

# **INTERNATIONAL LAW AND THE SYRIAN CRISIS**

---

**Professor Donald R. Rothwell  
ANU College of Law, ANU**

**“Asia Pacific Moot Keynote Seminar”  
Hong Kong: 14 March 2014**

# Framework

1. Outline of Key Dates and Events
2. Discussion of Principal Legal Issues
3. Legal Issues relevant to Diplomatic and Political Responses
  - Use of Force
  - Chemical Weapons
  - Accountability

# Key Dates and Events

- March 2011: Outbreak of protests over release of political prisoners
- July 2011: Reports of government forces engaging in acts of violence, torture and heavy artillery against civilians
- August 2011: Free Syrian Army attack government forces
- September 2011: UN Human Rights Council establishes Independent International Commission of Inquiry
- April 2012: UNSC Res 2043 (2012): UN Supervision Mission in Syria (UNSMIS) – mandate ends 19/8/12
- November 2012: formation of National Coalition for Syrian Revolutionary and Opposition Forces
- July 2013: UN reports at least 100,000 deaths in conflict
- August 2013: Reports of use of chemical weapons
- September 2013: UNSC Res 2118 (2013)

# Principal Legal Issues

1. Status of the Conflict
2. Application of International Humanitarian Law
3. Weapons
  - Cluster Munitions
  - Chemical Weapons
4. Human Rights & Refugee Outflows
5. Border incidents with Turkey
6. Use of Force
7. Recognition of the Syrian opposition
8. Role of the UN & Regional Organisations
9. Role of the ICRC and NGOs

# 1. Status of the Conflict

- Is this an internal disturbance or sporadic acts of violence?
- Has the threshold of an armed conflict been met?
- If so – is this an international or non-international armed conflict?

## **ICRC Operational Update (17 July 2012)**

“The ICRC concludes that there is a non-international (internal) armed conflict occurring in Syria...”

## 2. Application of International Humanitarian Law

➤ What international law applies in a non-international armed conflict?

➤ Treaty Law

➤ Geneva Conventions – Common Article 3

➤ 1977 Additional Protocol II to the Geneva Conventions

➤ Syria is **NOT** a party to Additional Protocol II

➤ Customary International Law

➤ What is the relevant CIL in the area?

**ICRC Study on Customary International Humanitarian Law**

➤ Identification of CIL in non-international armed conflict

➤ Protection of civilians

# 3. Weapons

Issues that arise as a result of the specific use of certain weapons:

## Cluster Munitions

- 2008 Cluster Munitions Convention
  - State Parties: Syria is **NOT** a party
  - Status under CIL? : 84 current state parties
  - Could Syria be considered a persistent objector?

## Chemical Weapons

- 1993 Chemical Weapons Convention
    - Syria accedes in September 2013
- Rule 74 ICRC CIL IHL Study
- “The use of chemical weapons is prohibited”
- UNSC Res 2118 (2014)

# 4. Human Rights & Refugee Outflows

## **Internally Displaced Persons**

**Rule 131.** In the case of displacement, all possible measures must be taken in order that the civilians concerned are received under satisfactory conditions of shelter, hygiene, health, safety and nutrition and that members of the same family are not separated.

**Refugees:** Obligations for those states receiving refugees

- States parties to the Refugee Convention
- Non-state parties to the Refugee Convention



## 5. Border incidents with Turkey

- Ongoing border incidents involving skirmishes and cross-border shelling since July 2012
  - October 2012 – 5 Turkish civilians killed by mortar fire
  - February 2013 explosion kills 13
  - May 2013 car bomb kills 43
- NATO placed patriot missiles on the border in January 2013 at request of Turkey

**How can Turkey respond if these incidents continue to escalate?**

### **Self-Defence and International Law**

- Article 51 UN Charter
- Caroline incident
- Nicaragua Case

## 6. Recognition of the Syrian Opposition

- Formation of the 'National Coalition for Syrian Revolutionary and Opposition Forces' (NCSROF)
  - 11 November 2012
  - Syrian Opposition Coalition (SOC)
- Recognition as the Legitimate Representative of the Syrian People
  - Gulf Cooperation Council (12 November 2012)
  - France (13 November 2012)
  - Turkey (15 November 2012)
  - Australia (12 December 2012)
    - “the legitimate representative of the Syrian people”

# 7. Use of Force

## **Can the international community intervene in the affairs of Syria?**

- Significance of Article 2(4) UN Charter
- Can the use of force be exercised in reliance upon the right of self-defence Article 51 UN Charter
- Can the use of force be exercised in response to a UNSC Resolution under Chapter VII?
- Can a foreign military intervention be supported under the principle of ‘responsibility to protect’?
  - Debates following August 2013 chemical weapons attack

# 8. Role of the UN & Regional Organisations

## **UN Security Council**

- United Nations Supervision Mission in Syria (UNSMIS)
- Failed UNSC Resolutions
- Chemical Weapons Resolution : UNSC Res 2118 (2013)
- UN and Arab League Joint Special Representative: Lakhdar Brahimi

## **Human Rights Council**

- Report of the Independent International Commission of Inquiry (June 2013)

## **Regional Organisations**

- Gulf Cooperation Council
- League of Arab States
- European Union

# 9. Role of the ICRC and NGOs

## **ICRC**

- ICRC and Syrian Red Crescent
- Enhanced mission operations

## **Humanitarian NGOs**

## **Human Rights NGOs**

# 10. Accountability

## **War Crimes and Crimes against Humanity**

- Report of the Independent International Commission of Inquiry

## **Accountability Mechanisms**

- Principles of State Responsibility
- Role of Applicable International Courts and Tribunals
  - International Criminal Court
  - Ad hoc Courts and Tribunals

## **Role for the UNSC?**

- Libya precedent : UNSC Res 1970 (2011)

# Legal Issues Relevant to Diplomatic and Political Responses: Use of Force

## No UNSC Resolution

- Cf. Libya (2011): UNSC Res 1973 (2011)
- CF. Operation Iraqi Freedom

## Are there grounds for humanitarian intervention?

- Status of Humanitarian Intervention in international law
- Can the US be invited to militarily intervene: Grenada (1983)

## Responsibility to Protect

- Status under contemporary international law
- Status during Libyan conflict 2011
- Status following Libyan conflict
  - Ukraine (2014)

## Intervention in support of Opposition

- Nicaragua case & US support for the Contras

# Legal Issues Relevant to Political and Diplomatic Responses: Chemical Weapons

## Chemical Weapons and International Law

- Chemical Weapons Convention
- Use of chemical weapons and IHL
- Customary International Law and use of chemical weapons

## 2013 UN Security Council debates

### UNSC Res 2118 (2013)

- Condemnation of the use of chemical weapons
- No party to the Syrian conflict to use chemical weapons
- UN sanctioned chemical weapons disarmament and removal process
- Endorsement of OPCW Council Decision
- 2014 update



# Legal Issues Relevant to Diplomatic and Political Responses: **Accountability**

## **Significant evidence of war crimes and crimes against humanity**

- Committed by Government and Opposition forces
- Significance arising from alleged use of chemical weapons

## **Mechanisms for making those responsible accountable**

- Syrian Court
- International Criminal Court
  - Syria is not party to the ICC Statute
  - Potential for UNSC referral: eg. Libya
  - State referral of a situation: eg. a national
- Ad hoc international tribunal: eg ICTY, ICTR
- Post conflict international tribunal: eg Sierra Leone Court; Extraordinary Courts in Cambodia