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THE WAR REPORT

ARMED CONFLICTS IN 2016

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**UNIVERSITÉ
DE GENÈVE**
FACULTY OF LAW

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INTRODUCTION

This work identifies, describes, and discusses situations of armed violence in 2016 that amounted to armed conflicts in accordance with the definitions recognized under international humanitarian law (IHL) and international criminal law (ICL). The purpose of *The War Report* is to collect information and data in the public domain and provide legal analysis under the framework of international law. The existence of an armed conflict is important because it has far-reaching implications. First and foremost, IHL governing the conduct of hostilities, which is markedly less restrictive in its prohibitions on the use of lethal force than is the international law of law enforcement, applies only in a situation of armed conflict. Notably, IHL does not prohibit the intentional use of lethal force against a member of the armed forces or a civilian ‘participating directly in hostilities’ (for the duration of such participation, see the ‘Summary rules’ sections in Part I). Second, war crimes may only be committed in connection with an armed conflict. Third, the International Committee of the Red Cross (ICRC) has a formal role in protection only in connection with armed conflicts.

No national or supranational body is authoritative in its determination or implication that a particular situation of armed violence constitutes an armed conflict; a situation threatening international peace and security is not a synonym for an armed conflict (although, unquestionably, the situations may coincide). Moreover, the existence of an armed conflict is an objective test and not a national ‘decision’. Consequently, whether a state affirms that a particular situation does, or does not, amount to an armed conflict is relevant information for the purposes of determining the applicable law, but is certainly not conclusive.

Further, as explained in more detail later, however significant (and tragic) loss of life may be in any state or territory, the qualification of a situation of armed violence as an armed conflict is not simply a numbers game. Indeed, armed violence within a state may claim not only hundreds, but even thousands, of lives — and may constitute crimes against humanity¹ or even genocide² — without necessarily crossing the threshold into armed conflict; other factors are also pertinent, especially the extent of clashes between armed forces, or between armed forces and organized armed groups (or between such groups themselves). Thus reports de-

1 Crimes against humanity are those crimes that ‘shock the conscience of humanity’. Under the 1998 Rome Statute of the International Criminal Court (Rome Statute), crimes against humanity occur where certain acts are undertaken as part of a widespread or systematic attack against a civilian population of which attack the perpetrator has knowledge. Such acts are murder, extermination, enslavement, forcible transfer of population, imprisonment, torture, rape, sexual slavery, enforced prostitution, forced pregnancy, enforced sterilization, sexual violence, persecution, enforced disappearance, apartheid, and other inhumane acts. Art. 7(1)(a)–(k), Rome Statute.

2 Genocide ‘means any of the following acts committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such:

- a. Killing members of the group;
- b. Causing serious bodily or mental harm to members of the group;
- c. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- d. Imposing measures intended to prevent births within the group;
- e. Forcibly transferring children of the group to another group.’

Art. 6, Rome Statute; see also Art. 2, 1948 Convention on the Prevention and Punishment of the Crime of Genocide.

tailing ‘wars’ based on, for example, 25 or 1,000 battlefield deaths annually can be valuable for political science purposes, but such categorizations do not per se have significance under international law.

Part 1 of this work lists and summarizes the armed conflicts that occurred in 2016 on the basis of explicit criteria that, I believe, best reflect existent international law, certain controversies and imprecision notwithstanding.

Part 2 focuses and details the situations of armed conflicts in 2016, drawing on the work of the Rule of Law in Armed Conflict (RULAC) project conducted since 2009 under Geneva Academy auspices.³ Unlike past editions of *The War Report*, the 2016 edition will comment on the recent developments of selected conflicts. For a complete overview of the history of all conflicts, it is therefore recommended to refer to the past editions of 2012, 2013 and 2014. The War Report 2016 may also be read in conjunction with the Rule of Law in Armed Conflict portal of the Geneva Academy (rulac.org), an online database that identifies and classifies all situations of armed violence that amount to an armed conflict under IHL.

³ At: <http://www.rulac.org/>

PART 1

SUMMARY

In 2016, at least 48 armed conflicts occurred on the territory of 28 states and territories in Afghanistan, Azerbaijan, Colombia, Cyprus, the Democratic Republic of Congo (DRC), Egypt, Eritrea, Georgia, Iraq, India, Lebanon, Libya, Mali, Moldova, Myanmar, Nigeria, Pakistan, Palestine, the Philippines, Somalia, South Sudan, Sudan, Syria, Thailand, Turkey, Ukraine, Western Sahara, and Yemen.⁴ Two armed conflicts ended during 2016 (in Colombia and in Afghanistan). Of course, the end of an armed conflict as defined by international law does not necessarily imply an end to armed violence, much less to the suffering of the population.

Of the 48 conflicts, active international armed conflicts have been taking place in the territory of 3 states: between India and Pakistan, between Ukraine and Russia, as well as between the different states belonging to the US-led coalition in Syria and Syria. In addition, belligerent occupations continued of parts of 10 states and territories (Azerbaijan, Cyprus, Eritrea, Georgia, Lebanon, Moldova, Palestine, Syria, Ukraine and Western Sahara). These occupations are governed by the law of military occupation that also forms part of the law of international armed conflict.⁵

At least a total of 36 NIACs occurred in 2016 in the territory of 20 states: Afghanistan, Colombia, the DRC, Egypt, India, Iraq, Libya, Mali, Myanmar, Nigeria, Pakistan, the Philippines, Somalia, South Sudan, Sudan, Syria, Thailand, Turkey, Ukraine and Yemen.

1. WHAT IS AN ARMED CONFLICT?

In accordance with IHL (also called the law of armed conflict, LOAC),⁶ and ICL, there are two categories of armed conflict: international armed conflict (IAC) and

4 On 1 January 2015, the Resolute Support mission was established by the North Atlantic Treaty Organization (NATO) in Afghanistan, replacing the International Security Assistance Force (ISAF), to train, advise and assist Afghan security forces and institutions. The following states are contributing to the mission and are, as a consequence, concerned by this armed conflict: Albania, Armenia, Australia, Austria, Azerbaijan, Belgium, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Denmark, Estonia, Finland, the former Yugoslav Republic of Macedonia, Georgia, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Mongolia, Montenegro, the Netherlands, New Zealand, Norway, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, Turkey, Ukraine, the United Kingdom, and the United States.

5 The Elements of Crimes established under the International Criminal Court (ICC) provide that 'the term "international armed conflict" includes military occupation'. ICC, Elements of Crimes, UN doc PCNICC/2000/1/Add.2 (2000), n. 34. See, e.g., A. Cullen, 'The Threshold of Non-International Armed Conflict', SSRN, 2008, p 132, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2222757.

6 Views differ as to whether international humanitarian law (IHL) is a synonym for the law of armed conflict (LOAC). Today, this is the prevailing view, although it has been argued that 'Geneva' law (on the protection of those in the power of a party to conflict who are not, or no longer, participating directly in hostilities) is better termed IHL while 'Hague' law (on the conduct of hostilities) falls within the broader LOAC framework.

non-international armed conflict (NIAC).⁷ A valuable and widely cited general definition of the two categories was advanced by the Appeals Chamber of the International Criminal Tribunal for the former Yugoslavia (ICTY) in a 1995 decision in the *Tadić case*:

[A]n armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State.⁸

Thus, in the view of the ICTY, an IAC exists whenever there is a resort to armed force between states, while an NIAC exists when there is protracted armed violence between governmental authorities and organized armed groups, or between such groups within a state. This means that the level of violence needed to trigger an IAC differs from — i.e. is, in general, significantly lower than — that necessary to constitute an NIAC. This issue is discussed below.

Furthermore, and even though this understanding is not universally shared, it is not a case of ‘either-or’ in any given geographical situation. Accordingly, several different armed conflicts, comprising one or both categories, may be ongoing at the same time and in parallel in any given state. This position, sometimes called the fragmentation of conflict theory, has been supported by the International Criminal Court (ICC)’s Trial Chamber judgment in March 2014 in the *Katanga case*.⁹ Such fragmentation is evidenced in a number of recent armed conflicts. For example, there are distinct NIACs in 2016 in Syria pitting Syrian armed forces (and supporting militia) against the Free Syrian Army and, separately, against Haiy’a

7 The EU also uses the term ‘internal armed conflict’ to determine, ‘for the purposes of protection under EU law, whether a third country national or a stateless person who does not qualify as a refugee but in respect of whom substantial grounds have been shown for believing that the person concerned, if returned to his or her country of origin, or in the case of a stateless person, to his or her country of former habitual residence, would face a real risk of suffering serious harm... and is unable, or, owing to such risk, unwilling to avail himself or herself of the protection of that country’. Art. 2, EU Directive 2004/83. According to Art. 15(c) of the Directive, serious harm consists of a ‘serious and individual threat to a civilian’s life or person by reason of indiscriminate violence in situations of international or internal armed conflict.’ In a decision in January 2014, the Court of Justice of the European Union (CJEU) determined that an internal armed conflict exists ‘if a State’s armed forces confront one or more armed groups or if two or more armed groups confront each other. It is not necessary for that conflict to be categorized as “armed conflict not of an international character” under international humanitarian law; nor is it necessary to carry out, in addition to an appraisal of the level of violence present in the territory concerned, a separate assessment of the intensity of the armed confrontations, the level of organisation of the armed forces involved or the duration of the conflict.’ CJEU, *Aboubacar Diakité v. Commissaire général aux réfugiés et aux apatrides*, Judgment (Fourth Chamber) (Case C-285/12), 30 January 2014, §35, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=147061&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=460406>. This decision has no influence on the IHL/ICL definition of armed conflict.

8 ICTY, *Prosecutor v. Dusko Tadić (aka ‘Dule’)*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (Appeals Chamber) (Case No. IT-94-1), 2 October 1995, §70, <http://www.icty.org/x/cases/tadic/acdec/en/51002.htm>. See generally also ICRC, ‘How is the Term “Armed Conflict” Defined in International Humanitarian Law?’, ICRC Opinion Paper, March 2008, <http://www.icrc.org/eng/assets/files/other/opinion-paper-armed-conflict.pdf>; and S. Vité, ‘Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations’, 91 IRRC 873 (March 2009), pp 69–94, <http://www.icrc.org/eng/assets/files/other/irrc-873-vite.pdf>.

9 See, e.g., ICC, *Prosecutor v. Germain Katanga*, Judgment (Trial Chamber II) (Case No. ICC-01/04-01/07), 7 March 2014, §1197.

Tahrir al-Sham (former al-Nusra front), while, a separate NIAC broke out since 2013 between the Syrian regime and the Islamic State (IS)¹⁰ and between the Free Syrian Army (FSA) and Hezbollah.

In any event, the existence of an armed conflict of either category is generally limited to the areas where the parties to the conflict are conducting hostilities against each other. War crimes may, however, be committed by a member of a party to the conflict in other areas that it controls. This could concern, for example, civilians at large in the power of that party or civilians or military personnel it is detaining. According to the ICTY, in the case of Bosnia and Herzegovina:

It is sufficient that the alleged crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict. There is no doubt that the allegations at issue here bear the required relationship. The indictment states that in 1992 Bosnian Serbs took control of the Opstina of Prijedor and established a prison camp in Omarska. It further alleges that crimes were committed against civilians inside and outside the Omarska prison camp as part of the Bosnian Serb take-over and consolidation of power in the Prijedor region, which was, in turn, part of the larger Bosnian Serb military campaign to obtain control over Bosnian territory. ... In light of the foregoing, we conclude that, for the purposes of applying international humanitarian law, the crimes alleged were committed in the context of an armed conflict.

Thus, consonant with the view of the ICTY, when an armed conflict is in progress, IHL generally applies throughout the territory of the state or states concerned. As a consequence, a number of fundamental rules, including those set out in Common Article 3 to the 1949 Geneva Conventions,¹¹ apply throughout the territory of a state engaged in an armed conflict.¹² Rules governing the conduct of hostilities are, though, limited to areas where combat is occurring.

¹⁰ This armed group is also called the Islamic State of Iraq and the Levant (ISIL). It was formerly called the Islamic State of Iraq.

¹¹ According to Common Article 3, inter alia, 'each Party to the conflict shall be bound to apply, as a minimum, the following provisions:

(1) Persons taking no active part in the hostilities, including members of armed forces who have laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause, shall in all circumstances be treated humanely, without any adverse distinction founded on race, colour, religion or faith, sex, birth or wealth, or any other similar criteria.... To this end, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons: (a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture; (b) taking of hostages; (c) outrages upon personal dignity, in particular humiliating and degrading treatment; (d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

(2) The wounded and sick shall be collected and cared for.'

¹² See, e.g., 1949 Geneva Convention IV, Arts. 35–46. See also R. Kolb and R. Hyde, *An Introduction to the International Law of Armed Conflicts*, Hart, 2008, pp 94–6.

2. INTERNATIONAL ARMED CONFLICT

A. CRITERIA FOR THE EXISTENCE OF AN INTERNATIONAL ARMED CONFLICT

According to Common Article 2 to the 1949 Geneva Conventions, each of the four Conventions ‘shall apply to all cases of declared war or of any other armed conflict which may arise between two or more of the High Contracting Parties, even if the state of war is not recognized by one of them.’

If understood strictly, the ICTY’s definition of an IAC in the *Tadić* case (‘whenever there is a resort to armed force between States’) is too narrow in its insistence that the armed force be between two or more states. It is undoubtedly true that, as Dietrich Schindler observed: ‘the existence of an armed conflict within the meaning of Article 2 common to the Geneva Conventions can always be assumed when parts of the armed forces of two States clash with each other.... Any kind of use of arms between two States brings the Conventions into effect.’¹³ But, consistent with *ius ad bellum* (the law governing interstate use of force), an IAC also exists whenever one state uses armed force against the territory of another state, irrespective of whether the latter state fights back. Thus, as Hans-Peter Gasser explains, ‘any use of armed force by one State against the territory of another triggers the applicability of the Geneva Conventions between the two States.... It is also of no concern whether or not the party attacked resists’.¹⁴

The *Tadić* case appears to support the so-called ‘first shot’ theory, in which any use of force (or even the mere detention of foreign military personnel) is sufficient to constitute an IAC. In contrast, however, The War Report follows the position adopted by the International Court of Justice (ICJ) in the Nicaragua case whereby small-scale ‘frontier incidents’ (for example, where a soldier fires across an international border) do not constitute an IAC.¹⁵

An IAC does, though, include any situation in which one state invades another and occupies it, even if there is no armed resistance at all. This is set down in Article 2 common to the four 1949 Geneva Conventions. The precise moment at which a belligerent occupation occurs is, though, not finally settled. According to the International Committee of the Red Cross (ICRC):

Not only is the definition of occupation vague under IHL, but other factual elements – such as the continuation of hostilities and/or the continued exercise of some degree of authority by local authorities, or by the foreign forces

¹³ D. Schindler, ‘The Different Types of Armed Conflicts According to the Geneva Conventions and Protocols’, *Recueil des cours*, Hague Academy of International Law (RCADI), Vol. 163 (1979), p 131.

¹⁴ H.-P. Gasser, ‘International Humanitarian Law: An Introduction’ in H. Haug (ed), *Humanity for All: The International Red Cross and Red Crescent Movement*, Paul Haupt, 1993, pp 510–11.

¹⁵ ICJ, *Case Concerning Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America)*, Judgment (Merits), 27 June 1986, §195, <http://www.icj-cij.org/docket/files/70/6503.pdf>. See also C. Gray, *International Law and the Use of Force*, 3rd Edn, Oxford University Press, 2008, pp 177–83.

during and after the phase out period – may render the legal classification of a particular situation quite complex.¹⁶

Article 42 of the 1907 Hague Regulations reads: ‘Territory is considered occupied when it is actually placed under the authority of the hostile army. The occupation extends only to the territory where such authority has been established and can be exercised’. According to Sylvain Vité, for occupation in the meaning of Article 42 to exist, ‘two conditions must be fulfilled: (a) the occupier is able to exercise effective control over a territory that does not belong to it; [and] (b) its intervention has not been approved by the legitimate sovereign.’¹⁷ Arguably, however, the threshold for the application of the 1949 Geneva Conventions is lower. According to Common Article 2:

The Convention shall also apply to all cases of partial or total occupation of the territory of a High Contracting Party, even if the said occupation meets with no armed resistance.

Of course, where one state uses armed force on the territory of another state with the latter state’s consent, the two states are not engaged in an IAC. This is the case with respect to NATO’s military involvement in Afghanistan, for instance. But there may be factual and legal issues concerning whether and when an occupation occurs.¹⁸ In March 2014, the issue arose of whether or not the Russian Federation was occupying Ukraine, given that deposed Ukrainian President Viktor Yanukovich had seemingly authorized Russian military intervention in a letter dated 1 March.¹⁹ However, without prejudice to the legality of his removal under Ukrainian law Mr Yanukovich did not effectively control the police or armed forces of Ukraine at the time of the letter and could not therefore be considered genuinely to represent the state. Subsequently, however, the facts on the ground demonstrated clearly that Russia had sought to annex part of Ukrainian territory (Crimea).

16 ICRC, ‘International Humanitarian Law and the Challenges of Contemporary Armed Conflicts’, Report to the 31st International Conference of the Red Cross and Red Crescent, Geneva, October 2011. See, e.g., M. Zwanenburg, M. Bothe, and M. Sassòli, ‘Is the Law of Occupation Applicable to the Invasion Phase?’ 94 *IRRC* 885 (Spring 2012), pp 29–50.

17 Vité, ‘Typology of Armed Conflicts in International Humanitarian Law’, 74.

18 In the *Katanga* case, the ICC Trial Chamber cited with approval the ICTY trial judgment in the case against and identified a non-exhaustive list of factors to take into account when determining whether an occupation was occurring:

- the occupying power must be in a position to substitute its own authority for that of the occupied authorities, which must have been rendered incapable of functioning publicly;
 - the enemy’s forces have surrendered, been defeated or withdrawn. In this respect, battle areas may not be considered as occupied territory. However, sporadic local resistance, even successful, does not affect the reality of occupation;
 - the occupying power has a sufficient force present, or the capacity to send troops within a reasonable time to make the authority of the occupying power felt;
 - a temporary administration has been established over the territory;
 - the occupying power has issued and enforced directions to the civilian population.
- ICC, *Prosecutor v. Germain Katanga*, Judgment (Trial Chamber) (Case No. ICC-01/04-01/07), 7 March 2014, §§1180, citing ICTY, *Prosecutor v. Mladen Naletilic, aka ‘Tuta’ and Vinko Martinovic, aka ‘Štela’*, Judgment (Trial Chamber) (Case No. IT-98-34-T), 31 March 2003, §217, footnotes omitted.

19 See, e.g., Euromaidan Press, ‘Russia Provides UN Security Council with Appeal by “Legal President” Yanukovich’, 5 March 2014, <http://euromaidanpr.com/2014/03/05/russia-provides-un-security-council-with-appeal-by-legal-president-yanukovich/>.

There may also be an IAC when one state supports an armed non-state actor (ANSA) operating in another state when that support is so significant that the foreign state is deemed to have ‘overall control’ over the actions of the ANSA.²⁰ More controversially, an IAC may also exist where there is an armed conflict ‘in which peoples are fighting against colonial domination and alien occupation and against racist regimes in the exercise of their right of self-determination’.²¹ The threshold of armed violence for such a conflict to occur is not settled, but is probably the same as for an IAC — that is to say, much lower than it is for an NIAC.²²

B. THE GEOGRAPHICAL SCOPE OF AN INTERNATIONAL ARMED CONFLICT

The geographical scope of an IAC is potentially far broader than is the case for a NIAC (see below). Without prejudice to *jus ad bellum*, the rules of which apply in parallel to any IAC, where militarily necessary states involved in an IAC may potentially target each other’s armed forces anywhere.

C. SUMMARY IHL RULES GOVERNING INTERNATIONAL ARMED CONFLICT

The basic principles and rules of IHL applicable to the conduct of hostilities in an IAC are set out in the 1907 Hague Regulations and the 1949 Geneva Conventions and their 1977 Additional Protocols, and represent customary law applicable to all. The basis of the law of armed conflict is the rule of distinction. This rule obliges ‘parties to a conflict’ (in other words, the warring parties, i.e. Israel and Syria or India and Pakistan in 2013) to target only military objectives and not the civilian population, individual civilians, or civilian objects (e.g. homes, hospitals, and schools). Deliberately targeting civilians is a serious violation of IHL, as too is failing to distinguish in military operations between civilians and combatants (i.e. an indiscriminate attack), and both are war crimes under customary international law given the requisite intent (*mens rea*).²³

20 See, e.g., ICTY, *Prosecutor v. Tadić*, Judgment (Appeals Chamber) (Case No. IT-94-1-A), 15 July 1999, §§84 and 115 et seq; ICTY, *Prosecutor v. Blaškić*, Judgment (Trial Chamber) (Case No. IT-95-14-T), 3 March 2000, §§149–50. See similarly the views of the Trial Chamber of the ICC in its judgment in the 2012 Lubanga case: ICC, *Prosecutor v. Thomas Lubanga Dyilo*, Judgment (Trial Chamber) (Case No. ICC-01/04-01/06), 14 March 2012, §541. The Trial Chamber expressly approved the *Tadić* dicta on this issue. In the 2014 *Katanga* judgment, the ICC Trial Chamber further approved this position: ‘Un conflit armé international existe dès lors que des hostilités armées opposent des États à travers leurs armées respectives ou à travers d’autres acteurs agissant en leur nom.’ (‘An international armed conflict exists whenever armed hostilities oppose states through their respective armies or through others acting on their behalf.’ Unofficial translation.) ICC, *Prosecutor v. Germain Katanga*, Judgment (Trial Chamber), 7 March 2014, §§1177 et seq.

21 See Art. 1(4), 1977 Additional Protocol I. The U.S. and a number of other states opposed this provision vociferously when it was adopted. It has never been applied in practice.

22 This is not, though, the position of the UK, which argues that the threshold is the same as for a NIAC regulated by Common Article 3. UK Ministry of Defence, *The Manual of the Law of Armed Conflict*, Oxford University Press, 2005, §3.4.2.

23 Civilians only lose their ‘general protection’ against hostilities if, and for such time as, they participate directly in hostilities.

Although it is understood that civilian casualties may not always be avoided in the conduct of hostilities, international law also requires that parties to a conflict take all feasible precautions in any attack to minimize civilian deaths and injuries (and damage to civilian objects). In addition, according to the rule of proportionality, attacks against lawful military objectives that may be expected to cause deaths or injuries among the civilian population, or damage to civilian objects, which jointly or severally would be ‘excessive’ compared to the expected ‘concrete and direct’ military advantage are prohibited.

Children must not be recruited into armed forces or armed groups nor allowed to take part in hostilities. Recruiting children less than 15 years of age is a war crime. The use of indiscriminate weapons,²⁴ or weapons ‘of a nature to cause superfluous injury or unnecessary suffering’, is prohibited. In addition, among many other provisions, parties to an international conflict must respect and protect combatants who are *hors de combat*, because of sickness, wounds, detention, or any other cause. Captured combatants (primarily, members of armed forces) are to be accorded the status of prisoner of war, with the associated rights and obligations.²⁵ In providing assistance to the civilian population, women and children are to be granted preferential treatment.

D. SUMMARY IHL RULES GOVERNING A SITUATION OF BELLIGERENT OCCUPATION

Subject to the discussion above, during a belligerent occupation of foreign territory, applicable law is set out in the 1907 Hague Regulations (Articles 42–56), the 1949 Geneva Convention IV, the 1977 Additional Protocol I, and customary international law. The underpinning of the law of military occupation is that it is supposed to be a temporary situation, which lasts until a political agreement is reached. During this period, the occupant does not enjoy sovereign rights over the territories it occupies and local law that was applicable prior to the occupation remains in force. At the same time, the occupying power is responsible for administering the local life of the population under its control, maintaining it as it was prior to the occupation as closely as possible, and for providing security (Article 43 of the Hague Regulations). In addition, international human rights law (HRL) is binding on the occupying state extraterritorially with regard to the territories it occupies.

E. WHEN DOES AN INTERNATIONAL ARMED CONFLICT END?

The precise duration of an international armed conflict is a difficult issue. The ICTY in the *Tadić* case suggested that IHL applies ‘from the initiation of ... armed conflicts and extends beyond the cessation of hostilities until a general conclusion

24 The Rome Statute (Art. 8(2)(a)(xx)) refers to ‘inherently’ indiscriminate weapons, while the ICJ, in its 1996 Nuclear Weapons Advisory Opinion, referred to ‘weapons that are incapable of distinguishing between civilian and military targets’. It has sometimes been claimed that no weapons are ‘inherently’ indiscriminate, and certainly there is no general agreement as to which weapons might fulfil this criterion.

25 These are set out, in particular, in 1949 Geneva Convention III.

of peace is reached' in the case of an IAC.²⁶ While certain IHL obligations will clearly extend beyond the active cessation of hostilities, including those pertaining to the treatment of detainees, a notion that law of armed conflict rules governing the conduct of hostilities pertain to acts committed after the point at which active hostilities have effectively ceased is too expansive. Nonetheless, there will often be a fluctuation in regularity and extent of armed violence during a situation of armed conflict without such an oscillation amounting to an active cessation of hostilities.

3. NON-INTERNATIONAL ARMED CONFLICT

A. CRITERIA FOR THE EXISTENCE OF A NON-INTERNATIONAL ARMED CONFLICT

In accordance with the definition in the *Tadić* case, a NIAC is a situation of regular and intense armed violence²⁷ between the security forces of a state, especially the army, and one or more organized non-governmental armed groups. A NIAC will also occur in a situation of intense armed violence between two or more organized armed groups within a state. Situations of 'internal disturbances and tensions', including 'riots, isolated and sporadic acts of violence', and other acts of a similar nature, are explicitly determined not to amount to armed conflicts.²⁸ Although not explicitly foreseen by the *Tadić* decision, a NIAC will also occur where intense armed violence occurs between two or more organized armed groups across an international border.

There are three cumulative requirements for an NIAC, according to the *Tadić* definition. First, there must be 'protracted armed violence'; second, violence must be conducted by government forces and at least one *organized* non-governmental armed group (or between such groups within a state or across a state's borders); and, third, the violence must take place *between* the armed forces and at least one organized armed group, or between such groups. These elements are discussed in turn.

The requirement of 'protracted armed violence' means that a certain threshold of armed violence has been reached.²⁹ According to the ICTY:

In an armed conflict of an internal or mixed character, these closely related cri-

26 ICTY, *Prosecutor v. Tadić*, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction (Appeals Chamber), 2 October 1995, §70.

27 In the trial judgment in *Tadić* and other cases, the ICTY confirmed that the specific meaning it gave to 'protracted' when qualifying armed violence was an insistence on the intensity of conflict (even though the word's meaning in ordinary parlance is one of duration, not intensity). ICTY, *Prosecutor v. Tadić*, Opinion and Judgment, 7 May 1997, §562; see also ICTY, *Prosecutor v. Ramush Haradinaj, Idriz Balaj, and Lahi Brahimaj*, Judgment (Trial Chamber) (Case No. IT-04-84-T), 3 April 2008, §§40 et seq; ICTY, *Prosecutor v. Slobodan Milošević*, Decision on Motion for Judgment of Acquittal (Case No. IT-02-54-T), 16 June 2004, §17.

28 Art. 1(2), 1977 Additional Protocol II; see also Art. 8(2)(d), 1998 Rome Statute.

29 As the ICRC has noted, 'the violence must reach a certain level of intensity'. ICRC, 'International Humanitarian Law and the Challenges of Contemporary Armed Conflicts', Report for the 31st International Conference of the Red Cross and Red Crescent, 2011, p 8.

teria are used solely for the purpose, as a minimum, of distinguishing an armed conflict from banditry, unorganized and short-lived insurrections, or terrorist activities, which are not subject to international humanitarian law.³⁰

Organized armed groups are those with a command-and-control structure, that typically possess and use a variety of weapons, and which control a significant logistical capacity that gives them the capability to conduct regular military operations. When engaged in regular and intense armed confrontations with armed forces or other organized armed groups, such groups are ‘party’ to an NIAC. These groups are sometimes called rebels, insurgents, terrorists, criminal gangs, or anti-government elements by states or other entities; such designations have no consequence for the determination of their status under international law with respect to an armed conflict. It is not, however, necessary that an armed group have a particular political or religious agenda for it to be party to an NIAC;³¹ therefore, an organized armed group whose aim is purely lucrative, such as a drugs cartel or an organized crime network, can be a party to an armed conflict.³²

The third criterion is potentially controversial. Inherent in the notion of the words ‘conflict’ and ‘between’ is, *The War Report* argues, a requirement that there be actual combat.³³ In its judgment in the Haradinaj case, the ICTY stated that indicative factors for an armed conflict include ‘the number, duration and intensity of individual confrontations’.³⁴ The *San Remo Manual on the Law of Non-International Armed Conflict* states that NIACs are ‘armed confrontations’ occurring within the territory of a single state.³⁵ In the *Limaj* case, the ICTY Trial Chamber, in finding that an armed conflict existed in Kosovo before the end of May 1998 between the Kosovo Liberation Army and the Serb forces, stated that

by the end of May 1998 KLA units were constantly engaged in armed clashes with substantial Serbian forces in areas from the Kosovo–Albanian border in the west, to near Prishtina/Pristina in the east, to Prizren/Prizren and the Kosovo–Macedonian border in the south and the municipality of Mitrovica/Kosovka Mitrovica in the north.... The ability of the KLA to engage in such varied operations is a further indicator of its level of organisation.³⁶

30 ICTY, *Prosecutor v. Tadić*.

31 See, e.g., ICTY, *Prosecutor v. Fatmir Limaj, Haradin Bala, and Isak Musliu*, Judgment (Trial Chamber) (Case No. IT-03-66-T), 30 November 2005, §170.

32 Vité, ‘Typology of Armed Conflicts in International Humanitarian Law’, 11.

33 In cases before the ICTY, the Tribunal has tended to consider the number of clashes as part of the intensity criterion: ‘the seriousness of attacks and potential increase in armed clashes, their spread over territory and over a period of time’. See, e.g., ICTY, *Prosecutor v. Mile Mrkšić, Miroslav Radić, and Veselin Šljivančinić*, Judgment (Trial Chamber) (Case No. IT-95-13/1-T), 27 September 2007, §407, and sources cited in footnote 1592.

34 ICTY, *Prosecutor v. Haradinaj*, Judgment (Trial Chamber) (Case No. IT-04-84-T), 3 April 2008, §49.

35 International Institute of Humanitarian Law, *The Manual on the Law of Non-International Armed Conflict With Commentary*, 2006, p 3, <http://www.iihl.org/iihl/Documents/The%20Manual%20on%20the%20Law%20of%20NIAC.pdf>.

36 ICTY, *Prosecutor v. Limaj, Bala, and Musliu*, Judgment (Trial Chamber) 30 November 2005, §172, footnote omitted.

Thus, an armed group that constructs and emplaces (or delivers to a target) improvised explosive devices (IEDs), landmines, vehicle-borne IEDs (VBIEDs), or body-borne IEDs (BBIEDs), but which does not engage in direct ‘hostilities’ with the armed or security forces of a state, is *not* engaged in a NIAC. Such situations appear to fall more accurately within the notion expressed by the ICTY in the *Tadić* case and cited above of ‘terrorist activities, which are not subject to international humanitarian law’.³⁷ As Sandesh Sivakumaran has noted, upon ratification of the 1977 Additional Protocol I, the UK entered a declaration whereby ‘the term “armed conflict” of itself and in its context denotes a situation of a kind which is not constituted by the commission of ordinary crimes including acts of terrorism whether concerted or in isolation’.³⁸

B. WHEN DOES A NON-INTERNATIONAL ARMED CONFLICT END?

More complicated than with respect to the end of an IAC is the determination of when a NIAC is effectively over. According to the *Tadić* decision, IHL applies ‘in the case of internal conflicts [i.e. NIACs], [until] a peaceful settlement is achieved’.³⁹ This is too expansive, even though identifying the ‘cessation of active hostilities’ in armed conflicts of a non-international character is particularly difficult, since an individual attack does not amount to an armed conflict as it may under the classification of IAC.⁴⁰ Clashes between parties to a NIAC must be frequent but not necessarily daily or even weekly. Further, when an armed group that is party to such a conflict fragments or its senior commanders are killed or captured, the group may, as a consequence, no longer fulfil the criterion of organization. Establishing in fact these situations is clearly challenging, but when either criterion is no longer fulfilled, a NIAC can be said to have ended. This position has been advanced by Rogier Bartels:

that NIACs do not necessarily end only by virtue of a peace settlement being reached, but rather by the more factual circumstance of the level of ‘organisation’ and ‘intensity’ falling below the threshold set for the application of IHL.⁴¹

The 2016 Commentary of the Geneva Conventions of 1949 also specified that a NIAC would end by the mere fact that one of the Parties ceases to exist or in case

37 These situations are governed by the international law of law enforcement, including, in particular, HRL.

38 Declaration of 28 January 1998, <http://www.icrc.org/ihl.nsf/NORM/OA9E03F0F2EE757CC1256402003FB6D2?OpenDocument>, cited in S. Sivakumaran, *The Law of Non-International Armed Conflict*, Oxford University Press, 2012, p 233. Sivakumaran refers to the ‘understanding’ of the UK as a ‘reservation’, but it is more accurately termed a ‘declaration’ because it does not seek to modify the terms of the Protocol with respect to the UK, but rather to set out the UK’s understanding of the term. See also e.g. ICTY, *Prosecutor v. Slobodan Milošević*, Decision on Motion for Judgment of Acquittal (Rule 98bis Decision) (Trial Chamber) (Case No. IT-02-54-T), 16 June 2004, §26.

39 ICTY, *Prosecutor v. Tadić*.

40 As noted above, in relevant treaties ‘isolated and sporadic acts of violence’ explicitly do not amount to (non-international) armed conflict.

41 R. Bartels, ‘Temporal Scope of Application of IHL: When do Non-International Armed Conflicts End? Part 2’, *Opinio Juris*, 19 February 2014, <http://opiniojuris.org/2014/02/19/guest-post-bartels-temporal-scope-application-ihl-non-international-armed-conflicts-end-part-2/>.

of a lasting cessation of armed confrontations without real risk of resumption, despite the existence of a ceasefire.⁴²

C. THE GEOGRAPHICAL SCOPE OF A NON-INTERNATIONAL ARMED CONFLICT

Common Article 3 to the 1949 Geneva Conventions refers to an NIAC ‘occurring in the territory of one of the High Contracting Parties’. This can be taken to mean that an armed conflict is limited to the territory of a single state or that the provisions only apply to a situation in which the territory on which an armed conflict is ongoing is governed by the authority of a state party.⁴³ If it is the latter, given that, as of November 2016, all United Nations (UN) member states were party to the Geneva Conventions, there is very little territory that would not be covered by the treaty provisions. Further, under customary law, there is arguably no such strict geographical limitation, at least with respect to ‘spill-over’ from one territory to another.

This position does not, though, mean that a globalized NIAC exists as a matter of international law. Some arguments had been made in the past by the US, that it was engaged in a ‘global armed conflict’ against with ‘the Taliban, al-Qaeda, and associated forces’.⁴⁴ No such conflict exists under IHL/ICL. While an NIAC can certainly cross international borders, it is not possible under existing international law for an NIAC to be simply global. According to Sivakumaran, an armed conflict must ‘have a territorial base...; a global non-international armed conflict does not exist, at least, as a matter of law’.⁴⁵

It is not contested here that an armed conflict may exist on ‘a single territory’,⁴⁶ or that, today, it may have ‘a core territory plus overspill onto different territory’,⁴⁷ sometimes (unhelpfully) termed a ‘transnational armed conflict’. More controver-

42 L. Cameron, B. Demeyere, J-M. Henckaerts, E. La Haye and I. Müller, with contributions by C. Droege, R. Geiss and L. Gisel, ‘Article 3: Conflicts Not of an International Character’, ICRC, Commentary on the First Geneva Convention, 2016, §489-491, <https://ihldatabases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6C DFA490736C1C1257F7D004BA0EC>.

43 For a helpful discussion of this issue, see, e.g., D. Jinks, ‘The Temporal Scope of Application of International Humanitarian Law in Contemporary Conflicts’, Background Paper prepared for the Informal High-Level Expert Meeting on the Reaffirmation and Development of International Humanitarian Law, Cambridge, January 27-29, 2003, Program on Humanitarian Policy and Conflict Research at Harvard University, 2003, p 8., at: <http://www.hpcrresearch.org/sites/default/files/publications/Session3.pdf> ,

44 According to John Brennan, for example, then Assistant to the US President for Homeland Security and Counterterrorism (since March 2013, Director of the US Central Intelligence Agency): ‘As a matter of international law, the United States is in an armed conflict with al-Qa’ida, the Taliban, and associated forces, in response to the 9/11 attacks.’ ‘The Ethics and Efficacy of the President’s Counterterrorism Strategy’, Remarks of John O. Brennan, Woodrow Wilson International Center for Scholars, Washington, DC, 30 April 2012, <http://www.lawfareblog.com/2012/04/brennanspeech/>. In the last two years, however, the Obama Administration has been quietly dropping the reference to the Taliban. See, e.g. Chapter 1 in this *War Report*.

45 Sivakumaran, *The Law of Non-International Armed Conflict*, p 234.

46 Indeed, the text of Common Article 3 refers to ‘armed conflict not of an international character occurring in the territory of one of the High Contracting Parties’ (author’s emphasis).

47 Sivakumaran, *The Law of Non-International Armed Conflict*, p 234.

sial is the question of whether an armed conflict may exist across ‘multiple territories’ that are geographically unconnected.⁴⁸ According to one theory, where a NIAC exists on the territory of one state against a non-state armed group, and that conflict involves foreign states intervening on behalf of that state, the law of armed conflict applies to any hostile act by the non-state party on the territory of any of those foreign states.⁴⁹

D. SUMMARY RULES APPLICABLE IN A NON-INTERNATIONAL ARMED CONFLICT

IHL is applicable to all parties to the conflict, whether state or non-state armed groups. This always includes Common Article 3 to the 1949 Geneva Conventions (by virtue of their universal application under customary international law) and all other provisions of the law of armed conflict applicable to an NIAC, as well as, in certain circumstances, the 1977 Additional Protocol II.⁵⁰ States engaged in an NIAC are also bound by both applicable treaty⁵¹ and customary human rights law. In areas in which hostilities are being actively conducted, the law of armed conflict is widely regarded as the applicable law, while outside such areas, HRL is arguably the legal framework determining lawful use of force.

There is also increasing acceptance that non-state armed groups are also bound by at least peremptory HRL norms (e.g. prohibitions on summary or arbitrary executions, torture, and enforced disappearances).⁵² They may also be bound by other customary human rights obligations, for example where they control territory. For instance, the UN Assistance Mission in Afghanistan (UNAMA) stated in February 2012 that:

While non-State actors in Afghanistan, including non-State armed groups, cannot formally become parties to international human rights treaties, international human rights law increasingly recognizes that where non-State

48 Ibid.

49 Vité, ‘Typology of Armed Conflicts in International Humanitarian Law’, 74.

50 The scope of application of 1977 Additional Protocol II is set out in Art. 1. In its commentary on the article, the ICRC notes that the Protocol ‘only applies to conflicts of a certain degree of intensity and does not have exactly the same field of application as common Article 3, which applies in all situations of non-international armed conflict’. ICRC, *Commentary on the Additional Protocols of 8 June 1977 to the Geneva Conventions of 12 August 1949*, 1987, p 1348. Certain criteria are explicitly required for application of the 1977 Additional Protocol II, namely: confrontation between the armed forces of the government and opposing ‘dissident’ armed forces; that the dissident armed forces are under a responsible command; and that they control a part of the territory so as to enable them to ‘carry out sustained and concerted military operations’ and to implement the Protocol.

51 Derogations from other human rights in accordance with the 1966 International Covenant on Civil and Political Rights may only occur in ‘time of public emergency which threatens the life of the nation and the existence of which is officially proclaimed’. Any derogation must be only ‘to the extent strictly required by the exigencies of the situation, provided that such measures are not inconsistent with their other obligations under international law and do not involve discrimination solely on the ground of race, colour, sex, language, religion or social origin’.

52 See, e.g., Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, UN doc A/HRC/19/69, 22 February 2012, §106: ‘In this regard, the commission notes that, at a minimum, human rights obligations constituting peremptory international law (*ius cogens*) bind States, individuals and non-State collective entities, including armed groups. Acts violating *ius cogens* – for instance, torture or enforced disappearances – can never be justified.’

actors, such as the Taliban, exercise de facto control over territory, they are bound by international human rights obligations.⁵³

Accordingly, based on applicable rules of the law of armed conflict, during the conduct of hostilities it is prohibited to attack any civilian taking no direct part in hostilities, or any fighter who has laid down his arms or who is *hors de combat* because of sickness, wounds, detention, or any other cause. Children must not be recruited into armed forces or armed groups, nor allowed to take part in hostilities. Recruiting children less than 15 years of age is a war crime. It is prohibited to attack civilian objects. Civilian objects are any buildings or areas that are not lawful military objectives. Indiscriminate attacks, namely attacks that do not distinguish between military objectives and civilians and/or civilian objects, are prohibited. Use of indiscriminate weapons, or weapons ‘of a nature to cause superfluous injury or unnecessary suffering’, is prohibited. Violating any of these rules may constitute a war crime.

Attacks against lawful military objectives (military personnel or equipment) are prohibited if they may be expected to cause ‘excessive’ harm to either civilians or civilian objects, or a combination of both, in relation to the concrete and direct military advantage anticipated. All feasible precautions must be taken to avoid, and in any event to minimize, incidental loss of civilian life, injury to civilians, and damage to civilian objects.

Enforced disappearances are prohibited. Hostages shall not be taken. Arbitrary deprivation of liberty is prohibited. Anyone detained by a party to an armed conflict must be treated humanely and in accordance with their sex, age, and religious beliefs. Murder, torture, rape, bodily injury, or other cruel, humiliating, or degrading treatment is prohibited. Summary or arbitrary executions are prohibited. No one may be convicted or sentenced, except pursuant to a fair trial affording all essential judicial guarantees. This includes a defendant’s right to know the charges against him/her, to understand the court proceedings, to have the opportunity to conduct a genuine defence, and to be able to appeal against both conviction and sentence. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

4. WHICH ARMED CONFLICTS OCCURRED IN 2016?

The following tables summarize the 13 IACs and 36 NIACs that took place in 2016.

A. INTERNATIONAL ARMED CONFLICTS IN 2016

In addition to the conflict between India and Pakistan, *The War Report* considers, in line with the Rule of Law in Armed Conflicts Project (rulac.org), that there is arguably a parallel international armed conflict between Ukraine and Russia, as

⁵³ See, e.g., UNAMA, *Afghanistan: Annual Report 2011, Protection of Civilians in Armed Conflict*, February 2012, p iv. See also in this regard A. Bellal, G. Giacca, and S. Casey-Maslen, ‘International Law and Armed Non-State Actors in Afghanistan’, 93 *IRRC* 881 (2011), pp 47-79.

well as a series of international armed conflicts between Syria and the different states composing the international coalition conducting air strikes in Syria (USA, Belgium, Canada, Denmark, France, Germany, Italy, Jordan, Morocco, Netherlands, Saudi Arabia, Turkey, United Arab Emirates and the United Kingdom)

Table 1. Active conflicts in 2016

Conflict no.	Location of conflict	Parties to conflict
1	India and Pakistan	India v. Pakistan
2	Ukraine	Ukraine v. Russia
3	Syria	International coalition v. Syria

The number (10) and detail of belligerent occupations in 2016 was the same as in the preceding years (2015 and 2014).

Table 2. Belligerent occupations in 2016

Conflict no.	Location of occupation	Occupier
4	Azerbaijan	Armenia
5	Cyprus	Turkey
6	Eritrea	Ethiopia
7	Georgia	Russian Federation
8	Lebanon	Israel
9	Moldova	Russian Federation
10	Palestine	Israel
11	Syria	Israel
12	Ukraine	Russia
13	Western Sahara	Morocco

Other belligerent occupations that have been alleged include the occupation by the UK of the Falkland Islands/Malvinas (Argentina claims this as sovereign territory),⁵⁴ of Tibet by China,⁵⁵ and of the state of Hawaii by the USA.⁵⁶ *The War Report* makes no determination as to whether belligerent occupation is occurring in these cases.

54 See, e.g., BBC News, 'Falkland Islands Profile', 3 January 2017, <http://www.bbc.com/news/world-latin-america-18425572>

55 See, e.g., BBC News, 'Tibet Profile – Overview', 13 November 2014, <http://www.bbc.com/news/world-asia-pacific-16689779>

56 See, e.g., M. Craven, 'Continuity of the Hawaiian Kingdom: Being a Portion of a Legal Brief Provided for the Acting Council of Regency', 12 July 2002, https://hawaiiankingdom.org/pdf/Continuity_Hawn_Kingdom.pdf; P. Dumberry P., 'The Hawaiian Kingdom Arbitration Case and the Unsettled Question of the Hawaiian Kingdom's Claim to Continuity as an Independent State under International Law', 1 655-684 (2002) and Dr. David Keanu Sai, 'The Continuity of the Hawaiian State and the Legitimacy of the acting Government of the Hawaiian Kingdom', 4 August 2013, http://www.hawaiiankingdom.org/pdf/Continuity_Brief.pdf.

B. NON-INTERNATIONAL ARMED CONFLICTS IN 2016

At least a total of 36 NIACs in 20 states occurred in 2016. A new conflict broke out in 2015 between Turkey and the PKK. A conflict ended in 2016 between Colombia and FARC, as well as, arguably, between Afghanistan and the group known as ‘Hezb e Islami’ in September 2016.

Conflict no.	Conflict location	Parties to conflict
14	Afghanistan	Afghanistan v. Quetta Shura Taliban
15	Afghanistan	Afghanistan v. Haqqani Network
16	Afghanistan	Afghanistan v. Hezb e Islami (until Sept.)
17	Afghanistan	Afghanistan v. Islamic State in Afghanistan (Khorasan Branch, IS-K)
18	Colombia	Colombia v. FARC (until November)
19	Colombia	Colombia v. National Liberation Army (ELN)
20	DRC	DRC v. Allied Democratic Forces/ Alliance des Patriotes pour un Congo Libre et Souverain (APCLS)
21	DRC	DRC (with support of MONUSCO) v. Forces Démocratiques pour la Libération du Rwanda (FDLR)
22	DRC	DRC v. The Nduma Defense of Congo (NDC)
23	DRC	DRC v The Nduma Defense of Congo-Rénové (NDC-R)
24	Egypt	Egypt v. Wilayat Sinai (‘State of Sinai’ or ‘Province of Sinai’, known as Ansar Beit al-Maqdis)
25	India	India v. Naxalite Maoists
26	Iraq	Iraq v. Islamic State (IS)
27	Libya	Libya v. Libya Dignity Alliance, Libya Dawn/ Ansar al-Sharia
28	Libya	Libya (with support of the USA) v. Islamic State
29	Mali	Mali and United Nations Multidimensional Integrated Stabilization Mission in Mali (MINUSMA) v. al-Qaeda in the Islamic Maghreb (AQIM), Ansar Dine
30	Myanmar	Myanmar v. Harakah al-Yaqin
31	Myanmar	Myanmar v. various armed groups, incl. MNDAA, KNLA
32	Nigeria	Nigeria v. Boko Haram
33	Pakistan	Pakistan v. Tehrik-e-Taliban Pakistan (TTP) and TTP splinter groups
34	Philippines	Philippines v. Abu Sayyaf
35	Somalia	Somalia, Ethiopia, Kenya, Uganda, and USA v. al-Shabaab
36	S. Sudan	South Sudan v. Sudan People’s Liberation Army (dissident faction)
37	Sudan	Sudan v. SPLM/A-North
38	Sudan	Sudan v. Justice and Equality Movement (JEM)
39	Syria	Syria, Russia v. Free Syrian Army
40	Syria	Syria v. Haiy’a Tahrir al-Sham (former al-Nusra front)
41	Syria	Syria, Russia v. Islamic State (IS)
42	Syria	YPG/YPJ v IS
43	Syria	Free Syrian Army v. Hezbollah

44	Thailand	Thailand v. Barisan Revolusi Nasional independence movement
45	Turkey	Turkey v. Kurdish Worker's Party (PKK)
46	Ukraine	Ukraine v. Donetsk People's Republic & Luhansk People's Republic
47	Yemen	Yemen v. al-Houthi
48	Yemen	al-Houthi v. al-Qaeda in the Arabian Peninsula AQAP
49	Yemen	Yemen v. AQAP

PART 2

KEY DEVELOPMENTS OF SELECTED⁵⁷ ARMED CONFLICTS IN 2016

57 The selection of armed conflicts has been made according to relevant facts which, we believe, have an impact on the legal situation of the armed conflict concerned. For a complete list of armed conflicts, see pp 28-31 above.

SELECTED INTERNATIONAL ARMED CONFLICTS

1. SYRIA: INCREASING FOREIGN INVOLVEMENT IN THE CONFLICT

Classification of the conflicts:

In line with the Geneva's Academy Rule of Law in Armed conflicts Project (rulac.org), The War Report 2016 takes the position that the different conflicts in Syria fall under a double qualification. First, there are multiple and overlapping non-international armed conflicts taking place in the territory. The Syrian government and its allies are involved in non-international armed conflicts against a wide array of rebel groups, including the Free Syrian Army, the Islamic State group and Kurdish militia. There are also on-going non-international armed conflicts between different rebel groups and the group that calls itself the Islamic State. In addition, an international coalition led by the U.S. is involved in a non-international armed conflict against the Islamic State group. Second, there is arguably an international armed conflict between Syria and members of the US-led international coalition and Turkey, due to the absence of the Syrian government's consent to the aerial air strikes by the coalition and Turkey on Syrian territory.⁵⁸ For the sake of concision, Syria's profile in The War Report is analysed in the international armed conflict section.

A. HISTORY OF THE CONFLICT⁵⁹

Anti-government protests erupted in Syria in March 2011, with demonstrators calling for reforms and for the overthrowing of President Assad's regime. Government forces responded violently and, in joint operations with security forces and allied militia known as *Shabbiha*, engaged in excessive use of force, kidnappings, torture and other forms of ill-treatment. The UN Independent International Commission of Inquiry, established by the Human Rights Council, in its first report in Novem-

58 According to the 2016 ICRC Commentary on Article 2 of the Geneva Conventions of 1949: 'The presence or absence of consent is essential for delineating the applicable legal framework between the two States as it affects the determination of the international or non-international character of the armed conflict involving those States. Should the third State's intervention be carried out without the consent of the territorial State, it would amount to an international armed conflict between the intervening State and the territorial State', §260 <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EAC1257F7D0036B518>. See on this issue, Dapo Akande, 'When Does the Use of Force Against a Non-State Armed Group Trigger an International Armed Conflict and Why does this Matter?', EJIL Talk, 18 October 2016, at: <http://www.ejiltalk.org/when-does-the-use-of-force-against-a-non-state-armed-group-trigger-an-international-armed-conflict-and-why-does-this-matter/comment-page-1/>.

59 Unless otherwise stated, this section is based on BBC News, 'Syria Country Profile', 5 December 2016, <http://www.bbc.com/news/world-middle-east-14703856>.

ber 2011, called the abuses carried out by Syrian authorities ‘crimes against humanity’.⁶⁰ The opposition became progressively organized when the main armed opposition group, the Free Syrian Army (composed largely of defectors from the Syrian army), and the Syrian National Council announced, in December 2011, that they would coordinate their efforts.⁶¹

In November 2011, despite initially agreeing to a League of Arab States workplan aiming at ending the violence, the Syrian Government failed to cooperate and was suspended from the League, as well as being made the subject of sanctions (the U.S. and the EU had already instituted sanctions against the regime).⁶² Following a year of violent clashes and the failure to adopt a Security Council Resolution on the Syrian situation,⁶³ the UN Secretary-General and the Arab League appointed Kofi Annan as Joint Special Envoy with the mandate to bring a negotiated peace and the halting of hostilities.⁶⁴ Since then, the country has been plunged into a spiral of violence.⁶⁵

In 2016, a dramatic military development occurred when the Syrian government took back the rebel-held city of Aleppo, after intense combat.⁶⁶ The fighting in Aleppo had increased in July 2016, with the death toll standing at around 448⁶⁷ (including 100 children) as of 28 August.⁶⁸ On 20 October 2016, the Russian Defense Ministry announced that Russia and Syrian Forces would halt their bombardment of Aleppo for eight hours to allow civilians and rebels to flee the city.⁶⁹ The Russians planned to broadcast live scenes of evacuation, while the rebels vowed not to

60 Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, UN doc A/HRC/S-17/2/Add.1, 23 November 2011, §1.

61 Combating Terrorism Center at West Point (CTC), *An Overview of Syria's Armed Revolution*, Vol. 5, No. 4 (April 2012).

62 Z. Laub and J. Masters, ‘Syria’s Crisis and the Global Response’, Council on Foreign Relations, 3 April 2013, www.cfr.org/syria/syrias-crisis-global-response/p28402.

63 UN Security Council, ‘Security Council Fails to Adopt Draft Resolution Condemning Syria’s Crackdown on Anti-Government Protesters, Owing to Veto by Russian Federation, China’, press release SC/10403, 4 October 2011, <https://www.un.org/News/Press/docs/2011/sc10403.doc.htm>.

64 UN Secretary-General, ‘Secretary-General, Kofi Annan Appointed Joint Special Envoy of United Nations, League of Arab States on Syrian Crisis’, Press release SG/SM/14124, 23 February 2012, www.un.org/News/Press/docs/2012/sgsm14124.doc.htm.

65 For a detailed account of the facts, see the previous editions of *The War Report*: 2012, 2013 and 2014.

66 E. Graham-Harrison, ‘Syrian Troops Launch Ground Offensive Against Aleppo Rebels’, *The Guardian*, 27 September 2016, <https://www.theguardian.com/world/2016/sep/27/syrian-troops-launch-ground-offensive-against-aleppo-rebels>.

67 E. McKirdy and B. Hosseini, ‘Syrian Barrel Bomb Attack: At Least 16 Killed at Wake of Aleppo’, CNN, 28 August 2016, <http://edition.cnn.com/2016/08/28/middleeast/aleppo-barrel-bomb-wake-bombed/>.

68 C. Ward, ‘Aleppo Siege: Why Latest Developments Are So Significant’, CNN, 28 July 2016, <http://edition.cnn.com/2016/07/28/middleeast/aleppo-syria-questions-ward/>.

69 I. Nechepurenko, ‘Assault on Aleppo Will Halt for 8 Hours, Russia Says’, *The New York Times*, 17 October 2016, http://www.nytimes.com/2016/10/18/world/middleeast/aleppo-syria-russia-ceasefire.html?ref=world&_r=1&mtref=undefined.

leave the city.⁷⁰ On 9 November 2016 the Syrian army claimed it took over a district on the southwestern outskirts of Aleppo that runs along the regime-controlled corridor into the city. The UK-based Syrian Observatory for Human Rights called the government's captures of the district the most significant regime advance since September.⁷¹ On 15 November 2016, Russia resumed airstrikes on the besieged rebel held sections of the city.⁷² The fighting shattered the relative calm that had prevailed in the rebel held eastern parts of Aleppo for about three weeks. Finally, after four years of fighting, the battle of Aleppo ended on 13 December 2016. According to the UN, it represented one of the longest sieges in modern warfare and left an estimated 31,000 people dead, almost a tenth of estimated overall war casualties.⁷³

On another front, the Syrian government forces have been making advances in the fight against the Islamic State group with notable victories like the seizure of Palmyra, an ancient Syrian city that had been occupied by the group for nearly a year.⁷⁴ Islamic State, however, re-captured the city in December 2016. According to defense analysts at think-tank IHS Jane, IS lost about 12% of its territory in 2016, and about 14% in 2015.⁷⁵

With regard to peace talks, several rounds of UN led intra-Syrian talks took place in 2015-2016.⁷⁶ In September 2016, foreign ministers of Russia and the U.S. reached an agreement on establishing a ceasefire between the Syrian government and a US-supported coalition of opposition rebel groups, including the High Negotiations Committee (HNC). In October however, the U.S. formally declared the suspension of diplomatic contacts with Russia in view of renewed violence in Syria, marking the end of the ceasefire deal. In December, Turkey and Russia brokered a nationwide Syrian ceasefire.⁷⁷ The UN Security Council unanimously adopted resolution 2336 in support of efforts by Russia and Turkey to end the violence in Syria.⁷⁸

70 Al Jazeera, 'Russia Extends 'Humanitarian Pause' in Aleppo Attack', 19 October 2016, <http://www.aljazeera.com/news/2016/10/russia-extends-humanitarian-pause-aleppo-attack-161019205535009.html>.

71 Al Jazeera, 'Syrian Army Makes Significant Gains in Aleppo', 9 November 2016, <http://www.aljazeera.com/news/2016/11/syria-army-significant-gains-aleppo-161109053124711.html>.

72 A. Barnard and I. Nechepurenko, 'Airstrikes on Aleppo Resume as Russia Begins New Offensive in Syria', *The New York Times*, 15 November 2016, <http://www.nytimes.com/2016/11/16/world/middleeast/syria-aleppo-russia-airstrikes.html?ref=world&mtref=www.nytimes.com&r=0>.

73 UN Office at Geneva, 'Intra-Syrian Negotiations – Key Dates of the Peace Process', [http://www.unog.ch/unog/website/news_media.nsf/\(httpPages\)/E409A03F0D7CFB4AC1257F480045876E?OpenDocument](http://www.unog.ch/unog/website/news_media.nsf/(httpPages)/E409A03F0D7CFB4AC1257F480045876E?OpenDocument).

74 B. Denten, 'A Jewel in Syria Where Ruins Have Been Ruined by ISIS', *The New York Times*, 4 April 2016, <http://www.nytimes.com/2016/04/05/world/middleeast/palmyra-syria-isis.html>.

75 Al Jazeera, 'ISIL Fighters Re-Enter Syria's Ancient City of Palmyra', 10 December 2016, <http://www.aljazeera.com/news/2016/12/isil-fighters-enter-syria-ancient-city-palmyra-161210175629614.html>.

76 See UN Office at Geneva, 'Syria Peace Process', <http://www.unog.ch/Syria>.

77 Al Jazeera, 'Russia, Turkey Broker "nationwide" Ceasefire Deal', 30 December 2016, <http://www.aljazeera.com/news/2016/12/russia-turkey-broker-nationwide-ceasefire-deal-161229154943609.html>.

78 UN Security Council, 'Security Council Supports Russian Federation-Turkey Efforts to End Violence in Syria, Jump-Start Political Process, Adopting Resolution 2336 (2016)', press release SC/12663, 31 December 2016, <https://www.un.org/press/en/2016/sc12663.doc.htm>.

From 23 to 25 January 2017, the Syrian government delegation and opposition rebel groups attended a meeting sponsored by Russia, Turkey and Iran in Astana, Kazakhstan. The UN's Special Envoy for Syria also attended the discussions, which ended with an agreement among the three sponsors of the talks to set up a trilateral monitoring body to enforce the 30 December ceasefire, preparing for the upcoming intra-Syrian negotiations convened by the UN in Geneva on 23 February 2017.

B. PARTIES TO THE CONFLICTS

1. International Armed Conflict

The parties to the international armed conflict in 2016 were Syria and the different members of the US-led international coalition. The states part of the coalition are Belgium, Canada, Denmark, France, Germany, Italy, Jordan, Morocco, Netherlands, Saudi Arabia, Turkey, United Arab Emirates and the United Kingdom.

a. Syrian Armed Forces

The current strength of the Syrian army is unknown. It is reported that the armed forces numbered around 300,000 personnel before the conflict and have shrunk by 30-50% through desertions, defections and deaths.⁷⁹

2. Non-International Armed Conflicts

The main parties to the different non-international armed conflicts in Syria in 2016 were Syria, supported by Russia and Hezbollah, the Free Syrian Army, the Islamic State group, Jabhat Fatah Al-Sham (formerly Jabhat al-Nusra), Ahar al-Sham, and the Kurdish Syrian armed groups YPG-YPJ.

a. Free Syrian Army

The Free Syrian Army's (FSA) formation was announced on 29 July 2011 in a video released on the internet by a uniformed group of deserters from the Syrian military who called upon members of the Syrian army to defect and join them.⁸⁰ Although most of the FSA's members are Sunni Arabs (Syria's largest community), the organisation also includes battalions made up of Kurds, Turkmen, Palestinians, and Druze. In December 2011, the Syrian opposition became more unified, with the Free Syrian Army agreeing to coordinate its efforts with the non-violence-advocating Syrian National Council.⁸¹ The FSA operates throughout Syria, both in urban areas and in the countryside. Forces are active in the north-west (Idlib, Aleppo), the central region (Homs, Hama, and Rastan), the coast around Latakia, the south

79 S. Westall, 'Assad's Army Stretched but Still Seen Strong in Syria's War', Reuters, 18 September 2014, <http://www.reuters.com/article/2014/09/18/us-syria-crisis-military-idUSKBN0HDOM420140918>.

80 J. Landis, 'Free Syrian Army Founded by Seven Officers to Fight the Syrian Army', Syria Comment, 29 July 2011, www.joshualandis.com/blog/free-syrian-army-established-to-fight-the-syrian-army/.

81 J. Holliday, 'Middle East Security Report No. 3: Syria's Armed Opposition', Institute for the Study of War, March 2012, p 9, www.understandingwar.org/sites/default/files/Syrias_Armed_Opposition.pdf.

(Daraa and Houran), the east (Dayr al-Zawr, Abu Kamal), and the Damascus area.⁸² Many of the tens of operating armed non-State actors affiliated or partly coordinating with the Free Syrian Army share power by forming coalitions in the areas where they operate, to coordinate operations against the regime and other opponents. However, it is not possible to talk of effective co-ordination of the various Free Syrian Army brigades and other armed groups and militarized groupings on the ground under a joint command.

b. Haiy'a Tahrir al-Sham (former Jabhat Fateh al-Sham, former Nusra Front)

Reportedly set up with the help of the then Islamic State of Iraq, Haiy'a Tahrir al-Sham (former Nusra Front) announced its formation in January 2012. Its leader, Abu Mohammed al-Jawlani is believed to be a veteran of the Islamic State of Iraq. Considered as the Syrian affiliate of al-Qaeda since its inception, the group formally pledged its allegiance to al-Qaeda in April 2013. Thereafter, the group was placed on the Security Council al-Qaeda sanctions list. However, in 2016, the group changed its name and announced its split from al-Qaeda.

c. Islamic State (IS)

Under its former name, Islamic State in Iraq and the Levant (ISIL), IS was formed in early 2013 growing out of al-Qaeda in Iraq. In April 2013, the leader of the al-Qaeda affiliated Islamic State of Iraq, Abu Bakr al-Baghdadi, announced that his group was merging with Jabhat Al-Nusra to form the Islamic State of Iraq and Al-Sham, also known as the Islamic State of Iraq and the Levant. However, this unilateral declaration was rejected by both the leader of Jabhat Al-Nusra, Abu Mohammed al-Jawlani, and the leader of al-Qaeda, Ayman al-Zawahiri. In May 2013 the group split from Al-Nusra and began acting under the name Islamic State of Iraq and Al-Sham, under the leadership of Abu Bakr al-Baghdadi.⁸³ Despite IS's separation from al-Qaeda, it expanded its operations in Syria and experienced military success in both Syria and Iraq, capturing several major cities, including Raqqa, Fallujah, and Mosul. The funds seized through these invasions and seizure of oil fields in Iraq and eastern Syria combined with income from foreign donors and criminal activities, such as smuggling and the extortion of local businesses, have enabled IS to gather cash and assets worth up to \$2bn.⁸⁴

Currently IS's precise size is unclear. Its numbers have significantly risen over the last five years. Estimates of the number of fighters vary from around 12,000 to 30,000.⁸⁵ Some estimates state that about 80% of Western fighters in Syria have joined the group. Islamic State claims to have fighters from the UK, France, Germa-

82 D.H. Flood, 'An Overview of Syria's Armed Revolution', 5 *CTC Sentinel* 4 (April 2012), www.ctc.usma.edu/wp-content/uploads/2012/04/CTCSentinel-Vol5Iss41.pdf.

83 BBC News, 'Profile of Islamic State and Leader, Abu Bakr al-Baghdadi', 12 August 2014, <http://www.bbc.com/news/world-middle-east-28749734>.

84 M. Chulov, 'How an Arrest in Iraq Revealed Isis's \$2bn Jihadist Network', *The Guardian*, 15 June 2014, <http://www.theguardian.com/world/2014/jun/15/iraq-isis-arrest-jihadists-wealth-power>.

85 R. Barrett, *Foreign Fighters in Syria*, The Soufan Group, June 2014, <http://soufangroup.com/foreign-fighters-in-syria/>.

ny, and other European countries, as well as the US, the Arab world and the Caucasus. Despite the recruitment of thousands of Syrians the IS leadership structure is largely dominated by foreign fighters.⁸⁶

IS has extensively used explosive weapons, such as suicide or remote controlled car bombs, to cause mass civilian casualties, executed and tortured captured fighters during military operations, carried out kidnappings and public beheadings of civilians and journalists, and forcibly recruiting fighters, including children.

d. Ahrar al-Sham

Ahrar al-Sham, also known as Harakat Ahrar al-Sham al-Islamiyya, or the Islamic Movement of the Free Men of the Levant is considered one of the largest and most powerful rebel groups. The group has ties to al-Qaeda affiliates, but is not on the Security Council al-Qaeda sanctions list.⁸⁷

e. YPG-YPJ

YPG-YPJ is ‘the dominant military force’ in Kurdish-populated Syria. It has mainly been fighting Islamist armed groups active in Syria, notably the Islamic State and the Al-Nusra Front, since government forces largely withdrew from the areas in 2012. The Democratic Self-Administration in Rojava was formed in January 2014 and is the *de facto* governing authority in the Kurdish areas, in which the Peoples’ Protection Units (YPG) and the Women’s Protection Units (YPJ) hold the responsibility of military action.⁸⁸ YPG declared it had 50,000 fighters though independent estimates place the number at around 30,000.⁸⁹ YPG-YPJ has, together with other ANSAs such as the Revolutionary Army and the Syriac Military Council, created the coalition called Syrian Democratic Forces (SDF) to mainly fight against IS, but it also engages in fighting with other non-state armed groups.

f. Hezbollah

Hezbollah — the Party of God — is a Shi’a Islamist political, military, and social organization that wields considerable power in Lebanon. It emerged with the help of Iran during the Israeli occupation of Lebanon in the early 1980s, though its ideological roots stretch back to the Shia Islamic revival in Lebanon in the 1960s and 1970s. After Israel withdrew in 2000, Hezbollah resisted pressure to disarm and continued to strengthen its military wing, the Islamic Resistance. In some ways, its capabilities now exceed those of the Lebanese army, its considerable firepower used against Israel in the 2006 war. Starting in April 2013 (and possibly earlier),

86 UN, Report of the Independent International Commission of Inquiry on the Syrian Arab Republic – Rule of Terror: Living under ISIS in Syria, 14 November 2014, §13.

87 Stanford University, ‘Mapping Militant Organizations’, <https://web.stanford.edu/group/mappingmilitants/cgi-bin/groups/view/523>.

88 Geneva Call, ‘Syria’, <http://www.genevacall.org/country-page/syria/>.

89 GlobalSecurity.org, ‘Kurdish People’s Protection Unit YPG’, <http://www.globalsecurity.org/military/world/para/ypg.htm>

Hezbollah sent fighters across the border to support President al-Assad, a close ally of Shia-led Iran, in his struggle against the rebels.⁹⁰

C. KEY DEVELOPMENTS IN 2016: INCREASING FOREIGN INVOLVEMENT IN THE CONFLICT

Foreign involvement in the Syrian civil war has significantly increased since the conflict began over five years ago. On 10 September 2014, President Obama announced the formation of a broad international coalition to defeat The Islamic State of Iraq and the Levant (ISIL) (Operation 'Inherent Resolve').⁹¹ The U.S. contributed 3,500 troops, 200 special force agents. As of February 2017, the U.S. and coalition have conducted a total of 7,421 in Syria.⁹² The other states in the coalition are Belgium, Canada, Denmark, France, Germany, Italy, Jordan, Morocco, Netherlands, Saudi Arabia, Turkey, United Arab Emirates and the United Kingdom.

In September 2015 Russia began launching air strikes against rebels, saying the Islamic State (IS) and 'all terrorists' were targets.⁹³

Turkey became a party to the non-international armed conflict in Syria against IS after it launched its first airstrikes against Islamic State group targets in July 2015.⁹⁴ In August 2015, Turkey announced that it had joined the coalition against the Islamic State group led by the U.S. and conducted further airstrikes targeting the group in Syria.⁹⁵ The operation pursued the dual objective of supporting Syrian armed groups in their offenses against IS in the border area and to contain the expansion of the YPG in the same area.⁹⁶ Reportedly, armed clashes broke out between Turkish armed forces and the YPG during the operation.⁹⁷ The Syrian gov-

90 I. Black and D. Roberts, 'Hezbollah is Helping Assad Fight Syria Uprising, Says Hassan Nasrallah', *The Guardian*, 30 April 2013, www.theguardian.com/world/2013/apr/30/hezbollah-syria-uprising-nasrallah; see also BBC News, 'Profile: Lebanon's Hezbollah Movement', 4 December 2013, www.bbc.com/news/world-middle-east-10814698.

91 U.S. Department of State, 'The Global Coalition to Counter ISIL', <http://www.state.gov/s/seci/>.

92 U.S. Department of Defence, at: https://www.defense.gov/News/Special-Reports/0814_Inherent-Resolve

93 BBC News, 'Syria Crisis: Where Key Countries Stand', 30 October 2015, <http://www.bbc.com/news/world-middle-east-23849587>; M. Weaver and J. Borger 'Syria Airstrikes: Everything You Need to Know,' *The Guardian*, 1 December 2015, <https://www.theguardian.com/politics/2015/dec/01/syria-airstrikes-everything-you-need-to-know>.

94 C. Letsch, K. Shaheen and S. Ackerman, 'Turkey Carries Out First Ever Strikes Against Isis in Syria', *The Guardian*, 24 July 2015, <https://www.theguardian.com/world/2015/jul/24/turkish-jets-carry-out-strikes-against-isis-in-syria-reports>; BBC News, 'Turkey Bombs Islamic State Targets in Syria', 24 July 2015, <http://www.bbc.com/news/world-europe-33646314>.

95 T. Arango, A. Barnard and C. Yeginsu, 'Turkey's Military Plunges Into Syria, Enabling Rebels to Capture ISIS Stronghold', *The New York Times*, 25 August 2016, <http://nyti.ms/2bFfeap>.

96 C. Mills, 'ISIS/Daesh: The Military Response in Iraq and Syria', House of Commons Library Briefing Paper 06995, 8 November 2016, p 17, <http://researchbriefings.parliament.uk/ResearchBriefing/Summary/SNO6995>.

97 H. Pamuk and U. Bektas, 'Turkey Fires on U.S.-Backed Kurdish Militia in Syria Offensive', Reuters, 26 August 2016, <http://www.reuters.com/article/us-mideast-crisis-syria-turkey-idUSKCN10Z07J>.

ernment condemned the Turkish operation.⁹⁸ The Turkish operation is ongoing.⁹⁹

Iran is also very much present in the Syrian conflict. Iran and Syria are close strategic allies, and Iran has provided significant support for the Syrian Government, including logistical, technical and financial support, as well as training and some combat troops. It has also been reported that Iran sent ground troops in support of the Syrian armed forces.¹⁰⁰

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS, AND PROSECUTIONS

Syria is a signatory but not a state party to the 1998 Rome Statute of the International Criminal Court (ICC).

In October 2016, the French President François Hollande called for Russia to be prosecuted and confirmed it was working to find a way for the ICC prosecutor to launch an investigation into attacks on rebel held eastern Aleppo.¹⁰¹ Soon after the Secretary-General Ban Ki-moon again urged the UN Security Council to refer the situation in Syria to the International Criminal Court for investigation of possible war crimes.¹⁰²

Confronted on the UNSC deadlock on the issue, on December 21, 2016, the UN General Assembly adopted a resolution establishing a mechanism to assist in the investigation of serious crimes committed in Syria since 2011.¹⁰³ The new body met in Geneva in February 2017 with the objective to analyse information, organize and prepare files on the worst abuses that amount to international crimes — primarily war crimes, crimes against humanity and genocide - and identify those responsible'.¹⁰⁴

98 The Syrian Observer, 'Syria Condemns Turkey's Breach of Sovereignty in Jarablus', 25 August 2016, http://www.syrianobserver.com/EN/News/31549/Syria_Condemns_Turkey_Breach_Sovereignty_Jarablus.

99 Reuters, 'Turkish Air Strikes Kill 23 Islamic State Militants in Syria's Al-Bab Region - Army', 7 December 2016, <http://www.reuters.com/article/us-mideast-crisis-syria-turkey-idUSKBN13W0XQ>; Middle East Eye, 'Russia Bombs IS-held Town in Syria, Aids Turkish Advance', 29 December 2016, <http://www.middleeasteye.net/news/russia-bombs-islamic-state-held-town-syria-aids-turkish-advance-1956435883>.

100 H. Bastani, 'Iran Quietly Deepens Involvement in Syria's War', BBC News, 20 October 2015, <http://www.bbc.com/news/world-middle-east-34572756>.

101 BBC News, 'Syria Conflict: France Wants Russia on War Crimes Charges, 10 October 2016, <http://www.bbc.com/news/world-europe-37611151>.

102 Fox News, 'UN Chief Again Urges UN to Refer the Syria Situation to ICC', 10 October 2016, <http://www.foxnews.com/world/2016/10/10/un-chief-again-urges-un-to-refer-syria-situation-to-icc.html>

103 Human Rights Watch, 'Syria: UN General Assembly Adopts Resolution on War Crimes Investigations', 21 December 2016, <https://www.hrw.org/news/2016/12/21/syria-un-general-assembly-adopts-resolution-war-crimes-investigations>.

104 S. Nebehay, 'New U.N. Team Aims to Bring Syria War Crimes to Court', Reuters, 16 February 2016, <http://www.reuters.com/article/us-mideast-crisis-syria-warcrimes-idUSKBN15V1QU?feedType=RSS&feedName=worldNews>.

Finally, in a remarkable case, a former Syrian rebel who took part in the mass killing of seven captured Syrian soldiers in 2012 was sentenced to life in prison for war crimes in Sweden, where he had travelled and applied for asylum.¹⁰⁵

2. NAGORNO-KARABAKH: SEVERE CLASHES IN APRIL 2016

Classification of the conflict:

Armenia and Azerbaijan were involved in an international armed conflict in 2016 by virtue of continued Armenian occupation of Azerbaijani territory.

A. HISTORY OF THE CONFLICT

The re-emergence of violence in the late 1980s between ethnic Armenians and Azeris over the long-disputed region of Nagorno-Karabakh erupted into armed conflict in February 1992 between forces from Armenia and Azerbaijan as well as Nagorno-Karabakh. The armed conflict led to occupation of more than one-seventh of the territory of Azerbaijan, more than 20,000 casualties, massive refugee flows from both sides, and expulsion of ethnic Armenians from Azerbaijan and ethnic Azeris from Armenia.¹⁰⁶

A ceasefire between the parties to the conflict was signed on 12 May 1994. Since February 1992, attempts to settle the conflict have been made under the framework of the Minsk Process led by the Presidents of the Organization for Security and Co-operation in Europe (OSCE) Minsk Group's Co-Chair states, namely France, the Russian Federation, and the U.S.

The Minsk Process negotiations resulted in a proposal of Basic Principles put forward in November 2007 in Madrid. The Principles aimed to serve as a basis for a comprehensive settlement between Armenia and Azerbaijan and call *inter alia* for the return of the territories surrounding Nagorno-Karabakh to Azerbaijani control and an interim status for Nagorno-Karabakh providing guarantees for security and self-governance as well as international security guarantees that would include a peacekeeping operation.

Despite the 20-year-long ceasefire, which is monitored by the OSCE, and continued negotiations for a peaceful settlement of the conflict, the Nagorno-Karabakh situation remains unsolved with regular violations of the ceasefire involving armed incidents along the Line of Contact between Armenia and Azerbaijan.

105 C. Anderson, 'Syrian Rebel Gets Life Sentence for Mass Killing Caught on Video', *The New York Times*, 16 February 2017, https://www.nytimes.com/2017/02/16/world/europe/syrian-rebel-haisam-omarsakhanh-sentenced.html?_r=0.

106 See, e.g., BBC News, 'Nagorno-Karabakh Profile', 30 May 2012, www.bbc.co.uk/news/world-europe-18270325, 'Armenia Profile – Timeline', 27 February 2013, www.bbc.co.uk/news/world-europe-17405415, and 'Azerbaijan Profile – Timeline', 20 March 2012, www.bbc.co.uk/news/world-europe-17047328.

B. PARTIES TO THE CONFLICT

The parties to the conflict were Armenia and Azerbaijan.

Armenia was estimated by one source to have some 70,000 active frontline military personnel and a further 210,000 in reserve.¹⁰⁷ Azerbaijan is estimated to have 70,000 active frontline military personnel and a further 300,000 in reserve.¹⁰⁸ A wide array of conventional weaponry is possessed by both states.

C. KEY DEVELOPMENTS IN 2016: SEVERE CLASHES IN APRIL 2016

In early April 2016, fighting resumed in violation of the 1994 ceasefire reportedly killing more than sixty people.¹⁰⁹ Prior to this incident, Azerbaijani forces had shot down an Armenian helicopter in November 2014, and ceasefire violations continued at a steady rate throughout 2015.¹¹⁰

Between 1–5 April 2016, intense fighting broke out in Nagorno Karabakh all along the front line between Karabakh and Azerbaijan. Ground fighting was confined to areas close to the Line of Contact (LOC) but artillery fire penetrated more than 10km into Nagorno Karabakh.

Soon after the fighting broke out, on 7 April 2016, Azerbaijan's defense ministry accused Armenian backed separatists of violating the ceasefire in the Nagorno-Karabakh region 119 times within a period of 24 hours in the first week of April 2016.¹¹¹ Azerbaijan alleged Armenia had been using white-phosphorus chemical weapon.¹¹²

Moscow called for an immediate ceasefire. Russia hinted it may deploy peacekeepers and would keep Moscow's sales of arms to both sides 'in balance'. Iran pledged to serve as a mediator, and Turkish President Recep Tayyip Erdogan said he would back Azerbaijan 'until the end'.

107 Global Firepower, 'Armenia Military Strength', last updated 7 March 2017, http://www.globalfirepower.com/country-military-strength-detail.asp?country_id=armenia. The Republic of Armenia armed forces website is www.mil.am/.

108 Global Firepower, 'Azerbaijan Military Strength', last updated 7 March 2017, http://www.globalfirepower.com/country-military-strength-detail.asp?country_id=azerbaijan.

109 Nagorno-Karabakh Republic Ministry of Foreign Affairs Republic, 'Cease- Fire Agreement', <http://nkr.am/en/ceasefire-agreement/147/>.

110 France 24, 'Azerbaijan Agrees Truce with Authorities in Nagorno-Karabakh', 5 April 2016, <http://www.france24.com/en/20160405-minsk-group-austria-meeting-end-fighting-nagorno-karabakh>.

111 Radio Free Europe Radio Liberty, 'Azerbaijan Accuses Nagorno-Karabakh Separatists of Violating Cease- Fire', 7 April 2016, <http://www.rferl.org/a/azerbaijan-armenia-karabakh-cease-fire-violation-nakhchivan/27659695.html>.

112 CNS News (AP), 'Azerbaijan Alleges White-Phosphorus Use in Karabakh Fight', 11 May 2016, <http://www.cnsnews.com/news/article/azerbaijan-alleges-white-phosphorus-use-karabakh-fight>

The OSCE condemned the violence as well.¹¹³

Finally, in a trilateral meeting held by Russian leader Vladimir Putin, Presidents from Armenia and Azerbaijan met in St. Petersburg to discuss the potential for a settlement in Nagorno-Karabakh. Shortly after the talks, a joint statement was released announcing an agreement to increase number of OSCE monitors along the line of contact and a mutual readiness to engage in a peace process.¹¹⁴

Further reading: International Crisis Group, Nagorno-Karabakh: New Opening, or More Peril? Report n° 239, 4 July 2016, <https://www.crisisgroup.org/europe-central-asia/caucasus/azerbaijan/nagorno-karabakh-new-opening-or-more-peril>

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS, AND PROSECUTIONS

On 4 April 2016, it was reported that Azerbaijani forces decapitated the body of a Yazidi-Armenian soldier, Kyaram Sloyan who had been killed in action,¹¹⁵ with videos and pictures of his severed head posted on social networks.¹¹⁶ On 3 May Azerbaijani Defense Ministry denied this information and claimed that all the bodies of the Armenian soldiers were handed over in the presence of international observers, and no traces of violence were detected on the bodies.¹¹⁷

Relatives of three Armenian soldiers killed and beheaded during the escalation filed a complaint against Azerbaijan to the European Court of Human Rights (ECHR), claiming a violation of the Convention with regard to the inhuman treatment of the bodies, lack of respect for their privacy, and discrimination based on nationality.¹¹⁸

In April 2016 the European Ombudsman Institute (EOI) issued a statement condemning any violation of human rights regarding civilians and attacks on civilian objects in Nagorno-Karabakh.¹¹⁹

113 M. Mirovalev, 'Here's Why a 'Frozen' Conflict Between Armenia and Azerbaijan Has Gotten Hot', Los Angeles Times, 19 April 2016, <http://www.latimes.com/world/europe/la-fg-nagorno-karabakh-20160419-story.html>.

114 Radio Free Europe Radio Liberty, 'Leaders of Azerbaijan, Armenia Meet With Putin for Talks on Nagorno- Karabakh', 20 June 2016, <http://www.rferl.org/a/talks-on-nagorno-karabakh/27809257.html>.

115 Armenpress, 'Nagorno Karabakh Defense Ministry Releases Names of 36 Killed Soldiers', 8 April 2016, <http://armenpress.am/eng/news/842717/nagorno-karabakh-defense-ministry-releases-names-of-36-killed-soldiers.html>; D. Beliakov and M. Franchetti, 'Former Russian States on Brink of Renewing War', *The Sunday Times*, 10 April 2016, http://www.thesundaytimes.co.uk/sto/news/world_news/Middle_East/article1686450.ece?CMP=OTH-gnws-standard-2016_04_09.

116 Ezidi Press, 'Karabakh Conflict: Azerbaijani Soldiers Behead Ezidi From Armenia', 4 April 2016, <http://ezidipress.com/en/karabakh-conflict-azerbaijani-soldiers-behead-ezidi-soldier-from-armenia/>.

117 Azvision, 'Armenian Soldiers', 3 May 2016, <http://en.azvision.az/news.php?id=36565>.

118 A. Martirosyan, 'Complaint About Beheading of Armenian Soldiers Filed to ECtHR, Advocate Reports', *Caucasian Knot*, 26 April 2016, <http://www.eng.kavkaz-uzel.eu/articles/35390/>.

119 European Ombudsman Institute, 'Statement EOI Karabakh' 11 April 2016, <http://www.eoi.at/?EOI%20-%20Statements>.

On 17 May 2016, Azerbaijan Ministry of Foreign Affairs alleged that the Armenian military had used 122-mm caliber white phosphorus munitions prohibited by the Convention on Certain Conventional Weapons against Azerbaijani civilians and civilian objects.¹²⁰ The NKR foreign ministry and Armenia defense ministry denied this.¹²¹ HALO Trust reported that Azerbaijan had dropped rocket-dispersed cluster bombs around civilian settlements in NKR.¹²²

According to the US State Department, Azerbaijan ‘took a huge number of casualties, including comparatively’, although the number was not specified. Overall, a senior member of the US State Department estimated 350 casualties on both sides, including civilians.¹²³

Neither Armenia nor Azerbaijan is a state party to the 1998 Rome Statute of the International Criminal Court (ICC), although Armenia is a signatory state.

3. MILITARY OCCUPATION OF CYPRUS BY TURKEY: A SETBACK TO REUNIFICATION TALKS

Classification of the conflict:

Cyprus and Turkey were involved in an international armed conflict in 2016 by virtue of continued Turkish occupation of territory in the north of the Republic of Cyprus.

A. HISTORY OF THE CONFLICT¹²⁴

Cyprus has been divided since 1974 when Turkey invaded the north in response to a military coup on the island backed by the Greek government in Athens. Cyprus was effectively partitioned with the northern third inhabited by Turkish Cypriots and the southern two-thirds by Greek Cypriots. A ‘Green Line’ with a buffer zone, dividing the two parts from Morphou through Nicosia to Famagusta, is patrolled by UN troops.

UN Security Council Resolution 353 of 20 July 1974 requested the withdrawal without delay from the Republic of Cyprus of foreign military personnel. UN General Assembly Resolution 37/253 of 16 May 1983 declared that ‘part of the territory of the Republic of Cyprus is still occupied by foreign forces’.

120 Republic of Azerbaijan Ministry of Foreign Affairs, ‘Statement on the Use of White Phosphorus Bomb by the Armed Forces of Armenia Against Civilians and Civilian Objects of Azerbaijan’, 17 May 2016, <http://www.mfa.gov.az/en/news/909/4104>.

121 Armenpress, ‘NKR MFA: Falsification and Distortion of Reality is Integral Part of Azerbaijan’s Foreign Policy’, 20 May 2016, <https://armenpress.am/eng/news/848030/nkr-mfa-falsification-and-distortion-of-reality-is-integral-part-of-azerbajians-foreign-policy.html>.

122 The HALO Trust, ‘HALO Begins Emergency Clearance in Karabakh’, 19 April 2016, <https://www.halo-trust.org/minefreenk/media-centre/news/halo-begins-emergency-clearance-in-karabakh/>.

123 U.S. Department of State, ‘Background Briefing on the Nagorno-Karabakh Conflict’, 16 May 2016, <https://2009-2017.state.gov/r/pa/prs/ps/2016/05/257263.htm>.

124 Unless otherwise stated, this section is based on BBC News, ‘Cyprus Country Profile: Timeline’, 26 February 2016, <http://www.bbc.com/news/world-europe-17217956>.

In 1983, the Turkish-held area declared itself the Turkish Republic of Northern Cyprus. Turkey recognizes only the Turkish Cypriot authorities and is believed still to maintain more than 10,000 troops in the north of the island. No other government has recognized the north as a state.

As European Union (EU) entry for the Republic of Cyprus approached, a UN reunification plan was put to both communities in twin referenda in April 2004. The plan was endorsed by Turkish Cypriots, although not by their leader Rauf Denktaş, but was overwhelmingly rejected by Greek Cypriots. Since both sides had to approve the proposals, the island remained divided as it joined the EU in May 2004.

Reunification talks have proceeded slowly since 2008.

B. PARTIES TO THE CONFLICT

The parties to the conflict are Cyprus and Turkey.

Cyprus is estimated to have some 10,000 active frontline military personnel and a further 50,000 in reserve.¹²⁵ Turkey is estimated by one source to have 41,640 active frontline military personnel and a further 185,630 in reserve.¹²⁶ A wide array of conventional weaponry is possessed by both states.

The UN Peacekeeping Force in Cyprus (UNFICYP)¹²⁷ is a UN peacekeeping force established in 1964 under UN Security Council Resolution 186 to prevent a recurrence of fighting following intercommunal violence between the Greek Cypriots and Turkish Cypriots, to contribute to the maintenance and restoration of law and order and to facilitate a return to normal conditions.

C. RECENT DEVELOPMENTS IN 2016: SETBACK TO REUNIFICATION TALKS

Talks that had resumed in 2015 hit an impasse in 2016, in a serious setback that cast doubt over whether 18 months of negotiations could successfully resolve the decades-old dispute. A UN statement said Cypriot President Nicos Anastasiades, a Greek Cypriot, and breakaway Turkish Cypriot leader Mustafa Akinci had failed to narrow differences on the territorial aspect of a deal over two days of negotiations at Mont Pelerin, Switzerland.¹²⁸

125 Armedforces.co.uk, 'European Defence Information: Cyprus', www.armedforces.co.uk/Europeandefence/edcountries/countrycyprus.htm. The Republic of Cyprus armed forces website (in Greek only) is www.army.gov.cy/?cat=1.

126 Global Firepower, 'Turkey Military Strength', last updated 5 December 2016, http://www.globalfirepower.com/country-military-strength-detail.asp?country_id=Turkey.

127 UNFICYP, <https://unficy.unmissions.org/>.

128 The Herald, 'Crucial Cyprus Peace Talks at Swiss Resort "Inconclusive"', 21 November 2016, <http://www.dailyherald.com/article/20161121/news/311219793>

The main area of disagreement was on the amount of territory that would make up the federal zones each side would run. Greek Cypriots sought the return of enough territory that would enable as many as 100,000 displaced people to return to the homes and property they lost during the war. That would serve to build support for an accord that would be put to a vote and help reduce the costs involved with compensating those unable to return. Despite this important setback, officials repeatedly said this latest round had nevertheless marked significant progress especially on how power will be shared between the majority Greek Cypriots and the Turkish Cypriots. In January 2017, in yet another round of negotiations, rival Cypriot delegations failed to agree on maps for new borders on the divided island state, each slamming the other's proposals as 'unacceptable'.

Further reading: AFP, 'Cyprus Reunification: Leaders Leave Switzerland Without Deal', *The Guardian*, 22 November 2016, <https://www.theguardian.com/world/2016/nov/22/cyprus-reunification-leaders-leave-switzerland-without-deal>; AFP, 'Cyprus Reunification Talks: Rivals Reject Proposed New Borders', *The Guardian*, 14 January 2017, <https://www.theguardian.com/world/2017/jan/14/cyprus-reunification-talks-rivals-reject-proposed-new-borders>.

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS, AND PROSECUTIONS

Cyprus ratified the 1998 Rome Statute of the International Criminal Court (ICC Statute) in March 2002. Turkey is neither a party nor a signatory to the Statute.

In accordance with the ICC Statute, the Court may exercise jurisdiction over war crimes alleged to have been committed by Cypriot nationals or on its territory. No allegations of war crimes are known to have been made against either Cypriot or Turkish military personnel regarding any acts concerning the military occupation in 2016.

4. WESTERN SAHARA: THE POLISARIO FRONT'S DECLARATION UNDER ARTICLE 96.3 AP I AND IMPORTANT EU COURT OF JUSTICE DECISION

Classification of the conflict:

Morocco and the Frente Popular para la Liberación de Saguia el-Hamra y de Río de Oro (Polisario Front) were engaged in an international armed conflict in 2016 by virtue of Morocco's continued military occupation of Western Sahara. Western Sahara is not universally recognized as a state and is not an Observer State within the UN although the Sahrawi Arab Democratic Republic has been a member of the African Union since 1984.

A. HISTORY OF THE CONFLICT¹²⁹

The status of the Western Sahara remains unresolved. Morocco annexed the territory in 1975, and a guerrilla war with Algerian-backed pro-independence forces ended in 1991. UN efforts have so far failed to break the political deadlock. The Polisario Front was set up on 10 May 1973. In a 1979 Resolution, the UN General Assembly noted that the Polisario Front was the representative of the people of Western Sahara.¹³⁰ Some 100,000 refugees still live in Polisario's camps in Algeria. In February 1976, Polisario declared the establishment of the Sahrawi Arab Democratic Republic. The current President of the Republic, Mohamed Abdelaziz, was elected Secretary-General of Polisario in August 1976.

In October 1975, the International Court of Justice (ICJ) rejected territorial claims by Morocco and Mauritania.¹³¹ The court recognized the Saharawi's right to self-determination and Spain agreed to organize a referendum. But in November 1975, Moroccan King Hassan II ordered a 'Green March' of more than 300,000 Moroccans into the territory. Spain backed down and negotiated a settlement with Morocco and Mauritania, known as the Madrid Agreement. Signed on 14 November 1975, the deal partitioned the region. Morocco acquired two-thirds in the north and Mauritania the remaining third. Spain agreed to end colonial rule. Under international law, the Madrid agreements are not considered valid since, by virtue of the principle of Self-Determination, Spain could not transfer sovereignty over Western Sahara to Morocco without consulting the people of Western Sahara.¹³²

In August 1978, one month after a coup, a new Mauritanian government signed a peace deal with Polisario and renounced all territorial claims. Morocco moved to occupy areas allocated to Mauritania. Algeria in turn allowed refugees to settle in its southern town of Tindouf, where Polisario still has its main base.

In April 1991, the UN established MINURSO, the UN Mission for a Referendum in Western Sahara. Its mandate was to implement a peace plan outlined in a 1990 Security Council resolution. In September 1991, a UN-brokered ceasefire was declared. The peace plan provided for a transition period, leading to a referendum in January 1992. Western Saharans would choose between independence and integration with Morocco. While the ceasefire held, the mission was never fully de-

129 Unless otherwise stated, this section is based on BBC News 'Western Sahara Profile', 27 July 2016, <http://www.bbc.com/news/world-africa-14115273>.

130 UNGA Resolution 34/37, adopted on 21 November 1979, para 7.

131 ICJ, Western Sahara: Advisory Opinion of 16 October 1975, www.icj-cij.org/docket/files/61/6195.pdf.

132 As noted by Hans Corell, the then UN legal Counsel: 'On 14 November 1975, a Declaration of Principles on Western Sahara was concluded in Madrid between Spain, Morocco and Mauritania ("the Madrid Agreement"), whereby the powers and responsibilities of Spain, as the administering Power of the Territory, were transferred to a temporary tripartite administration. The Madrid Agreement did not transfer sovereignty over the Territory, nor did it confer upon any of the signatories the status of an administering Power, a status which Spain alone could not have unilaterally transferred. The transfer of administrative authority over the Territory to Morocco and Mauritania in 1975 did not affect the international status of Western Sahara as a Non-Self-Governing Territory.' See Letter dated 29 January 2002 from the Under-Secretary-General for Legal Affairs, the Legal Counsel, addressed to the President of the Security Council, para 6, <http://www.havc.se/res/SelectedMaterial/20020129legalopinionwesternsahara.pdf>.

ployed and nor was the transition period ever completed. A key sticking point was an ‘identification process’, to decide who was eligible to vote. Identification was to be based on a census carried out by Spain in 1973. Polisario wanted to rule out Moroccans who settled in Western Sahara after the Green March.

In a new bid to break the deadlock, UN Envoy James Baker submitted a ‘Framework Agreement’, known as the Third Way, in June 2001. It provided for autonomy for Saharawi’s under Moroccan sovereignty, a referendum after a four-year transition period, and voting rights for Moroccan settlers resident in Western Sahara for over a year. This formula was rejected by Polisario and Algeria. Then in July 2003, the UN adopted a compromise resolution proposing that Western Sahara become a semi-autonomous region of Morocco for a transition period of up to five years. A referendum would then take place on independence, semi-autonomy or integration with Morocco.

Polisario signalled its readiness to accept, but Morocco rejected the plan, citing security concerns. Envoy James Baker resigned in June 2004 and the UN process remains deadlocked.

B. PARTIES TO THE CONFLICT

The parties to the conflict are Morocco and the Polisario Front.

Morocco is estimated to have some 200,000 active frontline military personnel and a further 150,000 in reserve.¹³³ The Polisario Front operates as the armed forces of the Sahrawi Arab Democratic Republic. Its strength today is not known.

C. RECENT DEVELOPMENTS IN 2015-2016:¹³⁴ ARTICLE 96.3 API DECLARATION AND IMPORTANT EU COURT OF JUSTICE DECISION

On 21 June 2015, the Polisario Front made the following unilateral declaration on behalf of the people of Western Sahara that it undertook to apply the 1949 Geneva Conventions and Additional Protocol I to the conflict between it and the Kingdom of Morocco :

Conformément à l'article 96.3 du Protocole additionnel aux Conventions de Genève du 12 août 1949 relatif à la protection des victimes des conflits armés internationaux (Protocole I) du 8 juin 1977, le Front POLISARIO, en tant qu'autorité représentant le peuple du Sahara Occidental luttant pour son droit à disposer de lui-même, déclare s'engager à appliquer les Conventions de Genève de 1949 et le Protocole I dans le conflit l'opposant au Royaume du Maroc.

¹³³ Global Firepower, ‘Morocco Military Strength’, last updated 5 December 2016, http://www.globalfirepower.com/country-military-strength-detail.asp?country_id=morocco.

¹³⁴ The 96.3 AP I Declaration by the Polisario Front was made in 2015 and not 2016. However, since there was no *War Report* in 2015, we believe this is an important fact that should be reported in the present edition of *The War Report*.

The Polisario Front addressed its unilateral declaration to the Swiss Federal Council, which is the depositary of the Conventions. The Swiss Federal Council accepted the declaration, making it the first time that Article 96.3 from API was applied. The legal effects of the Swiss Federal Council having accepted the unilateral declaration and notified to States Parties are limited to those written in Article 96(3) of API, namely :

- The Conventions and API are brought into force for the Polisario Front as a party to the conflict with immediate effect;
- The Polisario Front assumes the same rights and obligations as those assumed by Morocco in respect to the Geneva Conventions and API (NB: Morocco is a party to both); and
- The Geneva Conventions and this Protocol are equally binding upon all Parties to the conflict.

In other words, the Polisario Front is now recognized to be bound to the Geneva Conventions and Additional Protocol I in its relations with Morocco and vice versa.

On the second half of 2016, the EU Court of justice ruled over an important case on which it had to decide whether the agreements relating to the EU-Morocco Association Agreement and Liberalisation Agreement were applicable to the Western Sahara and if so, whether they should be annulled. Following the Advocate General Wathelet's opinion published on 13 September 2016,¹³⁵ the Court of Justice gave its appeals judgment on 21 December 2016¹³⁶ and overruled the earlier decision of the General Court.¹³⁷ It decided that the EU-Morocco trade agreement did not apply to the territory of Western Sahara, which is claimed by Morocco as its own. The Court then went on to dismiss the action for annulment brought against the EU Council decision endorsing the agreement by the Polisario Front. While the dismissal of the Polisario Front's action may appear to be a victory for the EU Council and Morocco, this determination in fact is a consequence from the Court's recognition of the people of Western Sahara's right to self-determination and the attendant exclusion of the territory from the trade agreement.

135 *Council of the European Union v. Front Populaire pour la libération de la saguia-el-hamra et du rio de oro (Front Polisario)* Opinion of Advocate General Wathelet (Case C-104/16 P), 13 September 2016 (1), <http://curia.europa.eu/juris/document/document.jsf?text=&docid=183273&pageIndex=0&doclang=en&mode=req&dir=&occ=first&part=1&cid=1031729>.

136 Judgment of the Court (Grand Chamber), 21 December 2016, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=186489&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=324852>.

137 Judgment of the General Court (Eighth Chamber), 10 December 2015, <http://curia.europa.eu/juris/document/document.jsf?text=&docid=172870&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1407150>.

Further reading: Katharine Fortin, ‘Unilateral Declaration by Polisario Under API Accepted by Swiss Federal Council’, *Armed Groups and International Law*, 2 September 2015, <https://armedgroups-internationallaw.org/2015/09/02/unilateral-declaration-by-polisario-under-api-accepted-by-swiss-federal-council/>. On the EU case, see Cedric Ryngaert, ‘The Polisario Front Judgment of the EU Court of Justice: A Reset of EU-Morocco Trade Relations in the Offing’, *Armed Groups and International Law*, 23 January 2017, <https://armedgroups-internationallaw.org/2017/01/23/guest-post-by-cedric-ryngaert-the-polisario-front-judgment-of-the-eu-court-of-justice-a-reset-of-eu-morocco-trade-relations-in-the-offing/>.

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS, AND PROSECUTIONS

Neither Morocco nor the Sahrawi Arab Democratic Republic is a state party to the 1998 Rome Statute of the International Criminal Court. Morocco has signed the Statute.

SELECTED NON-INTERNATIONAL ARMED CONFLICTS

1. AFGHANISTAN: A CONTINUING INCREASE IN CIVILIAN CASUALTIES

Classification of the conflicts:

Afghanistan was involved in a non-international armed conflict (NIAC) in 2016 in which the armed forces of the Government of Afghanistan are fighting against the Taliban.¹³⁸ This conflict meets the threshold for the application of the 1977 Additional Protocol II. In addition, there are two separate NIAC with the Haqqani Network and the armed group identifying itself as belonging to IS. There was also a NIAC with Hezb-e-Islami Gulbuddin (HIG), until September 2016, at which point a peace agreement was signed between the parties (see below). In addition, an increasing number of attacks were claimed by the group known as the Islamic State in Afghanistan (IS 'Khorasan' branch, IS-K), making it a party to the conflict in Afghanistan.

On January 1, 2015 the U.S. and NATO formally ended their combat role in Afghanistan and the ANDSF took full responsibility for securing their country.¹³⁹

The position of the UN Assistance Mission in Afghanistan (UNAMA) in 2016 was that:

UNAMA takes the position that the armed conflict in Afghanistan is a non-international armed conflict between the Government of Afghanistan and its armed forces (Afghan national security forces supported by international military forces...) and non-State armed opposition groups...¹⁴⁰

UNAMA considers that the following non-State armed oppositions groups party to the conflict are

'those who identify as 'Taliban' as well as individuals and non-State organised armed groups taking a direct part in hostilities and assuming a variety of labels including the Haqqani Network, Hezb-e-Islami, Islamic Movement

138 The term Quetta Shura is a composite comprising the name of the town in Pakistan to which Mullah Omar relocated in 2001 and the Supreme Shura that governed Afghanistan in the early 1990s. See, e.g., J. Dressler and C. Forsberg, 'The Quetta Shura Taliban in Southern Afghanistan: Organization, Operations and Shadow Governance', Background, Institute for the Study of War, 21 December 2009, p 1, www.understandingwar.org/report/quetta-shura-taliban-southern-afghanistan.

139 U.S. Department of State, 'U.S. Relations with Afghanistan', <http://www.state.gov/r/pa/ei/bgn/5380.htm>.

140 UNAMA and OHCHR, *Afghanistan: Midyear Report 2016: Protection of Civilians in Armed Conflict*, Kabul, July 2016, p 96, https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_midyear_report_2016_final_rev.1-9sept.pdf.

of Uzbekistan, Islamic Jihad Union, LashkariTayyiba, Jaysh Muhammed, groups identifying themselves as ‘Daesh’ and other militia and armed groups pursuing political, ideological or economic objectives including armed criminal groups directly engaged in hostile acts on behalf a party to the conflict.¹⁴¹

The War Report does not consider the Islamic Movement of Uzbekistan, Islamic Jihad Union, Lashkari Tayyiba, Jaysh Muhammed, or other armed groups to have been parties to NIACs in Afghanistan in 2016.¹⁴² In addition, since a peace agreement was signed with Hezb-e-Islami in September 2016, the War Report considers the group is no longer a party to the conflict from that date on.¹⁴³

A. HISTORY OF THE CONFLICT

Afghanistan has been engulfed in almost perpetual conflict since the Soviet invasion in 1979. Ongoing non-international armed conflict has now been raging for several years.

Emerging as a force in the 1990s, the Taliban — originally a group of Islamic scholars drawn from the largest ethnic group in Afghanistan, the Pashtuns — controlled about 90% of the country until late 2001, although the Taliban were recognized as the legitimate government of ‘the Islamic Emirate of Afghanistan’ by only three states (Pakistan, Saudi Arabia, and the United Arab Emirates). Following the attacks by al-Qaeda in the U.S. on 11 September 2001, which were masterminded by Osama Bin Laden from Afghanistan, the Taliban refused US demands that they hand over Bin Laden. This led to the U.S. initiating an aerial bombing campaign in October 2001, enabling opposition groups, namely the Northern Alliance, to drive the Taliban from power. But since the fall of the regime in 2001, Taliban and other Mujahedeen fighters have re-grouped into a number of different armed groups (see below). The Taliban are conducting a widespread insurgency, particularly in the south east and east of the country, while the Afghan Government has struggled to extend its effective authority beyond the capital.¹⁴⁴

141 Ibid, p 101.

142 In December 2015, the Office of the Prosecutor (OTP) of the International Criminal Court (ICC) considered that: ‘Today, the Government of Afghanistan forces combat armed groups which mainly include the Taliban, the Haqqani Network, and Hezb-e-Islami Gulbuddin (“HIG”). International forces deployed in support of the Government of Afghanistan ended their combat missions in December 2014, although such forces remain in reduced numbers, primarily in a training, advisory and assistance role.’, OTP, ‘Report on Preliminary Examination Activities 2015’, 12 November 2015, §114, <https://www.icc-cpi.int/iccdocs/otp/OTP-PE-rep-2015-Eng.pdf>.

143 Rod Norland, ‘Afghanistan Signs Draft Peace Deal With Faction Led by Gulbuddin Hekmatyar’, The New York Times, 22 September 2016, at : https://www.nytimes.com/2016/09/23/world/asia/afghanistan-peace-deal-hezb-i-islami.html?_r=0; Al Jazeera, ‘Afghanistan: Ghani, Hekmatyar sign peace deal’, 29 September 2016, <http://www.aljazeera.com/news/2016/09/afghanistan-ghani-hekmatyar-sign-peace-deal-160929092524754.html>

144 See, e.g., International Crisis Group, ‘Afghanistan: The Long, Hard Road to the 2014 Transition’, Asia Report No. 236, 8 October 2012, p 16, <https://www.crisisgroup.org/asia/south-asia/afghanistan/afghanistan-long-hard-road-2014-transition>.

2016 marked the emergence of IS in Afghanistan as a party to the conflict. In July 2016, the deadliest of regular attacks claimed by IS targeted a protest by the Hazaras, in July, leaving at least 80 people dead and wounded 230.¹⁴⁵ Another attack took place in November 2016, killing 30 persons.¹⁴⁶ Attacks continued in 2017.¹⁴⁷

B. PARTIES TO THE CONFLICTS

The parties to the NIACs were Afghan Government forces and ISAF against the Quetta Shura Taliban and, in separate conflicts, against the Haqqani Network and Hezb-e-Islami, respectively.

1. Afghan Forces

Afghanistan was estimated to have 200,000 active frontline military personnel as of December 2016.¹⁴⁸ According to *The Independent* newspaper, the ANP were considered by the United Kingdom's Foreign and Commonwealth Office (FCO) to be 'endemically corrupt' and riven with problems including nepotism and drug abuse.¹⁴⁹ A confidential FCO report obtained by the British newspaper on the performance of the police observed in October: 'Unless radical change is introduced to improve the actual and perceived integrity and legitimacy of officers... the organisation will continue to provide an ineffective and tainted service to citizens... for decades to come.'¹⁵⁰

2. Taliban

The largest non-state armed group fighting against the Afghan regime, the Taliban in Afghanistan (Quetta Shura Taliban) were led by Mullah Omar, killed an erstwhile village clergyman who lost his right eye fighting Soviet forces in the 1980s, but who was reportedly killed in 2015.¹⁵¹

3. Hezb-e-Islami

Hezb-e-Islami Gulbuddin (HIG) is led by Gulbuddin Hekmatyar, a rebel military commander during the 1980s conflict with the Soviets and one of the key figures in the civil war that followed the Soviet withdrawal. He was Prime Minister of

145 BBC News, 'Kabul explosion: IS "claims attack on Hazara protest"', 23 July 2016, <http://www.bbc.com/news/world-asia-36874570>.

146 M. Mashal and F. Abed 'Islamic State Again Strikes at Afghan Shiites, Killing at Least 30 in Kabul', *The New York Times*, 21 November 2016, <https://www.nytimes.com/2016/11/22/world/asia/afghanistan-kabul-blast-mosque.html>.

147 Reuters, 'Islamic State Fighters Kill 18 Afghan Soldiers in Attack on Outpost', 17 February 2017, <http://in.reuters.com/article/afghanistan-islamic-state-idINKBN15W15B>.

148 Global Firepower, 'Afghanistan Military Strength', last updated 7 December 2016, http://www.globalfirepower.com/country-military-strength-detail.asp?country_id=afghanistan.

149 B. Brady, 'Taliban Preys on Afghanistan's Corrupt Police Force', *Independent*, 23 December 2012, www.independent.co.uk/news/world/asia/taliban-preys-on-afghanistans-corrupt-police-force-8430111.html.

150 Ibid.

151 Although there is some uncertainty about the exact date of his death. See BBC News, 'Taliban Admit Covering up Death of Mullah Omar', 31 August 2015, <http://www.bbc.com/news/world-asia-34105565>.

Afghanistan from 1993 to 1994 and again briefly in 1996. HIG has been active in eastern Afghanistan.¹⁵² The group was a party to the conflict until September 2016.

4. Haqqani Network

A former anti-Soviet group in the 1980s and led by one of the most prominent families in Afghanistan's Khost, the Haqqani Network commands far fewer fighters than the Taliban, with whom they are closely allied,¹⁵³ but has been described by US military leaders as 'the most resilient enemy network out there'.¹⁵⁴ The network operates along the border with Pakistan, where the escalating campaign against them, including drone strikes, has been targeting their fighters. At the end of April 2014, the US Department of State claimed that the Haqqani Network and the Afghan Taliban continued to find 'safe haven' in Pakistani territory. In its annual global report on terrorism submitted to the US Congress it accused Pakistani authorities of not taking 'significant military or law enforcement action against these groups'.¹⁵⁵ The report further claimed that a number of aggressive and coordinated attacks in Afghanistan were planned and launched from safe havens in Pakistan.¹⁵⁶

5. The Islamic State in Afghanistan (Khorasan Branch)

The Islamic State's 'Khorasan' branch (IS-K) emerged in Afghanistan in mid-2014, but little is understood about its aims and viability or the extent of its operational links with IS-Central in Iraq and Syria. The estimated number of IS-K fighters in Afghanistan varies widely; however, due to offensives by the Taliban and private militias and drones strikes by the US military, the number has significantly declined as of early March 2016 and is now likely around 2,500 fighters, concentrated mainly in eastern Nangarhar Province.¹⁵⁷

152 See, e.g., 'Hizb-i-Islami – Gulbuddin (HIG) (Afghanistan)' in *Jane's World Insurgency and Terrorism*, Jane's Information Group, 1 February 2012.

153 See, e.g., B. Roggio, 'Afghan Taliban Condemn the Killing of Nasiruddin Haqqani', FDD's Long War Journal, 12 November 2013, www.longwarjournal.org/archives/2013/11/afghan_taliban_conde.php.

154 See, e.g., J. A. Dressler, 'Afghanistan Report 6' – *The Haqqani Network: From Pakistan to Afghanistan*, Institute for the Study of War, October 2010, http://www.understandingwar.org/sites/default/files/Haqqani_Network_Compressed_0.pdf, 'Afghanistan Report 9' – *The Haqqani Network: A Strategic Threat*, Institute for the Study of War, 2012, http://www.understandingwar.org/sites/default/files/Haqqani_StrategicThreatweb_29MAR_0.pdf.

155 Reuters, 'Afghan Taliban, Haqqani Network Continue to Find Safe Haven in Pakistan, Claims US Report', *The Express Tribune*, 1 May 2014, tribune.com.pk/story/702681/afghan-taliban-haqqani-network-continue-to-find-safe-haven-in-pakistan-claims-us-report/.

156 Ibid.

157 C.G. Johnson, M. Karokhail and R. Amiri, 'The Islamic State in Afghanistan Assessing the Threat', Peace Brief 202, U.S. Institute of Peace, April 2016, <https://www.usip.org/sites/default/files/PB202-The-Islamic-State-in-Afghanistan-Assessing-the-Threat.pdf>.

C. RECENT DEVELOPMENTS IN 2016: A CONTINUING INCREASE IN CIVILIAN CASUALTIES

In 2016, the nature of insurgency in the country threatened several provincial capitals, including the capital of the strategically important Helmand¹⁵⁸ province in the south and the capital of the northern province of Kunduz, which had briefly fallen to the Taliban in September 2015.¹⁵⁹ In April 2016 Taliban launched their Spring offensive, 'Operation Omari'¹⁶⁰ hitting Kabul with an attack that killed dozens and wounded more than 300 people.¹⁶¹ Showing his concern for the Security situation in Afghanistan and the continued territorial gains by the Taliban across the country, President Obama announced in July 2016 that the U.S. would leave 8,400 troops in Afghanistan through the end of his term.¹⁶² In July 2016, during the Warsaw Summit, the North Atlantic Treaty Organization (NATO) further committed to maintaining 12,000 total troops in Afghanistan, and to providing an annual \$1 billion (905 million Euros) in addition the U.S. requested \$3.5 billions¹⁶³ in funding for the Afghan National Defense and Security Forces (ANDSF) through 2020.¹⁶⁴

In May 2016, Taliban leader Mullah Akhtar Mansour, who had assumed leadership of the insurgency less than year before, was killed in a US drone strike in Pakistan's Baluchistan province. Mawlawi Haibatullah Akhundzada, a religious leader within the group and a former top judge during the Taliban rule of Afghanistan, was selected to succeed him.¹⁶⁵

In the same month, President Obama approved new authorities for the military, authorizing commanders to send US troops on combat missions with ANDSF

158 S.E. Rasmussen, 'Afghan Army Sends Reinforcements as Taliban Close in on Lashkar Gah', *The Guardian*, 11 August 2016, <https://www.theguardian.com/world/2016/aug/11/afghan-army-reinforcements-taliban-lashkar-gah-helmand>.

159 J. Goldstein and M. Masha, 'Taliban Fighters Capture Kunduz City as Afghan Forces Retreat', *The New York Times*, 28 September 2015, http://www.nytimes.com/2015/09/29/world/asia/taliban-fighters-enter-city-of-kunduz-in-northern-afghanistan.html?_r=0.

160 AfghanistanAnalystNetworkandB.Osman, 'Operation Omari: Taleban Announced 2016 Spring Offensive', 14 April 2016, <https://www.afghanistan-analysts.org/operation-omari-taleban-announces-2016-spring-offensive/>.

161 S.E. Rasmussen, 'Dozens Killed and 300 Injured as Kabul Hit by Taliban Suicide Attack', *The Guardian*, 19 April 2016, <https://www.theguardian.com/world/2016/apr/19/explosion-rocks-afghan-capital-kabul>.

162 M. Landler, 'Obama Says He Will Keep More Troops in Afghanistan Than Planned', *The New York Times*, 6 July 2016, http://www.nytimes.com/2016/07/07/world/asia/obama-afghanistan-troops.html?_r=0.

163 J. Smith, 'US Plans Billions in Afghan funding Until 2020, Seeks Allies' Help', Reuters, 13 June 2016, <http://www.reuters.com/article/us-afghanistan-funding-idUSKCN0YZ1HU>.

164 DW, 'NATO Extends Mission in Afghanistan, 9 July 2016, <http://www.dw.com/en/nato-extends-mission-in-afghanistan/a-19390071>.

165 G. Harris, 'Obama Says Mullah Mansour, Taliban Leader, Was Killed in US Strike', *The New York Times*, 23 May 2016, <http://www.nytimes.com/2016/05/24/world/asia/obama-mullah-mansour-taliban-killed.html>.

forces and expanding authorities for US air strikes to target the Taliban.¹⁶⁶ The expanded military measures came after months of high ANDSF casualties, increased difficulty maintaining security and protecting territory, and reports of a growing self-proclaimed Islamic State in Afghanistan¹⁶⁷ and resurging al-Qaeda presence.¹⁶⁸

Attacks intensified from August to October 2016, including on the Afghan defense ministry, killing 35 and injuring more than 103 in Kabul. The twin attack was followed only hours later by a car bomb in the Share Naw area of the city and an hours-long standoff with gunmen who barricaded themselves into a building following the blast. Afghan forces eventually killed all three gunmen involved in the second attack.¹⁶⁹ In another unclaimed attack at least 17 people were killed and dozens wounded when at least one gunman attacked worshippers at a Shia shrine in Kabul on the Ashura holiday.¹⁷⁰

Further reading: UNAMA and OHCHR, 'Afghanistan: Midyear Report 2016: Protection of Civilians in Armed Conflict', Kabul, July 2016. 'Protection of Civilians in Armed Conflict', Kabul, July 2016, https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_midyear_report_2016_final_rev.1-9sept.pdf.

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS, AND PROSECUTIONS

Afghanistan has been a state party to the 1998 Rome Statute of the International Criminal Court (ICC) since February 2003. The ICC has jurisdiction over Rome Statute crimes committed in the territory of Afghanistan or by its nationals since 1 May 2003.

As of November 2016, the ICC's Office of the Prosecutor (OTP) found that the information available provides a reasonable basis to believe that war crimes and crimes against humanity were and continue to be committed in Afghanistan.¹⁷¹

Referring to Taliban attacks, it reported:

166 M. Ryan and T. Gibbons-Neff, 'U.S. Widens War in Afghanistan, Authorizes New Action Against Taliban', *The Washington Post*, 10 June 2016, <https://www.washingtonpost.com/news/checkpoint/wp/2016/06/09/defense-official-u-s-to-begin-striking-taliban-advise-regular-afghan-soldiers-again/>.

167 F.J. Marty, 'On the Trail of Islamic State in Afghanistan', *Foreign Policy*, 4 April 2016, <http://foreignpolicy.com/2016/04/05/afghanistan-islamic-state-taliban/>.

168 T. Joscelyn and B. Roggio, 'U.S. Military is Hunting Al Qaeda in at least 7 Afghanistan Provinces', *FDD's Long War Journal*, 24 September 2016, <http://www.longwarjournal.org/archives/2016/09/us-military-is-hunting-al-qaeda-in-at-least-7-afghan-provinces.php>.

169 Reuters, 'Death toll from Afghan Defence Ministry Attack Revised up to 35', 6 September 2016, <http://in.reuters.com/article/afghanistan-blast-toll-idINKCN11C003>.

170 Radio Free Europe Radio Liberty, 'Islamic State Claims Attack on Shi'ite Mourners in Kabul', 12 October 2016, <http://www.rferl.org/a/adghanistan-gunmen-shi-ite-pilgrims-kabul-ashura/28046322.html>

171 OTP, 'Report on Preliminary Examination Activities 2016', https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-PE_ENG.pdf.

205. The Office has examined the information available on crimes allegedly committed by anti-government armed groups, in particular the Taliban and their affiliates, in the context of the armed conflict in Afghanistan. According to this information, anti-government armed groups have been responsible for more than 17,000 civilian deaths in the period between January 2007 and December 2015. Since May 2003, insurgent groups have allegedly launched numerous attacks on protected objects, including schools, civilian government offices, hospitals, shrines and mosques, and humanitarian organisations.

206. There is a reasonable basis to believe that the Taliban and their affiliates have committed the crimes against humanity of murder (article 7(1)(a)), imprisonment or other severe deprivation of physical liberty (article 7(1)(e)), and persecution against any identifiable group or collectivity on political grounds and on gender grounds (article 7(1)(h)). These crimes were allegedly committed as part of a widespread and/or systematic attack against civilians perceived to support the Afghan government and/or foreign entities, or to oppose Taliban rule and ideology, including women and girls who worked, took part in public affairs, or attended school past the age of puberty, and involved the multiple commission of violent acts in pursuance of the policy of the Taliban leadership to seize power from the Government of Afghanistan and impose its rule and system of beliefs by lethal force.

207. Based on the information available at this stage, the Office has found that there is a reasonable basis to believe that since 1 May 2003, the Taliban and their affiliates have also committed at a minimum the following war crimes in the context of a non-international armed conflict: murder (article 8(2)(c)(i)), intentionally directing attacks against the civilian population (article 8(2)(e)(i)), intentionally directing attacks against humanitarian personnel (article 8(2)(e)(iii)); intentionally directing attacks against protected objects (article 8(2)(e)(iv)); conscripting or enlisting children under the age of fifteen years or using them to participate actively in hostilities (article 8(2)(e)(vii)), and killing or wounding treacherously a combatant adversary (article 8(2)(e)(ix))

With respect to pro-government forces, the OTP reported:

209. There is a reasonable basis to believe that Afghan authorities have committed the war crimes of torture and cruel treatment under article 8(2)(c)(i); outrages upon personal dignity pursuant to article 8(2)(c)(ii); and sexual violence under article 8(2)(e)(vi). Governmental authorities alleged to have tortured conflict-related detainees include the National Directorate of Security (“NDS”), the Afghan National Police (“ANP”), the Afghan National Army (“ANA”), the Afghan National Border Police (“ANBP”) and the Afghan Local Police (“ALP”).

The OTP also reported the acts allegedly committed by members of the US forces and the CIA and concluded:

211. The information available provides a reasonable basis to believe that, in the course of interrogating these detainees, and in conduct supporting those interrogations, members of the US armed forces and the US Central Intelligence Agency (“CIA”) resorted to techniques amounting to the commission of the war crimes of torture, cruel treatment, outrages upon personal dignity, and rape. These acts are punishable under articles 8(2)(c)(i) and (ii) and 8(2)(e)(vi) of the Statute.

2. COLOMBIA: PEACE DEAL WITH FARC ENDS 60 YEARS OF CONFLICT

Classification of the conflicts:

Colombia was involved in non-international armed conflicts (NIACs) with the Revolutionary Armed Forces of Colombia (FARC-EP) and the National Liberation Army (ELN) in 2016. At the end of 2016, a peace agreement was signed between the government and the FARC, thereby ending the conflict between the two parties. Peace Talks with the ELN started in February 2017.

A. HISTORY OF THE CONFLICT¹⁷²

Colombia has endured armed conflict between the government and several left-wing armed groups (notably the FARC-EP and the ELN) for more half a century. The International Crisis Group gives factors of FARC's resilience: 'First, it retains access to money, despite declining income from drug trafficking and kidnapping. Secondly, it has proven capable of replenishing its ranks, thus mitigating the substantial losses from combatant deaths and defections. Thirdly, a strong institutional structure and organizational culture that have grown over five decades have enabled FARC to absorb shifts in the balance of power and the elimination of some of its high-ranking leaders.¹⁷³ The US Government has also been involved in the country through Plan Colombia, an initiative originally intended to support Colombian anti-drug efforts. In that context, Colombian forces received training and equipment to eliminate smugglers and eradicate coca crops, with US assistance.¹⁷⁴

The activities of the guerrillas led to the formation of right-wing paramilitary organizations, primarily the United Self-Defense Forces of Colombia (AUC), as a means of protecting landowners, drug lords and local businessmen from attacks and kidnappings by guerrilla forces. There have been regular accusations of linkages between the paramilitaries and the state in waging war against the guerrillas, although this has been denied by the Government. Since their origins, both the guerrillas and the paramilitaries have become increasingly involved in criminal activities (such as kidnapping, extortion, bombings, murder, and hijackings), and have given a new dimension to the problem of narco-trafficking.

Over the years, the Government of Colombia has held several peace talks and negotiations with guerrilla groups, with different degrees of success. Recent years have also seen the power of the paramilitaries diminish. Following generous and controversial

172 Unless otherwise stated, this section is based on BBC News, 'Colombia Country Profile', 28 December 2016, <http://www.bbc.com/news/world-latin-america-19390026>.

173 International Crisis Group, Colombia: *Peace at Last? Latin America Report N°45*, 25 September 2012, p 4, <http://www.crisisgroup.org/~media/Files/latin-america/colombia/045-colombia-peace-at-last.pdf>.

174 J. McDermott, 'Colombia Changes Tactics in Drugs War', BBC News, 31 August 2000, news.bbc.co.uk/2/hi/americas/891289.stm.

amnesty legislation,¹⁷⁵ which offered significantly reduced jail terms, by mid-2006 about 95% of the total estimated AUC force was disbanded.¹⁷⁶

In October 2012, negotiators from the Colombian Government and FARC-EP rebels met for their first direct peace talks for a decade in Oslo, Norway. FARC-EP's head negotiator, Ivan Marquez, said that they came 'with an olive branch' but peace did not mean 'arms go quiet'.¹⁷⁷ Colombian President Juan Manuel Santos rejected FARC calls for a ceasefire, saying military operations would continue until a final agreement was reached.¹⁷⁸ After the launch of the process, both parties agreed to move the talks to Havana, Cuba, in November 2012. A five-point peace plan had been agreed aimed at addressing: 1) rural reform 2) a framework for political participation of the Farc 3) illicit drugs 4) end of conflict and decommission 5) victims and post-war justice.¹⁷⁹

Between January and April 2015, peace negotiations in Havana showed signs of continued progress and growing international support. On February 20, the US Secretary of State, John Kerry, announced the appointment of a special envoy to the Colombian peace process, Bernard Aronson. The appointment was welcomed, including by the FARC, and interpreted as a clear endorsement of Colombia's peace process by the U.S., long a key foreign player in the Colombian conflict. On February 27, former UN Secretary-General Kofi Annan visited the negotiating table in Havana.¹⁸⁰ The announcement was significant, as the FARC undertook to reveal the location of mines and suspending the planting of new ones in that territory, and it was the first aspect of the peace negotiations, which would have an immediate impact on the ground. President Santos recognized that the FARC had kept their word on the unilateral ceasefire and, as a gesture to de-escalate the conflict, ordered the Ministry of Defense and military commanders to cease the bombing of FARC camps for a month.

The ceasefire was violated when 11 soldiers were killed in a FARC ambush in the Cauca on April the 15. FARC justified the attack saying that the army had been advancing with reinforcement against guerrilla camp. President Santos responded immediately by ordering bombings to resume.¹⁸¹

175 The Center for Justice & Accountability, 'Colombia: The Justice and Peace Law', August 2005, <http://cja.org/where-we-work/colombia/related-resources/colombia-the-justice-and-peace-law/?id=863>.

176 S. Hanson, 'Colombia's Right-Wing Paramilitaries and Splinter Groups', Council on Foreign Relations, 11 January 2008, www.cfr.org/colombia/colombias-right-wing-paramilitaries-splinter-groups/p15239?breadcrumb=%2Fpublication%2Fpublication_list%3Ftype%3Dbackgrounder%26page%3D9.

177 BBC News, 'Colombia and Farc Negotiators Launch Norway Peace Talks', 18 October 2012, www.bbc.co.uk/news/world-latin-america-19994289?print=true.

178 BBC News, 'Colombia's President Santos Rejects Farc Ceasefire Call', 7 September 2012, www.bbc.co.uk/news/world-latin-america-19514814.

179 E. Vulliamy, 'Colombia: Is the End in Sight to the World's Longest War?', *The Observer*, 15 March 2015, <https://www.theguardian.com/world/2015/mar/15/colombia-end-in-sight-longest-running-conflict>.

180 FARC-EP International, 'Timeline 2012-2016', <http://farc-epeace.org/peace-process/timeline.html>.

181 Ibid.

The death of the 11 soldiers turned public opinion against the peace process and boosted the popularity of its main opponent.¹⁸²

However, according to the Conflict analysis resource centre (Cerac), the attack on the soldiers was the only severe violation of the ceasefire, given that the FARC had generally complied with their ceasefire up to that point, resulting in the lowest levels of violence in the conflict since 1984.¹⁸³

On July 12 2015, the government and the FARC negotiators in a joint communiqué entitled 'Expedite in Havana and de-escalate in Colombia, announced a major agreement to de-escalate the conflict. Each delegation agreed to move towards a final agreement without delay by changing the format (to 'a technical, on-going and simultaneous work on the core items of the Agenda, while concurrently building agreements at the Table'), in particular on the terms of the final bilateral ceasefire, cessation of hostilities and surrender of weapons. Without agreeing to an immediate bilateral ceasefire, the government set in motion a de-escalation process of military actions consistent with the FARC's suspension of all offensive actions.¹⁸⁴

On 23 September 2015, the government and the FARC reached a historic agreement on Transitional Justice (Special Jurisdiction for Peace or *Jurisdicción Especial para la Paz*). Simultaneously with the agreement, the government also announced that a final agreement would be signed within six months. It was finally signed in November 2016.

On 30 March 2016, the Government of Colombia announced the beginning of peace negotiations with the ELN. The six-point negotiating agenda, agreed as the framework for the peace talks, includes: (i) societal participation in the construction of peace; (ii) democracy for peace; (iii) transformations for peace; (iv) victims; (v) end of the armed conflict; and (vi) implementation.¹⁸⁵

Peace Talks with the ELN started in February 2017.¹⁸⁶

B. PARTIES TO THE CONFLICTS

The parties to the NIACs in 2016 were Colombia and its Armed Forces against the ELN.

1. Colombian Armed Forces

As of January 2016 Colombia was estimated to have some 445,000 active frontline

182 Semana, 'Todo Está a la Baja', 2 May 2015, <http://www.semana.com/nacion/articulo/gran-encuesta-santos-esta-la-baja/426263-3>.

183 CERAC, 'Semanario 18: Termina el Cese Unilateral de las FARC; Se Recrudescerá el Conflicto', 24 May 2015, <http://blog.cerac.org.co/semanario-18-termina-el-cese-unilateral-de-las-farc-se-recrudescera-el-conflicto>.

184 Mesa De Conversaciones, 'Comunicado Conjunto # 55. La Habana, 12 de Julio de 2015', <https://www.mesadeconversaciones.com.co/comunicados/comunicado-conjunto-55-la-habana-12-de-julio-de-2015>.

185 OTP, 'Report on Preliminary Examination Activities 2015', §235-236.

186 BBC News, 'Colombia: Peace Talks With ELN Rebel Group Begin', 8 February 2017, <http://www.bbc.com/news/world-latin-america-38902638>.

military personnel and a further 62,000 in reserve.¹⁸⁷ In the past however, it has been claimed that the effective combat strength of the National Army (Ejército Nacional) was considerably less than that suggested by total strength figures.¹⁸⁸

2. Revolutionary Armed Forces of Colombia (FARC-EP)

The oldest and largest of Colombia's left-wing rebel groups, FARC-EP, was formed in 1964 with a mission to overthrow the government and install a Marxist regime through armed struggle. FARC early on gained the support of the Soviet Union, and continued to have strong ties to the Colombian Communist Party until the mid-1980s. When paramilitary forces fought with the group in the 1990s, FARC began financing its campaign through involvement in and taxation of the illegal drug trade,¹⁸⁹ as well as kidnapping and extortion. In combination with acts of violence against civilians, this led to a loss of support among the civilian population. At the end of 2016, a peace agreement was signed between the government and the FARC, thereby ending the conflict between the two parties.

3. National Liberation Army (ELN)

Founded in 1964, the Ejército de Liberación Nacional (ELN) is the second-largest leftist rebel group in Colombia after the FARC. ELN ideology is based on Marxism-Leninism as well as Liberation theology, a predominantly Catholic philosophy with a strong emphasis on social awareness and justice. ELN considered itself a liberation movement, formed with the goal of ousting the ruling government.¹⁹⁰ The group believes foreign involvement in Colombia's oil industry violates the country's sovereignty and foreign companies are unfairly exploiting Colombia's natural resources. It was long seen as more politically motivated than the FARC, staying out of the illegal drugs trade on ideological grounds.¹⁹¹

The ELN reached the height of its power in the late 1990s, carrying out hundreds of kidnappings and hitting infrastructure such as oil pipelines. The ELN ranks have since declined from around 4,000 to an estimated 1,500, suffering defeats at the hands of the security forces and paramilitaries.¹⁹² However, in October 2009, ELN rebels were able to spring one of their leaders from jail, indicating that they were not a completely spent force. In recent years, ELN units have become involved in

187 Global Firepower, 'Colombia Military Strength', last updated 9 February 2017, http://www.globalfirepower.com/country-military-strength-detail.asp?country_id=colombia.

188 Globalsecurity.org 'Colombia – Army (Ejército Nacional)', *GlobalSecurity.org*, 4 March 2012, www.globalsecurity.org/military/world/colombia/colombia_army.htm.

189 According to a U.S. Department of Justice indictment in 2006, FARC generated more than 50% of the world's cocaine and more than 60% of the cocaine that enters the U.S. See U.S. Department of Justice, 'United States Charges 50 Leaders of Narco-Terrorist FARC in Colombia With Supplying More Than Half of the World's Cocaine', 22 March 2006, <https://www.justice.gov/archive/usao/nys/pressreleases/March06/farcindictmentpr.pdf>.

190 D. Renwick and C. Felter, 'Colombia's Civil Conflict', Council on Foreign Relations, 11 January 2017, <http://www.cfr.org/colombia/colombias-civil-conflict/p9272>

191 Voces de Colombia, <https://eln-voces.com>.

192 Ibid.

the drugs trade, often forming alliances with criminal gangs. ELN remains on US and European lists of terrorist organizations.¹⁹³

The ELN remained active with approximately 2,000 fighters but with diminished resources and reduced offensive capability. By 2017 the ELN had between 2,000 and 3,000 active members since declining from its heyday of between 4,000 and 5,000 rebels in the late 1990.¹⁹⁴

C. RECENT DEVELOPMENTS IN 2016: PEACE AGREEMENT WITH FARC

On 18 October 2012, peace talks between the Government of Colombia and the FARC-EP began in Oslo and then moved to Havana. On 26 September 2016, after nearly four years of negotiations, the negotiating parties signed the Final Agreement for Ending Conflict and Building a Stable and Long-Lasting Peace ('Acuerdo Final Para la Terminación del Conflicto y la Construcción de una Paz Estable y Duradera').¹⁹⁵ The proposed agreement foresaw that FARC members would surrender their arms to UN personnel and disclose the nature of their involvement in the conflict to a special tribunal that would include Colombian and international lawyers. Those who admitted to crimes like kidnappings and executions would be subject to periods of restricted mobility for five to eight years, during which time they would be expected to perform community service.¹⁹⁶ Those who had committed less serious crimes like drug trafficking would receive amnesty.

A national plebiscite held on 2 October 2016 resulted, however, in the peace agreement being rejected by 50.2% of the voters (37% of the Colombian electorate).¹⁹⁷

As a result, on 30 November 2016, Colombia's Congress approved a revised peace accord. By pushing the new deal through Congress, the government chose this time to by-pass voters, who had turned down the accord by a narrow margin on 2 October.¹⁹⁸ The Congress's vote thus brought to an end a 60-year-old conflict with the FARC.¹⁹⁹

193 Globalsecurity.org, 'Ejército de Liberación Nacional (ELN), National Liberation Army', www.globalsecurity.org/military/world/para/eln.htm.

194 Globalsecurity.org, 'Colombia – Army (Ejercito Nacional)', 9 February 2017.

195 CBC News, 'Yes to peace: Colombia, FARC rebels reach historic deal to end 5-decade war', 24 August 2016, <http://www.cbc.ca/news/world/farc-colombia-peace-accord-1.3734814>.

196 *The New York Times*, 'Colombia's Remarkable Peace Process', 25 August 2016, <http://www.nytimes.com/2016/08/26/opinion/colombias-remarkable-peace-process.html>.

197 S. Brodzinsky, 'Colombia Referendum: Voters Reject Peace Deal With FARC Guerrillas', *The Guardian*, 3 October 2016, <https://www.theguardian.com/world/2016/oct/02/colombia-referendum-rejects-peace-deal-with-farc>.

198 N. Casey, 'Colombia's Congress Approves Peace Accord With FARC', *The New York Times*, 30 November 2016, <http://www.nytimes.com/2016/11/30/world/americas/colombia-farc-accord-juan-manuel-santos.html>.

199 S. Brodzinsky, 'Colombia Signs Historic Peace Deal With Farc', *The Guardian*, 24 November 2016, <https://www.theguardian.com/world/2016/nov/24/colombia-signs-historic-peace-deal-with-farc-rebels>.

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS, AND PROSECUTIONS

Colombia adhered to the 1998 Rome Statute of the International Criminal Court (Rome Statute) in August 2002. The ICC has had jurisdiction over Rome Statute crimes committed in the territory of Colombia or by its nationals since 1 November 2002, in cases where national courts are unwilling or unable to prosecute. However, the Court only has jurisdiction over war crimes committed since 1 November 2009, in accordance with Colombia's declaration pursuant to Article 124 of the Rome Statute.²⁰⁰

The situation in Colombia has been under preliminary examination by the ICC's Office of the Prosecutor (OTP) since June 2004.²⁰¹ As in its previous reports, the OTP stated in November 2016:²⁰²

237.... the information available provides a reasonable basis to believe that crimes against humanity under article 7 of the Rome Statute have been committed in the situation in Colombia by different actors, since 1 November 2002, including murder under article 7(1)(a); forcible transfer of population under article 7(1)(d); imprisonment or other severe deprivation of physical liberty under article 7(1)(e); torture under article 7(1)(f); rape and other forms of sexual violence under article 7(1)(g) of the Statute.

238. There is also a reasonable basis to believe that war crimes under article 8 of the Statute have been committed in the context of the non-international armed conflict in Colombia, including, since 1 November 2009, murder under article 8(2)(c)(i); attacks against civilians under article 8(2)(e)(i); torture and cruel treatment under article 8(2)(c)(i); outrages upon personal dignity under article 8(2)(c)(ii); taking of hostages under article 8(2)(c)(iii); rape and other forms of sexual violence under article 8(2)(e)(vi); and conscripting, enlisting and using children to participate actively in hostilities under article 8(2)(e)(vii) of the Rome Statute.

239. During the reporting period, the Office continued to receive and gather information on alleged crimes, including killings and enforced disappearances known as **false positives** cases. This information together with relevant open sources information has been analysed to inform the identification of potential cases that would likely arise from an investigation of the situation, on the basis of which the Office is analysing the admissibility of cases relating to this area of focus of the preliminary examination.

On 2 September 2016, the ICC Prosecutor welcomed Colombia's peace deal with FARC rebels, but called for the 'genuine' prosecution of perpetrators of crimes against humanity and war crimes. The OTP pointed out that the responsibility now rested with a five-person panel entitled the Special Peace Jurisdiction, which will be tasked with trying and sentencing individuals accused of committing war

200 OTP, 'Report on Preliminary Examination Activities 2012', November 2012, §98, <https://www.icc-cpi.int/NR/rdonlyres/C433C462-7C4E-4358-8A72-8D99FD00E8CD/285209/OTP2012ReportonPreliminaryExaminations22Nov2012.pdf>.

201 OTP, 'Report on Preliminary Examination Activities 2013', November 2013, §118.

202 OTP, 'Report on Preliminary Examination Activities 2016'.

crimes during the conflict.²⁰³ The Deputy Prosecutor stated that the government should negotiate ‘a peace agreement that was compatible with the Statute’ and added that the Prosecutor was not ‘driven by considerations of peace or security’, a position consistent with the ICC’s longstanding position that ‘the interests of peace’ are not within its remit and fall to other institutions.²⁰⁴

3. EGYPT: THE STRENGTHENING OF THE INSURGENCY OUTSIDE SINAI

Classification of the conflict:

Egypt in 2016 was involved in a non-international armed conflict between Egyptian armed forces and the armed group known as Ansar Bayt al-Maqdis (ABM). The conflict did not reach the threshold for applicability of the 1977 Additional Protocol II.

A. HISTORY OF THE CONFLICT

In February 2011, President Mubarak stepped down and handed the power to the Supreme Armed Forces Council (SCAF). He went on trial in August and was later sentenced to life in prison for complicity in the killing of protesters during the 2011 uprising. The protests that ousted President Hosni Mubarak in 2011 raised the hopes of those seeking democratic reform and an end to decades of a repressive regime.²⁰⁵

Following Essam Sharraf resignation, Kamal al-Ganzouri became the new Prime Minister and head of the National unity government in December 2011.²⁰⁶ After a year and a half of the interim military government, Muslim Brotherhood candidate, Mohammed Morsi won the first democratic presidential elections in half a century in June 2012.

In November, President Morsi issued a decree stripping the judiciary of the right to challenge his decisions. The same month an Islamist-dominated constituent assembly approved a draft constitution that many feared could further restrict freedom of speech and of assembly.²⁰⁷ Such draft was later publicly approved by referendum.

Protests increased until in July 2013 the military, in light of the demonstrators’

203 ICTJ, ‘ICC Welcomes Colombia Peace Deal, Urges Prosecutions’, 2 September 2016, <https://www.ictj.org/news/icc-welcomes-colombia-peace-deal-urges-prosecutions>.

204 Justice in Conflict, ‘Peace with Justice in Colombia: Why the ICC isn’t the Guarantor’, 13 October 2016, <https://justiceinconflict.org/2016/10/13/peace-with-justice-in-colombia-why-the-icc-isnt-the-guarantor/>.

205 BBC News, ‘Egypt Country Profile – Overview’, 6 November 2015, <http://www.bbc.co.uk/news/world-africa-13313371>.

206 CNN, ‘Egyptian Prime Minister Given Added Powers, Swears in Cabinet’, 7 December 2011, <http://edition.cnn.com/2011/12/07/world/africa/egypt-prime-minister/index.html>.

207 H. Hendawi and M. Michael, ‘Egypt Islamists Hurriedly Approve New Constitution’, Yahoo News, 30 November 2012, <http://news.yahoo.com/egypt-islamists-hurriedly-approve-constitution-043918749.html>.

demands, ousted Mr Morsi and violently suppressed the protest sit-ins held by the Brotherhood in response. The month of August 2013 has seen the worst incidents of state violence on demonstrators in modern Egyptian history. An example is the Rabaa massacre: on 14 August 2013 Egyptian security forces raided two camps of protesters in Cairo, one at al-Nahda Square and a larger one at Rabaa al-Adawiya Square. According to Human Rights Watch, in Rab'a Square, Egyptian security forces carried out one of the world's largest killings of demonstrators in a single day in recent history.²⁰⁸ These events have been seen in light of further radicalisation and deterioration of the situation in Sinai.

By the end of 2013 the Government declared the Muslim Brotherhood a terrorist group, after a bomb explosion at a government building in Mansoura.²⁰⁹ The Muslim Brotherhood, however, denied any involvement in the bombing, while ABM claimed responsibility for the blast, which killed 16 people.²¹⁰ The government started drafting a new constitution and curbed media freedom.²¹¹ On 14 and 15 January 2014, a referendum took place, where more than 90% of voters opted to ratify Egypt's third constitution.²¹² However, the turnout was 38.6% of registered voters, less than the 50% predicted.²¹³ Egypt's new constitution strengthened the country's three key institutions — the military, the police and the judiciary — and gave more rights to women and disabled people.²¹⁴

Clashes between supporters of the ousted President Morsi and security forces increased ahead of, during and after the referendum, with at least 49 people killed in the worst incident on 25 January.²¹⁵ While several bomb attacks took place in Cairo, multiple attacks continued in the Sinai Peninsula, which included the use of a surface-to-air missile by the militants on 27 January in order to bring down a military helicopter.²¹⁶ This attack, claimed by the ABM, represented a significant intensification of the violence in the area.

At the beginning of 2015, a new Sinai-based militant group emerged from the split

208 Human Rights Watch, 'Egypt: Rab'a Killings Likely Crimes against Humanity', 12 August 2014, <http://www.hrw.org/news/2014/08/12/egypt-rab-killings-likely-crimes-against-humanity>.

209 BBC News, 'Egypt Profile – Timeline', 23 April 2015, <http://www.bbc.com/news/world-africa-13315719>.

210 A. Abdel-Raheem, 'Egypt's confused ban on Muslim Brotherhood', *The Commentator*, 26 December 2013, http://www.thecommentator.com/article/4507/egypt_s_confused_ban_on_muslim_brotherhood.

211 BBC News, 'Egypt country profile – Overview', 17 February 2015.

212 P. Kingsley, 'Widespread Boycotts as Egyptian Voters Back New Constitution', *The Guardian*, 16 January 2014, <http://www.theguardian.com/world/2014/jan/16/egyptian-voters-back-new-constitution>.

213 Al Jazeera, 'Egypt Constitution Approved by 98.1 Percent', 24 January 2014, <http://www.aljazeera.com/news/middleeast/2014/01/egypt-constitution-approved-981-percent-201411816326470532.html>.

214 Kingsley, 'Widespread Boycotts as Egyptian Voters Back New Constitution'.

215 CNN, 'At Least 49 Dead in Egypt as Throngs Commemorate Revolution', 26 January 2014, <http://edition.cnn.com/2014/01/25/world/meast/egypt-blast/>.

216 K. Vick, 'Surface-to-Air Missile Attack in Sinai Spells Trouble For Israeli Airliners', *The Times*, 27 January 2014, <http://world.time.com/2014/01/27/missile-attack-in-sinai-spell-trouble-for-israeli-airliners/>.

of ABM, due to a disagreement over its pledge of allegiance to IS.²¹⁷ In October 2015, Wilayat Sinai claimed responsibility for downing a Russian airplane in response to Russia's fight against IS in Syria.²¹⁸ Violence continued throughout 2016 in the Sinai Peninsula as the jihadi group ABM pursued its attacks.

B. PARTIES TO THE CONFLICT

The parties to the conflict in 2016 are Egypt and its armed forces against the Sinai Province group.

1. Egypt Armed Forces

Egyptian armed forces are estimated to include 470,000 active frontline personnel as well as 800,000 as reserve personnel.²¹⁹

2. Sinai Province

Sinai Province was previously called Ansar Beit al-Maqdis (Champions of Jerusalem), but announced a name change in November 2014 when it pledged allegiance to IS.²²⁰ Ansar Beit al-Maqdis was an al-Qaeda-inspired group that started its operations immediately after the January 2011 uprising that led to the fall of Egypt's long-running ruler Hosni Mubarak. The group was initially known for launching attacks on Israeli targets and interests.²²¹

The exact number of fighters is difficult to assess, as estimates are different and contradictory. According to one of these, Ansar Bayt al-Maqdis militants reportedly did not exceed 50 people inside Sinai, but the group had succeeded in opening fronts inside other Egyptian districts, especially after pledging allegiance to IS. Indeed several people who supported the idea of a jihadist caliphate joined the group, in addition to defecting members from the Muslim Brotherhood.²²²

According to a different estimate, ABM's total number of fighters (with 'high strategic and technological capacity') was as high as 1,000.²²³

217 See generally, International Crisis Group, 'Egypt Profile', at: <https://www.crisisgroup.org/middle-east-north-africa/north-africa/egypt>

218 A. Roth, 'Russia Confirms Sinai Plane Crash Was the Work of Terrorists', *The Washington Post*, 17 November 2015, https://www.washingtonpost.com/world/russia-confirms-sinai-crash-was-the-work-of-terrorists/2015/11/17/496286f4-8d05-11e5-ae1f-af46b7df8483_story.html; F. Pleitgen, 'Russian Plane Crash: Who Are Terror Group, Al -Wilayat Sinai?', CNN, 10 November 2015, <http://edition.cnn.com/2015/11/09/africa/egypt-al-wilayat-sinai/>.

219 Global Firepower, 'Egypt Military Strength: Manpower', last updated 18 February 2017, http://www.globalfirepower.com/country-military-strength-detail.asp?country_id=egypt.

220 Al-Monitor, 'Ansar Bayt al-Maqdis Joins Islamic State', 13 November 2014, <http://www.al-monitor.com/pulse/security/2014/11/egypt-ansar-maqdis-sinai.html#>.

221 BBC News, 'Sinai Province: Egypt's Most Dangerous Group' militant group', 12 May 2016, <http://www.bbc.com/news/world-middle-east-25882504>.

222 Al-Monitor, 'After Joining IS, Ansar Bayt al-Maqdis Expands in Egypt', 1 December 2014, <http://www.al-monitor.com/pulse/originals/2014/12/egypt-ansar-maqdis-sinai-spread.html#ixzz3aCAoo0Bt>.

223 E. Dyer and O. Kessler, 'Terror in the Sinai', The Henry Jackson Society, 2014, <http://henryjacksonsociety.org/wp-content/uploads/2014/05/HJS-Terror-in-the-Sinai-Report-Colour-Web.pdf>.

C. LATEST DEVELOPMENTS IN 2016: THE STRENGTHENING OF THE INSURGENCY OUTSIDE SINAI

The rate of terrorist attacks by Wilayat Sinai and other Islamist militants grew rapidly in 2015 and 2016 in the country. In 2015, the group carried out separate attacks outside Sinai, at prime tourist destinations near the pyramids in Giza²²⁴ and the Karnak Temple in Luxor.²²⁵

In April 2016, the Pentagon decided to shift troops from a base in the Sinai Peninsula near the Egypt-Israeli border.²²⁶ In May 2016, eight police officers were killed by gunmen in a suburb of Cairo. Both IS's Egyptian branch and an Egyptian outfit called the Popular Resistance Movement, which opposes the government's counterterrorism operations, claimed responsibility for the attack.²²⁷ In the same month, a flight carrying 56 passengers and 10 crew members of EgyptAir crashed while flying from Paris to Cairo; no evidence of terrorist attack was found but the possibility could not be totally ruled out.²²⁸

In the month of June, Islamist militants gunned down a Christian priest in Egypt's Sinai Peninsula. Islamic State claimed responsibility for the attack and threatened more attacks in the future. In a separate IS attack in Arish, one policeman was killed and three wounded when an improvised bomb exploded as their convoy drove near a police station.²²⁹

In the first week of August 2016, the Egyptian Military claimed to have killed Abu Duaa al-Ansari, leader of the Sinai branch of IS.²³⁰

224 M. Thomas and A. Smale, 'Two Egyptian Policemen Shot Dead Near the Pyramids of Giza', *The New York Times*, 4 April 2015, <http://www.nytimes.com/2015/06/04/world/middleeast/egypt-policemen-attacked-giza-pyramids.html>.

225 L. Loveluck and M. Samaan, 'Suicide Bomber Attacks Egypt's Luxor Temple Tourist Site', *The Telegraph*, 10 June 2015, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/egypt/11664436/Suicide-bomber-attacks-Egypt-Luxor-temple-tourist-site.html>.

226 W.J. Hennigan, 'U.S. shifts troops in the Sinai Peninsula after attacks by militants', *Los Angeles Times*, 23 April 2016, <http://www.latimes.com/world/middleeast/la-fg-us-sinai-20160423-story.html>.

227 Reuters, 'Gunmen Kill Eight Police in Cairo Suburb, Islamic State Claims Attack', 8 May 2016, <http://www.reuters.com/article/us-egypt-police-attack-idUSKCN0XZ00U>.

228 Al Jazeera, 'Families Wait for Answers to Missing EgyptAir Plane', 20 May 2016, <http://www.aljazeera.com/news/2016/05/egyptair-flight-ms804-plane-disappeared-radar-160519031853365.html>; D. Walsh and K. Fahim, 'EgyptAir Flight Believed to Have Crashed at Sea; Egypt Cites Possible Terrorism', *The New York Times*, 19 May 2016, http://www.nytimes.com/2016/05/20/world/middleeast/egyptair-flight-804.html?_r=0.

229 Reuters, 'Islamic State Kills Christian Priest in Egypt's North Sinai', 30 June 2016, <http://www.reuters.com/article/us-egypt-violence-idUSKCN0ZG23Q>.

230 Reuters, 'Egypt Military Says Killed Leader of Islamic State in Sinai', 4 August 2016, <http://www.reuters.com/article/us-egypt-islamicstate-idUSKCN10F24W>.

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS, AND PROSECUTIONS

Egypt has signed but not ratified the Rome Statute of the International Criminal Court. There have been no allegations of war crimes concerning the NIAC in the country.

1. IRAQ: MILITARY GAINS AGAINST ISLAMIC STATE

Classification of the conflict:

In 2016 and since 2014, there was a non-international armed conflict between Iraqi armed forces, supported by an international coalition, and the Islamic State. The air strikes on IS by the US-led international coalition has not transformed the conflict into an international armed conflict, since they were conducted with the consent and at the invitation of the Iraqi government.

A. HISTORY OF THE CONFLICT

Deep political tensions have been mounting in Iraq since 2011 owing to alienation of the country's Sunni minority from the Shia-dominated government in Baghdad. These tensions were vented in anti-government protests that erupted across the country in late 2011. Following a violent crackdown on anti-government protest in the Anbar province at the end of 2013, IS took advantage of the growing insecurity and greatly expanded their operations in Iraq. Islamic State quickly managed to take control over some of the major checkpoints on the borders with Syria and Jordan, giving it the opportunity to connect the main areas under its control in eastern Syria and western Iraq.

In June 2014, IS militants declared that they had established a caliphate in the territory they control stretching from Aleppo in North West Syria to the eastern Iraqi province of Diyala. On 29 June 2014, IS released a video, entitled 'End of Sykes Picot', a reference to the agreement between France and Britain on dividing up Iraq and Syria after the First World War. In the video an IS spokesperson explains the new caliphate in Iraq and Syria and warns '[t]his is not the first border we will break, we will break other borders'.²³¹ Abu Bakr al-Baghdadi is declared as the leader of the new caliphate.

The rapid advance across northern Iraq (and Syria) by militant fighters from IS threw the region into chaos and led to Iraqi government to formally invite a US-led coalition to conduct air strikes against IS in Iraq.²³² Coalition air strikes against IS key positions began on 8 August 2014, with the consent of the government.

231 M. Tran and M. Weaver, 'Isis Announces Islamic Caliphate in Area Straddling Iraq and Syria', *The Guardian*, 30 June 2014, <http://www.theguardian.com/world/2014/jun/30/isis-announces-islamic-caliphate-iraq-syria>.

232 BBC News, 'Iraq Formally Asks US to Launch Air Strikes Against Rebels', 18 June 2014, <http://www.bbc.com/news/world-middle-east-27905849>.

In early August 2014 IS began a brutal ethnic-cleansing campaign against Iraq's Yezidi minority in an area around Sinjar, in northwestern Iraq. Thousands of Yezidi were killed and thousands of women and girls were raped or abducted and forced into sexual slavery.²³³ To escape the violence many Yezidi fled up mount Sinjar. By mid-August 150,000 thousand people were stranded up the mountain with very little access to shelter, water, food, and medical supplies.²³⁴

On the 8th of August 2014, following an emergency session at the UN Security Council, and at the request of the Iraqi Government the US, UK, France and Australia began airdrops of humanitarian aid to the those trapped on the mountain. In mid-August the Kurdish People's Protection Units (YPG) with the assistance of US air strikes secured a route down the mountain thereby providing the opportunity for tens of thousands of civilians trapped on the mountain to escape.²³⁵ Nevertheless thousands of civilians remained stranded on the mountain to fearful or frail to make the journey down. An operation conducted by approximately 8,000 Kurdish Peshmerga, with US air support, broke the IS siege of mount Sinjar in December 2014.²³⁶

As violence continued throughout 2015 and 2016, the US-led international coalition conducted over 14,000 air strikes in Iraq and Syria.²³⁷ As of August 2016, IS had lost 47%²³⁸ of its territory in Iraq, according to the US Department of State. Significant coalition gains were also made in late December 2015, when Iraqi security forces retook control of the strategic city of Ramadi,²³⁹ the capital of the Anbar Province in western Iraq.

233 Amnesty International, *Escape from Hell: Torture and Sexual Slavery in Islamic State Captivity in Iraq*, 2014, https://www.es.amnesty.org/uploads/media/Escape_from_hell_-_Torture_and_sexual_slavery_in_Islamic_State_captivity_in_Iraq_-_English.pdf.

234 J. Krohn, 'Mount Sinjar: Iraq's Mountain of Death', *The Telegraph*, 19 August 2014, <http://www.telegraph.co.uk/news/worldnews/middleeast/iraq/11024987/Mount-Sinjar-Iraqs-mountain-of-death.html>.

235 OHCHR and UNAMI, *Report on the Protection of Civilians in Armed Conflict in Iraq: 6 July-10 September 2014*, 2014, http://www.ohchr.org/Documents/Countries/IQ/UNAMI_OHCHR_POC_Report_FINAL_6July_10September2014.pdf.

236 BBC News, 'Mount Sinjar: Islamic State Siege Broken, Say Kurds', 19 December 2014, <http://www.bbc.com/news/world-middle-east-30539170>.

237 U.S. Department of Defense, 'Operation Inherent Resolve Targeted Operations Against ISIS Territories', 2016 http://www.defense.gov/News/Special-Reports/0814_Inherent-Resolve.

238 J. Hudson, 'Top U.S. Official: Islamic State Has Lost 47 Percent of its Territory in Iraq', *Foreign Policy*, 28 June 2016, <http://foreignpolicy.com/2016/06/28/top-u-s-official-islamic-state-has-lost-47-percent-of-its-territory-in-iraq/>.

239 The Economist, 'Reclaiming the Ruins from Islamic State', 2 January 2016, <http://www.economist.com/news/middle-east-and-africa/21684689-retaking-ramadi-iraqs-security-forces-have-won-morale-boosting>.

Sectarian tensions have continued to rise. In April 2016, anti-government Shiite protesters breached Baghdad's Green Zone, the heavily fortified area surrounding government buildings that civilians are prohibited from entering.²⁴⁰ The protesters occupied the parliament building, demanding reform and blaming parliament members for corruption.²⁴¹

B. PARTIES TO THE CONFLICTS

There are numerous armed actors taking part in the conflict in Iraq. The following are a selection of some of the main actors.

1. Iraqi Army

The Iraqi Army is reported to currently have 272,000 active personnel and 528,500 in reserve.²⁴²

2. Popular Mobilisation (Hashid Shaabi)

The Popular Mobilisation comprises of dozens of Shia militia groups, and has been taking a lead role in Iraqi operations against IS. It was formed by the Shia-led government in June 2014 after the army collapsed in the face of an advance by IS across northern Iraq. The Popular Mobilisation is headed by Jamal Jaafar Mohammed, also known as Abu Mahdi al-Mohandis, a former Badr Organisation commander who is close to Iranian General Qassem Soleimani. Iran provides funding, weapons and military advisers to militia in the Popular Mobilisation, and reportedly controls several of the militia groups directly.²⁴³

Thousands volunteered to fight in the Popular Mobilisation after Iraq's most senior Shia cleric, Grand Ayatollah Ali Sistani, called on people to take up arms and defend their country and its holy sites. According to Shiite Popular Mobilisation officials, the recruitment campaign is also successful because the religious establishment administers it and Shia religious scholars from the Hawza are instrumental in recruitment.²⁴⁴ It has been observed that the Sunni Arab tribes that took part in the recruitment are those that also had good relations with Nouri al-Maliki during his tenure as Prime Minister.²⁴⁵

240 L. Morris, 'Protesters Leave Baghdad's Green Zone a Day After Ransacking Parliament', *The Washington Post*, 1 May 2016, https://www.washingtonpost.com/world/iraqi-prime-minister-orders-arrest-of-troublemaking-protesters/2016/05/01/e6e4d070-0f24-11e6-bc53-db634ca94a2a_story.html.

241 L. Morris and M. Salim, 'State of Emergency Declared in Baghdad as the Protesters Take Iraqi Parliament', *The Washington Post*, 30 April 2016, https://www.washingtonpost.com/world/protesters-storm-iraqi-parliament-in-baghdad/2016/04/30/0862fd3a-0ec1-11e6-8ab8-9ad050f76d7d_story.html.

242 Global Firepower, 'Iraq Military Strength', last updated 20 February 2017, http://www.globalfirepower.com/country-military-strength-detail.asp?country_id=Iraq.

243 BBC News, 'Iraqi Forces Seek to Encircle IS Fighters in Tikrit', 4 March 2015, <http://www.bbc.com/news/world-middle-east-31727470>.

244 CarnegieMiddleEastCenter, 'The Popularity of the Hashd in Iraq', *Diwan*, 1 February 2016, <http://carnegie-mec.org/diwan/62638?lang=en>.

245 ORSAM, *A New Controversial Actor In Post ISIS Iraq: al-Hasadal-Shaabi (the Popular Mobilization Forces)*, May 2015, <http://www.orsam.org.tr/files/Raporlar/rapor198/198eng.pdf>.

3. Islamic State (IS)

Under its former name, Islamic State in Iraq and the Levant (ISIL), IS was formed in early 2013, growing out of al-Qaeda in Iraq. In April 2013, the leader of al-Qaeda affiliated Islamic State of Iraq, Abu Bakr al-Baghdadi, announced that his group was merging with Jabhat Al-Nusra to form the Islamic State of Iraq and Al-Sham, also known as the Islamic State of Iraq and the Levant. However, this unilateral declaration was rejected by both the leader of Jabhat Al-Nusra, Abu Mohammed al-Jawlani, and the leader of al-Qaeda, Ayman al-Zawahiri. In May 2013 the group split from Al-Nusra and began acting under the name Islamic State of Iraq and Al-Sham, under the leadership of Abu Bakr al-Baghdadi.²⁴⁶ Despite IS's separation from al-Qaeda, it expanded its operations in Syria and experienced military success in both Syria and Iraq, capturing several major cities, including Raqqa, Fallujah and Mosul. The funds seized through these invasions and the seizure of oil fields in Iraq and eastern Syria, combined with income from foreign donors and criminal activities such as smuggling and extortion from local businesses, have enabled IS to gather cash and assets worth up to \$2 billion.²⁴⁷

In July 2016, it was alleged that IS had lost about a quarter of the territory that it held in January 2015. At its peak, some 10 million people lived in territory under IS control. IHS Conflict Monitor analysts suggest this figure is now nearer 6 million.²⁴⁸

During 2016, IS also claimed attacks in a number of countries including Turkey, Indonesia, France, Belgium, the U.S. and Bangladesh. The proclamation of the caliphate also triggered a surge in the number of foreign fighters travelling to Syria and Iraq to join IS. A report published in December 2015 by the New York-based security consultancy Soufan Group estimated that 27,000 foreign jihadists had made the trip from 86 countries, more than half of them from the Middle East and North Africa.²⁴⁹

A report in *The Huffington Post* in July 2016 said it seemed likely that IS was no longer generating enough revenue to fund its operations.²⁵⁰

4. Kurdish Peshmerga

Since IS took control of Mosul in June 2014, the Kurdish Peshmerga have taken a lead role in trying to retake Northern Iraq. The Kurdish Peshmerga have roots leading back to groups of loosely organized tribal border guards in the late 1800s, but were formally organized as the national fighting force of the Kurdish people after the fall of the Ottoman Empire in the wake of the First World War. As the Kurdish

246 BBC news, 'Profile of Islamic State and Leader, Abu Bakr al-Baghdadi'.

247 M. Chulov, 'How an arrest in Iraq revealed Isis's \$2bn jihadist network'.

248 BBC News, 'Islamic State and the Crisis in Iraq and Syria in Maps', 21 September 2016, <http://www.bbc.com/news/world-middle-east-27838034>.

249 The Soufan Group, *Foreign Fighters: An Updated Assessment of the Flow of Foreign Fighters Into Syria and Iraq*, December 2015, http://soufangroup.com/wp-content/uploads/2015/12/TSG_ForeignFightersUpdate3.pdf.

250 J.V. Micallef, 'The Business of ISIS', *The World Post*, 24 July 2016, http://www.huffingtonpost.com/joseph-v-micallef/the-business-of-isis_b_11142954.html.

nationalist movement grew, so too did the identity of the Peshmerga who are now seen as a key part of Kurdish culture. The ultimate objective of the Peshmerga is to secure an independent Kurdish state.²⁵¹

The Kurdish Pashmerga are thought to number around 190,000 male and female fighters. They are mainly armed with Soviet-style weapons, either seized from Saddam's army or purchased in later years from former Communist-Bloc countries. The Peshmerga are considered to be well-trained, organized and battle-hardened fighters, and are particularly formidable in combat in mountainous terrain.²⁵²

The Pashmerga have received combat training from German, Italian, British and US armed forces, which consider the group as crucial in their fight against IS.²⁵³ Britain has supplied the Peshmerga with 40 heavy machine guns and ammunition, but has denied further requests from the Pashmerga for more weaponry.²⁵⁴

On 12 July 2016 the U.S. signed a memorandum of understanding with the Kurdistan Regional Government (KRG) regarding US-Kurdish military cooperation in the next stage of the war against IS.²⁵⁵

On 18 September 2016, IS launched an offensive on the headquarters of the Peshmerga forces in northern Iraq, killing and wounding a number of Kurdish soldiers. According to one Peshmerga officer, Jamshid Hamo:

Daesh terrorists (ISIS) are trying to avoid clashes with the Peshmerga forces. They've lost many battles with the Peshmerga, that's why they now depend on such attacks with car bombs and mortar shells.²⁵⁶

After the attack, the Kurdish forces were heavily deployed in the surroundings of Khazir to prevent any infiltration attempt by ISIS militants. According to US central command, the Iraqi Kurdistan's Peshmerga forces will play a critical role amongst others in the anti-IS Mosul operation. A top Kurdish delegation met with the Iraqi Prime Minister, Haider Abadi, in Baghdad, reaching agreements on oil exports and discussing the impending battle for Mosul.²⁵⁷

251 BBC News, 'Profile: Who are the Peshmerga?', 12 August 2014, <http://www.bbc.com/news/world-middle-east-28738975>.

252 A. Bayoumi and L. Harding, 'Mapping Iraq's Fighting Groups', Al Jazeera, 27 June 2014, <http://www.aljazeera.com/news/middleeast/2014/06/mapping-out-iraq-fighting-groups-201462494731548175.html>.

253 CNN, 'Kurdish Peshmerga Learn Tactics to Fight ISIS', 25 February 2015, <http://edition.cnn.com/videos/world/2015/02/25/pkg-wedeman-iraq-kurdish-fighter-training.cnn>.

254 M. Chulov, 'Kurdish Peshmerga Call for Heavy Weaponry to Take Their Fight to ISIS', *The Guardian*, 22 February 2015, <https://www.theguardian.com/world/2015/feb/22/kurdish-peshmerga-call-for-heavy-weaponry-to-take-their-fight-to-isis>.

255 M. Knights, 'The US, the Peshmerga and Mosul', Al Jazeera, 28 July 2016, <http://www.aljazeera.com/indepth/opinion/2016/07/160727120458839.html>.

256 ARA News, 'Scores of Kurdish Peshmergas Killed in ISIS Attack Near Iraq's Khazir', 19 September 2016, <http://aranews.net/2016/09/scores-of-kurdish-peshmergas-killed-in-isis-attack-near-iraqs-khazir/>.

257 Ibid.

5. Islamic Army of Iraq

The Islamic Army of Iraq (IAI) is one of the major Sunni armed groups that formed after the US invasion of Iraq in 2003. The group is thought to be led by former Iraqi military officers. During 2006-2007, some IAI members were thought to have joined the US-backed Awakening Councils to fight al-Qaeda. The group also reportedly shifted its attention more towards what it considered growing Iranian influence inside Iraq, especially as US forces began to withdraw. After a relatively inactive period, the group was seen as a supporter of the anti-government protests that erupted across Iraq in 2011.²⁵⁸

IAI's last attack was with IS against the Iraqi military when they successfully captured Mosul. On 16 September 2016, IAI released a video allegedly showing its presence by attacking an armed vehicle.²⁵⁹

6. Sadr Fighters/ Sadr's Peace Brigades/ Saraya Al-Salam Shia

In response to IS in Iraq, powerful Shia cleric, Muqtada al-Sadr, called on his supporters to regroup to defend the people, country, religion and holy places.

Sadr claims he has 60,000 loyal fighters who are thought to have access to one of the largest weapons arsenals in Iraq, including long-range missiles.²⁶⁰ The Sadr Peace Brigade claim to be a nationalist rather than sectarian force, with the objective of defeating IS for the purpose of reunifying Iraq.

On 26 February 2016, Sadr led a million-man demonstration in Baghdad's Tahrir Square to protest against corruption in Iraq and the government's failure to deliver on reforms. 'Abadi must carry out grassroots reform', Sadr said in front of the protesters. 'Raise your voice and shout so the corrupt get scared of you', he encouraged the people.²⁶¹

Since May 2016 Sadr has been preparing his militia to participate in an offensive to retake the northern city of Mosul from the IS. The US military is preparing to aid the Iraqi government in liberating Mosul, but has insisted that the operation will not include the Shia militias.²⁶² On 18 March, Sadr's followers began a sit-in outside the Green Zone, which he called 'a bastion of support for corruption'.²⁶³ On 27 March, he himself walked into the Green Zone to begin a sit-in, urging followers

258 A. Bayoumi and L. Harding, 'Mapping Iraq's fighting groups'.

259 Islamic Army of Iraq, 17 September 2016, <https://www.youtube.com/watch?v=WIN82SSDQ8w.A>

260 S. al-Salhy, 'Sunni Boycott Threatens Reconciliation Efforts in Iraq', Al Jazeera, 23 February 2015, <http://www.aljazeera.com/news/2015/02/sunni-boycott-threatens-reconciliation-efforts-iraq-150223091549767.html>

261 Rudaw, 'Shiite Cleric Sadr Leads 1 Million Man Anti-Gov't Demonstration', 26 February 2016, <http://rudaw.net/english/middleeast/iraq/26022016>.

262 B. Roggio, 'Sadr's Peace Bridges Prepares for Mosul Offensive', FDD's Long War Journal, 17 March 2017, <http://www.longwarjournal.org/archives/2016/05/sadrs-peace-brigades-prepares-for-mosul-offensive.php>.

263 Reuters, 'Iraq's Sadr Spurns Calls to Drop Sit-In Over "Bastion of Corruption"', 17 March 2016, <http://www.reuters.com/article/us-mideast-crisis-iraq-sadr-idUSKCNOWJ241>

to stay outside and remain peaceful. The Iraqi army general in charge of security at the Green Zone kissed Sadr's hand as he allowed him to enter.²⁶⁴

C. LATEST DEVELOPMENTS IN 2016: MILITARY GAINS AGAINST ISLAMIC STATE

The battle of Fallujah (May–June 2016)

Fallujah was considered to be the second most important stronghold of IS in Iraq after Mosul, and was seized by the group in January 2014. The operation to recapture Fallujah started in May, but the city had been under a de facto siege for about six months. Up to 90,000 civilians were allegedly trapped in the city during the battle.²⁶⁵ A month later, the Iraqi army was able to win the city from the armed group. According to CNN, over 1,800 IS militants were killed during the operation.²⁶⁶

The Obama administration announced in April 2016 that the U.S. would deploy an additional 200 troops²⁶⁷ to advise and assist Iraqi security forces advancing toward Mosul, the largest city under IS rule, and another 560 troops in July 2016, bringing the total number of US troops to approximately 4,647.²⁶⁸

On 14 July 2016, the U.S. signed a deal with the Iraqi Kurdistan government to provide select members of the Kurdish Peshmerga forces with \$415 million in aid as they battle IS.²⁶⁹ A Kurdish government spokesman said the aid included financial and military support in the form of weapons, ammunition and equipment.²⁷⁰

The Battle of Mosul (ongoing since October 2016)

On 14 August 2016, Iraqi forces, led by the Kurdish Peshmerga army, launched an offensive to retake several villages near Mosul,²⁷¹ leading to concerns about

264 Reuters, 'Iraq's Sadr Begins Sit-In Inside Green Zone, Tells Supporters to Stay Outside', 27 March 2016, <http://uk.reuters.com/article/mideast-crisis-iraq-sadr-idUKL5N16Z0EC>.

265 Al Jazeera, 'UN: Up to 90,000 Civilians Inside ISIL-Held Fallujah', 8 June 2016, <http://www.aljazeera.com/news/2016/06/90000-civilians-fallujah-160608163552169.html>.

266 E. McKirdy and H. Alkhshali, 'Iraqi General: "The Battle for Falluja is Over"', CNN, 26 June 2016, <http://edition.cnn.com/2016/06/26/middleeast/falluja-liberated-isis/>.

267 Y. Torbati, 'U.S. to Send More Troops to Iraq to Tackle Islamic State', Reuters, 18 April 2016, <http://www.reuters.com/article/us-mideast-crisis-iraq-carter-idUSKCN0XF1ZP>.

268 M.S. Schmidt and M. Landler, 'U.S. will deploy 560 More Troops to Iraq to Help Retake Mosul from ISIS', The New York Times, 11 July 2016, http://www.nytimes.com/2016/07/12/world/middleeast/us-iraq-mosul.html?_r=0.

269 Al Jazeera, 'US Signs Military Aid Deal With Iraq's Kurdish Fighters', 14 July 2016, <http://www.aljazeera.com/news/2016/07/signs-military-aid-deal-iraq-kurdish-fighters-160714071048418.html>.

270 D. Abdullah, 'U.S. to Offer Military Support to Kurdish Peshmerga', *Ashraq Al-Awsat*, 13 July 2016, <http://english.aawsat.com/2016/07/article55354349/u-s-offer-military-support-kurdish-peshmerga>.

271 Al Jazeera, 'Iraq: Troops Advance on ISIL-Held Mosul', 14 August 2016, <http://www.aljazeera.com/news/2016/08/iraq-troops-advance-isil-held-mosul-160814054001692.html>.

the displacement of the civilian population.²⁷² With roughly 600,000 residents remaining as of June 2016, Mosul was the largest population centre under IS control.²⁷³ The operation to retake Mosul effectively started in October 2016,²⁷⁴ and made some progress in the following months.²⁷⁵ In February 2017, Iraqi government forces launched an offensive to liberate the western part of the city, after retaking the city's eastern half the preceding month,²⁷⁶ while the UN called for respect and protection for the estimated 650,000 civilians trapped in the city.²⁷⁷

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS, AND PROSECUTIONS

In June 2016, the UN Commission of Inquiry on Syria stated that IS was committing genocide against the Yazidis.²⁷⁸ While Iraq is not a party to the Rome Statute, two of the victims, with the assistance of lawyer Amal Clooney,²⁷⁹ are pushing for the case to be brought before the ICC, notably by pressuring Russia to plead their case at the UN Security Council, for a possible referral to the court.²⁸⁰

5. LIBYA: THE AMPLIFICATION OF CHAOS

Classification of the conflict:

Since 2014, Libya has been marred by armed violence between several non-state armed groups, including at least the 'Libya Shield', the group of militia known as 'Libya Dawn' and the Ansar al-Sharia armed group. After the formation of the UN 'Unity Government'— General National Accord (a solution between the two self-proclaimed governments — the House of Representatives (HoR) in Tobruk and

272 R. Gladstone, '1.2 Million Iraqis Could be Uprooted in Mosul Battle, U.N. Says', *The New York Times*, 23 August 2016, <http://www.nytimes.com/2016/08/24/world/middleeast/isis-mosul-iraq.html?ref=world>.

273 J. Malsin 'The Next War for Iraq', *Time*, 13 June 2016, <http://time.com/isis-mosul/>.

274 BBC News, 'Mosul Battle: Kurds Launch "Large-Scale" Offensive', 20 October 2016, <http://www.bbc.com/news/world-middle-east-37709970>.

275 BBC, 'Mosul Battle: Iraqi Forces Advance in Fresh Push', 29 December 2016, <http://www.bbc.com/news/world-middle-east-38459024>.

276 BBC News, 'Battle for Mosul: The Story so Far', 3 March 2017, <http://www.bbc.com/news/world-middle-east-37702442>.

277 BBC News, 'Mosul Battle: UN Plea to Protect Trapped Civilians', 18 February 2017, <http://www.bbc.com/news/world-middle-east-39018519>.

278 HRC "'They Came to Destroy": ISIS Crimes Against the Yazidis', UN doc. A/HRC/32/CRP.2, 15 June 2016, http://www.ohchr.org/Documents/HRBodies/HRCouncil/ColSyria/A_HRC_32_CRP.2_en.pdf.

279 C. McFadden, J. Whitman and H. Rappleye, 'Amal Clooney Takes on ISIS for "clear case genocide" of Yazidis', NBC News, 19 September 2016, <http://www.nbcnews.com/storyline/isis-uncovered/amal-clooney-takes-isis-clear-case-genocide-yazidis-n649126>.

280 Yazda, 'Yazidis Request Russian Federation to Raise Yazidi Genocide Issue at International Criminal Court', 2 August 2016, <http://v6.yazda.org/v6/press/yazidis-request-russian-federation-to-raise-yazidi-genocide-issue-at-international-criminal-court/>.

the General National Congress (GNC) in Tripoli) in January 2016,²⁸¹ and with the advent of IS, the year 2016 witnessed the beginning of another round of armed violence between the UN's General National Accord (backed by the U.S.) and IS. The conflict in Libya in 2016 can be classified as a non-international armed conflict.

A. HISTORY OF THE CONFLICT ²⁸²

The situation in Libya deteriorated in May 2014 when Ahmed Maiteeq, widely perceived as backed by Misrata-based Islamist groups, was appointed as the new Prime Minister. As a result, General Khalifa Hifter formed the 'Libya dignity alliance' and launched a military operation ('operation dignity') in Benghazi with the aim to eradicate Islamic terrorism. Meanwhile, the legality of Maiteeq's appointment continued to be questioned,²⁸³ leading the chairman of the congress to finally declare the vote of his appointment as illegal.²⁸⁴ Maiteeq had to finally step down after the Supreme Court also confirmed the illegality of his appointment.²⁸⁵ As a result of his removal, Al-Thinni was appointed as the new interim prime minister until the elections.²⁸⁶ In the background of boycotts and insecurities, the Council of Representatives emerged victorious in the 2014 elections and established their government at Tobruk instead of Tripoli.²⁸⁷ The clashes in Tripoli between Libya Dawn (Islamic faction) and the Zintan allied to Libya Dignity continued and led to many civilian casualties.²⁸⁸ The Tobruk based parliament of the House of Representatives declared Tinni as the new prime Minister, this led to strong instability as both Tobruk based government and the Tripoli based government (GNC) had their leaders but none of the two could exercise effective control.²⁸⁹

In 2014 and 2015, tribal armed groups engaged in localized hostilities in the south, particularly in Sabha, Awbari and Al-Kufra. Armed conflicts in the north also spilled over to the south, with some groups allying with Operation Dignity or

281 BBC News, 'Libya Profile – Timeline', 10 August 2016, <http://www.bbc.com/news/world-africa-13755445>.

282 Unless otherwise stated, this section is based on the Crisis Watch Database profile of Libya, <https://www.crisisgroup.org/middle-east-north-africa/north-africa/libya>

283 F. Bosalum and U. Laessing, 'Maiteeq Installed as Libya's New PM but Dismissed by Speaker', Reuters, 4 May 2014, <http://www.reuters.com/article/2014/05/04/us-libya-politics-idUSBREA4304720140504>.

284 BBC News, 'Libya Congress Rejects New PM Ahmed Maiteeq', 4 May 2014, <http://www.bbc.com/news/world-africa-27276153>.

285 'Libyan Supreme Court Rules PM's Election Unconstitutional', Business Insider, 9 June 2014, <http://www.businessinsider.com/r-libyan-supreme-court-rules-pms-election-unconstitutional-2014-09?IR=T>.

286 Financial Times, 'Supreme Court in Libya Reinstates Former Prime Minister', 9 June 2014, <http://www.ft.com/intl/cms/s/0/933dac82-efb7-11e3-9b4c-00144feabdc0.html#axzz3ZkT4mdnD>.

287 Human Rights Watch, 'World Report 2015: Libya', <http://www.hrw.org/world-report/2015/country-chapters/libya?page=3>.

288 BBC News, 'Libya Clashes Kill 38 in Benghazi', 28 July 2014, <http://www.bbc.com/news/world-africa-28510865>

289 Human Rights Watch, 'World Report 2015: Libya'.

Libya Dawn.²⁹⁰

B. PARTIES TO THE CONFLICT²⁹¹

The parties to the NIAC in Libya in 2016 are the Libya Dignity Alliance, backed by the Tobruk-based government; Libya Dawn, which supports the Tripoli-based government, and Ansar al-Sharia, which has now reportedly been integrated in the Islamic State group.

In August 2016, the U.S. launched sustained air operations against IS in Sirte at the invitation of the unity government backed by the UN. As the intervention took place with consent, the nature of the armed conflict remains non-international.

1. Libya Dawn

Libya Dawn, a Misrata-led militia that includes Islamist factions, is an alliance of hard-line and moderate Islamist groups, and members of the ethnic Berber minority, cooperating with factions from Misrata.²⁹² The militia alliance can be viewed as the 'armed forces' of the GNC, the former parliament which has reconvened in Tripoli.

2. Libya Shield

The Libya Shield group is made up of several militias of the same name that operate in various parts of the country.

The Central Libya Shield supports the defunct GNC and is viewed by the unrecognized Tripoli authorities as part of its 'Ministry of Defence' forces. The Central Libya Shield is further broken down into smaller groups. Its Third Force seized control of Birak al-Shati airport in central Libya, over 700km south of Tripoli.

3. Islamic State (IS)

A major development on the ground in Libya in 2015 was the emergence of IS. In 2015, IS had built a presence in the eastern city of Derna, from where it was driven out during the year. The group went on to take control of the city of Sirte. With the support of the US air strikes, IS was pushed back from the city in August 2016. There are no reliable figures about the number of IS militants in Libya but it is estimated that the group has about 5,000 fighters in the country, many of whom were thought to have been deployed in Sirte.²⁹³

290 Investigation by the Office of the United Nations High Commissioner for Human Rights on Libya, UN doc. A/HRC/31/47, 15 February 2016.

291 See for further information, BBC News, 'Guide to Key Libyan Militias', 11 January 2016, <http://www.bbc.com/news/world-middle-east-19744533>.

292 I. Tharoor and A. Taylor, 'Here Are the Key Players Fighting the War for Libya, All Over Again', *The Washington Post*, 27 August 2014, <http://www.washingtonpost.com/blogs/worldviews/wp/2014/08/27/here-are-the-key-players-fighting-the-war-for-libya-all-over-again/>.

293 BBC News, 'What Next for Islamic State in Libya After Sirte?', 27 August 2016, <http://www.bbc.com/news/world-africa-37188226>.

4. Ansar al-Sharia

Ansa al-Sharia is a radical Islamist armed group based in Benghazi.²⁹⁴ Its leader was Mohamed al-Zahawi. After his death, probably in September 2014,²⁹⁵ many members of the group, including the majority of its organization in Sirte, reportedly defected to the Islamic State of Iraq and the Levant in Libya.²⁹⁶ Ansar al-Sharia initially manifested as a revolutionary brigade during the 2011 Libyan revolution and gained prominence following the death of Muammar al-Qaddafi.²⁹⁷ The group has been labelled as a terrorist group by the U.S.²⁹⁸

C. RECENT DEVELOPMENTS IN 2016: THE AMPLIFICATION OF CHAOS

On 7 April 2016, the Tripoli-based GNC refused to recognize the new Unity Government, contrary to its earlier acceptance of it.²⁹⁹ The creation of the new Unity Government was based on a compromise elaborated by the UN to restore stability. The UN had facilitated a series of talks in Morocco and Tunisia with the Tobruk-based HoR and its rival the Tripoli-based GNC. The principle obstacles to the success of a unity government continue to include the HoR's concerns about GNC politicians' links to Salafist militias, and demands by GNC allies to exclude Libyan Army General Khalifa Haftar, a Tobruk-backed former Qaddafi loyalist, from the new government.³⁰⁰

In the meantime, groups pledging allegiance to IS further emerged as a force, particularly in Derna and Benghazi. Taking advantage of the political and military turmoil in the country, IS had quickly gained control over the coastal city of Sirte.³⁰¹ In May 2016, Libya's UN-backed government, with support of allied militias, launched a coordinated offensive on the Mediterranean port city, the group's

294 F. Irshaid, 'Profile: Libya's Ansar al-Sharia', BBC News, 13 June 2014, <http://www.bbc.com/news/world-africa-27732589>.

295 Reuters, 'Leader of Libyan Islamists Ansar al-Sharia Dies of Wounds', 23 January 2015, <http://www.reuters.com/article/2015/01/23/us-libya-security-idUSKBNOKW1MU20150123>.

296 R. Sherlock and S. Tarling, 'Islamic State: Inside the Latest City to Fall Under its Sway', *The Telegraph*, 10 March 2015, <http://www.telegraph.co.uk/news/worldnews/africaandindianocean/libya/11460124/How-Gaddafis-home-city-in-Libya-fell-under-the-rule-of-Islamic-State-jihadists.html>.

297 TRAC, 'Ansar al-Sharia in Libya (ASL)', <http://www.trackingterrorism.org/group/ansar-al-sharia-libya-asl>.

298 U.S. Department of State, 'Terrorist Designations of Three Ansar al-Shari'a Organizations and Leaders', 10 January 2014, <https://www.state.gov/j/ct/rls/other/des/266560.htm>.

299 BBC News, 'Libya's Tripoli Government to Step Down', 5 April 2016 <http://www.bbc.com/news/world-africa-35974641>; Al Jazeera, 'Libya's Tripoli Authority Rejects UN-Backed Government', 7 April 2016, <http://www.aljazeera.com/news/2016/04/libya-tripoli-authority-rejects-backed-government-160407041526033.html>.

300 BBC News, 'Profile: Libya's Military Strongman Khalifa Haftar', 22 April 2016, <http://www.bbc.com/news/world-africa-27492354>.

301 E.M Lederer, 'UN Experts Say up to 3,000 Islamic State Fighters in Libya but Extremist Group is 1 Player', U.S. News, 1 December 2015, <http://www.usnews.com/news/world/articles/2015/12/01/un-experts-up-to-3-000-islamic-state-fighters-in-libya>.

most significant stronghold outside of Syria and Iraq.³⁰²

On 11 August 2016, with the support of US air strikes, the Unity Government was successful in capturing the headquarters of IS.³⁰³ In the last week of August 2016, Libyan fighters fighting alongside the Unity Government pushed IS back to the outskirts of Sirte.³⁰⁴

D. WAR CRIMES AND PROSECUTIONS

Following the UN Security Council (UNSC) referral to the International Criminal Court (ICC) of the situation in Libya since 15 February 2011 with Resolution 1970 (2011),³⁰⁵ on 21 May 2014 the ICC issued a final decision rejecting Libya's request to try Qaddafi domestically for crimes against humanity.³⁰⁶ However, the Libyan government failed to uphold its legal obligation to cooperate and surrender Saif al-Islam Qaddafi, which it had been requested to do twice. As a consequence, on 10 December 2014 the ICC issued a finding of non-compliance by Libya and referred the issue to the UNSC.³⁰⁷

In the case of Abdullah Sanussi, the ICC judges approved Libya's bid to prosecute the former intelligence chief at home for his alleged role during the 2011 uprising.³⁰⁸

In November 2016, the twelfth report of the Office of the Prosecutor to the UNSC on the situation of Libya, stated:

The unstable security situation persists in Libya. This instability currently precludes the Office from conducting investigations within Libyan territory in relation to both existing and possible new cases. The Office continues to assess the security situation in Libya through a variety of sources, with the aim of returning to the country to conduct in situ investigations as soon as possible. The Office is also constantly looking to mitigate the corresponding security risks and will continue to work in partnership with the Libyan Pro-

302 Reuters, 'Western Libyan Forces Prepare Attack on Islamic State Stronghold', 11 May 2016, <http://www.reuters.com/article/us-libya-security-idUSKCN0Y21CB>.

303 PBS Newshour, 'News Wrap: Libyan Headquarters of ISIS Captured, Claim U.S.-Backed Fighters', 10 August 2016, <http://www.pbs.org/newshour/bb/news-wrap-libyan-headquarters-isis-captured-claim-u-s-backed-fighters/>.

304 A. Lewis, 'High toll for Libyan troops battling Islamic State in Sirte', Reuters, 29 August 2016 <http://www.reuters.com/article/us-libya-security-idUSKCN1130TH>.

305 Security Council Resolution 1970 (2011), UN doc. S/RES/1970 (2011), 26 February 2011, http://www.un.org/ga/search/view_doc.asp?symbol=S/RES/1970%20%282011%29.

306 Human Rights Watch, 'Libya: Final ICC Ruling on Gaddafi', 21 May 2014, <http://www.hrw.org/news/2014/05/21/libya-final-icc-ruling-gaddafi>. See also, *The Prosecutor v. Saif Al-Islam Gaddafi*, ICC Case Information Sheet, <http://www.icc-cpi.int/iccdocs/PIDS/publications/GaddafiEng.pdf>.

307 Human Rights Watch, 'World Report 2015: Libya'.

308 ICC, 'Al-Senussi Case: Appeals Chamber Confirms Case is Inadmissible Before ICC', 27 July 2014, http://www.icc-cpi.int/en_menus/icc/press%20and%20media/press%20releases/Pages/pr1034.aspx.

secutor General's office to find a suitable solution that will permit the safe conduct of investigative missions. Working outside of Libya, the Office has been successful in continuing to conduct investigations and collect important evidence. Despite the continuing resource challenges, in 2017 the Office intends to expand significantly its investigations into crimes committed from 2011, including current instances of alleged grave criminal behaviour falling under the Court's jurisdiction.³⁰⁹

6. MALI: GROUND-BREAKING ICC CASE ON THE DESTRUCTION OF CULTURAL PROPERTY

Classification of the conflict:

Mali, supported by France and the African-led International Support Mission in Mali (AFISMA), then the UN Multidimensional Integrated Stabilization Mission in Mali (MINUSMA), was involved in a non-international armed conflict with al-Qaeda in the Islamic Maghreb (AQIM), Ansar Dine, the Movement for Oneness and Jihad in West Africa (MOJWA), and the MNLA in 2014. The conflict met the threshold for applicability of the 1977 Additional Protocol II.

A. HISTORY OF THE CONFLICT³¹⁰

Since May 2006, Mali has been engaged in low-intensity conflict in the north of the country between the Government and a number of ethnic Touareg non-state armed groups then under the umbrella of the *23 May Democratic Alliance for Change*. In July 2008, the Government and the group agreed a ceasefire after four days of talks in the Algerian capital, Algiers. Mali, Africa's third-biggest gold producer, had struggled to end the escalating militancy by the Touareg nomads who took up arms demanding greater rights for their people. The conflict followed similar rebellions in the 1960s and 1990s by the Touareg.

On 22 March 2012, a military coup in the capital, Bamako, overthrew the elected President Amadou Toumani Toure. The coup came in the aftermath of a series of losses suffered by Malian armed forces in the face of the Touareg, who had received new weaponry from Libya. On 6 April 2012, the National Movement for the Liberation of Azawad (MNLA), a new umbrella group for Touareg rebels, proclaimed the independence of the Azawad, a territory in northern Mali. Among others, the African Union, the EU, and the U.S. did not recognize the putative new state.³¹¹

309 OTP, 'Twelfth Report of the Prosecutor of the International Criminal Court to the United Nations Security Council Pursuant to UNSCR 1970 (2011)', 9 November 2016, para 13, https://www.icc-cpi.int/iccdocs/otp/16-11-10_OTP-rep-UNSCR-1970_ENG.pdf,

310 Unless otherwise stated, this section is based on BBC News, 'Mali Country Profile', 21 May 2015, <http://www.bbc.com/news/world-africa-13881370>.

311 IRIN, 'War and Peace – Mali Repeats the Cycle', 29 March 2012, www.irinnews.org/Report/95186/Briefing-War-and-peace-Mali-repeats-the-cycle.

On 9 April 2012, the UN Security Council reaffirmed ‘the need to uphold and respect the sovereignty, unity and territorial integrity of Mali and reject categorically any declarations to the contrary’, and demanded ‘an immediate cessation of hostilities in the north of Mali by rebel groups’.³¹² In May 2012, the Economic Community of West African States (ECOWAS) decided to send a force of 3,000 regional soldiers to Mali in an effort to restore stability even though the military junta opposed the idea.

In May 2012, the MNLA and Islamist militant group Ansar Dine³¹³ sought to merge, declaring northern Mali an Islamic state. Ansar Dine began to impose Islamic law in Timbuktu. AQIM ‘endorsed’ the deal. But by June, the already strained relationship between Ansar Dine and the MNLA imploded, and following fierce combat with Ansar Dine and the MOJWA the MNLA was expelled from the main northern cities of Gao, Kidal, and Timbuktu by July 2012. The town of Douentza followed in September, seeing the Islamists come ever closer to Government-held territory.³¹⁴

In November 2012, ECOWAS, backed by the UN and African Union, agreed to launch a coordinated military expedition to recapture the north. France, the USA, and the United Kingdom announced logistical support for the mission, which was planned to comprise some 3,300 military personnel.

On 11 January 2013, the French military began operations against the Islamist armed groups in Operation Serval, deploying some 4,000 troops. The first forces from the African-led International Support Mission in Mali (AFISMA) arrived on 17 January.³¹⁵ Combat operations took place throughout the first part of 2013.³¹⁶

In April 2013, France began to withdraw some of its troops aiming to have no more than 1,000 by year’s end. On 25 April, the UN Security Council adopted Resolution 2100 in which it

Demand[ed] that all rebel armed groups in Mali put aside their arms and cease hostilities immediately and urge[d] all such parties in Mali who have cut off all ties with terrorist organizations such as AQIM, MUJAO, Ansar Edine and associated terrorist groups and who recognize, without conditions, the unity and territorial integrity of the Malian State, and the transitional authorities of Mali to engage expeditiously in an inclusive negotiation process, facilitated by the Secretary-General.³¹⁷

312 UN Security Council, ‘Security Council Press Statement on Mali’, 10 April 2012, www.un.org/News/Press/docs/2012/sc10603.doc.htm.

313 Ansar Dine was founded by Touareg rebel Iyad Ag Ghaly.

314 RFI, ‘Rupture Entre le MNLA et Ansar Dine au Nord du Mali’, 20 March 2012, www.rfi.fr/afrique/20120320-nord-mali-rupture-mnla-ancar-dine-touaregs-iyad-ag-ghali.

315 International Institute for Strategic Studies, *Military Balance* 2014, Chapter 9: Sub-Saharan Africa.

316 See ‘Mali Profile’ in Annyssa Bellal (ed) *The War Report 2014*, Oxford University Press, p 147.

317 UN Security Council Resolution 2100, UN doc. S/RES/2100 (2013), 25 April 2013, §4, http://www.un.org/en/peacekeeping/missions/minusma/documents/mali%20_2100_E_.pdf.

The Resolution further established MINUSMA, determining that authority would be transferred from AFISMA to MINUSMA on 1 July 2013.³¹⁸ The mandate of MINUSMA was to include protection, ‘without prejudice to the responsibility of the transitional authorities of Mali, civilians under imminent threat of physical violence, within its capacities and areas of deployment’ and to ‘monitor, help investigate and report’ to the Security Council on any abuses or violations of human rights or violations of IHL committed in Mali ‘and to contribute to efforts to prevent such violations and abuses’.³¹⁹

In May, an international conference pledged US\$4 billion to help rebuild Mali. In June, the Government signed a peace deal with Tuareg rebels to pave the way for national elections. Rebels agreed to hand over the northern town of Kidal they had captured after French troops had forced out Islamists in January. In July–August 2013, Ibrahim Boubacar Keita won presidential elections. In September, the Malian army clashed with Tuareg rebels in the first fighting since the June peace accord.

April 2015 saw an upsurge in the level of violence as the Coordination of Azawad Movements northern rebels clashed with UN Peacekeepers in Timbuktu and seized the town of Lere and attempted to recapture the town of Menaka from the pro-government forces.³²⁰

On 21 May 2015, it was reported that French Special Forces killed leading al-Qaeda commanders Amada Ag Hama and Ibrahim Ag Inawalen in northern raid. Both the individuals were suspected of kidnapping and killing French citizens.³²¹

After a long process of dialogue and negotiation, a new peace accord has finally been concluded between the Malian Government and two coalitions of armed groups that were fighting the government and against each other, namely the Coordination of Azawad Movements (CMA) and the Platform of armed groups (the Platform). The new peace accord, *Accord pour la paix et la réconciliation au Mali issu du processus d’Alger* [Accord for peace and reconciliation in Mali emanating from the Algiers process], was formally signed on 15 May 2015 by the Government of Mali, the Platform and two groups forming part of the CMA. The remaining CMA groups signed the accord on 20 June 2015.³²²

In November 2015, 16 people were killed at the Radisson Blu Hotel in Bamako.³²³ Attacks extended to neighboring countries in 2016. On March 2016, a shooting at

318 Ibid, §7.

319 Ibid, §16(c)(i) and (d)(i).

320 BBC News, ‘UN Base in Mali Hit by Deadly Suicide Bombing’, 15 April 2015, <http://www.bbc.com/news/world-africa-32327252>.

321 Al Jazeera, ‘French Special Forces “Kill Al-Qaeda Leader in Mali”’, 21 May 2015, <http://www.aljazeera.com/news/2015/05/french-special-forces-kill-al-qaeda-leader-mali-150520203048981.html>.

322 G. Nyirabikali, ‘Mali Peace Accord: Actors, Issues and Their Representation’, Stockholm International Peace Research Institute, 27 August 2015, <https://www.sipri.org/node/385>.

323 D. Searcey and A. Nossiter, ‘Deadly Siege Ends After Assault on Hotel in Mali’, *The New York Times*, 20 November 2015, http://www.nytimes.com/2015/11/21/world/africa/mali-hotel-attack-radisson.html?_r=0.

a beach hotel in Ivory Coast killed nineteen civilians.³²⁴ In May 2016, five Chadian peacekeepers were killed in an ambush near Kidal. Al Qaeda in the Islamic Maghreb (AQIM) also claimed responsibility for an attack that month that killed a Chinese peacekeeper and three civilians.³²⁵ In July 2016, Mali extended its state of emergency till March 29, 2017 amidst fighting still taking place in the country.³²⁶

In September 2016, Malian President, Ibrahim Boubacar Keita, warned the UN that terrorism and crime were spreading from the northern part of the country to the centre and, due to slow implementation of the peace deal and continuing insecurity, groups affiliated with al-Qaeda and the so-called Islamic State were at risk of expanding.³²⁷

According to the UN more than 100 peacekeepers have been killed since MINUSMA deployed its forces in July 2013.³²⁸ The UN Security Council (UNSC) voted in June to increase the contingent by 2,500 troops, taking the total number of uniformed personnel to more than 15,000.³²⁹ Mali is now being considered to be the deadliest place for UN peacekeeping forces.³³⁰

B. PARTIES TO THE CONFLICTS

The parties to the NIACs in 2016 were Mali, AFISMA, and MINUSMA against AQIM, Ansar Dine, MOJWA and the MNLA.

1. Malian Armed Forces

The size of Malian armed forces is estimated to be around 7500 active personnel and 0 reserve personnel in 2016.³³¹

2. AFISMA

The African-led International Support Mission in Mali (AFISMA), which was

324 L. Coulibaly and D. Searcey, '16 Killed in Terrorist Attack on Resort Hotels in Ivory Coast', *The New York Times*, 13 March 2016, <https://www.nytimes.com/2016/03/14/world/africa/gunmen-carry-out-fatal-attacks-at-resorts-in-ivory-coast.html?mtrref=undefined&gwh=4F22AE983513FC9D0765EDE6511005E8&gwt=pay>.

325 Reuter, 'One UN Peacekeeper Killed, Four Wounded in North Mali Mine Attack', 7 August 2016, <http://www.reuters.com/article/us-mali-violence-idUSKCN1010U0?il=0>.

326 I. Akwei, 'Mali Extends State of Emergency Amidst Fighting', *Africa News*, 31 July 2016, <http://www.africanews.com/2016/07/31/mali-extends-state-of-emergency-amidst-continued-fighting/>.

327 J. Irish, 'Mali Leader Warns U.N.: Qaeda, Islamic State Gaining Ground in Country', *Reuters*, 23 September 2016, <http://www.reuters.com/article/us-un-assembly-mali-idUSKCN11T1N0>.

328 UN Peacekeeping, 'Fatalities by Year, Mission and Incident Type up to 31 January 2017', http://www.un.org/en/peacekeeping/fatalities/documents/stats_5ajan.pdf.

329 UN Security Council, 'Security Council Adopts Resolution 2295 (2016), Authorizing "More Proactive and Robust" Mandate for United Nations Mission in Mali', 29 June 2016, <https://www.un.org/press/en/2016/sc12426.doc.htm>.

330 Reuters, 'Dutch to Cut Role in U.N. Peace Mission in Mali', 7 October 2016, <http://www.reuters.com/article/us-mali-un-netherlands-idUSKCN1271ZL?il=0>.

331 Global Firepower, 'Mali Military Strength', December 2016, http://www.globalfirepower.com/country-military-strength-detail.asp?country_id=mali.

initially under the auspices of the Economic Community of West African States (ECOWAS), reverted to an African Union (AU) mandate. The transition from ECOWAS to the African Union followed a review of the mission's concept of operation by the ECOWAS Committee of Chiefs of Defence Staff. The UN Security Council in Resolution 2085 authorized deployment of AFISMA for an initial period of one year, with the mandate to 'take all necessary measures, in compliance with applicable international humanitarian law and human rights law and in full respect of the sovereignty, territorial integrity and unity of Mali' to carry out a number of tasks, including:

To support the Malian authorities in recovering the areas in the north of its territory under the control of terrorist, extremist and armed groups and in reducing the threat posed by terrorist organizations, including AQIM, MUJWA and associated extremist groups, while taking appropriate measures to reduce the impact of military action upon the civilian population.³³²

On 1 July 2013, in accordance with UN Security Council Resolution 2100, AFISMA transferred its authority to MINUSMA in an official ceremony in Bamako, the Malian capital.

3. MINUSMA

In April, the UNSC approved the 12,600-strong MINUSMA's taking over from the African-led force, authorizing it 'to use all necessary means'³³³ to carry out security-related stabilization tasks, protect civilians, UN staff and cultural artefacts, and create the conditions for provision of humanitarian aid. MINUSMA is the world's third largest UN peacekeeping force.

4. Al-Qaeda in the Islamic Maghreb (AQIM)

AQIM is a Salafi-jihadist militant group operating in North Africa's Sahara and Sahel. The group was created during Algeria's earlier internal armed conflict, and has since become an al-Qaeda affiliate. In recent months, AQIM expanded its foothold in northern Mali.³³⁴ It has been designated as a terrorist organization by both the U.S. and the EU. AQIM's main objectives include the eradication of Western influence from North Africa by overthrowing 'unbeliever' governments, and installing regimes based on Shari'a law. Its tactics include the use of guerrilla-style raids, assassinations, and suicide bombings of military, government and civilian targets.³³⁵

332 UN Security Council Resolution 2085, 20 December 2012, §9, <https://www.un.org/press/en/2012/sc10870.doc.htm>.

333 UN Security Council Resolution 2100, UN doc. S/RES/2100 (2013) 25 April 2013, §17, https://www.un.org/en/peacekeeping/missions/minusma/documents/mali%20_2100_E_.pdf.

334 Globalsecurity.org, 'Al-Qaeda in the Land of the Islamic Maghreb', June 2011, www.globalsecurity.org/military/world/para/gspc.htm.

335 Z. Laub and J. Masters, 'Al-Qaeda in the Islamic Maghreb (AQIM)', Council on Foreign Relations, January 2014, www.cfr.org/north-africa/al-qaeda-islamic-maghreb-aqim/p12717.

5. Ansar Dine³³⁶

Ansar Dine (meaning ‘defenders of the religion’ in Arabic) was created in December 2011. The group was led by Iyad Ag Ghaly, a leader of Touareg rebellions in the 1990s. Unlike the MNLA, Ansar Dine’s goal is to impose Islamic law over the whole country without necessarily challenging the territorial integrity of Mali.³³⁷ Ansar Dine’s members were allegedly responsible for the destruction of UNESCO world heritage sites in Timbuktu, while the imposition of Shari’a in their controlled areas led thousands to flee.³³⁸ In November 2012, in light of the planned ECOWAS intervention, the group issued a statement whereby it rejected all forms of extremism and terrorism and committed itself in the fight against transnational organized crime.³³⁹ This declaration seemed to indicate the will of Ansar Dine to publicly distance itself from AQIM. However, a few months later, the two rebel groups were reported to be operating in close collaboration.³⁴⁰

6. Mouvement Pour le Tawhîd et du Jihad en Afrique de l’Ouest (MOJWA)

The Mouvement pour le Tawhîd et du Jihad en Afrique de l’Ouest (Movement for Oneness and Jihad in West Africa, MOJWA) is an active terrorist group that emerged from AQIM in mid-2011. In a video announcing its creation on 12 December 2011, the rebel group openly declared its intent to spread jihad and impose Shari’a law in West Africa, namely in Algeria and northern Mali. The MOJWA was among the rebel groups that took control of northern Mali after the military coup on 21 March 2012. On 1 September, the group seized the town of Douentza from a local self-defence militia. The capture of the town, situated in the Mopti region of Mali, was the southernmost point of the occupied territory, a fact that caused great concern in Bamako.³⁴¹ On 5 December 2012, the group was listed as a terrorist organization associated with al-Qaeda by the UN Security Council.³⁴²

7. National Movement for the Liberation of Azawad (MNLA)

The Movement National de Libération de l’Azawad (MNLA) is a separatist political and military organization formed mainly by Tuareg and, to a much smaller extent,

336 See also I. Maïga, *Armed Groups in Mali: Beyond the Labels*, Institute for Security Studies West Africa Report 17, June 2016, <https://issafrica.s3.amazonaws.com/site/uploads/WestAfricaReport17.pdf>.

337 Amnesty International UK, ‘Media Briefing – Mali Unrest 2012-2013’, January 2013, p 5, https://www.amnesty.org.uk/files/mali_briefing_jan_2013.pdf.

338 L. Jacinto, ‘Strange Bedfellows: The MNLA’s On-Again, Off-Again Marriage With Ansar Dine’, France24, 7 June 2012, www.france24.com/en/20120605-mali-strange-bedfellows-mnla-ansar-dine-al-qaeda-aqim-islamists-tuareg.

339 *Le Monde*, ‘Mali: Les Islamistes d’Ansar Dine Assurent Refuser le “terrorisme”’, 6 November 2012, www.lemonde.fr/afrique/article/2012/11/06/les-islamistes-d-ansar-dine-rejettent-le-terrorisme_1786631_3212.html.

340 RFI, ‘Au Nord du Mali, Ansar Dine et Aqmi Œuvrent Main Dans la Main’, 3 January 2013, www.rfi.fr/ameriques/20130103-nord-mali-ansar-dine-aqmi-tombouctou-azawad.

341 A. Look, ‘Islamic Militant Group in Northern Mali Expanding Southward’, GlobalSecurity.org, 4 September 2012 <http://www.globalsecurity.org/military/library/news/2012/09/mil-120904-voa08.htm>.

342 See the United Nations Security Council Al-Qaida Sanctions Committee, <https://www.un.org/sc/suborg/en/search/content/MUJAO>

Saharan and other people living in the territory situated in Northern Mali. It was founded on 16 October 2011,³⁴³ when the National Movement of Azawad (MNA) merged with the National Alliance of Touareg in Mali (ATNM) to form the MNLA. Based in Northern Mali, the MNLA had its strongest presence in Kidal, but was also active and present in the regions of Timbuktu, Gao and partially Mopti. In the past and present, some northern Malians have felt that the government has marginalized them, yet some southerners resent what they see as governments' lavish spending on demographically small regions and peoples. Since 2013, the MNLA has reconsidered its political claim for the independence of the Azawad region in favour of a more autonomous administration of the Azawad but still within Malian territory. MNLA is part of the peace process and has signed the Algiers Agreement of May 2015.

C. LATEST DEVELOPMENTS IN 2016: ICC CASE ON THE DESTRUCTION OF CULTURAL PROPERTY AS A WAR CRIME

In September 2016, the International Criminal Court (ICC) sentenced Ahmad al-Faqi to nine years imprisonment for intentionally directing attacks against 10 mausoleums and mosques in Timbuktu between 30 June and 11 July 2012. The situation in Mali was referred to the ICC by the government in 2012. The al-Mahdi case was the first ICC case to focus on the destruction of cultural property and the only ICC case so far addressing crimes under international law committed during the 2012 conflict in Mali. Ahmad al-Faqi al-Mahdi admitted that his sermons were leading rebel forces to the destruction of the historic mausoleums. His confession and apparent willingness to cooperate with the court seems to have contributed to the nine-year sentence.³⁴⁴

Further reading: ICC, Al Mahdi Case, The Prosecutor v. Ahmad Al Faqi Al Mahdi (ICC-01/12-01/15), <https://www.icc-cpi.int/mali/al-mahdi>; Human Rights Brief, 'Protecting Cultural Heritage: The International Criminal Court's Prosecution of Destruction of Cultural Property', 5 November 2016, <http://hrbrief.org/hearings/protecting-cultural-heritage-international-criminal-courts-prosecution-destruction-cultural-property/>.

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS, AND PROSECUTIONS

Mali adhered to the 1998 Rome Statute of the International Criminal Court (Rome Statute) in 2000. The ICC has jurisdiction over Rome Statute crimes committed

343 Reliefweb, 'Mali: Humanitarian Overview (as of 30 September 2014)', <http://reliefweb.int/report/mali/mali-humanitarian-overview-30-september-2014>.

344 BBC, 'Mali Islamist Jailed for Nine Years for Timbuktu Shrine Attacks' 27 September 2016, <http://www.bbc.com/news/world-africa-37483967>.

in the territory of Mali or by its nationals since 1 November 2002, in cases where national courts are unwilling or unable to prosecute.

On 16 January 2013, the ICC Prosecutor formally opened an investigation into alleged crimes committed in the territory of Mali since January 2012. This decision was the result of the preliminary examination of the situation in Mali that the Office of the Prosecutor (OTP) had been conducting since July 2012, following the referral of the ‘situation in Mali since January 2012’ by the Malian Government.³⁴⁵ In its preliminary examination, the OTP had determined that a reasonable basis existed to believe that war crimes within the jurisdiction of the Court had been committed in Mali since January 2012, namely:

- (1) murder
- (2) mutilation, cruel treatment, and torture
- (3) the passing of sentences and the carrying out of executions without due process
- (4) intentionally directing attacks against protected objects
- (5) pillaging
- (6) rape.

The OTP’s assessment was preliminary in nature for the purpose of satisfying the threshold determination under Article 53(1), and is therefore not binding for the purpose of the investigation or any future selection of charges.³⁴⁶ The situation in Mali is assigned to Pre-Trial Chamber II of the ICC.

7. SOUTH SUDAN: MASSIVE HUMAN RIGHTS AND IHL VIOLATIONS IN THE SUMMER OF 2016

Classification of the conflict:

In 2016, South Sudan and its armed forces (the former Sudan People’s Liberation Army — SPLA) was involved in a non-international armed conflict with dissident South Sudan armed forces (sometimes called the SPLM/A-in-Opposition). The conflict, which began in mid-December 2013, subsequently met the threshold for applicability of the 1977 Additional Protocol II.

A. HISTORY OF THE CONFLICT

South Sudan gained independence from Sudan in July 2011 as the outcome of a 2005 peace deal (the Comprehensive Peace Agreement) that ended Africa’s longest-running civil war. An overwhelming majority of South Sudanese voted in a January 2011 referendum to secede and become Africa’s first new state since Er-

345 OTP, ‘Report on Preliminary Examination Activities 2013’, November 2013, §230.

346 Ibid, §231.

itrea split from Ethiopia in 1993.³⁴⁷ In adopting Resolution 1996 on 8 July 2011, the UN Security Council (UNSC) determined that the situation faced by South Sudan continued to constitute a threat to international peace and security in the region. The situation has remained highly unstable all the following years.

Under the threat of international sanctions and following several rounds of negotiations supported by the Intergovernmental Authority on Development (IGAD), President Salva Kiir signed a peace agreement with rebel leader and former Vice President Riek Machar on August 26, 2015.³⁴⁸

As the first step toward ending the civil war, Machar returned to Juba on 26 April 2016 and was sworn in as Vice President, after spending more than two years outside of the country.³⁴⁹ Soon after his return, violence broke out again between government forces and opposition factions in July 2016, displacing tens of thousands of people yet again. After Machar fled the country, Kiir replaced him as Vice President with General Taban Deng Gai.³⁵⁰ Taban blamed the former Vice President for the unrest.³⁵¹ On 26 September 2016, Macher called for renewed war against the government and declared the collapse of the August 2015 peace agreement.³⁵²

B. PARTIES TO THE CONFLICT

The parties to the NIAC in 2016 were South Sudan and its armed forces, supported by the UPDF, against dissident South Sudan armed forces.

South Sudan Armed Forces

The South Sudan armed forces have been estimated to be 210,000 strong,³⁵³ though since the split in the SPLA the size of the effective fighting force is not known. It has been alleged that Government forces are actively recruiting child soldiers as young as 13-years-old.³⁵⁴

347 BBC News, 'South Sudan Country Profile', 23 April 2014, www.bbc.com/news/world-africa-14069082.

348 Al Jazeera, 'South Sudan President Signs Peace Deal With Rebels', 27 August 2015, <http://www.aljazeera.com/news/2015/08/south-sudan-expected-sign-peace-deal-rebels-150826084550000.html>.

349 J. Lynch, 'South Sudan Takes Tentative Step Forward as Former Rebel Leader Becomes VP', *The Christian Science Monitor*, 26 April 2016, <http://www.csmonitor.com/World/Africa/2016/0426/S.-Sudan-takes-tentative-step-forward-as-former-rebel-leader-becomes-VP>.

350 N. Bariyo and M. Stevis, 'South Sudan's Former Vice President Flees Country', *The Wall Street Journal*, 18 August 2016, <http://www.wsj.com/articles/south-sudans-vice-president-flees-country-1471530128>.

351 S. O'Grady, 'South Sudan VP Blames Former Rebel Leader for Unrest', *Foreign Policy*, 28 September 2016, <http://foreignpolicy.com/2016/09/28/south-sudan-vp-blames-former-rebel-leader-for-unrest/>.

352 AFP, 'South Sudan Rebel Chief Issues War Call From Exile', 25 September 2016, <https://www.yahoo.com/news/south-sudan-rebel-chief-issues-war-call-exile-155219801.html>.

353 Global Firepower, 'South Sudan Military Strength', last updated on 20 December 2016, http://www.globalfirepower.com/country-military-strength-detail.asp?country_id=south-sudan.

354 Human Rights Watch, 'South Sudan: Government Forces Recruiting Child Soldiers', 16 February 2015, <http://www.hrw.org/news/2015/02/16/south-sudan-government-forces-recruiting-child-soldiers>.

Dissident South Sudan Armed Forces

The size of the dissident South Sudan armed forces (SPLM/A-in-Opposition) is not known. A large number of soldiers have defected from the SPLA and other organized forces; estimates suggest the number to be around 35,000 fighters. Moreover, an unknown number of police forces have also joined the opposition, and if the proportion of defections was roughly similar to the SPLA, they may amount to around 10,000.³⁵⁵

C. RECENT DEVELOPMENTS IN 2016: MASSIVE HUMAN RIGHTS AND IHL VIOLATIONS IN THE SUMMER OF 2016

Following the outbreak of fierce fighting in Juba in July 2016, the August 2015 peace agreement collapsed. The clashes included continuing ethnic violence, reports of widespread sexual violence and rape by government forces, looting, and indiscriminate attacks.³⁵⁶ In South Sudan's capital of Juba, several foreign aid workers were raped, beaten, and robbed after troops allegedly loyal to President Salva Kiir went on a four-hour frenzy through a residential district popular with foreigners.³⁵⁷

On 12 August 2016, Security Council Resolution 2304 (2016) authorized the deployment of the Regional Protection Force with a robust mandate to use all necessary means to implement its mandate of securing Juba.³⁵⁸ In January 2017, the South Sudan government rejected the deployment of the Regional Protection Force.³⁵⁹

An investigation found that international troops failed to protect civilians and aid workers during the July attack in Juba by government soldiers.³⁶⁰ As a result, the UN Secretary-General, Ban Ki-moon, removed from his post the Kenyan general who was the South Sudan Peacekeeping Commander.³⁶¹ Soon after this decision,

355 Human Security Baseline Assessment (HSBA) for Sudan and South Sudan, 'The SPLM- In-Opposition', 1 April 2014, <http://www.smallarmssurveysudan.org/fileadmin/docs/facts-figures/south-sudan/HSBA-SPLM-IO-May-2014.pdf>.

356 Human Rights Watch, 'South Sudan: Killings, Rapes, Looting in Juba', 15 August 2016, <https://www.hrw.org/news/2016/08/15/south-sudan-killings-rapes-looting-juba>.

357 AP, Rampaging South Sudan troops raped foreigners, killed local, 15 August 2016, <http://bigstory.ap.org/article/237fa4c447d74698804be210512c3ed1/rampaging-south-sudan-troops-raped-foreigners-killed-local>

358 UN Security Council Resolution 2304 (2016), UN doc. S/RES/2304 (2016), 12 August 2016, <http://undocs.org/S/RES/2304%282016%29>.

359 Sudan Tribune, 'South Sudan Renews Rejection to Regional Protection Force', 11 January 2017, <http://www.sudantribune.com/spip.php?article61351>.

360 J. Burke, 'UN Peacekeeper Refused to Help as Aid Workers Were Raped in South Sudan', *The Guardian*, 6 October 2016, <https://www.theguardian.com/world/2016/oct/06/un-peacekeepers-refused-to-help-south-sudan-rebels-raped-aid-workers-report>.

361 BBC News, 'UN Sacks South Sudan Peacekeeping Chief Over Damning Report', 1 November 2016, <http://www.bbc.com/news/world-africa-37840961>.

Kenya announced withdrawal of its troops from the UN mission in South Sudan.³⁶²

Since the July 2016 clashes, there has been an increase in incitement to ethnic violence, leading to warnings that the situation may escalate into genocide.³⁶³ Nonetheless, the UNSC failed to adopt an arms embargo on 23 December 2016.³⁶⁴

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS, AND PROSECUTIONS

South Sudan is neither a party nor a signatory to the 1998 Rome Statute of the International Criminal Court (ICC). The ICC may not exercise jurisdiction over war crimes alleged to have been committed by a state's nationals or on its territory unless the situation is referred to the Court by the UNSC.

In a report issued in October 2016, Amnesty International claimed that the South Sudanese government forces were responsible for deliberately killing civilians, raping women and girls, and looting property in July 2016 in Juba. The report added that these attacks by government forces were further proof of the urgent need to impose an arms embargo on South Sudan, with the aim of stopping the flow of weapons, and establish an effective mechanism to monitor compliance.³⁶⁵

8. TURKEY IN 2016: GROWING INSTABILITY IN THE COUNTRY

Classification of the conflict:

Turkey and its armed and security forces were involved in a non-international armed conflict with the Kurdish Workers' Party (PKK) in the southeast of the country and the Kurdistan region of Iraq in 2016.

A. HISTORY OF THE CONFLICT³⁶⁶

The Kurdish minority represents 15% of Turkey's 73 million people. Around half of its Kurdish population lives in cities in the western part of the country and the other half live in the impoverished southeast, where they are the ethnic majority.

The Kurdish Workers' Party (PKK), formed in 1978, waged a guerrilla war for Kurdish

362 Al Jazeera, 'Kenya Withdraws Troops From UN Mission in South Sudan', 3 November 2016, at <http://www.aljazeera.com/news/2016/11/kenya-withdraws-troops-mission-south-sudan-161102165506898.html>

363 UN News Centre, 'Risk of "Outright Ethnic War" and Genocide in South Sudan, UN Envoy Warns', 11 November 2016, <http://www.un.org/apps/news/story.asp?NewsID=55538#.WKdxchDJrXM>.

364 M. Nichols, 'article Council Fails to Impose Arms Embargo on South Sudan', Reuters, 23 December 2016, <http://www.reuters.com/article/us-southsudan-security-un-idUSKBN14C1KY>.

365 Amnesty International, 'We Did Not Believe we Would Survive': Killings, Rape and Lootings in Juba, 24 October 2016, <https://www.amnesty.org/en/documents/afr65/5028/2016/en/>.

366 Unless otherwise stated, this section is based on BBC News, 'Turkey Country Profile', 10 August 2016, <http://www.bbc.com/news/world-europe-17988453>.

independence in south-eastern Turkey from 1984. In the 1990s, the PKK shifted its goal from an independent Kurdish state to seeking greater autonomy and an improvement of rights for Kurdish people in Turkey, including the right to teach their language in schools. A Government campaign to depopulate pro-PKK villages in Turkey created at least 500,000 internally displaced. Military operations mostly took place in south-eastern Turkey, but since 1992 the Turkish Government has also launched periodic air strikes and ground assaults on PKK camps in the northern mountainous area along the border with Iraq.³⁶⁷ In 2012, the PKK stepped up and diversified its insurgency in the southeast taking its campaign to a new level by launching major attacks in urban areas as well as setting up checkpoints on roads.

In December 2012, the Turkish State declared its will to start closed negotiations with PKK's leader Öcalan, initiating the so-called 'Erzincan Process', aiming, *inter alia*, at disarming rebels.³⁶⁸ After months of talks, in March Abdullah Öcalan ordered his fighters to stop attacking Turkey and withdraw from the country from May 2013, effectively ending the insurgency. In April, the military leader of the PKK, Murat Karayılan, said that PKK fighters would begin to withdraw from Turkey in early May.³⁶⁹ Occasional ceasefire violations occurred subsequently. In October, the peace process was looking increasingly fragile, although the PKK did not end its ceasefire after 15 October as it had threatened.

The 2013 ceasefire agreement between the Kurdistan Worker's Party PKK and the Turkish government broke down in July 2015 when renewed fighting broke out between the PKK and Turkish armed and security forces following a suicide attack in the Turkish-Syrian border town Suruç.³⁷⁰ While the government blamed the Islamic State group for the attack, the PKK attacked and killed two Turkish policemen.³⁷¹ As a response, the government launched air strikes against PKK targets in both Turkey and northern Iraq, claiming to have killed 390 PKK militants by mid-August.³⁷²

One of the deadliest attacks in Turkey occurred at a peace rally in Ankara in October 2015. It was claimed by TAK (Kurdistan Freedom Hawks) — an offshoot of the PKK — and killed more than 100 people.³⁷³

367 International Crisis Group, *Turkey, the PKK and the Kurdish Settlement*, Europe Report No. 219, 11 September 2012, <https://d2071andvip0wj.cloudfront.net/219-turkey-the-pkk-and-a-kurdish-settlement.pdf>.

368 Al Jazeera, 'Timeline: PKK Conflict with Turkey', 21 March 2013, www.aljazeera.com/news/europe/2013/03/2013320652845642.html.

369 BBC News, 'Turkey Profile: Timeline', 25 April 2013, www.bbc.co.uk/news/world-europe-17994865.

370 Euronews, 'Turkey: Death Toll Climbs in Suruc Attack', 20 July 2015, <http://www.euronews.com/2015/07/20/turkey-death-toll-climbs-in-suruc-attack>.

371 BBC News, 'Turkey Car Bomb Kills Two Soldiers as PKK Truce Breaks Down', 26 July 2015, <http://www.bbc.com/news/world-europe-33667427>.

372 L. Kafanov, 'End of Turkey-PKK Ceasefire Puts HDP in Tough Spot', Al Jazeera, 10 August 2015, <http://www.aljazeera.com/news/2015/08/turkey-pkk-ceasefire-puts-hdp-tough-spot-150806110231827.html>.

373 BBC News, 'Ankara Blast: Kurdish Group TAK Claims Bombing', 17 March 2016, <http://www.bbc.com/news/world-europe-35829231>.

On 15 December 2015, the Turkish army launched a major offensive concentrated around the towns of Cizre and Silopi. After five days of fighting, 102 PKK rebels, two soldiers and five civilians were killed.³⁷⁴ The operations ceased in February 2016 after the Turkish authorities took control of Cizre.³⁷⁵

Violence continued throughout 2016. According to the International Crisis Group, at least 2,481 people have been killed in clashes since 20 July 2015, with a notable spike from August 2015 onwards.³⁷⁶

B. PARTIES TO THE CONFLICT

The parties to the NIAC in 2016 are Turkey and its armed forces against the PKK.

1. Turkish Armed Forces

The Turkish armed forces have been estimated to be 410,500 strong, with 185,630 reservists.³⁷⁷ The Turkish army is said to be the largest in size after the U.S. within NATO.³⁷⁸

2. The Kurdistan Workers' Party (PKK)³⁷⁹

The group, which has Marxist-Leninist roots, was formed in 1978 by Abdullah Öcalan and a few co-conspirators. With the aim of creating an independent Kurdish state within Turkey, the PKK launched an armed struggle against the Turkish Government in 1984. The group has relied on guerrilla warfare, including kidnappings of foreign tourists, suicide bombings, and attacks on Turkish diplomatic offices in Europe. During the conflict, which reached a peak in the mid-1990s, thousands of villages were destroyed in the largely Kurdish south-east and east of Turkey, and hundreds of thousands of Kurds fled to cities in other parts of the country.³⁸⁰

In the 1990s, the organisation backed down on its demands for an independent Kurdish state, calling instead for more autonomy for the Kurds.³⁸¹ Nonetheless, the armed group remains highly organized and well-financed entity, with several

374 France 24, 'Turquie – Une Centaine de Militants Kurdes Tués Lors Une Opération Anti-PKK', 20 December 2015, <http://www.france24.com/fr/20151220-turquie-militants-kurdes-tues-operation-anti-pkk-kurdistan-diyarbakir-erdogan>.

375 Romandie, 'Turquie: Fin des Opérations Militaires Contre le PKK Dans le Bastion Kurde de Cizre', 11 February 2016, <http://www.romandie.com/news/675622.rom>.

376 B. Mandiraci, 'Turkey's PKK Conflict: The Death Toll', International Crisis Group, 20 July 2016, <http://blog.crisisgroup.org/europe-central-asia/2016/07/20/turkey-s-pkk-conflict-the-rising-toll/>.

377 Global Firepower, 'Turkey Military Strength', last updated on 17 February 2017.

378 Y. Mavashev, 'Turkey's Defense Power Grows at Pace to be Envied', *Pravda.Ru*, 31 January 2012, english.pravda.ru/world/asia/31-01-2012/120376-turkey_defense_power-0/.

379 See also BBC News, 'Who are the Kurdistan Workers' Party (PKK) Rebels?', 4 November 2016, <http://www.bbc.com/news/world-europe-20971100>.

380 G. Bruno, *Inside the Kurdistan Workers Party (PKK)*, Council on Foreign Relations, 19 October 2007, www.cfr.org/turkey/inside-kurdistan-workers-party-pkk/p14576.

381 P. O'Toole, 'Profile: The PKK', BBC News, <http://news.bbc.co.uk/1/hi/world/europe/7044760.stm>.

thousand men and women under arms and millions of Kurdish sympathizers in Turkey. The PKK established bases in Iran, Iraq, and Syria, and has deep-rooted support networks in Europe.³⁸²

The PKK is listed as a terrorist organization by numerous governments, including Turkey, the EU and the U.S.³⁸³ The Iraqi Kurdish party has been accused by the Turkish military of supporting the PKK, but the party denies the accusations. The PKK suffered a major blow in 1999 when its leader, Abdullah Öcalan, was arrested and jailed for treason.³⁸⁴

C. KEY DEVELOPMENTS IN 2016: GROWING INSTABILITY IN THE COUNTRY

In July 2016, an attempted military coup appeared to reflect growing unease in the country, and particularly the military, disenchanted by the rule of an unpopular president.³⁸⁵ On 22 August, Turkey launched artillery attacks against targets in Syria, including against the Kurdish YPG (People's Protection Forces) locations in the city of Manbij.³⁸⁶ Following the July coup attempt, President Erdogan cracked down on suspected coup conspirators and arrested an estimated 32,000 people³⁸⁷ and is reportedly targeting the Kurdish minority.³⁸⁸ In his first public statement since April 2015, the PKK's jailed leader, Abdullah Ocalan, called for the resumption of peace talks with the Turkish government in September 2016.³⁸⁹

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS, AND PROSECUTIONS

Turkey is not party to the 1998 Rome Statute of the International Criminal Court.

382 International Crisis Group, *Turkey, the PKK and the Kurdish Settlement*, p 7.

383 G. Bruno, *Inside the Kurdistan Workers Party (PKK)*.

384 O'Toole, 'Profile: The PKK'.

385 I. Black, 'Attempted Coup Reflects Growing Tension in Turkey', *The Guardian*, 16 July 2016, <https://www.theguardian.com/world/2016/jul/16/how-recep-tayyip-erdogan-inflamed-tensions-in-turkey>.

386 Al Jazeera, 'Turkish Military Strikes ISIL in Northern Syria', 23 August 2016, <http://www.aljazeera.com/news/2016/08/turkish-military-strikes-ypg-isil-targets-syria-160822174350790.html>.

387 VOA, '6,000 Detained in Turkey After Failed Coup Attempt', 17 July 2016, <http://www.voanews.com/a/turkey-attempted-coup-crowds-cheer-erdogan/3420312.html>

388 E. Cunningham, 'Turkey's Kurds are in the Crosshairs as Government Crackdown Widens' *The Washington Post*, 10 October 2016, https://www.washingtonpost.com/world/turkeys-kurds-are-in-the-crosshairs-as-government-crackdown-widens/2016/10/09/6be368f8-8a82-11e6-8cdc-4fbb1973b506_story.html.

389 A. MacDonald, 'PKK Leader Calls for Peace Talks in First Statement for Two Years', Middle East Eye, 12 September 2016, <http://www.middleeasteye.net/news/jailed-pkk-leader-calls-negotiation-first-statement-almost-two-years-496070383>.

9. UKRAINE: A PARALLEL INTERNATIONAL ARMED CONFLICT WITH RUSSIA?³⁹⁰

Classification of the conflict:

Ukraine was involved in a non-international armed conflict in 2016 in which the armed forces of the Government of Ukraine were fighting against pro-Russian separatist armed groups, which proclaimed themselves ‘the Donetsk People’s Republic’ and the ‘Luhansk People’s Republic’, in the east of the country. The conflict meets the threshold for applicability of the 1977 Additional Protocol II.

There have been allegations of the presence of Russian armed groups in Ukraine, as well as their participation in combat operations.³⁹¹ Questions on the level of control exercised by Russia on the armed groups were also raised.³⁹² *The War Report* is not in a position to verify the veracity of these allegations and facts on the ground, nor does it have enough information to attest a level of control sufficient to meet the ICTY case-law conditions³⁹³ to conclude that the conflict in Ukraine has been internationalized.³⁹⁴ In its November report, the OPT stated that ‘for the purpose of determining whether the otherwise non-international armed conflict could be actually international in character, the Office is also examining allegations that the Russian Federation has exercised overall control over armed groups in eastern Ukraine.’³⁹⁵

That being said, *the War Report* argues there might be a parallel international armed conflict with Russia (see below).

390 We thank Ms Kvitoslava Krotiuk (LLM candidate, Geneva Academy 2016-2017) for her insightful contribution to this profile.

391 See A.E. Kramer and M.R. Gordon, ‘Ukraine Reports Russian Invasion on a New Front’, *The New York Times*, 27 August 2014, http://www.nytimes.com/2014/08/28/world/europe/ukraine-russia-novoazovsk-crimea.html?_r=2; A. Swain, ‘Further Claims of Russian Troop Deployments Follow Capture of Soldiers in Donetsk’, *The Conversation*, 27 August 2014, <https://theconversation.com/further-claims-of-russian-troop-deployments-follow-capture-of-soldiers-in-donetsk-30945>; *The Times of India*, ‘Russian Military Sources Say Soldiers Crossed Ukraine Border “by Accident”’, 26 August 2014, <http://timesofindia.indiatimes.com/World/Europe/Russian-military-sources-say-soldiers-crossed-Ukraine-border-by-accident/articleshow/40912541.cms>.

392 See N. MacFarquhar and M.R. Gordon, ‘Ukraine Leader Says “Huge Loads of Arms” Pour in From Russia’, *The New York Times*, 27 August 2014, <http://www.nytimes.com/2014/08/29/world/europe/ukraine-conflict.html>.

393 The ICTY Appeals Judgment in *Tadić* stated: ‘[C]ontrol by a State over subordinate armed forces or militias or paramilitary units may be of an overall character (and must comprise more than the mere provision of financial assistance or military equipment or training). ... The control required by international law may be deemed to exist when a State (or, in the context of an armed conflict, the Party to the conflict) has a role in organising, coordinating or planning the military actions of the military group, in addition to financing, training and equipping or providing operational support to that group. Acts performed by the group or members thereof may be regarded as acts of de facto State organs regardless of any specific instruction by the controlling State concerning the commission of each of those acts’, ICTY, *Prosecutor v. Tadić*, para 137.

394 See also the discussion by N. Quenivet on the blog *IntLawGrrls*, ‘Trying to Classify the Conflict in Eastern Ukraine’, 28 August 2014, <http://ilg2.org/2014/08/28/trying-to-classify-the-conflict-in-eastern-ukraine/>.

395 OTP, ‘Report on Preliminary Examination Activities 2016’, para 170.

A. HISTORY OF THE CONFLICT³⁹⁶

Tensions in Ukraine began in 2013, after Russia halted imports from one of Ukraine's main confectionary makers, claiming that its products fell below safety standards, which, however, was seen as an act of retaliation for Ukraine's efforts to integrate further with the EU.³⁹⁷ On 21 November 2013, after the government's sudden decision to abandon the plans to sign an association agreement with the EU, tens of thousands of people took to the streets of central Kiev and other cities to protest against such decision, accusing the government of bowing to Russian pressure, as well as of being corrupt and unaccountable.³⁹⁸

Consequently, on 18 December 2013, Russia announced the implementation of a \$15mn aid package to help faltering Ukraine's economy, which included the lowering of Russian gas price.³⁹⁹ Despite the new anti-protest laws passed by the government on 16 January 2015, which also amended the Criminal Code so as to restrict freedom of speech,⁴⁰⁰ violence escalated and in February 2014 members of security forces killed at least 77 protesters in Kiev.⁴⁰¹ Few days later, on 28 January 2014 the government resigned in an attempt to resolve the crisis while the parliament first overturned the 16 January anti-protest law and, then, passed an amnesty law for the protesters.⁴⁰²

Following further clashes with anti-government protesters, on the 21 February 2014, President Yanukovich and the opposition group agreed to form a new government and hold new election under a EU-mediated deal. However, on 22 February, President Yanukovich fled the capital to Russia. As a result, the next day the parliament elected the opposition leader Olexander Turchynov as interim president and issued an arrest warrant for Yanukovich.⁴⁰³

396 Unless otherwise stated, this section is based BBC News, 'Ukraine Country Profile', 3 February 2017, <http://www.bbc.com/news/world-europe-18018002>.

397 Euractiv, 'Russia Hits at Ukraine With Chocolate War', 14 August 2013, <http://www.euractiv.com/europes-east/russia-hits-ukraine-chocolate-wa-news-529804>. See also *The Financial Times*, 'Russia Puts Economic Squeeze on Ukraine', 20 March 2014, <http://www.ft.com/intl/cms/s/0/7ecbb1c4-b027-11e3-b0d0-00144feab7de.html#axzz3ZkT4mdnD>.

398 BBC News, 'Ukraine Protests After Yanukovich EU Deal Rejection', 30 November 2013, <http://www.bbc.com/news/world-europe-25162563>. See also BBC News, 'Ukraine Crisis: What's Going on in Crimea?', 12 August 2016, <http://www.bbc.com/news/world-europe-25182823>.

399 BBC News, 'Ukraine Crisis: Parliament Abolishes Anti-Protest Law', 28 January 2014, <http://www.bbc.com/news/world-europe-25923199>.

400 BBC News, 'Ukraine's President Signs Anti-Protest Bill Into Law', 17 January 2014, <http://www.bbc.com/news/world-europe-25771595>.

401 S. Malik, A. Gani and T. MacCarthy, 'Ukraine Crisis: Deal Signed in Effort To End Kiev Standoff', *The Guardian*, 21 February 2014, <http://www.theguardian.com/world/2014/feb/21/ukraine-crisis-president-claims-deal-with-opposition-after-77-killed-in-kiev>.

402 O. Grytsenko, 'Ukraine President Makes Concession to Protesters by Scrapping Anti-Protest Law', *The Guardian*, 27 January 2014, <http://www.theguardian.com/world/2014/jan/27/ukraine-president-scraps-anti-protest-laws>. See also BBC News, 'Ukraine Crisis: Parliament Abolishes Anti-Protest Law', 28 January 2014, <http://www.bbc.com/news/world-europe-25923199>.

403 BBC News, 'Ukraine Arrest Warrant for Fugitive Viktor Yanukovich', 24 February 2014, <http://www.bbc.com/news/world-europe-26320004>.

After the annexation of Crimea by Russia on 21 March 2014, pro-Russian separatists seized control of over a dozen towns and cities in Eastern Ukraine leading to deadly clashes with Ukrainian armed forces. During the month of April, pro-Russian separatists occupied governmental buildings in Donetsk, Luhansk and Kharkiv, demanding a referendum for greater autonomy and the right to join Russia. In response, the interim Prime Minister Yatsenyuk offered to devolve more powers to the eastern regions.⁴⁰⁴

On 17 April 2014, the U.S., Russia, the EU and Ukraine gathered in Geneva in order to reach an agreement on the necessary steps to be taken to de-escalate the ongoing crisis, which, however, quickly broke down after the separatists occupying governmental buildings refused to leave.⁴⁰⁵

Pro-Russian separatists seized the regional government headquarters in Luhansk On 29 April, and the next day, the acting President Turchynov announced that the government was no longer in control of Donetsk and Luhansk.⁴⁰⁶

Although a build-up of Russian troops on the shared border in April sparked international concerns that another annexation could take place, the Russian Defence Minister Shoigu said Russia had no plans to invade Ukraine or to intervene in Eastern Ukraine.⁴⁰⁷

On 11 May 2014, pro-Russian separatists in Donetsk and Luhansk declared their independence as “People’s Republics” after the referendums were held.⁴⁰⁸ Although the separatists announced that 90% of the people had voted in favour of the ‘People’s Republics’, those were not recognized by Kiev or the West countries.

Presidential elections were held in Ukraine on 25 May 2014, which resulted in the election of the pro-western Petro Poroshenko as the president, who got more than 55% of the votes, although pro-Russian separatists prevented polling stations to be open in the Donetsk and Luhansk regions.⁴⁰⁹

404 BBC News, ‘Ukraine Leader Yatsenyuk Offers Powers to Troubled East’, 11 April 2014, <http://www.bbc.com/news/world-europe-26984799>.

405 J. Borger and A. Luhn, ‘Ukraine Crisis: Geneva Talks Produce Agreement on Defusing Conflict’, *The Guardian*, 17 April 2014, <http://www.theguardian.com/world/2014/apr/17/ukraine-crisis-agreement-us-russia-eu>.

406 L. Harding, ‘Ukraine’s Government Has Lost Control of East, Says Acting President’, *The Guardian*, 30 April 2014, <http://www.theguardian.com/world/2014/apr/30/ukraine-government-lost-control-east-acting-president>.

407 ‘Russian Defense Minister Reassures US Colleague on Ukraine’, TASS, 29 April 2014, <http://tass.ru/en/world/729883>.

408 S. Denyer, M. Birbaum and F. Kunkle, ‘As Ukrainian Separatists Claim Victory in Self-Rule Vote, Fears of All-Out Civil War Mount’, *The Washington Post*, 12 May 2014, http://www.washingtonpost.com/world/europe/separatists-claim-victory-in-eastern-ukraine-kremlin-calls-for-talks-with-kiev-government/2014/05/12/135ceba9-824c-486d-98e1-e1aa49627fa3_story.html.

409 D.M. Herszenhorn, ‘Pro-European Businessman Claims Victory in Ukraine Presidential Vote’, *The New York Times*, 25 May 2014, http://www.nytimes.com/2014/05/26/world/europe/ukraine-elections.html?_r=0.

On 20 June 2014, President Poroshenko announced a 15-point peace plan and declared a week-long ceasefire. The President demanded the rebel's disarmament and offered a safety corridor to Russia and freedom from prosecution in absence of 'serious crimes' for disarmed rebels; he called for a buffer zone along the border, proposed to held early elections, decentralisation and full Russian language rights.⁴¹⁰ The ceasefire broke when a military helicopter was shot down over Eastern Ukraine later in the month.

On 27 June, the government signed the Association Agreement with the EU, which was later ratified on 16 September 2014.

On 17 July 2014, Malaysia Airlines flight MH17 from Amsterdam is shot down near the village of Grabove, over the Donetsk region, reportedly by Russian-made SA-11 surface-to-air missile, killing all 298 passengers on board.⁴¹¹ While pro-Russian rebels denied any involvement in the accident, pressure increased on Russia as the EU and U.S. announced further sanctions, including economic ones in late July.⁴¹²

Violence escalated between government forces and pro-Russian rebels as the Ukrainian army attempted to encircle Donetsk and Luhansk. Reportedly, Russia stepped up to support the rebels by deploying Russian troops inside Ukraine. According to NATO, there were over 1,000 Russian troops in Ukraine and 20,000 near the border.⁴¹³

After having agreed a ceasefire with the rebels, on 16 September 2014 the Ukrainian parliament passed a law allowing a certain degree of self-government to the break-away regions, which raised the concern that it could amount to a de facto recognition of independence.⁴¹⁴

410 BBC News, 'Ukraine Crisis: Details of Poroshenko's Peace Plan Emerge', 20 June 2014, <http://www.bbc.com/news/world-europe-27937596>.

411 H. Davidson and A. Yuhas, 'Malaysia Airlines Plane MH17 "Shot down" in Ukraine – as it Happened', *The Guardian*, 17 July 2014, <http://www.theguardian.com/world/2014/jul/17/malaysia-airlines-plane-crashes-ukraine-live>. See also BBC News, 'Downing of MH17 jet in Ukraine "may be war crime" – UN', 28 July 2014, <http://www.bbc.com/news/world-europe-28520813>; on some of the legal aspects of the attack, see M. Gibney, 'The Downing of MH17: Russian Responsibility', 15 *Human Rights Law Review* (2015), pp 169-178.

412 J. Pawlak and E. Beech, 'EU and U.S. Announce New Sanctions on Russia Over Ukraine', *Reuters*, 29 July 2014, <http://www.reuters.com/article/2014/07/29/us-ukraine-crisis-east-idUSKBN0FY00X20140729>.

413 *Financial Times*, 'Russia Has "Well Over 1,000 Troops" in Ukraine, Nato Warns', 29 August 2014, <http://www.ft.com/intl/cms/s/0/8275bec4-2ea2-11e4-afe4-00144feabdc0.html#slide0>. See also A. Croft, 'More Than 1,000 Russian Troops Operating in Ukraine: NATO', *Reuters*, 28 August 2014, <http://www.reuters.com/article/2014/08/28/us-ukraine-crisis-nato-idUSKBN0GS1D220140828>.

414 N. MacFarquhar and C. Gall, 'Kiev Offers "Special Status" for Breakaway Regions', *The New York Times*, 15 September 2014, <http://www.nytimes.com/2014/09/16/world/europe/ukraine-conflict.html>.

On 26 October 2014 Parliamentary elections were held and a new pro-EU parliament was elected, although the polls were once more boycotted by the rebels in the East.⁴¹⁵

NATO Commander declared that Russian military equipment had been seen entering Ukrainian territory in early November and NATO Chief Stoltenberg urged Russia to pull back its forces.⁴¹⁶

Meanwhile, on 2 November 2014 separatists in Eastern Ukraine held their own elections for the head of state of the self-proclaimed People's Republics in Donetsk and Luhansk, which resulted in the victory of two pro-Russian leaders. While Kiev and Western states said the polls were illegitimate, Russia declared it respected the election's outcome.⁴¹⁷

On 26 December 2014, Russian President Putin implemented a new Russian military doctrine stating that the country faced threats from foreign nations installing hostile governments in neighbouring countries.⁴¹⁸

Beginning of 2015, fighting between the army and the rebels intensified in and around Donetsk, as well as in Luhansk region resulting in heavy civilian and military casualties and further undermining the peace talks.⁴¹⁹ On January, the separatist leader Alexander Zakharchenko announced a plan to take control of the entire Donetsk province.⁴²⁰ Accordingly, Kiev accused Russia of sending troops into Ukraine as well as of providing weapons and military training for separatists in Russia.⁴²¹

On 12 February 2015 after peace talks took place in Minsk, Russia, Ukraine, Germany and France announce that an agreement had been reached to end the fighting and that a ceasefire would begin on 15 February. The deal also included weapons withdrawals and prisoner exchanges.⁴²² The pro-Russian rebels in eastern Ukraine

415 M. Birnbaum, 'Exit Polls in Ukraine's Parliamentary Elections Show Win for Pro-Western Blocs', *The Washington Post*, 26 October 2014, http://www.washingtonpost.com/world/europe/exit-polls-in-ukraines-parliamentary-elections-show-win-for-pro-western-blocs/2014/10/26/e5ac0484-5d1a-11e4-827b-2d813561bdfd_story.html.

416 Al Jazeera, 'NATO: Russia Sending Forces Into Ukraine', 12 November 2014, <http://www.aljazeera.com/news/europe/2014/11/nato-russian-troops-ukraine-now-2014111214105962679.html>.

417 AFP, 'Pro-Russia Separatists Hold Leadership Elections In Two Ukraine Enclaves', *The Guardian*, 2 November 2014, <http://www.theguardian.com/world/2014/nov/02/russia-elections-ukraine-donetsk-lugansk>.

418 AP, 'New Russian Military Doctrine Says NATO Top Threat', *The Daily Mail*, 26 December 2014, <http://www.dailymail.co.uk/wires/ap/article-2887762/New-Russian-military-doctrine-says-NATO-threat.html#ixzz3ZqfN7FkX>.

419 BBC News, 'Ukraine Conflict: Battles Rage in Donetsk and Luhansk', 19 January 2015, <http://www.bbc.com/news/world-europe-30878406>.

420 UNIAN, 'Zakharchenko Threatens Full-Scale War, Says Militants Plan to Take Over All Donetsk Region', 23 January 2015, <http://www.unian.info/war/1035430-zaharchenko-threatens-full-scale-war-says-militants-plan-to-take-over-all-donetsk-region.html>.

421 A. Zverev and A. Prentice, 'Kiev Accuses Russia of Sending More Tanks to East Ukraine', Reuters, 20 February 2015, <http://www.reuters.com/article/2015/02/20/us-ukraine-crisis-idUSKBN0L013420150220>.

422 M. Weaver and A. Luhn, 'Ukraine Ceasefire Agreed at Belarus Talks', *The Guardian*, 12 February 2015, <http://www.theguardian.com/world/2015/feb/12/ukraine-crisis-reports-emerge-of-agreement-in-minsk-talks>.

also signed the agreement, which included a buffer zone for heavy weapons, with a minimum of 50km between rival forces' artillery (140km for rockets).

However, despite the ceasefire, heavy fighting continued around Debaltseve.⁴²³

Russia's actions of incursion into a NATO country have raised serious concern about its intentions elsewhere in Eastern Europe. The conflict has not only tensed the relation between the U.S. and Russia but has also hampered the prospects of cooperation elsewhere including the issues of terrorism, arms control and solution for Syria.⁴²⁴

Although the conflict has transitioned to a stalemate after it first erupted in early 2014, shelling and skirmishes occur regularly. There has been a continuous violation of ceasefire in the eastern Ukraine and the summer of 2016 saw a spike in violence and civilian casualties.⁴²⁵ In such an incident in the month of July 2016, seven Ukrainian soldiers were killed and another fourteen wounded amidst clashes between government forces and pro-Russian separatists in the Donbass region of eastern Ukraine.⁴²⁶

In early July 2016, the U.S. announced that it would deploy 1,000 troops to Poland as part of broader NATO efforts to reassure former Communist eastern member states fearful of a more assertive Russia. A week before, Britain had agreed to commit 650 troops to a separate battalion, and fellow NATO allies Germany and Canada have also agreed to stand up. The troops will rotate through Poland as well as the three small Baltic states of Estonia, Latvia and Lithuania, acting as a tripwire to deter any Russian adventurism. They are backed up by a 'Spearhead Force' — officially the 'Very High Readiness Joint Task Force' — which numbers about 5,000 troops ready to move. In the south, NATO has announced plans to set up a similar reassurance force in Romania.⁴²⁷

In September 2016, the Ukrainian military and Russian-backed separatists agreed to disengage troops from several frontline areas, after agreeing to a fragile truce. The deal bans military troops from both sides from entering the three regions, each of which comprises 4km² (1.5 square miles). The agreement, named 'The Framework Decision of the Trilateral Contact Group relating to disengagement of forces and hardware'⁴²⁸, included arrangements on disengaging the troops of parties and

423 BBC News, 'Ukraine Crisis: Battle Rages for Debaltseve Despite Truce', 17 February 2015, <http://www.bbc.com/news/world-europe-31495099>.

424 Global Conflict Tracker, 'Conflict in Ukraine', 21 October 2016, <http://www.cfr.org/global/global-conflict-tracker/p32137#!/conflict/conflict-in-ukraine>.

425 Deutsche Welle, 'With Fresh Violence in Ukraine, is There Hope for a Solution?', 5 August 2016, <http://www.dw.com/en/with-fresh-violence-in-ukraine-is-there-hope-for-a-solution/a-19451997>.

426 Reuters, 'Seven Ukrainian Soldiers Killed in Eastern Regions Amid Surge in Violence, 19 July 2016, <http://www.reuters.com/article/us-ukraine-crisis-casualties-idUSKCN0ZZ1DU>.

427 T. Watkins, 'Four NATO Battalions to Go to Eastern Europe to Deter Russia', Military.com, 8 July 2016, <http://www.military.com/daily-news/2016/07/08/four-nato-battalions-go-eastern-europe-deter-russia.html>

428 OSCE, 'The Framework Decision of the Trilateral Contact Group relating to disengagement of forces and hardware, 21 September 2016' (available in Russian) at: <http://www.osce.org/cio/266266>

creating a ceasefire zone of 2 km width and 2 km length between the positions of relocation, as well as an undertaking by the parties to the conflict to report their actions to the OSCE SMM and guarantee access to the OSCE SMM for the purposes of monitoring.⁴²⁹ The latest peace prospects come in response to a new truce agreement on 15 September, which has reduced the violence in the region but has failed to end the fighting, which began in April 2014. The truce is monitored by the Organization for Security and Co-operation in Europe (OSCE).⁴³⁰ The ceasefire has been violated shortly after the conclusion of the agreement,⁴³¹ and the OSCE SMM mission reported that its access to certain areas was denied by the Russian-backed separatists,⁴³² as well as by Ukrainian Armed Forces.⁴³³ Overall, the amount of ceasefire violations since the beginning of 2016 reached their peak in January 2017,⁴³⁴ during the fight in the city of Avdiivka in Donetsk region.⁴³⁵ As a result, Avdiivka and surrounding areas were left on the brink of humanitarian crisis, with no to water or electricity.⁴³⁶

According to the UN, by February 3, 2017, the total death toll since the beginning of the conflict amounted to 9, 800 people.⁴³⁷

Meanwhile, the internal leadership purge amongst the rebels (Luhansk People's Republic) continues, as does the killing of officials. One example is Gennady Tsykalov who was among the dozens of senior officials killed in the purge.⁴³⁸

429 OSCE, 'The Framework Decision of the Trilateral Contact Group relating to disengagement of forces and hardware, 21 September 2016, full text (available in Russian) at: <http://www.osce.org/ru/cio/266271?download=true>

430 Deutsche Welle, 'Ukraine and Russian-Backed Rebels Agree to Pullback of Troops', 21 September 2016, <http://www.dw.com/en/ukraïne-and-russian-backed-rebels-agree-to-pullback-of-troops/a-19567017>.

431 Kyivpost, 'Kyiv records five ceasefire breaches in Donbas', September 20, 2016, available at: <https://www.kyivpost.com/article/content/ukraine-politics/kyiv-records-five-ceasefire-breaches-in-donbas-423338.html>

432 OSCE, 'Latest from OSCE Special Monitoring Mission (SMM) to Ukraine, based on information received as of 19:30, 28 October 2016': 'The SMM was not allowed to approach weapons to verify serial numbers at two "DPR" heavy weapons holding areas.... The SMM was stopped by an armed man at a "DPR"-controlled checkpoint on the eastern edge of Novolaspa (50km south of Donetsk) and prevented from proceeding into the village', 29 October, 2016, available at: <http://www.osce.org/ukraine-smm/278046>

433 OSCE, 'Latest from OSCE Special Monitoring Mission (SMM) to Ukraine, based on information received as of 19:30, 25 October 2016': "Ukrainian Armed Forces personnel again denied the SMM access to a heavy weapons holding area", October 26, 2016, available at: <http://www.osce.org/ukraine-smm/277306>

434 Twitter, 'Number of ceasefire violations recorded by the OSCE SMM per week since the beginning of 2016', 10 February 2017, available at: https://twitter.com/OSCE_SMM/status/829980631497113604/photo/1?ref_src=twsrc%5Etfw

435 Shaun Walker, 'Ukraine clashes leave several dead and test Trump's Russia stance', *The Guardian*, 1 February, 2017, available at: <https://www.theguardian.com/world/2017/feb/01/ukraine-clashes-leave-several-dead-and-test-trumps-russia-stance>

436 Ibid.

437 UN News Centre, 'Civilians face 'dire' situation amid ongoing hostilities in eastern Ukraine, UN warns', 3 February 2017, available at: <http://www.un.org/apps/news/story.asp?NewsID=56110#.WK9U3W-LTIU>

438 J. Losh 'Ukrainian Rebel Leaders Divided by Bitter Purge', *The Washington Post*, 3 October 2016, https://www.washingtonpost.com/world/europe/ukrainian-rebel-leaders-divided-by-bitter-purge/2016/10/03/2e0076ac-8429-11e6-b57d-dd49277af02f_story.html

On 18 February 2017, Russia announced that it accepts identity documents ‘issued by de-facto authorities, acting in Donetsk and Lugansk regions of Ukraine’.⁴³⁹ In reaction to the decree issued by the President of Russia, the Ukrainian authorities stated that ‘Putin has legally recognised the quasi-state terrorist groups which cover Russia’s occupation of part of Donbas’.⁴⁴⁰

B. PARTIES TO THE CONFLICTS

The parties to the NIACs were the Ukrainian armed forces against pro-Russian separatists armed groups.

1. Ukraine Armed Forces

According to the bill ‘On the strength of the Armed Forces of Ukraine in 2013’ signed by ex-president Yanukovich, as of December 31 the army of Ukraine had 125,482 personnel. However, on 11 March 2014 Admiral Ihor Tenuikh made a public statement declaring that de-facto only 6,000 soldiers were in ‘combat readiness’.⁴⁴¹

Ukrainian security forces estimated the government forces around 50,000 nationwide.⁴⁴²

At present, the armament of the Ukrainian Army is 90-95% worn out or outdated. New equipment and armament is present in exceedingly small quantities and, coincidentally, it is supplied by manufacturers located predominantly in the East of Ukraine.⁴⁴³

2. ‘The Donetsk People’s Republic’ and the ‘Luhansk People’s Republic’

Ukrainian security sources estimated the rebels’ strength to be in a range between 6,000 and 20,000 fighters.⁴⁴⁴

Amid the escalating hostilities, the insurgents announced a call-up of new volunteer recruits in Donetsk, following a pledge by Alexander Zakharchenko, prime minister of the self-declared Donetsk People’s Republic (DPR), to strengthen his

439 Official website of the President of the Russian Federation, ‘Указ о признании документов, выданных гражданам Украины и лицам без гражданства, проживающим на территориях отдельных районов Донецкой и Луганской областей Украины’ (‘The decree on the recognition of documents issued to Ukrainian citizens and stateless persons residing in the territories of certain areas of the Donetsk and Luhansk regions of Ukraine’), para 1 a), 18 February, 2017, available in Russian at: <http://kremlin.ru/events/president/news/53895>

440 BBC, ‘Russia accepts passports issued by east Ukraine rebels’, 19 February 2017, available at: <http://www.bbc.com/news/world-europe-39018429>

441 *The Ukrainian Week*, ‘In the Army Now: Answering Many Why’s’, 8 July 2014, <http://ukrainianweek.com/Politics/115444>.

442 Ukraine Profile, International Crisis Group, <https://www.crisisgroup.org/europe-central-asia/eastern-europe/ukraine>.

443 *The Ukrainian Week*, ‘In the Army Now’.

444 Ukraine Profile, *Crisis Watch Database*, 1 August 2014; see also L. Smith-Spark, ‘Who Are Ukraine’s Pro-Russia Rebels?’, CNN, 23 July 2014, <http://edition.cnn.com/2014/07/22/world/europe/ukraine-rebels-explainer/>.

forces to 100,000 men.⁴⁴⁵ In August 2014, Zakharchenko linked the rebels in Donetsk with those in Luhansk, stating that they were in possession of ‘150 combat vehicles, of which about 30 are actual tanks and the rest are infantry fighting vehicles and armoured personnel carriers, and 1,200 personnel who underwent four months of military training on the territory of the Russian Federation’.⁴⁴⁶

C. LATEST DEVELOPMENTS IN 2016: A PARALLEL INTERNATIONAL ARMED CONFLICT BETWEEN UKRAINE AND RUSSIA?⁴⁴⁷

From the outset, Ukraine has consistently claimed that Russian soldiers were participating in the fighting in eastern Ukraine. However, Russia denies these allegations, claiming that the Russians fighting in Ukraine are volunteers, including discharged members of the Russian army.⁴⁴⁸ Ukraine has repeatedly captured Russian servicemen in eastern Ukraine.⁴⁴⁹ Locals have also repeatedly claimed that Russian soldiers were fighting alongside rebels.⁴⁵⁰ In July 2014, Ukraine accused Russia of having shot down a Ukrainian military plane.⁴⁵¹ Both have accused each other of cross-border shelling.⁴⁵² Based on the analysis of satellite images and social media, there is mounting evidence of cross-border artillery shelling since 14 July.⁴⁵³ Finally, there are many reports of Russian soldiers having died in Ukraine.⁴⁵⁴

445 AP, ‘Ukraine Troops, Pro-Russia Rebels Intensify Clashes’, CBS News, 10 February 2015, <http://www.cbsnews.com/news/ukraine-troops-pro-russia-rebels-intensify-clashes/>.

446 BBC News, ‘Ukraine Crisis: Rebel Fighters “Trained in Russia”’, 16 August 2014, <http://www.bbc.com/news/world-europe-28817347>.

447 This section is drawn from the Rule of Law in Armed Conflicts project (rulac.org) profile of Ukraine, <http://www.rulac.org/browse/conflicts/international-armed-conflict-in-ukraine#collapse2accord>.

448 BBC News, ‘Ukraine Crisis: “Thousands of Russians” Fighting in East’, 28 August 2014, <http://www.bbc.com/news/world-europe-28963310>; M. Urban, ‘How Many Russians Are Fighting in Ukraine?’, BBC News, 10 March 2015, <http://www.bbc.com/news/world-europe-31794523>.

449 BBC News, ‘Captured Russian Troops “in Ukraine by Accident”’, 26 August 2014, <http://www.bbc.com/news/world-europe-28934213>.

450 S. Walker and A. Luhn, ‘Tension High in Ukrainian Border Towns Menaced by Russian Forces’, *The Guardian*, 30 August 2014, <https://www.theguardian.com/world/2014/aug/30/tension-ukrainian-towns-menaced-russian-forces>.

451 BBC News, ‘Ukraine Conflict: Russia Accused of Shooting Down Jet’, 17 July 2014, <http://www.bbc.com/news/world-europe-28345039>.

452 Al-Jazeera, ‘Ukraine and Russia Claim Border Crossfire’, 25 July 2014, <http://www.aljazeera.com/news/europe/2014/07/ukraine-says-soldiers-under-fire-from-russia-201472592936697212.html>

453 S. Case and C. Anders, ‘Putin’s Undeclared War: Summer 2014 – Russian Artillery Strikes Against Ukraine’, *Bellingcat*, 21 December 2016, <https://www.bellingcat.com/news/uk-and-europe/2016/12/21/russian-artillery-strikes-against-ukraine/>.

454 A. Luhn, ‘They were Never There: Russia’s Silence for Families of Troops Killed in Ukraine’, *The Guardian*, 19 January 2015, <https://www.theguardian.com/world/2015/jan/19/russia-official-silence-for-families-troops-killed-in-ukraine>.

All these factors combined point towards direct Russian involvement in eastern Ukraine in support of the rebels since July 2014. Hence, in addition to the non-international armed conflicts between the rebels and the government, there appears to be a parallel international armed conflict between Ukraine and Russia. The Office of the Prosecutor of the International Criminal Court concluded in its November 2016 Report on Preliminary Examination Activities that the available information ‘would suggest the existence of an international armed conflict in the context of armed hostilities in eastern Ukraine from 14 July 2014 at the latest, in parallel to the non-international armed conflict.’⁴⁵⁵

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS, AND PROSECUTIONS

On 17 April 2014, the Government of Ukraine lodged a declaration under Article 12(3) of the Rome Statute of the International Criminal Court (ICC) accepting the jurisdiction of the ICC over alleged crimes committed in its territory from 21 November 2013 to 22 February 2014.⁴⁵⁶ On 25 April 2014, the ICC Prosecutor, Fatou Bensouda, opened a preliminary investigation into allegations of crimes against humanity in the country.⁴⁵⁷ In May 2015, the Office of the United Nations High Commissioner for Human Rights issued its report on the human rights situation in Ukraine, alleging that the scale of human rights abuses in the country might amount to war crimes.⁴⁵⁸

At the domestic level, Kiev authorities opened a criminal investigation in September 2014 into alleged crimes by the pro-Kiev Aydar battalion, which have reportedly included arbitrary detention, enforced disappearances and torture.⁴⁵⁹

In September 2016, a Dutch-led investigation concluded that the powerful surface-to-air missile system used to shoot down a Malaysia Airlines plane over Ukraine two years ago, killing all 298 people on board, was trucked in from Russia at the request of Russian-backed separatists, and returned to Russia the same night. The report largely confirmed the Russian government’s already widely documented role not only in the deployment of the missile system called a Buck, or SA-11, but also in the subsequent cover-up, which continues to this day. The report by a team of prosecutors from the Netherlands, Australia, Belgium, Malaysia and Ukraine, was

455 OTP, ‘Report on Preliminary Examination Activities 2016’, §169. For a contrary view, albeit reached at an earlier point in time, see R. Heinsch, ‘Conflict Classification in Ukraine: The Return of the “Proxy War”?’, 91 *International Law Studies* 323 (2015), U.S. Naval College of War, 354, <http://stockton.usnwc.edu/ils/vol91/iss1/9/>.

456 See ICC, Ukraine, <https://www.icc-cpi.int/ukraine>

457 K. Bennett, ‘ICC Opens Preliminary Investigation Into Alleged Ukraine Crimes’, *JURIST*, 25 April 2014, <http://jurist.org/paperchase/2014/04/icc-opens-preliminary-investigation-into-alleged-ukraine-crimes.php>.

458 OHCHR, ‘Report on the Human Rights Situation in Ukraine 16 February to 15 May 2015’, <http://www.ohchr.org/Documents/Countries/UA/10thOHCHRreportUkraine.pdf>.

459 Human Rights Watch, ‘World Report 2015: Ukraine’, <http://www.hrw.org/world-report/2015/country-chapters/ukraine>.

significant for applying standards of evidence admissible in court while still building a case directly implicating Russia, and it is likely to open a long diplomatic and legal struggle. The inquiry did not name individual culprits and stopped short of saying that Russian soldiers were involved.⁴⁶⁰ Russia refused to give its opinion on the findings of the investigation, arguing that it will wait for the final verdict.⁴⁶¹

Three inter-state cases initiated by Ukraine concerning Russia's actions in Crimea and Eastern Ukraine are currently pending before the European Court of Human Rights.⁴⁶²

Finally, in January 2017, Ukraine instituted proceedings against Russia at the International Court of Justice and requested the Court to indicate provisional measures with regard to alleged violations of the International Convention for the Suppression of the Financing of Terrorism and the International Convention on the Elimination of All Forms of Racial Discrimination.⁴⁶³ Ukraine contended that 'since 2014 the Russian Federation has escalated its interference in Ukrainian affairs to dangerous new levels, intervening militarily in Ukraine, financing acts of terrorism, and violating the human rights of millions of Ukraine's citizens, including their right to life'.⁴⁶⁴

10. YEMEN IN 2016: A HEAVY TOLL ON CIVILIANS

Classification of the conflicts:

Yemen and the consolidated forces (led by Saudi Arabia) continued to be involved in a non-international armed conflict against Houthi rebels in the North and al-Qaeda in the Arabian Peninsula (AQAP) in the South of Yemen in 2016. There are instances in which Iran was accused of supporting Houthi rebels but there is not sufficient evidence to classify the conflict as an international armed conflict. The conflict has met the threshold for applicability of the 1977 Additional Protocol II. There is also a non-international armed conflict between the Houthi and AQAP.

460 S. Sengupta and A.E. Kramer, 'Dutch Inquiry Links Russia to 298 Deaths in Explosion of Jetliner Over Ukraine', *The New York Times*, 28 September 2016, <http://www.nytimes.com/2016/09/29/world/asia/malaysia-air-flight-mh17-russia-ukraine-missile.html>

461 BBC News, 'MH17 Missile "Came From Russia", Dutch-Led Investigators Say', 28 September 2016, <http://www.bbc.com/news/world-europe-37495067>.

462 G. Nuridzhanyan, 'Ukraine vs. Russia in International Courts and Tribunals', EJIL: Talk!, 9 March 2016, <http://www.ejiltalk.org/ukraine-versus-russia-in-international-courts-and-tribunals/>.

463 International Court of Justice, 'Ukraine institutes proceedings against the Russian Federation and requests the Court to indicate provisional measures', International Court of Justice, 17 January, 2017, available at: <http://www.icj-cij.org/docket/files/166/19310.pdf>

464 Ibid.

A. HISTORY OF THE CONFLICT⁴⁶⁵

Conflict between Yemeni forces and Houthi rebels began as isolated clashes in 2004. Husain al-Houthi founded the Believing Youth movement in the 1990s, aimed at reviving Zaidi Islam, a branch of Shi'ism found mainly in Yemen, to counter growing fundamentalist Sunni trends in the northern Yemeni governorates where Zaidis dominate.

Since the clashes of 2004, there have been periods of sustained fighting, mostly in the countryside, but escalating in June 2008 to the outskirts of Sanaa. In August 2009, the Government launched a major offensive against the Houthis in the Sa'da and Amran provinces, backed by air strikes and artillery fire and resulting in some of the fiercest fighting. Dozens were reportedly killed on both sides, including Houthi leaders and civilians.⁴⁶⁶ An estimated 200,000 persons were reportedly displaced from their homes in the northern governorates in 2009–10.⁴⁶⁷

Furthermore, the conflict acquired a regional dimension, with the Yemeni authorities accusing Iran of backing the Houthis, while the Houthis accused Saudi Arabia of supporting the Yemeni Government. In October 2009, clashes broke out between the Houthis and Saudi security forces along the border of the two countries. On 4 November 2009, Houthis reportedly fought their way across the border into Saudi Arabia and took 'full control' of a mountainous section of the border region of Jabal al-Dukhan.⁴⁶⁸

A ceasefire seemed to have been reached between the Yemeni Government and the Houthis in February 2010, though episodes of violence continued to occur sporadically.⁴⁶⁹ An estimated 200,000 persons were displaced from their homes in the northern governorates in 2009–10.⁴⁷⁰ In 2011–12, the Houthis continued fighting against tribal militia, gaining control of various towns and villages near the northern Syrian border.⁴⁷¹

Violence continued throughout 2015 and 2016. In late July 2016, the Houthis and ousted President Ali Abdullah Saleh's government announced the formation of

465 Unless otherwise stated, this section is based on BBC News, 'Yemen Country Profile', 17 January 2017, <http://www.bbc.com/news/world-middle-east-14704852>.

466 C. Harnisch, *A Critical War in a Fragile Country: Yemen's Battle with the Shiite al Houthi Rebels*, Critical Threats, 31 August 2009, www.criticalthreats.org/yemen/critical-war-fragile-country-yemens-battle-shiite-al-houthi-rebels.

467 UNHCR, 'More than 200,000 Displaced by the Conflict in Yemen', 12 January 2010, www.unhcr.se/en/media/press-releases/artikel/8e6a57b4a95019884040a369d1ead582/more-than-200000-displaced-by-the-c.html.

468 Ploughshares, *Yemen (2004 – first combat deaths)*, March 2012, ploughshares.ca/pl_armedconflict/yemen-2004-first-combat-deaths/.

469 CNN, 'Yemeni cease-fire breached', 13 February 2010, edition.cnn.com/2010/WORLD/meast/02/13/yemen.violence/index.html?_s=PM:WORLD.

470 UNHCR, 'More than 200,000 displaced by the conflict in Yemen', 12 January 2010.

471 Ploughshares, *Yemen (2004 – first combat deaths)*.

a ‘political council’ to govern Sanaa, Yemen’s capital and largest city, and much of north Yemen. Meanwhile, fighting continued between the rebels and the Saudi-backed government of President Abed Rabbo Mansour Hadi.⁴⁷²

After more than three months, peace talks to end the war were suspended in August 2016. The UN Special Envoy had been mediating the talks between President Abedrabbo Mansour Hadi’s government and the Iran-backed Houthi rebels and their allies in Kuwait since April, without a major breakthrough.⁴⁷³

B. PARTIES TO THE CONFLICT

The parties to the NIAC in 2016 are Yemen and its armed forces against the Houthi rebels and Al Qaeda (AQAP).

At this stage it is not possible to consider Iran as a party to the NIAC. Although Iran is providing extensive material, financial, training and logistical assistance to the Houthi rebels,⁴⁷⁴ to the point that US Secretary of State, John Kerry, accused Iran of ‘contributing’ to the Houthis’ takeover in Yemen,⁴⁷⁵ such contribution cannot yet be regarded as ‘overall control’, as required by the Tadic jurisprudence of the ICTY.

1. Yemeni Armed Forces

The Yemeni Armed Forces is estimated to be 250,700 strong, with 250,000 reservists.⁴⁷⁶ UN Secretary-General Ban Ki-moon welcomed President Hadi’s efforts to restructure the nation’s security sector, in particular the armed forces ‘with a view to integrating them under unified, national and professional leadership and command based on the rule of law’.⁴⁷⁷

2. Houthi Rebels

al-Houthi is a Zaidi Shia insurgent group operating in Yemen. The group takes its name from Hussein Badreddin al-Houthi, their former commander, who was reported killed by Yemeni army forces in September 2004. The Houthi rebels have asserted that their actions are to defend Houthis against Government discrimination, though the Yemeni Government has in turn accused it of wishing to destabilize the government and of ‘stirring anti-American sentiment’. The group responded to the ‘Arab Spring’ movement by aligning with ‘revolutionary youth’ calling

472 A. Nasser, ‘Yemeni Conflict Goes Back to Square One’, Al-Monitor, 14 August 2016, <http://www.al-monitor.com/pulse/originals/2016/08/yemen-government-bank-houthis-council-chaos.html>.

4704852. <http://www.al-monitor.com/pulse/afp/2016/08/yemen-conflict-health-probe-saudi-msf.html>.

474 S. ShahidSaless ‘Does Iran Really Control Yemen?’, Al-Monitor, 12 February 2015, <http://www.al-monitor.com/pulse/originals/2015/02/iran-yemen-houthis-axis-of-resistance.html>.

475 Al-Monitor, ‘GCC Moves to Legitimize Aden as Yemen’s Capital’, 1 March 2015, <http://www.al-monitor.com/pulse/politics/2015/02/yemen-aden-gcc-houthis-gulf-support.html#ixzz3ULTWzHaG>.

476 Global Firepower, ‘Yemen Military Strength’, December 2016, http://www.globalfirepower.com/country-military-strength-detail.asp?country_id=yemen.

477 UN News Centre, ‘Yemen: Ban, Security Council welcome efforts to reform armed forces’, 12 April 2013, www.un.org/apps/news/story.asp?NewsID=44638#.UJCwtXZBvX4.

for the downfall of the regime and justice for its victims.⁴⁷⁸The Houthis, once the outliers, are now one of the most stable and organized social and political movements in Yemen. The power vacuum created by Yemen's uncertain transitional period has drawn more supporters to the Houthis. Many of the formerly powerful parties, now disorganized with an unclear vision, have fallen out of favour with the public, making the Houthis under their newly branded Ansar Allah name all the more attractive.⁴⁷⁹

On 5 February 2016, press tv reported that Men of Hamdan, one of Yemen's most powerful tribes, rallied to the north of the capital, Sana'a, vowing to provide support in the form of potential mobilization for the country's fighters resisting the Saudi aggression. In a gathering held in the capital, hundreds of tribesmen from the southern parts pledged union against what they described as a U.S.-Israeli initiative targeting the country, which was being implemented by Saudi Arabia.⁴⁸⁰

3. Al Qaeda in the Arab Peninsula (AQAP)

Al-Qa'ida in Yemen (AQY), AQAP's predecessor, came into existence after the escape of 23 Al-Qa'ida members from a prison in Sanaa, in February 2006. AQAP emerged in January 2009 through a union of the Saudi and Yemeni branches of al-Qaeda.⁴⁸¹ The group has been designated as a terrorist organization by the UN, Australia, Canada, Russia, Syria, Iran, Yemen, Saudi Arabia, the UAE, the EU and the U.S.. It is believed to have orchestrated numerous high-profile terrorist attacks, last but not least the one at the headquarters of *Charlie Hebdo* satirical magazine in Paris on 7 January 2015.

On 20 February 2016, AQAP seized the southern Abyan governance, linking them with their headquarters in Al Mukalla.⁴⁸²

478 L. Winter, 'Yemen's Huthi Movement in the Wake of the Arab Spring', 5, *CTC Sentinel*, 8 (August 2012) 13, . www.ctc.usma.edu/posts/yemens-Houthi-movement-in-the-wake-of-the-arab-spring.

479 A. Potter, 'Yemen in Crisis', *Esquire Middle East*, 5 September 2015, <http://www.esquireme.com/brief/news/is-yemen-on-the-brink-of-economic-meltdown-and-civil-war>.

480 *PressTv* 'Yemeni Tribes Call for Mobilization Against Saudi Arabia', 5 February 2016, <http://presstv.ir/Detail/2016/02/05/448750/Yemen-Saudi-Arabia-Hamdan-Aden/>.

481 National Counterterrorism Center, 'Al Qa'ida in the Arabian Peninsula (AQAP)', <http://www.nctc.gov/site/groups/aqap.html>.

482 AFP, 'Qaeda Kills Three in Sweep of Yemen's South', *Business Standard*, 20 February 2016, http://www.business-standard.com/article/pti-stories/qaeda-kills-three-in-sweep-of-yemen-s-south-116022000534_1.html.

C. LATEST DEVELOPMENTS IN 2016: A HEAVY TOLL ON CIVILIANS

In 2016, the conflict continued to take a heavy toll on Yemeni civilians. According to the UN Office for the Coordination of Humanitarian Affairs (OCHA), more than 6,800 people were killed and 35,000 injured from March 2015 until August 2016.⁴⁸³ It has been reported that more than one-third of all Saudi-led multinational coalition raids have hit civilian sites, such as school buildings, hospitals, markets, mosques and economic infrastructure, according to the most comprehensive survey of the conflict.⁴⁸⁴ On 15 August, an air strike hit a hospital run by Doctors Without Borders, killing 11 people and wounding more than 19 others.⁴⁸⁵ The growing number of civilian casualties has put added pressure by the UK and the U.S. on the Saudi-led coalition, which is facing accusations of breaching international humanitarian law. In September, a report from a UK joint parliamentary committee called for the suspension of weapons sales to Saudi Arabia until the UN can investigate allegations of violations of IHL.⁴⁸⁶ In December 2016, the U.S. announced the halt of arms sales to Saudi Arabia because of the high death toll among civilians in the kingdom's bombing campaign in Yemen.⁴⁸⁷

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS, AND PROSECUTIONS

Yemen has signed but not ratified the 1998 Rome Statute of the International Criminal Court.

In 2016, an investigation began into an alleged war crime in Yemen and whether smart bombs fired at a busy market had guidance systems produced by a US arms company with a factory in Fife.⁴⁸⁸

483 OCHA, 'Yemen : Humanitarian Dashboard (January–August 2016)', http://reliefweb.int/sites/reliefweb.int/files/resources/Humanitarian%20Dashboard_Jan-Aug%20Final%20v2.pdf.

484 E. MacAskill and P. Torpay, 'One in Three Saudi Air Raids on Yemen Hit Civilian Sites, Data Shows', *The Guardian*, 16 September 2016, <https://www.theguardian.com/world/2016/sep/16/third-of-saudi-airstrikes-on-yemen-have-hit-civilian-sites-data-shows>.

485 AFP, 'Coalition Open Probe Into Deadly Yemen Hospital Raid', *Al-Monitor*, 16 August 2016, <http://www.al-monitor.com/pulse/afp/2016/08/yemen-conflict-health-probe-saudi-msf.html>.

486 G. Baker, 'Saudi Arms Sales Must End, UK Parliamentary Report Says', *Middle East Eye*, 15 September 2016, <http://www.middleeasteye.net/news/uk-arms-sales-yemen-saudi-arabia-556224369>.

487 E. MacAskill, 'US to Halt Planned Arms Sales to Saudi Arabia Over Yemen airstrikes', *The Guardian*, 13 December 2016, <https://www.theguardian.com/world/2016/dec/13/us-to-halt-planned-arms-sales-to-saudi-arabia-over-yemen-airstrikes>.

488 B. Briggs, 'Investigation Into Alleged Yemen War Crime: 97 Killed', *The Ferret*, 12 April 2016, <https://theferret.scot/investigation-underway-into-alleged-yemen-war-crime-97-killed/>.

In January 2017, Human Rights Watch declared that the Saudi-led coalition military operations in Yemen, supported by the U.S. and UK, against Houthi forces and forces loyal to former President Ali Abdullah Saleh since March 2015 might amount to war crimes, as the coalition has unlawfully attacked homes, markets, hospitals, schools, civilian businesses and mosques, in violation of IHL rules on the conduct of hostilities.⁴⁸⁹

489 Human Rights Watch, 'Yemen: No Accountability for War Crimes', 12 January 2017, <https://www.hrw.org/news/2017/01/12/yemen-no-accountability-war-crimes>.

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