian conflict, engaging in a gradualist approach that slowly engaged the population surrounding their sphere of influence to support the al-Qaeda linked movement (Cassman, 2016; Lister, 2016b). The insurgent group functioned as an extension of al-Qaeda's influence, acting as the most successful incarnation of central command's plan to establish localized cells from which to launch coordinated attacks (Cassman, 2016; Lister, 2016b). Despite these factors, Syria's opposition has largely tolerated the presence of the group due to Nusra Front's

ability to carry out effective attacks on the Assad regime, but in periods of time when

hostilities have been suspended, opposition groups have had a chance to examine

ideological ties and reject the group (Cassman, 2016; Lister, 2016b). The inability of

parties in Syria to maintain a cessation of hostilities has, however, allowed Nusra Front to

maintain its power base and expand its influence (Lister, 2016b). While the organization

is not as well known in the mainstream as groups such as ISIS, they have become a

significant force, recruiting approximately 3,000 Syrians into its ranks in the months

between February and June of 2016 (Lister, 2016b). The threat of US-Russian strikes,

and an increasing scrutiny as to their allegiance to the Syrian cause, pushed the Nusra

Front to reconsider its relationship with al-Qaeda central. Eventually the group opted to

move closer to Syrian opposition groups, rebranding itself 'Jaish al-Fateh al-Sham,' also

known as the Front for the Conquest of the Levant (Cassman, 2016; Chulov, 2016; John,

2016; Lister, 2016b). The decision to pivot toward a more independent position, separate

from central al-Qaeda command, is political in nature, seeking to engage Syrian

opposition groups into a more interdependent relationship (Chulov, 2016; Lister, 2016b).

The radicalism displayed by the Nusra Front has raised concerns throughout the

international community, such as the group's calls for genocidal acts toward Syria's

minority Alawite population, which represents around 8% to 15% of Syria's population,

and of which the ruling Assad family is a part (BBC, 2011; Lister, 2016b). Numerous

troubling crimes, outlined by Amnesty International (2016) and Human Rights Watch

(2016), include an increase in abductions by Jabhat al-Nusra Front of journalists,

activists, and lawyers in an attempt to suppress free speech. There were also reports,

documented by Amnesty International (2016), of summary killings in Aleppo and Idlib

carried out by Nusra Front and affiliated forces on civilians and members of other

fighting groups, sometimes in front of crowds. Amnesty International (2016) also noted

that the first attack that Nusra Front took responsibility for, in 2012, was a suicide

bombing in Damascus that killed 26 people. Nusra Front has consistently utilized tactics

and practices that violate the established rules and norms of conflict, frequently targeting

civilians, and engaging in what may amount to crimes against humanity.

The actions of Jabhat al-Nusra Front become more complicated when the

presence of foreign fighters is considered. A report by Barrett, Berger, Ghosh,

Schoenfeld, el-Shawesh, Skinner, and Soufan (2015) found that in 2015 alone Turkey

arrested 100 people attempting to cross the border into Syria to join Nusra Front. The

fighting force is estimated to have anywhere between 5,000 and 20,000 fighters in total,

as John (2016) noted, and is composed of 70% foreign fighters and only 30% localized

members. Having a high concentration of foreign fighters complicates the alleged

commission of war crimes even further, and draws into question what justice will be

served, and how it will be served. The foreign component and allegations of war crimes

have dogged Nusra Front as well as many other insurgent elements. Yet, the group that

has received the most press is likely that of ISIS.

ISIS

The Islamic State of Iraq and Syria is a key player in the Syrian civil war that has

drawn upon the instability in Syria and Iraq in order to establish a self-declared Islamic

Caliphate and impose a barbaric and archaic interpretation of Islam. ISIS has its roots in

al-Qaeda, specifically AQI, which was founded and run as a wing of central command in

October 2004 by Abu Musab al Zarqawi and quickly began a campaign of brutality and violence, including public beheadings and bombings (Berger & Stern, 2015; Lister, 2014). Following Zarqawi's death in June of 2006, the organization was rebranded as the Islamic State of Iraq (ISI) and Abu Omar al Baghdadi was declared the leader (Berger & Stern, 2015; Lister, 2014). After Abu Omar al Baghdadi was killed in a US-led airstrike in 2010, Abu Bakr al Baghdadi was named the leader of ISI, and he quickly began to expand the group's influence in the region (Berger & Stern, 2015; Lister, 2014). ISI gained ground in the aftermath of the uprising in Syria, with the group rebranding itself as ISIS once it moved its influence into the country in 2013. The group did this while moving further away from al-Qaeda central command, which sought Jihad abroad as opposed to ISIS's more Syria-focused strategy (Berger & Stern, 2015; Brown, 2015; Lister, 2014). Ayman al Zawahiri, leader of al-Qaeda Central, publicly severed ties with ISIS in 2014 as Baghdadi's group gained strength and territory, and came into conflict with Nusra Front, as well as other rebel groups (Berger & Stern, 2015; Lister, 2016c). Since its inception, ISIS has been a menacing presence in the region, enacting a campaign of barbarism and cruelty; the group's actions have made it a consistent violator of human rights.

ISIS has spent its tenure in Syria and Iraq attempting to establish an "Islamic Caliphate," which is a sovereign state led by the self-declared caliph, Baghdadi, and in doing so has caused a substantial amount of bloodshed. In territories under ISIS control, a strict fundamentalist approach to Islam is practiced, with violent punishments for those who disobey. A report by the United Nations Human Rights Council (2014) noted that ISIS utilizes harsh punishments for those residing in territory under its control if they do

not follow the rules of the group. The report, as well as Berger & Stern (2015), argued

that those found to be in violation of ISIS's strict interpretation of Shariah law, were

punished with lashings, amputations, torture, death, and a myriad of other penalties that

fly in the face of human rights. The group's rigid interpretation of Islam has led to

allegations of horrendous crimes, such as one instance, reported by Dearden (2015),

when two children under the age of 18 were allegedly crucified for violating their fast

during Ramadan. Their bodies were then displayed in public. This is not the only

instance of barbarism toward children by ISIS. There are reports of ISIS crucifying

children, burying them alive, using mentally handicapped children as suicide bombers,

and even selling young children into sex-slavery (Buncombe, 2015). These acts of

brutality toward those living in territory that the group controls are coupled with its

horrifying tactics of warfare, especially toward those whom it captures.

Allegations of the forced conversions of Yazidi border guards, as well as attempts

to commit acts of genocide upon the Yazidi people, are some of ISIS's most notable

offenses, but they have also undertaken other unique acts of brutality (Amnesty

International, 2014). ISIS has engaged in a concerted effort to broadcast its barbarism to

the world by beheading journalists, aid-workers, and soldiers, burning people alive,

drowning captives in cages, as well as many other violent executions, and then

disseminating the footage online for the world to see (Amnesty International, 2014;

Berger & Stern, 2015; Brown, 2015; Wheeler, 2016). These acts fly in the face of the

established rules of engagement for warfare and pose a number of post-conflict justice

questions. The substantial presence of foreign fighters in the group complicates things

even further, given that a large portion of the estimated 30,000 extra-national fighters

have ventured to Syria following the recruiting call of ISIS (Barret et al., 2016). The

allegations of widespread war crimes, likely by, in part, some foreign nationals, mires an

already complicated situation even further. ISIS and other insurgent groups, however, are

not the only ones that have engaged in these acts, many reports suggest the regime of

Bashar al-Assad has violated the norms of warfare on several occasions.

ASSAD

Bashar al-Assad succeeded the rule of his father, General Hafez al-Assad, in

2000, after he had run the country as a military dictatorship since 1970 (Berger & Stern,

2015). The repressive tactics of the Assad regime pushed a large portion of the Syrian

people into protest following the eruption of the Arab Spring movement. The movement,

however, quickly evolved into outright resistance, upon which the regime brutally

cracked down. Following the torture of some teenage boys in Daraa in response to anti-

government graffiti, protesters took to the streets. They were then fired upon by regime

forces in what became known as "Great Friday", which resulted in the death of 100

protesters (Berger & Stern, 2015; Lister, 2016). The violence quickly escalated

throughout the country, and by May of 2011, only a few months after the initial protests,

over a thousand people had been killed (Berger & Stern, 2015). Resistance rapidly

evolved into all-out warfare, with exceedingly brutal tactics, causing many in the

regime's security forces to defect to opposition factions.

The Assad regime has been accused of violating the norms of warfare and

engaging in crimes against humanity. In one instance, an egregious offense occurred

when government and opposition forces met in the town of al-Bayda; Human Rights
Watch (2013) summarized the incident as follows:

> "Around 1 p.m., the local opposition fighters retreated and government and pro-
> government forces entered the village and proceeded to search the houses. Over
> the next three hours, a familiar pattern repeated itself in most parts of al-Bayda:
> government and pro-government forces entered homes, separated men from
> women, rounded up the men of each neighborhood in one spot, and executed
> them by shooting them at close range" (p. 1).

Summary executions of civilians is an egregious offense, and the international
community was quick to rebuke the regime forces' actions. Government forces,
however, continued a campaign of barbarism against the Syrian people. The Assad
regime has frequently targeted opposition and often civilians in systemic campaigns of
violence that amount to war crimes. Amnesty International (2017) reported that in the
five years between 2011 and 2015 up to 13,000 people were hanged in secret at a prison
in Saydnaya. Many of the people killed at the prison were civilians. One of the most
damning allegations came with backing of the CIA, which purported that the regime
utilized chemical weapons on opposition groups, civilians, and even children (Lister,
2016; United Nations, 2013). The use of chemical weapons is largely viewed by the
international community to be a "red-line" for intervention against the regime. Political
maneuvers between Assad and Russia regarding a relinquishment of the country's
chemical weapons stores were sufficient to avoid that scenario (Browne & Labott, 2016;
Kessler, 2013; Lister, 2016).

The relationship between the Assad regime and Russia has complicated matters even further, with Putin's government backing a head of state that has allegedly committed egregious offenses on numerous occasions, some with Russian support (Lister, 2016). The tactics employed by Syrian and Russian forces have drawn widespread condemnation. Among other things, Amnesty International (2016b) documented that the two governments engaged in systematic targeting of hospitals in opposition areas, in a flagrant violation of the established norms and international law. Russian actions in aid of Assad have frequently come under fire as war crimes, as Lister (2016) noted:

> "Russian aircraft were blamed for an intentional two-hour attack on a UN-mandated humanitarian aid convoy and over 500 people were killed in two weeks of bombing that followed. Bunker buster bombs were used for the first time, including on hospitals constructed underground" (p. 23).

Assaults on aid workers as well as places such as schools and hospitals are flagrant violations of accepted humanitarian law. This has mired not only Syrian forces, but the Russian and Iranian governments, which have aided Assad, in international condemnation.

The Assad regime has come under constant scrutiny from the international community for its role in war crimes perpetrated on opposition forces as well as civilians and even children. Syria's war has become a six-year lesson in cruelty, leaving millions displaced and hundreds of thousands dead. The conflict will leave an entire generation lost, with no clear picture as to what a future Syria looks like, if a future Syria even

exists. The number of people who have been displaced over the course of the war is staggering: a total of 11 million Syrians displaced, 6.3 million as IDPs, more than 4.8 million registered as refugees, and half of those refugees are children (Amnesty International, 2016c; Mercy Corps, 2016; UNHCR, 2017). Such a mass exodus alone would make the situation a humanitarian crisis of epic proportions, but the chaos does not end with displacement. Over 13.5 million people in Syria are still in need of humanitarian assistance, between 450,000 and 470,000 people have died, including 50,000 children killed, and life expectancy in the country has dropped to 55.4 years in 2015 from 77.5 in 2010 (Boghani, 2016; I Am Syria, 2016). The crisis in Syria has seen the country in constant turmoil, torn apart by numerous violent actors, with civilians caught in-between. There will have to be extensive restorative measures in order to help the people of Syria move forward once this violence has ended.

Despite numerous substantiated reports regarding the violence, death tolls, and atrocities in Syria, the true extent of the situation is hard to determine in its current stage. The difficulty of documenting, verifying, and subsequently stopping these alleged crimes against humanity is immense due to the volatile nature of the Syrian conflict. Violent actors have been actively ripping apart any semblance of a state over the course of the last six years, and therefore it is going to take a concerted effort and a substantial amount of time to determine the true extent of the crisis that has unfolded for the Syrian people. As the violence reigns, and long after the dust settles, the need for transitional justice will be considerable. Sorting through the violations committed by each actor, holding foreign participants accountable, and assembling a governing body to manage transitional justice measures will involve a Herculean effort. The effort, however, is one of absolute

necessity if the Syrian people are to have any hope of moving forward after this brutal and horrific chapter in their history.

C. Transitional Justice

Transitional justice is a complex and ever-changing instrument of post-conflict reconstruction and reconciliation. As time has passed, the concept has evolved from that of solely an internal matter for the country involved to an internationally monitored necessity involving everything from trials to reparations and memorials. The institution of transitional justice is a multifaceted undertaking with the purpose of doling out justice where it is due, stopping victor's justice, preempting cycles of violence, reinstating order, and assisting in the reconciliation of victims and perpetrators so that society can move forward together and rebuild. Countries have implemented transitional justice measures for centuries, but the process has only become an accepted international imperative since the aftermath of WWII and the atrocities committed in Germany. Since the Nuremberg Trials, this process has evolved considerably. It experiences new interpretations and additions every time it is utilized, such as in the case of Rwanda, Yugoslavia, Colombia, South Africa, and many other countries. ICTJ (2017) has defined transitional justice as follows:

> "Transitional justice refers to the ways countries emerging from periods of
> conflict and repression address large scale or systematic human rights violations
> so numerous and so serious that the normal justice system will not be able to
> provide an adequate response."

The importance of implementing transitional justice measures is difficult to quantify, however there is a line of reasoning behind its usefulness. The peace process is just the first step in resolving the conflict as ICTJ (2012) noted,

> "Because systemic human rights violations affect not just the direct victims, but society as a whole, in addition to satisfying these obligations, states have duties to guarantee that the violations will not recur, and therefore, a special duty to reform institutions that were either involved in or incapable of preventing the abuses.

> A history of unaddressed massive abuses is likely to be socially divisive, to generate mistrust between groups and in the institutions of the State, and to hamper or slow down the achievement of security and development goals. It raises questions about the commitment to the rule of law and, ultimately, can lead to cyclical recurrence of violence in various forms."

Transitional justice is a means of bringing a society together so that it may move forward with more traditional reconstruction efforts, and attempt to rebuild after conflict or a period of transition.

Transitional justice has come into much more of a mainstream practice since the end of WWII; evolving and gaining traction in areas other than simply judicial proceedings. The scars that war inflicts upon society are ever-growing. Borer (2009) noted that during WWI 80% of casualties were soldiers, but by the 1990s up to 90% of those killed in war were civilians. The fact that war touches broad swaths of society in so many ways means that many different elements must be employed in order to heal the wounds created. While not limited to the elements in this section, the discipline has

developed into a set of elements, each meant to serve a different purpose. Some applications of the process are not possible due to the outcomes of the conflict period and/or transition, which van Zyl (2009) noted was the case for post-war Germany, when the Nazis were defeated outright. In contrast, Chile's transition allowed Pinochet to retain considerable authority over the military, making trials difficult to impossible. Despite the fact that they are not always possible, the most high-profile and oldest practiced of the toolset is that of criminal prosecutions, which have become a standard international staple following any ugly conflict since the trials following the fall of the Axis powers in the 1940s.

CRIMINAL PROSECUTIONS

The implementation of criminal prosecutions is the most traditional and practical of post-conflict reconciliation efforts. ICTJ (2009) defined the criminal prosecution effort as such, "These are judicial investigations of those responsible for human rights violations. Prosecutors frequently emphasize investigations of the "big fish": suspects considered most responsible for massive or systematic crimes" (p. 1). In fact, prosecutions were the first international display of the transitional justice process. As Scarlet (2009) noted, the post-conflict trials in Nuremburg that held high-ranking Nazi officials accountable for atrocities committed during the war is where the field finds its roots; before this "perpetrators of human rights violations committed during wartime were often granted amnesty as part of peace negotiations" (p. 170). Cole (2007) pointed out that the very concept of "crimes against humanity" was born out of the terrible acts committed during WWII and were created during the Nuremburg trials.

In the decades that followed those post-WWII prosecutions, transitional justice has been developed further. Since the 1980s there has been a dramatic uptick in calls for post-conflict trials for human rights abuses, in what Lutz and Sikkink (2001) and Sikkink (2011) have deemed "the justice cascade" (Kim and Sikkink 2012). This "cascade" of human rights prosecutions has had a positive impact, as Kim and Sikkink (2012) found through their study of transitional countries between 1980 and 2004, which showed that those with human rights prosecutions were less repressive than those without, and those with more cumulative prosecutorial processes were less repressive than those with less. The move toward holding perpetrators accountable for crimes against humanity was institutionalized as well, as noted by Huyse and Salter (2008)

> "A major policy shift, both morally and politically grounded, occurred from the mid-1980s onwards. The global growth of a human rights culture blossomed into a new, now much wider, fight against impunity. International agencies such as the United Nations (UN) and the Inter-American Human Rights Court as well as large human rights NGOs cooperated to develop both the norm and the practice of a duty to prosecute crimes against humanity, genocide and war crimes. This in turn resulted in the establishment of the ad hoc tribunals of The Hague (for the former Yugoslavia) and Arusha (for Rwanda) and of the International Criminal Court (ICC), and in the gradual spread of the principle of universal jurisdiction" (p. 2).

As accountability mechanisms grew, results began to solidify. The benefits of exercising human rights trials, while not conclusive, trend toward positive outcomes. Sikkink and Walling (2007) found that South America, a region that has had more of these trials than any other, has also seen profound transition to democracy, with waves of change since

the 1980s when Lutz and Sikkink's (2001) "justice cascade" began. Whether the trials are effective due to the threat of deterrence or the establishment of norms is still up for debate.

Some regions are historically more averse to domestic trials for human rights offenders than are others, and some vary in type of trial: domestic, foreign, or international. What differentiates domestic trials from foreign trials is location and operation, domestic trials occur in the judicial system of the country in question, whereas foreign trials occur in the judicial system of a country other than where the transition is taking place. International trials occur in much more of a hybrid system (Sikkink and Walling, 2007). Sikkink and Walling (2007) found that, in countries undergoing transition from an undemocratic regime to a more democratic one where human rights abuses had been committed, when the number of years wherein domestic trials were conducted were measured, the Americas had the highest instance with 54%, whereas the Middle East and North Africa were at the lowest with 0% (p.6). That low percentage of proceedings has dangerous implications when it comes to addressing post-conflict justice in current-day Syria, as the region has not had widespread success utilizing the founding element of transitional justice. That historical deficit is not the end of the road, however, as many countries opt for other elements of the post-conflict process in order to tailor it to their situation.

Criminal prosecutions are not always the most satisfactory of the transitional justice process. This is because most societies that are just coming out of conflict or a period of transition are not capable of punishing large swaths of offenders in their court systems. Due to the fact that Pinochet and his allies still commanded considerable power

in Chile when the country transitioned toward democracy prosecution of many human rights abusers was not possible, as van Zyl (1999) noted. Rwanda, for example, has had a difficult time processing the more than 100,000 Rwandans that took part in the country's genocide, requiring the utilization of more community based efforts, which will be examined later on as extensions of traditional transitional justice (Scarlet, 2009). South Africa also underwent a complex transitional endeavor following the Apartheid era. Due to an inability to effectively prosecute all offenders, the South African Truth and Reconciliation Commission (TRC) was created in order to grant forgiveness in order to gain a fuller picture of the period in question (Huyse and Salter, 2008). Once a community asses the grand nature of a prosecutorial endeavor following a period of transition the reality that not everyone accountable can be punished becomes a heavy weight to bare. Rwanda ran into this problem following the 1994 genocide that left 800,000 people dead when neighbors were encouraged to kill neighbors (Westberg, 2010; Gourevitch and Stewart, 2015). Approximately 120,000 suspects were imprisoned by the government following the genocide, a number far too high for the country's court to handle, so Rwandans went a different way (Westberg, 2010). Gacaca Courts were established as a community measure that allowed neighbors to come together and address the levels together, bringing victims and perpetrators together (Westberg, 2010; Brehm, Uggen, and Gasanabo, 2014). The success of small-scale individualized approaches to transitional justice such as the Gacaca Courts is testimony to the interpretive nature of each transitional justice process. The one commonality between all post-conflict societies, however, is the need to find the truth.

TRUTH COMMISSIONS

Truth commissions are utilized in an effort to uncover what actually happened during the period of conflict so that victims may be vindicated, and wounds can begin to heal. ICTJ (2009) noted the purpose of these truth commissions, "These commissions of inquiry have the primary purposes of investigating and reporting on key periods of recent abuse. They are often official state bodies that make recommendations to remedy such abuse and to prevent its recurrence" (p. 1). Further delineating the purpose of truth commissions, Cárdenas, Páez, Rimé, and Arnoso (2015) wrote that the process serves:

> "(i) To attempt to discover the truth about the period of collective violence; (ii) to recognize and validate victims' suffering; (iii) to provide compensation for those affected, both materially and symbolically; (iv) to contribute to the creation of an inclusive collective memory oriented toward the future; (v) to prevent new acts of violence; and (vi) to seek justice."

The desired outcome of truth commissions is directly aligned with that of criminal prosecutions, with the hindrance of punishment replaced with amnesty in an effort to make discovering the truth more plausible.

South Africa is one of the better known examples of this facet of the transitional justice process. Due to the country's unique transition and an inability on the part of the courts to prosecute offenders, as van Zyl (1999) noted, the process of truth commissions had to be used, instituting the controversial practice of amnesty. The purpose of the truth commissions, as described by Borer (2009) and van Zyl (1999), was to get to the truth of what happened in order to grant amnesties and establish who deserved reparations. The

amnesty was outlined in the Promotion of National Unity and Reconciliation Act of 1995 which explained that the commission should work toward the purpose of "facilitating the granting of amnesty to persons who make full disclosure of all the relevant facts relating to acts associated with a political objective and comply with the requirements of this Act" (ch. 2, sec. 3[1][b]). The Act, as noted by Borer (2009), also determined which victims had suffered gross violations of human rights (GVHR), determined by those that had experienced, or in certain circumstances had relatives experience "harm in the form of physical or mental injury, emotional suffering, pecuniary loss or a substantial impairment of human rights" (ch. 1, sec. 1[xix]). The commission undertook a massive endeavor, taking statements from 21,000 potential victims regarding 37,672 potential human rights violations (Borer, 2009; Cole, 2007). Amnesty was denied in 5,392 cases out of a total 7,112, yet there were not many significant prosecutions to follow, instead the stated opted for a formal apology, and the TRC made several recommendations, including issuing reparations, prosecuting those that were denied or did not seek amnesty, and the institution of reforms (USIP, 1995).

The question then becomes, for cases such as that of South Africa and others like it, what is to be done with those that are not prosecuted and incarcerated? How is society supposed to bring actors in conflict back into the fold once it has ended? Reintegration is a complex endeavor, but one that is necessary if a society is to truly move on without cycles of violence, and stop "victor's justice" then it must address how former combatants are to coexist in the same society as their victims.

REINTEGRATION EFFORTS

Reintegrating former combatants after a period of conflict and/or transition is a difficult yet necessary endeavor. The act of reintegration is also an act of disarmament, which is an endeavor of the peace process, Nilsson (2005) and Clark (2014) noted that disarmament and reintegration ensures assimilation back into society. This prevents a return to violence. The act of reintegration is so integral to the post-conflict process, and the process of peace and disarmament itself, that the United Nations has even published The Integrated Disarmament, Demobilization and Reintegration Standards (IDDRS) which link heavily to the cause of transitional justice (Clark, 2014; UNICEF, 2006). The efforts to reintegrate combatants have become a priority due to the fact that trust and security cannot be gained while there is still a large group of armed belligerents left-over from conflict (Nilsson, 2005). As conflicts end reintegration becomes a difficult task to accomplish, there is the threat of former combatants engaging in crime, the need for special assistance for certain sub-groups of fighters, and the fact that people that were once soldiers suddenly need new jobs, and if those jobs are even possible to create, they still have to work alongside people that they may have harmed, or may know someone that they have harmed (Nilsson, 2005). This fact is why the process of reintegration is often undertaken as an element of a broader transitional justice process and not the sole endeavor itself; there is healing, truth-seeking, and justice required in order for a society to accept the reintroduction of former combatants into the fold.

According to the UN (1999), in order for combatants to be reintegrated they need to be ex-combatants, which means they need to be disarmed. However, there is some difficulty, as Nilsson (2005) noted, due to the fact that despite a clear definition of what a

combatant is in interstate war, with the presence of guerilla forces and other groups with

a lack of clear organization, there is no clear delineation for those in intrastate war. This

murky classification makes the process of reintegration difficult, but it is not a problem

that is going away. In a study observing the types of armed conflict from 1946-2008,

PRIO (2009) found that intrastate conflict was far more predominant than that of

interstate conflict, as can be seen in figure 1. The prevalence of intrastate conflict in the

modern world presents a conundrum for post-conflict justice in places such as Syria,

which has multiple non-state forces involved in the conflict, as well as Colombia, which

is in the midst of a peace process between the state and the leftist guerilla group *Fuerzas*

Armadas Revolucionarias de Colombia (FARC).
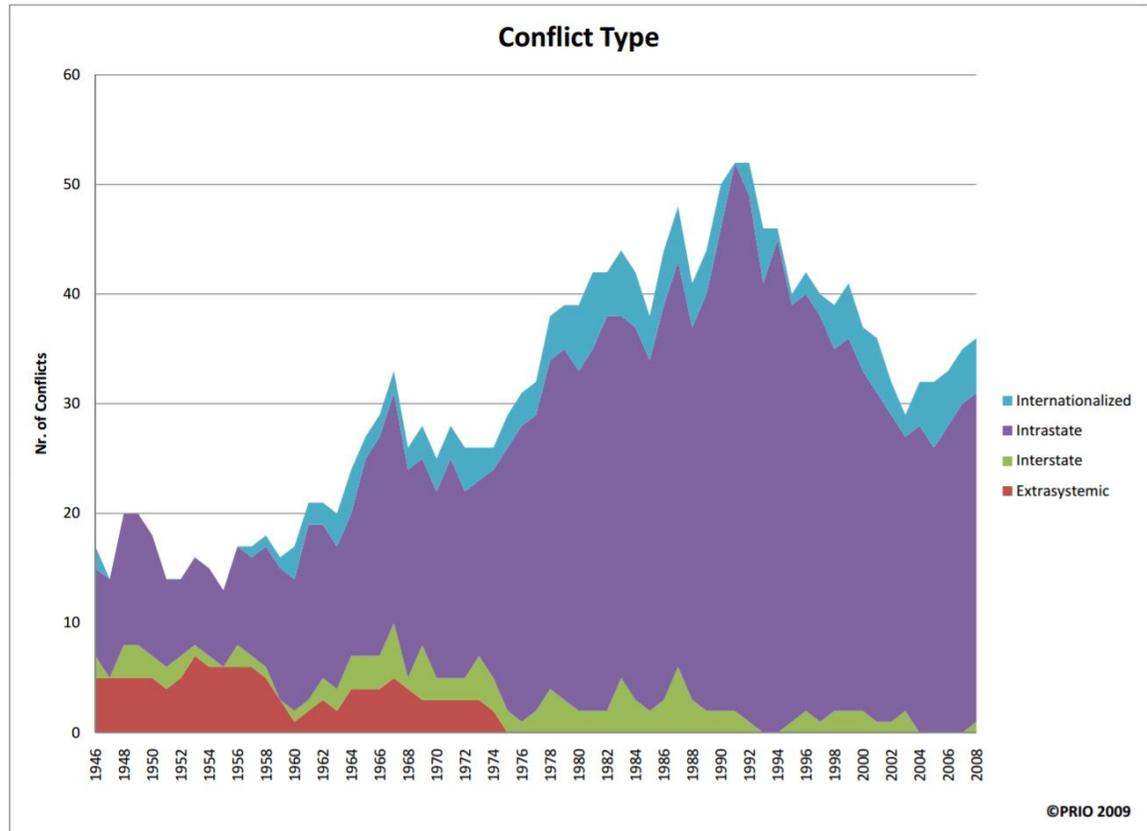
Note. Retrieved from PRIO: Armed Conflicts Version 4-2009. Copyright 2009 by PRIO. Reprinted with permission.

The conflict between the Colombian government and the FARC dates back to 1964, but it has roots as far back as the 1940s, operating as an armed peasant resistance group (Vargas, 1999). With such an entrenched and historical conflict, the peace process, and by extension the transitional justice process is a complex endeavor to undertake, but the two sides have been working to come to an agreement. Reintegration is of paramount concern, as the FARC is estimated to have between 8,000 and 10,000 active combatants, according to Howe and Nussio (2012), which means the government cannot simply lock every offender up. They must find a way to reconcile the fighting forces with the civilians that have experienced the ravages of such a long and protracted conflict. The

damage done by the conflict in Colombia has created a tense atmosphere that is not conducive to a process such as reintegration, as International Crisis Group (ICG) (2013b) concluded, "over five decades, the conflict has claimed the lives of an estimated 220,000, displaced over five million and made refugees of nearly 400,000" (p. ii). The reluctance to accept peace and reintegration measures was illustrated in 2016 when the Colombian people rejected a referendum that would result in peace between the government and the FARC forces; as of this writing a new deal that would require more openness by the FARC about illicit activities committed has been approved by the Colombian government (Onyanga-Omara and Gomez, 2016). Part of that reconciliation and reintegration process involves airing the truth about what has happened. One of the conditions, outlined in a NOREF report by Pfeiffer (2015) is "committing to telling the truth about their paramilitary past by signing a truth agreement with the government" (p. 2). Truth telling, as has already been established, is an essential part of the transitional justice process, so much so that it is often tied in with reduced sentencing. The NOREF report also cites other amnesty conditions that must be met by FARC members, such as "satisfactory participation in the government's reintegration programme; not being involved in other crimes post-demobilisation; and undertaking 80 hours of community service" (p. 2). DDR is an integral part of the post-conflict process, and many times, such as the case for Colombia, it is also a part of the peace process.

REPARATIONS PROGRAMS AND MEMORIALIZATION EFFORTS

Initiating reparations programs is an important step toward repairing the damage that has been done to the victims of a conflict. ICTJ (2009) explained that reparations programs are "state-sponsored initiatives that help repair the material and moral damages

of past abuse. They typically distribute a mix of material and symbolic benefits to victims, benefits that may include financial compensation and official apologies." Reparations programs have been undertaken by many post-conflict and transitional societies, Huyse and Salter (2008) and ICTJ (2016) pointed to Sierra Leone after its period of unrest ended in 1999, which anointed the National Commission for Social Action (NaCSA) the agency in charge of implementing reparations programs, it has received government grants as well as aid from the international community, but it has still suffered from a lack of funds in attempting to compensate victims. Sierra Leone has engaged in reparations programs, such as the President's formal apology to the women impacted by the violence as a symbolic compensation, but those programs, as ICTJ (2016) pointed out, were only a portion of the country's transitional justice endeavor. The process of repaying victims for the pain and suffering they endured was tied to truth commissions and eventual prosecutions. While there was a large degree of amnesty granted through the truth commissions, the establishment of The Special Court for Sierra Leone in 2002 began a process which, as of 2011, had resulted in eight convictions. Several countries have initiated reparations plans. Following a recommendation by the Truth and Reconciliation Commission, Peru began to institute a reparations program for victims in 2005, and Timor-Leste has approved recovery and reparations programs, although little progress has been made. It is important to link reparations with prosecutions and/or truth-commissions, as ICTJ (2009) and Duthie and Greiff, (2009) noted, in order to remove the appearance of paying off victims.

Reparations often come in the form of material gestures, as well as symbolic ones. Following the violent reign of the Pinochet regime in Chile, the government awarded

victims $1.6 billion to victims, created a special healthcare program for survivors, and issued an official apology (ICTJ, 2016). Formal apologies, while not a substantial way to replace what has been lost, can be an integral part of the reparations process. The purpose of an apology, as Verdeja (2010) wrote, is to bring attention to the suffering and abuse that may have occurred during a time of upheaval, an acknowledgement of regret over wrongdoing, a solidification of acceptance of accountability, but it is not sufficient reparation on its own, there must be some combination with compensation.

Reparations are a touchy subject, but often times a necessary undertaking in order for people to feel that they have gained back some semblance of what they have lost. The process of reparation is accurately summed up by a report from the United Nations Office of the High Commissioner of Human Rights (OHCHR) (2008):

> "It is generally understood that the right to reparation has a dual dimension under international law: (a) a substantive dimension to be translated into the duty to provide redress for harm suffered in the form of restitution, compensation, rehabilitation, satisfaction and, as the case may be, guarantees of non-repetition; and (b) a procedural dimension as instrumental in securing this substantive redress" (p. 6).

There is a clear importance in allowing victims to experience some form of redress. Without a substantial and acceptable amount of compensation for their pain and suffering no amount of truth-telling or criminal proceedings will help those affected move past what they experienced.

Reparations programs in transitional justice processes can be difficult to give shape to, as the process itself is inherently subjective. The OHCHR report on the measures required goes on to delineate criteria required for ensuring "completeness" of the programs. The requirements include basing the program around information about the victims, making the program participatory in nature, including a large amount of outreach as a central tenet of the proceedings, making the process as accessible as possible, and requiring evidentiary thresholds (p. 16-18). All these components are central to a successful reparations program within a post-conflict justice system. However, compensating victims is not only accomplished through reparations, but also through the institution of memorials and tributes, ensuring that society never forgets that chapter in history.

Monuments and memorials are a service to memory, they serve a purpose, but they can often serve a variety of them. The impact of monuments is described by Mégret (2010); "At times, monuments are specifically built for commemorative purposes, at times, certain monuments are destroyed in particular symbolic ways and yet, at other times, monuments that were symbolic of the criminal regime are kept, although at counter-purpose" (p. 26). Symbols operate in a powerful way, serving as a reminder in many forms. Memorials occur in many societies post-conflict in order to collectively remember. In South Korea many communities held memorials following the Korean War and the post-conflict truth commissions, and the same can be said for many other societies following the closure of conflict (Hayner, 2010). Memorials also often occur in a lasting physical form, for example, monuments to the Holocaust in Nazi Germany exist all around the world as a means of collective remembrance. There are many different

expressions of memorialization, as Barsalou and Baxter (2007) pointed to, it can be a constructed site, such as monuments, museums, commemorative libraries, victims' names on walls, or internet memorials; a found site, such as graves, mass killing or genocide locations, or the sites of former concentration camps or torture centers; and activities, which can include anniversaries of events related to the conflict, temporary exhibits, renamed/rededicated locations, tours or parades, demonstrations and events, and apologies. The sheer variety of memorialization leaves it up to each community to decide what the legacy of their transition will be. In his examination of the transitional justice process of Bosnia and Herzegovina Garbett (2012) discussed the need for the citizens of the country to continue the restorative process long after the final mastermind has been tried, calling it a responsibility to take "national ownership" of the process, make it one's own, and never forget it. The idea of collective memory can, in itself be a form of memorialization. Following on the difficult nature of reparations programs and instituting memorialization efforts, one of the most challenging, yet most important aspects of the transitional justice process is ensuring gender justice.

Holocaust Memorial in Berlin, Germany

GENDER JUSTICE

Violence against women during conflict is a pervasive issue. Borer (2009) concluded that rape is used as a tool of war to emasculate the enemy's men, but it is also perpetrated by soldiers and peacekeepers meant to protect those same women. Often women join the struggle militarily as well. Gender-based justice is not necessarily a separate undertaking so much as it is a component of all other elements of transitional justice, one that demands specific focus. ICTJ (2016) noted that engaging in transitional justice gives a society, and gender activists, an opportunity to correct social inequities through reforms, alongside the reparations made to women for violence committed against them, which should be uncovered through truth commissions and prosecuted through criminal proceedings. Gender justice is accomplished most effectively through reforms, which is itself a pillar of the transitional justice process.

INSTITUTIONAL REFORMS

Initiating institutional reforms after a period of conflict is the means by which a society course corrects for its future, ensuring that the faulty systems that led to violence in the first place are dismantled. ICTJ (2016) defined the various methods of institutional reform:

"**Vetting**: examining personnel backgrounds during restructuring or recruitment to eliminate from public service or otherwise sanction abusive and corrupt officials.

Structural reform: restructuring institutions to promote integrity and legitimacy, by providing accountability, building independence, ensuring representation, and increasing responsiveness.

Oversight: creating publicly visible oversight bodies within state institutions to ensure accountability to civilian governance.

Transforming legal frameworks: reforming or creating new legal frameworks, such as adopting constitutional amendments or international human rights treaties to ensure protection and promotion of human rights.

Disarmament, demobilization, and reintegration: disbanding armed actors—such as paramilitary groups—and providing justice-sensitive processes and means by which ex-combatants can rejoin civil society.

Education: training programs for public officials and employees on applicable human rights and international humanitarian law standards."

Instituting reforms in manners such as these is a critical way to rebuild a more secure and equitable society post-conflict. It is important not to overdo these institutional reforms

and destabilize the government entirely, as was the case in post-conflict Iraq following the US-led invasion of 2003. As Berger and Stein (2014) and Zeren (2014) explained, In an attempt to rid the government of corruption and initiate massive reform, the US force decided to disband the Iraqi military and purge the government of all Ba'ath Party (Saddam Hussein's ruling party) members. That act of de-Ba'athification resulted in more than 100,000 Sunni Ba'athists "unemployed, angry, and for the military personnel, armed" (p. 19). Many of those purged Sunni's went on to become integral to the foundation of ISIS, while at the same time the government of Iraq had lost many of its experienced officials. This was an attempt at broad reform that went too far.

Despite the disastrous reform failure in Iraq, institutional reforms have been implemented successfully in numerous post-conflict transitions. The importance of reform implementation was summed up by Oette (2016) that the act of reform

"May be among the terms of peace agreements, and constitutes a prerequisite for accountability and reparation measures. It also plays an important role in providing a framework that guarantees civil, political, social, economic and cultural rights of individuals and communities, and embodies fundamental values of governance" (p. 11).

Reforms set the stage for many other facets of transitional justice, and they continue on to become a foundation for a new society. In order to prevent a reoccurrence of violence past, the systemic roots that allowed the violence to begin with must be addressed (Duthie & Greiff, 2009). As Cady (2003) and Oette (2016) noted, the UN has stepped in many times to help administer law reforms in cases such as East Timor and Kosovo. South Africa is another society which engaged in massive reforms after the end of the

Apartheid-era. There were systematic reforms, with some of the most notable coming in the education sector. In the aftermath of Apartheid, as Fiske and Ladd (2004) noted, the education system had to deal with a system that granted many more resources to white schools than to the schools of Africans. Reforms were instituted to make the education more equitable and less race-based, and more democratic controls were put in place on a governmental level, attempting to overcome the country's legacy of division (Arthur, 2009; Fiske & Ladd, 2004). The institution of reforms are designed to correct past inequities, prepare the country for the future, and ensure that other transitional justice measures are able operate to maximum effect.

Transitional justice is a complex and ever-evolving endeavor. Each conflict requires a unique approach to post-conflict justice, and Syria will not be an exception. The country has been shattered by more than five years of violent civil war, marred by gross violations of human rights and massive war crimes on all sides. If the people ever hope to move forward and rebuild their lives and their society, the state will need to undergo a decidedly novel transitional process once the fighting finally stops. Syria will have to reconcile a fractured state and address the presence of foreign fighters. There are a myriad of other distinct challenges that must be addressed in order to move forward. Once the violence ends, the work will have just begun.

Chapter III: Research and Resolution

A Toolkit for Addressing Foreign Fighters in Syria

Syria is in a unique situation in regard to modern conflict. Foreign fighters are engaged in conflict in the country on an unprecedented scale. If the Syrian people are to have a complete and fruitful transitional justice program, the issue of foreign fighters must be addressed. Unlike any other conflict, Syria has become a global conflict on a local stage. While previous wars have involved foreign fighters, to varying degrees, no conflict has involved so many actors from so many different countries. Due to this influx of foreigners from a wide swath of states around the globe, the war crimes committed in Syria have the potential to become an issue of global guilt. There have not been any truly significant endeavors undertaken to address the presence of foreign fighters, as of yet. There are, however, tools in the international realm that may allow the powers that be to sort through the mess that has festered in Syria. Through the use of UN Commissions of Inquiry (CoI) and fact-finding missions, peace negotiations, ICC, and other aspects of the Rome Statute, there may be a toolkit that allows for the global community to address the presence of foreign fighters in a conflict riddled with war crimes.

The OHCHR conducts fact finding missions in situations when gross human rights abuses are thought to have occurred. Syria's foreign fighter problem is an issue that certainly meets the need for one of these missions. The OHCHR (2017) listed the process behind the missions:

"United Nations mandated commissions of inquiry, fact-finding missions and investigations are increasingly being used to respond to situations of serious

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violations of international humanitarian law and international human rights law, whether protracted or resulting from sudden events, and to promote accountability for such violations and counter impunity"

The nature of CoI, fact-finding missions, and investigations is based around the discovery of what atrocities have been committed and by what groups. That makes these important tools for a budding transitional justice process in respect to foreign fighters in Syria's war.

Establishing a commission of inquiry would not be that difficult to accomplish. The UN already created "The Independent International Commission of Inquiry on the Syrian Arab Republic" on August 22, 2011 by the Human Rights Council through resolution S17/1. The CoI has a very relevant mission that could easily include a foreign fighters initiative, it is summed up by OHCHR (2017) as follows:

"A mandate to investigate all alleged violations of international human rights law since March 2011 in the Syrian Arab Republic. The Commission was also tasked to establish the facts and circumstances that may amount to such violations and of the crimes perpetrated and, where possible, to identify those responsible with a view of ensuring that perpetrators of violations, including those that may constitute crimes against humanity, are held accountable."

There is an explicit purpose in the CoI's mandate, which is to document war crimes and atrocities and find those that committed them. Through interviews with victims and witnesses, of which there have been more than 1,400, and the review of "photographs, video recordings, satellite imagery, forensic and medical, reports from Governments and

non-Governmental sources, academic analyses and United Nations reports" the

commission has compiled substantial evidence to achieve its stated mandate (OHCHR,

2017). In order for the commission to make a finding, it "requires that incidents be

corroborated to a level where the commission had 'reasonable grounds to believe' that

the incidents occurred as described" (OHCHR, 2017). Approaching the investigation at

this level of scrutiny, from this many fronts, ensures that a large swath of war crimes

perpetrators can be identified, moving the prospect of a more complete transitional justice

process along substantially.

The CoI's mandate to discover the nature of atrocities and those that have

committed them is a significant tool for the transitional justice arsenal in a post-conflict

Syria. Moreover, the mandate falls directly in line with the transitional justice mission

regarding foreign fighters. The only thing that would need to happen is the CoI would

need to be modified to add a codification that the identities of foreign fighters engaged in

atrocities be documented and prepared for a separate accountability process. The UN is

also the perfect venue through which to reach a consensus about how countries around

the world are going to deal with their respective foreign fighters. Due to the fact,

however, that the Syrian government has yet to allow the CoI to undertake investigations

inside the country, the scope of potential findings have been hampered. This hindrance

must be overcome in order to gain a fuller picture of what atrocities are being committed,

and whom is committing them. Allowing the commission to operate in-country could be

a significant step for the Assad regime to begin negotiating their position in the post-

conflict justice process. Using peace negotiations with the Assad regime will be a key

component of the country's transitional justice process. This will be discussed in the next

section. Utilizing negotiations as leverage could, however, be an important tool in addressing the foreign fighter problem.

Peace negotiations have often been utilized to achieve goals that are pertinent to the post-conflict reconciliation process. An agreement to end hostilities usually comes with caveats that will allow for public acceptance of that peace, as was recently the case in the Colombian government's agreement with FARC. One of the most important components of the Colombian negotiation involved a search for the disappeared. The commitment to addressing the pervasive issues was outlines by *Vice News*, Daniels (2015) wrote:

> "Tuesday's accord promises compensation for the victims as well as the creation of an 'Integral System of Truth, Justice Reparation and No Repetition" that is supposed to provide a framework for the implementation of this as well as of previous accords touching on the victims. They include an agreement to set up a truth commission to establish who committed what atrocities, special tribunals to give more lenient treatment to those who confess, and a pledge from both sides to look for the disappeared."

Utilizing the peace process to gain concessions such as this can be an important tool in Syria's transition. While many factions inside Syria's conflict are extreme ideologues, dedicated to absolute victory with no mention of a negotiated peace, there may still be some room for discussion once these groups have been beaten back. Although groups such as ISIS and al-Nusra Front have declared an intent for all-out victory, when their backs are against the wall they may be willing to make concessions to avoid all-out defeat.

Linking the foreign fighter problem to peace negotiations could become an important part of the toolkit in the post-conflict process. If a condition of peace is that all parties turn over information on their respective foreign fighter populations then more identities could be discovered for prosecution, reconciliation, and monitoring by their home countries. While these groups may be reluctant to hand over their own members for prosecution, they may be willing to agree to reconciliatory processes such as reintegration and amnesty for a majority in return for information on the identities of key figures. This leniency may not go over well with the Syrian people but discovering the identities of these foreign fighters and the atrocities they committed will go a long way to accomplishing many of the goals involved in the transitional justice process. The identities of the fighters and the nature of their crimes can provide a significant boon to achieving some elements of truth commissions, a major component of the reconciliation process.

Offering a degree of amnesty may accomplish a significant amount in terms of identifying foreign fighters involved in war crimes. This could also go a long way toward eliminating some of the apprehension involved in prosecutions. Human Rights Watch (2009) noted that the threat of looming prosecutions sometimes makes achieving certain peacemaking goals difficult, and that amnesties can be useful. Utilizing a degree of amnesty in order to achieve truth-seeking goals is something that will have to be balanced with Syrian demands and minimal limits for justice. The mechanics of justice will likely be achieved through the most established portion of the toolkit: the ICC.

The ICC is the most important tool for a successful transitional justice process in Syria. Despite the lynchpin nature of the ICC, it is also the most difficult of all the tools

to utilize in Syria's case. The Rome Statute created the ICC in order to address

international crimes such as genocide and other war crimes (Rome Statute, 1998; UN,

2003). There are 124 countries that are parties to the Rome Statute (ICC, 2017). Only

states that are party to the Rome Statute fall under the jurisdiction of the ICC, and Syria is

not one of those countries (Human Rights Watch, 2013b; Rome Statute, 1998). The

absence of Syria from the parties to the Rome Statute means that the war crimes

committed in Syria do not fall under the jurisdiction of the ICC. If Syria does not accept

the jurisdiction of the ICC, the only means by which the court could obtain said

jurisdiction would be through an "ICC Referral" (Human Rights Watch, 2013b). The

"ICC Referral" has to be approved by the UN Security Council, which has occurred only

in the case of Darfur in 2002 and Libya in 2011. As of yet the Security Council has been

hampered by "no" votes by Russia and China, leaving Syria out of play for the ICC

(Human Rights Watch, 2013b).

If Syria is to have a respectable and effective transitional justice process the ICC

must be included. Crucial to this aspect of the post-conflict transition is the acquiescence

of Russia and China's "yes" votes on the drafting of Syria into the ICC. Russia's

allegiance to the Assad regime makes exercise of the ICC extremely difficult, but

nonetheless extremely necessary. Key to addressing justice in Syria is convincing Russia

to come to the table. Bringing Russia into a consensus with the rest of the Security

Council regarding the ICC may also be a significant step toward bringing the Assad

regime into a more robust peace process, due to its connection with Russia. Securing

Russia's vote has proven to be difficult. There are certain strategies, however, that may

prove fruitful in moving the dialogue forward. Negotiating some conditions with Russia,

such as an easing of certain sanctions incurred by their actions in Crimea, may force the country to reconsider its no vote. If not sufficiently motivated by a relief of sanctions, negotiating certain amnesties for some Assad officials, and Russians involved in the conflict, while ensuring the continuation of Syria's current system of government following a cessation of hostilities may be sufficient to bring Russia to the table. If Russia is convinced that its interests in Syria will be maintained to an acceptable degree, it may be possible to secure a vote in favor of the ICC. Convincing Russia may go a long way toward acquiring a "yes" vote from China as well, as the country may resist being the sole country on the council to "veto" the referral.

Russia and China's apprehension makes drafting Syria into the jurisdiction of the ICC difficult, however, if a negotiated settlement is not fruitful in gaining the countries' support, there are other avenues. The Security Council can be overruled by the UN General Assembly in the event that they deem the Security Council to have failed to exercise its responsibility to maintain peace (Johnson, 2014; UN General Assembly, 1950). "Uniting for Peace" grants the General Assembly a higher degree of authority that could be significant in Syria's case, as mentioned in paragraph 1 of section 1A of resolution 377A(V):

> "1. *Resolves* that if the Security Council, because of lack of unanimity of the
> permanent members, fails to exercise its primary responsibility for the
> maintenance of international peace and security in any case where there appears
> to be a threat to the peace, breach of the peace, or act of aggression, the General
> Assembly shall consider the matter immediately with a view to making
> appropriate recommendations to Members for collective measures, including in

the case of a breach of the peace or act of aggression the use of armed force when necessary, to maintain or restore international peace and security. If not in session at the time, the General Assembly may meet in emergency special session within twenty-four hours of the request therefor. Such emergency special session shall be called if requested by the Security Council on the vote of any seven [now nine] members, or by a majority of the Members of the United Nations" (Johnson, 2014; UN General Assembly, 1950).

Given the situation in Syria, the Security Council could certainly be considered to have failed "to exercise its primary responsibility for the maintenance of international peace and security," especially considering Russia's obvious stake in the Assad regime (UN General Assembly, 1950). A UN report already deemed the government of the Syrian Arab Republic to have utilized chemical weapons in violation of international law; considering Russia's ties to said government, it is easy to determine that the Security Council has failed in its duty (United Nations, 2013). It is therefore imperative that, if Russia and China refuse to agree to the drafting of Syria into the ICC, the UN General Assembly utilize an emergency special session override the Security Council's deadlock.

The ICC is a critical portion of the transitional justice process for Syria especially in respect to addressing the issue of foreign fighters. There have, however, been some significant resolutions passed by the UN that could be used as well. The UN and many of its member states have adopted resolutions and laws that act to restrict and criminalize membership/contributions to internationally recognized terror groups, as well as international travel countries where intra-state conflict occurs (UN Security Council, 2001; UN Security Council, 2014).

Extradition of foreign fighters to stand trial in the ICC is difficult. The Rome

Statute that established the ICC grants the court authority when the state of perpetrator of

the crime in question is unwilling or unable to prosecute said perpetrator, but national

extradition laws may hamper efforts to extradite to the court (Gupta, 2000). The sheer

global variety and magnitude of the foreign fighter population in Syria means that there

will be many countries, each with their own extradition laws with which the ICC will

need deal. However, under Part 9, Article 86 of the Rome Statute, states that are party to

the statute have a "general obligation to cooperate" with the ICC in "its investigation and

prosecution of crimes within the jurisdiction of the court" (Rome Statute, 1998). If Syria

were to be drafted into the jurisdiction of the court (either through Security Council vote

or General Assembly override) that means that all 124 countries that are party to the

statute would be compelled to cooperate. That obligation to cooperate would imply

extradition of suspected perpetrators to the ICC if the state itself is unwilling or unable to

prosecute the alleged perpetrators itself. Further, Part 9, Article 89, Item 1of the statute

states:

> "The Court may transmit a request for the arrest and surrender of a person,
>
> together with the material supporting the request outlined in article 91, to any
>
> State on the territory of which that person may be found and shall request the
>
> cooperation of that State in the arrest and surrender of such a person. States
>
> Parties shall, in accordance with the provisions of this Part and the procedure
>
> under their national law, comply with requests for arrest and surrender" (Rome
>
> Statute, 1998).

This provision states very clearly that states which are party to the statute shall act in accordance with the requests for surrender of suspected perpetrators. International agreements of this nature are not necessarily legally binding, and are difficult to enforce if a state decides that it no longer wishes to participate. However, the intent that the parties to the Rome Statute had was to comply with the content of the statute; and given the near-universal condemnation of the crisis in Syria, as well as the concern over the implications of its global nature, most countries would be more than likely to cooperate in this aspect of the post-conflict justice process.

Transitional justice is by its very nature a complex and imperfect endeavor. There is never total accountability, total reconciliation, or total closure; it is simply not possible. The best that transitional justice can hope to accomplish is the mitigation of injustice. People want to feel that their suffering did not go unnoticed by the world. With this toolkit for addressing the foreign fighter problem the world can acknowledge not just the suffering of the Syrian people, but the global role in their suffering. The solution is far from perfect; two of the biggest players in the Syrian conflict (Russia and the US) are signatories to the Rome Statute, but they have not ratified it, meaning they are not bound to obey its terms.

This toolkit is not meant to be a comprehensive total solution, but merely a guideline for how to begin to address the unprecedented global phenomena that is the foreign fighter problem in Syria. First, the facts need to be codified and the perpetrators and their crimes documented. Next, the global community must make every effort to bring actors to the table through negotiated disclosures and other concessions. Then, the ICC needs to draft Syria into jurisdiction and create the International Criminal Tribunal

for the Syrian Arab Republic (ICTS) for the purpose of addressing violations of international humanitarian law. Once investigations have identified potential perpetrators the court must utilize the Rome Statute to compel extradition of alleged war criminals. Following that, the international community must continue to work toward addressing this pervasive issue.

The foreign fighter problem is one that impacts the global community, and there are not yet enough tools to solve it. States around the world are already seeing the impact that radicalized citizens can have. It would be in the best interest of the foreign fighters' states of origin to address the problem in a substantive manner. The international community must make it clear to all those that consider engaging in the violent tourism that they cannot simply run home and hide after they have engaged in these acts. The world must declare unequivocally that "if you come from anywhere, we will find you anywhere." This brand of global radicalism may be occurring on this scale for the first time in Syria, but it will not be the last time that it happens.

The UN and countries the world over must expand on this toolkit and engage this problem head on. Addressing this serves the purpose of protecting each nation's homeland, deterring future foreign fighter recruitments, and most importantly providing justice to a people that have endured one of the worst crises in modern history. Foreign fighters will not simply disappear nor should the world let them. More tools must be developed, more concrete investigative procedures for identification of potential foreign fighters, more measures to apprehend said fighters, and more means to smoothly extradite the perpetrators to an internationally monitored criminal court. There is still much work

to be done, but this toolkit should provide some measure of what the international

community already has at its disposal.

Chapter IV: Discussion

Proposal for a Broader Syrian Post-Conflict Process

COMMUNITY LEVEL

The transitional justice process in Syria will not follow the same path of states before it. Each justice process is unique, and Syria's will be no different. Addressing foreign fighters, while one of the most distinctive aspects of Syria's process, is not the sole issue facing the country. There are a myriad of challenges that make transitional justice difficult, not the least of which is the fractured nature of the state. If Syria is to be successful in the post-conflict era, the implementation of transitional justice must be unconventional. The most likely successes will not come from state-sponsored transitional justice, but from community-level reconciliation efforts. Personalized local efforts can be undertaken to the benefit of the Syrian people. Syria can affect a positive transitional justice process through exercising processes similar to the Gacaca Courts of Rwanda and by engaging in comprehensive on-the-ground localized efforts.

Rwanda's own terrible chapter in 1994 resulted in the death of 800,000 people, the rape of 250,000 women, and the commission of countless other atrocities (Huyse & Salter, 2008; Westberg, 2010). A hallmark of the Rwandan genocide of 1994 was the violence perpetrated by average people, where neighbors were killing neighbors. That widespread commission of violence rendered much of what the International Criminal Tribunal for Rwanda (ICTR) meaningless to average Rwandans. The ICTR was established to deal solely with the masterminds behind the genocide. With around 120,000 suspects imprisoned after the violence, there were too many for the judicial

system to address (Westberg, 2010). Due to the personal need for many Rwandans to feel a sense of justice, communities began to initiate Gacaca Courts, a Rwandan tradition that came to represent "justice on the grass" or community-level reconciliation (Westberg, 2010, p. 333). The process is based around truth and reconciliation, and is a useful tool that can be implemented when a full-scale international justice process cannot be undertaken and/or fails to do so effectively. The post-genocide Gacaca Courts in Rwanda had five goals:

> "establish the truth about what happened; accelerate the legal proceedings for those accused of genocide crimes; eradicate the culture of impunity; reconcile Rwandans and reinforce their unity; and use the capacities of Rwandan society to deal with its problems through a justice based on Rwandan custom" (Westberg, 2010, p. 337).

Due to the deep divisions in Syrian society and the convoluted nature of the conflict, an interpretation of the Gacaca Courts could be a useful tool in the Syrian transitional justice process.

Engaging in a process like that of the Gacaca Courts would empower each individual community in Syria to address transitional justice in their own way, tailored to fit their needs. By initiating this process, the Syrian people can jumpstart a broader transitional justice movement throughout the country. The program has been so successful in Rwanda that not only have more than a thousand prisoners confessed to crimes, but "the government has continued to expand and legitimize the process" (Westberg, 2010, p. 338). Rwanda's Gacaca Courts also brought about the first iterations of institutional reform with a vetted judiciary. The local level control also gives

communities a venue to address the deeply personal matter of gender justice in a more intimate and neatly tailored process. Families may feel more comfortable confronting issues of gender violence in a community process, but broader programs will have to be initiated on the state-level in order to ensure justice for victims, given the taboo nature of the subject. With few options available while Assad retains power, community actions such as these are imperative to the execution of transitional justice.

Syria is in a protracted conflict with no clear outcome. The destruction that has permeated Syrian society from all sides has made unilateral organized transitional justice mechanisms difficult to impossible to implement. With an entangled assault from regime forces, ISIS, al-Nusra Front, Kurdish groups, and multiple other groups, there is no clear path to victory for any one party, and there is no fighting force that would be impartial or innocent enough to implement an effective and fair transitional justice process. A process similar to the Gacaca Courts of Rwanda could become an effective tool in initiating localized transitional justice mechanisms of truth and reconciliation in Syria. There is no telling when the situation in Syria will resolve itself completely, and towns are frequently changing hands between the powers-that-be. In order for Syrians to address the problems that have been born of this war, there must be ongoing transitional justice. Implementing transitional justice, even low-level processes such as Gacaca Court style community truth and reconciliation commissions, is far from easy, but it could be useful.

Implementing transitional justice practices while the Syrian conflict is ongoing could be useful in helping to heal the people trapped in the ongoing war. The Gacaca process involves two phases, the first of which is information gathering (Westberg,

2010). The information gathering process involves investigating accusations and truth-seeking (Westberg, 2010; Huyse, 2008). This is an element of truth-commissions in broader transitional justice, but is undertaken here on the community level, which could be extremely useful in Syrian towns with neighbors looking to come together to heal. The second phases of the process is that of the trial. Trials are held at different levels depending on the severity of the crime in question, with less severe crimes happening in communities between neighbors, and the most severe occurring in official civil courts (Westberg, 2010). Instituting this tiered-trial system could go a long way in addressing and mitigating certain crimes perpetrated throughout the Syrian conflict. Communities would be able to put certain matters to bed, allowing them to begin the process of healing, while separating them from crimes that need to be addressed in a more systematic and formal manner. If the process of transitional justice has already been initiated when the conflict winds down, then it will be much easier to sift through the wreckage knowing that less severe matters have been handled, with more heinous crimes filtered out for higher authority.

While transitional justice serves the post-conflict process, implementation during an ongoing conflict is not unprecedented. ICTJ has been working in Afghanistan since 2003, through waves of violence. The work that ICTJ does in conflict zones could easily lend itself to the situation in Syria. Things like documentation of abuses and promotion of civil society missions are paramount to a successful transitional justice process, and must be initiated during conflict (Kouvo, 2009). Instituting transitional justice measures in the midst of conflict is a useful tool already in practice by one civil society group in Syria.

The Center for Civil Society and Democracy in Syria (CCSD) has instituted several local measures in Syria. One of the most innovative transitional justice measures that CCSD has put into place is the "I Am She" program, centered on female activism in Syria. CCSD (2017) described the program as "a network of community-based women's groups or 'peace circles' led by Syrian women, working to reinforce effective political, economic, social, and cultural participation of women in order to realize peace, freedom, justice, representation, and transparency for all Syrians." The program is put into practice through the exercise of peace circles, which teach advocacy, organizing, mobilization, and other training mechanisms to Syrian women in various provinces. The program has been able to secure cease-fires, allowing assistance to the wounded, and has provided a means for women to gain a significant role in Syria's future (SyriaUntold, 2015). Processes such as the "I Am She" project are invaluable tools in combatting gender-based violence, and empowering local communities in a besieged state. These on-the-ground tools are the exact sort of transitional justice mechanisms that can make a difference, not only in bringing about healing post-conflict, but also bringing communities together in order to end the violence in the first place.

Localized measures during the midst of the war are Syria's best hope yet to bring some semblance of peace and stability to the fractured state. As it stands, Syria is mired in an incredibly complex and violent conflict, with major powers incredibly ingrained in the warfare. No matter the outcome of the fighting, someone will be left out of the transitional justice process. The sheer number of forces involved in the conflict, and the magnitude of accusations against all participants ensures that a state-run transitional justice program will be incomplete at best, and farcical at worst. Every force involved

has had accusations leveled against them, with the most successful being accused of the most pervasive violations. If the Assad regime retains power, there is no plausible scenario that Assad or any of those that stood by him throughout the conflict will be held accountable on a national level; the leader would never allow that to happen. On an international level, given Russia's obvious allegiance to Assad, there is little hope that the regime will be held accountable either. US-backed rebels, if successful, would likely be largely exempt from criminal prosecutions, and the process would be catastrophically hindered, just as the transitional justice process was for Iraq after US involvement (Stover, Sissons, Pham, & Vinck, 2008). The presence of two of the world's foremost super powers (US and Russia) makes large-scale transitional justice measures involving their proxies difficult to impossible, given each state's respective power and authority over global decisions through mechanisms such as the UN Security Council. The power that Russia wields has already been evident in the Security Council, and the US's hegemonic authority lends credence to the idea that any action against the nation or its allies in Syria would be miniscule or nonexistent.

The most effective action on the international scale will be against ISIS, al-Nusra Front, and any other non-state actors that are not backed by international forces. The UN and the ICC would be most effectively utilized in pursuing foreign fighters through the process outlined in the previous section. Tackling the foreign fighter component is a significant means by which the international community can do something to apologize to the Syrian people for the lack of action over the last six years. An ideal situation would see Assad toppled and prosecuted for his crimes, but in reality, in-state transitional justice measures are going to have to be carried out by everyday people in towns and

cities across Syria. If the Syrian people cannot get what they really want, an end to the terrors of Assad, they are going to have to figure out some means of living with what they have gone through, which is only accomplishable through local action. Communities must come together to bridge divides and heal wounds. Peace circles, like those in practice through "I Am She" must be utilized to activate average citizens, so that each person can understand the stakes they have in reconciliation. Community courts, like that of "Gacaca" must be developed and initiated so that the people in those communities are able to live together with what has become an irrevocable part of their past.

STATE-LEVEL

The best case scenario for Syria's future would be a situation in which Assad is removed and transitional justice measures can be carried out on a state-wide level with no exemptions for Assad's forces. The removal of such a significant hurdle will allow successful iterations of prosecutions and reconciliation, institutional reform, and memorialization. With Assad out of power, Syrians could gain control of their post-conflict process, taking back the reigns of that which was stolen from them during this dark chapter in their history.

Trust in the impartiality of Syria's court system is not high. With Assad at the head of the government, the Syrian people will not receive a fair chance at justice. The very reason for the current climate in Syria is the distrust that many had in Assad's government, and that sentiment has not dissipated over six years of fighting that has seen many accusations of war crimes leveled against the regime. Several key elements of transitional justice cannot proceed with Assad still in power. The paramount issue at play is that of prosecutions and truth commissions. ICTJ (2009) identifies criminal

prosecutions as "judicial investigations of those responsible for human rights violations. Prosecutors frequently emphasize investigations of the "big fish": suspects considered most responsible for massive or systematic crimes" (p. 1). Assad and other members of his regime are some prime examples of "big fish" in the scheme of the Syrian war, and their removal is key to bringing criminal prosecutions some degree of legitimacy.

Assad's removal from power would allow the international community to work with the transitional Syrian government to initiate fully-fledged trials. The criminal prosecutions of the Nuremburg trials were only able to come to fruition because the Nazi leaders accountable for the war crimes in question were out of power following the end of WWII. If Assad is removed from power, the international community can more effectively prosecute those that engaged in human rights abuses. With the power structure behind a large portion of the civil war removed, the community level, gacaca-inspired courts could work more effectively in concert with a rebuilt national court system. While the Gacaca Courts are primarily a community-based mechanism, it did operate on leveled tiers of legitimacy, offering an insight into how the Syrian judicial system might tackle the issue of impartiality in the post-conflict arena. When selecting judges for the process, "Rwandans elected 260,000 gacaca judges based on their moral standing, integrity, and noninvolvement in the genocide" (Westberg, p. 338, 2010). This selection process could lend itself to an expansion of the court's reach, allowing higher level prosecutions to operate under Syrian jurisdiction. Placing Syrians in control of this process would grant them a greater connection to their post-conflict healing process.

The good that comes from domestic control of trials cannot be overstated. With a vetted and rebuilt judiciary, the people of Syria can address the violence on their own

terms. The United States Institute of Peace (USIP) (2008) explained the benefits: "If domestic prosecutions are possible, they can signal a break with the past, foster renewed public trust in institutions and restore the dignity of victims. At the same time, prosecutions generally face many hurdles and require significant resources and a high commitment to fairness, transparency and public consultations" (p. 6). Syrian control of the transitional justice judiciary process could bring about a positive reinvigoration of important security institutions and provide justice for victims at the same time. This utilization of a new iteration of Syria's judiciary would also go a long way toward rebuilding and reforming the state's institutions, another key component of transitional justice.

Reform of institutions is an important aspect of transitional justice. Utilizing a mechanism similar to that of Rwanda's could begin to rebuild the judiciary and establish a cornerstone of the new government. The impact of rebuilding institutions in this manner is two-fold, as noted by ICTJ (2014) "reform efforts can both provide accountability for individual perpetrators and disable the structures that allowed abuses to occur." With the regime out of the picture, a rebuilt judiciary can begin reinstituting rule of law and rebuilding public trust, and from that point other institutions can be rebuilt. Once trust is once again returned to the public sphere through institutional reform, the country can move forward with other aspects of transitional justice, uninhibited by the presence of a repressive regime.

Another key element of post-conflict justice measures is that of memorialization. Memory efforts involve truth seeking and tribute to victims. The primary goal of memorialization efforts is the discovery and preservation of truth and its commitment to

public memory in order to prevent atrocities of a similar nature from ever happening again. Each society chooses to remember the past in different ways, often through public instillations of remembrance, and museums. How Syria will choose to remember the hundreds of thousands lost in their civil war is unique to them, but there are mechanisms in place that could assist with the creation of these instillations.

The Rome Statute, which created the ICC, also established the Trust Fund for Victims (TFV) which is dedicated to working in tandem with the court's decisions regarding victims (Mégret, 2010). The purpose of the TFV, according to the official TFV (2017) website is to

> "Support and implement programmes that address harms resulting from genocide, crimes of humanity and war crimes. To achieve this mission, the TFV has a two-fold mandate: (i) to implement Court-Ordered reparations and (ii) to provide physical, psychological, and material support to victims and their families. By assisting victims to return to a dignified and contributory life within their communities, the TFV contributes to the realization of sustainable and long-lasting peace through the promotion of restorative justice and reconciliation."

The TFV is an international resource that can assist state-level mechanisms in order to help victims. Providing reparations and other programs that can aid victims in moving forward with their lives is an essential restorative measure. The TFV also works toward rehabilitation services for victims which is another important element of remembrance: working for those that are still here.

INTERNATIONAL LEVEL

The TFV was created through the Rome Statute just like the ICC, which is the most important element of the international level of transitional justice for Syria. The court is the means by which the worst offenders will see justice. While Syria is not a party to the Rome Statute, meaning the country is out of the court's jurisdiction, they can be drafted into it through the Security Council. As it stands today, the Security Council has had difficulty reaching the required consensus to draft Syria under the courts authority, but this can be avoided through intervention by the General Assembly under the "Uniting for Peace" initiative, as mentioned in the previous section (UN General Assembly, 1950).

Operating through the ICC, the international community can address the systemic human rights abuses that have occurred over the course of the last six years in Syria. Chief among the issues to be addressed by the court will need to be the high-level offenders behind the atrocities in Syria. The crimes committed by the various factions involved in the war must be addressed in order to provide some measure of justice to the Syrian people. Another issue that will be extremely important for restorative measures in Syria will be the prosecution of some element of the foreign fighter force involved in the civil war. Under the Rome Statute, and through the "Uniting for Peace" initiative, this aspect of transitional justice is possible. If Syria can be drafted into the ICC's jurisdiction, then all states that are party to the Statute could be compelled to turn over their respective foreign fighters for prosecution in an international court.

The process will not be quick, nor will it be easy, but it will provide a measure of justice. The international community has already acknowledged that some accountability

must occur. The United Nations has, according to a report by Reuters (2017), established a CoI with the intent of preparing for the prosecution of war crimes offenders in Syria. Evidence gathering and case building are important aspects of the international community's role in Syria's post-conflict process, but they must also make a commitment to addressing the foreign fighter problem as a part of the total and complete judicial undertaking. Syrians must feel that all perpetrators are held to some degree of accountability, even when those perpetrators operated as an invading army.

Every level of the transitional justice process is important. The goal is not reversing the tragedy but moving forward from it. The process does not heal all wounds, but it allows people to live with the wounds that they have endured. Transitional justice is an endeavor worth undertaking. Though processes such as reconciliation may seem to many, if not most, like unsatisfactory concessions, a society cannot live with so much unresolved violence. People have to come together to address what has happened to them, even if the only thing they accomplish is that their neighbors and the world knows their story. There is no such thing as a perfect transitional justice process. It is impossible to completely repair something that has been so fractured by war, but it *is* possible to bring the pieces back together. The hope is not that the process will bring everything back to normal and return Syrian society to the peace it had before. The hope is that enough of that peace and normalcy can be created so that the next generation can move on, learning the lessons of the violence before, but uninhibited by the wounds it has created.

VI. Conclusion

Syria has a litany of issues to address in order to move on from the barbarism of the country's civil war. There have been widespread accusations of human rights abuses by all sides in the conflict, hundreds of thousands have been killed, millions displaced, and much of the country has been destroyed. Foreign fighters have poured into the conflict on an unprecedented scale, unmatched in any conflict before. In order for the victims of Syria's war to move forward a unique iteration of transitional justice must be undertaken. Community-level reconciliation is the most likely path forward for Syria due to the fractured nature of the state. If Assad were to be removed from power, then broader state-led measures could be undertaken. However, the likelihood of the regime retaining power puts a complete state-level process in doubt. On the international level, the UN must take action to overcome the roadblocks that have besieged the Security Council and initiate CoI's to determine the extent of war crimes committed in Syria. Once Syria is drafted into the jurisdiction of the ICC then prosecutions can commence. Under the authority of the Rome Statute, all states that are party to it could be compelled to turn over their respective foreign fighters for prosecution by the ICC.

With Syria operating under a rebuilt judiciary, individual communities working toward reconciliation, and the international community holding the masterminds of the war, both foreign and domestic, accountable, there could be hope for a new dawn in Syria. The wounds inflicted by the years of war will not be erased through transitional justice, but they can be mitigated. Transitional justice will seek to pull the survivors out of the darkness so that they may begin to try to return to a sense of normalcy. The path to justice is often long and arduous, but that makes it no less necessary. It is an endeavor

worth undertaking, if for no other reason than the fact that the moral arc of the universe

demands it.

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