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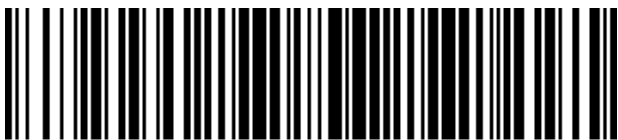
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**The Syrian Crisis and the International Humanitarian Law violations**

**Promit Acharya**

## ABSTRACT

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*As developed after the War of Solferino, the Humanitarian Law is a regulation for a “just war”. It is based on the doctrine of “Jus in Bello” and “Jus ad Bellum”, whose several principles are now being constantly violated or disobeyed in the Syrian Civil War. The crisis that occurred in Syria is basically a continuing multi-sided armed conflict, fought between the Arab Socialist Ba'ath Party – Syria Region led by President Bashar Hafez al-Assad, with the domestic and foreign allies, and several such other forces opposing both the Syrian government and each other. Several bombs such as chemical weapons for which the unblamed the Syrian militants under the command of president Bashar al-Assad, cluster bombs used by Syria as it is not a party to the cluster bomb convention, thermo baric weapons, anti-tank missiles which was sent by Russia, ballistic missiles which were used by Iran to destroy the ISIL camps in the Deir ez-Zor area in eastern Syria, all of which is prohibited under the several conventions of the humanitarian law.*

*This paper contains an analysis of the violations of the several provisions of the Humanitarian Law including Customary Humanitarian Law and Human Rights Law, and several peace efforts that have been undertaken to control the situation of the civil war in Syria which is also participated by several nations as proxy*

**Keywords:-** Syrian Crisis, Principle of Distinction, Principle of Military Necessity, Pro-Government Forces, Non-State Actors, Holy War, Proxy War.

## INTRODUCTION TO THE CONCEPT OF HUMANITARIAN LAW

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War is a thing that envisages the killing of innumerable human beings. It does not distinguish between the civilian objects or civilians and the military objects and the military. It brings inevitably involves death and destruction<sup>1</sup>. Something similar happened in the Battle of Solferino which led Henry Dunant to come up with an international organization named The International Committee of Red Cross (ICRC), which provided help to the wounded and the sick soldiers in a battle field. This gave rise to the drafting of the Geneva Conventions, which had the rules and regulation of conducting a just war. It was based on the doctrine of “*jus in bello*”, which is a corollary to the doctrine of “*jus ad bellum*” i.e., the right to go to war, which, though prohibited by Article 2(4) of the UN charter, can be concluded under the provision of Article 51 of the UN Charter which provides for self defense that can be exercised by a nation in retaliation to any threat towards it.

The law seeks to protect the sick and wounded *horse de combats*, both on land and on the sea and also provides for the safety and protection of the civilians in a war zone<sup>2</sup>. It is based on the principles of Distinction, i.e., the combatants must distinguish between a military object and a civilian object and an attack must be directed towards the military objects only; principle of proportionality, i.e., the attack directed towards any military object must be in proportion to the strength of the other military group; principle of military necessity, i.e.; a military object must be attacked only to gain a substantial “military advantage”<sup>3</sup> over the other and to make the opponent group to surrender without any further loss of money, men and time; and lastly the principle of unnecessary sufferings i.e.; no action of either military group should cause unnecessary suffering towards any group in order to gain any advantage or end the war<sup>4</sup>.

These rules are a part of customary international law and must be followed by all the countries even if they are not a member of the United Nations. The violation of these rules may bring disturbance in international peace and leading to complications in the international relationships. Some similar violations were caused in Syria which led to an ongoing crisis which is not yet solved.

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<sup>1</sup> International Humanitarian Law and Combat Casualties WILLIAM J. FENRICK Office of the Prosecutor (OTP), International Criminal Tribunal for the Former Yugoslavia (ICTY), 5253 Harvey Street, B3J 1A7, Halifax NS, Canada

<sup>2</sup> Geneva Conventions and additional Protocol

<sup>3</sup> Article 52(2) of The Protocols Additional to the Geneva Convention of August 12, 1949.(Protocol I of 8<sup>th</sup> June 1977).

<sup>4</sup> The Laws of Armed Conflict. The international Humanitarian Law in wars, Garry D. Solis, United States Military Academy.



## **IMPORTANT PRINCIPLES OF THE HUMANITARIAN LAW**

The concept of humanitarian law or the principal of “just war” is made possible by four basic principles. The at most respect towards this principles is mandatory for all the countries even if they are not a member of the United Nations, because it forms a major part of the Customary Humanitarian Law.

### **PRINCIPLE OF DISTINCTION:-**

By the war between nations, it is the civilians who are the most affected. Since the priorities of a nation are different, the civilian’s protection is to some extent weakened by obvious facts. This is the time when the militants are at an obligation to respect the civilian status of the civilians of the opponent nation to a conflict. This is done by the very acts of the militants. The militias are authorized to distinguish between the civilian and the military groups and objects, and direct their military actions only against the military groups and objects, and not against any civilian groups or objects.<sup>5</sup> It is also obligatory for the armed forces to presume the civilian character of an object in case of doubt of it being civilian or military.<sup>6</sup> The exception to this rule is that, if the civilians are directly involved in the armed conflict then they lose their protection as a civilian.

### **MILITARY NECESSITY:-**

This principle goes hand in hand with the doctrine of Distinction, or better to say is a step forward towards the protection of the militants as well as the civilians. This principles holds that the attack that is proceeded against other military object or group must be such in nature that it must give a military advantage to the attacking party and ensures the submission of the other party. A military objective is such an object that provides an, ‘effective contribution to military action and whose partial or total destruction, capture or neutralization, in the circumstances ruling at the time, offers a definite military advantage’.<sup>7</sup>

### **PRINCIPLE OF PROPORTIONALITY:-**

The principle of proportion is another doctrine that goes hand in hand with the Principle of Military Necessity. The principle specifically requires the military groups to use force against the opponent party in a proportionate manner and must not use force in excessive to that reasonable proportion. Proportionality refers to the launch of an attack which may lead to the incidental

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<sup>5</sup> Protocol Additions to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts.

<sup>6</sup> Article 52(3) of the Protocol Additions to the Geneva Conventions of 12 August 1949.

<sup>7</sup> ICRC, Definition Of Military Objectives, Customary IHL Database, (Apr 19, 2019, 9:10PM), [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule8](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule8).

loss of civilian life and if such an attack is disproportionate to the military advantage that is to be gained.<sup>8</sup>

#### **PRINCIPLE OF UNNECESSARY SUFFERING:-**

This is a principle that gave rise to the other three above mentioned principles. It is based on the basic rule that no human being, irrespective of his status as a combatant or a civilian, must be subjected to any kind of unnecessary suffering by the opponent party in a war zone. This is against the principle of Human Rights, which needs to be protected and respected even at the time of war.

Apart from all these basic principles there are some other restrictions to the warfare rules, i.e. protection of the Prisoners Of War, protection of the wounded soldiers on land and the sea, protection of the Cultural Property, protection of the women and children and other vulnerable, no attack towards the volunteers who enter the war zone to help the combatants and the civilians with their difficulties, etc.

#### **INTRODUCTION TO THE CRISIS IN SYRIA**

As the history reads, Syria had a great civilization, and a semi-independent state, ruled by the unchallenged authority of Hafez al-Assad for many years.<sup>9</sup> With the help of the Lebanese and Israel occupied Palestinian terrorists, he converted Syria into regional power and developed an understanding with the Iran who opposed the US and Israeli Government. After his bereavement in 2000, his son, Bashar al-Assad, became the President, who, initially, was a very moderate ruler but soon, he took on the military power politics used by his father.

Syria is a heterogeneous society with diversity on the basis of finance, ethnicity, religion, tribe etc.<sup>10</sup> the population combination is: about 74% Alawites and 16% Druze and 10% Christians. There is also a tiny Jewish population.<sup>11</sup>

The present humanitarian crisis in Syria started in March 2011, when a student posted graffiti in the streets of Dara, which was countered by the Syrian militias and this led to violent protests for demanding more power and liberty regarding politics and economics. Instead of listening to the demands, the government used forces to suppress the uprising which got intensified and led to

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<sup>8</sup> ICRC, Proportionality In Attack, Customary IHL Database (Apr 19, 2019, 8:20PM), [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule14](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule14).

<sup>9</sup> George Lenczowski, *The Middle East in World Affairs*, 3rd edition (New York: Cornell University Press, 1962), pp.309-71.

<sup>10</sup> R.D. McLaurine, Don Peretz and Lewis W. Snider, *Middle East Foreign Policy: Issues and Processes* (New York: Praeger, 1992), pg 241

<sup>11</sup> The data is taken from the CIA World Fact Book, available at [www.cia.gov](http://www.cia.gov), retrieved on 8 September 2013.

the division of the country socially and politically and to counter the forces the rebel groups took up arms and the world saw another outbreak of civil war.

There were two groups made by the world powers, Pro-Syrian Group, which consisted of Russia, China, Iran and Hezbollah; and the Anti-Syrian Group, which consisted of US, Britain, France, Israel, Turkey and Saudi-Arabia; all participating either actively or passively in the crisis and playing their own interest in the form of proxy war.<sup>12</sup>

The Syrian oppositions were helped by US, France, Turkey and Arab States. The crisis further aggravated when 5000 al-Qaeda insurgents<sup>13</sup> were sent to Syria and they started implementing their own agendas. Owing to this Russia and Iran came to support the Assad government and Hezbollah sent the fighters in lieu of that and in July 2013, supply of the arms were increased by the "Friends of Syria" resolution.

The ideological conflict was turned into a military conflict by Iran and Saudi-Arabia. Syria is a crucial land for the regional influence of Iran in the Middle East through a connection of other states and Hezbollah fought for the Iranian proxy in the regional context. On the other hand Russia has a political and military interest over this land. It has the only naval base near the Tartus Port and has a multi-billion deal with the Assad government regarding defense and arms, which it intended to carry on.

As for the Chinese government, they have a pre-existing conflict with the US government and thus, though passively, it had taken part in the proxy war, for its competition in the Korean Peninsula and South China Sea, which were controlled by both of them.<sup>14</sup>

US fought the proxy war basically to maintain its status as the only super power in the world and break the Iranian regional influence which would ensure Israel's security and break down the Syrian defense and this would lead Damascus's inability to challenge the superiority. This would also undo the strategic link between the Iranian regional influence and the Hezbollah.<sup>15</sup> In this, the Britain supported the US and France strengthened its influence in Libya and Sudan.

The crisis saw over 100,000 deaths and over 2 million refugees fled to Turkey, Lebanon and Jordan. The use of chemical weapons for which the UN blamed the Syrian Militants under the command of President Bashar Al-Assad, cluster bombs used by Syria as it is not a party to the Cluster Bomb Convention., Thermobaric weapons, Anti-tank missiles which was sent by Russia,

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<sup>12</sup> For details see Emile Hokayem, *Syria's Uprising and Fracturing of the Levant* (London: IISS, 2013).

<sup>13</sup> It included the Jbhatul Nusra, which was declared as a terrorist entity by the US later on.

<sup>14</sup> Sui Lee Wee, 'China's Xi tells Obama Syrian crisis can't be resolved with military strikes', Reuters, 6 September 2013

<sup>15</sup> Jodi Rudoren and Isabel Kershner, 'On Obama's Plan, A Message Emerges in Israel: Stay Quiet', The New York Times, 2 September 2013

Ballistic missiles which were used by Iran to destroy the ISIL camps Deir ez-Zor area in eastern Syria, killed over 1400 people. The crisis gave rise to genocide eventually. .

By 2015, the United Nations (UN) Secretary-General reported that “there is a complete and utter absence of protection of civilians in the Syrian Arab Republic”.<sup>16</sup> According to a 2015 report on health care in Syria, “civilians as well as healthcare personnel, medical facilities, and ambulances are deliberately and routinely targeted as part of the military strategy of the Syrian Government”.<sup>17</sup>

## **INCIDENTS IN SYRIA THAT LED TO THE VIOLATIONS OF THESE FUNDAMENTAL PRINCIPLES**

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Under the International Law, there are several weapons which are categorized as prohibited weapons owing to their indiscriminate nature and the amount of destruction that they cause.

In the present Syrian crisis many of such prohibited weapons are being broadly used. The use of chlorine munitions and cluster munitions by the pro-Government forces near densely populated civilian areas near Aleppo city caused a large number of deaths. The Syrian Air Forces improvised these weapons and dropped them through air by munitions assisted by rocket named IRAMS in the Bseema village of Damascus and Saraqeb in Idlib in January and August respectively. The use of these weapons caused, indiscriminately, burning sensation in lungs, suffocation and red irritated eye.<sup>18</sup>

This has caused a grave violation of the Convention Prohibition of the Development, Production, Stock Piling and use of Chemical Weapons and on their destruction which was ratified by the Syrian Government. These convention shot to ban the use of chemical weapons owing to their grave injury and unnecessary suffering that they cause indiscriminately.<sup>19</sup>

Despite the prohibition of indiscriminate attack<sup>20</sup> towards an opponent party, there were several attacks which were directed in such manner. The direct fire of the improvised artillery named OMAR rockets which were locally manufactured was targeted at Aleppo, Idlib and Dara, not

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<sup>16</sup>Report of the Secretary-General, Implementation of Security Council Resolutions 2139 (2014), 2165 (2014) and 2191 (2014), UN Doc. S/2016/272 (2015).

<sup>17</sup> Report of the Independent International Commission of Inquiry on the Syrian Arab Republic, UN Doc. A/HRC/34/CRP.3 (2017), Para 15.

<sup>18</sup> Human Rights Council, Thirty-fourth session on 27 February-24 March 2017, Human rights abuses and international humanitarian law violations in the Syrian Arab Republic, 21 July 2016- 28 February 2017, Indiscriminate Attack, Para 61-66.

<sup>19</sup> International Committee of the Red Cross (ICRC), Customary International Humanitarian Law, 2005, Volume I: Rules [hereinafter “ICRC Rule”], at Rule 74.

<sup>20</sup> International Committee of Red Cross, Rule 12, (Apr 19, 1:16 AM), [https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1\\_rul\\_rule12](https://ihl-databases.icrc.org/customary-ihl/eng/docs/v1_rul_rule12).

only destroyed military camps but also destroyed an adjacent school Tha't al-Nitagin which killed several students during their class hours. On 10<sup>th</sup> October a group named FSA bombarded the village of Tel Btal indiscriminately to capture the city of al-Bab from the ISIL.

Under humanitarian law indiscriminate attack is strictly prohibited as it is against the very Doctrine of Distinction and causes unnecessary suffering to the civilians.

The hospitals, schools and other resources for the survival of the civilians are to be protected by either party at any cost. But in the present case the different states and non state actors have violated the status of these protected objects. Several air strikes near the army camps in Idlib which killed many medical personnel and destroyed vital infrastructure providing medical facilities, which led to lack of supply of anesthetics, surgical equipments and medicines. Similar attacks were carried out at al-Mal hospital in Milis.

The attacks which were targeted to the schools amounted for half of the worlds attack on schools from 2011 to 2015. In Syria the attack towards the schools caused a huge number of children to be killed and meined in brutal circumstances. The international law provides for warning before any attack on any army camp situated near protected objects such as schools but here such warning was missing. The Russian Federation has denied their involvement in this attack. The majority lives were lost in a school complex in Haas, Idlib country side which consisted of kinder garden, High school, two preparatory schools and co-educational elementary school. The deliberateness of the attack was justified by the facts that the attackers knew the location of the school; the attack took place during class hours, lack of warning and absence of indication of military object. These factors specifically prove there violation and disobedience towards the norms of customary international law lay down by the principle of distinction and military necessity.<sup>21</sup>

Water resources are one of the most vital ingredients for the survival of a human being and when such was destroyed in Wadi Barada, Damascus country side, not only the humanitarian law was violated but also took away the basic human rights of the civilians which are to be protected even during the war.<sup>22</sup>

Under Geneva Convention there are several persons who are protected and should not be attacked even during the war. But on February 2017 an attack on the UN/Syrian Arab Red

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<sup>21</sup>Human Rights Council, Thirty-fourth session on 27 February-24 March 2017, Human rights abuses and international humanitarian law violations in the Syrian Arab Republic, 21 July 2016- 28 February 2017, Government and Pro-Government Forces, Attacks against Civilian Infrastructure, Schools, Para 20-31.

<sup>22</sup>Human Rights Council, Thirty-fourth session on 27 February-24 March 2017, Human rights abuses and international humanitarian law violations in the Syrian Arab Republic, 21 July 2016- 28 February 2017, Government and Pro-Government Forces, Attacks against Civilian Infrastructure, Water Resources, Para 32-37.

Crescent (SARC) in Orum al-Kubra western Aleppo destroyed the volunteers working for the humanitarian aid had shown a severe disrespect to the rules of ICRC and thus escalating the humanitarian crisis in Syria.

The international coalitions of United States conducted airstrikes in several villages, such as Taltana, Aleppo Governorate, which killed several civilians. The strike was conducted on 4<sup>th</sup> October 2016, to take down the Levant forces but was unfortunately killed the civilians while they were being detained and punished for not following the rules and regulations of ISIL. Following this on early February 2017, series of airstrikes were conducted in Aleppo which killed several civilians. The attack was indiscriminate and abused the principle of distinction. The civilians are protected persons<sup>23</sup> under the 4<sup>th</sup> Geneva Convention of 1949.<sup>24</sup>

Under the International Humanitarian Law and a Convention on the Protection of the Cultural Property, there is a mandate for all the state and non-state armed forces to protect the cultural property that is of great historical importance at any cost. The attack on the Temple of Bel, which is a world heritage site showed a grave violation of this rule. The city of Palmyra, an ancient Roman City was also targeted which destroyed many archeological sites. On June 18<sup>th</sup>, the 4 columns of Tetrapylon, a cubic structure with 4 gateways and depicted the amphitheatre of the second century, was destroyed, which was a symbol of openness of Palmyra.

### **INVOLVEMENT OF DIFFERENT NON-STATE ACTORS IN THE CRISIS**

Apart from the different state actors, there are many non-state actors who have helped the acceleration of the crisis by putting their own interest in the calamities going on in Syria. These non-state actors are helped by different states silently and were the main cause of the large scale violations of the different provisions of the humanitarian law, human rights and customary international law.

All states have an obligation under Common Article of the Four Geneva Conventions “to respect and to ensure respect for the present Convention in all circumstances”. As Common Article 3 of the Four Geneva Conventions is part of each of the four Conventions as well, this obligation extends as a matter of treaty obligation to the minimum guarantees provided in Common Article 3 in situations of “armed conflict not of an international character occurring in the territory of one of the High Contracting Parties.” The ICRC Commentary to Common Article 1 of 1952 as well as the updated ICRC Commentary of 2016 indicate that the High

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<sup>23</sup>Article 4 of the Geneva Convention relating to the Protection of the Civilians at the time of war, of 12 August, 1949.

<sup>24</sup> Article 48 of the Protocols Additional to the Geneva Conventions of 12 August, 1949.

Contracting Parties' obligations "to respect and ensure respect for" the Conventions are required both in respect to their own forces as well as the forces of other parties to a conflict in situations of both international and non-international armed conflict

The involvement of Islamic Society of the Iraq and the Levant (ISIL), is seen the most in the recruitment of child soldiers and using them as suicide bombers in Azaz, Aleppo countryside, in a civilian populated area, after they lost the city of Aleppo to the FSA. The use of the suicide bombings as a strategy of war, though not forbidden the provisions of the international law, use of them in a civilian populated areas in against the very doctrine of Distinction and unnecessary suffering.

The ISIL have used many other strategies to impose their strict Sharia believe and rules in the people, which are against the very doctrine of Human Rights. They imposed corporal punishments and executions, irrespective of their sex or age. They also used the 500 civilians as human shield to get back the city of Minbij from the SDF, which they were holding since 2014.<sup>25</sup>

The other group, named Jabhat Fatah al-Sham also has a great contribution to the affairs in Syria leading to inhumane conditions. They stoned the women to death, near the Idlib countryside, for having extramarital affairs. The family members also supported the fact because they were of the opinion that such act has caused their honour to be lowered. They are also involved in recruitment of child soldiers in Ariha, Idlib, for maintaining and guarding their military check posts and other military occupied places.

Another group named the Kurdish People's Protection Unit (YPG), forcibly conscript men and boys for their military enhancement and survives.

## **PRESENT CONDITION IN SYRIA**

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There were several peace talks organized by the United Nation in Geneva which utterly failed in its endeavors. In January, 2017 a meeting was organized at Astana, Kazakhstan which was attended by Russia, Iran and Turkey to pursue de-escalation in towards the ongoing conflict. The meeting resulted in the decrease of the violation of humanitarian law but couldn't actually stop it. The Syrian government along with the Russians and others constantly violated the cease fire agreements and by October, 2017 Turkey started deploying armed troops in and around Idlib. The Security Council through its resolution demanded for safe and unhindered Humanitarian access, stop use of indiscriminate weapons in populated areas, stop and release arbitrarily

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<sup>25</sup> Human Rights Council, Thirty-fourth session on 27 February-24 March 2017, Human rights abuses and international humanitarian law violations in the Syrian Arab Republic, 21 July 2016- 28 February 2017, Government and Pro-Government Forces, Islamic Society of the Iraq and the Levant, Human Shield, Para 82 and 83.

arrested persons. Even this resolution couldn't stop the crisis as the Syrian Government constantly violated the mandates with the help of Russian and Iranian military assistance. In July, 2018 US Jordan and Russia agreed to a cease fire agreement in the southern part of Syria. In December, 2016 the United Nation General Assembly gave rise to the International Impartial and Independent Mechanism (IIIM), for the sole purpose of gathering, preserving and analysis of the evidences of the serious war crimes in Syria. In April, 2018 the European Union stepped into the endeavor to conclude the Syrian crisis by its strategy of political and humanitarian actions and promoting means for ending the war crimes and human rights violations. For this purpose it hosted the Brussels Conference on supporting the Future of Syria and the Region. In June 2018 it donated 15 million Dollars to support the IIIM. In addition to all this the Governments of Sweden, Germany and France, under the principle of Universal Jurisdiction, have appointed police and prosecutors to investigate few individuals accused of committing war crimes in Syria<sup>26</sup>.

## CONCLUSION

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The crisis in Syria that had started in 2011 and is continuing till date is one of the examples of great violations of Humanitarian Principles. Though the crisis have started as a civil war with the Syrian Government of Azad, we find involvement of different world super powers, specifically Russia and USA and others in their own interest either to gain power or to support Russia and US anyways thus giving rise to proxy war. We also find the killing of children and woman's by ruthless means and attacking the civilian populations in order to frighten them and also to frighten the military personals so that they take back their troops. Apart from the world powers, several non-state actors specifically the ISIL, Jabhat Fatah al-Sham have also poked their nose with their own interest of protecting their religion thus giving rise to a Holy War. These non-state actors were involved in recruitment of child soldiers and giving corporal punishments to the ones who had failed to follow their religious beliefs.

Apart from the proxy war the conflict of the world powers with the non-state actors had further enhanced the crisis. The series of air strikes in an attempt to take down each other have affected the civilians to a great extent. More than half of the population was killed for the interest of these groups and the rest have taken refuge in several adjacent countries.

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<sup>26</sup>Human Rights Watch, Syria events of 2017, Key international actors, (Apr 19; 03:18 PM) <https://www.hrw.org/world-report/2018/country-chapters/syria>



The crisis in Syria saw the violation of majority principles of humanitarian law, customary international law, rules of ICRC and the Geneva Convention.

As of now due to the enforcement of several cease fire agreements and the formation of the IIM has brought the situation under control to some extent but yet a lot have to be done to support the effected civilians who lost their family and shelter.