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THE WAR REPORT

ARMED CONFLICTS IN 2017

ANNYSSA BELLAL

THE ACADEMY A JOINT CENTER OF



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ÉTUDES INTERNATIONALES
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GRADUATE INSTITUTE
OF INTERNATIONAL AND
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**UNIVERSITÉ
DE GENÈVE**
FACULTY OF LAW

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This work identifies, describes and discusses situations of armed violence in 2017 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;
- d. Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part;
- e. Imposing measures intended to prevent births within the group;
- f. 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 I of this work lists and summarizes the armed conflicts that occurred in 2017 on the basis of explicit criteria that, we believe, best reflect existent international law, certain controversies and imprecision notwithstanding.

Part II focuses and details the situations of selected armed conflicts in 2017. For a complete overview of the history of all conflicts, the 2012, 2013 and 2014 editions of *The War Report* are recommended. *The War Report 2017* may also be read in conjunction with the Rule of Law in Armed Conflicts 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

³ At: <http://www.rulac.org/>.

PART 1

SUMMARY

In 2017, at least 55 armed conflicts occurred in 29 states and territories in Afghanistan, Azerbaijan, Colombia, Cyprus, the Democratic Republic of Congo (DRC), Egypt, Eritrea, Georgia, India, Iraq, Lebanon, Libya, Mali, Mexico, Moldova, Myanmar, Nigeria, Pakistan, Palestine, the Philippines, Somalia, South Sudan, Sudan, Syria, Thailand, Turkey, Ukraine, Western Sahara and Yemen.⁴

Of the 55 conflicts, international armed conflicts have been taking place in the territory of 6 states: between India and Pakistan, Ukraine and Russia, as well as between Syria and the different states belonging to the United States-led coalition in Syria. In addition, there have been a series of short-lived international armed conflicts between Libya and Egypt, Israel and Syria, as well as Turkey and Iraq.

In addition, belligerent occupations continued in 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 38 non-international armed conflicts occurred in 2017 in the territory of 21 states: Afghanistan, Colombia, the DRC, Egypt, India, Iraq, Libya, Mali, Mexico, 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 UK and the US.

5 The Elements of Crimes established under the International Criminal Court (ICC) provide that 'the term "international armed conflict" includes military occupation'. Preparatory Commission for the International Criminal Court., Finalized Draft Text of the Elements of Crimes, UN doc PCNICC/2000/1/Add.2, 2 November 2000, fn 34. See, e.g., A. Cullen, 'The Threshold of Non-International Armed Conflict', in A. Cullen, *The Concept of Non-International Armed Conflict in International Humanitarian Law*, Cambridge University Press, 2010, SSRN, 2008, p 132, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2222757 (last accessed 6 March 2018).

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 a 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 a 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's (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 were distinct NIACs in 2017 in Yemen pitting Yemen and the con-

7 The European Union (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(e), 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*, Fourth Chamber, Judgment, Case no 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 (last accessed 6 March 2018).

8 ICTY, *Prosecutor v Dusko Tadić (aka 'Dule')*, Appeals Chamber, Decision on the Defence Motion for Interlocutory Appeal on Jurisdiction, IT-94-1, 2 October 1995, §70, <http://www.icty.org/x/cases/tadic/acdec/en/51002.htm> (last accessed 6 March 2018). See generally also International Committee of the Red Cross (ICRC), *How is the Term Armed Conflict Defined in International Humanitarian Law?*, Opinion Paper, 17 March 2008, <https://www.icrc.org/eng/resources/documents/article/other/armed-conflict-article-170308.htm> (last accessed 6 March 2018); S. Vitte, 'Typology of Armed Conflicts in International Humanitarian Law: Legal Concepts and Actual Situations', 91 *International Review of the Red Cross (IRRC)* 873 (March 2009), <https://www.icrc.org/en/international-review/article/typology-armed-conflicts-international-humanitarian-law-legal-concepts> (last accessed 6 March 2018).

9 See, e.g., ICC, *Prosecutor v Germain Katanga*, Trial Chamber II, Judgment, ICC-01/04-01/07, 7 March 2014, §1197.

solidated forces led by Saudi Arabia against Houthi rebels in the North, while a separate NIAC broke out between Yemen and al-Qaeda in the Arabian Peninsula (AQAP) in the south of the country.¹⁰

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. 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, apply throughout the territory of a state engaged in an armed conflict.¹¹ Rules governing the conduct of hostilities are, though, limited to areas where combat is occurring. The 2016 ICRC Commentary confirms this interpretation, and notes that

the applicability of humanitarian law in the whole of the territory of a State party to the conflict does not mean that all acts within that territory therefore fall necessarily under the humanitarian law regime. As noted by the ICTY, a particular act must be 'closely related to the hostilities occurring in other parts of the territories controlled by the parties to the conflict' for that act to be committed in the context of the armed conflict and for humanitarian law to apply ... The applicability of humanitarian law to a specific act therefore requires a certain nexus between that act and the non-international armed conflict. Acts that have no such connection to the conflict generally remain regulated exclusively by domestic criminal and law enforcement regimes, within the boundaries set by applicable international and regional human rights law.¹²

10 See section on Yemen, below.

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

12 ICRC, 2016 Commentary on Art 3 of the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field. §460, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=59F6CDFA490736C1C1257F7D004BA0EC#174> (last accessed 6 March 2018).

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 observes, ‘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 *jus 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

As underlined by the ICRC Commentary on common Article 2, ‘for international armed conflict, there is no requirement that the use of force between the Parties reach a certain level of intensity before it can be said that an armed conflict exists ... Even minor skirmishes between the armed forces, be they land, air or naval forces would spark an international armed conflict and lead to the applicability of humanitarian law.’¹⁵

In addition, an IAC includes 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), ‘[n]ot 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

13 D. Schindler, ‘The Different Types of Armed Conflicts According to the Geneva Conventions and Protocols’, Hague Academy of International Law (RCADI), *Recueil des cours*, vol 163, Brill/Nijhoff, 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 ICRC, 2016 Commentary on Art 2 of the First Geneva Convention: Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, §§236–237, <https://ihl-databases.icrc.org/applic/ihl/ihl.nsf/Comment.xsp?action=openDocument&documentId=BE2D518CF5DE54EA C1257F7D0036B518> (last accessed 6 March 2018). See also D. Carron, *L’acte déclencheur d’un conflit armé international*, Schulthess, 2016.

authorities, or by the foreign forces 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, ‘[t]he 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. Sassöli, ‘Is the Law of Occupation Applicable to the Invasion Phase?’ 94 *IRRC* 885 (Spring 2012).

17 Vité, ‘Typology of Armed Conflicts in International Humanitarian Law’, *supra* fn 8, 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*, trial chamber judgment, *supra* fn 9, §§1180, citing ICTY, *Prosecutor v Mladen Naletilic, aka ‘Tuta’ and Vinko Martinovic, aka ‘Stela’*, Trial Chamber, Judgment IT-98-34-T, 31 March 2003, §217, footnotes omitted.

19 See, e.g., L. Stangret, ‘Russia Provides UN Security Council with Appeal by “Legal President” Yanukovich’, *Euromaidan Press*, 5 March 2014, <http://euromaidanpress.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, 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

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

20 See, e.g., ICTY, *Prosecutor v Tadić*, Appeals Chamber, Judgment, IT-94-1-A, 15 July 1999, §§84 and 115 et seq; ICTY, *Prosecutor v Blaškić*, Trial Chamber, Judgment, 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*, Trial Chamber, Judgment, 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*, trial chamber judgment, supra fn 9, §§1177 et seq.

21 See Art 1(4), 1977 Additional Protocol I. The US 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.

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 under 15 years old 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 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 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

24 Art 8(2)(a)(xx) of the Rome Statute 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.

26 ICTY, *Prosecutor v Tadić*, appeals chamber decision, supra fn 8, §70.

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 the 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 a 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, ‘[i]n an armed conflict of an internal or mixed character, these closely related criteria 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, who typically possess and use a variety of weapons and control a significant logistical

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*, Trial Chamber, Judgment, IT-04-84-T, 3 April 2008, §§40 et seq; ICTY, *Prosecutor v Slobodan Milošević*, Trial Chamber, Decision on Motion for Judgment of Acquittal, IT-02-54-T, 16 June 2004, §17.

28 Art 1(2), 1977 Additional Protocol II; see also Art 8(2)(d), 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’, supra fn 16, p 8.

30 ICTY, *Prosecutor v Tadić*.

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 a 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 a 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 This discussion takes place in *The War Report 2017* with regard specifically to the situation in Mexico.

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

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

31 See, e.g., ICTY, *Prosecutor v Fatmir Limaj, Haradin Bala, and Isak Musliu*, Trial Chamber, Judgment, IT-03-66-T, 30 November 2005, §170.

32 Vité, ‘Typology of Armed Conflicts in International Humanitarian Law’, supra fn 8, 78.

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 Šijavančin*, Trial Chamber, Judgment, IT-95-13/1-T, 27 September 2007, §407 and sources cited in footnote 1592.

34 ICTY, *Haradinaj* trial chamber judgment, supra fn 27, §49.

35 International Institute of Humanitarian Law, *The Manual on the Law of Non-International Armed Conflict With Commentary*, 2006, p 3, <http://stage.iihl.org/wp-content/uploads/2015/12/Manual-on-the-Law-of-NIAC.pdf> (last accessed 6 March 2018).

36 ICTY, *Limaj* trial chamber judgment, supra fn 31, §172, footnote omitted.

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 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. 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 these situations as fact 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: '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 ICRC Commentary on the Geneva Conventions of 1949 also specifies that a NIAC would end by the mere fact that one of the parties ceases to exist or in case 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 a NIAC 'occurring in

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> (last accessed 6 March 2018), 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, *Milošević* trial chamber decision, *supra* fn 27, §26.

39 ICTY, *Tadić*, *supra* fn 8, § 70.

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/> (last accessed 6 March 2018).

42 ICRC, 2016 Commentary on Art 3 of the First Geneva Convention, *supra* fn 12, §489–491.

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 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 mean, however, that a globalized NIAC exists as a matter of international law. Some arguments were 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 a NIAC can certainly cross international borders, it is not possible under existing international law for a 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 controversial 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

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, <https://hhi.harvard.edu/publications/temporal-scope-application-international-humanitarian-law-contemporary-conflicts> (last accessed 6 March 2018).

44 For example, in 2012 John Brennan, then Assistant to the US President, and Deputy National Security Advisor for Homeland Security and Counterterrorism (later, Director of the US Central Intelligence Agency from 2013–2017), stated: '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/> (last accessed 6 March 2018). Later, however, the Obama Administration started quietly dropping the reference to the Taliban.

45 Sivakumaran, *The Law of Non-International Armed Conflict*, *supra* fn 38, 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' (emphasis added).

47 Sivakumaran, *The Law of Non-International Armed Conflict*, *supra* fn 38, p 234.

48 *Ibid.*

49 Vité, 'Typology of Armed Conflicts in International Humanitarian Law', *supra* fn 8, 74.

D. 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 a NIAC, as well as, in certain circumstances, the 1977 Additional Protocol II.⁵⁰ States engaged in a NIAC are also bound by both applicable treaty⁵¹ and customary HRL. In areas where 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 '[w]hile 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 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.

⁵⁰ The scope of application of 1977 Additional Protocol II is set out in Art 1. In its 1987 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 the application of 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., HRC, 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.'

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).

Recruiting children under 15 years old 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 2017?

The following tables summarize the 17 IACs and 38 NIACs that took place in 2017.

A. INTERNATIONAL ARMED CONFLICTS IN 2017

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 well as a series of international armed conflicts between Syria and the different states composing the international coalition conducting airstrikes in Syria (the US, Belgium, Canada, Denmark, France, Germany, Italy, Jordan, Morocco, Netherlands, Saudi Arabia, Turkey, the United Arab Emirates and the United Kingdom). In addition, there have been a series of short-lived international armed conflicts between Libya and Egypt, Israel and Syria, as well as between Turkey and Iraq.

Table 1. Active Conflicts in 2017

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
4	Libya	Egypt v Libya
5	Syria	Israel v Syria
6	Iraq	Turkey v Iraq

There was one more situation of belligerent occupation in 2017 than in 2016, as Turkey occupied part of northern Syria (for details, see the profile on Turkey at rulac.org).

Table 2. Belligerent Occupations in 2017

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

B. NON-INTERNATIONAL ARMED CONFLICTS IN 2017

At least 38 NIACs in 21 states occurred in 2017. Arguably, there was a ‘new’ conflict in 2017 between the Mexican Government and armed gangs. A new conflict also broke out in Myanmar between the armed forces and the Arakan Rohingya Salvation Army (ARSA).

Conflict no.	Conflict location	Parties to conflict
18	Afghanistan	Afghanistan and the USA v Quetta Shura Taliban
19	Afghanistan	Afghanistan v Haqqani Network
20	Afghanistan	Afghanistan v Islamic State in Afghanistan (Khorasan branch, IS-K)
21	Colombia	Colombia v National Liberation Army (ELN)
22	Colombia	Colombia v armed gangs (BACRIM)
23	DRC	DRC (with support of MONUSCO) v Allied Democratic Forces/Alliance des Patriotes pour un Congo Libre et Souverain (APCLS)

Conflict no.	Conflict location	Parties to conflict
24	DRC	DRC (with support of MONUSCO) v Forces Démocratiques pour la Libération du Rwanda (FDLR)
25	DRC	DRC (with support of MONUSCO) v The Nduma Defense of Congo (NDC)
26	DRC	DRC (with support of MONUSCO) v The Nduma Defense of Congo-Rénové (NDC-R)
27	DRC	DRC (with support of MONUSCO) v Allied Democratic Forces (ADF-Nalu)
28	Egypt	Egypt v Wilayat Sinai (‘State of Sinai’ or ‘Province of Sinai’, known as Ansar Beit al-Maqdis)
29	India	India v Naxalite Maoists
30	Iraq	Iraq v Islamic State
31	Libya	Libya v several armed groups, including Libya Shield and Ansar al-Sharia
32	Libya	Libya (with support of the USA) v Islamic State
33	Mali	Mali and UN Multidimensional Integrated Stabilization Mission in Mali (MINUS-MA) v al-Qaeda in the Islamic Maghreb (AQIM), Ansar Dine
34	Mexico	Mexico v the Sinaloa Cartel and the Jalisco Cartel New Generation
35	Myanmar	Myanmar v various armed groups, incl. KIA, TNLA, MN-DAA, AA, ARSA and DKBA
36	Nigeria	Nigeria, with the support of Cameroon, Niger and Chad v Boko Haram
37	Pakistan	Pakistan v Tehrik-e-Taliban Pakistan (TTP) and TTP splinter groups
38	Philippines	Philippines v various armed groups, incl. Abu Sayyaf Group, BIFF, Maute Group
39	Philippines	Philippines v NPA
40	Somalia	Somalia, AMISOM, Ethiopia, Kenya, Uganda and USA v al-Shabaab
41	South Sudan	South Sudan v Sudan People’s Liberation Army (dissident faction)
42	Sudan	Sudan v SPLM/A-North
43	Sudan	Sudan v Justice and Equality Movement (JEM)
44	Syria	Syria, Russia v Free Syrian Army
45	Syria	Syria v Hai’y’a Tahrir al-Sham (former al-Nusra front)
46	Syria	Syria, Russia v Islamic State (IS)
47	Syria	YPG-YPJ v IS
48	Syria	Free Syrian Army v Hezbollah
49	Thailand	Thailand v Barisan Revolusi Nasional independence movement
50	Turkey	Turkey v Kurdish Worker’s Party (PKK) + YPG/YPJ in Syria
51	Ukraine	Ukraine v Donetsk People’s Republic & Luhansk People’s Republic
52	Yemen	Yemen v al-Houthi
53	Yemen	al-Houthi v al-Qaeda in the Arabian Peninsula AQAP
54	Yemen	Yemen v AQAP
55	Yemen	Yemen v the Southern Movement

PART 2

KEY DEVELOPMENTS OF SELECTED ARMED CONFLICTS IN 2017⁵⁴

⁵⁴ 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 30–31 above.

SELECTED INTERNATIONAL ARMED CONFLICTS

1. THE PALESTINIAN–ISRAELI ARMED CONFLICT: FIFTY YEARS ON

Montse Ferrer

Classification of the Conflict

Israel and Palestine were engaged in an international armed conflict in 2017 by virtue of Israel's continued military occupation of Palestinian territory.

A. HISTORY OF THE CONFLICT

The War Report 2014 included a history of the conflict since the United Nations Partition Plan of 1947, the resulting Arab–Israeli war and Israel's declaration of independence in 1948. This year's *War Report* provides an update on the Israeli–Palestinian conflict and highlights 2017's most important developments.

The protracted, century-long conflict engulfing Israelis and Palestinians commemorated several landmark anniversaries in 2017 – anniversaries that some condemned and others celebrated, highlighting the schism between both sides that widens every year. The most significant of these was the centenary of the divisive Balfour Declaration, which was issued on 2 November 1917. This year also marked the 50-year anniversary of the 1967 Arab–Israeli war, which led to the Israeli military occupation of the West Bank, Gaza, East Jerusalem and the Golan Heights. And finally, 2017 marked a decade since Israel and Egypt's land, sea and air blockade of Gaza.

1. The West Bank and East Jerusalem

Israel's military occupation⁵⁵ of the West Bank and annexation of East Jerusalem since 1967 has resulted in mass violations of international humanitarian law (IHL) and human rights. Between 2015 and 2017, Israel continued to impose discriminatory policies on, and severely limit the rights of, Palestinians in the West Bank and East Jerusalem, in regard to land confiscation, economic restrictions, unlawful⁵⁶ expansion of settlements, freedom of movement and arbitrary detentions. Palestin-

⁵⁵ As the Occupying Power in the West Bank, Israel must administer the occupied territory's population in accordance with the 1907 Hague Regulations, the 1949 Fourth Geneva Convention (GC IV) and the 1977 Additional Protocol I, the latter two largely reflecting customary international law. See generally International Court of Justice (ICJ), *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, 9 July 2004, §§98–101, <http://www.icj-cij.org/files/case-related/131/131-20040709-ADV-01-00-EN.pdf>. Israel accepts the applicability of the Hague Regulations but denies the applicability of GC IV (although it claims to apply the Convention's humanitarian provisions). *Ibid.*, §93.

⁵⁶ *Ibid.*, §120; see also UNSC Res 446, 22 March 1979.

ian attacks against Israeli civilians have also continued, most of which do not seem to have been part of a concerted, organized effort by a militant group.

a. Sustained Violence

Sustained clashes between Israelis and Palestinians have persisted, with the most significant surge of violence taking place between October 2015 and mid-2016, and then again in July–August 2017.⁵⁷ In addition to demonstrations, most of the violence from the Palestinian side consisted of stabbings (or attempted stabbings) and vehicular attacks (ramming) on Israeli passersby and security forces, committed primarily by individuals acting without the sponsorship of any armed group, and referred to as ‘lone-wolf’ attacks.⁵⁸ Between January 2015 and December 2017, Palestinians killed 62 Israeli citizens and soldiers in the West Bank and Israel⁵⁹ and injured 427 Israeli civilians and security officers.⁶⁰ During the same period, Israeli security forces killed 269 Palestinians and injured 22,688 Palestinians in the West Bank and Israel, including bystanders, protesters and suspected assailants.⁶¹ The Israeli military responded harshly to demonstrators, using tear gas, rubber bullets and live ammunition.

57 Israel Ministry of Foreign Affairs (Israel MFA), ‘Wave of Terror 2015–2017’, 17 December 2017, <http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Palestinian/Pages/Wave-of-terror-October-2015.aspx> (last accessed 5 March 2018).

58 Israel MFA, ‘Wave of Terror 2015–2018’, 13 February 2018, <http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Palestinian/Pages/Wave-of-terror-October-2015.aspx> (last accessed 5 March 2018); Human Rights Watch (HRW), ‘Israel and Palestine: Events of 2017’, *World Report 2018*, <https://www.hrw.org/world-report/2018/country-chapters/israel/palestine> (last accessed 5 March 2018); HRW, ‘Israel/Palestine: Events of 2016’, *World Report 2017*, <https://www.hrw.org/world-report/2017/country-chapters/israel/palestine> (last accessed 5 March 2018).

59 Israel MFA, ‘Victims of Palestinian Violence and Terrorism Since September 2000’, data of fatalities until January 2018, <http://mfa.gov.il/MFA/ForeignPolicy/Terrorism/Palestinian/Pages/Victims%20of%20Palestinian%20Violence%20and%20Terrorism%20sinc.aspx> (last accessed 5 March 2018).

60 For 2017 data, see HRW, ‘Israel and Palestine: Events of 2017’, supra fn 58; for 2016 data see HRW, ‘Israel/Palestine: Events of 2016’, supra fn 58; for 2015 data see HRW, ‘Israel/Palestine: Events of 2015’, *World Report 2016*, <https://www.hrw.org/world-report/2016/country-chapters/israel/palestine> (last accessed 5 March 2018). Although the Israel MFA indicates that between September 2015 and December 2017, 881 individuals were injured, this figure includes ‘uninvolved Palestinians’, which is not defined. Israel MFA, ‘Wave of Terror 2015–2018’, supra fn 58.

61 For 2017 data, see UN Office for the Coordination of Humanitarian Affairs (OCHA), *Protection of Civilians Report / 19 December 2017–1 January 2018*, 4 January 2018, <https://www.ochaopt.org/content/protection-civilians-report-19-december-2017-1-january-2018> (last accessed 5 March 2018); for 2016 data, see OCHA, *Protection of Civilians Report / 27 December 2016–9 January 2017*, 12 January 2017, <https://www.ochaopt.org/content/protection-civilians-report-27-december-2016-9-january-2017> (last accessed 5 March 2018); for 2015 data, see OCHA, *Protection of Civilians Report / 19 December 2015–11 January 2016*, 14 January 2016, <https://www.ochaopt.org/content/protection-civilians-weekly-report-29-december-2015-11-january-2016> (last accessed 5 March 2018). However, HRW *World Reports 2016, 2017 and 2018* (supra fns 58 and 60) depart significantly in the number of Palestinians who were injured during this timeframe (although they are almost identical in regard to the number of Palestinian fatalities). According to HRW, the total number of Palestinians injured by Israelis in Israel, the West Bank and Gaza between January 2015 and December 2017 were: 3,494 in 2017, 3,203 in 2016 and 11,953 in 2015, a total of 18,650. Note that the data provided by HRW include data for the West Bank and Gaza, unlike OCHA’s figures, which provide data for the West Bank and Gaza separately.

b. Land Expropriation, Economic Stagnation, Demolitions and Settlements

Pursuant to the 1995 Israeli–Palestinian Interim Agreement on the West Bank and the Gaza Strip (Oslo Agreement),⁶² the West Bank is divided into three areas: (i) Area A, which consists of approximately 18 percent of the area, is exclusively administered by the Palestinian Authority; (ii) Area B, which consists of approximately 22 percent of the area, is administered by both the Palestinian Authority (administratively) and Israel (security); and (iii) Area C, which consists of the remaining 60 percent of the land, is administered exclusively by Israel. Although the Oslo Agreement envisioned that powers and responsibilities in Area C would be transferred gradually to Palestinian jurisdiction by the 1999 conclusion of the five-year interim period, the timetable for this transfer was never implemented, and Israel has therefore continued to assume administration of Area C, including in planning, building and development.

As the administrator of Area C, Israel has limited Palestinian use of 70 percent of Area C’s land by designating large tracts as firing zones, nature reserves and natural parks, survey land and other similarly restrictive spaces, effectively expropriating thousands of acres of Palestinian land, in many cases for the construction or expansion of settlements.⁶³ The remaining 30 percent of land requires a permit for any use, including construction and grazing. Obtaining such permits has proved extremely difficult.⁶⁴ As a result of these regulations, Palestinians have been restricted in accessing and using their land, and many have been forced to leave their homes and relocate. These land-use restrictions have also severely constrained private investment and economic activity in the West Bank by Palestinians.⁶⁵ Unlike Areas A and B, which represent 227 isolated enclaves, Area C is the only contiguous territory in the West Bank. According to the World Bank, this geographical reality renders Area C indispensable to the efficient movement of goods and people within the West Bank, and also to connective infrastructure development.⁶⁶

Israeli authorities also continued their widespread practice of home and structure demolitions across the West Bank.⁶⁷ Israeli authorities demolish homes in one of three instances: when a building permit is not sought prior to construction (ad-

62 Israeli–Palestinian Interim Agreement on the West Bank and the Gaza Strip, Art 2, Appendix 1, Protocol Concerning Civil Affairs.

63 HRW, ‘Israel: 50 Years of Occupation Abuses’, 4 June 2017, <https://www.hrw.org/news/2017/06/04/israel-50-years-occupation-abuses> (last accessed 5 March 2018).

64 B’Tselem, ‘Restrictions on Movement’, 11 November 2017, https://www.btselem.org/freedom_of_movement (last accessed 5 March 2018). HRW, ‘Israel and Palestine: Events of 2017’, supra fn 58.

65 The World Bank, *Economic Monitoring Report to the Ad Hoc Liaison Committee*, 18 September 2017, §41, <http://documents.worldbank.org/curated/en/515891504884716866/pdf/119657-WP-PUBLIC-on-Monday-1-PM-sept-11-AHLC-report-September-8.pdf> (last accessed 5 March 2018).

66 Ibid.

67 UN Human Rights Council (HRC), Human Rights Situation in the Occupied Palestinian Territory, Including East Jerusalem, Report of the Secretary-General, UN doc A/HRC/34/38, 16 March 2017; UN Office of the High Commissioner for Human Rights (OHCHR), ‘Punitive Demolitions Destroy More Than Homes in Occupied Palestinian Territory’, 28 December 2015, <http://www.ohchr.org/EN/NewsEvents/Pages/PunitiveDemolitionsinOPT.aspx> (last accessed 5 March 2018).

ministrative demolition); if the authorities deem it necessary as part of a military operation (military demolition – the only valid reason under international law for such demolitions), or as a punitive measure against an individual or their family – referred to as ‘collective punishment’ – who have harmed or attempted to harm an Israeli civilian or security personnel (punitive demolition). According to the HRC, demolitions have been identified as a key element of a ‘coercive environment’ in East Jerusalem and the West Bank, particularly in Area C, where Israeli authorities have targeted communities for relocation, especially if they are close to Israeli settlements.⁶⁸ The home demolitions have led to the displacement of thousands of Palestinians.⁶⁹ For example, between 1 August 2016 and 30 November 2017, Israeli authorities confiscated and/or demolished 734 Palestinian-owned structures, including 180 residential inhabited structures, of which 48 were located in East Jerusalem.⁷⁰ Forcible transfer of population in an occupied territory is in violation of IHL and international human rights law.⁷¹

At the same time, Israel continued to facilitate the transfer of Israeli citizens to settlements across the West Bank, while providing them with security, administrative services, housing, education and medical care.⁷² The transfer of a state’s population to the territory it occupies is in breach of the Fourth Geneva Convention, and is considered a war crime that may lead to individual criminal responsibility under the International Criminal Court.⁷³ Israel also increased its settlement activity, authorizing construction work for new settlement housing units.⁷⁴ Approximately 600,000 Israeli citizens currently reside in settlements and outposts across the West Bank and East Jerusalem.⁷⁵ In East Jerusalem in particular, efforts to expand settlements on Palestinian-owned land have continued, particularly in the Old City, leading to an increase in evictions of Palestinian families.⁷⁶ The growth of settlements and their exclusive roads and security infrastructure have resulted in further displacement of Palestinians and have also created significant and, at times, violent tension between settlement populations and Palestinians. Between

68 HRC, *Israeli Settlements in the Occupied Palestinian Territory, Including East Jerusalem, and the Occupied Syrian Golan*, UN doc A/HR/34/39, 16 March 2017, §47.

69 HRC, *Human Rights Situation in the Occupied Palestinian Territory*, supra fn 67.

70 The Office of the Prosecutor (OTP), ICC, *Report on Preliminary Examination Activities 2017*, 4 December 2017, §62, quoting OCHA data, https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf (last accessed 5 March 2018).

71 Art 53, GC IV; Art 1, International Covenant on Economic, Social and Cultural Rights; Art 17, International Covenant on Civil and Political Rights; HRC, *Human Rights Situation in the Occupied Palestinian Territory*, supra fn 67, §20.

72 HRW, ‘Israel and Palestine: Events of 2017’, supra fn 58.

73 ICJ, *Wall case*, supra fn 55, §120; UNSC Res 2334, 23 December 2016; UNSC Res 465, 1 March 1980; UNGA Res 70/89, 9 December 2015; HRC Res 31/36, 24 March 2016; Conference of High Contracting Parties to the Fourth Geneva Convention Declaration, 17 December 2014, §8; HRC, *Human Rights Situation in the Occupied Palestinian Territory*, supra fn 67, §19.

74 HRC, *Human Rights Situation in the Occupied Palestinian Territory*, supra fn 67.

75 B’Tselem, ‘Settlements’, 11 November 2017, <https://www.btselem.org/settlements> (last accessed 5 March 2018).

76 HRC, *Israeli Settlements in the Occupied Palestinian Territory*, supra fn 68.

2015 and 2017, Israeli settler violence led to the death of 179 Palestinians and damages to Palestinian property in 322 separate incidents in the West Bank.⁷⁷

c. Freedom of Movement and the Separation Barrier

Israel controls the freedom of movement of Palestinians within the West Bank and between the West Bank and the Gaza Strip, and Israel and abroad, primarily through checkpoints spread across the West Bank and the Separation Barrier or wall (a system of fences and some sections of concrete wall) dividing the West Bank and Israel. In its advisory opinion of 2004, the International Court of Justice (ICJ) found the Separation Barrier to be illegal under international law because, amongst other reasons, it departed markedly from the Armistice Line of 1949 (also referred to as the Green Line) – a dividing line between Israel and Palestine agreed on by Israeli and Arab Forces following the 1948 Arab–Israeli War.⁷⁸ Israel has continued to build the Separation Barrier, having completed approximately 65 percent by September 2017.⁷⁹

As currently built, the Separation Barrier has effectively annexed Palestinian lands and resources west of the Separation Barrier (areas referred to as ‘seam zones’). Approximately 85 percent of the Separation Barrier falls within the West Bank.⁸⁰ Once completed, approximately 9.4 percent of the West Bank, including East Jerusalem, will be isolated from the rest of the West Bank.⁸¹ Approximately 11,000 Palestinians are trapped between the Separation Barrier and the Green Line, requiring them to cross checkpoints on a daily basis to access their work, family and friends, school and other daily destinations.⁸² The Separation Barrier has also limited access to farmland and land to graze animals to approximately 150 Palestinian communities, blocking thousands of Palestinians from freely accessing and cultivating their land.⁸³ Thus, many Palestinians have been forced to abandon lucrative lands, allowing much of it to be confiscated by the Israeli Government.

The nearly 100 checkpoints located across the West Bank⁸⁴ have resulted in the severe restriction of movement for Palestinians, as these checkpoints can forbid access through a road or significantly increase travel time within the West Bank without notice or explanation. In the case of East Jerusalem, which Israel unlaw-

77 For 2017, 2016 and 2015 figures on demolitions, see OCHA, *Protection of Civilians Report 2018*, 2017 and 2016, respectively, supra fn 61.

78 See ICJ, *Wall case*, supra fn 55, §72.

79 OCHA, ‘West Bank Barrier’, <https://www.ochaopt.org/theme/west-bank-barrier> (last accessed 5 March 2018).

80 HRC, *Human Rights Situation in the Occupied Palestinian Territory*, supra fn 67.

81 Ibid.

82 HRW, ‘Israel/Palestine: Events of 2016’, supra fn 58; S. McNeill, ‘Occupied Lives: Palestinians in the West Bank Have Now Spent 50 Years Under Israeli Military Control’, *ABC*, 30 June 2017, <http://www.abc.net.au/news/2017-06-06/occupied-lives-palestinians-israel-military-control/8578368>.

83 HRC, *Human Rights Situation in the Occupied Palestinian Territory*, supra fn 67.

84 B’Tselem, ‘List of Checkpoints and Forbidden Roads’, 8 February 2017, https://www.btselem.org/freedom_of_movement/checkpoints_and_forbidden_roads#list (last accessed 5 March 2018).

fully annexed in 1967,⁸⁵ the Separation Barrier and checkpoints have completely sealed off access to it for Palestinians residing in the West Bank, unless they are able to obtain a permit to enter the city and access Israel, which involves a non-transparent and arbitrary approval process.⁸⁶

d. Arbitrary Detention

In the West Bank, Israeli authorities carry out administrative detentions pursuant to a military order on Security Provisions. In administrative detention, a person is held without charge or trial, and the evidence is considered 'secret' and withheld from the defendant and their lawyer. In December 2017, Israel was holding 434 Palestinian administrative detainees without charge or trial.⁸⁷ The Israeli military detains Palestinians inside Israel, violating international law, which requires them to be held within the occupied territory.⁸⁸ About 1,000 Palestinian prisoners protested by organizing a 40-day hunger strike in mid-2017.⁸⁹

e. The Palestinian Authority

Since the Hamas–Fatah split in 2007, the Palestinian Authority (PA) in the West Bank has been controlled by the political faction Fatah. In governing the West Bank, the PA and its security services have been accused of corruption,⁹⁰ arbitrary arrests and torture and mistreatment of detainees.⁹¹ In particular, the PA in the West Bank has been accused of arbitrarily arresting journalists,⁹² activists and students for their alleged affiliation with Hamas or other political opponents or for political criticism of Fatah and the PA.⁹³ The Independent Commission for Human

85 See generally UNSC Res 478, 20 August 1980; UNSC Res 476, 30 June 1980; UNGA Res 70/88, 9 December 2015; UNGA Res and 71/96, 6 December 2016.

86 B'Tselem, 'Restrictions on Movement', supra fn 64.

87 Addameer, 'Statistics', November 2017, <http://www.addameer.org/statistics/20171130> (last accessed 5 March 2018).

88 Amnesty International, 'Israel Must End 'Unlawful and Cruel' Policies Towards Palestinian Prisoners', 13 April 2017, <https://www.amnesty.org/en/latest/news/2017/04/israel-must-end-unlawful-and-cruel-policies-towards-palestinian-prisoners/> (last accessed 5 March 2018). See generally N. Ishaq, *Violating International Legal Obligations: Israel's Treatment of Palestinian Prisoners*, Directorate-General for External Policies of the European Union, 12 March 2013, http://www.europarl.europa.eu/RegData/etudes/briefing_note/join/2013/491484/EXPO-AFET_SP%282013%29491484_EN.pdf (last accessed 5 March 2018).

89 I. Fisher, 'Palestinian Prisoners End Hunger Strike in Israel After 40 Days', *The New York Times*, 27 May 2017, <https://www.nytimes.com/2017/05/27/world/middleeast/palestinian-prisoners-hunger-strike-israel.html>.

90 T. Dana, 'Corruption in Palestine: A Self-Enforcing System', Al-Shabaka, 18 August 2015, <https://al-shabaka.org/briefs/corruption-in-palestine/> (last accessed 5 March 2018).

91 Amnesty International, 'Palestine (State of) 2016/2017', <https://www.amnesty.org/en/countries/middle-east-and-north-africa/palestine-state-of/report-palestine-state-of/> (last accessed 5 March 2018).

92 Amnesty International, 'Palestine: Dangerous Escalation in Attacks on Freedom of Expression', 23 August 2017, <https://www.amnesty.org/en/latest/news/2017/08/palestine-dangerous-escalation-in-attacks-on-freedom-of-expression/> (last accessed 5 March 2018).

93 Amnesty International, 'Palestine (State of) 2016/2017', supra fn 91.

Rights (ICHR), a statutory commission that monitors human rights violations in Palestine, received a total of 205 complaints of torture and other ill-treatment of detainees committed by the PA's security forces in the West Bank between January and October 2017.⁹⁴

Further, in June 2017, President Abbas' administration introduced the Electronic Crimes Law by executive decree, which imposed tight controls on media freedom and severely banned online expression.⁹⁵ A number of human rights activists were subsequently charged under the law for criticizing the PA.⁹⁶ Although the Justice Ministry proposed several amendments to the law in response to widespread criticism, a number of problematic provisions remain that limit citizens' rights to privacy and freedom of expression, including the authorities' right to conduct surveillance, force service providers to retain consumer data and block websites.⁹⁷

Finally, the UN Human Rights Council (HRC) reported, referring to the Middle East Quartet's findings, that some members of Fatah publicly supported attacks against Israel and encouraged violent confrontation, with no concerted and consistent action apparently taken by Fatah to prevent such statements.⁹⁸ Despite these statements, the PA in the West Bank and the Israeli Government have upheld their security alliance (unpopular with many Palestinians⁹⁹), first established pursuant to the 1993 Oslo Accords.¹⁰⁰

2. The Gaza Strip

2017 marked 10 years of the blockade of Gaza by Israel and Egypt. The blockade was imposed after Hamas won the 2006 Palestinian elections, a conflict between Fatah and Hamas led to their split in 2007 and Hamas did not agree to renounce

94 HRW, 'Israel and Palestine: Events of 2017', supra fn 58; see also U.S. Department of State, *2016 Human Rights Reports: Israel and The Occupied Territories*, 3 March 2017, <https://www.state.gov/j/drl/rls/hrrpt/2016/nea/265502.htm>.

95 Tamleh – The Arab Center for the Advancement of Social Media, 'The Full English Translation of the Palestinian Cyber Crime Law', 2 August 2017, <https://tamleh.org/2017/08/02/the-full-english-translation-of-the-palestinian-cyber-crime-law/> (last accessed 5 March 2018); Addameer, *Behind a Firewall: Repercussions of the PA 'Electronic Crimes Law'*, 20 August 2017, <http://www.addameer.org/publications/behind-firewall-repercussions-pa-%E2%80%98electronic-crimes-law%E2%80%99> (last accessed 5 March 2018).

96 Amnesty International, 'Palestinian Human Rights Activist Charged Under Repressive New Cybercrimes Law', 7 September 2017, <https://www.amnesty.org/en/press-releases/2017/09/palestinian-human-rights-activist-charged-under-repressive-new-cybercrimes-law/> (last accessed 5 March 2018).

97 HRW, 'Palestine: Reform Restrictive Cybercrime Law', 20 December 2017, <https://www.hrw.org/news/2017/12/20/palestine-reform-restrictive-cybercrime-law> (last accessed 5 March 2018).

98 HRC, Additional Information Pertaining to the Comprehensive Review on the Status of Recommendations Addressed to all Parties Since 2009 With Regard to the Occupied Palestinian Territory, Including East Jerusalem, UN doc A/HRC/35/19.Add.1, 15 June 2017, §35.

99 Approximately 64 percent of Palestinians are against the Israeli–Palestinian security cooperation, increasingly likened by Palestinians to cooperation with the 'enemy'. J. Lisiecka, *Israeli–Palestinian Security Cooperation: What Next?* European Union Institute for Security Studies, May 2017, https://www.iss.europa.eu/sites/default/files/EUISSFiles/Alert_12_Israel_and_Palestine.pdf (last accessed 5 March 2018).

100 Ibid.

violence against Israel, recognize the state of Israel and honour all previous agreements between Israel and the PA. Israel claims it no longer occupies the Gaza Strip as it dismantled all settlements, withdrew its military forces and declared the end of the military government.¹⁰¹ However, Palestinian human rights organizations argue that in practice, the occupation continues as Israel controls all border crossings by land apart from the one entry point into Egypt, as well as Gaza's sea and air space.¹⁰²

a. The Blockade

As part of Israel's control of Gaza's border, it has blocked nearly all outgoing goods from Gaza and severely limited the entry and exit of persons by allowing only 'exceptional humanitarian cases', which primarily refers to medical patients, their companions and prominent business people. Egypt has similarly blocked all regular movement of goods at the crossing it controls in Rafah, and imposed increased restrictions on the movement of people. As of mid-2017, the PA in the West Bank has imposed its own punitive measures to force Hamas into a reconciliation deal (discussed below under 'Fatah and Hamas Reconciliation').

The effects of the blockade and the punitive measures imposed by Fatah in 2017 have been catastrophic for Gaza. The infrastructure and public services were in a critical condition by the end of 2017. As reported in November 2017, over 95 percent of water pumped in Gaza was contaminated and thus undrinkable.¹⁰³ Unemployment rates in Gaza reached 44 percent.¹⁰⁴ Electricity was provided for only two to four hours a day (with generators providing some extended periods).¹⁰⁵ Due to the power shortage, hospitals worked at minimal capacity, with only the most critical services being provided to the public. Wastewater plants operated on shortened treatment cycles, resulting in a decreased quality of sewage.¹⁰⁶ According to

101 R. Eglash, 'Does Israel Actually Occupy the Gaza Strip?', 2 July 2015, *The Washington Post*, https://www.washingtonpost.com/news/worldviews/wp/2015/07/02/does-israel-actually-occupy-the-gaza-strip/?utm_term=.a0275e0638b0.

102 Ibid.

103 B'Tselem, 'The Gaza Strip', 11 November 2017, https://www.btselem.org/gaza_strip (last accessed 5 March 2018).

104 World Bank, *Economic Monitoring Report*, supra fn 65.

105 Although the flow of electricity was already inadequate between 2015 and early 2017, in April 2017, President Abbas decided to stop funding the electricity that Israel supplied to the Gaza Strip, which made up approximately 30 percent of Gaza's total power needs. I. Kershner, 'Challenging Hamas, Palestinian Authority Cuts Electricity Payments for Gaza', *The New York Times*, 27 April 2017, <https://www.nytimes.com/2017/04/27/world/middleeast/palestinian-authority-hamas-gaza-electricity.html>; International Committee of the Red Cross (ICRC), 'Electricity Shortages Affect all Aspects of Life in Gaza', 15 May 2017, <https://www.icrc.org/en/document/Gaza-power-fuel-crisis> (last accessed 5 March 2018); Amnesty International, 'Gaza: Looming Humanitarian Catastrophe Highlights Need to Lift Israel's 10-Year Illegal Blockade', 14 June 2017, <https://www.amnesty.org/en/latest/news/2017/06/gaza-10-year-illegal-blockade/> (last accessed 5 March 2018).

106 OCHA, *The Humanitarian Impact of the Gaza Electricity Crisis, May 2017*, 4 May 2017, <https://reliefweb.int/report/occupied-palestinian-territory/humanitarian-impact-gaza-electricity-crisis-may-2017> (last accessed 5 March 2018).

the UN Conference on Trade and Development, 'the social, health and security-related ramifications of the high population density and overcrowding are among the factors that may render Gaza unlivable by 2020'.¹⁰⁷

The punitive measures taken by Fatah in 2017 against Gaza further exacerbated its humanitarian crisis.¹⁰⁸ In April 2017, the PA imposed a tax on industrial diesel used for Gaza's power plant; unable to pay the new taxes, the plant ran out of fuel, leaving a number of schools, hospitals and businesses only partly operational.¹⁰⁹ In mid-2017, the PA reduced the salaries of approximately 50,000 Gaza-based civil servants by about 30 percent and forced more than 6,000 civil servants based in Gaza into early retirement.¹¹⁰ Finally, President Abbas further restricted medical border crossings for Gazans.¹¹¹

b. Hamas

Since Operation Protective Edge in 2014, Palestinian armed groups¹¹² have continued to launch rocket and mortar attacks (at times indiscriminately) on Israel; Israel has continued to respond with overwhelmingly superior firepower. According to the UN Office for the Coordination of Humanitarian Affairs, between 2015 and 2017, Israeli security forces killed approximately 64 Palestinians and injured approximately 12,150 Palestinian in Gaza, including bystanders, protesters and suspected assailants.¹¹³ Israeli authorities have reported no Israeli fatalities or injuries between January 2015 and 2017 resulting from violence in or rocket and mortar attacks from Gaza.

Hamas in Gaza has been accused of launching a repressive campaign against dissenters, especially journalists from opposition media outlets, who have been arbitrarily detained, mistreated and tortured.¹¹⁴ The ICHR received a total of 193 complaints of torture and other ill-treatment of detainees by Hamas security forces between January and October 2017.¹¹⁵

107 UN Conference on Trade and Development, Report on UNCTAD Assistance to the Palestinian People: Developments in the Economy of the Occupied Palestinian Territory, UN doc TD/B/62/3, 6 July 2015.

108 'Gaza Strip Faces Humanitarian Catastrophe as President's Punitive Measures Take Effect,' *Fanack Chronicle for the Middle East and North Africa*, 22 August 2017, <https://fanack.com/palestine/history-past-to-present/gaza-humanitarian-catastrophe/> (last accessed 5 March 2018).

109 Ibid.

110 Ibid.

111 Ibid.

112 The main Palestinian armed groups operating from Gaza include Hamas and its military wing, the Izz ad-Din al-Qassam Brigades; the Palestinian Islamic Jihad; the Popular Resistance Committees and its military wing, the Al-Nasser Salah al-Deen Brigades; and Fatah and its military wing, the Al-Aqsa Martyrs Brigade. There are also other smaller armed groups, some affiliated to al-Qaeda, that operate in and from Gaza, including Jaysh al-Islam, Jaysh al-Ummah, Hizb-ut-Tahrir, Mujahideen Shura Council in the Environs of Jerusalem, and Harakat as-Sabirin Nasran li-Filastin. *Palestinian Territories*, American Foreign Policy Council's *World Almanac of Islamism*, 22 September 2017, <http://almanac.afpc.org/palestinian-territories/> (last accessed 5 March 2018).

113 For 2017, 2016 and 2015 figures on casualties and injuries in Gaza, see OCHA, *Protection of Civilians Report 2018*, 2017 and 2016, respectively, supra fn 61.

114 Amnesty International, 'Palestine', supra fn 92.

115 HRW, 'Israel and Palestine: Events of 2017', supra fn 58.

Further, the HRC in 2017 highlighted several reports that document the Palestinian authorities' persistent use of statements meant to incite violence against Israel, noting that Hamas and other radical factions in Gaza 'use media outlets to glorify terrorism and openly call for violence against Jews, including instructing viewers on how to carry out stabbings.'¹¹⁶ For example, Moshir El Masry, a member of the legislative committee of Hamas' bureau, urged all imprisoned Palestinians in February 2017 to 'initiate a stabbing intifada behind bars targeting Israeli soldiers'.¹¹⁷

B. PARTIES TO THE CONFLICTS

The parties to the conflict are Israel and Palestine, with Fatah in the West Bank and Hamas being the two key political factions in Palestine. The multiple armed groups operating in Gaza and the West Bank can generally be categorized as one of the following: (1) Hamas-affiliated, (2) Fatah-affiliated, (3) Palestinian Islamic Jihad or (4) Salafist Groups.

One of these groups that is poised to keep growing, if not in numbers and support, then certainly in terms of publicity, is the Islamic State of Iraq and the Levant – Sinai Province (ISIL-SP). According to various reports, ISIL-SP has been gaining popularity at least with a certain part of Palestinian society, especially in the Gaza Strip.¹¹⁸ It has been a strong critic of Hamas (and Fatah) for several years, accusing it of being a false representative of Islamic ideology – one that does not adhere to a Salafi jihadist doctrine and methodology.¹¹⁹ In January 2018, it formally declared war against Hamas by publicly broadcasting the execution of a Hamas-affiliated militia member.¹²⁰

C. KEY DEVELOPMENTS IN 2017: THE PALESTINIAN-ISRAELI ARMED CONFLICT FIFTY YEARS ON

i. Settlements

The expansion of, and operations in, settlements have continued to draw headlines, with several major developments within the past year. On 23 December 2016, the UN Security Council (UNSC) passed Resolution 2334, which condemned,

116 HRC, Additional Information supra fn 98, §35.

117 Ibid.

118 S. Moubayed, 'Hamas Powerless as ISIS Gains Ground in Palestine', *Asia Times*, 11 January 2017, <http://www.atimes.com/article/hamas-powerless-isis-gains-ground-palestine/>; S. Batrawi, 'Understanding ISIS's Palestine Propaganda', *Al-Shabaka*, 30 March 2016, <https://al-shabaka.org/commentaries/understanding-isis-palestine-propaganda/>.

119 S. Batrawi, 'What ISIS Talks About When It Talks About Palestine', *Foreign Affairs*, 28 October 2015, <https://www.foreignaffairs.com/articles/israel/2015-10-28/what-isis-talks-about-when-it-talks-about-palestine>.

120 In the video, published online, members of ISIL-SP execute an individual whom they identify as a Hamas collaborator and call on ISIS's followers to attack Hamas. J. Khoury, 'ISIS in Sinai Executes Hamas Militant, Accuses Gaza Group of Abandoning Palestinians', *Haaretz*, 4 January 2018, <https://www.haaretz.com/middle-east-news/palestinians/1.833052>; J. Moore, 'Gaza's Next War: ISIS Vows to Overthrow Radical Rival Hamas for Failing to Stop Trump', *Newsweek*, 4 January 2018, <http://www.newsweek.com/gazas-next-war-looms-isis-vows-defeat-hamas-failing-stop-trump-770694>.

inter alia, all measures aimed at altering the demographic composition of Palestine since 1967, including 'the construction and expansion of settlements, transfer of Israeli settlers, confiscation of land, demolition of homes and displacement of Palestinian civilians, in violation of international humanitarian law'.¹²¹ Resolution 2334 also significantly stated that 'the cessation of all Israeli settlement activities is essential for salvaging the two-State solution'. The UNSC passed the resolution with 14 votes to 0, with an abstention from the United States¹²² – departing from the US's longstanding policy of shielding Israel from such UN initiatives.

The US decision to abstain came at the very end of President Obama's eight-year administration – a step many regarded as a punishment for Netanyahu's government failing to progress in peace negotiations at a pace the Obama administration considered acceptable.¹²³ The Obama administration had made multiple efforts to broker peace in the Middle East, first with George Mitchell, a diplomatic veteran who was instrumental in the Northern Ireland peace process, but who resigned from his Middle East post after only two years, having made limited progress. Then, in 2013, John Kerry, President Obama's second Secretary of State, attempted to restart the peace process, but these talks also failed in March 2014. When explaining the US decision to abstain on the UNSC vote, Kerry blamed Netanyahu's coalition for jeopardizing the two-state solution as a result of its steadfast commitment to settlements. He described the coalition as the 'most right wing in Israeli history, with an agenda driven by the most extreme elements'.¹²⁴ As former US Ambassador to the UN Samantha Powers further noted, '[t]he settlement problem has gotten so much worse that it is now putting at risk the very viability of that two-state solution'.¹²⁵

Equally significant is the early positioning of President Trump (who was at the time of Resolution 2334's vote President-elect) and his administration on Israel–Palestine generally, and in particular the settlement issue. As was later reported, former National Security Advisor Michael Flynn was involved in significant back-channel attempts at the time to prevent the resolution from being tabled and later from being approved (despite the fact that transition administrations are

121 UNSC Res 2334, supra fn 73.

122 United Nations, 'Israel's Settlements Have No Legal Validity, Constitute Flagrant Violation of International Law, Security Council Reaffirms', 23 December 2016, <https://www.un.org/press/en/2016/sc12657.doc.htm> (last accessed 5 March 2018).

123 N. Sachs, 'What's New and What's Not in the U.N. Resolution on Israeli Settlements', *Brookings*, 26 December 2016, <https://www.brookings.edu/blog/markaz/2016/12/26/whats-new-and-whats-not-in-the-u-n-resolution-on-israeli-settlements/> (last accessed 5 March 2018).

124 J. Kerry, 'Remarks on Middle East Peace', Washington, D.C., 28 December 2016, <https://2009-2017.state.gov/secretary/remarks/2016/12/266119.htm> (last accessed 5 March 2018).

125 'Full Text of US Envoy Power's Speech Following Abstention at the UN', *The Jerusalem Post*, 24 December 2016, <http://www.jpost.com/American-Politics/Read-Full-text-of-US-envoy-Powers-speech-following-abstention-at-the-UN-476370>.

discouraged from taking any active role prior to inauguration).¹²⁶ The current US Ambassador to the UN, Nikki Haley, has made clear that Resolution 2334 was a mistake and is working closely with Israel to overturn it (a challenging task, given that it would require a new motion, a majority on the Council and no veto from any of the permanent members).¹²⁷

The most significant domestic development in relation to settlements took place on 6 February 2017, when Israel's Knesset passed the 'Regularisation Law' by 60 votes to 52, which retroactively legalizes Israeli outposts¹²⁸ on privately-owned Palestinian land built by settlers in good faith or with government support.¹²⁹ Under the law, Palestinian landowners will be offered compensation above the market rate for the long-term use of their property but will not be able to reclaim it. So far, it allows for the retroactive legalization of land in more than 50 outposts, amounting to approximately 4,000 settler homes.¹³⁰ It is extremely controversial in and outside Israel, with Israel's Attorney General, Avichai Mandelblit, describing it as unconstitutional and in contravention of the Fourth Geneva Convention,¹³¹ and the UN's coordinator for the Middle East peace process, Nicky Mladenov, claiming that the legislation 'opens the floodgates to the potential annexation of the West Bank'.¹³² The Israeli High Court has not yet ruled on its constitutionality but in August issued an injunction to freeze its implementation pending its decision.¹³³

In addition to legal steps, Israel's security cabinet in March 2017 approved the construction of Amichai, a new settlement aimed at housing the residents of an illegal outpost that had been evacuated following a ruling by the Israeli High Court of Jus-

126 C. Lynch, 'Flynn Pressured U.N. On Israel Vote Before Taking Office', *Foreign Policy*, 13 February 2017, <http://foreignpolicy.com/2017/02/17/logan-trump-israel-flynn-pressured-u-n-on-israel-vote-before-taking-office/>.

127 'Israel and US to Work to Annul UN Anti-Settlement Resolution', *The Times of Israel*, 7 June 2017, <https://www.timesofisrael.com/israel-and-us-to-work-to-annul-un-anti-settlement-resolution/>.

128 Under Israeli law, outposts are considered illegal Israeli settlements, constructed without the authorization of the Israeli government. Under international law, both outposts and settlements are considered illegal.

129 R. Wootliff, 'In Historic First, Israel Legalizes West Bank Outposts With Sweeping New Legislation', *The Times of Israel*, 6 February 2017, <https://www.timesofisrael.com/in-historic-first-israel-legalizes-west-bank-outposts-with-sweeping-new-legislation/>.

130 J. Reed, 'Israeli Settlement Law "Crosses Thick Red Line", Warns UN Envoy', *Financial Times*, 7 February 2017, <https://www.ft.com/content/13786bba-ed46-11e6-930f-061b01e23655>; see also 'Israel Passes Controversial Law on West Bank Settlements', *BBC News*, 7 February 2017, <http://www.bbc.com/news/world-middle-east-38888649>.

131 I. Fisher, 'Israel Passes Provocative Law to Retroactively Legalize Settlements', *The New York Times*, 6 February 2017, <https://www.nytimes.com/2017/02/06/world/middleeast/israel-settlement-law-palestinians-west-bank.html>; E. Chachko, 'Israel's Settlement Regularization Law: The Attorney General's Extraordinary Brief and What It Means for Israel's Legal Stance on Illegal Settlements', *Lawfare Blog*, 8 December 2017, <https://www.lawfareblog.com/israels-settlement-regularization-law-attorney-generals-extraordinary-brief-and-what-it-means> (last accessed 5 March 2018).

132 Reed, 'Israeli Settlement Law', supra fn 130.

133 J. Magid and S. Winer, 'High Court Freezes Controversial Outpost Legalization Law', *The Times of Israel*, 17 August 2017, <https://www.timesofisrael.com/high-court-freezes-controversial-outpost-legalization-law/>.

tice.¹³⁴ Although existing settlements have grown in size (and illegal outposts have been made legal as discussed above), this is the first new settlement since 1999, and thus a significant and defiant step by the Israeli Government.¹³⁵

In March 2016, the HRC voted, with 32 countries in favour and 15 abstaining, to produce a database of all business enterprises operating in Israeli settlements in the West Bank, East Jerusalem and the Golan Heights.¹³⁶ The basis for this initiative is a 2013 HRC report on the fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people.¹³⁷ Article 117 of the report required that private companies assess their activities in Israeli settlements to ensure that they do not have an adverse impact on the human rights of the Palestinian people. Although the database was due to be published in March 2017, its release has already been postponed twice, first to December 2017, and most recently to the first quarter of 2018.¹³⁸ Throughout 2017, the US criticized the HRC for this initiative and exerted pressure to prevent its publication.¹³⁹

2. Fatah and Hamas Reconciliation

On 11 October 2017, the two main Palestinian factions, Fatah and Hamas, signed a reconciliation agreement to create a national consensus government uniting both parties in the West Bank and Gaza.¹⁴⁰ Egypt brokered the reconciliation talks in Cairo. As part of the deal, Hamas has agreed to transfer administrative control of Gaza to the PA (including the Rafah border with Egypt) and, in return, the PA will lift its sanctions, easing Gaza's economic blockade. In addition, legislative, presidential and national council elections are to be held within one year.¹⁴¹

134 Y. Berger, 'Israeli Cabinet Approves Resumption of Work on New West Bank Settlement', *Haaretz*, 3 September 2017, <https://www.haaretz.com/israel-news/1.810403>.

135 M. Lubell, 'Israeli Cabinet Approves First West Bank Settlement in 20 Years', *Reuters*, 30 March 2017, <https://www.reuters.com/article/us-israel-palestinians-settlement/israeli-cabinet-approves-first-west-bank-settlement-in-20-years-idUSKBN1711K6>.

136 OHCHR, 'Human Rights Council Adopts Six Resolutions and Closes its Thirty-First Regular Session', 24 March 2016, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=18535&LangID=E/> (last accessed 5 March 2018).

137 HRC, Report of the Independent International Fact-Finding Mission to Investigate the Implications of the Israeli Settlements on the Civil, Political, Economic, Social and Cultural Rights of the Palestinian People Throughout the Occupied Palestinian Territory, Including East Jerusalem', UN doc A/HRC/22/63, 7 February 2013.

138 According to the Israeli government, approximately 100 local companies have received warning letters that they will be on the list. These include Israeli banks, supermarkets, restaurant chains, bus lines and security firms, as well as multinational corporations that provide equipment or services used to build or maintain settlements. 'Israel Races to Head Off UN Settlement "Blacklist"', *CNBC*, 26 November 2017, <https://www.cnbc.com/2017/11/26/israel-races-to-head-off-un-settlement-blacklist.html>.

139 Ibid.

140 D. Walsh and D. Halbfinger, 'Unity Deal Offers Hope for Palestinians and a Respite for Gaza', *The New York Times*, 12 October 2017, <https://www.nytimes.com/2017/10/12/world/middleeast/palestinians-fatah-hamas-gaza.html>.

141 N. al-Mughrabi and O. Fahmy, 'Palestinian Rivals Fatah, Hamas Sign Reconciliation Accord', *Reuters*, 12 October 2017, <https://www.reuters.com/article/us-palestinians-talks/palestinian-rivals-fatah-hamas-sign-reconciliation-accord-idUSKBN1CHOF5>.

This is not the first attempt at reunification; the previous agreements, most notably the 2007 Mecca agreement, 2011 Cairo agreement and 2014 al-Shati (Beach refugee camp) agreement, all failed. However, what makes the latest attempt the most promising yet is that Hamas has never been as cornered as it is today. The Israeli and Egyptian blockades of Gaza, coupled with the harsh measures taken against Gaza by the PA, have led to the continued – and unsustainable – deterioration of living conditions in Gaza. In addition, Qatar, which until recently was Hamas' main donor, has taken a step back as a result of its diplomatic dispute with regional allies like Saudi Arabia¹⁴² (despite Hamas' reports claiming that its relationship with Qatar remains unchanged¹⁴³). These factors, and internal conflicts, have pushed Hamas to the negotiating table.

However, as promising as this reconciliation deal may seem, several issues remain unresolved, a number of which have led to the failure of past reconciliation attempts. First, in its strong belief that resistance to Israel must continue, Hamas has insisted that it will not lay down its arms. (Notably, Hamas unveiled a political programme in May 2017 stating that it accepted an interim Palestinian state within pre-1967 boundaries, effectively recognizing the existence of Israel. Although a number of Hamas leaders had already made public statements to this effect, this was the first time Hamas did so as part of its political programme).¹⁴⁴ What would happen to the 25,000 members of Hamas' military wing and other Palestinian factions¹⁴⁵ is also an open question. Similarly, there is serious concern about what will happen to the tens of thousands of civil servants employed by Hamas.¹⁴⁶ Another significant obstacle to reconciliation is the elections that have been promised – many are skeptical that Fatah will expose itself to a popular election, especially in Gaza, given the 2006 results. Success will also depend on those supporting the reconciliation process from afar – reportedly, the agreement is backed by Egypt (with whom Hamas' relations have improved in the past few months), the US, Saudi Arabia, the United Arab Emirates and even Israel.¹⁴⁷ The continued support – and when necessary, the willingness to exert the right type of pressure – will also be a determinant.

142 Ibid.

143 'Hamas: No Rift With Qatar Over Fatah Reconciliation', *Al Jazeera*, 22 October 2017, <http://www.aljazeera.com/news/2017/10/hamas-rift-qatar-fatah-reconciliation-171022152847114.html>.

144 Hamas, 'A Document of General Principles and Policies', 1 May 2017, <http://hamas.ps/en/post/678/a-document-of-general-principles-and-policies>; P. Wintour, 'Hamas Presents New Charter Accepting a Palestine Based on 1967 Borders', *The Guardian*, 1 May 2017, <https://www.theguardian.com/world/2017/may/01/hamas-new-charter-palestine-israel-1967-borders>; 'New Hamas Policy Document "Aims to Soften Image"', *BBC News*, 1 May 2017, <http://www.bbc.com/news/world-middle-east-39744551>.

145 See supra fn 112 for Palestinian armed groups.

146 'Key Points on the Hamas-Fatah Palestinian Reconciliation Deal', *The Times of Israel*, 12 October 2017, <https://www.timesofisrael.com/key-points-of-the-hamas-fatah-palestinian-reconciliation-deal/>.

147 Walsh and Halbfinger, 'Unity Deal', supra fn 140.

3. Jerusalem

The latest development in 2017 was President Trump's decision on 6 December to recognize Jerusalem as the capital of Israel. The long-term impact of this decision, and any legal and diplomatic consequences, are not yet clear. Yet, its most immediate impact is well-known.

Palestinian President, Mahmoud Abbas, responded to President Trump's announcement by stating that Palestine no longer recognized the US as a mediator in the peace negotiations.¹⁴⁸ Hamas quickly responded with rocket attacks against Israeli towns close to the Gaza border, following a declaration of a 'day of rage' by Palestinian factions in protest at President Trump's announcement. The Israeli military responded by launching airstrikes on Gaza and killing at least two Palestinians. Although protests and demonstrations were organized in the West Bank and Gaza, and clashes between protesters and the Israeli military in the West Bank led to some casualties and injuries, there is no indication yet that these acts will develop into a more extensive surge of violence.

Further, the decision resulted in an immediate international outcry. On 21 December 2017, the UN General Assembly (UNGA) passed a resolution by an overwhelming majority declaring 'null and void' any actions intended to alter Jerusalem's 'character, status or demographic composition', and stating that the Holy City 'is a final status issue to be resolved through negotiations in line with relevant UN resolutions'.¹⁴⁹ The vote lineup was significant, as only 8 countries supported the US (Guatemala, Honduras, Israel, the Marshall Islands, the Federated States of Micronesia, Nauru, Palau and Togo), with 35 abstentions.¹⁵⁰ Turkish President, Recep Tayyip Erdogan, also took steps to organize Arab and Muslim countries in an extraordinary summit of the Organization of Islamic Cooperation, which met on 14 December 2017 and declared East Jerusalem the capital of Palestine.¹⁵¹ Reportedly, Saudi Arabia¹⁵² and Egypt¹⁵³ were both previously informed of President Trump's decision.

148 P. Beaumont, 'Palestinians No Longer Accept US As Mediator, Abbas Tells Summit', *The Guardian*, 13 December 2017, <https://www.theguardian.com/world/2017/dec/13/recep-tayyip-erdogan-unite-muslim-world-trump-east-jerusalem>.

149 UN News, 'General Assembly Demands All States Comply With UN Resolutions Regarding Status of Jerusalem', 21 December 2017, <http://www.un.org/apps/news/story.asp?NewsID=58330#.WID61LbMxBw> (last accessed 5 March 2018). UNGA Draft Res A/ES-10/L.22, 19 December 2017.

150 Ibid.

151 'OIC Declares East Jerusalem as Palestinian Capital', *Al Jazeera*, 14 December 2017, <http://www.aljazeera.com/news/2017/12/oic-leaders-reject-trump-decision-jerusalem-171213095417995.html>.

152 'Trump's Jerusalem Move "Coordinated With Arab Leaders"', *The New Arab*, 7 December 2017, <https://www.alaraby.co.uk/english/News/2017/12/7/Trumps-Jerusalem-move-coordinated-with-Arab-leaders>.

153 D. Kirkpatrick, 'Tapes Reveal Egyptian Leaders' Tacit Acceptance of Jerusalem Move', *The New York Times*, 6 January 2018, <https://www.nytimes.com/2018/01/06/world/middleeast/egypt-jerusalem-talk-shows.html>.

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS

In January 2015, Palestine accepted the jurisdiction of the International Criminal Court (ICC) over alleged crimes committed in the occupied Palestinian territory, including East Jerusalem, since June 2014. It subsequently acceded to the 1998 Rome Statute, becoming an ICC State Party in April. The ICC Office of the Prosecutor (OTP) opened a preliminary examination into the situation in Palestine that same month to determine whether the criteria have been met to pursue a formal investigation into crimes committed in and from Palestine.¹⁵⁴ Since then, the OTP has made numerous visits to Israel and the West Bank, held meetings with Israeli and Palestinian officials and received approximately 100 communications.¹⁵⁵ According to its December 2017 Report on Preliminary Examination Activities, the focus of its preliminary examination in Palestine is twofold: (1) settlement-related activities in the West Bank and East Jerusalem, in particular as they relate to the displacement of Palestinian residents; and (2) the 2014 Gaza conflict, which resulted in 'a high number of civilian casualties, significant damage to or destruction of civilian buildings and infrastructure, and massive displacement'.¹⁵⁶

Although it is unclear how long the preliminary examination of the Palestinian allegations will take, to move beyond the 'preliminary examination' stage, the situation in Palestine must satisfy the Rome Statute's admissibility requirements of complementarity and gravity – a determination of whether Israel is 'unwilling or unable' to investigate or punish the accused; and an assessment of the scale, nature and manner of the alleged crimes and their impact, respectively.

The OTP has also signalled that it will have to decide two thorny jurisdictional issues: the legal regime applicable to the territory of the West Bank and the legal characterization of the Gaza conflict. First, the ICC notes Israel's position that the West Bank is a disputed, rather than occupied, territory, but recognizes that inter-governmental and international judicial bodies, including the ICJ, the UNSC and UNGA, consider the West Bank to be occupied.¹⁵⁷ Second, while most agree that an armed conflict exists in Gaza, the OTP believes that the classification of the conflict as one of an international or non-international character, or both existing in parallel, remains subject to debate and diverging views. This is significant because certain war crimes provisions under the Rome Statute appear to be applicable to international armed conflicts only, and thus would not apply to Gaza if the conflict were to be considered non-international.¹⁵⁸

154 OTP, ICC, Report on Preliminary Examination Activities 2017, *supra* fn 70, §11.

155 *Ibid.*, §52.

156 *Ibid.*, §64.

157 *Ibid.*, §69.

158 *Ibid.*, §70.

SELECTED NON-INTERNATIONAL ARMED CONFLICTS

1. AFGHANISTAN: INCREASED INVOLVEMENT OF THE UNITED STATES IN COMBAT OPERATIONS

Caroline Siewert

Classification of the Conflicts

Afghanistan was involved in a non-international armed conflict (NIAC) in 2017, in which the armed forces of the Government of Afghanistan are fighting against the Taliban. This conflict meets the threshold for the application of the 1977 Additional Protocol II. In addition, there are two separate NIACs with the Haqqani Network and the armed group known as the Islamic State in Afghanistan (IS Khorasan branch). The United States also continues to be a party to the NIAC in Afghanistan.

According to the United Nations Assistance Mission in Afghanistan (UNAMA), '[d]uring the first half of 2017, armed conflict continued to cause severe harm to civilians across Afghanistan'.¹⁵⁹ It recorded that 'sustained ground fighting between Anti-Government Elements and Pro-Government Forces in numerous provinces across the country coincided with asymmetric attacks in villages, towns, and cities by Anti-Government Elements'.¹⁶⁰

A variety of actors are active in Afghanistan. However, the groups Islamic Movement of Uzbekistan, Islamic Jihad Union, Lashkari Tayyiba and Jaysh Muhammad are not considered as being party to the conflict.¹⁶¹ The group Hezb-e-Islami ceased being a party to the conflict pursuant to a peace agreement it concluded with the Afghan Government in 2016, which followed several years of relative inactivity. The group's last big attack took place in 2013, and no attacks have been reported

159 UN Assistance Mission in Afghanistan (UNAMA), *Protection of Civilians in Armed Conflict*, Midyear Report 2017, July 2017, p 3, https://unama.unmissions.org/sites/default/files/protection_of_civilians_in_armed_conflict_midyear_report_2017_july_2017.pdf (last accessed 28 February 2018).

160 *Ibid.*, p 13.

161 In November 2016, the Office of the Prosecutor (OTP) of the International Criminal Court (ICC) considered that '[t]he armed conflict has opposed the Government of Afghanistan forces and armed groups which mainly include the Taliban, the Haqqani Network, and Hezb-e-Islami Gulbuddin'. OTP, ICC, Report on Preliminary Examination Activities 2016, 14 November 2016, §196, https://www.icc-cpi.int/iccdocs/otp/161114-otp-rep-pe_eng.pdf (last accessed 28 February 2018). According to the BBC, 'the main insurgent groups fighting the Afghan and NATO-led forces are the Taliban and its semi-autonomous Haqqani network, al-Qaeda and recently the so-called Islamic State (IS) group.' W. Massoud, 'What does Afghan Warlord Hekmatyar's Return Mean?', *BBC News*, 6 May 2017, <http://www.bbc.com/news/world-asia-39819123>.

since the conclusion of the peace agreement. The group's leader, Gulbuddin Hekmatyar, returned to Kabul after years of self-imposed exile in May.¹⁶²

A. HISTORY OF THE CONFLICT

Afghanistan has been engulfed in almost perpetual armed conflict since the Soviet invasion in 1979.

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 percent 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 US 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 US initiating an aerial bombardment 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 Mujahideen fighters have regrouped into a number of different armed groups. The Taliban are conducting a widespread insurgency, particularly in the southeast and east of the country, while the Afghan Government has struggled to extend its effective authority beyond the capital.¹⁶³

Additionally, since 2015, the Islamic State (IS) has emerged in Afghanistan.¹⁶⁴ The IS Khorasan branch (IS-K) caused large numbers of casualties in its first year of operations in Afghanistan and established control over part of the country's territory.¹⁶⁵ In April 2017, US forces used the 'Mother of All Bombs' against IS-K.¹⁶⁶

162 'Hekmatyar Returns to Kabul After 20 Years in Hiding', *Al Jazeera*, 4 May 2017, <https://www.aljazeera.com/news/2017/05/hekmatyar-returns-kabul-20-years-hiding-170504145123325.html>; Massoud, 'What Does Afghan Warlord Hekmatyar's Return Mean?', supra fn 161.

163 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/afghan-istan-long-hard-road-2014-transition> (last accessed 28 February 2018); 'Afghanistan Profile – Timeline', *BBC News*, 8 March 2017, <http://www.bbc.com/news/world-south-asia-12024253>.

164 B. Osman, 'The Islamic State in 'Khorasan': How it Began and Where it Stands Now in Nangarhar', Afghanistan Analysts Network, 27 July 2016, <https://www.afghanistan-analysts.org/the-islamic-state-in-khorasan-how-it-began-and-where-it-stands-now-in-nangarhar/> (last accessed 28 February 2018); C. G. Johnson, *The Rise and Stall of the Islamic State in Afghanistan*, United States Institute of Peace, 3 November 2016, <https://www.usip.org/publications/2016/11/rise-and-stall-islamic-state-afghanistan> (last accessed 28 February 2018).

165 UN Security Council (UNSC), Eighteenth Report of the Analytical Support and Sanctions Monitoring Team Submitted Pursuant to Resolution 2253 (2015) Concerning Islamic State in Iraq and the Levant (Da'esh), Al-Qaida and Associated Individuals and Entities, UN doc S/2016/629, 19 July 2016, §§18–20; UNSC, Fifth Report of the Secretary-General in the Threat Posed by ISIL (Da'esh) to International Peace and Security and the Range of United Nations Efforts in Support of Member States in Countering the Threat, UN doc S/2017/467, 31 May 2017, §§28–29.

166 'Timeline: US Intervention in Afghanistan 2001 to 2017', *Al Jazeera*, 22 August 2017, <https://www.aljazeera.com/news/2017/08/2001-2017-intervention-afghanistan-170822035036797.html>.

After the armed group Hezb-e-Islami concluded a peace agreement with the Afghan Government in 2016, the UN lifted sanctions against the group's leader, Gulbuddin Hekmatyar, in February 2017.¹⁶⁷ Hekmatyar made his first public appearance in April 2017, calling on the Taliban to start negotiations.¹⁶⁸ He returned to Kabul after years of self-imposed exile in May 2017.¹⁶⁹

B. PARTIES TO THE CONFLICTS

In 2017, Afghan Government forces, supported by US forces, opposed the Afghan Taliban and, in separate conflicts, the Haqqani Network and IS-K.

1. Afghan Forces

In September 2017,¹⁷⁰ Afghanistan was estimated to have 200,000 active frontline military personnel.

2. The United States Armed Forces

The US has been engaged in fighting in Afghanistan since 2001.¹⁷¹ At the height of US involvement, around 100,000 US troops were stationed in the country.¹⁷² This number has decreased since 2014.¹⁷³ In January 2017, 7,400 US troops remained in Afghanistan.¹⁷⁴ Apart from serving in NATO's Resolute Support Mission to train, advise and assist a certain number of US troops are involved in 'continuing to disrupt and degrade al-Qa'eda and Islamic State activities in Afghanistan, through partnered operations with Afghan forces, as well as unilateral operations.'¹⁷⁵ These operations, classified as counter-terrorism by the US,¹⁷⁶ constitute a continuing fighting role for of the US, making it a party to the conflict.¹⁷⁷

167 S. Qazi, 'UN Lifts Sanctions Against Gulbuddin Hekmatyar', *Al Jazeera*, 4 February 2017, <https://www.aljazeera.com/news/2017/02/lifts-sanctions-gulbuddin-hekmatyar-170204125508334.html?xif=>.

168 S. Qazi, 'Hezb-i-Islami's Hekmatyar to Taliban: Lay Down Arms', *Al Jazeera*, 29 April 2017, <https://www.aljazeera.com/news/2017/04/hezb-islami-hekmatyar-taliban-lay-arms-170429082441681.html>.

169 'Hekmatyar Returns to Kabul After 20 Years in Hiding', *Al Jazeera*, 4 May 2017, <https://www.aljazeera.com/news/2017/05/hekmatyar-returns-kabul-20-years-hiding-170504145123325.html>; 'Afghan Warlord Hekmatyar Returns to Kabul After Peace Deal', *BBC News*, 4 May 2017, <http://www.bbc.com/news/world-asia-39802833>.

170 Global Firepower, '2017 Afghanistan Military Strength', https://www.globalfirepower.com/country-military-strength-detail.asp?country_id=afghanistan (last accessed 7 March 2018).

171 U.S. Department of State, 'U.S. Relations with Afghanistan', <http://state.gov/r/pa/ei/bgn/5380.htm>, last updated 3 January 2017 (last accessed 7 September 2017).

172 Ibid.

173 Ibid.

174 Ibid.

175 Ibid.

176 Statement for the Record by Genral John W. Nicholson, Commander U.S. Forces Afghanistan, Before the Senate Armed Services Committee on the Situation in Afghanistan, Stenographic Transcript Before the Committee on Armed Services United States Senate, 9 February 2017, p 2, https://www.armed-services.senate.gov/imo/media/doc/Nicholson_02-09-17.pdf (last accessed 28 February 2018).

177 Ibid.; N. Bobkin, 'What is the US Doing in Afghanistan?', Strategic Culture Foundation, 9 August 2016, <https://www.strategic-culture.org/news/2016/08/09/what-us-doing-afghanistan.html> (last accessed 28 February 2018).

3. The Taliban

The largest armed non-state actor fighting against the Afghan regime, the Taliban in Afghanistan (Quetta Shura Taliban) was led by Mullah Omar, an erstwhile village clergyman who lost his right eye fighting Soviet forces in the 1980s, but who was killed in 2015.¹⁷⁸ After initial infighting and breakaways from the group, it is currently led by Haibatullah Akhonzada.¹⁷⁹ Haibatullah's son was reported to have carried out a suicide attack in July 2017.¹⁸⁰

4. The Haqqani Network

A former anti-Soviet group in the 1980s and led by one of the most prominent families in Afghanistan's Khost region, the Haqqani Network commands far fewer fighters than the Taliban, with whom they are closely allied.¹⁸¹ However, it has been described by US military leaders as 'the most resilient enemy network out there'.¹⁸² The network operates along the border with Pakistan, where its fighters have been targeted by an escalating campaign, including drone strikes. United States Department of State reports have claimed that Haqqani Network fighters find shelter and a safe haven in Pakistan.¹⁸³ They are considered to be actively engaged in the Afghan conflict alongside the Taliban and have been suspected to have connections with IS-K.¹⁸⁴ In June 2017, the Afghan Government claimed that Pakistani intelligence services had supported the Haqqani Network in carrying out a large-scale bomb attack in Kabul, an allegation Pakistan denied.¹⁸⁵ In October 2017, an American-Canadian couple was rescued after having been kidnapped by the Haqqani Network five years before in Afghanistan.¹⁸⁶

178 There is some uncertainty as to the exact date of his death. See, 'Taliban Admit Covering Up Death of Mullah Omar', *BBC News*, 31 August 2015, <https://www.bbc.com/news/world-asia-34105565>.

179 S. Qazi, 'Afghan Taliban: Haibatullah Akhonzada Named New Leader', *Al Jazeera*, 26 May 2016, <https://www.aljazeera.com/news/2016/05/afghan-taliban-haibatullah-akhonzada-leader-160525045301080.html>.

180 J. Ahmad, 'Son of Afghan Taliban Leader Dies Carrying Out Suicide Attack', *Reuters*, 22 July 2017, <https://www.reuters.com/article/us-afghanistan-taliban-son/son-of-afghan-taliban-leader-dies-carrying-out-suicide-attack-idUSKBN1A707K>; M. Mashal and T. Shah, 'Taliban Say Top Leader's Son Carried Out a Suicide Attack', *The New York Times*, 22 July 2017, <https://www.nytimes.com/2017/07/22/world/asia/taliban-afghanistan-supreme-leader-son-suicide-attack.html>.

181 See, e.g., B. Roggio, 'Afghan Taliban Condemn the Killing of Nasiruddin Haqqani', *FDDs Long War Journal*, 12 November 2013, https://www.longwarjournal.org/archives/2013/11/afghan_taliban_conde.php.

182 See, e.g., J. A. Dressler, *The Haqqani Network: From Pakistan to Afghanistan*, Afghanistan Report 6 Institute for the Study of War, October 2010, http://www.understandingwar.org/sites/default/files/Haqqani_Network_0.pdf (last accessed 28 February 2018); J. Dressler, *The Haqqani Network: A Strategic Threat*, Afghanistan Report 9, Institute for the Study of War, March 2012, http://www.understandingwar.org/sites/default/files/Haqqani_StrategicThreatweb_29MAR_0.pdf (last accessed 28 February 2018).

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

184 'Taliban Kills Scores in Afghanistan's Paktia and Ghazni', *Al Jazeera*, 18 October 2017, <https://www.aljazeera.com/news/2017/10/suicide-bombers-attack-afghan-police-training-centre-171017062036058.html>; 'Afghan Officers Killed in "Erroneous" Air Raid', *Al Jazeera*, 2 October 2017, <https://www.aljazeera.com/news/2017/10/afghan-officers-killed-erroneous-air-strike-171001155622258.html>.

185 'Afghanistan Blames Pakistan and Taliban for Kabul Blast', *Al Jazeera*, 1 June 2017, <https://www.aljazeera.com/news/2017/06/afghanistan-blames-pakistan-taliban-kabul-blast-170601151615042>.

186 'Family Freed From "Haqqani Captivity" in Pakistan', *Al Jazeera*, 13 October 2017, <https://www.aljazeera.com/news/2017/10/family-freed-haqqani-captivity-pakistan-171012170422573.html>.

5. The Islamic State in Afghanistan (Khorasan Branch)

The IS Khorasan branch (IS-K) emerged in Afghanistan in mid-2014. The foundation of a Khorasan province, covering parts of Afghanistan and Pakistan, was announced by IS Central's spokesperson, Abu Muhammad al-Adnani, in January 2015 through an IS media foundation.¹⁸⁷ The number of IS-K forces in Afghanistan have been estimated to be around 700 by US officials, but 1,500 by the Afghan Government.¹⁸⁸

C. KEY DEVELOPMENTS IN 2017: INCREASED INVOLVEMENT OF THE US IN COMBAT OPERATIONS

A trend of aid workers coming under attack continued in early 2017. In January, a Spanish employee of the International Committee of the Red Cross (ICRC), who had been kidnapped in December 2016, was released.¹⁸⁹ In February 2017, six staff members of the ICRC were killed in Afghanistan, with two further members being abducted¹⁹⁰ and released only in September.¹⁹¹ The attack occurred while they were delivering material aid.¹⁹² It was conducted by unknown armed men. This caused the ICRC to put its work in Afghanistan on hold.¹⁹³ The governor of the region in which the attack occurred blamed IS-K, while the Taliban publicly stated that they had not been involved.¹⁹⁴

In February 2017, US General John Nicholson, who controls both the NATO and separate US forces in Afghanistan, declared a need for more troops.¹⁹⁵ In August, the US announced an official plan to increase the number of its forces in Afghanistan,

187 A. Roul, "'Wilayat Khurasan': Islamic State Consolidates Position in AfPak Region', 13 *Terrorism Monitor* 7, The Jamestown Foundation, 3 April 2015, <https://jamestown.org/program/wilayat-khorasan-islamic-state-consolidates-position-in-afpak-region/#.VSspPmUe4Y> (last accessed 28 February 2018).

188 'US Says "Mother of All Bombs" Hits ISIL in Afghanistan', *Al Jazeera*, 14 April 2017, <https://www.aljazeera.com/news/2017/04/drops-mother-bombs-isil-afghanistan-170413174730383.html>.

189 ICRC, 'Afghanistan: Abducted ICRC Staff Member Released', 15 January 2017, <https://www.icrc.org/en/document/afghanistan-abducted-icrc-staff-member-released>.

190 ICRC, 'Afghanistan: Six ICRC Staff Members Killed and Two Unaccounted For in Attack', 8 February 2017, <https://www.icrc.org/en/document/afghanistan-six-icrc-staff-members-killed-and-two-unaccounted-attack>; ICRC, 'Afghanistan: An Appeal For the Safe and Unconditional Release of ICRC Staff', 18 February 2017, <https://www.icrc.org/en/document/afghanistan-appeal-safe-and-unconditional-release-icrc-staff>.

191 ICRC, 'Afghanistan: Two Abducted ICRC Staff Members Released', 5 September 2017, <https://www.icrc.org/en/document/afghanistan-two-abducted-icrc-staff-members-released>.

192 'ICRC: Six Red Cross Aid Workers Killed in Afghanistan', *Al Jazeera*, 8 February 2017, <https://aljazeera.com/news/2017/02/icrc-afghan-red-cross-workers-killed-missing-170208131532856.html>.

193 B. Ansari, 'Red Cross Suspends Afghanistan Operations After Six Aid Workers Killed', *Reuters*, 8 February 2017, <https://www.reuters.com/article/us-afghanistan-attack/red-cross-suspends-afghanistan-operations-after-six-aid-workers-killed-idUSKBN15N1BL>.

194 'ICRC: Six Red Cross Aid Workers Killed in Afghanistan', supra fn 192; Ansari, 'Red Cross Suspends Afghanistan Operations After Six Aid Workers Killed', supra fn 193.

195 'Timeline: US intervention in Afghanistan 2001 to 2017', supra fn 166.

coupled with a demand directed at other NATO countries to do the same.¹⁹⁶ Reportedly, the authority to deploy up to 3,900 new US troops has been given.¹⁹⁷

A NATO troop increase in Afghanistan was discussed during the first half of the year, but criticized by Afghan officials.¹⁹⁸ However, NATO chief, Jens Stoltenberg, stressed that this would not change the non-combat nature of the operation.¹⁹⁹ New troop deployments were agreed on by NATO states in June.²⁰⁰

In April 2017, the US dropped the largest non-nuclear bomb it has ever used in combat – ‘MOAB’ (‘Massive Ordnance Air Blast’, also called ‘Mother of All Bombs’) – on northern Afghanistan’s Nangarhar province, allegedly killing nearly 100 IS-K fighters.²⁰¹ The use of this GBU-43 bomb was explained by the need to destroy bunkers and tunnel systems harbouring hundreds of IS-K fighters in the area.²⁰²

The US Air Force reported dropping 1,250 bombs and other ordnance from January to July 2017, almost double the number of the same period in 2016.²⁰³

In the same span of time, 5,243 civilian casualties – 1,662 dead and 3,581 injured – were recorded by UNAMA.²⁰⁴ Compared to the same period of time in 2016, this represents a 1 percent decrease in overall civilian casualties.

United States military personnel and air power began to be sent at the end of August, with further troops announced to be arriving over the following months.²⁰⁵ At the end of August 2017, the US troop level in Afghanistan reached 11,000 according to the US Pentagon.²⁰⁶ Afghans nevertheless fear that troop increases will

196 B. Henderson and K. McCann, ‘Donald Trump Commits More US Troops to Afghanistan and Calls on Britain to Follow Suit’, *The Telegraph*, 22 August 2017, <http://www.telegraph.co.uk/news/2017/08/21/donald-trump-address-nation-outline-new-afghanistan-strategy/>.

197 ‘Timeline: US intervention in Afghanistan 2001 to 2017’, supra fn 166.

198 ‘NATO Troop Increase Plan Draws Criticism in Afghanistan’, *Al Jazeera*, 25 May 2017, <https://www.aljazeera.com/news/2017/05/nato-troop-increase-plan-draws-criticism-afghanistan-170525052520655.html>.

199 Ibid.; C. Muñoz, ‘NATO Approves Troop Increases for Afghanistan; U.S. Likely to Follow’, *The Washington Times*, 29 June 2017, <http://www.washingtontimes.com/news/2017/jun/29/nato-approves-troop-increases-afghanistan/>.

200 Muñoz, ‘NATO approves troop increases for Afghanistan’, supra fn 199; ‘NATO to Increase Presence in Afghanistan, May Send Thousands More Troops’, *RT*, 29 June 2017, <https://www.rt.com/news/394630-afghanistan-nato-troop-increase/>.

201 ‘Timeline: US intervention in Afghanistan 2001 to 2017’, supra fn 166.

202 ‘US Says “Mother of All Bombs” Hits ISIL in Afghanistan’, supra fn 188.

203 M. Mashal, ‘U.S. Troop Increase in Afghanistan Is Underway, General Says’, *The New York Times*, 24 August 2017, <https://www.nytimes.com/2017/08/24/world/asia/afghanistan-troop-increase-trump-taliban.html>.

204 UNAMA, *Protection of Civilians in Armed Conflict*, supra fn 159, p 3.

205 Mashal, ‘U.S. Troop Increase in Afghanistan Is Underway, General Says’, supra fn 203.

206 ‘US Reveals Higher Number of Troops in Afghanistan’, *Al Jazeera*, 31 August 2017, <https://www.aljazeera.com/news/2017/08/reveals-higher-number-troops-afghanistan-170831050000418.html>.

only prolong the conflict.²⁰⁷ In the first eight months of 2017, the UN recorded 16,290 security related incidents. Of these, 64 percent were armed clashes, which increased by 5 percent from the previous year.²⁰⁸

United States airstrikes in Afghanistan reportedly surged from August 2017. In November, airstrikes in the northern Kunduz region reportedly targeted three villages. While Afghan forces claim no civilians were killed in these attacks, local sources have reported between 13 and 55 civilian casualties, including women and children.²⁰⁹

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 had jurisdiction over Rome Statute crimes committed in the territory of Afghanistan or by its nationals since 1 May 2003.

On 20 November 2017, the Prosecutor of the ICC requested authorization from Pre-Trial Chamber III to initiate an investigation into alleged war crimes and crimes against humanity in relation to the armed conflict in the Islamic Republic of Afghanistan since 1 May 2003, as well as similar crimes that have a nexus with the armed conflict in Afghanistan and are sufficiently linked to the situation and were committed on the territory of other States Parties to the Rome Statute since 1 July 2002.²¹⁰

2. COLOMBIA: ARMED GANG VIOLENCE SPOILS THE PEACE PROCESS

Ana Beatriz Balcazar Moreno

Classification of the Conflicts

In 2017, Colombia was involved in a non-international armed conflict (NIAC) with the National Liberation Army. Peace Talks with the ELN started in February 2017. In addition, there has arguably been a NIAC between the state armed forces of Colombia and certain armed gangs, known as ‘BACRIM’.

207 ‘NATO Troop Increase Plan Draws Criticism in Afghanistan’, supra fn 198.

208 UN General Assembly, Report of the Secretary-General: The Situation in Afghanistan and its Implications for International Peace and Security, UN doc A/72/651-S/2017/1056, 15 September 2017, §15.

209 S. E. Rasmussen, ‘US Airstrikes Kill Scores of Civilians in Kunduz Province, Afghans Say’, *The Guardian*, 4 November 2017, https://www.theguardian.com/world/2017/nov/04/us-airstrikes-kill-civilians-kunduz-afghanistan?CMP=Share_iOSApp_Other.

210 ICC, Preliminary Investigation, Afghanistan, <https://www.icc-cpi.int/afghanistan> (last accessed 28 February 2018); ‘ICC Prosecutor to Seek Afghanistan War Crimes Probe’, *Al Jazeera*, 3 November 2017, <http://www.aljazeera.com/news/2017/11/icc-prosecutor-seek-afghanistan-war-crimes-probe-171103143955107.html>.

A. HISTORY OF THE CONFLICT

With the 2016 Peace agreement between the Colombian Government and the Revolutionary Armed Forces of Colombia – People’s Army (FARC-EP),²¹¹ and the ongoing negotiations between the government and the National Liberation Army (ELN),²¹² the panorama of conflicts within the country has improved.²¹³ However, while violence has decreased in the country,²¹⁴ it still persists.²¹⁵ *The War Report 2017* focuses on armed gang violence in Colombia.

In its 23rd report to the Organization of American States, the Secretary General of the Mission to Support the Peace Process in Colombia (MAPP/OAS)²¹⁶ depicts an expansion of the ELN’s power and the appearance of new armed groups of a diverse nature, which dispute the control of the illicit economies and the territories vacated by the demobilization of the FARC-EP.²¹⁷ In this setting, the civilian population has been subject to extortion, confinement, forced displacement, gender-based violence and recruitment of minors, as well as the use of weapons as anti-personnel mines²¹⁸ and improvised explosive devices.²¹⁹

211 ‘Congreso refrendó el acuerdo de paz con las Farc’, *Vanguardia Liberal*, 30 November 2016 <http://www.vanguardia.com/colombia/381508-congreso-refrendo-el-acuerdo-de-paz-con-las-farc>; J. Partlow and N. Miroff, ‘Colombia’s Congress Approves Historic Peace Deal with FARC Rebels’, *The Washington Post*, 30 November 2016, https://www.washingtonpost.com/world/the_americas/colombian-congress-approves-historic-peace-deal/2016/11/30/9b2fda92-b5a7-11e6-939c-91749443c5e5_story.html?utm_term=.469da44c032a.

212 ‘Se inicia cuarto ciclo de diálogo Gobierno-Eln confirme cese el fuego’, *El Tiempo*, 23 October 2017, <http://www.eltiempo.com/politica/proceso-de-paz/se-inicia-cuarto-ciclo-de-dialogo-entre-el-gobierno-y-el-eln-143860>.

213 See UNSC Res 2381, 5 October 2017. However, there are still some outbursts. For instance, on 30 October 2017, despite the ceasefire agreed with the Government, the ELN claimed responsibility for the murder of Aulio Isaramá Forastero, an indigenous governor in the Department of Chocó. ‘Eln reconoce asesinato de gobernador indígena en Chocó’, *El Tiempo*, 30 October 2017, <http://www.eltiempo.com/politica/proceso-de-paz/eln-reconoce-asesinato-de-gobernador-indigena-en-choco-146142>; ‘Gobierno dice que asesinato de indígena viola cese al fuego con Eln’, *El Tiempo*, 10 November 2017, <http://www.eltiempo.com/justicia/conflicto-y-narcotrafico/gobierno-dice-que-el-eln-viola-el-cese-al-fuego-150110>.

214 According to the Washington Office on Latin America (WOLA), ‘[i]n 2016, only 216 members of the Colombian security forces, guerrilla groups, or paramilitary groups died in situations that could be defined as combat – a 46 percent drop from 2015, and a 93 percent drop from a decade earlier’. A. Isacson, ‘Some of the Many Reasons Why the United States Should Keep Supporting Colombia’s Peace Accord’, WOLA, 27 January 2017, <https://www.wola.org/analysis/many-reasons-united-states-keep-supporting-colombias-peace-accord/> (last accessed 6 December 2017).

215 ‘Se desactiva la guerra, pero la violencia sigue en Colombia’, *El Espectador*, 8 April 2017, <https://www.elespectador.com/noticias/nacional/se-desactiva-la-guerra-pero-la-violencia-sigue-en-colombia-articulo-688480>.

216 Twenty-Third Report of the Secretary General to the Permanent Council on the Organization of American States Mission to Support the Peace Process in Colombia (MAPP/OAS). The report is the result of 959 field missions carried out from 1 August 2016 to 31 January 2017.

217 *Ibid.*, p 2.

218 J. G. Mercado, ‘Bandas criminales siembran minas en varias zonas del país’, *El Tiempo* 27 May 2013, <http://www.eltiempo.com/archivo/documento/CMS-12825863>.

219 Twenty-Third Report of the Secretary General to the Permanent Council on the OAS Mission, *supra* fn 216, p 2.

In 2008, the Colombian Government determined that these new types of armed actors were present in 179 municipalities of 28 departments.²²⁰ However, it maintains that they were not part of organized crime structures and, as the International Criminal Court (ICC) underlined in its 2012 Interim Report, did ‘not consider them as organized armed groups that are parties to the armed conflict’.²²¹

In 2015, the Colombian Government launched Operation Agamemnon, mandating the police force to capture Dairo Antonio Úsuga David (alias Otoniel), the leader of the Gulf Clan,²²² and to dismantle this group, for which 1,200 policemen and 15 helicopters, some of them Black Hawk, were deployed.²²³

In 2016, the Colombian Ministry of Defence adopted Directive 015,²²⁴ which, for the first time, qualified some of these groups – that have been implicated in a high level of hostilities and reached a sufficient level of organization – as ‘Organized Armed Groups’ (OAGs). The Directive allows the police and the rest of the public forces to fight them with ‘all the strength of the state’, including air force bombers, infantry operations and military intelligence.²²⁵ Furthermore, this legal instrument aims at: i) establishing an adequate procedure that enables the Public Forces to fulfil their constitutional mandate; ii) acting on the evolution of organized criminality, which affects the security of Colombian citizens; and iii) guaranteeing juridical security for members of the Public Forces. In this regard, the Minister of the Interior added that ‘if necessary, with the fulfillment of all the norms of international humanitarian law, the possibility of our military forces bombarding those high-value objects is ... authorized’.²²⁶

220 República de Colombia y Observatorio del Programa Presidencial de Derechos Humanos y DIH, *Dinámica de las bandas asociadas al narcotráfico después de la desmovilización de las autodefensas: 2005-mediados de 2008*, June 2009, p 18, <http://historico.derechoshumanos.gov.co/Observatorio/Publicaciones/Documents/LibroBandasArmadoWEB.pdf> (last accessed 1 December 2017).

221 Office of the Prosecutor (OTP), International Criminal Court (ICC), Situation in Colombia: Interim Report, November 2012, p 3.

222 N. Cosoy, ‘Así es el megaoperativo para la captura de Otoniel, el narco más buscado de Colombia’, *BBC Mundo*, 1 April 2015, http://www.bbc.com/mundo/noticias/2015/04/150401_colombia-caza_otoniell_narco_mas_buscado_lv.

223 N. Cosoy, ‘Otoniel, el narco colombiano al que buscan más hombres que a Pablo Escobar’, *BBC Mundo*, 24 March 2015, http://www.bbc.com/mundo/noticias/2015/03/150318_colombia_otoniell_usuga_uraba_nc.

224 República de Colombia Ministerio de Defensa Nacional, Directiva Permanente no 0015, 22 April 2016.

225 ‘Gobierno cambia estrategia contra las bacrim; las califica como Grupos Armados Organizados y ordena bombardeos en su contra’, *RCN Radio*, 5 May 2016, <http://www.rcnradio.com/nacional/gobierno-cambia-estrategia-las-bacrim-las-califica-grupos-armados-organizados-ordena-bombardeos/>.

226 ‘Gobierno dice que garantizará cumplimiento del DIH en bombardeos a las bacrim, ahora GAO’ *RCN Radio*, 6 May 2016, <http://www.rcnradio.com/nacional/politica/gobierno-garantiza-cumplimiento-del-dih-bombardeo-las-bacrim/>.

Despite the positive results of Operation Agamemnon,²²⁷ the government has been unable to dismantle the Gulf Clan. Hence, in 2017, it launched Operation Agamemnon II,²²⁸ which includes an estimated 250 members of the military.²²⁹

As result of these actions, the Gulf Clan has expressed its desire to enter a peace process with the government and demobilize. Referring to Dairo Antonio Úsuga David, alias Otoniel, the Colombian President, Juan Manuel Santos, announced in September 2017 that the government had received a ‘clear declaration from the head of the Urabeños that he wishes to submit himself and all of his men to justice’,²³⁰ but that this would not mean a political negotiation.

Yet, Amnesty International has exposed in its report of November 2017 that the ‘Government fails to keep civilians safe as new threats go unchallenged’.²³¹

B. PARTIES TO THE CONFLICTS

The parties to the NIACs in 2017 were Colombia and its armed forces against the ELN, as well as certain armed gangs, known as BACRIM. In this context, it is worth mentioning that the 1st Front of the FARC is not part of the 2016 peace agreement. It continues to fight the government and, for instance, in May 2017 it kidnapped a United Nations official who was working on a programme to substitute legal crops for illegal ones.²³² These dissident armed factions of the FARC, thus remain parties to the conflict, but will not be described in the following section (see on the FARC, *The War Report 2016*).

227 Policía Nacional de Colombia, “Agamenón”, la operación que ya desmanteló la mitad del “Clan del Golfo”, 8 May 2017, <https://www.policia.gov.co/noticia/agamenon-operacion-que-ya-desmantelo-mitad-del-clan-del-golfo> (last accessed 1 December 2017); Verdad Abierta, ‘Los secretos del “Clan Úsuga”’, 24 August 2015, <http://www.verdadabierta.com/rearme/5933-los-secretos-del-clan-usuga> (last accessed 1 December 2017).

228 ‘Desmantelar el ‘clan del Golfo’ orden perentoria del presidente Santos’, *El Tiempo*, 22 June 2017, <http://www.eltiempo.com/justicia/conflicto-y-narcotrafico/lanzan-operacion-agamenon-ii-contra-el-clan-del-golfo-101708>.

229 ‘El reto que tendrá Agamenón II’, *El Colombiano*, 21 May 2017, <http://www.elcolombiano.com/antioquia/seguridad/el-reto-que-tendra-agamenon-ii-AC6576640>.

230 Presidencia de la República de Colombia, ‘Presidente Santos anuncia que el Clan del Golfo está dispuesto a someterse a la justicia’, 5 September 2017, <http://es.presidencia.gov.co/noticia/170905-Presidente-Santos-anuncia-que-el-Clan-del-Golfo-esta-dispuesto-a-someterse-a-la-justicia> (last accessed 8 November 2017).

231 Amnesty International, ‘Colombia: Government fails to keep civilians safe as new threats go unchallenged’, 22 November 2017, <https://www.amnesty.org/en/latest/news/2017/11/colombia-governent-fails-to-keep-civilians-safe-as-new-threats-go-unchallenged/> (last accessed 1 December 2017).

232 ‘ONU realiza labores para liberar a funcionario secuestrado en Guaviare’, *El Tiempo*, <http://www.eltiempo.com/justicia/investigacion/funcionario-de-la-onu-en-guaviare-fue-secuestrado-por-disidencia-de-farc-84348> (last accessed 7 March 2018).

1. Colombian Armed Forces

In 2017, Colombia was estimated to have some 369,100 active frontline military personnel and a further 142,450 in reserve.²³³ 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.²³⁴

2. Criminal bands (BACRIM)

The term ‘criminal bands’ (BACRIM) has been used by the Colombian Government to identify the new types of armed actors that have emerged since 2006,²³⁵ and which, due to their constant transformations and changes in denomination, are difficult to identify.²³⁶

Most of these new actors have replaced the former United Self-Defense Forces of Colombia (AUC) following its demobilization in 2005,²³⁷ joining forces with drug trafficking organizations²³⁸ and allegedly been involved in enforced disappearances,²³⁹ torture, kidnappings, human trafficking,²⁴⁰ ‘social cleansing’²⁴¹ and internal displacements.²⁴² In the words of the MAPP/OAS report, ‘there has been a resurgence of common violence. Although without the political connotations of the past, it has the potential to be very damaging’.²⁴³

233 GlobalFirepower, ‘2017 Colombia Military Strength’, http://www.globalfirepower.com/country-military-strength-detail.asp?country_id=colombia (last accessed 7 March 2018).

234 GlobalSecurity.org ‘Colombia – Army (Ejército Nacional)’, GlobalSecurity.org, www.globalsecurity.org/military/world/colombia/colombia_army.htm (last accessed 7 March 2018).

235 J. D. Restrepo, *Autodefensas gaitanistas de Colombia en el Bajo Cauca antioqueño*, Fundación Ideas para la Paz, 2015, p 5, <http://cdn.ideaspaz.org/media/website/document/5617efbc18756.pdf> (last accessed 1 December 2017).

236 República de Colombia y Observatorio del Programa Presidencial de Derechos Humanos y DIH, *Dinámica de las bandas*, supra fn 220, p 15.

237 Council on Hemispheric Affairs, ‘Neo-Paramilitary Gangs Ratchet Up Their Threat to Colombian Civil Society and the Long Term Survival of Civic Rectitude in the Public Arena’, 17 November 2011, <http://www.coha.org/neo-paramilitary-gangs-ratchet-up-their-threat-to-colombian-civil-society-and-the-long-term-survival-of-civic-rectitude-in-the-public-arena/> (last accessed 7 March 2018).

238 C. A. Prieto, *Las BACRIM y el crimen organizado en Colombia*, Friedrich Ebert Stiftung, Policy Paper 47, March 2013, p 1, <http://library.fes.de/pdf-files/bueros/la-seguridad/O9714.pdf> (last accessed 6 December 2017).

239 D. R. Marin, ‘Homicidios bajan, vacunas suben, dicen en comuna 8’, *El Colombiano*, 9 January 2014, http://www.elcolombiano.com/historico/homicidios_bajan_vacunas_suben_dicen_en_comuna_8-PAEC_277190.

240 ‘Bandas criminales para trata de personas operan en comunas de Cali’, *El Espectador*, 28 July 2016, <https://www.elespectador.com/noticias/nacional/valle/bandas-criminales-trata-de-personas-operan-comunas-de-c-articulo-646031>.

241 J. Bargent and M. Charles, ‘Inside Colombia’s BACRIM: Murder’, *InSight Crime*, 13 July 2017, <https://www.insightcrime.org/investigations/inside-colombia-s-bacrim-murder/> (last accessed 2 November 2017).

242 OCHA, *Colombia – Desplazamiento masivo en Alto Baudó (Chocó)*, Flash Update no 1, 13 May 2014, <https://reliefweb.int/sites/reliefweb.int/files/resources/140513%20Flash%20Update%20No%201%20Alto%20Baudo.pdf> (last accessed 2 November 2017).

243 Twenty-Third Report of the Secretary General to the Permanent Council on the OAS Mission, supra fn 216, p 2.

However, according to the guidelines of Directive 015,²⁴⁴ only the Gulf Clan (formerly known as Los Urabeños, Clan Úsuga or Autodefensas Gaitanistas de Colombia), Los Puntillos and Los Pelusos were recognized by the government as OAGs,²⁴⁵ whose activities are of national and international scope; who have an organized armed structure and generate a high level of armed violence exceeding the levels of internal disturbances and tensions; have a command structure; the ability to conduct military operations and the capacity to procure, transport and distribute weapons.²⁴⁶ For instance, in March 2016 the Gulf Clan decreed a 24-hour 'strike', which emptied streets and nearly paralysed daily activities in 36 municipalities,²⁴⁷ in spite of the capture of more than 1,000 of its members.²⁴⁸ This led some security experts to criticize the government's strategy for dealing with these armed groups as deficient.²⁴⁹

The MAPP report notes:

[a]rmed groups such as the Clan del Golfo [Gulf Clan] or Los Pelusos are gaining notoriety for their attacks on security forces. These groups have nonhomogeneous structures and are able to take differentiated, flexible action in response to specific local and regional circumstances and contexts. They seek to replay coercive control scenarios in rural and urban communities,²⁵⁰ impeding the consolidation of community organizational bases and social mobilization to assert rights²⁵¹ ... [T]he IACHR has lamented the rise in murders of members of this population in the final months of 2016 and has noted with concern an increase in the vulnerability of campesino, indigenous, and Afro-Colombian leaders to such violence. According to the Commission, this trend has continued in 2017.²⁵²

According to the Colombian non-governmental organization, INDEPAZ, in the first semester of 2017, the BACRIM had operations in 275 municipalities of 28 departments, showing the greatest permanence (high intensity) in 165 municipali-

244 República de Colombia Ministerio de Defensa Nacional, Directiva Permanente no 0015, supra fn 224.

245 'Vía libre para bombardear a las tres bandas criminales más fuertes', *El Tiempo*, <http://www.eltiempo.com/archivo/documento/CMS-16583590>.

246 República de Colombia Ministerio de Defensa Nacional, Directiva Permanente no 0015, supra fn 224, p 5.

247 J. León and Juanita Vélez, 'Las cinco razones por las que las bacrim le ganan el pulso a Santos', *La Silla Vacía*, 11 April 2016, <http://lasillavacia.com/historia/las-cinco-razones-por-las-que-las-bacrim-le-ganan-el-pulso-santos-55358>.

248 A. L. Méndez, 'Ataques a la Policía prueban que están desesperados': Nieto, *El Tiempo*, 14 May 2017, <http://www.eltiempo.com/justicia/conflicto-y-narcotrafico/entrevista-a-general-de-la-policia-sobre-plan-pistola-del-clan-del-golfo-87814>.

249 León and Vélez, 'Las cinco razones', supra fn 247.

250 For instance, '[i]n rural sectors, uniformed BACRIM armed with assault rifles still patrol in units that are a throwback to their paramilitary origins. But in the urban centers, their capacity for violence lies with their more hidden networks of "sicarios," or hitmen.' Bargent and Charles, 'Inside Colombia's BACRIM', supra fn 241.

251 Twenty-Third Report of the Secretary General to the Permanent Council on the OAS Mission, supra fn 216, p 2.

252 Ibid, p 8.

ties of 23 departments.²⁵³ The government has determined that some groups had changed their *modus operandi*, generating less violence while been more profitable at the same time, and now the most violent places are mainly those where these groups fight over territory for the control of drug routes.²⁵⁴

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. The ELN considers itself a liberation movement, formed with the goal of ousting the ruling government.²⁵⁵ 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.²⁵⁶

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.²⁵⁷ 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 the drugs trade, often forming alliances with criminal gangs. The ELN remains on United States and European lists of terrorist organizations.²⁵⁸

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 1990s.²⁵⁹

253 C. G. Posso, '¿Hacia la dejación de las armas y sometimiento del Clan del Golfo?: Panorama de paramilitares y grupos armados ilegales en el posacuerdo. INDEPAZ, 2017, <http://www.indepaz.org.co/wp-content/uploads/2017/10/Sometimiento-del-Clan-del-Golfo-Camilo-Gonzalez-Posso.pdf> (last accessed 1 December 2017).

254 Fiscalía General de la Nación, *Documentos de la Política Pública y Política Criminal: Drogas y homicidios*, Documento no 3, 2017, <http://www.fiscalia.gov.co/colombia/wp-content/uploads/Drogas-y-homicidios-vf1.pdf> (last accessed 1 December 2017).

255 D. Renwick and C. Felner, 'Colombia's Civil Conflict', Council on Foreign Relations, 11 January 2017, <http://www.cfr.org/colombia/colombias-civil-conflict/p9272> (last accessed 7 March 2018).

256 Ibid.

257 Ibid.

258 Globalsecurity.org, 'Ejército de Liberación Nacional (ELN), National Liberation Army', www.globalsecurity.org/military/world/para/elin.htm (last accessed 7 March 2018).

259 Globalsecurity.org, 'Colombia -- Army (Ejército Nacional)', supra fn 234.

C. KEY DEVELOPMENTS IN 2017: ARMED GANG VIOLENCE SPOILS THE PEACE PROCESS

In March 2017, clashes between the Gulf Clan and the ELN left Afro-Colombian communities and indigenous peoples of the Department of Chocó in humanitarian crisis, framed in torture settings for alleged cooperation with enemy groups and selective killings,²⁶⁰ and subjected to both the forced displacement of more than 500 persons and confinement, as explosive devices, i.e., personal land mines, were used to impede community members' search for food in isolated areas.²⁶¹

In May 2017, the Gulf Clan launched a plan to attack the governmental security forces – the so-called 'Plan Pistola' (Gun Plan)²⁶² – which killed eight policemen and injured five more over eleven days.²⁶³ Later, in September, the same group announced a new Gun Plan in retaliation for the death of Roberto Vargas Gutiérrez (alias Gavilán), its second-in-command.²⁶⁴

For their part, members of the public armed forces have been accused of committing excesses that have been documented in reports of the UN High Commissioner for Human Rights.²⁶⁵ For instance, in October 2017, the (Colombian) Office of the Procurator investigated 36 policemen and 14 members of the army for the killing of seven peasants and the injury of 20 more during protests against the eradication of illicit crops in the Department of Nariño. Initially, the public forces alleged that FARC dissidents were responsible, but witnesses and subsequent investigations pointed towards the public forces.²⁶⁶

In November 2017, according to the information provided by the local community, clashes between armed groups resulted in the killing of 13 persons in the Department of Nariño.²⁶⁷

260 Amnesty International, *Risk of Forced Displacement in Chocó*, AI Index number AMR 23/7356/2017, 26 October 2017, <https://www.amnesty.org/en/documents/amr23/7356/2017/en/> (last accessed 1 December 2017).

261 Verdad Abierta, 'Grupos armados ilegales y ausencia del Estado incendian el sur de Chocó', 8 March 2017, <http://www.verdadabierta.com/victimas-seccion/desplazados/6576-grupos-armados-ilegales-y-ausencia-del-estado-incendian-el-sur-de-choco> (last Accessed 1 December 2017).

262 The Gun Plan is a strategy used by the illicit armed groups, and also by Pablo Escobar, to attack the security forces by offering a certain amount of money to hitmen for each police officer murdered. 'Versiones encontradas sobre supuesto "plan pistola" en Bogotá', *Semana*, 5 November 2017, <https://semana.com/Item/ArticleAsync/524813?nextId=524819>.

263 '¿Qué busca el "clan del Golfo" con el plan pistola contra la Policía?', *El Tiempo*, 11 May 2017, <http://www.eltiempo.com/justicia/conflicto-y-narcotrafico/analisis-del-plan-pistola-adelantado-por-el-clan-usuga-contra-la-policia-86976>.

264 'Nuevo "Plan Pistola" anuncia Clan del Golfo por muerte de alias Gavilán', *Caracol Radio*, 1 September 2017, http://caracol.com.co/emisora/2017/09/01/medellin/1504302009_298659.html.

265 UN Human Rights Council, Annual Report of the United Nations High Commissioner for Human Rights on the Situation of Human Rights in Colombia, UN doc A/HRC/34/3/Add.3, 23 March 2017.

266 'Procuraduría investiga a 36 policías por masacre en Tumaco', *Semana*, 13 October 2017, <http://www.semana.com/nacion/articulo/procuraduria-investiga-a-36-policias-por-masacre-en-tumaco/543843>.

267 'Cuatro muertos, cifra preliminar de enfrentamientos en Nariño', *El Tiempo*, 29 November 2017, <http://www.eltiempo.com/justicia/delitos/ataque-en-maguei-payan,-deja-al-menos-cuatro-personas-muertas-segun-ejercito-156714>.

According to the Single Register of Victims (RUV), a total of 49,699 individual victims of the armed conflict had been identified and 62,843 'cases of victimization' had taken place up to November 2017.²⁶⁸ Furthermore, the Regional Indigenous Organization of Valle del Cauca (ORIVAC) has announced that a total of 17 indigenous leaders of Valle del Cauca have been threatened in 2017 by illegal armed groups including criminal groups, dissidents of the FARC and the ELN.²⁶⁹

This is all notwithstanding that, by the end of 2016, the main leaders of Los Pelusos were captured or dead;²⁷⁰ that in September 2017, the principal ringleader of Los Puntilleros, Arnulfo Guzmán Hernández (alias Tigre) was captured and that, according to declarations of the Ministry of Defense, the organization has been completely disarticulated.²⁷¹ This, in principle,²⁷² would leave the Gulf Clan as the major OAG.

Taking into account that these kinds of illegal armed groups operate as decentralized networks²⁷³ and that they have constantly reconfigured themselves, it is still too soon to determine whether there will be a new manifestation of the previous groups. We should also consider the fact that these groups have shown a high level of cooperation, which has allowed them to admit to their criminal activities and even 'compil[e] lists of people whom the groups consider military targets'.²⁷⁴

Further reading: International Crisis Group, Colombia's Armed Groups Battle for the Spoils of Peace, Report no 63, 19 October 2017, <https://www.crisisgroup.org/latin-america-caribbean/andes/colombia/63-colombias-armed-groups-battle-spoils-peace>.

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS

Colombia adhered to the 1998 Rome Statute of the ICC 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 un-

268 Registro Único de Víctimas (RUV), <https://rni.unidadvictimas.gov.co/RUV> (last accessed 30 November 2017).

269 'Eln reconoce asesinato de gobernador indígena en Chocó', supra fn 213.

270 "'Los Pelusos" se quedan sin su máximo jefe en el Catatumbo', *El Colombiano*, 16 September 2016, <http://www.elcolombiano.com/colombia/los-pelusos-se-quedan-sin-su-maximo-jefe-en-el-catatumbo-FE4996997>.

271 'Por una mujer cayó alias Tigre, jefe de "los Puntilleros"', *El Tiempo*, <http://www.eltiempo.com/justicia/delitos/jefe-de-los-puntilleros-cayo-por-reunion-con-una-mujer-134240>.

272 According to the Colombian Government, four of the leaders of the Gulf Clan have been captured or killed. Presidencia de la República de Colombia, 'Policía decomisó más 12 toneladas de cocaína en la incautación más grande en la historia', 8 November 2017, <http://es.presidencia.gov.co/noticia/171108-Policia-decomiso-mas-12-toneladas-de-cocaina-en-la-incautacion-mas-grande-en-la-historia> (last accessed 6 December 2017).

273 For instance, according to INDEPAZ, in 2017 the Gulf Clan 'concentrated more than 70% of all the narco-paramilitary structures that have activities in Colombia and operate with a network of allies and local subaltern groups'. Posso, *¿Hacia la dejación de las armas y sometimiento del Clan del Golfo?*, supra fn 253.

274 Twenty-Third Report of the Secretary General to the Permanent Council on the OAS Mission, supra fn 216, p 6.

willing 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.²⁷⁵

The situation in Colombia has been under preliminary examination by the ICC's Office of the Prosecutor (OTP) since June 2004.²⁷⁶ As in its previous reports, the OTP stated in November 2017:

127. ... 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.

128. 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.²⁷⁷

3. EL SALVADOR: HIGH LEVEL OF ARMED GANG VIOLENCE, BUT NOT AN ARMED CONFLICT UNDER IHL

Ximena Mercedes Galvez Lima

Despite the high level of violence in El Salvador, *The War Report 2017* considers that the level of structural organization of the armed gangs there does not meet the *Tadi* criteria. As a consequence, El Salvador is not listed as an armed conflict in 2017, which is a controversial position. *The War Report 2017* nevertheless addresses and describes the situation in the country, given the important impact on the civilian population of the very high level of armed violence.

275 OTP, ICC, Report on Preliminary Examination Activities 2012, November 2012, §98, <https://www.icc-cpi.int/NR/rdonlyres/C433C462-7C4E-4358-8A72-8D99FD00E8CD/285209/OTP2012ReportonPreliminaryExaminations22Nov2012.pdf> (last accessed 7 March 2018).

276 OTP, ICC, Report on Preliminary Examination Activities 2013, November 2013, §118.

277 OTP, ICC, Report on Preliminary Examination Activities 2017, November 2017, https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf (last accessed 7 March 2018).

A. HISTORY OF THE VIOLENCE

When the Salvadorian civil armed conflict ended in 1992, the military was forced to demilitarize and disarm, the country was in poverty, there was an absence of a strong state and the youth lacked economic opportunities in the fragile post-conflict society.²⁷⁸ This led to widespread lack of security throughout the country and, combined with the fact that Salvadorian gang members (with criminal records undisclosed to the Salvadorian authorities)²⁷⁹ were being deported from the United States to El Salvador, gave way to the installation and expansion of gang culture within El Salvador. The majority of the present-day gangs appeared by the end of the civil war.²⁸⁰

El Salvador has been and still is extremely affected by its high rate of violence: 'The country registered an extraordinarily high intentional homicide rate of around 103 per 100,000 population in 2015. No other country in the world presently registers annual homicide rates that even come close to those of El Salvador in 2015'.²⁸¹ In recent years, El Salvador has been second only to Syria in the overall rates of annual violent deaths of any country in the world, and the situation there is in fact more deadly than the majority of the armed conflicts currently taking place across the globe.²⁸² By 2016, the violent homicide rate was around 81.7 per 100,000 population (approx. 5,278 people) and so far in 2017, 2,705 violent homicides have been reported.²⁸³ As noted by David Cantor, the overt increase in social violence is driven primarily by a particular element of organized crime: the street gangs of the Northern Triangle countries (Guatemala, Honduras and El Salvador). As an indication of their role in violence in El Salvador, official statistics suggest that around two-thirds of the many homicides registered in 2015 were committed by gang members.²⁸⁴ Allegedly, corruption within the police, military and state organs has a big impact on the growth and expansion of the gangs in El Salvador.²⁸⁵

The need for anti-gang policies became evident with the rise in violent crimes and homicides carried out by gang members. President Francisco Flores (1999–2004) was the first to implement the *Mano Dura* ('Iron Fist') policy in 2003, which consisted of arresting gang members, the removal of graffiti that usually portrayed the initials of the *maras* that controlled the neighbourhood or municipality and broad

278 D. J. Cantor, 'As Deadly as Armed Conflict? Gang Violence and Forced Displacement in the Northern Triangle of Central America', 23 *Agenda Internacional Año 34* (2016), 84.

279 T. Diaz, 'No Boundaries: Transnational Latino Gangs and American Law Enforcement', University of Michigan Press, 2009, p 164.

280 Cantor, 'As Deadly as Armed Conflict?', supra fn 278, 84.

281 Ibid, 81.

282 Ibid, 82–83.

283 'El Salvador vivió el sábado el "día más violento" del 2017 con 40 asesinatos', La Prensa Gráfica, 26 September 2017, <https://www.laprensagrafica.com/elsalvador/El-Salvador-vivio-el-sabado-el-dia-mas-violento-del-2017-con-40-asesinatos-20170926-0001.html>.

284 Cantor, 'As Deadly as Armed Conflict?', supra fn 278, 84.

285 J. M. Cruz, 'How Political Violence Fuels Gang Violence in Central America', *Pacific Standard*, 27 October 2017, <https://psmag.com/news/political-corruption-and-gang-violence-in-central-america>.

area sweeps in search of gang members.²⁸⁶ From 2004, President Antonio Saca substituted this policy with the Super Mano Dura policy, which was more repressive and allowed the apprehension of those who appeared to be affiliated with *maras*. Unfortunately, these two policies exacerbated violence in the country, where *maras* retaliated by killing more civilians, police and military members; prison overcrowding was unprecedented; the gangs adapted to the repressive policies and started using higher-calibre weapons and the rate of extortion crimes intensified as gang members who were free had to provide for imprisoned gang members and their families. Sonja Wolf claims that ‘the Super Mano Dura policies implemented in El Salvador were not only bad, but spectacularly ineffective’.²⁸⁷

In 2012, a truce was signed between the two rival gangs, MS-13 and MS-18. Sponsored by the Catholic Church and in collaboration with the Salvadorian Government, the deal was that *maras* should stop the killings, both between gangs and of civilians, in return for better and less repressive prison conditions for gang members in jail. Unfortunately, this truce did not last the year and homicide rates spiked again after some months. With the former government’s entry into a truce, a ‘dangerous message was being sent to the gangs and other criminal actors: the government can be held hostage with violence and criminal activity’.²⁸⁸ Cantor has also suggested that there are signs that some sectors within the gangs are becoming increasingly political in their visions, language and demands (noted especially when the truce was negotiated) and that MS-13 is sporadically igniting hostilities with state authorities and assassinating police and military personnel in a manner resembling that of the FARC in Colombia.²⁸⁹ The ability to speak with one voice and negotiate and conclude agreements was clearly noticeable when the truce between gangs was signed. However, due to the truce’s failure, it remains uncertain whether the representatives had the power to enforce it. There have been new attempts to sign truces with the government, but the latter says it will not give in to negotiation with criminals.²⁹⁰

The Super Mano Dura policy was active until 2014. By 2015, the year when El Salvador reached its highest peak of violent homicides, the average rate of approximately 18 violent deaths per day in El Salvador exceeded the average rate of 16 violent deaths per day during the bloody civil war of the 1980s.²⁹¹ This was evidently a wake-up call for the current Farabundo Martí National Liberation Front Government, and the current Salvadorian President, Sanchez Cerén, created the

286 S. Wolf, *Mano Dura: The Politics of Gang Control in El Salvador*, University of Texas Press, 2016, p 72, cited by C. Carballo, ‘El Salvador’s Crime Prevention Policies – from Mano Dura to El Salvador Seguro’, Naval Postgraduate School thesis, 2015, p 1.

287 Wolf, *Mano Dura*, supra fn 286, p 72.

288 S. Dudley ‘El Salvador’s Gang Truce: Positives and Negatives’, InSight Crime, 10 June 2013, <http://www.insightcrime.org/investigations/el-salvadors-gang-truce-positives-and-negatives> (last accessed 11 November 2017).

289 Cantor, ‘As Deadly as Armed Conflict?’, supra fn 278, 87.

290 N. Rauda Zablah ‘Sanchez Cerén: aunque algunos digan que estamos en una guerra, no queda otro camino’, *El Faro*, 7 March 2016, https://elfaro.net/es/201603/el_salvador/18180/Sánchez-Cerén-Aunque-algunos-digan-que-estamos-en-una-guerra-no-queda-otro-camino.htm.

291 Cantor, ‘As Deadly as Armed Conflict?’, supra fn 278, 84.

National Council on Citizen Security and Coexistence (Consejo Nacional de Seguridad Ciudadana y Convivencia – CNSCC). The CNSCC created the Plan Safe El Salvador,²⁹² which tries to envision a holistic approach, both preventive and repressive, towards the problem by providing youth employment, focusing on education, increasing state presence in the 50 most violent municipalities, expanding security in public transport, cutting communication between imprisoned gang members and those who are free or controlling and prosecuting crime.²⁹³ However, aid workers like Jorge Castañeda Gutman²⁹⁴ have questioned this plan for its lack of effectiveness and not tackling the problem at its root, which is poverty. He states that no real positive result has been perceived because of the lack of consistency in the programmes carried out in municipalities, and there is no way that this plan, with its current strategy, will ever weaken gangs, much less eradicate them.²⁹⁵ Additionally, in her latest visit to El Salvador, the UN Special Rapporteur on the human rights of internally displaced persons, noted ‘a deeply worrying law enforcement deficit in El Salvador, its police and investigation service is overwhelmed and under-equipped to respond to the challenges they face’.²⁹⁶

By 2016, El Salvador, Guatemala and Honduras decided to launch the Tri-national Task Force, the main objective of which is to create a tripartite security unit composed of military personnel, national police, members of the Office of the Attorney General, the judicial system and other institutions of the three countries.²⁹⁷ It seeks to maintain government control and public order in border communities, neutralize criminal gangs, impede the movement of criminal groups in the border area and reduce the level of drug trafficking, organized crime and petty crime, among other crimes in the region. The detention and extradition by the security units of gang members operating in the borders have been reported.²⁹⁸

B. MAIN ARMED GANGS

MS-13 and MS-18 are not the only gangs operating in El Salvador; however, they have the broadest membership, possess the most territorial influence²⁹⁹ and are

292 Consejo Nacional de Seguridad Ciudadana y Convivencia, Plan El Salvador Seguro, Executive Summary, 15 January 2015, <https://app.box.com/s/qk24npw6f2fqhti9p7hfdemto3kfvu7> (last accessed 6 December 2017).

293 Ibid.

294 President of the Forever Foundation in El Salvador.

295 R. Valencia ‘Hay cero posibilidades de que las pandillas se debiliten con el modelo actual de prevención’, *El Faro*, 25 October 2017, <https://elfaro.net/es/201710/salanegra/21038/Hay-cero-posibilidades-de-que-las-pandillas-se-debiliten-con-el-modelo-actual-de-prevención>.htm.

296 UN Office of the High Commissioner for Human Rights (OHCHR), Statement on the Conclusion of the Visit of the UN Special Rapporteur on the Human Rights of Internally Displaced Persons, Cecilia Jimenez-Damary to El Salvador, 14-18 August 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21984&LangID=E> (last accessed 7 March 2018).

297 J. Pelcastre, ‘Northern Triangle Countries Create Trinational Force’, *Diálogo*, 9 December 2016, <https://dialogo-americas.com/en/articles/northern-triangle-countries-create-trinational-force>.

298 International Institute for Strategic Studies (IISS), *Armed Conflict Survey 2017*, pp 331-332.

299 Ibid.

considered the most dangerous and lethal. Each gang also has its own hierarchy, codes of conduct and rules.³⁰⁰ The magnitude of the two gangs' power was evidenced in 2015, when they were responsible for a national transportation strike – with the objective of forcing negotiations with the government – which paralysed activities throughout the country, and during which some workers in public transportation were killed for not obeying the gangs' orders.³⁰¹

1. Mara Salvatrucha (MS-13)

MS-13 was created by Salvadorian immigrants who fled the country during the civil war (1980–1992) and settled in the US in the 1980s. The gang first appeared as a means of protecting the Salvadorian community from other gangs and ethnic communities, and other Central American immigrants joined rapidly. At the end of the Salvadorian civil war, the US started deporting Central American immigrants convicted of certain offences. These deportees effectively imported a Los Angeles-style gang culture to the post-conflict societies of El Salvador, Guatemala and Honduras. This gang has a presence in El Salvador, Guatemala, Honduras, Mexico, the US and Canada.³⁰² There are said to have been 12,000 Mara Salvatrucha gang members in El Salvador by 2012. Recent information offered by the Salvadorian Minister of Justice and Public Security has confirmed that, due to discrepancies in the management of finances within MS-13, some of its ringleaders and members have created a rival faction called MS503.³⁰³ The attacks between the factions are recurrent, even within prison facilities.³⁰⁴ Allegedly, this gang is forming alliances, or fulfilling subcontracts, with Mexican cartels like the Zetas for drug trafficking and murder-for-hire purposes.³⁰⁵

Organization:

- Organized in *clicas*: cliques in control of a small territory-neighbourhoods
- *Cabecillas*, *palabrerros* or *ranfleros*: local leaders of the gang
- *Maras permanentes*: members with the longest experience in the gang
- *Novatos* and *simpatizantes*: rookies with less power
- *Sicarios* or *gatilleros*: members in charge of killings

300 'Conozca los codigos y reglas del barrio 18 y la Mara Salvatrucha' El Herald, 29 April 2016, <http://www.elheraldo.hn/pais/954755-466/conozca-los-codigos-y-reglas-del-barrio-18-y-la-mara-salvatrucha>.

301 'El paro que demuestra el poder de las maras', *BBC Mundo*, 25 July 2015, http://www.bbc.com/mundo/noticias/2015/07/150729_america_latina_el_salvador_maras_pandillas_paros_transporte_aw.

302 S. Velázquez, 'MS13', *InSight Crime*, 9 March 2017, <https://www.insightcrime.org/el-salvador-organized-crime-news/mara-salvatrucha-ms-13-profile/> (last accessed 1 December 2017).

303 B. J., Argueta 'Por diferencias, la Mara Salvatrucha se separa y surge la MS503', *Tiempo Digital*, 2 May 2017, <http://tiempo.hn/mara-salvatrucha-se-separa-surge-ms503/>.

304 *Ibid.*

305 'Mara Salvatrucha (MS13)', *InSight Crime*, 11 January 2017, <http://es.insightcrime.org/noticias-sobre-crimen-organizado-en-el-salvador/mara-salvatrucha-ms-13-perfil> (last accessed 12 November 2017).

- *Comision*: formed by the nine leaders of the most powerful *clicas*, whose functions may include the right to activate the '*luz verde*', a green light to the death sentence on a *mara* member found guilty of insubordination
- As a result of Mano Dura policies, which have contributed to the massive imprisonment of gang members, incarcerated members now organize their main operations from jails, communicating with the *cabecillas* by mobile phone³⁰⁶

2. Mara Barrio 18 (MS-18)

Unlike MS-13, MS-18 was created by Mexican immigrants in 1959 in the Pico Union district of Los Angeles, California. It was created as a means of protection against other ethnic gangs, and it incorporated other Latinos including Salvadorian refugees. Under the US immigration policies of the 1990s, foreign-born residents with criminal charges were deported to their home countries, many of them Salvadorian active gang members, thus contributing to the spread of gang culture in Central America. Presumably, this gang has a presence in the El Salvador, Guatemala, Honduras, Mexico, the US and Canada.³⁰⁷ According to the UN Office on Drugs and Crime, by 2012 MS-18 had between 8,000 and 10,000 members in El Salvador.³⁰⁸ Allegedly, it has a close relationship with the Mexican Mafia and has established links with Mexican cartels like the Zetas and Sinaloa.³⁰⁹

Organization:

- In 2005, it divided itself into two rival factions: the *Revolucionarios* and the *Sureños*
- Divided into *clicas* local subdivisions, which are more or less independent of each other
- A hierarchy within cliques, but no chain of command for all members across North and Central America³¹⁰
- *Ranfleros*: clique leaders
- *Llaveros*: close partners of the leaders
- *Soldados*: subordinates of the *llaveros*
- *Chequeos*: rookies
- *Rueda de barrio*: brings together the *ranfleros* of the 15 most powerful *clicas* in the country³¹¹

306 UN Office on Drugs and Crime (UNODC), *Transnational Organized Crime in Central America and the Caribbean: A Threat Assessment*, September 2012, p 27, https://www.unodc.org/documents/data-and-analysis/Studies/TOC_Central_America_and_the_Caribbean_english.pdf (last accessed 6 December 2017).

307 H. S. Ávalos, 'Barrio 18', *InSight Crime*, 13 January 2017, <https://www.insightcrime.org/el-salvador-organized-crime-news/barrio-18-profile/> (last accessed 12 November 2017).

308 UNODC, *Transnational Organized Crime*, supra fn 306, p 27.

309 Ávalos, 'Barrio 18', supra fn 307.

310 *Ibid.*

311 UNODC, *Transnational Organized Crime*, supra fn 306, p 28.

C. KEY DEVELOPMENTS IN 2017: HIGH LEVEL OF ARMED GANG VIOLENCE, BUT NOT AN ARMED CONFLICT UNDER IHL

Allegations of an implicit recognition of ‘war’ during President Sanchez Cerén’s speech in 2016 have been acknowledged.³¹² As part of the ‘extraordinary measures’³¹³ implemented to tackle the issue of gangs and as a follow-up to his speech, the Salvadorian President ordered the creation of three battalions of 200 military agents, each comprised of the Special Reaction Forces, who are taught to shoot in a discriminate way, trained as snipers and taught how to deploy tanks, etc. The training centre’s motto seems to be: ‘when colliding with the enemy, kill do not hesitate, the law is to kill or die’.³¹⁴ Among the other extraordinary measures adopted are the creation of a special regime of internment and isolation of gang leaders, the suspension of visits in prison, temporary detention centres in different places and suspended transfers of imprisoned gang members to judicial hearings, etc.³¹⁵ All these measures were meant to expire by April 2017, but the Legislative Assembly decided to extend them until April 2018.³¹⁶

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS

El Salvador deposited its instrument of ratification of the 1998 Rome Statute of the International Criminal Court on 3 March 2016.

In their recent visits to El Salvador in 2017, both the UN High Commissioner for Human Rights and the UN Special Rapporteur on the human rights of internally displaced persons³¹⁷ were alarmed by reports of extrajudicial killings and the return of anti-gang death squads.³¹⁸ The Inter-American Commission on Human Rights has also stated that it is almost certain that there is a pattern of extremely excessive use of force by state agents and that it deems a country visit necessary.³¹⁹

312 Rauda Zablah, ‘Sanchez Cerén’, supra fn 290.

313 A. Peralta, ‘El Salvador extiende medidas extraordinarias contra pandillas hasta 2018’, *PanAm Post*, 13 February 2017, <https://es.panampost.com/adriana-peralta/2017/02/13/salvador-medidas-extraordinarias/>.

314 Prensa Libre, ‘El Salvador alista a su ejército para una “guerra” contra las pandillas’, *Prensa Libre*, <http://www.prensalibre.com/internacional/el-salvado-se-alista-para-una-guerra-contra-las-pandillas>.

315 Peralta, ‘El Salvador extiende medidas extraordinarias’, supra fn 313.

316 Ibid.

317 OHCHR, Statement on the Conclusion of the Visit of the UN Special Rapporteur on the Human Rights of Internally Displaced Persons, supra fn 296.

318 OHCHR, ‘Statement by UN High Commissioner for Human Rights Zeid Ra’ad Al Hussein at the End of his Mission to El Salvador’, 17 November 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22412&LangID=E>.

319 Inter-American Commission on Human Rights, ‘Report on the 164th Ordinary Period of Sessions of the IACHR, 12 October 2017’, http://www.oas.org/en/iachr/media_center/PReleases/2017/157.asp (last accessed 2 December 2017).

4. LIBYA: CONFLICT AND INSTABILITY CONTINUE

Sari Arraf

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 known as the Islamic State in Libya and the Ansar al-Sharia armed group. The violence persisted in 2017 and the situation in Libya remains one of a series of overlapping non-international armed conflicts.

A. HISTORY OF THE CONFLICT

The ongoing conflict in Libya is characterized by a myriad of armed groups and actors who are divided across different ideological, national, regional, ethnic and tribal lines. The tendency to depict the conflict as a rivalry between nationalist and Islamist camps suffers from oversimplification, because it tends to detract attention from other factors that come into play. These factors include regional tensions between the historical provinces of the country; tribal and ethnic tensions, which in some cases date back to discriminatory policies pursued in the era of the Gaddafi regime, in addition to conflicts between revolutionary forces and actors identified with the older regime. Moreover, armed groups are strongly embedded in their local context, which means that ideological and political agendas intersect with local identities as well. With growing competition over resources in the country, these conflicting allegiances and identities have further intensified with armed groups vying for a stake in Libya’s future.³²⁰

The current proliferation of armed groups in Libya is anchored in the settings of the 2011 uprisal, which led to the ouster of the Gaddafi regime later that year. The violent crackdown of the former regime on protestors led to the emergence of various local councils and armed militia groups on a city-by-city basis.³²¹ In addition, the Transitional National Council (TNC) was established in February 2011 by members of the exiled opposition and high-ranking defectors, to act as the military leadership of the uprisal and the political representative of the Libyan opposition. While the TNC eventually gained wide recognition from the international community, it failed to build close relations with local councils and armed groups leading the uprisal.³²² More importantly, it did not succeed in disarming these armed groups or incorporating them effectively into the state security apparatus, which

320 D. Gartenstein-Ross and N. Barr, *Dignity and Dawn: Libya’s Escalating Civil War*, International Centre for Counter-Terrorism Research Paper, February 2015, p 17, <https://www.icct.nl/wp-content/uploads/2015/02/ICCT-Gartenstein-Ross-Barr-Dignity-and-Dawn-Libya-Escalating-Civil-War-February2015.pdf> (last accessed 7 March 2018).

321 Ministry of Foreign Affairs of the Netherlands, *Libya: Militias, Tribes and Islamists*, 19 December 2014, p 7, <https://www.government.nl/documents/reports/2014/12/20/libya-militias-tribes-and-islamists> (last accessed 7 March 2018).

322 W. Lacher, *Fault Lines of the Revolution: Political Actors, Camps and Conflicts in the New Libya*, Research Paper 2013/RP, German Institute for International and Security Affairs, 4 May 2013, p 9, <https://www.swp-berlin.org/en/publication/libya-fault-lines-of-the-revolution/> (last accessed 7 March 2018).

had almost entirely collapsed after the fall of the Gaddafi regime. As a result of a disarrayed process of integration, many armed groups were put on the payroll of the government but retained a high degree of autonomy from the state.³²³

In August 2012, the TNC transferred power to the newly elected General National Council (GNC). Yet, none of the successive governments that emerged from the Council managed to stop state funding for these armed groups or bring them under control, and the numbers of fighters on the government payroll was recorded to be around 200,000 at the beginning of 2014.³²⁴ In fact, by that time many armed groups had bolstered their power, and some political parties and figures had aligned themselves with certain militias.³²⁵ As a result, armed groups came to exert control over the work of the parliament and state institutions, thus hindering the basic functioning of the government and putting the viability of state institutions in peril. This was evidenced on numerous occasions in 2013–2014, when armed groups allied with various political factions stormed the GNC and other government buildings, demanding political concessions.³²⁶

The situation of violence deteriorated in mid-2014, when Ahmed Maiteeq, widely perceived as backed by Misrata-based Islamist groups, was appointed as the new Prime Minister. On 16 May 2014, General Khalifa Haftar launched Operation Dignity with the purpose of eradicating Islamist militias in Benghazi. Two days later, Zintani militias allied with Haftar raided the GNC and declared the legislative body suspended. Earlier that year, the GNC's decision to extend its mandate – which was originally due to expire on February 2014 – had been highly contentious,³²⁷ leading Haftar to conduct an abortive coup d'état. This extension was all the more criticized given the GNC's failure to address the country's economic, political and security problems. The decision came after an Islamist/Berber/Misratan bloc gained control of the GNC, which was narrowly divided between a coalition generally described as nationalist (the National Forces Alliance) and a rival coalition composed of Islamist factions.³²⁸ Consequently, new elections were scheduled on 25 June 2014.

Following the raid of the GNC, Misrata-based militias moved to the capital at the behest of political allies in the Council. This was followed by clashes between these groups and Zintani militias that initially occurred on a limited scale.³²⁹ In

323 Ministry of Foreign Affairs of the Netherlands, *Libya*, supra fn 321, pp 9–10. A large number of armed groups were incorporated into umbrella coalitions, mainly the Libya Shield Forces and the Supreme Security Committee, which were, respectively, under the authority of the Ministry of Defence's Chief of Staff and the Ministry of Interior. Yet, these armed groups retained a considerable degree of autonomy.

324 H. Salah, 'Libyan Militias and the Quest for National Unity' (in Arabic), Human Rights Watch (HRW), 27 October 2015, <https://www.hrw.org/ar/news/2015/10/27/282761> (last accessed 7 March 2018).

325 Ministry of Foreign Affairs of the Netherlands, *Libya*, supra fn 321, p 7.

326 Gartenstein-Ross and Barr, *Dignity and Dawn*, supra fn 320, p 10.

327 Middle East Institute, *Libya Congress Extends its Mandate Until End-2014*, 23 December 2013, <http://www.mei.edu/content/libya-congress-extends-its-mandate-until-end-2014> (last accessed 7 March 2018).

328 Gartenstein-Ross and Barr, *Dignity and Dawn*, supra fn 320, p 16.

329 Ibid, p 23.

Benghazi, Islamist factions were prompted to unite in order to rebuff Haftar's forces. On 20 June 2014, they announced the establishment of the Benghazi Revolutionaries Shura Council (BRSC), an umbrella group of Islamist militias, including Ansar al-Sharia in Libya (ASL) and the 17 February Martyrs Brigade.³³⁰ Meanwhile, the parliamentary elections in June resulted in gains for the nationalist bloc at the expense of the Islamist/Misratan bloc that had previously dominated the GNC.³³¹

This shift led to the emergence of a coalition of Islamist/Misratan militias, set to take control of the capital. On 13 July 2014, they launched Operation Libya Dawn in order to drive out Haftar-aligned Zintani militias from their positions in the capital, including the strategic Tripoli International Airport, which had been under the control of the al-Qa'qa and Sawa'iq Zintani militias since the fall of the former regime in 2011. The intensity of clashes forced the newly elected parliament, now called the House of Representatives (HoR), to retreat to the city of Tobruk in the east of the country.³³² On 23 August 2014, Tripoli International Airport was seized by Libya Dawn forces, which had gained control over most of the capital.³³³ Two days later, former GNC members from the losing Islamist/Misratan bloc announced the reinstatement of the GNC, thus marking the beginning of a harsh split in the political institutions of the country.

On 6 November 2014, the Libyan Supreme Court invalidated on procedural grounds a constitutional amendment on the basis of which the HoR was established. While the court refrained from decreeing the dissolution of the HoR, the ruling delegitimized the newly elected parliament and further complicated the political situation in the country. The HoR rejected the ruling by claiming that the decision was rendered under pressure from Islamist militias controlling the capital, and continued to hold its sessions.³³⁴ In the same month, the HoR endorsed Operation Dignity as an operation under the General Chief of Staff of the Libyan Army, Abd-al-Raziq al-Nazuri.³³⁵ On 2 March 2015, Haftar was eventually appointed by the HoR as Chief of Staff of the Libyan Army.³³⁶

330 Ibid, p 22.

331 M. Eljarh, 'Libya's Islamists Go for Broke', *Foreign Policy*, 22 July 2014, <http://foreignpolicy.com/2014/07/22/libyas-islamists-go-for-broke/>.

332 B. Humphrey, 'Theoretical Implications of Moving the Libyan Government to Tobruk', *Arsenal for Democracy*, 24 August 2014, <http://arsenalfordemocracy.com/2014/08/24/theoretical-implications-of-moving-the-libyan-government-to-tobruk> (last accessed 7 March 2018).

333 'Tripoli Airport "Seized by Islamist Militia"', *Al Jazeera*, 23 August 2014, <http://www.aljazeera.com/news/middleeast/2014/08/tripoli-airport-2014823183122249347.html>.

334 S. Ibrahim, 'Caught Between Law and Politics: Judicial Review of Constitutional Amendments in Libya', *ConstitutionNet*, 28 November 2014, <http://www.constitutionnet.org/news/caught-between-law-and-politics-judicial-review-constitutional-amendments-libya> (last accessed 7 March 2018)..

335 'HoR Says Operation Dignity Under National Army', *Libya Herald*, 17 November 2014, <https://www.libyaherald.com/2014/11/17/hor-says-operation-dignity-under-national-army>.

336 'Libya Names Anti-Islamist General Haftar as Army Chief' *BBC News*, 2 March 2015, <http://www.bbc.com/news/world-africa-31698755>.

In mid-March 2015, ISIL went on to seize the coastal town of Sirte. The group had first emerged in Libya in early October 2014, when Islamist factions in the eastern city of Derna pledged allegiance to the Islamic State (IS)³³⁷ Following the release of a video on 15 February showing the mass beheading of 21 Egyptian Coptic Christians who were captured earlier in Sirte, Egyptian warplanes conducted a series of airstrikes on ISIL positions in the east of the country.³³⁸ The Egyptian intervention received the approval of the HoR-aligned government led by Prime Minister Abdullah al-Thinni, who called for western military intervention against Islamist militants in the country. Conversely, the GNC condemned Egypt's military action, calling it 'an assault against Libyan sovereignty'.³³⁹

The year of 2015 was marked by United Nations-brokered negotiations to reach a power-sharing deal between the conflicting parties. Negotiators included representatives of the two rival parliaments, the Tobruk-based HoR and Tripoli-based GNC, joined later by independent participants.³⁴⁰ The negotiations eventually led to the adoption of the UN-brokered Libyan Political Agreement (LPA) on 17 December 2015.³⁴¹ The agreement established the Presidency Council of the Council of Ministers, known as the Presidential Council (PC), which functions as a head of state and Supreme Commander of the Libyan Army.³⁴² The PC consists of nine members and is presided over by Faiez al-Serraj, a former HoR member from the Tripoli constituency, who became Council President upon signature. According to the agreement, Serraj would head the Government of National Accord (GNA), which had to be endorsed by the HoR,³⁴³ and the two governments linked to the HoR and GNC would be dissolved. Moreover, the HoR would remain as the legitimate parliament of the country, whereas members of the GNC would be integrated into the consultative High Council of State, a new body with a say in appointments for key positions.³⁴⁴

337 E. Banco, 'ISIS Establishes Stronghold in Derna, Libya', *International Business Times*, 11 October 2014, <http://www.ibtimes.com/isis-establishes-stronghold-derna-libya-1721425>.

338 J. Malsin and C. Stephen, 'Egyptian Air Strikes in Libya Kill Dozens of Isis Militants', *The Guardian*, 17 February 2015, <https://www.theguardian.com/world/2015/feb/16/egypt-air-strikes-target-isis-weapons-stockpiles-libya>.

339 M. Fetouri, 'Could Libya's IS Suck Egypt into Endless War?', *Al-Monitor*, 17 February 2015, <http://www.al-monitor.com/pulse/originals/2015/02/egypt-copts-libya-islamic-state-military-action.html>; see also U. Laessing, 'Libya Prime Minister Calls for International Strikes on Islamists', *Reuters*, 16 February 2015, <http://www.reuters.com/article/us-mideast-crisis-libya-thinni-idUSKBNOLKOWE20150216>.

340 International Crisis Group, *The Libyan Political Agreement: Time for a Reset*, Report no 170, p 1, 4 November 2016, <https://www.crisisgroup.org/middle-east-north-africa/north-africa/libya/libyan-political-agreement-time-reset> (last accessed 7 March 2018).

341 UN News, 'UN Welcomes "Historic" Signing of Libyan Political Agreement', 17 December 2015, http://www.un.org/apps/news/story.asp?NewsID=52845#WT_ARmiGOUk (last accessed 7 March 2018).

342 Libyan Political Agreement, as signed on 17 December 2015, <https://unsmil.unmissions.org/libyan-political-agreement> (last accessed 7 March 2018)..

343 Ibid, Art 3.

344 Crisis Group, *The Libyan Political Agreement*, supra fn 340, p 3.

On 23 December 2015, the UN Security Council (UNSC) adopted Resolution 2259, welcoming the formation of the PC and calling upon states to cease support for and official contact with parallel institutions that claim to be the legitimate authority but are outside of the agreement. It further urged states to actively support the GNA in responding to security threats posed by ISIL, ASL and other al-Qaeda affiliates.³⁴⁵ By January 2016, most states recognized the PC as the executive power of Libya and stopped engaging with al-Thinni's government,³⁴⁶ despite the fact that the HoR did not endorse the GNA as required by the agreement. The stumbling of the peace deal was due to a major drawback in the LPA: it did not represent all of the important stakeholders in the country, as major opponents who disagreed on key components in the negotiated agreement were left out. These included the GNC's President, Nuri Abu Sahmain, and his counterpart in the HoR, Ageelah Saleh, General Haftar and forces affiliated to the Libyan National Army (LNA), as well as several armed groups in western Libya.³⁴⁷ By August 2018, the HoR gave the GNA a vote of no confidence.³⁴⁸

The GNA initially operated from Tunisia until Serraj and six other members of the PC arrived in Tripoli on 30 March 2016, defying threats from city militias affiliated with the GNC leadership.³⁴⁹ Yet, there was no substantial military opposition, and several local militias declared their support for the PC. Many western municipalities as well as the main financial institutions in the capital, the Central Bank and the National Oil Corporation, also recognized the authority of the PC.³⁵⁰ On 5 April 2016, a number of members declared the GNC's dissolution and the establishment of the High Council of State as its replacement.³⁵¹ The session had been held outside the GNC headquarters under the control of GNC President Abu Sahmain, leading the latter to condemn the move and threaten to resort to court.³⁵² This move was all the more contentious given that the HoR had not yet approved the Agreement.

In late July 2016, the PC reached an agreement with the former head of the Petroleum Facilities Guards (PFG) for central Libya, Ibrahim Jadhraan, to reopen the oil terminals in Ra's Lanuf and Sidrah and reinstate him.³⁵³ Jadhraan had taken control

345 UNSC Res 2259, 23 December 2015.

346 Crisis Group, *The Libyan Political Agreement*, supra fn 340, p 20.

347 Ibid, pp 1-4.

348 A. Assad, 'Tobruk-based HoR Gives No Confidence to UN-proposed Government', *The Libya Observer*, 22 August 2016, <https://www.libyaobserver.ly/news/tobruk-based-hor-gives-no-confidence-un-proposed-government>.

349 H. Amara, 'Libya's U.N.-backed Presidential Council Reaches Tripoli by Ship', *Reuters*, 30 March 2016. <http://www.reuters.com/article/us-libya-security-politics-idUSKCNOWW1CG>.

350 Crisis Group, *The Libyan Political Agreement*, supra fn 340, p 10.

351 K. Hanly, 'Op-Ed: Libya's State Council Meets in Tripoli Ignores Rules of LPA', *Digital Journal*, 5 April 2016, <http://www.digitaljournal.com/news/politics/op-ed-libya-s-state-council-meets-in-tripoli-ignores-rules-of-lpa/article/462105>.

352 Ibid; see also S. Ayyub, 'Abu Sahmain Condemns State Council Meeting, Threatens Court Action as Ghwell "Government" Gives up', *Libya Herald*, 5 April 2016, <https://www.libyaherald.com/2016/04/05/abu-sahmain-condemns-state-council-meeting-threatens-court-action/>.

353 A. Mustafa, 'Presidency Council Members in Ras Lanuf for Deal with Jadhraan', *Libya Herald*, 28 July 2016, <https://www.libyaherald.com/2016/07/28/presidency-council-members-in-ras-lanuf-for-deal-with-jadhraan/>.

of the main oil terminals in eastern Libya in July 2013 and later attempted to sell oil. The seizure of the oil terminals cost Libya billions of dollars in revenue.³⁵⁴ Yet, despite hefty payments to Jadhran, oil exports did not resume.³⁵⁵ On 11 September, LNA forces attacked the oil crescent area and seized control of oil ports in Sidrah, Ra's Lanuf, Burayqah and Zuwaytinah with the support of tribal leaders. Oil exports resumed shortly after the LNA called on the National Oil Corporation to assume the management of the facilities.³⁵⁶ At the same time, the capture of the oil terminal increased tensions between the two major armed coalitions in the country.³⁵⁷

On 14 October 2016, a rump of GNC members led by the former Prime Minister of the National Salvation Government, Khalifa al-Ghweil, and supported by allied militias seized the premises of the High Council of State.³⁵⁸ Some units of the Presidential Guard, a force created by the PC in May 2016 to protect government buildings and vital installations, turned against the LPA and backed the return of the GNC-aligned government.³⁵⁹ However, this challenge failed to gain wider support. On 5 December 2016, Sirte was liberated from ISIL after a six-month military campaign led by armed groups loyal to the GNA.³⁶⁰ The operation, called al-Bunyan al-Marsous ('Solid Foundation'), was supported by airstrikes by the US Air Force at the request of the GNA.³⁶¹ Sirte was the last significant urban centre under IS control in Libya, and by the end of 2016, the group's presence was reduced to desert areas in the south and some cells around the country.³⁶² The number of deaths resulting from the Sirte campaign was reported to be 720, approaching half the death toll in Libya for the year 2016.³⁶³

354 M. Toaldo and M. Fitzgerald, 'A Quick Guide to Libya's Main Players', European Council on Foreign Relations, p 5.

355 Crisis Group, *The Libyan Political Agreement*, supra fn 340, p 16.

356 UNSC, Report of the Secretary-General on the United Nations Support Mission in Libya, UN doc S/2016/1011, 1 December 2016.

357 Crisis Group, *The Libyan Political Agreement*, supra fn 340, p 25.

358 L. Watanabe, 'Libya's Political Agreement Reaching a Breaking Point', *Global Observatory*, 27 October 2016, <https://theglobalobservatory.org/2016/10/libya-al-ghweil-haftar-government-national-accord/>.

359 A. Ben-Ibrahim, 'Presidential Guard Says No Longer Supports Libyan Political Agreement', *The Libya Observer*, 17 October 2016, <https://www.libyaobserver.ly/news/presidential-guard-says-no-longer-supports-libyan-political-agreement>.

360 'Libya Officially Declares Liberation of Sirte from ISIS', *The Arab Weekly*, 18 December 2016, <http://www.thearabweekly.com/article/7388/Libya%20officially%20declares%20liberation%20of%20Sirte%20from%20ISIS>.

361 J. Pack, 'Mapping Libya's Jihadists', *Hate Speech International*, 7 June 2017, <https://www.hate-speech.org/mapping-libyas-jihadists/#fn-3327-1> (last accessed 7 March 2018).

362 A. Lewis, 'Islamic State Shifts to Libya's Desert Valleys After Sirte Defeat', *Reuters*, 10 February 2017, <http://uk.reuters.com/article/uk-libya-security-islamicstate-idUKKBN15P1H1>; see also 'BM Forces Hunt IS Encampments near Bani Walid', *Libya Herald*, 29 December 2016, <https://www.libyaherald.com/2016/12/29/bm-forces-hunt-is-encampments-near-bani-walid/>.

363 S. Zaptia, 'A Total of 1,523 Violent Deaths Were Reported in Libya in 2016: Libyanbodycount', *Libya Herald*, 5 January 2017, <https://www.libyaherald.com/2017/01/05/a-total-of-1523-violent-deaths-were-reported-in-libya-in-2016-libyanbodycount/>.

B. PARTIES TO THE CONFLICT

The UN-backed unity government is involved in multiple and overlapping non-international armed conflicts in Libya involving a myriad of armed groups, notably the Libyan National Army, Ansar a-Sharia and the IS group.

As in 2016, the US launched air operations against IS in 2017 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.

Given the multiplicity of the different armed actors in Libya, the determination of the parties to the conflict is not straightforward. This list is an attempt to name the most important ones.

1. Libyan National Army (LNA)

Although proclaimed by its leader, General Khalifa Haftar, to be the national army of Libya, it is in fact a mixture of military units, former police officers and tribal or regional-based armed groups.³⁶⁴ The LNA came to the fore in Mid-2014 with the launch of Operation Dignity. In March 2015, Haftar was designated by the HoR as Chief of Staff of the Libyan Army. The LNA has a strong hold on the eastern part of the country with control over some parts in Central Libya.

2. The Zintani Militias

Armed groups from the western city of Zintan, who are allied with LNA forces. They were driven out of Tripoli as a result of Operation Dawn. Some later joined the so-called Tribal Army – comprising fighters from the Warshefana region and other tribal elements from western Libya – to confront Libya Dawn forces.³⁶⁵ They held Saif al-Islam in captivity for over five years until his alleged release in June 2017.

3. Libya Shield Forces (LSF)

An umbrella coalition of armed groups that was established in 2012 and is nominally under the authority of the Ministry of Defense. It comprises three largely independent divisions that are named after their geographical locations: the Eastern, Central and Western Shields. The eastern branch (also called Libya Shield One) is part of the BRSC. The Central Shield Force is predominantly composed of Misratan militias and, together with the Western Shield, was a key component of the former Libya Dawn coalition.

4. Misratan Third Force

An armed group falling under the authority of Misrata's Military Council and led by Jamal al-Treki. The Third Force was originally deployed in the southern part of Libya by the National Salvation Government in early 2015, in order to stabi-

364 Toaldo and Fitzgerald, 'A Quick Guide to Libya's Main Players', supra fn 354, p 4.

365 Ibid, p 5.

lize communal fighting in Sabha.³⁶⁶ The group had to withdraw from some of its positions in the region following heavy clashes with LNA forces in mid-2017. It is considered to be loyal to the GNA.

5. Benghazi Revolutionaries Shura Council (BRSC)

An umbrella group of Islamist militias that united in June 2014 to rebuff Haftar's forces in Benghazi. It included the former ASL, the 17 February Martyrs Brigade, the Rafallah al-Sahati Brigade and Libya Shield One. Its presence in Benghazi today is limited to the districts of Sabri and Souk al-Hout in the city centre.

6. Former Ansar al-Sharia in Libya (ASL)

A radical Islamist group that was originally established in Benghazi in 2011. The group is affiliated with al-Qaeda and is considered to be responsible for the September 2012 attack on the US Consulate in Benghazi.³⁶⁷ Following the attack, the group went through a process of rebranding, changing its name from Katibat Ansar al-Sharia in Benghazi to Ansar al-Sharia in Libya. This change reflected the group's plan to expand its activity to the rest of the country, later leading to the emergence of affiliates in the cities of Derna, Sirte and Ajdabiya.³⁶⁸ Until recently, it was the leading force in the BRSC. It announced its dissolution in May 2017, citing heavy losses that have wiped out its leadership.

7. Islamic State in Libya (ISIL)

First emerged in Libya in early October 2014, when Islamist factions in the eastern city of Derna pledged allegiance to IS. It was, however, ousted from the city in mid-2015 by the Derna Mujahideen Shura Council (DMSC). In March 2015, IS went on to seize the coastal town of Sirte, which was only liberated in late 2016 following Operation al-Bunyan al-Marsous. Currently, the group's presence in Libya is limited to desert areas in the south and some cells around the country.

8. Derna Mujahideen Shura Council (DMSC)

A coalition of jihadist militias that was formed in December 2014 in opposition to ISIL and the Islamic Youth Shura Council in Derna.³⁶⁹ It managed, half a year later, to oust ISIL from the city, which has since remained under an LNA blockade. Following the terrorist attack on Egyptian Copts in May 2017, the Egyptian Air Force launched several airstrikes against DMSC positions in Derna. The city remains the last key centre in eastern Libya that the LNA has been unable to take.³⁷⁰

366 F. Wehrey, 'Insecurity and Governance Challenges in Southern Libya', Carnegie Endowment for International Peace, 30 March 2017, <http://carnegieendowment.org/2017/03/30/insecurity-and-governance-challenges-in-southern-libya-pub-68451> (last accessed 7 March 2018).

367 Toaldo and Fitzgerald, 'A Quick Guide to Libya's Main Players', supra fn 354, p 7.

368 Ministry of Foreign Affairs of the Netherlands, *Libya*, supra fn 321, p 17.

369 Pack, 'Mapping Libya's Jihadists', supra fn 361.

370 'LNA Air Strikes on Derna After Haftar Appoints New Head of Operations', *Libya Herald*, 17 January 2017, <https://www.libyaherald.com/2017/01/17/new-lna-air-strikes-on-derna-after-haftar-appoints-another-new-head-of-operations-against-it/>.

9. Benghazi Defense Brigades (BDB)

Formed in May 2016 with the purpose of supporting the BRSC and retaking Benghazi from Haftar-aligned forces. It is comprised of a number of anti-Haftar army and police personnel as well as militiamen of various political stripes, including hardline Islamists. The group was recently involved, together with the Misratan Third Force, in heavy clashes against LNA forces in South Libya.

10. Libyan National Guard (LNG)

A coalition of militias formed in February 2017 in support of the GNC-linked government of Khalifa al-Ghweil. The LNG is composed largely of Misratan militias with a number of Amazigh militias, and also includes the Libyan Revolutionaries Operations Room (LROR). The coalition is reported to exert control over almost all of western Tripoli, whereas the rest of the capital is controlled by forces loyal to the GNA.

C. KEY DEVELOPMENTS IN 2017: CONFLICT AND INSTABILITY CONTINUE

On 18 January, the US Air Force conducted airstrikes against IS positions in south-western Libya, resulting in the killing of 80 people.³⁷¹ On 31 January, the Misrata Military Council (MMC) announced that all brigades under its control would join the Central Military Zone of 'the Libyan Army', in apparent reference to forces loyal to the GNA.³⁷² On the opposite side, a coalition of militias announced, on 10 February, the formation of the LNG, which supports the GNC-linked government of Khalifa al-Ghweil. The LNG is composed largely of Misratan militias with a number of Amazigh militias, later joined by the LROR. It is reported to control almost all of western Tripoli, while the rest of the capital is controlled by forces loyal to the GNA.³⁷³

On 18 March, the LNA fully captured the district of Gandoufa in southwest Benghazi, after having made major breakthroughs in January against BRSC fighters occupying the district.³⁷⁴ The group's presence in Benghazi was thus reduced to the districts of Sabri and Souk al-Hout in the city centre.³⁷⁵ Reports about alleged war crimes committed by LNA forces emerged shortly after. According to a Human Rights Watch report, these include the killing and beating of civilians, as well as

371 S. Ackerman and C. Stephen, 'US Planes Strike Isis Fighters in Libya "Planning Attacks in Europe"', *The Guardian*, 19 January 2017, <https://www.theguardian.com/world/2017/jan/19/libya-us-airstrikes-isis-islamic-state>.

372 K. Hanly, 'Misrata Military Council Brigades Will Join the "Libyan Army"', *Digital Journal*, 31 January 2017, <http://www.digitaljournal.com/news/world/misrata-military-council-brigades-will-join-the-libyan-army/article/484881>.

373 'Washington Alarmed at New Military Formation in Tripoli', *Libya Herald*, 11 February 2017, <https://www.libyaherald.com/2017/02/11/washington-alarmed-at-new-military-formation-in-tripoli/>.

374 'Update: The Final Fall of Ganfouda', *Libya Herald*, 18 March 2017, <https://www.libyaherald.com/2017/03/18/update-the-final-fall-of-ganfouda/>.

375 C. Macé, 'En Libye, un mois de combats tous azimuts', *Libération*, 3 April 2017, http://www.liberation.fr/planete/2017/04/03/en-libye-un-mois-de-combats-tous-azimuts_1560242.

summary execution and the desecration of bodies of opposition fighters.³⁷⁶ The LNA has issued a statement describing the unlawful killings as ‘isolated’ incidents, and ordering that those responsible be brought to military trial.³⁷⁷

Earlier in March, an attack was launched on the LNA-controlled oil crescent by the BDB, resulting in the capture of the oil facilities in Ra’s Lanuf and Sidrah. The BDB was formed in May 2016 in order to support the BRSC and retake Benghazi from Haftar-aligned forces.³⁷⁸ It is comprised of a number of anti-Haftar army and police personnel as well as militiamen of various political stripes, including hard-line Islamists.³⁷⁹ Shortly after the attack, the PC sent the PFG to take over the oil terminals from the BDB. Although Serraj initially denied the GNA’s involvement in the attack, reports indicate that GNA defence minister, Mahdi Al-Bargathi, had sent an infantry brigade to fight alongside the BDB.³⁸⁰

As a result of the attack, the HoR withdrew its support for the LPA, and called for elections to be held in early 2018.³⁸¹ By 14 March, LNA forces succeeded in recapturing the oil terminals in Ra’s Lanuf and Sidrah.³⁸² In early April, the HoR set preconditions for returning to the UN-sponsored Libyan political dialogue, and reiterated its previous demand to do away with Article 8 of the LPA. The article, which designates the PC as the Supreme Commander of the army, had stalled the peace process by sidelining HoR-backed General Haftar, and its modification arguably aims to pave the way for Haftar to be the future Supreme Commander of the army.³⁸³

On 15 April, Serraj called for international help concerning the escalation of hostilities in southwestern Libya between the pro-GNA Misratan Third Force (now called the 13th Brigade) and the BDB on one side, and the LNA on the other side.

376 HRW, ‘Libya: War Crimes as Benghazi Residents Flee’, 22 March 2017, <https://www.hrw.org/news/2017/03/22/libya-war-crimes-benghazi-residents-flee> (last accessed 7 March 2018).

377 Amnesty International, ‘Evidence Points to War Crimes by Libyan National Army Forces’, 23 March 2017, <https://www.amnesty.org/en/latest/news/2017/03/evidence-points-to-war-crimes-by-libyan-national-army-forces/> (last accessed 7 March 2018).

378 A. Assad, ‘Libyan Revolutionary Factions Form Defend Benghazi Brigades’, *The Libya Observer*, 2 June 2016, <https://www.libyaobserver.ly/news/libyan-revolutionary-factions-form-defend-benghazi-brigades>.

379 N. Missaglia, ‘Libya’s Political Stalemate: (1) Chaos in Libya .. A Background’, *Libya Tribune*, 9 February 2017, <http://international.minbarlibya.com/2017/02/09/libyas-political-stalemate-1-chaos-in-libya-a-background/>.

380 M. Ali, ‘PC Sends Petroleum Facilities Guards to Take Over Sidra and Ras Lanuf’, *Libya Herald*, 7 March 2017, <https://www.libyaherald.com/2017/03/07/pc-sends-petroleum-facilities-guards-to-take-over-sidra-and-ras-lanuf/>.

381 ‘Libya: Escalation Feared as Pro-Haftar Parliament Calls for Elections’, *The New Arab*, 9 March 2017, <https://www.alaraby.co.uk/english/news/2017/3/9/libya-escalation-feared-as-pro-haftar-parliament-calls-for-elections>.

382 ‘LNA Lose 21 Dead in Retaking Oil Terminals’, *Libya Herald*, 14 March 2017, <https://www.libyaherald.com/2017/03/14/lna-lose-21-dead-in-retaking-oil-terminals/>.

383 A. Ben-Ibrahim, ‘Tobruk Parliament Sets Preconditions for Political Talks’, *The Libya Observer*, 3 April 2017, <https://www.libyaobserver.ly/news/tobruk-parliament-sets-preconditions-political-talks>.

This led the HoR to condemn his move and decry it as unconstitutional.³⁸⁴ On 16 April, the LNG announced it was joining the fight against the LNA in the south.³⁸⁵ On 22 April, a meeting took place in Rome between the President of the HoR, Ageelah Saleh, and the head of the High Council of State, Abdurrahman Sewehli, under the sponsorship of the Italian foreign minister.³⁸⁶ A breakthrough in the talks occurred on 2 May, when Haftar met with Serraj in Abu Dhabi. The two sides reportedly agreed to the annulment of Article 8 of the LPA and the restructuring of the PC.³⁸⁷ The foreign minister of the GNA subsequently stated that Haftar would be head of the army provided that he recognized the GNA as the legitimate government of the country. The statement is said to have provoked criticism among GNA supporters.³⁸⁸

On 18 May, an offensive led by the Misratan Third Force on an airbase held by the LNA in Brak al-Shati’ resulted in the death of 141 people, mainly LNA fighters. The offensive was carried out without the approval of the PC, which led Serraj to temporarily suspend the defence minister, Mahdi Al-Bargathi, pending an investigation into the incident.³⁸⁹ On 25 May, the LNA recaptured Tamenhint airbase in Sebha after the Misratan Third Force and its allies withdrew from the base towards Jufra.³⁹⁰ On 3 June, the LNA also took the strategic Jufra airbase from the Third Force and its allies after they deserted it.³⁹¹ This was considered by commentators to be a significant shift in the power balance, in favour of the LNA.³⁹²

In parallel, Tripoli witnessed heavy clashes on 26–27 May between militias loyal to the GNA and to the GNC. The clashes resulted in the death of 52 pro-GNA fighters, 17 of whom were reportedly summarily executed.³⁹³ Meanwhile, following a terrorist attack by the Islamic State on 26 May that led to the death of 30 Egyptian

384 ‘HoR Condemns Serraj’s Foreign Intervention Call’, *Libya Herald*, 16 April 2017, <https://www.libyaherald.com/2017/04/16/hor-condemns-serrajs-foreign-intervention-call/>.

385 ‘Ghwell’s Libyan National Guard Militia Joining Fighting in South’, *Libya Herald*, 16 April 2017, <https://www.libyaherald.com/2017/04/16/ghwells-libyan-national-guard-militia-joining-fighting-in-south/>.

386 K. Hanly, ‘Op-Ed: Rivals from Competing Libyan Governments Meet in Rome’, *Digital Journal*, 24 April 2017, <http://www.digitaljournal.com/news/politics/op-ed-rivals-from-competing-libyan-governments-meet-in-rome/article/491073>.

387 Al Jazeera Centre for Studies, *The Haftar-Serraj Rapprochement and Prospects for a Resolution of the Libyan Crisis*, 25 May 2017, <http://studies.aljazeera.net/en/positionpapers/2017/05/haftar-serraj-rapprochement-prospects-resolution-libyan-crisis-170525101108118.html> (last accessed 7 March 2018).

388 ‘Libya Foreign Minister Names Khalifa Haftar Army Chief’, *Al Jazeera*, 9 May 2010, <http://www.aljazeera.com/news/2017/05/libya-foreign-minister-names-khalifa-haftar-army-chief-170509154020813.html>.

389 A. al-Warfalli, ‘Death Toll Rises in Southern Libya Attack, Defense Minister Suspended’, *Reuters*, 19 May 2017, <http://www.reuters.com/article/us-libya-security-toll-idUSKCN18F2KA>.

390 M. Ellawati, ‘LNA Takes Tamenhint Airbase as Misratans Withdraw North’, *Libya Herald*, 25 May 2017, <https://www.libyaherald.com/2017/05/25/lna-takes-tamenhint-airbase-as-misratans-withdraw-north/>.

391 ‘LNA Takes Key Jufra Airbase’, *Libya Herald*, 3 June 2017, <https://www.libyaherald.com/2017/06/03/lna-takes-key-jufra-airbase/>.

392 Libya Analysis, ‘Power Balance Shifts Towards Haftar as LNA Seizes Jufra and Misratans & BDB Withdraw’, 7 June 2017, <http://www.libya-analysis.com/?s=Power+Balance+Shifts+Towards+Haftar+as+LNA+Seizes+Jufra+and+Misratans+%26+BDB+Withdraw>; see also *ibid*.

393 ‘Rival Factions Clash in Libya’s Tripoli’, *Al Jazeera*, 27 May 2017, <http://www.aljazeera.com/news/2017/05/rival-factions-clash-libya-tripoli-170526154255187.html>.

Copts in the Egyptian province of Minya, the Egyptian Air Force launched new airstrikes on Islamist positions in Derna and Jufra.³⁹⁴ The city of Derna and its environs are the last eastern areas not under the control of the LNA, and Derna has been blockaded by the LNA since June 2015, when the Derna Mujahideen Shura Council (DMSC) ousted ISIL from the city.³⁹⁵ On a relevant note, ASL announced its dissolution on 27 May, citing heavy losses that have wiped out its leadership. The group called on other armed groups in Benghazi to unite and continue fighting.³⁹⁶

On 5 June, the HoR-linked government announced the breaking off of diplomatic relations with Qatar following a similar decision by the UAE and Egypt, which are considered key allies of the eastern administration. In a statement, the HoR accused Qatar of destabilizing the country by supporting terrorist groups with 'money and weapons'.³⁹⁷ However, the GNA is unlikely to endorse this move given its warm relationship with Qatar.³⁹⁸

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS

Following the UNSC referral to the International Criminal Court (ICC) of the situation in Libya since 15 February 2011, with Resolution 1970 (2011),³⁹⁹ on 21 May 2014 the ICC issued a final decision rejecting Libya's request to try Saif al-Islam Qaddafi domestically for crimes against humanity.⁴⁰⁰ Saif al-Islam is accused of the murder and persecution of civilians as crimes against humanity, and since 27 June 2011, has been under an arrest warrant from the Court.⁴⁰¹ As the Libyan Government failed to uphold its legal obligation to cooperate and surrender Saif al-Islam Qaddafi, the ICC issued a finding of non-compliance by Libya and referred the issue to the UNSC.⁴⁰²

On 9 June 2017, Saif al-Islam al-Gaddafi was released from his detention. His captor, the Zintani militia Abu Bakr al-Siddiq Brigade, which had detained him for

394 'New Egyptian Derna Airstrikes as Cairo Warns of Libyan Islamist Threat', *Libya Herald*, 29 May 2017, <https://www.libyaherald.com/2017/05/29/new-egyptian-derna-airstrikes-as-cairo-warns-of-libyan-islamist-threat/>.

395 'LNA's Derna Blockade to be Eased for Ramadan', *Libya Herald*, 25 May 2017, <https://www.libyaherald.com/2017/05/25/lnas-derna-blockade-to-be-eased-for-ramadan/>.

396 'Libyan Islamist Group Ansar al-Sharia Says it is Dissolving', *Reuters*, 27 May 2017, <http://www.reuters.com/article/us-libya-security-idUSKBN18N0YR>.

397 J. Prentis, 'Beida Government Cuts off Diplomatic Relations with Qatar', *Libya Herald*, 5 July 2017, <https://www.libyaherald.com/2017/06/05/beida-government-cuts-off-diplomatic-relations-with-qatar/>.

398 Ibid.

399 UNSC Res 1970, 26 February 2011.

400 HRW, 'Libya: Final ICC Ruling on Gaddafi', 21 May 2014, <http://www.hrw.org/news/2014/05/21/libya-final-icc-ruling-gaddafi> (last accessed 7 March 2018). See also ICC, *The Prosecutor v Saif Al-Islam Gaddafi*, Case Information Sheet, <http://www.icc-cpi.int/iccdocs/PIDS/publications/GaddafiEng.pdf> (last accessed 7 March 2018).

401 ICC, Warrant of Arrest for Saif Al-Islam Gaddafi, Pre-Trial Chamber I, ICC-01/11, 27 June 2011.

402 HRW, 'World Report 2015: Libya', <https://www.hrw.org/world-report/2015/country-chapters/libya> (last accessed 7 March 2018).

more than five years, cited an amnesty law passed the previous year by the HoR as the reason for his release.⁴⁰³ He was sentenced to death in absentia by a Tripoli court in July 2015. His current whereabouts are unknown.

5. MEXICO: ARMED GANG VIOLENCE SLIDING INTO ARMED CONFLICT?

Julie Lambin

Classification of the Conflict

In 2017, Mexico's security forces were arguably engaged in non-international armed conflicts with at least the Sinaloa Cartel and the Jalisco Cartel New Generation. It is important to note that this classification is controversial.

A. HISTORY OF THE CONFLICT

Mexico is known as the home of "the hemisphere's largest, most sophisticated and violent organized criminal groups".⁴⁰⁴ Organized criminal organizations have been operating in the country for over a century, originally developing drug production and trafficking activities and creating links with other criminal organizations in the region.⁴⁰⁵ By the 1980s, Mexico had become a major drug smuggling route to the United States.⁴⁰⁶

Although the Mexican Government has implemented repressive policies against drug trafficking, with the support of the US, since the 1930s, President Felipe Calderón stepped up this policy by initiating an aggressive 'war on drugs' in 2006.⁴⁰⁷ The Calderón administration identified organized crime as an existential threat to national security,⁴⁰⁸ and its strategy to combat it had two main components: the militarization of public security and the 'kingpin' strategy of targeting cartel leaders.⁴⁰⁹

403 C. Stephen, 'Gaddafi Son Saif al-Islam Freed by Libyan Militia', *The Guardian*, 11 June 2017, <https://www.theguardian.com/world/2017/jun/11/gaddafi-son-saif-al-islam-freed-by-libyan-militia>.

404 InSight Crime, 'Mexico Profile', <https://www.insightcrime.org/mexico-organized-crime-news/mexico/> (last accessed 3 December 2017).

405 J. S. Beittel, *Mexico: Organized Crime and Drug Trafficking Organizations*, CRS Report for Congress R41576, Library of Congress, Congressional Research Service, 25 April 2017, <https://www.hsdl.org/?abstract&did=800584> (last accessed 3 December 2017).

406 InSight Crime, 'Mexico Profile', supra fn 404; Beittel, 'Mexico', supra fn 405, p 8.

407 Open Society Foundations, *Undeniable Atrocities: Confronting Crimes against Humanity in Mexico*, 2016, p 23, <https://www.opensocietyfoundations.org/sites/default/files/undenialable-atrocities-2nd-edition-20160808.pdf> (last accessed 6 December 2017).

408 F. Calderón Hinojosa, *Los Retos Que Enfrentamos: Los Problemas de México y Las Políticas Públicas Para Resolverlos (2006-2012)*, Debate, 2013, pp 27, 66.

409 F. Enciso, 'Mexico's Worsening War Without a Name', International Crisis Group, 15 June 2017, <https://www.crisisgroup.org/latin-america-caribbean/mexico/mexicos-worsening-war-without-name> (last accessed 3 December 2017); Open Society Foundations, *Undeniable Atrocities*, supra fn 407, p 28.

First, President Calderón deployed the armed forces on a large scale throughout the country, increasing the number of troops engaged in combating drug trafficking to 45,000 over his term of office.⁴¹⁰ The budget and resources dedicated to the military were also greatly increased, including upgrades in weapons, ammunitions, vehicles and intelligence equipment.⁴¹¹ Military commanders and ex-commanders widely took over control of the police, resulting in a total of 32,000 military personnel performing tasks traditionally carried out by civilian forces in 2012.⁴¹² When the current President, Enrique Peña Nieto, took office in 2013, he promised a paradigm shift in the government's approach to organized crime. However, most of his reforms failed and he continued the militarized security strategy of his predecessors.⁴¹³ Very recently, the Mexican parliament approved a bill allowing the army to perform law enforcement duties indefinitely, raising serious concerns about the further militarization of the country.⁴¹⁴ However, instead of reducing it, this militarized strategy led to a general increase in violence. In response to the growing number of government attacks, the cartels resisted and expanded their armaments, training and tactics. This led to an arms race and increasing clashes of high intensity between the cartels and the armed forces, including several clashes in 2017.⁴¹⁵

The second element of Calderón's strategy – the targeting and elimination of high- and mid-level cartel leaders – also had dramatic consequences and resulted in a generalized increase in violence. As their leaders were eliminated, the large cartels fragmented into an ever-increasing number of splinter groups, fighting amongst each other in succession wars or for control over territory or lucrative criminal activities.⁴¹⁶ Whereas Mexico's criminal landscape was dominated by four major drug trafficking organizations

410 Open Society Foundations, *Undeniable Atrocities*, supra fn 407, p 58.

411 Ibid, pp 57–58.

412 UN Human Rights Council (HRC), Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on His Mission to Mexico, UN doc A/HRC/28/68/Add.3 29 December 2014, § 22.

413 InSight Crime, 'Mexico Profile', supra fn 404; Beittel, *Mexico*, supra fn 405, p 3; Open Society Foundations, *Undeniable Atrocities*, supra fn 407, p 57; International Institute for Strategic Studies (IISS), *Armed Conflict Survey 2017*, pp 348–350.

414 M. Stevenson, 'Mexican Congress Approves Law Allowing Army to Act as Police', *AP*, 30 November 2017, <https://apnews.com/df692c0bf88c449dada36616408d8e89/Mexican-congress-approves-law-allowing-army-to-act-as-police>.

415 Enciso, 'Mexico's Worsening War Without a Name', supra fn 409; 'Mexican Marines Use Helicopter Gunship to Kill Alleged Cartel Leader and Members', *The Guardian*, 10 February 2017, <http://www.theguardian.com/world/2017/feb/10/mexico-helicopter-gun-drug-cartel-leader-killed>; J. Tuckman, 'Mexico Declares All-Out War After Rising Drug Cartel Downs Military Helicopter', *The Guardian*, 4 May 2015, <http://www.theguardian.com/world/2015/may/04/mexico-declares-war-rising-drug-cartel-downs-military-helicopter>; D. Gagne, 'Bloody Attack on Police in Mexico Raises Jalisco Cartel's Profile', InSight Crime, 8 April 2015, <https://www.insightcrime.org/news/analysis/bloody-attack-police-mexico-raises-jalisco-cartel-profile/> (last accessed 3 December 2017).

416 Beittel, *Mexico*, supra fn 405, p 9; InSight Crime, 'Mexico Profile', supra fn 404; Open Society Foundations, *Undeniable Atrocities*, supra fn 407, p 28; W. Neuman, 'As Drug Kingpins Fall in Mexico, Cartels Fracture and Violence Surges', *The New York Times*, 12 August 2015, <https://www.nytimes.com/2015/08/13/world/americas/as-mexico-arrests-kingpins-cartels-splinter-and-violence-spikes.html>; 'Why Murder in Mexico Is Rising Again', *The Economist*, 11 May 2017, <https://www.economist.com/news/americas/21721973-gangs-get-smaller-and-diversify-why-murder-mexico-rising-again>; D. Agren, "'The Only Two Powerful Cartels Left": Rivals Clash in Mexico's Murder Capital', *The Guardian*, 28 November 2016, <http://www.theguardian.com/world/2016/nov/28/mexico-drug-cartels-sinaloa-jalisco-colima>.

in the early 2000s, these organizations repeatedly fractured, fragmenting into seven dominant organizations later in the 2000s, then into around 60 to 80 competing criminal groups operating across the country today.⁴¹⁷ Nevertheless, certain groups have retained prominence over the years, including the Sinaloa Cartel, Gulf Cartel, Beltran Leyva Cartel and La Familia Michoacana, and one organization has risen to prominence in recent years: the Jalisco Cartel New Generation (CJNG).⁴¹⁸ In addition, as smaller groups do not have the resources and connections required for full-scale drug operations, they have diversified their criminal activities to generate revenue, expanding to extortion, kidnapping, fuel theft, human smuggling and arms trafficking, etc.⁴¹⁹ Relying on widespread corruption, most of these cartels operate without interference from, or with the support of, corrupt government officials or members of the security forces.⁴²⁰

The evolution of the violence related to organized crime can be traced by examining homicide rates in the country. In 2006, homicide rates dramatically increased with the onset of Calderón's 'war on drugs', rising to an unprecedented peak of nearly 23,000 murders in 2011.⁴²¹ After a decline in 2012–2014, the rates peaked again in 2016–2017.⁴²² The first half of 2017 saw the highest toll ever recorded in Mexico, with a total of 13,729 murders.⁴²³ It is estimated that around one-third to a half of all homicides in Mexico are related to organized crime,⁴²⁴ and the rise was strongest in states that are most affected by the activities of criminal groups.⁴²⁵ Indeed, the recent surge in violence is attributed to the increasing battles between splintered gangs across the country.⁴²⁶

In absolute numbers, the total number of killings linked to the war on drugs since 2006 exceeds 100,000, with 23,000 fatalities in 2016 alone.⁴²⁷ These numbers surpass the total death toll of US casualties in other major conflicts around the world, including the US War of Independence (4,000), the Mexican–American War (13,000), World War I (53,000), the Korean Conflict (36,000) and the current conflicts in Afghanistan (2,000) and Iraq (4,000).⁴²⁸

417 Beittel, *Mexico*, supra fn 405, p 9.

418 IISS, *Armed Conflict Survey 2017*, supra fn 413, p 344; Beittel, *Mexico*, supra fn 405, 10.

419 'Why Murder in Mexico Is Rising Again', supra fn 416; Enciso, 'Mexico's Worsening War Without a Name', supra fn 409.

420 InSight Crime, 'Mexico Profile', supra fn 404; Beittel, *Mexico*, supra fn 405, p 6.

421 Beittel, *Mexico*, supra fn 405, Summary.

422 Justice in Mexico, *Drug Violence in Mexico: Data and Analysis Through 2016*, 2017, p 2, <https://justiceinmexico.org/drug-violence-mexico-data-analysis-2016/> (last accessed 4 December 2017).

423 C. Woody, 'Mexico's Bloody Drug-Related Violence Has Surged to a New Record' *Business Insider*, 26 July 2017, <http://uk.businessinsider.com/mexicos-bloody-drug-related-violence-has-surged-to-a-new-record-2017-7>.

424 Justice in Mexico, *Drug Violence in Mexico*, supra fn 422, p 5; Open Society Foundations, *Undeniable Atrocities*, supra fn 407, p 36.

425 IISS, *Armed Conflict Survey 2017*, supra fn 413, pp 344–345; Woody, 'Mexico's Bloody Drug-Related Violence', supra fn 423.

426 'Why Murder in Mexico Is Rising Again', supra fn 416.

427 Beittel, *Mexico*, supra fn 405, Summary; IISS, *Armed Conflict Survey 2017*, supra fn 413, p 5; Open Society Foundations, *Undeniable Atrocities*, supra fn 407, p 33.

428 Justice in Mexico, *Drug Violence in Mexico*, supra fn 422, p 5.

The violence related to organized crime in Mexico is unprecedented not only in terms of numbers of casualties, but also in the form of the violence. The tactics used by the cartels are particularly brutal, including beheadings, dismemberments, public hanging of mutilated corpses, torture and car bombs, etc.⁴²⁹ Clashes between cartels or with security forces involve heavy weaponry, including high-powered rifles, fragmentation grenades, rockets and anti-personnel mines.⁴³⁰ In addition, cartel violence is not limited to protecting their criminal activities, but also includes attacks against government officials, political candidates and the media.⁴³¹

In sum, the violence related to organized crime in Mexico can be characterized as: violent battles between heavily armed and increasingly fragmented criminal groups fighting over control of lucrative business opportunities from diverse criminal activities; violent confrontations between criminal groups and the state armed forces, involving heavy weaponry on both sides; a major impact on the civilian population as ‘collateral damage’ of both the clashes between criminal groups and the state’s response to organized crime.

B. PARTIES TO THE CONFLICTS

The qualification of the situation in Mexico as an armed conflict regulated by IHL is debated. *The War Report* submits that at least the Sinaloa Cartel and the CJNG are parties to the conflict with the Mexican armed forces. The other groups are mentioned in this section for information purposes and are not considered to be parties to the conflicts in Mexico.

1. Mexican Security Forces

The number of soldiers and marines engaged in security operations continued to rise in 2017. It is reported that a gendarmerie of 5,000 officers with military training was created within the Federal Police and control over security was recentralized in the Ministry of Interior.⁴³²

2. The Sinaloa Cartel

The Sinaloa Cartel is considered ‘the largest and most powerful drug trafficking organization in the Western hemisphere’.⁴³³ This cartel consists of an alliance of some of the top leaders of Mexican criminal organizations that operate in concert to protect themselves. It does not have a hierarchical structure, but rather operates

429 Beittel, Mexico, supra fn 405, p 1.

430 A. Angel, ‘Mexico’s Weapons Seizures Map Out Cartel Firepower’, InSight Crime, 16 October 2015, <https://www.insightcrime.org/news/analysis/mexico-weapons-seizures-map-out-cartel-firepower/> (last accessed 4 December 2017).

431 Beittel, Mexico, supra fn 405, p 2; Justice in Mexico, *Drug Violence in Mexico*, supra fn 422, p 2.

432 Beittel, Mexico, supra fn 405, p 3; Amnesty International, ‘Mexico 2016/2017’, <https://www.amnesty.org/en/countries/americas/mexico/report-mexico/> (last accessed 3 December 2017).

433 J. F. Gutiérrez, ‘Sinaloa Cartel’, InSight Crime, <https://www.insightcrime.org/mexico-organized-crime-news/sinaloa-cartel-profile/> (last accessed 4 December 2017).

like a federation of separate but cooperating organizations.⁴³⁴ The Sinaloa Cartel tends to rely on connections at the highest levels, the corruption of security forces and internal alliances, rather than resorting to armed force.⁴³⁵ Nevertheless, in recent years it has been involved in violent turf wars with other cartels over the control of certain regions.⁴³⁶ It has wide international reach and contacts for drug trafficking and other criminal activities.⁴³⁷ Currently, the cartel faces serious challenges from other groups, but it remains the dominant force in Mexico’s underworld and has dominated the conflicts in which it was involved.⁴³⁸

3. The Jalisco Cartel New Generation (CJNG)

The CJNG emerged in 2010 as a splinter group of the Sinaloa Cartel.⁴³⁹ It rapidly established its reputation as ‘one of the country’s fastest growing and most aggressive groups, willing to confront both rivals in the underworld and federal forces’.⁴⁴⁰ The CJNG has conducted several high-intensity attacks against the state security forces, especially in 2015, including the shooting down of a military helicopter in May 2015.⁴⁴¹ The group has access to highly sophisticated armaments, including machine guns and rocket-propelled grenade launchers, and it is believed to provide arms to self-defence groups.⁴⁴² The CJNG is also notorious for its public relations campaign and appeal to citizens through idealistic propaganda, promising to rid areas under its ‘control’ of competing criminal groups.⁴⁴³ The group is growing rapidly, having expanded its operations to 14 states in 2016. It has especially challenged the Sinaloa Cartel for control over strategic areas, leading to major battles in Colima.⁴⁴⁴ It also has contacts across the world for its drug trafficking operations.⁴⁴⁵ Currently, despite the capture of some of its top leaders, the cartel continues to expand and remains ‘the most notorious Mexican cartel’.⁴⁴⁶ However, the government recently launched ‘Operation Jalisco’ to dismantle the group.⁴⁴⁷

434 Beittel, Mexico, supra fn 405, p 10.

435 Gutiérrez, ‘Sinaloa Cartel’, supra fn 433.

436 Agren, ‘«The Only Two Powerful Cartels Left»’, supra fn 416.

437 Beittel, Mexico, supra fn 405, p 13.

438 Gutiérrez, ‘Sinaloa Cartel’, supra fn 433.

439 Beittel, Mexico, supra fn 405, pp 10, 22.

440 Agren ‘«The Only Two Powerful Cartels Left»’, supra fn 416.

441 Beittel, Mexico, supra fn 405, p 24.

442 InSight Crime, ‘Jalisco Cartel - New Generation (CJNG)’, <https://www.insightcrime.org/mexico-organized-crime-news/jalisco-cartel-new-generation/> (last accessed 4 December 2017).

443 Ibid.

444 D. Tucker, ‘Mexico’s Most-Wanted: A Guide to the Drug Cartels’, *BBC News*, 5 July 2017, <http://www.bbc.com/news/world-latin-america-40480405>.

445 Beittel, Mexico, supra fn 405, p 23.

446 Ibid, 10.

447 M. Lohmuller, ‘“Operation Jalisco” in Mexico: New General, Same Police’, InSight Crime, 6 May 2015, <https://www.insightcrime.org/news/brief/mexico-selects-army-general-to-lead-operation-jalisco/> (last accessed 4 December 2017).

The Zetas

The Zetas emerged as a group of former Special Forces members at the service of the Gulf Cartel. They then separated from the Gulf Cartel to become an independent cartel, and they initiated a constant battle against their former employees.⁴⁴⁸ They also became involved in numerous other cartel wars, including with the Sinaloa Cartel. Constituted by former army members, the group is characterized by its strong logistical sophistication and military training, including cutting-edge weapons and communications technologies, strict military discipline and strategic planning of operations.⁴⁴⁹ It has been described by the US Drug Enforcement Agency as ‘perhaps the most technologically advanced, sophisticated and violent of these paramilitary enforcement groups’.⁴⁵⁰ As other cartels began to adopt some of its tactics, it has been characterized as a real ‘game changer’ for organized crime in Mexico.⁴⁵¹ The Zetas use particularly brutal and violent methods, relying on terror rather than corruption and alliances.⁴⁵² These methods have allowed the group to expand their ‘territorial control’ and criminal activities throughout the country and across Central America, especially in Guatemala.⁴⁵³ It had worldwide contacts for its drug trafficking activities, and was involved in a wide range of criminal activities.⁴⁵⁴ Once one of the most powerful and feared cartels in Mexico, due to serious infighting and the loss of its leaders the Zetas are now a weakened and fragmented force focusing on local criminal activities.⁴⁵⁵

La Familia Michoacana

La Familia Michoacana first emerged as a ‘self-styled vigilante group’ in the early 2000s against the violence committed by the Zetas in the state of Michoacán, while adopting their tactics.⁴⁵⁶ The group stands out for its ‘pseudo-religious’ and regionalist ideology. It claims strong public support and acted as a de facto state in Western Michoacán, including by resolving local disputes, providing employment through the drug trade and doing social work by building schools and roads. At times, it has used a language of political insurgency or ‘evangelical crusade’.⁴⁵⁷ The group has been able to recruit hundreds of people in a short time span. La Familia Michoacana is notorious for its brutal tactics, especially the dumping of decapitated

448 InSight Crime, ‘Zetas’, <https://www.insightcrime.org/mexico-organized-crime-news/zetas-profile/> (last accessed 4 December 2017); Beittel, *Mexico*, supra fn 405, p 10.

449 Open Society Foundations, *Undeniable Atrocities*, supra fn 407, pp 88–89.

450 InSight Crime, ‘Zetas’, supra fn 448.

451 Ibid.

452 Beittel, *Mexico*, supra fn 405, p 18.

453 InSight Crime, ‘Zetas’, supra fn 448.

454 Beittel, *Mexico*, supra fn 405, p 18.

455 InSight Crime, ‘Zetas’, supra fn 448 ; Beittel, *Mexico*, supra fn 405, p 19; Tucker, ‘Mexico’s Most-Wanted’, supra fn 444.

456 H. Silva Ávalos, ‘Familia Michoacana’, <https://www.insightcrime.org/mexico-organized-crime-news/familia-michoacana-mexico-profile/> (last accessed 4 December 2017).

457 Beittel, *Mexico*, supra fn 405, p 20; Ávalos, ‘Familia Michoacana’, supra fn 456.

heads on the dancefloor of a club in 2006 to announce its emergence.⁴⁵⁸ At the height of its power, the group operated a wide range of criminal activities, including drug trafficking, kidnapping, extortion and racketeering. After serious heavy blows and the killing of its main leader, Mexican authorities considered the group to be extinct in 2011. It was supplanted by a splinter group, the ‘Knights Templar’, which has also been seriously weakened recently.⁴⁵⁹

The Beltran Lyva Organization (BLO)

The BLO emerged as a splinter group of the Sinaloa Cartel, with which it began a bloody war in 2008.⁴⁶⁰ It also engaged in a brutal war with the Gulf Cartel. As its influence rose in the early 2000s, the group operated in ten states and in Mexico City.⁴⁶¹ Its activities mainly focused on drug trafficking. The BLO is especially notorious for successfully infiltrating security and political forces, including at the highest levels of government.⁴⁶² The group was seriously weakened by numerous arrests and murders, including of all the Beltran Leyva brothers (its founders and leaders), but it remains influential and is regaining influence in some states, including Morelos, Guerrero and Sinaloa.⁴⁶³

C. KEY DEVELOPMENTS IN 2017: ARMED GANG VIOLENCE SLIDING INTO ARMED CONFLICT?

The constant evolution and fragmentation of the criminal landscape in Mexico make it difficult to analyse the main groups involved. Nevertheless, some general characteristics can be identified. As large and hierarchical organizations have suffered serious blows from the loss of their leaders, they have been succeeded or replaced by flatter and smaller organizations that are more loosely connected.⁴⁶⁴ Some dominant organizations retain their presence, but they face increasing challenges from aggressive organizations that emerge and fight them. The cartels operate as business-like entities, seeking profits from criminal activities and fighting with their rivals for control over these activities in different regions.⁴⁶⁵ They generally rely on a dual strategy of violence and bribery to coerce their competitors and ensure the smooth functioning of their operations.⁴⁶⁶

458 Ávalos, ‘Familia Michoacana’, supra fn 456.

459 Beittel, *Mexico*, supra fn 405, p 20; Ávalos, ‘Familia Michoacana’, supra fn 456.

460 Beittel, *Mexico*, supra fn 405, p 19.

461 InSight Crime, ‘BLO’, <https://www.insightcrime.org/mexico-organized-crime-news/beltran-leyva-organization-profile/> (last accessed 4 December 2017).

462 Beittel, *Mexico*, supra fn 405, p 20.

463 Ibid.

464 Beittel, *Mexico*, supra fn 405, p 5.

465 Ibid, p 6.

466 Ibid, pp 6–7; Tuckman, ‘Mexico Declares All-Out War’, supra fn 415.

The degree of command structure and discipline within the cartels depends on the group at hand. Cartels generally rely on violence to instil fear and discipline in their members.⁴⁶⁷ Some organizations, especially the Zetas, had a clear hierarchical command structure and maintained strict military discipline.⁴⁶⁸ However, such hierarchical and disciplined groups have been splintered by government attacks and are more susceptible to internal conflicts.⁴⁶⁹ Recently emerging groups are more loosely connected and rely on a cellular structure, and they lack the organizational structure and international reach of their predecessors.⁴⁷⁰

Mexican cartels have access to highly sophisticated armaments, which allows them to conduct high-intensity attacks against their rivals and the state security forces. For instance, the CJNG shot down a military helicopter in 2015 with a rocket-propelled grenade, and it was involved in several shootouts with rival cartels in 2017.⁴⁷¹ The Zetas employed clear military tactics and operations, including ‘ambushes, defensive positions and small-units tactics’.⁴⁷² Although this group is now seriously weakened, other cartels such as the CJNG have adopted their tactics and military-style operations. The repeated use of car bombs, grenades and rocket-propelled launchers by criminal organizations ‘continue to raise concerns that some Mexican drug traffickers may be adopting insurgent or terrorist techniques’.⁴⁷³ In addition, through their use of propaganda and the prospect of lucrative opportunities, these groups have access to numerous recruits, especially in the poorer regions of Mexico.

The cartels are often said to ‘control territories’ or ‘compete over territorial control’,⁴⁷⁴ but this generally refers to dominance over trafficking routes and markets for criminal activities rather than actual territorial control. There have been instances in past years where some dominant cartels effectively controlled territories in northern states and the state feared losing control over these regions.⁴⁷⁵ Nevertheless, these large and coherent cartels have been replaced by smaller groups that are less able to establish control over entire areas – even though they expand their presence and operations across the country.⁴⁷⁶

467 Beittel, *Mexico*, supra fn 405, p 7.

468 Open Society Foundations, *Undeniable Atrocities*, supra fn 407, pp 88–89.

469 Beittel, *Mexico*, supra fn 405 p 10.

470 Ibid, p 5.

471 Tuckman, ‘Mexico Declares All-Out War’, supra fn 415; Agren, ‘“The Only Two Powerful Cartels Left”’, supra fn 416.

472 J. P. Sullivan and S. Logan, ‘Los Zetas: Massacres, Assassinations and Infantry Tactics’, *The Counter Terrorist*, 24 November 2010, <https://www.insightcrime.org/news/analysis/the-zetas-massacres-assassinations-and-infantry-tactics/> (last accessed 8 March 2018).

473 Beittel, *Mexico*, supra fn 405, p 4.

474 See, e.g., C. Woody, ‘These Maps Show How Mexican Cartels Dominate the US Drug Market’, *Business Insider*, 15 December 2016, <http://uk.businessinsider.com/dea-maps-of-mexican-cartels-in-the-us-2016-12?r=US&IR=T>.

475 S. Albuja, ‘Criminal Violence, Displacement and Migration in Mexico and Central America’, in S. F. Martin, S. Weerasinghe and A. Taylor (eds), *Humanitarian Crises and Migration: Causes, Consequences and Responses* Routledge, 2014, p 122.

476 Agren, ‘“The Only Two Powerful Cartels Left”’, supra fn 416.

Cartels are mainly driven by profit and commercial interests. However, in Mexico the violence is not limited to criminal activities, as the cartels have also targeted government officials, political candidates, judges and news media. This form of violence has been considered ‘exceptional by the typical standards of organized crime’.⁴⁷⁷ In addition, several groups use propaganda and public relations campaigns to win the support of the population.

Further reading: F. Enciso, ‘Mexico’s Worsening War without a Name’, *International Crisis Group*, 15 June 2017, <https://www.crisisgroup.org/latin-america-caribbean/mexico/mexicos-worsening-war-without-name>.

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS

Mexico is a State Party to the 1998 Rome Statute of the International Criminal Court (ICC). As a result of the violence carried out by the cartels and the government’s response to it, which has had a dramatic impact on the Mexican population, several national and international organizations have voiced their concerns about the ‘human rights crisis’ in Mexico.⁴⁷⁸ Some organizations have also brought the situation to the attention of the ICC.⁴⁷⁹

Mexicans are often collateral, and in some instances direct, victims in the battles between cartels, which increasingly resort to tactics that take the population hostage.⁴⁸⁰ The population is also victim to the security forces’ use of force in the war on drugs, which targets any person that is perceived to be somewhat connected with organized crime.⁴⁸¹ The deployment of the armed forces has allegedly been associated with dramatic increases in cases of torture, enforced disappearances and extrajudicial killings.⁴⁸² As a result of the generalized climate of violence, an estimated 311,000 people are currently internally displaced throughout the country.⁴⁸³

477 Beittel, *Mexico*, supra fn 405, p 2.

478 Inter-American Commission on Human Rights, *Situation of Human Rights in Mexico*, OEA/Ser.L/V/II. doc 44/15, 31 December 2015, <https://www.oas.org/en/iachr/reports/pdfs/Mexico2016-en.pdf> (last accessed 6 December 2017); HRC, Report of the Special Rapporteur on Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment on His Mission to Mexico, supra fn 412; Human Rights Watch, ‘Mexico: Events of 2016’ *World Report 2017*, <https://www.hrw.org/world-report/2017/country-chapters/mexico> (last accessed 4 December 2017); see generally, CMDPDH publications, <http://cmdpdh.org/publicaciones/> (last accessed 6 December 2017).

479 For the 2011 complaint, see ‘Activists Accuse Mexican President of War Crimes in Drug Crackdown’, *The Guardian*, 26 November 2011, <http://www.theguardian.com/world/2011/nov/26/mexican-president-war-crimes-drug>; for the 2017 complaint, see International Federation for Human Rights (FIDH), ‘Mexico: Murders, Disappearances, and Torture in Coahuila de Zaragoza Are Crimes Against Humanity’, 5 July 2017, <https://www.fidh.org/en/region/americas/mexico/mexico-murders-disappearances-and-torture-in-coahuila-de-zaragoza-are> (last accessed 4 December 2017).

480 ‘Why Murder in Mexico Is Rising Again’, supra fn 416.

481 Open Society Foundations, *Undeniable Atrocities*, supra fn 407, p 38.

482 Ibid. See also, ‘Mexican Troops Waging War on Drug Gangs Not Punished for Rights Abuses – Report’, *The Guardian*, 7 November 2017, <http://www.theguardian.com/world/2017/nov/07/mexican-military-human-rights-abuses-war-on-drugs-report>.

483 Internal Displacement Monitoring Center (IDMC), ‘Mexico’, <http://www.internal-displacement.org/countries/mexico/> (last accessed 4 December 2017).

6. MYANMAR: THE EMERGENCE OF THE ROHINGYA INSURGENCY IN NORTHERN RAKHINE

Laura Baron Mendoza

Classification of the Conflict

In 2017, Myanmar and its armed forces were involved in a series of non-international armed conflicts (NIACs) with several non-state armed groups, in particular arguably with the Kachin Independence Army, the Ta'ang National Liberation Army, the Myanmar National Democratic Alliance Army, the Arakan Army, the Arakan Rohingya Salvation Army or Harakah al-Yaqin and the Democratic Karen Buddhist Army.

A. HISTORY OF THE CONFLICT

With a vast ethnic and cultural diversity,⁴⁸⁴ as well as high levels of poverty, Myanmar has witnessed the emergence of a myriad of armed non-state actors (ANSAs), which have splintered and morphed over time, and has subnational tensions arising from tremendous distinctive dynamics. The majority of such actors, known as ethnic armed organizations (EAOs), have primarily pursued a high level of autonomy along with the recognition of identity and rights. These claims have been ongoing since before the colonial period, intensifying after independence in 1948 and still persisting in 2017.

Myanmar is composed of seven states, seven regions, six self-administered zones (or divisions) and one union territory.⁴⁸⁵ One of the seven states, Rakhine (situated on the west coast of the country), is the site of ongoing tensions between the Myanmar Armed Forces and the Arakan Rohingya Salvation Army (ARSA). Violence escalated sharply from October 2016, when ARSA first attacked, and continued to spiral, with the last military crackdown on 25 August 2017.

Myanmar is known for its subnational tensions, which encompass colossal territorial challenges. These tensions can be understood as asymmetric armed violence in which the central government opposes a plethora of ANSAs located in specific regions where they 'share a common ethnic, cultural, or religious identity with the local population in the conflict-affected area'⁴⁸⁶ and seek its greater autonomy. In fact, some areas in Myanmar have never been under central state control since 1948.

484 In total, 135 ethnic groups are recognized. They each have their own language and culture and together account for one-third of Myanmar's population. See The Asia Foundation, 'Myanmar', *The State of Conflict and Violence in Asia*, 2017, p 106, <https://asiafoundation.org/wp-content/uploads/2017/10/Myanmar-TStateofConflictandViolence.pdf> (last accessed 28 November 2017).

485 A state is equivalent here to a region. This terminology has been used since the 2008 Constitution to distinguish ethnic states from the Bamar regions. See H. Nixon, C. Joeline, K. P. Chit Saw, T. A. Lynn and M. Arnold, *State and Region Governments in Myanmar*, The Asia Foundation, 2013, p 9, https://asiafoundation.org/wp-content/uploads/2015/03/State-and-Region-Governments-in-Myanmar_2015Forward.pdf (last accessed 28 November 2017).

486 A. Burke, N. Williams, P. Barron, K. Jolliffe and T. Carr, *The Contested Areas of Myanmar: Subnational Conflict, Aid, and Development* The Asia Foundation, 2017, p 14, <https://asiafoundation.org/wp-content/uploads/2017/10/ContestedAreasMyanmarReport.pdf> (last accessed 28 November 2017).

Violence in independent Myanmar commenced due to the suppression of democratic movements, struggles for ethnic autonomy and counterinsurgency tactics (i.e. the 'Four Cuts' strategy articulated in the 1960s).⁴⁸⁷ The military has since played a central role in national politics, with successive authoritarian military regimes following the military coup in 1962.⁴⁸⁸ It maintained such a role in 2017, as the 2008 Constitution conceded to it parliamentary seats and the control of three different ministries.⁴⁸⁹

Iconic events, like the Saffron Revolution in 2007 and the creation of the first civil government in 2010, have been followed by several efforts to reach peace agreements with EAOs, all of which have failed to generate a lasting settlement. It was not until 2015, when the National League for Democracy (NLD) won the general elections, that Myanmar was considered to have started paving the way to democratization and peace.⁴⁹⁰

On 15 October 2015, the Nationwide Ceasefire Agreement (NCA) was signed between the government and the following eight EAOs: Democratic Karen Buddhist Army (DKBA); Restoration Council of Shan States RCSS/SSA-South; Chin National Front (CNF); Karen National Union (KNU); Karen National Liberation Army Peace Council (KPC); Arakan Liberation Party (ALP); Pa-O National Liberation Organization (PNLO); All Burma Students' Democratic Front (ABSDF).

However, the agreement has two crucial flaws: 1) some of the largest EAOs were not allowed to sign it⁴⁹¹ and 2) the advancement towards its implementation is slow. As a result, military action and armed clashes continue in various contested areas and many EAOs remain skeptical; notably, four EAOs that operate in Kachin and Shan states. These four created the Northern Alliance: a coalition that conducts open armed violence against the Tatmadaw (Myanmar Armed Forces).⁴⁹²

Furthermore, while ethnic factors originally shaped these skirmishes, issues related

487 The 'Four Cuts' strategy sought to cut off insurgent groups from the support they received from the local population in order to get food, money, intelligence and potential recruits. To this end, villages were cleared, mass arrests, torture and extrajudicial killings were carried out and crops and farmland were burnt. See Human Rights Watch (HRW), *'Untold Miseries': Wartime Abuses and Forced Displacement in Burma's Kachin State*, pp 25–26, https://www.hrw.org/sites/default/files/reports/burma0312ForUpload_1_0.pdf (last accessed 8 March 2018).

488 Burke et al, *The Contested Areas of Myanmar*, supra fn 486, p 28.

489 The military was given control of the defence, home affairs and border affairs ministries. See The Asia Foundation, 'Myanmar', supra fn 484, p 105.

490 However, the Rohingya community was disenfranchised from these elections due to their status of illegal immigrants from Bangladesh. See *ibid*; People's Alliance for Credible Elections (PACE) *Final Report: Myanmar Elections*, 2015, p 31, <https://pacemyanmar.org/wp-content/uploads/2016/02/PACE-Final-Report-Myanmar-Elections-2015-English.pdf> (last accessed 28 November 2017).

491 International Crisis Group, *Myanmar's Peace Process: Getting to a Political Dialogue*, Asia Briefing no 149, pp 2, 7, 10, <https://d2071andvip0wj.cloudfront.net/b149-myanmar-s-peace-process-getting-to-a-political-dialogue.pdf> (last accessed 28 November 2017). One of several reasons for this is the non-existence of bilateral ceasefires with the Myanmar military.

492 Escola de Cultura de Pau, *Alerta 2017! Informe sobre conflictos, derechos humanos y construcción de paz*, p 169, <http://escolapau.uab.cat/img/programas/alerta/alerta/17/alerta17e.pdf> (last accessed 28 November 2017).

to the exploitation of natural resources, land use, the development of infrastructure projects and the narcotics trade also play a role in Myanmar's intricate context.⁴⁹³ Bearing this in mind, Myanmar's subnational tensions do not share a common cause. Accordingly, the actors and levels of violence diverge from one another.

Thus, at least one-third of Myanmar (118 out of 330 townships) is affected by subnational violence due to the repeated failure to reach a unanimous perspective on what constitutes the nation state and how it can be administered. This protracted situation is the main justification for the military's strong political role.

Although the current government, under the NLD, and the Tatmadaw have highlighted the achievement of peace as a priority, armed encounters have continued over the last two years in 40 of the 94 townships where EAO signatories are present.⁴⁹⁴ The states that have traditionally witnessed these clashes are Chin, Rakhine, Mon, Kayah, Kayin (or Karen), Shan and Kachin. Surprisingly, while Kayin state is known for the longest-running armed violence – between the central state and the Karen National Union (KNU)⁴⁹⁵ – which left at least 18,000 dead between 1949 and 2013, violence has decreased there since it joined the NCA.

Conversely, in Kachin and Northern Shan states in northern Myanmar, more than 600 people were killed and 700 injured between 2014 and mid-2017.⁴⁹⁶ Of these, 40 percent were civilians. In 2016 and 2017, the Tatmadaw attacked, for months, the Kachin Independence Army (KIA) posts in the mountains of Kachin in order to regain control. Both sides used artillery and airstrikes were launched by the Tatmadaw. In parallel, central state forces were also heavily confronting the Northern Alliance in Shan state (the KIA, Ta'ang National Liberation Army (TNLA), Myanmar National Democratic Alliance Army (MNDAA) and Arakan Army (AA)), which kept attacking police outposts.⁴⁹⁷ Finally, there were also some clashes between the breakaway group, the Democratic Karen Buddhist Army (DKBA), and central state forces in Kayin. However, the central state forces oppose smaller ethnic armed organizations and the confrontations are less intense.⁴⁹⁸

Although the level of violence in Kachin and Northern Shan states increased in 2016 and 2017, and the region has witnessed grave international law violations, the continued escalation of violence in the state of Rakhine since October 2016 has

493 HRW, 'Untold Miseries', supra fn 487, pp 29–33. For instance, Kachin state has the most lucrative jade mines, gold and timber, which have enriched both parties, and Shan state is the centre of the opium trade. See UN Office on Drugs and Crime (UNODC), 'Myanmar', *Southeast Asia Opium Survey 2015*, http://www.unodc.org/documents/southeastasiaandpacific/Publications/2015/Southeast_Asia_Opium_Survey_2015_web.pdf (last accessed 28 November 2017).

494 Nixon et al, *State and Region Governments in Myanmar*, supra fn 485, p 15.

495 The armed branch of the KNU is known as the Karen National Liberation Army (KNLA).

496 Nixon et al, *State and Region Governments in Myanmar*, supra fn 485, p 9.

497 'Tatmadaw, Northern Alliance Continue to Clash in 2017', *Myanmar Times*, 5 January 2017, <https://www.mmtimes.com/national-news/24414-tatmadaw-northern-alliance-continue-to-clash-in-2017.html>; see also the official website of the Northern Alliance, <http://northernalliance.today/about-us/> (last accessed 28 November 2017).

498 Escola de Cultura de Pau, *Alerta 2017!*, supra fn 492, p 73.

given rise to one of the most critical situations in 2017 (See the section below on 'Key Developments in 2017').⁴⁹⁹

B. PARTIES TO THE CONFLICTS

The parties to the NIACs in 2017 were Myanmar and its armed forces (Tatmadaw) against several armed non-state actors, affiliated to EAOs, in particular arguably the KIA, the TNLA, the Myanmar National Democratic Alliance Army (MN-DAA), the AA, the ARSA or Harakah al-Yaqin (HaY) and the DKBA.

1. Myanmar Armed Forces (Tatmadaw)

Tatmadaw, i.e. the official name of the Myanmar Armed Forces comprises more than 350,000 members and is backed up by paramilitary forces: militias affiliated to the government and Border Guard Forces.⁵⁰⁰

2. Ethnic Armed Organizations (EAOs)

These are ANSAs affiliated to ethnic groups. They are typically the military wings of political movements and differ in terms of size, organization, military capacity and territory. Thus, not all of them can be considered ANSAs. For instance, the strongest can have more than 5,000 members, be highly centralized and able to operate as state-like entities in regions where the state has never governed. On the other hand, smaller EAOs can be a partnership of diverse commanders with wide-ranging agendas. Despite these differences, due to constant disintegration, dissolution and inconsistent relations with the Tatmadaw, there are more than 21 EAOs at present.⁵⁰¹ Those are: 1. Arakan Army (AA); 2. All Burma Student's Democratic Front (ABSDF); 3. Arakan Liberation Party (ALP); 4. Chin National Front (CNF); 5. Democratic Karin Buddhist Army (DKBA-5); 6. Kachin Independence Organization/Army (KIO/A); 7. Karenni Army/Karenni National Progressive Party (KA/KNPP); 8. Karen National Union (KNU); 9. Karen National Union/Karen National Liberation Army Peace Council (KPC); 10. Lahu Democratic Union (LDU); 11. Myanmar National Democratic Alliance Army (MN-DAA); 12. National Democratic Alliance Army/Eastern Shan State (NDAA/ESS); 13. New Mon State Party (NMSP); 14. National Socialist Council of Nagaland-Khaplang (NSCN-K); 15. Pa-Oh National Liberation Organization/Army (PNLO/A); 16. Palaung State Liberation Fron /Ta'ang National Liberation Army (PSLF/TNLA) 17. Restoration Council of Shan State/Shan State Army-South (RCSS/SSA-S); 18. Shan State Progress Party/Shan State Army-North (SSPP/SSA-N) 19. United Wa State Army (UWSA); 20. Wa National Organization (WNSO); 21. Arakan Rohingya Salvation Army (ARSA).

499 See Amnesty International 'We Are at Breaking Point' – Rohingya: Persecuted in Myanmar, Neglected in Bangladesh, 19 December 2016, <https://www.amnesty.org/en/documents/asa16/5362/2016/en/> (last accessed 28 November 2017).

500 Burke et al, *The Contested Areas of Myanmar*, supra fn 486, p 24.

501 Ibid, pp 15, 28; B. McCartan and K. Jolliffe, *Ethnic Armed Actors and Justice Provision in Myanmar*, The Asia Foundation, October 2016, pp 34–36, https://asiafoundation.org/wp-content/uploads/2016/10/Ethnic-Armed-Actors-and-Justice-Provision-in-Myanmar_EN.pdf (last accessed 28 November 2017).

3. Militias⁵⁰²

This term is frequently used to denote a wide range of armed actors, predominantly paramilitary. Yet, 'militia' is understood here to be an armed actor that assists another. In Myanmar, militias have often been neglected, as they respond either to EAOs or the Tatmadaw. Most of them have their own economic and political agenda.⁵⁰³

The number of militias, as well as their interactions and affiliations, are still undetermined. For instance, in Shan state alone, 396 militias are estimated to be present.⁵⁰⁴ Accordingly, there are two main categories of militias:

- EAO militias, affiliated to EAOs
- Militias under Tatmadaw supervision. The command structure and integration levels among these fluctuate:
 - Tatmadaw-integrated militias: incorporated into the Tatmadaw's command structure. These are known as Border Guard Forces, which are comprised of both former EAOs and former members of the State Armed Forces. They respond to the orders of Regional Military Commands.
 - Tatmadaw non-integrated militias: commonly EAOs or their breakaway factions, which, despite not being directly integrated, still respond to the Tatmadaw's command and supervision.
 - Tatmadaw-supported community militias: members come from the local community. These militias are usually smaller than the other groups, lightly armed or not armed at all and trained and supervised by local Tatmadaw units.

C. KEY DEVELOPMENTS IN 2017: THE EMERGENCE OF THE ROHINGYA INSURGENCY IN NORTHERN RAKHINE

Rakhine state, located in western Myanmar, is the setting of an interplay between ANSAs and communal violence.⁵⁰⁵ Tensions between the central government and the Muslim population, which self-identifies as Rohingya, date back to 1982 when the Burma Citizenship Law was enacted. This law enabled the revocation of Rohingya citizenship, therefore excluding the community from the 135 ethnic

502 For full information and descriptions, see J. Buchanan, *Militias in Myanmar*, Asia Foundation, July 2016, pp 13–14, <https://asiafoundation.org/wp-content/uploads/2016/07/Militias-in-Myanmar.pdf> (last accessed 28 November 2017).

503 McCartan and Jolliffe, *Ethnic Armed Actors and Justice Provision in Myanmar*, supra fn 501.

504 Buchanan, *Militias in Myanmar*, supra fn 502, pp 14–15. McCartan and Jolliffe, *Ethnic Armed Actors and Justice Provision in Myanmar*, supra fn 501.

505 Burke et al, *The Contested Areas of Myanmar*, supra fn 486, p 26.

groups that were and still are recognized in Myanmar.⁵⁰⁶

Consequently, Rohingya referred to as Bengali and considered illegal immigrants from Bangladesh have since been severely persecuted. In other words, there has been a systematic denial of Rohingya rights and an asymmetric relation between them and the Rakhine Buddhists.⁵⁰⁷ According to the International Organization for Migration, mass migration has always been an issue in the state.⁵⁰⁸ Nonetheless, the ethnic tensions and the subsequent military crackdowns have had four different triggers since 2012: 1) The rape and murder of a Rakhine Buddhist woman by three Rohingya men in mid-2012. This increased tensions and created sporadic violence between the two communities;⁵⁰⁹ 2) The disenfranchisement of Rohingya during the 2015 elections; 3) ARSA claiming responsibility for attacks in October 2016;⁵¹⁰ 4) The latest attack by ARSA on military posts on 25 August 2017.

These four triggers have resulted in a severe military response against the Rohingya population, which has led to the destruction of private property, beatings, killings, rape, the suspension of humanitarian aid and a mass wave of migration to camps in Bangladesh's Cox's Bazar.⁵¹¹ In addition, based on the information documented by the office of Myanmar's military commander-in-chief, at least 90 armed engagements between the Tatmadaw and ARSA took place during the week after 25 August. The intensity of the violence is far from declining.⁵¹²

As a result of the above events, northern Rakhine saw the emergence of a newly organized resistance movement in late 2016, which calls itself Harkah al-Yaqin (HaY), meaning 'faith movement'. Yet, HaY had been operating and organizing since 2012.⁵¹³ What made it reveal its identity last year, it says, were the false claims by the Rohingya Solidarity Organization (RSO) to the attack and the subse-

506 I. Iqbal, 'Locating the Rohingya in Time and Space', *Al Jazeera*, 27 September 2017, <http://www.aljazeera.com/indepth/opinion/locating-rohingya-time-space-170927100542729.html>; L. H. Sakhong, *The 2008 Constitution and Ethnic Issues: To What Extent Did It Satisfy the Aspirations of Various Ethnic Groups?*, Burma Centre for Ethnic Studies, Analysis Paper no 5, 2012, p 33, <https://cdes.org.mm/publications/678a34097a581ca9403c8eaf2d86b5ee.pdf> (last accessed 28 November 2017).

507 G. Aron and D. Gilmore, *Navigating Change: Crisis and Crossroads in the Rakhine State Context*, Collaborative Learning Projects, April 2017, pp 4–16.

508 International Organization for Migration (IOM) (2017). *Bangladesh: Needs and Population Monitoring Report - Undocumented Myanmar Nationals in Teknaf and Ukhia*. Round 6, p 1-7, <http://www.globaldmt.info/category/asia-pacific/bangladesh/> (last accessed 29 November 2017).

509 The Asia Foundation, 'Myanmar', supra fn 484, p 108.

510 See International Crisis Group, *Myanmar: A New Muslim Insurgency in Rakhine State*. Asia Report no 283, 2016, <https://d2071andvip0wj.cloudfront.net/283-myanmar-a-new-muslim-insurgency-in-rakhine-state.pdf> (last accessed 28 November 2017).

511 UN Office of the High Commissioner for Human Rights (OHCHR), Report of OHCHR Mission to Bangladesh: Interviews With Rohingyas Fleeing From Myanmar Since 9 October 2016, Flash Report, 3 February 2017, http://www.ohchr.org/_layouts/15/WopiFrame.aspx?sourcedoc=/Documents/Countries/MM/FlashReport3Feb2017.pdf&action=default&DefaultItemOpen=1 (last accessed 28 November 2017).

512 P. Heijmans, 'Myanmar Says it Killed 370 Rohingya Fighters', *Al Jazeera*, 1 September 2017, <http://www.aljazeera.com/news/2017/09/myanmar-killed-370-rohingya-fighters-170901104820077.html>.

513 International Crisis Group has documented information that says HaY's planning and formation activities started during 2012 and its recruitment intensified in 2013. Crisis Group, *Myanmar* supra fn 510, p 15.

quent collection of donations for the RSO.⁵¹⁴ Recently, HaY has started to use the English name Arakan Rohingya Salvation Army (ARSA).

Despite being a Muslim group, ARSA does not follow a jihadist agenda, has no religious targets and does not aim to impose Sharia law. In addition, there is no information about the presence of foreign fighters. Conversely, ARSA targets army forces, which are perceived as a threat to the community, and its stated prime purpose is to end of the persecution of Rohingya.⁵¹⁵

On 14 September 2017, ARSA released a statement confirming the non-existence of links either with al-Qaeda, the Islamic State of Iraq and the Levant (ISIL) or any other transnational jihadist group.⁵¹⁶ While it does have various cooperation channels for training, funding and weapons provision in different countries, these seem to be governed by umma (Islamic community) solidarity rather than any convergence of radical ideology.⁵¹⁷

The attacks on 9 October 2016 mark a shift in the region's dynamics. Being the first military operation by ARSA (aimed at looting weapons), it embodied a new level of planning, organization and violent resistance. That day, 400 members of ARSA launched an attack targeting the Border Guard Police's headquarters in two townships near the northwest border with Bangladesh.⁵¹⁸ As a result, nine policemen as well as eight ARSA members were killed and two of the latter were captured. On this occasion, the non-state armed group employed 62 firearms and more than 10,000 rounds of ammunition. It should also be highlighted that by planting improvised explosive devices and preparing an ambush near the headquarters, ARSA demonstrated a high level of preparation. Subsequently, skirmishes continued during the following months, after the government deployed its 'clearance operations'.⁵¹⁹ This reaction by the Tatmadaw indicated the escalation of its operations through high-level violence, using military helicopters to launch airstrikes and the deployment of ground troops to surround and, inter alia, attack villages by means of arson.⁵²⁰

514 Crisis Group, *Myanmar*, supra fn 510, p 12; B. Lintner, 'The Truth Behind Myanmar's Rohingya Insurgency', *Asia Times*, <http://www.atimes.com/article/truth-behind-myanmars-rohingya-insurgency/>.

515 Crisis Group, *Myanmar*, supra fn 510, p 14.

516 F. Edroos, 'ARSA Group Denies Links With al-Qaeda, ISIL and Others', *Al Jazeera*, 14 September 2017, <http://www.aljazeera.com/news/2017/09/arsa-group-denies-links-al-qaeda-isil-170914094048024.html>.

517 F. Edroos, 'ARSA: Who are the Arakan Rohingya Salvation Army', *Al Jazeera*, 13 September 2017, <http://www.aljazeera.com/news/2017/09/myanmar-arakan-rohingya-salvation-army-170912060700394.html>.

518 Crisis Group, *Myanmar*, supra fn 510, p 6.

519 Government press conference, Nay Pyi Taw, 9 October 2016, reported in *Global New Light of Myanmar*, 10 October 2016, pp 1, 3, cited in Crisis Group, *Myanmar*, supra fn 510, p 6.

520 International Crisis Group interview by Arakan Project researcher, Yangon, November 2016, cited in Crisis Group, *Myanmar*, supra fn 510, p 10.

Recent attacks and subsequent responses at the end of August of 2017 marked another escalation of violence. On 25 August, ARSA members attacked at least 30 security force posts, which generated severe counter-attacks mainly affecting Rohingya locals. This campaign has been classified by various organizations as systematic, organized and ruthless, targeting civilians and not ARSA members.⁵²¹

ARSA is led by a committee of Rohingya in Saudi Arabia. However, in Rakhine, it is under the command of Rohingya with international training and experience in modern guerrilla war tactics. At the same time, it undeniably counts on the local communities' support, which has been ratified and enforced by fatwas (religious rulings) as religious backup for its cause.⁵²²

Its leader and main speaker is known as Ata Ullah (alias Ameer Abu Amar or Abu Amar Jununi), identified as Hafiz Tohar by the Myanmar Government. As well as the leadership group in Mecca, Ata Ullah, alongside other Rohingya in Rakhine, has led all the ground operations.⁵²³ Bearing this in mind, the existence of a command structure, headquarters and disciplinary rules is unquestionable.⁵²⁴

On the other hand, ARSA's tactics of guerrilla warfare and the use of different kinds of weapons suggest that the group possesses a certain level of military training and funding, along with its ability to gain access to weapons, military equipment and recruits.⁵²⁵ In fact, it has been alleged that it is well-connected with the Rohingya diaspora (in Bangladesh, Pakistan and other countries such as India) through its headquarters in Saudi Arabia.

Last but not least, the number of members is unclear.⁵²⁶ The majority are Muslim villagers, organized in village-level cells and trained by mullahs or hafizes (Islamic clerics and scholars).⁵²⁷ Moreover, ARSA's ability to plan, coordinate and carry out military operations is undeniable. Proof of this lies in the information leaked by informers regarding training programmes as well as the involvement of the Saudi-based leaders in selecting targets, dates, places and methods.⁵²⁸

521 Amnesty International, 'My World is Finished': *Rohingya Targeted in Crimes Against Humanity in Myanmar*, October 2017, p 6, <https://www.amnestyusa.org/wp-content/uploads/2017/10/Amnesty-My-World-is-Finished-Myanmar-18.10.20171.pdf> (last accessed 28 November 2017).

522 Several clerics have stated that given the persecution of Muslims in Rakhine, the campaign against the security forces is legal in Islam. Crisis Group, *Myanmar*, supra fn 510, p 13.

523 Ibid, pp 1, 12-13.

524 ICTY, *Prosecutor v Haradinaj*, Trial Chamber, Judgment, IT-04-84-T, 3 April 2008, § 63-89.

525 Ibid.

526 Edroos, 'ARSA Group Denies Links With al-Qaeda, ISIL and Others', supra fn 516.

527 Lintner, 'The Truth Behind Myanmar's Rohingya Insurgency', supra fn 514; J. Head, 'Rohingya Crisis: Finding out the Truth about Arsa Militants', *BBC News*, 11 October 2017, <http://www.bbc.com/news/world-asia-41521268>.

528 Crisis Group, *Myanmar*, supra fn 510, pp 1, 16.

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS

Due to the framework of violence outlined above, various human rights organizations have been working in the field in 2016 and 2017, in order to document what has happened since the crisis began and the results of the military campaign launched by the Tatmadaw. In October 2017, the United Nations Human Rights Council announced the conclusion of the first fact-finding mission on Myanmar, which was dispatched on 24 March 2017 due to the accusations of human rights violations carried out by military and security forces.⁵²⁹ Experts have been reported to be 'deeply disturbed' by accounts of more than 600,000 Rohingya fleeing from Rakhine state, killings, torture, sexual violence, the destruction of villages by arson, aerial attacks reportedly perpetrated against the Rohingya and the restrictions on humanitarian aid.⁵³⁰ Myanmar's central government has also been accused of laying anti-personnel mines at different points on the border with Bangladesh, in order to impede the return of Rohingya refugees.⁵³¹

The Myanmar Government has yet to ratify most international law treaties. Following the military violence after the attacks of October 2016 and August 2017, human right organizations have denounced the possible commission of crimes against humanity and/or war crimes,⁵³² some of them calling for the intervention of the UN Security Council to potentially refer the case to the International Criminal Court.⁵³³

NIGERIA: A FOCUS ON THE BOKO HARAM INSURGENCY

Sari Arraf

Classification of the Conflict

In 2017, Nigeria and its armed forces were involved in a non-international armed conflict (NIAC) with Boko Haram, which began in the middle of May 2013. By 2014, Cameroon, Niger and Chad were also involved in the armed conflict, in support of the Nigeria armed forces, thus continuing the qualification of the situation as a NIAC.

529 UN Human Rights Council ResA/HRC/RES/34/22, 7 April 2017.

530 OHCHR, 'Experts of the Independent International Fact-Finding Mission on Myanmar Conclude Visit to Bangladesh', 27 October 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22320&LangID=E>, (last accessed 14 November 2017).

531 'Myanmar Laying Landmines on Bangladesh Border: Reports', *Al Jazeera*, 6 September 2017, <http://www.aljazeera.com/news/2017/09/myanmar-laying-landmines-bangladesh-border-reports-170906014211124.html>.

532 O. Holmes, 'Rohingya Crisis: Amnesty Accuses Myanmar of Crimes Against Humanity', *The Guardian*, 18 October 2017, <https://www.theguardian.com/world/2017/oct/18/amnesty-alleges-crimes-against-humanity-in-myanmar-against-rohingya>; 'UN: Myanmar Violence May Be Crimes Against Humanity', *Al Jazeera*, 4 October 2017, <http://www.aljazeera.com/news/2017/10/myanmar-violence-crimes-humanity-171004083223963.html>.

533 HRW, 'UN Security Council: Refer Burma to the ICC', 3 November 2017, <https://www.hrw.org/news/2017/11/03/un-security-council-refer-burma-icc> (last accessed 8 March 2018).

A. HISTORY OF THE CONFLICT

Originally seeded in the northern region of Nigeria, Boko Haram is a fundamentalist Islamic group that has been in outright conflict with the Nigerian state since at least 2013. Over the course of the conflict, the violence has affected the lives of millions of people as Boko Haram has increased the intensity of its brutal campaign and widened its range of targets to include civilians. Moreover, the violence took on a regional dimension when hostilities spread to the other countries in the Lake Chad Basin, starting with Cameroon in 2014 and reaching Niger and Chad one year later. While a coordinated military force that was established by these countries in early 2015 has reversed many of the gains made by Boko Haram in the early years of the insurgency and put it on the back foot, the group maintains the capacity to carry out violent attacks in the region.

The group is formally known as Jama'at Ahl al-Sunna lil-Da'awah wa al-Jihad (the Association of the People of the Sunnah for Preaching and Jihad). Although popularly dubbed Boko Haram, the group has never identified as such and many of its sympathizers dismiss this label as offensive and derogatory.⁵³⁴ Moreover, this by-name, which is often loosely translated from Hausa as 'Western education is sacrilege', does not succeed in capturing the full ideology of the group, which is itself somewhat vague.⁵³⁵ Rather than merely opposing education coming from the West, the group tends to highlight a rejection of Western civilisation in general. This includes, according to the group, the constitutional provision of rights and privileges for women, consumption of alcohol, the type of sanctions that apply in cases of terrible crimes and the idea of multi-party democracy.⁵³⁶ However, Western education still attracts particular criticism from Boko Haram as it echoes a longstanding mistrust in northern Nigeria of colonial and Christian influence through schooling.⁵³⁷

Without underestimating the role of fundamentalist ideologies in the eruption of the insurgency, the emergence of Boko Haram in Northeast Nigeria was also seeded in a highly fertile environment of unfavourable economic and political conditions that facilitated the rise of groups seeking to challenge state authority (be they ethnic, religious or community-based).⁵³⁸ While Nigeria is considered to be Africa's biggest economy, at least 122 million Nigerians (accounting for 67.1 percent of the

534 For simplicity, and given the popular acceptance that the term has acquired, this paper will also refer to the group as Boko Haram.

535 International Crisis Group, *Northern Nigeria: Background to Conflict*, 20 December 2010, p 37, <https://www.crisisgroup.org/africa/west-africa/nigeria/northern-nigeria-background-conflict> (last accessed 31 January 2018).

536 'Boko Haram Resurrects, Declares Total Jihad', *Vanguard*, 14 August 2009, <https://www.vanguardngr.com/2009/08/boko-haram-ressurrects-declares-total-jihad/>.

537 Crisis Group, *Northern Nigeria*, supra fn 535, p 37. This fits with a wider feeling in the north that British colonial rule was an alien domination that disrupted or eroded the region's legal, political and cultural values.

538 Crisis Group, *Curbing Violence in Nigeria (II): The Boko Haram Insurgency*, 3 April 2014, p 1, <https://www.crisisgroup.org/africa/west-africa/nigeria/curbing-violence-nigeria-ii-boko-haram-insurgency> (last accessed 31 January 2018).

population) live below the poverty line.⁵³⁹ Viewed in a wider frame, this is the result of a mix of bad governance, corruption and underdevelopment, underscored by a declining capacity of the Nigerian state to deliver public goods, including security, transportation, water, health services, power and education.⁵⁴⁰ The situation is even bleaker in predominantly Muslim Northeast Nigeria, which suffers from the worst poverty rate among the six official zones of the country.⁵⁴¹ Moreover, with the country being almost equally – albeit not totally – divided between Christians and Muslims, the political scene is characterized by a continuous bickering over political power between these two groups, thus contributing to the ongoing unrest.⁵⁴²

It was against the backdrop of this environment of frustration and alienation that Boko Haram was founded in 2002 by the radical young preacher Mohammed Yusuf in Maiduguri, the capital of the state of Borno in Northeast Nigeria.⁵⁴³ Believing that Sharia law would address the ills of society, including corruption and bad governance, the group advocated for the establishment of an Islamic state in the north with a strict implementation of Sharia law.⁵⁴⁴ Initially, Yusuf took a non-violent line by engaging in official efforts to implement Sharia law across the northern states.⁵⁴⁵ However, soon disenchanted by the improbability of achieving the full implementation of Sharia law through local politicians who became perceived as false and corrupt Muslims, Boko Haram adopted a more confrontational stance. Consequently, a series of confrontations between the group and police forces culminated by 26 July 2009 in an outright rebellion that lasted five days.⁵⁴⁶ As the police forces could not contain the violence, the Nigerian Army took things in hand and quashed the insurrection by killing hundreds of the group's followers and destroying its principal mosque.⁵⁴⁷ Yusuf, the group's leader, was captured and later extrajudicially executed while in police custody.

539 V. Ahiuma-Young, 'Poverty: 112M Nigerians Live below Poverty Line', *Vanguard*, 18 October 2016, <https://www.vanguardngr.com/2016/10/poverty-112m-nigerians-live-poverty-line/>.

540 Crisis Group, *Curbing Violence in Nigeria (II)*, supra fn 538, p 1.

541 Ibid, p 3.

542 M. A. Sergie and T. Johnson, 'Boko Haram: Backgrounder', Council on Foreign Relations (CFR), 5 March 2015, <https://www.cfr.org/backgrounder/boko-haram> (last accessed 7 March 2018).

543 Some analysts contend that Boko Haram started operating in 1995. However, most accounts date the beginning of Boko Haram to 2002, when it began to attract official attention, see Crisis Group, *Curbing Violence in Nigeria (II)*, supra fn 538, pp 7–8.

544 Ibid, p 9.

545 Having many young followers who constituted a significant electoral bloc, Yusuf allegedly struck a deal with politician Ali Modu Sheriff from Maiduguri, according to which he would back the latter's electoral campaign in exchange for his introducing measures to implement Sharia law and giving the group some senior government appointments when elected. However, Sheriff later reneged on his promises, inciting the rage of the group. For more details, see *ibid*, pp 11–12.

546 The uprising started in the state of Bauchi but quickly spread to Borno, Yobe and Kano, see Sergie and Johnson, 'Boko Haram', supra fn 542; see also 'Timeline: Tensions in Nigeria', *Al Jazeera*, 26 December 2010, <http://www.aljazeera.com/news/africa/2010/01/201012314018187505.html>.

547 'Boko Haram', *Encyclopaedia Britannica*, 6 March 2014, <https://www.britannica.com/topic/Boko-Haram#ref326098> (last accessed 7 March 2018); according to the International Committee of the Red Cross (ICRC), the harsh intervention left 780 people dead, see 'Displaced Go Home as Calm Settles Over Maiduguri', *IRIN*, 5 August 2009, <http://www.irinnews.org/news/2009/08/05/displaced-go-home-calm-settles-over-maiduguri>; see also Human Rights Watch (HRW), 'Nigeria: Boko Haram Attacks Indefensible', 8 November 2011, <https://www.hrw.org/news/2011/11/08/nigeria-boko-haram-attacks-indefensible> (last accessed 7 March 2018).

The heavy-handed response did not manage to put an end to the group's activities. Many Boko Haram members reportedly fled to neighbouring countries where they reorganized, while those who stayed in Nigeria kept a low profile.⁵⁴⁸ Following a period of reorganization, the group remerged in July 2010 under the leadership of Yusuf's second-in-command, Abubakar Shekau, who vowed in a released video to avenge the death of Yusuf and other Boko Haram members.⁵⁴⁹ Shortly after, the group went on an assassination campaign targeting mainly policemen, military personnel, politicians, critical religious clerics and others. On 7 September, Boko Haram militants orchestrated a spectacular prison break in the state of Bauchi, resulting in the release of over 700 inmates and, ultimately, the replenishing of their force.⁵⁵⁰

Over the course of 2011, Boko Haram's attacks increased in frequency and magnitude, leading to more civilian fatalities. The circle of victims was widened to include Christians, critical Muslims and schools, and not only state agents on whom the group had concentrated its attacks in the beginning.⁵⁵¹ Following the inauguration of Goodluck Jonathan as Nigeria's President on 29 May, several bombs hit cities around the country, resulting in the death of many civilians. With police forces overwhelmed by the level of violence, cooperation between the different elements of the state apparatus was needed more than ever. On 12 June, the government announced the establishment of a Joint Task Force (JTF) with the mandate to 'restore law and order' to Northeastern Nigeria and Borno State in particular. The force comprises personnel from the Nigerian Armed Forces, Nigeria Police Force, the Department of State Security, Nigerian Customs Service, Nigeria Immigration Service and the Defence Intelligence Agency.⁵⁵²

Shortly after, Boko Haram staged what was deemed to be the first suicide bombing in the history of the country by attacking the national police headquarters in the Nigerian capital of Abuja with a vehicle-borne improvised explosive device, thereby embarrassing the Nigerian security forces and agencies.⁵⁵³ On 26 August 2011, the group carried out another startling attack by striking its first high-pro-

548 Crisis Group, *Northern Nigeria*, supra fn 535, p 37.

549 'Boko Haram', supra fn 547.

550 'Boko Haram Fast Facts', *CNN*, 18 September 2017, <http://edition.cnn.com/2014/06/09/world/boko-haram-fast-facts/index.html>.

551 For example, on Christmas Eve 2010, Boko Haram conducted a series of attacks against churches in north Nigeria leading to the death of six people. In parallel, it carried out a series of bombings in the city of Jos, located in the centre of Nigeria, which claimed the lives of 32 people, see 'Plusieurs attaques contre des églises au Nigeria, à la veille de Noël', *Le Monde*, 25 December 2010, http://www.lemonde.fr/afrique/article/2010/12/25/le-nigeria-endeuille-par-deux-attaques-a-la-veille-de-noel_1457714_3212.html#ZLBhWhVF18h3xcwS.99; Boko Haram attacks occurred primarily in Nigeria's Northeast, North-Central, and Central states, see 'Boko Haram', supra fn 547.

552 P. Mbah and C. Nwangwu, 'The Counter-Insurgency Operations of the Joint Task Force and Human Rights Abuses in Northern Nigeria, 2011–2013', 4 *Journal of Educational and Social Research* 5 (July 2014) 73, <http://www.mcser.org/journal/index.php/jesr/article/download/4395/4298> (last accessed 7 March 2018).

553 C. K. Ekeke, 'Suicide Bomb Blast at Abuja Police Headquarters – Our Nation's Moral Dilemma', *Sahara Reporters*, 23 June 2011, <http://saharareporters.com/2011/06/23/suicide-bomb-blast-abuja-police-headquarters-%E2%80%93-our-nation%E2%80%99s-moral-dilemma>.

file international target in Nigeria – another suicide bomber detonated a car filled with explosives outside the United Nations headquarters in Abuja, destroying several floors of the building in a blast that left at least 18 people dead.⁵⁵⁴ With the continuing deterioration of the conflict, President Jonathan declared in late 2011 a state of emergency in parts of the northern states of Yobe and Borno as well as the central states of Plateau and Niger.⁵⁵⁵

However, violent attacks continued into the following year, a remarkable example of which was a series of coordinated bomb blasts at government offices and shooting sprees in the homonymous capital of the state of Kano. This was one of the deadliest strikes ever conducted by the group, leading to the death of at least 178 people.⁵⁵⁶ However, a significant shift in the fight against Boko Haram started to take place from early 2013 onwards as vigilante groups began to spring up in Borno State with the aim of protecting local communities from Boko Haram.⁵⁵⁷ These groups emerged as a response both to attacks by Boko Haram and a wide mistrust of the Nigerian military whose campaign was not only defective – by early 2013, Boko Haram arguably reached its apex when it controlled large swathes in the state of Borno – but was also marred by well-documented human rights abuses.⁵⁵⁸ By June 2013, these vigilante groups became known as the Civilian Joint Task Force (CJTF) and were put under the supervision of the JTF who organized them along its own lines of command.⁵⁵⁹ Following its success in driving Boko Haram members out of Maiduguri, the CJTF model spread further in Nigeria, and was later replicated in Cameroon in 2014 and Chad in 2015, where such groups are known as *comités de vigilance*.⁵⁶⁰ Although the CJTF was helpful to the military efforts against Boko Haram, it was also reported to have committed human rights abuses.⁵⁶¹

554 S. Murray and A. Nossiter, 'Suicide Bomber Attacks U.N. Building in Nigeria', *The New York Times*, 26 August 2011, <http://www.nytimes.com/2011/08/27/world/africa/27nigeria.html>.

555 B. Adigun, 'Nigerian President Declares State of Emergency after Deadly Communal Clashes', *The Star*, 31 December 2011, https://www.thestar.com/news/world/2011/12/31/nigerian_president_declares_state_of_emergency_after_deadly_communal_clashes.html.

556 M. Oboh, 'Islamist Insurgents Kill Over 178 in Nigeria's Kano', *Reuters*, 22 January 2012, <https://www.reuters.com/article/us-nigeria-violence/islamist-insurgents-kill-over-178-in-nigerias-kano-idUSTRE80LOAO20120122>.

557 Crisis Group, *Watchmen of Lake Chad: Vigilante Groups Fighting Boko Haram*, 23 February 2017, p 4, <https://www.crisisgroup.org/africa/west-africa/nigeria/244-watchmen-lake-chad-vigilante-groups-fighting-boko-haram> (last accessed 31 January 2018).

558 Ibid, pp 4–5. In a highly contested incident dating from April 2013, the Nigerian Army was suspected of committing a massacre against civilians in the city of Baga while engaging in fights with Boko Haram. At least 200 people, including many civilians, were reported to have been killed during the hostilities and troops were accused of burning houses (although the Nigerian Government denied accusations of deliberate targeting of civilians and burning of houses). See T. Kibangula, 'Nigeria : à Baga, «les soldats ont mis le feu maison par maison»', *Jeune Afrique*, 2 May 2013, <http://www.jeuneafrique.com/171007/politique/nigeria-baga-les-soldats-ont-mis-le-feu-maison-par-maison/>. Like the army, Nigeria's police forces also suffer from wide public mistrust. See O. Okenyodo, *Governance, Accountability, and Security in Nigeria*, Africa Center for Strategic Studies, 21 June 2016, <https://africacenter.org/publication/governance-accountability-security-nigeria-html/#fn15> (last accessed 31 January 2018).

559 Crisis Group, *Watchmen of Lake Chad*, supra fn 557, p 5.

560 Ibid, p i. Niger, on the other hand, has been more cautious on this issue, partly because of past struggles with armed groups and because it has not needed them as much. See *ibid*.

561 Crisis Group, *Curbing Violence in Nigeria (II)*, supra fn 538, pp 34–35; see also Crisis Group, *Watchmen of Lake Chad*, supra fn 557, p i.

Meanwhile, on 14 May 2013, President Jonathan declared a state of emergency in the entirety of Borno, Yobe and Adamawa States.⁵⁶²

Despite the creation of the CJTF, the anti-insurgency efforts fell short of effectively checking Boko Haram's attacks. If anything, the deployment of vigilante groups did much to increase the level of violence by pitting Boko Haram against local communities (rather than its concentrating mainly on state targets).⁵⁶³ Consequently, Boko Haram continued its brutal campaign throughout 2014, raiding villages and murdering civilians with increasing frequency, particularly in the Northeastern region. The group also pursued its bombing attacks, which claimed the lives of hundreds of people across Nigeria.⁵⁶⁴ What is more, after being mainly concentrated in northern Nigeria during its initial years, the conflict acquired a regional dimension in March 2014 when Boko Haram carried out its first attacks in Cameroon. Since then, the group has multiplied its attacks in northern Cameroon, thereby confirming its ability to carry out attacks beyond Nigeria's borders. Boko Haram, it should be noted, had been present in the country well before the initial attacks occurred, particularly in the Far North region of Cameroon where it has built its logistic network.⁵⁶⁵ The conflict would extend to Niger and Chad by the following year.

In April 2014, Boko Haram gained significant notoriety in the international arena after kidnapping more 276 girls from a public school in Chibok in Borno State.⁵⁶⁶ Shortly after the abduction, Shekau released a video in which he declared his intentions to sell the girls in the market and said that girls should be married off.⁵⁶⁷ Although not the first of its kind, the incident spurred international outrage and mobilization, manifested by the 'Bring Back our Girls' campaign on social media. In this context, the UN Security Council's Al-Qaida Sanctions Committee added Boko Haram to its

562 'Jonathan Declares State of Emergency in Borno, Yobe and Adamawa State', *Sahara Reporters*, 14 May 2013, <http://saharareporters.com/2013/05/14/breaking-news-jonathan-declares-state-emergency-borno-yobe-and-adamawa-state>. This declaration followed on from the previous declaration of a state of emergency in December 2011, which had a partial scope of application in some of the Nigerian states. See also N. Ekujumi, 'Declaration of States of Emergency as a Set Back for Nigeria's Democracy', *Sahara Reporters*, 17 May 2013, <http://saharareporters.com/2013/05/17/declaration-states-emergency-set-back-nigeria%E2%80%99s-democracy>.

563 Crisis Group, *Watchmen of Lake Chad*, supra fn 557, p i.

564 'Boko Haram', supra fn 547.

565 Crisis Group, *Cameroon: Confronting Boko Haram*, 16 November 2016, pp i, 10, <https://www.crisisgroup.org/africa/central-africa/cameroon/cameroon-confronting-boko-haram> (last accessed 31 January 2018). In doing so, Boko Haram benefited from a network of local collaborators and exploited vulnerabilities that the region shares with Northeastern Nigeria. Apart from shared socio-economic vulnerabilities, Cameroon's Far North region is closely related to Northeastern Nigeria in historical, religious, commercial, ethnic and cultural terms. For more details, see *ibid*, pp 3–7.

566 K. Phillips and K. Sieff, 'Some Chibok Schoolgirls Are Now Free – But Hundreds More Abducted by Boko Haram Are Still Missing', *The Washington Post*, 7 May 2017, https://www.washingtonpost.com/news/worldviews/wp/2017/05/07/some-chibok-schoolgirls-are-now-free-but-hundreds-more-abducted-by-boko-haram-are-still-missing/?utm_term=.1156fcbce239c.

567 A. Abubakar and J. Levs, "I Will Sell Them," Boko Haram Leader Says of Kidnapped Nigerian Girls', *CNN*, 6 May 2014, <http://edition.cnn.com/2014/05/05/world/africa/nigeria-abducted-girls/index.html>.

sanctions list on 22 May, subjecting it to an arms embargo and assets freeze.⁵⁶⁸ To the present day, many of the abducted Chibok girls remain in captivity although some have been released or found by security forces on several occasions.⁵⁶⁹

From August 2014 onwards, Boko Haram made substantial military gains, going on to capture many towns in Northeastern Nigeria. Notably, the group seized the city of Damasak near the Nigerian border on 24 November, and captured about 400 women and children, including at least 300 elementary school students.⁵⁷⁰ In early 2015, it also took control of the city of Baga on the heels of an infamously bloody offensive that left around 2,000 people dead according to some reports.⁵⁷¹ In sum, the year 2014 proved to be disastrous for the Nigerian Government, which lost large territories to Boko Haram in the north, leading to a high level of demoralization among Nigerian troops and various incidents of mutiny.

As a response to the growing regional threat of Boko Haram, a Multinational Joint Task Force (MNJTF) was put into action in late January 2015.⁵⁷² Comprising units from the countries of the Lake Chad Basin (Nigeria, Niger, Chad and Cameroon) and Benin, the MNJTF is an offensive and stabilization mechanism with the objective of combating Boko Haram and other groups labelled as terrorists operating around the Lake Chad Basin. Initially, a serious regional response was lacking for several reasons. Whilst Niger chose to hold back military action, conceiving Boko Haram as a mainly Nigerian problem, Chad was much more occupied by the consequences of chaos in Libya.⁵⁷³ On the other hand, cooperation between Nigeria and Cameroon

568 United Nations, 'Security Council Al-Qaida Sanctions Committee Adds Boko Haram to Its Sanctions List', 22 May 2014, <http://www.un.org/press/en/2014/sc11410.doc.htm> (last accessed 7 March 2018). Later, the committee added Shekau and Ansaru, a splinter group of Boko Haram, to its sanctions list. See United Nations, 'Security Council Al-Qaida Sanctions Committee Adds Abubakar Mohammed Shekau, Ansaru to Its Sanctions List', 26 June 2014, <http://www.un.org/press/en/2014/sc11455.doc.htm>.

569 The most recent episode of a release of some Chibok schoolgirls was on 6 May 2017, when Nigerian officials said 83 schoolgirls were freed. See 'Boko Haram Releases Dozens of Chibok Schoolgirls, Say Nigerian Officials', *The Guardian*, 6 May 2017, <https://www.theguardian.com/world/2017/may/06/boko-haram-releases-dozens-of-kidnapped-chibok-schoolgirls>.

570 HRW, 'Nigeria: A Year On, No Word on 300 Abducted Children', 29 March 2016, <https://www.hrw.org/news/2016/03/29/nigeria-year-no-word-300-abducted-children> (last accessed 7 March 2018). The town would be later recaptured on 17 March 2015.

571 The number of fatalities was contested by the Nigerian Government, which capped the death toll at 150, see J. Rademeyer and E. Whitehead, 'Factsheet: What Happened in Baga?', Africa Check, 16 January 2015, <https://africacheck.org/factsheets/factsheet-what-happened-in-baga/> (last accessed 7 March 2018).

572 The MNJTF is a descendant of the Multinational Joint Task Force (MNJTF) created by the Lake Chad Basin Commission (LCBC) in 1998 to fight banditry in the region. See Crisis Group, *Cameroon*, supra fn 565, p 27. On 7 October 2014, the LCBC Member States and Benin modified the structure of the MNJTF in order to enable it to respond to the Boko Haram threat. On 25 November 2014, the African Union's Peace and Security Council fully endorsed the activation of the force, but it was not until 29 January 2015 that formal authorization for its deployment was given. For a more detailed account, see W. Assanvo, J. E. A. Abatan and W. A. Sawadogo, *Assessing the Multinational Joint Task Force Against Boko Haram*, Institute for Security Studies (ISS), *West Africa Report* 19, September 2016, p 2, <https://issafrica.s3.amazonaws.com/site/uploads/war19.pdf> (last accessed 31 January 2018).

573 Crisis Group, *Niger and Boko Haram: Beyond Counter-Insurgency*, 27 February 2017, p i, <https://www.crisisgroup.org/africa/west-africa/niger/245-niger-and-boko-haram-beyond-counter-insurgency> (last accessed 31 January 2018); Crisis Group, *Fighting Boko Haram in Chad: Beyond Military Measures*, 8 March 2017, p 16, <https://www.crisisgroup.org/africa/central-africa/chad/246-fighting-boko-haram-chad-beyond-military-measures> (last accessed 31 January 2018).

was impeded by their embroiled relations.⁵⁷⁴ However, with the security developments in 2014, this situation inevitably changed. Niger decided to actively intervene in the conflict after it became increasingly alarmed by Boko Haram's territorial gains in its backyard, whereas Chad sought to secure the vital economic routes connecting its capital with maritime outlets in Cameroon, which were becoming increasingly jeopardized by Boko Haram activities in northern Cameroon.

Although regional cooperation under the MNJTF left much to be desired, the military campaign that ensued in the course of the following months managed to reverse Boko Haram's previous gains by recapturing many territories that had previously fallen under its control.⁵⁷⁵ The intervention, however, came at a certain cost for Chad and Niger. While Boko Haram had previously been present in these two countries, it avoided conducting military operations there so it could have more room to operate a rear base to support its activities in Nigeria.⁵⁷⁶ However, shortly after the decision by Niger and Chad to directly intervene in the war effort against Boko Haram, the group started launching attacks on their soil from February 2015, and the scope of hostilities became ever wider, affecting millions of people in the region of the Lake Chad Basin.⁵⁷⁷

On 7 March 2015, in a step perceived by many as a sign of weakening, Boko Haram pledged allegiance to Islamic State (IS), and was renamed shortly after as Islamic State's West Africa Province (ISWAP).⁵⁷⁸ Commentators indicated that, rather than being a game changer, the move was more an attempt by Boko Haram to boost its members' morale and image and attract local support.⁵⁷⁹ Indeed, by the end of March, Boko Haram had come to suffer many losses and was forced to change its strategy by taking refuge in Lake Chad, the topographical features of which were an advantage.⁵⁸⁰ Later, another notable shift in the fight against Boko Haram started taking place when Muhammadu Buhari assumed office as Nigeria's newly elect-

574 Assanvo, Abatan and Sawadogo, *Assessing the Multinational Joint Task Force*, supra fn 572, p 6.

575 Originally conceived as an integrated force, the MNJTF is in fact more of a coordinated force. See Crisis Group, *Cameroon*, supra fn 565, p 28. For a long time, the force was conceived as an empty shell and national forces preferred national or bilateral actions. For a more detailed assessment of the MNJTF, see Assanvo, Abatan and Sawadogo, *Assessing the Multinational Joint Task Force*, supra fn 572.

576 Crisis Group, *Niger and Boko Haram*, supra fn 573, p i.

577 Boko Haram carried out its first attacks in Niger on 6 February by raiding the towns of Diffa and Bosso in the southeast. On 13 February, the group carried its first attack on Chadian territories by raiding the village of Ngouboua on the western shore of Lake Chad.

578 'Boko Haram Pledges Allegiance to ISIL, Reports Say', *Al Jazeera*, 8 March 2015, <http://www.aljazeera.com/news/2015/03/nigeria-boko-haram-pledges-allegiance-isil-150307201614660.html>; A. Chandler, 'The Islamic State of Boko Haram?', *The Atlantic*, 9 March 2015, <https://www.theatlantic.com/international/archive/2015/03/boko-haram-pledges-allegiance-islamic-state/387235/>.

579 Y. Adegoke, 'Boko Haram's Pledge of Allegiance to ISIL Is a Symptom of Weakness, Not Strength', Quartz, 9 March 2015, <https://qz.com/358264/why-boko-harams-pledge-of-allegiance-to-isil-is-a-symptom-of-weakness-not-strength>.

580 For a detailed account of the topography of Lake Chad, see C. Seignobos, 'Boko Haram et le lac Tchad: Extension ou sanctuarisation?', *Afrique Contemporaine* 255 (2015), <http://www.cairn.info/revue-afrique-contemporaine-2015-3-page-93.htm> (last accessed 7 March 2018).

ed President in late May 2015.⁵⁸¹ Taking a more proactive stance in fighting Boko Haram than his predecessor, who was criticized earlier for his weak leadership and inability to effectively combat the group, Buhari immediately began strengthening cooperation with the neighbouring countries.⁵⁸² He also undertook to reform the Nigerian military, replacing top commanders and making some battalions operational by placing them under the command of non-corrupt officers.⁵⁸³

By the end of the year, Boko Haram lost many territories but remained present in the Sambisa Forest and Mandara Mountains on the borders with Cameroon, as well as on the islands of Lake Chad.⁵⁸⁴ The group was put on the defensive and its campaign became more reliant on guerrilla warfare strategies and suicide bombings.⁵⁸⁵ However, the subsequent takeover of the town of Bosso in Niger for a short time in early June 2016 brought into question the ability of the engaged states to sustain military gains and ensure protection for reconquered territories, and proved that Boko Haram's threat was still imminent.

On 3 August 2016, an internal split in the leadership of Boko Haram came to the surface when IS announced that Abu Musab al-Barnawi, identified as the son of former leader Mohammed Yusuf, would be the new *wali* of ISWAP.⁵⁸⁶ In response, Shekau released an audio message in which he declared his return to his previous role as imam of Jama'at Ahl al-Sunna lil-Da'awah wa al-Jihad, and said that al-Barnawi's faction had staged a coup against him by manipulating IS's leadership and cutting him off from corresponding with Abu Bakr al-Baghdadi.⁵⁸⁷ The split has been driven by ideological and strategic differences: al-Barnawi and his close associate, Mamman Nur, are at odds with Shekau for his takfirist approach and indiscriminate attacks on Muslims who do not openly oppose those he calls 'infidels'. Consistent with their ideological leanings, their strategy places greater emphasis on attacking Christians and Western targets.⁵⁸⁸

581 General elections were held in Nigeria on 28 and 29 March 2015, after having been postponed for six weeks due to the intensity of Boko Haram's attacks.

582 Assanvo, Abatan and Sawadogo, *Assessing the Multinational Joint Task Force*, supra fn 572, pp 7–8.

583 C. Seignobos, 'Boko Haram et le lac Tchad', supra fn 580, 98.

584 R. Carayol, 'Terrorisme: Boko Haram, monstre blessé', *Jeune Afrique*, 22 June 2015, <http://www.jeuneafrique.com/mag/238229/politique/terrorisme-boko-haram-monstre-blesse/>.

585 In this context, the city of Maiduguri witnessed, on 20 September, one of the deadliest attacks it has been hit by since the beginning of the conflict, when coordinated bombings led to the death of at least 100 people. See N. Onishi, 'More than 100 Killed by Boko Haram Bombings in Nigeria', *The New York Times*, 21 September 2015, <https://www.nytimes.com/2015/09/22/world/africa/deadly-bombings-are-reported-in-nigerian-city-where-boko-haram-was-founded.html>.

586 D. Gartenstein-Ross and J. Zenn, 'Boko Haram's Doomed Marriage to the Islamic State', *War on the Rocks*, 26 August 2016, <https://warontherocks.com/2016/08/boko-harams-doomed-marriage-to-the-islamic-state/>. Abu Musab al-Barnawi is a pseudonym, the real name of Mohammed Yusuf's son being Habib Yusuf.

587 Ibid.

588 F.C. Onuoha, *Split in ISIS-Aligned Boko Haram Group*, Al Jazeera Center for Studies, 27 October 2016, <http://studies.aljazeera.net/en/reports/2016/10/split-isis-aligned-boko-haram-group-161027113247008.html> (last accessed 31 January 2018).

Following the declaration in early August, several deadly clashes were reported to have taken place between the factions of Shekau and al-Barnawi.⁵⁸⁹ Subsequently, Shekau's faction came to assert its presence in the Sambisa Forest and the Mandara Mountains, while al-Barnawi's became dominant in Lake Chad and part of its shores as well as along the Komadougou River.⁵⁹⁰ The split also arguably entailed an intensification of Boko Haram's attacks in the last quarter of 2016, which was attributed to an attempt by Shekau to assert the relevance of his faction.⁵⁹¹ At the beginning of October, the Nigerian military launched Operation Forest Storm, cracking down on Boko Haram positions in the Sambisa Forest. By the end of December, President Buhari declared that the remnants of Boko Haram had been finally crushed in their last enclave in the Sambisa Forest.⁵⁹² Overall, the year 2016 witnessed significant progress in the battle against Boko Haram.

B. PARTIES TO THE CONFLICT

The parties to the NIAC in 2017 were Nigeria and its armed forces, with the support of the Multinational Joint Task Force (Cameroon, Chad, Niger) and Boko Haram.

1. Nigerian Armed Forces

The Nigerian Armed Forces have been estimated to be 181,000 strong, with 57,000 reservists.⁵⁹³

2. Boko Haram

There is no sufficiently clear and reliable information on Boko Haram's structure and different factions. The group reportedly began splintering into multiple factions following the death of its founding leader, Mohammed Yusuf, in July 2009.⁵⁹⁴ Many of these factions were later eliminated by security forces or co-opted into stronger groups to avoid capture or death. Already by 2014, International Crisis Group enumerated six different factions of Boko Haram, including notably a group of fighters under the leadership of Shekau, another faction commanded by Mamaan Nur and Ansaru (now formally known as Jama'atu Ansarul-Muslimina Fi Biladis Sudan).⁵⁹⁵ It should be nuanced though that Ansaru has been consid-

589 'Shekau's Boko Haram Group, Barnawi Camp Clash', *Vanguard*, 8 September 2016, <https://www.vanguardngr.com/2016/09/shekaus-boko-haram-group-barnawi-camp-clash/>.

590 However, the demarcation between the two factions is not clear, especially in the northwest of Borno State, close to the border with Niger and on the lake, where the two factions have reportedly clashed, see Crisis Group, *Niger and Boko Haram*, supra fn 573, p 18.

591 O. S. Mahmood, 'Boko Haram in 2016: A Highly Adaptable Foe', ISS, 7 February 2017, <https://issafrica.org/iss-today/boko-haram-in-2016-a-highly-adaptable-foe> (last accessed 7 March 2018).

592 'Buhari: Last Boko Haram Base Taken in Sambisa Forest', *Al Jazeera*, 24 December 2016, <http://www.aljazeera.com/news/2016/12/buhari-boko-haram-base-retaken-sambisa-forest-161224125809113.html>.

593 Global Firepower, '2017 Nigeria Military Strength', https://www.globalfirepower.com/country-military-strength-detail.asp?country_id=nigeria (last accessed 7 March 2018).

594 'Boko Haram', supra fn 547.

595 For more details, see Crisis Group, *Curbing Violence in Nigeria (II)*, supra fn 538, p 22.

ered as a splinter group since January 2012, when it first announced its formation (as a separate group) with view to distancing itself from Shekau's tactics of targeting Muslim civilians. The group focuses instead on international targets as well as staging attacks against state agents and Christian civilians. Ansaru eventually became largely dormant due to the assassination of its members by Shekau, the Nigerian military campaign and the disruption of AQIM's networks in Mali after the French-led intervention in 2013. It later tried to reassert itself when conditions became more permissive but was dealt a blow by the capture of its leader, Khalid al-Barnawi, in 2016.⁵⁹⁶

Boko Haram has ties with several Islamist groups inside as well as outside Africa, most notably with IS, al-Qaeda in the Islamic Maghreb (AQIM), Islamist groups fighting in Mali and al-Shabaab. AQIM has given financial, arsenal and training support to Boko Haram.⁵⁹⁷ Links with Islamist groups were particularly strengthened after the military crackdown in 2009 when some surviving members escaped through Niger and Chad to Somalia, Algeria and, reportedly, Afghanistan, where they joined other Islamist fighters and received guerrilla training.⁵⁹⁸ Some fighters in the Maghreb and Sahel were trained and armed by the former Libyan leader, Muammar Gaddafi, to destabilize their home governments. After his fall, arms depots were looted and many weapons originating from Libya subsequently found their way into the hands of Boko Haram.⁵⁹⁹ As already mentioned, Boko Haram pledged allegiance to IS in March 2015. This was more of a tactical move designed to boost the credentials of the group. There is no discernible evidence that Boko Haram has received significant operational support or financing from IS, although communications channels are open between the two.⁶⁰⁰

The recent fracturing of Boko Haram's leadership into two major factions spearheaded by Shekau and (Abu Musab) al-Barnawi has arguably led to an effective deposition of Shekau. Moreover, there is reason to believe that the leadership of al-Barnawi's faction retains a latent affinity with al-Qaeda, even though it is now publicly loyal to IS.⁶⁰¹ Al-Barnawi, as well as his ally Mamaan Nur, is closer in terms of beliefs and ideology to al-Qaeda than IS. The paradox of his alignment with IS

596 Gartenstein-Ross and Zenn, 'Boko Haram's Doomed Marriage to the Islamic State', supra fn 586; see also 'Khalid al-Barnawi: Nigeria Islamist Group Head "Arrested"', *BBC*, 3 April 2016, <http://www.bbc.com/news/world-africa-35956301>

597 Crisis Group, *Curbing Violence in Nigeria (II)*, supra fn 538, p 24; see also L. Prieur, 'Boko Haram Got Al Qaeda Bomb Training, Niger Says', *Reuters*, 25 January 2012, <https://www.reuters.com/article/ozatp-sahara-bokoharam-qaeda-20120125-idAFJ0E8000K20120125>.

598 Crisis Group, *Curbing Violence in Nigeria (II)*, supra fn 538, p 23.

599 Ibid, pp 24–25.

600 J. Landay, W. Strobel and P. Stewart, 'U.S. Sees No Major Islamic State Links to Boko Haram, Despite Claims', *Reuters*, 9 June 2016, <https://www.reuters.com/article/us-nigeria-security-usa-insight/u-s-sees-no-major-islamic-state-links-to-boko-haram-despite-claims-idUSKCN0YV0BW>; see also Ryan Cummings, 'The Shadowy Ties Between ISIS and Boko Haram', Tony Blair Institute for Global Change, 30 Jun 2016, <https://institute.global/insight/co-existence/shadowy-ties-between-isis-and-boko-haram> (last accessed 7 March 2018).

601 Gartenstein-Ross and Zenn, 'Boko Haram's Doomed Marriage to the Islamic State', supra fn 586.

could be explained by his vision to establish an Islamic state in West Africa. Being harder to achieve in a short time under al-Qaeda's gradual grassroots approach, al-Barnawi's ambition fits more with IS's modus operandi and its prioritization of an 'immediate caliphate'.⁶⁰² Some also speculate that al-Barnawi's alignment with IS might have been motivated by his will to do away with Shekau. According to this view, merging with Shekau made it possible for al-Barnawi to be in control of Boko Haram's communication channels with IS, out of which he would eventually cut Shekau leading to his disposal. While it might seem conspiratorial at first, this idea is consistent with Shekau's own accusations that Barnawi had deliberately cut him off from corresponding with al-Baghdadi and manipulated IS's leadership in order to become the new leader of Boko Haram.⁶⁰³

C. KEY DEVELOPMENTS IN 2017: A FOCUS ON THE BOKO HARAM INSURGENCY

Following the dislodgement of Boko Haram from the Sambisa Forest, military operations concentrated on the destruction of the group's remaining strongholds around Lake Chad.⁶⁰⁴ As a consequence, many Boko Haram members have been dispersed across the region and the group's capacity to conduct large-scale attacks has been severely diminished. Other Boko Haram fighters surrendered to the state forces, including Auwal Ismaeela, who led the abduction of the Chibok schoolgirls in 2014.⁶⁰⁵ However, Boko Haram still retains the ability to conduct small raids, ambushes, suicide bombings and abductions. For instance, on 25 July the group ambushed an oil exploration team in the Magumeri locality of Borno State, killing around 50 people and abducting others.⁶⁰⁶ According to data collected by Amnesty International, the attacks by Boko Haram in Nigeria and Cameroon alone left at least 381 civilians dead between April and September 2017, more than double the casualties recorded in the previous five months.⁶⁰⁷

Military offensives during the months of September and October were extensive and yielded measurable effects on the already debilitated group. Several high-pro-

602 Jacob Zenn, 'Making Sense of Boko Haram's Different Factions: Who, How and Why?', *African Arguments*, 20 September 2016, <http://africanarguments.org/2016/09/20/making-sense-of-boko-harams-different-factions/>.

603 Gartenstein-Ross and Zenn, 'Boko Haram's Doomed Marriage to the Islamic State', supra fn 586.

604 Armed Conflict Location & Event Data Project (ACLED), *Conflict Trends* no 61, *Real-time Analysis of African Political Violence*, September 2017, p 7, https://www.acleddata.com/wp-content/uploads/2017/09/ACLED_Conflict-Trends-Report_No.61-September-2017_pdf.pdf (last accessed 31 January 2018).

605 'Boko Haram Commander Confesses to Leading Operation to Kidnap Chibok Girls', *Premium Times*, 27 August 2017, <https://www.premiumtimesng.com/news/headlines/241662-boko-haram-commander-confesses-leading-operation-kidnap-chibok-girls.html>.

606 Security Council Report, 'Lake Chad Basin', *September 2017 Monthly Forecast*, 1 September 2017, http://www.securitycouncilreport.org/monthly-forecast/2017-09/lake_chad_basin.php (last accessed 31 January 2018).

607 'Lake Chad Region: Boko Haram's Renewed Campaign Sparks Sharp Rise in Civilian Deaths', Amnesty International, 5 September 2017, <https://www.amnesty.org/en/latest/news/2017/09/lake-chad-region-boko-harams-renewed-campaign-sparks-sharp-rise-in-civilian-deaths/>.

file targets have been killed or captured by security forces.⁶⁰⁸ A number of intelligence reports have indicated that a large number of Boko Haram fighters have fled to Adamawa State to avoid the military saturation of Borno.⁶⁰⁹ Although the group is now on the back foot and devoid of much of the appeal it previously had in the eyes of early sympathisers, it remains uncertain whether its threat can be completely eradicated. Without addressing the structural problems that nourished the evolution of the group in the region, military responses could only have temporary effects in the fight against the group.

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS

The conflict with Boko Haram has resulted in the killing, injuring and displacement of thousands of civilians around the Lake Chad Basin.⁶¹⁰ All parties to the conflict have allegedly committed serious abuses in the course of hostilities. Boko Haram's violent campaign has involved, inter alia, raiding and burning villages, attacking schools, markets and religious places, sexual violence, forced recruitment of children, kidnapping civilians (many of whom are women and girls that were later married to members of the group or used to stage suicide attacks), extortion and looting of property. National security forces and the MNJTF were also involved in human rights abuses such as extrajudicial killings, torture and ill-treatment, arbitrary detentions, enforced disappearances, extortion and forced displacement.⁶¹¹ Moreover, harsh counter-insurgency measures that were imposed by some states in order to cut off Boko Haram's financial resources, notably in Niger, have had a severe effect on local populations, leaving tens of thousands of people without occupation or income.⁶¹² Vigilante groups, too, have committed abuses and become involved in the war economy.⁶¹³

608 The wife of Boko Haram leader, Abubakar Shekau, was targeted in an air strike on Konduga Local Government Area on 19 October. See 'Wife of Boko Haram Leader, Shekau, Killed in Military Strike', *Sahara Reporters*, 25 October 2017, <http://saharareporters.com/2017/10/25/wife-boko-haram-leader-shekau-killed-military-strike>. On 24 September, Idris Ibrahim Babawo, a top level Shekau lieutenant, was arrested in Ondo State, see 'Wanted Boko Haram Suspect Arrested in Ondo State', *Sahara Reporters*, 26 September 2017, <http://saharareporters.com/2017/09/26/wanted-boko-haram-suspect-arrested-ondo-state>.

609 ACLED, *Conflict Trends* no 63, *Real-time Analysis of African Political Violence*, November 2017, p 7, https://www.acleddata.com/wp-content/uploads/2017/11/ACLED_Conflict-Trends-Report_November2017_FINAL-1.pdf (last accessed 31 January 2018).

610 There are divergent reports on the number of fatalities caused by the conflict. Nonetheless, according to figures from CFR's 'Nigeria Security Tracker', the conflict claimed the lives of 31,184 people in Nigeria alone from May 2011 to November 2017, see <https://www.cfr.org/nigeria/nigeria-security-tracker/p29483> (last accessed 7 March 2018); the overall number of people displaced as a result of attacks by Boko Haram and military operations in the Lake Chad Basin is estimated to be around 2.4 million, see UN Security Council (UNSC), Report of the Secretary-General on the Situation in the Lake Chad Basin Region, UN doc S/2017/7647, September 2017, §10, www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_2017_764.pdf (last accessed 7 March 2018).

611 UNSC, Report of the Secretary-General on the Situation in the Lake Chad Basin Region, supra fn 610, §21.

612 Crisis Group, *Niger and Boko Haram*, supra fn 573, p 14.

613 Crisis Group, *Watchmen of Lake Chad*, supra fn 557, p i; see also UNSC, Report of the Secretary-General on Situation in the Lake Chad Basin Region, supra fn 610, §22; Crisis Group, *Curbing Violence in Nigeria (II)*, supra fn 538, pp 34-35.

Nigeria ratified the 1998 Rome Statute of the International Criminal Court (ICC) on 27 September 2001. The ICC therefore has jurisdiction over the Rome Statute crimes committed on the territory of Nigeria or by its nationals from 1 July 2002 onwards.

The preliminary examination of the situation in Nigeria was announced on 18 November 2010.⁶¹⁴

The Office of the Prosecutor (OTP) received a total of 131 communications under Article 15 in relation to the situation in Nigeria. On 12 November 2015, the Office identified eight potential cases involving the commission of crimes against humanity and war crimes under articles 7 and 8 of the Statute, including six for conduct by Boko Haram and two for conduct by the Nigerian security forces.

In October 2017, a series of new proceedings were initiated by the Nigerian authorities, thus impacting on the ICC admissibility process (complementarity principle). Several prosecutors were assigned to bring to court more than 2,300 Boko Haram suspects, currently detained in two military camps in Northwestern Nigeria. In addition, the Nigerian authorities initiated two inquiries, the Special Board of Inquiry (SBI), instituted by the Nigerian Army and the Presidential Investigation Panel to Review Compliance of the Armed Forces with Human Rights Obligations and Rules of Engagement (the PIP). The SBI was convened by the Chief of Army Staff of the Nigerian Army on 8 March 2017 and was mandated to investigate allegations of human rights violations against the Nigerian Security Forces, including in the context of its operations against Boko Haram in Northeastern Nigeria. The PIP was set up by Acting President Yemi Osinbajo on 11 August 2017, in accordance with one of the SBI's recommendations. The PIP is mandated among others to investigate alleged violations of international humanitarian law and human rights law and matters of conduct and discipline in the Nigerian Armed Forces in local conflicts and insurgencies. Stakeholders, affected persons, institutions and interested members of the public have been invited to submit information to the PIP to assist it in the discharge of its mandate. From 7 September to 6 October 2017, the PIP held a public hearing in Abuja. The last hearing reportedly took place on 8 November 2017, concluding the investigation. The OTP continues to follow the situation.

614 The following two paragraphs are drawn from Office of the Prosecutor (OTP), International Criminal Court (ICC), Report on Preliminary Examination Activities 2017, Nigeria, para. 204-229, https://www.icc-cpi.int/itemsDocuments/2017-PE-rep/2017-otp-rep-PE_ENG.pdf (last accessed 7 March 2018).

8. THE PHILIPPINES: A LONG-RUNNING AND MULTIFACETED CONFLICT IN MINDANAO

Laura Baron Mendoza

Classification of the Conflict

In 2017, the Philippine Armed Forces were involved in non-international armed conflicts (NIAC) with dissident armed factions of the Moro National Liberation Front⁶¹⁵ and the Moro Islamic Liberation Front, namely with the Abu Sayyaf group, the Bangsamoro Islamic Freedom Fighters and the Maute Group. In addition, there is still a NIAC with the New People's Army.

A. HISTORY OF THE CONFLICT

Mindanao is the second largest island in the Philippines, divided into six administrative regions, including the Muslim-majority Autonomous Region in Muslim Mindanao (ARMM).⁶¹⁶ For centuries, it has been home to Christians, indigenous peoples and Moros.⁶¹⁷ This southern Philippine island is facing one of the longest-running situations of violence, with roots that can be traced back to the colonial era and the dynamics of exploitation and resistance shadowed by clashes between Christian and Muslim armed militias that attained a national character.⁶¹⁸

Despite claims of its decline,⁶¹⁹ there are still many instances of armed violence by armed non-state actors (ANSAs) against the state (vertical insurgency) and between ANSAs (horizontal violence). Since 2014, there has been a prominent increase in vertical insurgency-related conflict.⁶²⁰ In addition, horizontal violence between clans, ethnic groups, political parties or shadow authorities continues to nourish the instability under Rodrigo Duterte's presidency.

615 A. Macapaar, known as Commander Bravo has stated he will not give up the rebel group's weapons as long as historical injustices continue. J. Alindogan, 'Philippines' MILF Rebel Group "Committed to Peace"', *Al Jazeera*, 12 March 2017, <http://www.aljazeera.com/video/news/2017/03/philippines-milf-rebel-group-committed-peace-170312162817804.html>.

616 ARMM obtained special autonomous status in 1990 following a plebiscite. It includes the provinces of Maguindanao and Lanao del Sur on the mainland and island provinces like Basilan, Sulu and Tawi-Tawi. ARMM's population is approximately 4.1 million, largely dominated by Muslims from the Meranaw, Tausug and Maguindanaon ethnic groups.

617 Mindanao Muslims are known as Moros, derived from the Spanish term Moor (Muslim), while Bangsamoro describes their territory. See S. C. Druce, 'Not the "ASEAN Way": The Southern Philippines Conflict and its Internationalization', in M. Oishi (ed), *Contemporary Conflicts in Southeast Asia: Towards a New ASEAN Way of Conflict Management*, Springer, 2016, p 46.

618 R. J. Heydarian, *The Quest for Peace: The Aquino Administration's Peace Negotiations with the MILF and CPP-NPA-NDF*, NOREF, March 2015, <https://www.files.ethz.ch/isn/189990/6a4a521651243abd9d63bafa322d7da9.pdf> (last accessed 30 January 2018).

619 K. Dupuy, S. Gates, H. M. Nygard, I. Rodolfson, S. A. Rustad, H. Strand and H. Urdal, *Trends in Armed Conflict, 1946-2016*, Peace Research Institute Oslo (PRIO) Policy Brief, February 2017, p 4, <https://www.prio.org/utility/DownloadFile.ashx?id=1373&type=publicationfile> (last accessed 30 January 2018).

620 See A. L. Strachan, *Conflict Analysis of Muslim Mindanao*, GSDRC, 2015, p 13, <http://www.gsdr.org/wp-content/uploads/2016/02/ConflictAnalysisARMM.pdf> (last accessed 30 January 2018).

As a result, the region has also witnessed diverse and often protracted series of peace talks. After numerous attempts to resolve divergences, a final peace agreement, between the Government of the Philippines and the Philippines' largest rebel group, the Moro Islamic Liberation Front (MILF), was signed in 2014, paving the way for the foundation of a new Bangsamoro Autonomous Region (BAR) to replace the current ARMM. However, progress on the implementation of the peace agreement has been slow. The slow enforcement of the peace agreement is one of the reasons why MILF fighters move towards radical ANSAs.

After martial law was imposed on the island of Mindanao in May 2017, fighting erupted between security forces and IS-linked groups (the Maute group and the Isnilon Hapilon faction). Despite a reported regain of control by state armed forces, the death of main leaders and a threatened peace agreement demonstrate that IS, with the support of a great number of foreign fighters who reached Mindanano, is far from being militarily defeated in the area.

Since 1972, when President Ferdinand Marcos declared martial law,⁶²¹ the Philippine island of Mindanao has been engaged in an armed conflict between various ANSAs that have morphed over the years. Today, the armed conflict is said to have caused more than 120,000 casualties,⁶²² which has led to more than 3.5 million internally displaced persons (IDPs) since 2000.⁶²³

Usually portrayed as an ethno-nationalist struggle for an independent state or an autonomous territory within the Philippines by the traditionally marginalized Muslim minority against the central government, it has, undoubtedly, evolved into an intractable conflict.⁶²⁴

Causes of violence are numerous and overlapping, including, inter alia, massive poverty, unequal distribution of resources, poor governance, abuse of power, clan warfare and family feuds, the shadow economy, a culture of impunity and lack of recognition of ancestral heritage, drug dealing and a denser youth population in urban settings.⁶²⁵ Still, it must be said that Moro-Christian tensions have always played a significant role in influencing the religious facet of the conflict.

At the same time, the situation of armed violence in Mindanao involves a multitude of actors, such as clans, criminal gangs or political elites and is multifacet-

621 C. A. Abubakar, 'Review of the Mindanao Peace Processes', 5 *Inter-Asia Cultural Studies* 3 (2004), DOI: 10.1080/1464937042000288732.

622 Project Ploughshares, 'Philippines-Mindanao (1971 - First Combat Deaths)' http://ploughshares.ca/pl_armedconflict/philippines-mindanao-1971-first-combat-deaths (last accessed 8 November 2017).

623 Internal Displacement Monitoring Centre, 'Philippines IDP Figures Analysis', <http://www.internal-displacement.org/south-and-south-east-asia/philippines/figures-analysis> (last accessed 23 October 2016).

624 S. D. Russell and T. Rey, 'Conflict Transformation Efforts in the Southern Philippines', in C. Carter (ed), *Conflict Resolution and Peace Education: Transformations Across Disciplines*, Palgrave Macmillan, 2010, p 157; C. A. Crocker, F. E. Hampson and P. Aall (eds), *Taming Intractable Conflicts: Mediation in the Hardest Cases*, United States Institute of Peace (USIP), 2004, p 59.

625 R. Jeffery, 'Amnesties and Intractable Conflicts: Managed Impunity in the Philippines' Bangsamoro Peace Process', *Journal of Human Rights* (2017) 11, DOI: 10.1080/14754835.2017.1382339.

ed.⁶²⁶ For this reason, while the government is vigorously trying to wage a ‘war on drugs’, the degree of horizontal and vertical violence in Mindanao embodies a major obstacle to achieving sustainable peace,⁶²⁷ regardless of the stop-start negotiations with the two largest ANSAs – the MILF and the Moro National Liberation Front (MNLF).⁶²⁸

Shortly after President Rodrigo Duterte took office in June 2016, a new approach to the peace process was underway. Duterte’s plans to discuss both the arrangements made with the MILF and the those made previously with the MNLF were incorporated under a new federal constitutional framework.⁶²⁹ Thus, the agreement will be implemented once the federalism project becomes a reality.⁶³⁰ The failure of Congress to pass the Bangsamoro Basic Law (BBL) three years after the agreement was signed has generated growing public distrust in the peace process.

Despite these warnings and the lack of compliance, both parties have prolonged the ceasefire agreement. However, even if the MILF has not been very active militarily since the signing of the agreement, it has been involved in some confrontations such as the Mamasapano clash.⁶³¹ It should also be noted that the cumulative mistrust promotes the radicalization of certain sectors of the MILF, as well as the legitimation of those who encourage a military reaction. In fact, the risk of MILF dissident members joining other actors such as the Bangsamoro Islamic Freedom Fighters (BIFF) continues.⁶³²

Nevertheless, while violence involving certain ANSAs has declined, armed violence in the Mindanao region persists, with various concerns arising in 2017 after the Mindanao battle (see below). Vertical conflict and extremist horizontal violence thus shaped the situation in Mindanao in 2017.⁶³³ The latest concerns in Mindanao are

626 A. Fermin and T. Parks, *The Contested Corners of Asia: Subnational Conflict and International Development Assistance: The Case of Mindanao, Philippines*, The Asia Foundation, 2013, p 26, <https://asiafoundation.org/resources/pdfs/MindanaoCaseStudyFullReport.pdf> (last accessed 30 January 2018).

627 International Alert, *Violence in the Bangsamoro and Southern Mindanao: Emerging Actors and New Sites of Conflict 2011–2015*, 2016, p 34, <http://conflictalert.info/publication/conflict-alert-2011-2015/> (last accessed 30 January 2018).

628 The Asia Foundation, *Philippines at Glimpse*, 2017, p 146, <https://asiafoundation.org/wp-content/uploads/2017/10/Philippines-StateofConflictandViolence.pdf> (last accessed 30 October 2017).

629 Escola de Cultura de Pau, *Alerta 2017! Informe sobre conflictos, derechos humanos y construcción de paz*, 2017, p 237, <http://escolapau.uab.cat/img/programas/alerta/alerta/17/alerta17e.pdf>, (last accessed 30 January 2018).

630 C. O. Arguillas, ‘Federalism First; BBL If It Fails’, *MindaNews*, 9 July 2017, <http://www.mindanews.com/peace-process/2016/07/federalism-first-bbl-if-it-fails/>.

631 See R. J. Heydarian, *Crisis in Mindanao: Duterte and the Islamic State’s Pivot to Asia*, Al Jazeera Centre for Studies, 2017, p 5, http://studies.aljazeera.net/mritems/Documents/2017/8/6/b03ba3f98f124b4ca3aa27b08d2740f1_100.pdf (last accessed 30 January 2018).

632 Z. Abuza, *Politicking and the Philippine Peace Process*, Institute for Security and Development Policy, Policy Brief no 176, 2015, pp 1–3, <http://isdpeu.org/content/uploads/publications/2015-abuza-politicking-and-the-philippine-peace-process.pdf> (last accessed 30 January 2018).

633 International Alert, *Conflict Alert 2017 Report Highlights*, pp 1–10, <http://conflictalert.info/publication/conflict-alert-2017-report-highlights/> (last accessed 30 January 2018).

focused on: 1) the increasing proliferation and coordination of ANSAs with the increased presence of ISIS,⁶³⁴ and 2) *rido* (clan feuding) and urban crime.

With regard to the second point, it should be highlighted that *rido* (vertical violence involving hostilities between families over land, business or personal revenge), has a wide-ranging influence on the ANSAs of Mindanao. Often, *rido* tends to interact with various ANSAs,⁶³⁵ not only causing the intensification of urban crime but also increasing the complexity of armed conflicts.

Amid this rise of violence and the deadlock in the peace process (the repeated failure to pass the BBL),⁶³⁶ both the Philippine Government and the MILF leadership have expressed their concern over the spread of radicalism by ANSAs that have pledged their allegiance to ISIL, inter alia, Abu Sayyef, the Maute group and the BIFF.

The undeniable connection between Duterte’s counter-insurgency campaign and his war on drugs inhibits the possibility of viewing the augmentation of violence during his administration separately. In fact, Duterte has alleged the involvement of ANSAs in narco-trafficking activities and, at the beginning of 2017, confirmed that his regime had launched the largest military campaign in Mindanao (with 22,500 troops – 8,000 in Sulu where the Abu Sayyaf group (ASG) operates) in order to neutralize the threat posed by extremist ANSAs.⁶³⁷ As a result, 2017 witnessed the siege of Marawi⁶³⁸ and clashes between different ANSAs that risk jeopardizing the peace process.

B. PARTIES TO THE CONFLICTS

The parties to the NIACs in 2017 were the Philippine Armed Forces against dissident factions of the MNLF and the MILF, namely with the ASG, the BIFF and the Maute Group. In addition, the New People’s Army (NPA) remains a party to the NIAC with the Philippine Armed Forces.

1. The Philippine Armed Forces

In 2017, the Philippine Armed Forces comprised of a total of 498,250 military personnel.⁶³⁹

634 Escola de Cultura de Pau, *Alerta 2017!*, supra fn 629.

635 W. Torres III, *Rido: Clan Feuding and Conflict Management in Mindanao*, Ateneo de Manila University Press, 2007, pp 44, 64.

636 R. J. Heydarian, ‘Philippines’ Peace Process in Tatters’ *Al Jazeera*, 7 Feb 2016, <http://www.aljazeera.com/indepth/opinion/2016/02/philippines-peace-process-tatters-160207103251669.html>.

637 Escola de Cultura de Pau, *Alerta 2016! Informe sobre conflictos, derechos humanos y construcción de paz*, pp 224–225, <http://escolapau.uab.cat/img/programas/alerta/alerta/16/alerta16e.pdf> (last accessed 30 January 2018).

638 E. McKirdy and I. Watson, ‘Bloodied and Broken: Rising Toll of Philippines’ War with ISIS’, *CNN*, 25 June 2017, <http://edition.cnn.com/2017/06/25/asia/philippines-marawi-isis/index.html>.

639 Global Firepower, ‘2017 Philippines Military Strength’, https://www.globalfirepower.com/country-military-strength-detail.asp?country_id=philippines (last accessed 7 March 2018).

2. The Moro National Liberation Front (MNLF) and The Moro Islamic Liberation Front (MILF) Dissident Factions: Abu Sayyaf, the Maute Group, the Bangsamoro Islamic Freedom Fighters (BIFF) and Foreign Fighters.

a. The MNLF

Underlying grievances and conflict drivers were boosted by episodes such as the massacres in Jabitah⁶⁴⁰ and Manili, which revealed the systemic environment of impunity for the Muslim population of Mindanao.⁶⁴¹ This was the fountainhead for the foundation in 1969 of the MNLF by Nur Misuari. It originally aimed to create an independent Moro nation in Mindanao for the 13 Islamized ethno-linguistic groups, while resisting discrimination and marginalization.⁶⁴²

Nevertheless, this was used by Marcos as justification for instituting martial law and combating the new ANSAs. The MNLF's unexpected capacity to take military action against the government has led to more than 40 years of violence that 'has borne all the hallmarks of an intractable conflict'.⁶⁴³

In 1976, after a five-year period of highly intensive armed hostilities, both sides signed a peace agreement in Tripoli, brokered by the Organization of Islamic Cooperation. This led to the cessation of armed hostilities and established the framework for an autonomous region for the Muslims in Mindanao.⁶⁴⁴ However, the deal collapsed not long after because of its unilateral implementation by the Marcos dictatorship.

Consequently, conflict resumed. It was in 1989, under the Corazon Aquino administration, that ARMM was finally proclaimed after a plebiscite had been held. Nonetheless, just 4 of the 13 provinces voted to join, creating discomfort and prolonging the armed struggle.⁶⁴⁵

Subsequently, President Fidel Ramos reached a Final Peace Agreement (FPA) in 1996 with the MNLF. This postulated another plebiscite for an expanded ARMM, but only the city of Marawi and island of Basilan were incorporated. Seen as a fiasco, this embittered the conflict and triggered a split in the MNLF, creating a new resistance movement in Muslim Mindanao.⁶⁴⁶

640 S. M. K. Aljunied and R. A. Curaming, 'Mediating and Consuming Memories of Violence', 44 *Critical Asian Studies* 2 (2012) 227.

641 Jeffery, 'Amnesties and Intractable Conflicts', supra fn 625, 11; R. C. Banlaoi, *Philippine Security in the Age of Terror: National, Regional, and Global Challenges in the Post-9/11 World*, CRC Press, 2009, p 53.

642 C. Mackerras (ed), *Ethnicity in Asia*. RoutledgeCurzon, 2004, p 143.

643 Strachan, *Conflict Analysis of Muslim Mindanao*, supra fn 620.

644 Asia Foundation, *Philippines at Glance*, supra fn 628; Escola de Cultura de Pau, *Alerta 2017!* supra fn 629, pp 199–200.

645 See S. Schiavo-Campo and M. Judd, *The Mindanao Conflict in the Philippines: Roots, Costs, and Potential Peace Dividend*, Social Development Paper no 24, The World Bank, 2005, p 2, <http://documents.worldbank.org/curated/en/701961468776746799/pdf/31822.pdf> (last accessed 30 January 2018).

646 F. Nurkhasanah Taufik, 'Causal Factors for Conducting Peaceful Settlement between GRP an [sic] MILF on Ancestral Domain Aspect 2008', 1 *Dauliyah Journal of Islamic and International Studies* 2 (2016) 137.

b. The MILF

A breakaway faction of the MNLF, the MILF⁶⁴⁷ is today considered to be the largest guerilla force in the Philippines, with an estimated 10,000 to 30,000 members.⁶⁴⁸ Originally led by Hashim Salamat, and operating fundamentally in Central Mindanao, the MILF was formally created in 1981 after outlining its vision of a completely self-governing region – Bangsamoro, as opposed to semi-autonomy in Mindanao.⁶⁴⁹

Clashes augmented after the failure of the FPA, this time with the MILF as the focal challenge for the government. In 2000, President Joseph Estrada declared an 'all-out war policy, which failed to neutralize the MILF. Conversely, the ANSA disbursed into smaller groups, hiding in remote areas of the region'.⁶⁵⁰

Armed struggles continued intermittently until the administration of Gloria Macapaga Arroyo, who implemented the contrasting 'all-out-peace' policy regarding the MILF. Peace talks, facilitated by the Malaysian Government, concluded on 24 March 2001 when both parties signed the General Framework for the Resumption of Peace Talks (GFRPT) in Kuala Lumpur. However, President Arroyo launched an attack, carried out by the Armed Forces of the Philippines, against the MILF in Buliook complex in North Cotabato and Maguindanao on 11 February 2003, causing conflict to erupt again.

Shortly after, the GFRPT was restored by a ceasefire with the new leader of the MILF: Chairman Al-Haj Murad Ebrahim.⁶⁵¹ In 2004, the International Monitoring Team was created, with Malaysia as the leader, and four years later, in mid 2008, the Memorandum of Agreement on Ancestral Domain (MOA-AD) was signed.

However, the declaration of such a Memorandum that was considered unconstitutional by the Supreme Court provoked a military retaliation by the MILF⁶⁵² and inter-group clashes that led to its rupture. In December 2010, Ameril Umbra Kato, one of the MILF commanders, founded the BIFF.⁶⁵³

Amid this sporadic violence, the Philippine Government and the MILF established formal negotiations, after President Benigno Aquino III held talks with Murad Ebrahim in Tokyo in 2011. Successive talks in Kuala Lumpur, under the auspices of

647 J. Bertrand, 'Peace and Conflict in the Southern Philippines: Why the 1996 Peace Agreement Is Fragile', 73 *Pacific Affairs* 1 (2000), 38.

648 Asia Foundation *Philippines at Glance*, supra fn 628, pp 147–148.

649 C. Bell, *Peace Agreements and Human Rights*, Oxford University Press, 2003, pp 358–359.

650 Schiavo-Campo and Judd, *The Mindanao Conflict in the Philippines*, supra fn 645, p 3.

651 Murad replaced Hashim Salamat when he died in 2003.

652 A. Hernandez, *Nation-Building and Identity Conflicts: Facilitating the Mediation Process in Southern Philippines*. Springer, 2014, p 22.

653 Strachan, *Conflict Analysis of Muslim Mindanao*, supra fn 620.

Malaysia and the International Contact Group,⁶⁵⁴ made it possible to achieve the Framework Agreement on the Bangsamoro in October 2012, as well as the Comprehensive Agreement on the Bangsamoro in March 2014 with President Benigno Aquino III.⁶⁵⁵

This ultimate agreement marked the culmination of 17 years of negotiations, decades of fighting with more than 120,000 fatalities, twelve prior agreements and declarations, annexes and addendums that had sought to bring an end to the conflict on the southern island of Mindanao.⁶⁵⁶ It precipitated the creation of a new autonomous region with more powers and territory, and thus the abolition of ARMM. Turning these agreements into law is dependent on the Congress deliberating the BBL.⁶⁵⁷

While the MNLF and the MILF, have engaged in peace negotiations with the Philippine Government, their breakaway factions have evolved into challenging and violent groups such as the ASG, the BIFF and the Maute group. Their recent pledges of allegiance – *Bay'ah* – to the Islamic State (IS), together with the acknowledgment of these groups by IS in 2016, led the ANSAs to step up their operations aimed at establishing a *wilayat* (province) in Southeast Asia.

In 2016, the risk of the proliferation of several Islamist ANSAs, the possible consolidation of IS's presence in Mindanao as an epicentre of its project in Southeast Asia, and the escalation of armed action, became palpable. Nonetheless, the basis of a radical Islamic outlook has been in place in the Philippines since the 1990s, ranging from an al-Qaeda to a Jemaah Islamiyah presence.⁶⁵⁸

Although this phenomenon had been minimized or even ignored, in 2016 Duterte recognized the presence of IS and foreign groups and fighters in the territory, as well as the increase in insecurity in the region, navigation risks and urban warfare.⁶⁵⁹ This might reveal a shift in strategy of IS command as a result of ground changes and military reversals in Iraq and eastern Syria.⁶⁶⁰

Between July and August 2014, various groups in Mindanao pledged *Bay'ah* to the IS leadership. It was not until 2016 that they received full recognition by the IS leadership, which designated them as the portents of a *Daulah Islamiyah Wilayatul Mashriq* (Islamic State – Eastern Region) under the overall leadership of Isnilon

654 This includes: the UK, Turkey, Japan, Saudi Arabia, the Centre for Humanitarian Dialogue, Conciliation Resources, The Asia Foundation and Muhammadiyah.

655 T.Regencia, 'Philippines Signs Deal with Muslim Rebels', *Al Jazeera*, 27 March 2014, <http://www.aljazeera.com/news/asia-pacific/2014/03/philippines-sign-deal-with-muslim-rebels-2014327434188160.html>.

656 Escola de Cultura de Pau, *Alerta 2016!* supra note 637, pp 224–225.

657 Asia Foundation, *Philippines at Glance*, supra fn 628, pp 148–149.

658 Heydarian, *Crisis in Mindanao*, supra fn 631.

659 Escola de Cultura de Pau, *Alerta 2017!*, supra fn 629, pp 255–256.

660 Institute for Policy Analysis of Conflict (IPAC), *Marawi, The 'East Asia Wilayah' and Indonesia*, IPAC Report no 38, 2017, p 4, http://file.understandingconflict.org/file/2017/07/IPAC_Report_38.pdf (last accessed 30 October 2017).

Hapilon.⁶⁶¹ The greatest threats in the Philippines today originate from Abu Sayyaf and its Mindanao partners, the Maute group.⁶⁶²

c. The Abu Sayyaf Group – ASG

The ASG is considered to be a Philippine jihadist organization founded as a breakaway faction of the MNLF in 1991 by Abdurajak Janjalani with the aim of creating an Islamic state in Mindanao. Despite its original ties to Osama bin Laden and its allegiance to al-Qaeda, in July 2014 it shifted when Isnilon Hapilon, a senior member of the ASG, officially pledged loyalty to IS and Abu Bakr al-Baghdadi in Basilan. In 2016, Hapilon was named the Emir of Southeast Asia without receiving an official ISIL *wilayat* designation.⁶⁶³ This has facilitated the collaboration between clans and ethnic lines, who decided to put their differences aside.

The influence of IS is apparent in the tactics. ASG practices range from beheadings to kidnapping for ransoms and even drugs and weapons smuggling.⁶⁶⁴ The group's notoriety was regained in 2016 with its unexpected military activity and operations in Butig.⁶⁶⁵ Despite having no unifying force of leadership (there are several ASG factions spread across different territories in the Sulu archipelago), it is known to be highly disciplined financially and militarily.⁶⁶⁶

d. The Maute Group

The Maute group, also known as *Daulah Islamiyah*, or Islamic State, which is based in Lanao del Sur, includes several members of a large family in Mindanao, and was led by brothers Abdullah and Omarkhayam Maute until October 2017.

It is considered to have 'the smartest, best educated, most sophisticated members across the Philippines'.⁶⁶⁷ The group, also fighting for an independent Muslim state in Mindanao, pledged allegiance to ISIL leader al-Baghdadi, adopting the group's black flag in April 2015.⁶⁶⁸ Its stronghold is Mindanao State University in Marawi, where it has been able to recruit students and teachers. The national and local ad-

661 Heydarian, *Crisis in Mindanao*, supra fn 631.

662 Also, the presence of lesser-known groups, such as Khilafa Islamiyah Mindanao (KIM) and Anshar Khalifa Philippines (AKP), cannot be ignored.

663 IPAC, *Pro-Isis Groups in Mindanao and their links to Indonesia and Malaysia*, IPAC Report no 33, 2016, p 7, http://file.understandingconflict.org/file/2016/10/IPAC_Report_33.pdf (last accessed 30 October 2017).

664 'Abu Sayyaf Video "Shows Beheading of German Hostage"', *Al Jazeera*, 27 Feb 2017, <http://www.aljazeera.com/news/2017/02/abu-sayyaf-video-shows-beheading-german-hostage-170227101245013.html>.

665 Escola de Cultura de Pau, *Alerta 2016!*, supra fn 637, p 224.

666 J. Alindogan, 'Inside Abu Sayyaf: Blood, Drugs and Conspiracies', *Al Jazeera*, 24 Jul 2016, <http://www.aljazeera.com/news/2016/07/abu-sayyaf-blood-drugs-conspiracies-160724090604857.html>.

667 T. Sanderson, *Black Flags over Mindanao: ISIS in the Philippines*, Center for Strategic & International Studies, Testimony, 12 July 2017, p 3, https://csis-prod.s3.amazonaws.com/s3fs-public/congressional_testimony/ts170712_Sanderson_testimony_blackflag_mindanao.pdf?OKDtmMuU1WDSYFAFvWeS03hqOrxYiyCj (last accessed 30 January 2018).

668 'Foreigners Fighting With ISIL-Linked Philippine Group', *Al Jazeera*, 26 May 2017, <http://www.aljazeera.com/news/2017/05/fighting-isil-linked-philippine-group-170526050310649.html>.

ministrations seem to have lost tracks of the number, origins and funding sources of madrassas in country. They mushroomed in Mindanao and it is unclear who the influencers are.

The Maute group has been responsible for several attacks, most notably the Davao night-market bombing on 2 September 2016, and played a lead role in the recent siege of Marawi.⁶⁶⁹ With these acts, the group has proved to be more organized than expected.

e. The Bangsamoro Islamic Freedom Fighters – BIFF

The BIFF originated in 2008, when Ameril Umbra Kato, a member of the MILF, expressed the need for military action once the Supreme Court declared the MOA-AD unconstitutional.⁶⁷⁰ Thus, with the formation of this breakaway faction of the MILF, violent conflicts increased, mainly in the period between 2011–2014.⁶⁷¹ After the Caliphate was announced in mid-2014, the BIFF also pledged allegiance to al-Baghdadi. However, it did not announce a unification under Isnilon Hapilon, as other groups did in January 2016.⁶⁷²

The belief that the group would not continue its activities after the death of Kato in 2015 and the announcement of Sheik Ismail Abubakar as the new leader has proved wrong. While it is true that information about its military capacity and allegiances is unclear,⁶⁷³ the BIFF has survived and is still a concern after various incidents; for instance, the situation in Pigcawayan in June 2017, where the BIFF occupied a school, keeping hostages in retaliation for military offensives in North Cotabato and Manguindanao Province.⁶⁷⁴ Its leadership accepts it is outnumbered, yet it refuses to lay down its arms.⁶⁷⁵

There are more groups than the abovementioned operating in Mindanao, which have declared allegiance to ISIL. However, their relationships remain fluid, which reveals their volatile nature and a capacity to adapt to unforeseen conditions.⁶⁷⁶ This said, further information is still needed to comprehend whether ties encompass a different command and control or just a symbolic relation, based on communication and certain financial and propaganda support.

669 IPAC, *Marawi, The 'East Asia Wilayah' and Indonesia*, supra fn 660, p 4.

670 Escola de Cultura de Pau, *Alerta 2016!*, supra fn 637, pp 67–68.

671 Strachan, *Conflict Analysis of Muslim Mindanao*, supra fn 5.

672 IPAC, *Pro-Isis Groups in Mindanao*, supra fn 663, p 18.

673 Escola de Cultura de Pau, *Alerta 2016!*, supra fn 637, pp 67–68.

674 'Fighters Flee After Raiding Philippine Village', *Al Jazeera*, 21 Jun 2017, <http://www.aljazeera.com/news/2017/06/fighters-flee-raiding-philippine-village-170621181400955.html>.

675 'Duterte Declares Martial Law After Mindanao Attack', *Al Jazeera*, 24 May 2017, <http://www.aljazeera.com/news/2017/05/duterte-declares-martial-law-mindanao-attack-170523171932275.html>.

676 J. Adam, B. Verbrugge and D. Vanden Boer, *Peacemaking and State-Society Interactions in Conflict-Torn Mindanao, Philippines*, JRSP Paper 18, The Justice and Security Research Programme, 2015, pp 13–14,18, <http://www.lse.ac.uk/internationalDevelopment/research/JRSP/downloads/JRSP18-AdametAl.pdf> (last accessed 8 November 2017).

f. Foreign Fighters

Not long after the emergence of IS in 2013 and the Caliphate declaration in 2014, a vast number of aspiring jihadists began travelling to Syria and Iraq in order to take up arms. As not all of them were able to make their way to Middle East, they became available for local battles also recognized as part of the Caliphate. Thus, among the fighters that participated in the battle of Marawi were individuals from Indonesia, Malaysia, Saudi Arabia, Morocco, Chechnya and Yemen. Yet, prior to the battle of Marawi, there were already more than a dozen foreign fighters being monitored by the Philippine military in-country.⁶⁷⁷

Without doubt, due to the deep-seated grievances among the Muslim minority population and ISIL support, the Philippines become an attractive hub for foreign fighters, for either training or fighting. However, it is too early to conclude if, after Marawi, it will maintain this magnetism.

3. The New People's Army (NPA)

The armed branch of the Communist Party of the Philippines, the New People's Army (NPA) initiated the armed struggle in 1969. The 1980s were its flourishing era. Nonetheless, it is still thought to be operational in most of the country's provinces, with more than 4,000 fighters.⁶⁷⁸

Although the levels of violence have dropped drastically compared to 2015 and 2016, especially after the ceasefire agreement signed by Rodrigo Duterte's new government at the end of August 2016, the truce remains weak. Dialogue has been on and off, as have the military actions of the group against government forces in 2017.⁶⁷⁹

C. KEY DEVELOPMENTS IN 2017: A LONG-RUNNING AND MULTIFACETED CONFLICT IN MINDANAO

On 23 May 2017, while Rodrigo Duterte was on a high-profile state visit to Russia, violence escalated radically after the Philippine military attempted to raid and capture Hapilon in Marawi (the capital of Lanao del Sur Province and the largest Muslim-majority city). The operation provoked a wide-ranging confrontation with the Maute group, which coalesced with ASG and other minor groups to resist the Philippine security forces.⁶⁸⁰ The day after, martial law was declared across the island.⁶⁸¹

677 T. Sanderson, *Black Flags over Mindanao*, supra fn 667, p 5.

678 Ibid, p 150.

679 'Philippines Freezes Peace Talks with Communist Rebels', *Al Jazeera*, 21 Jul 2017, <http://www.aljazeera.com/news/2017/07/philippines-freezes-peace-talks-communist-rebels-170721062205681.html>.

680 'Fighters Flee After Raiding Philippine Village', supra fn 674.

681 It was further approved and extended until the end of the year by the Supreme Court. Based on Philippine law, such a declaration is possible on the grounds of the existence of rebellion.

According to different sources, the IS leadership in Syria provided the funding necessary to siege and rampage the city.⁶⁸² Such support raises the question of whether Marawi reveals a chain of command or is simply displaying a symbolic and financial link⁶⁸³ as, to this day, no *wilayat* of Islamic State has been acknowledged in the area.

While government forces tried to regain control over the city through street-by-street warfare, by October 2017 the five-month clashes and bombings with the presence of foreign fighters,⁶⁸⁴ predominantly from Malaysia and Indonesia,⁶⁸⁵ killed more than 1,000 people and left 600,000 displaced and forced to flee to camps, and a city in ruins.⁶⁸⁶

The police and army were involved in air raids and the deployment of more than 7,000 troops by land, waging a major urban war against the alliance.⁶⁸⁷ ANSAs employed sniper strategies and improvised explosive devices, thus demonstrating their military ability, and access to weapons, equipment, recruits and military training.⁶⁸⁸

Due to the magnitude of violence, Duterte sought help from the United States, which deployed a Special Forces unit, providing real-time intelligence through drones and a new cache of weapons. Shortly after, Australia, Singapore and China pitched in, with the government's consent and therefore not affecting the nature of the armed conflict.⁶⁸⁹ For instance, Australia deployed P-3 Orion military surveillance planes for intelligence-gathering purposes; Singapore donated cargo planes and drones and China contributed an aid package of \$12 million.⁶⁹⁰

The inability of the Philippine Government to prevent a large-scale attack prompted a major humanitarian crisis and several questions regarding 'what next?'. It did, however, regain control on 23 October 2017.⁶⁹¹ The defeat was possible after

682 Heydarian, *Crisis in Mindanao*, supra fn 631, p 4.

683 Funds came both directly from ISIS central as well as local sources. ISIS channeled \$600,000. See IPAC, *Marawi, The 'East Asia Wilayah' and Indonesia*, supra fn 660, p 8.

684 R. J. Heydarian, 'Mindanao Crisis: A City on Fire' *Al Jazeera*, 26 May 2017, <http://www.aljazeera.com/indepth/opinion/2017/05/philippines-marital-law-rekindling-horrific-memories-170526131438289.html>.

685 C. Fonbuena and M. Bueza, 'Timeline: Marawi Clashes Prompt Martial Law in all of Mindanao', *Rappler*, 24 May 2017, <https://www.rappler.com/nation/170744-timeline-marawi-city-martial-law>.

686 'Marawi Death Toll Nears 700 – Military', *The Manila Times*, 6 August 2016, <http://www.manilatimes.net/marawi-death-toll-nears-700-military/342777/>.

687 Heydarian, *Crisis in Mindanao*, supra fn 631, p 3.

688 *Ibid*, p 6.

689 T. Ferraro, 'The ICRC's Legal Position on the Notion of Armed Conflict Involving Foreign Intervention and on Determining the IHL Applicable to This Type of Conflict', 97 *International Review of the Red Cross* 900 (2015) 1233, DOI:10.1017/S1816383116000448; V. Bevins, 'With Mattis in Manila, Duterte Decides It's Time to Boost Ties with Russia and China', *The Washington Post*, 27 October 2017, https://www.washingtonpost.com/news/worldviews/wp/2017/10/27/with-mattis-in-manila-duterte-decides-its-time-to-boost-ties-with-russia-and-china/?utm_term=.23878f86ebe0.

690 ICTY, *Prosecutor v Haradinaj*, Trial Chamber, Judgment, IT-04-84-T, 3 April 2008, §360.

691 'Total Victory Declared in Marawi Over ISIL', *Al Jazeera*, 23 October 2017, <http://www.aljazeera.com/news/2017/10/total-victory-declared-marawi-isil-171022092511749.html>.

the government teamed up with the MILF in early September to fight the Maute group, which was trapped in the 500 square meters under its control.⁶⁹²

As a result, different members of the ASG and the Maute group were killed. By September 2017, Abdullah Maute and two other Maute brothers were reported dead. However, the attack on 16 October was considered to be the major blow to IS sympathizers, when Isnilon Hapilon, the top commander of the ASG and Omarkhayam Maute, as well as seven of their fighters, were killed by military forces in besieged Marawi.⁶⁹³

Marawi had turned into a focal point of IS activity in Southeast Asia. It would seem logical to consider that killing the leaders will eradicate the group's presence and activities. However, as history has shown, it might just represent a temporary weakening of the movement. Indeed, the ASG has exhibited resilience and adaptability since it emerged in the 1990s. What needs to be asked is how the relationship with ISIL has evolved in order to reorganize and re-equip. For instance, the Malaysian Amin Bacu and Indonesian Ibno Kayi were named as the leaders of the last remaining fighters when still resisting.⁶⁹⁴

a. The Humanitarian Crisis

The battle of Marawi drove out 98 percent of the population of the city, as well as residents from nearby municipalities, due to severe food shortages and the narrowing of local economies. It also raised multiple humanitarian concerns⁶⁹⁵ for those who remained trapped or chose to stay in the city. Access to basic necessities, like water, food and shelter became harder every day.⁶⁹⁶

This impeded access was aggravated by martial law and the suspension of civil and legal rights it entailed. Evacuees feared being arrested for coming from Marawi. The majority left with no documents at all, which intensified the risk of being part of the mass arrests that were taking place. By the same token, neutral local and international organizations reported difficulties in negotiating access for humanitarian aid, for fear of being accused of diverting it.⁶⁹⁷

692 'Philippine Army and Armed Groups Join Forces in Marawi', *Al Jazeera*, 6 September 2017, <http://www.aljazeera.com/news/2017/09/philippines-army-rebel-groups-join-forces-marawi-170906112401721.html>.

693 T. Regencia, 'Marawi Siege: Army Kills Abu Sayyaf, Maute Commanders', *Al Jazeera*, 16 October 2017, <http://www.aljazeera.com/news/2017/10/marawi-siege-army-kills-abu-sayyaf-maute-commanders-171016072551985.html>.

694 'Total Victory Declared in Marawi Over ISIL', supra fn 691.

695 J. Alindogan, 'Philippine's Military Fights to Take Control of Marawi' *Al Jazeera*, 27 May 2017, <http://www.aljazeera.com/video/news/2017/05/philippines-military-fights-control-marawi-170527145017409.html>.

696 European Commission, European Civil Protection and Humanitarian Aid Operations, *Philippines Factsheet*, updated December 2017, pp 1–2, https://ec.europa.eu/echo/where/asia-and-pacific/philippines_en (last accessed 30 January 2018).

697 M. Searle, *Martial Law and Trust: Humanitarian Challenges in Marawi*, RSIS Commentary no 173, S. Rajaratnam School of International Studies, 21 September 2017, pp 1–3, <https://www.rsis.edu.sg/wp-content/uploads/2017/09/C017173.pdf> (last accessed 30 January 2018).

D. WAR CRIMES ALLEGATIONS, INVESTIGATION AND PROSECUTIONS

a. The 'War on Drugs' Campaign

The Philippines has been a State Party to the 1998 Rome Statute of the International Criminal Court since 2011. In February 2018, the ICC launched an initial inquiry into allegations of crimes against humanity committed by the Philippines President, Rodrigo Duterte, in his action against drug cartels and trafficking. According to official statistics, 4,000 people have been killed by the police in anti-drug operations since Duterte became President.⁶⁹⁸

b. Children and Armed Conflict

The use of child soldiers by armed groups has been a persistent problem in the Philippines and did not cease during the battle of Marawi.⁶⁹⁹ IS-linked armed groups are using children to fight as soldiers against the Philippine Army and are filming them for propaganda purposes. Most of the Maute and ASG fighters are in their twenties, but there are instances of children, as young as four, used as soldiers on the frontline. Hafiz Quranic study sessions and recruiting rebel orphans are the main strategies.⁷⁰⁰ These teenagers are born in disadvantaged environments. In Sulu, these boys are called *Anak Itu* – orphans of war. In their words, being part of an armed group provides them with a sense of belonging and identity after being historically judged and rejected for being either Moro or poor. In addition, the use of drugs before fighting aggravates the situation.

This has increased allegations of war crimes and violations of the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict. This said, the US Department of State in its recent 2017 *Trafficking in Persons Report*, as well as the United Nations Working Group on Children and Armed Conflict,⁷⁰¹ have continued to report the ongoing recruitment and use of children, through force, for combat and non-combat roles. The armed groups reported to be persistent perpetrators include the MILF, NPA, MNLF, ASG and BIFF.⁷⁰²

698 Hannah Ellis-Petersen, 'ICC Launches Crimes Against Humanity Inquiry Into Duterte's War on Drugs', *The Guardian*, 8 February 2018, <https://www.theguardian.com/world/2018/feb/08/icc-claims-crimes-against-humanity-duterte-philippines>.

699 N. Smith, 'Child Soldiers Are Fighting With ISIL in Philippines, Say Fleeing Civilians', *The Telegraph*, 29 May 2017, <http://www.telegraph.co.uk/news/2017/05/29/child-soldiers-fighting-isil-philippines-say-fleeing-civilians/>; R. J. Barrete and L. Lischin, 'Coming of Age in Conflict: Child Soldiers in the Philippines', *La Croix International*, 26 October 2017, <https://international.la-croix.com/news/coming-of-age-in-conflict-child-soldiers-in-the-philippines/6207>.

700 J. Alindogan, 'Philippines: ISIL-Linked Maute Group Using Children as Fighters', *Al Jazeera*, 31 May 2017, <http://www.aljazeera.com/video/news/2017/05/philippines-maute-armed-group-child-soldiers-marawi-170530193625476.html>.

701 UN Security Council (UNSC), Report of the Secretary-General on Children and Armed Conflict in the Philippines, UN doc S/2017/294, 5 April 2017.

702 UN General Assembly, UNSC, Children and Armed Conflict. Report of the Secretary-General, UN doc A/70/836-S/2016/360, 20 April 2016; UNSC, Conclusion on Children and Armed Conflict in the Philippines, UN doc S/AC.51/2017/4, 11 September 2017.

The UN has reported sexual abuse by soldiers, incidents of the military use of schools and child abduction, killing, maiming and recruitment, not only by the aforementioned actors, but also by paramilitary groups.⁷⁰³ Nevertheless, it has also affirmed the strong commitment to the action plan⁷⁰⁴ to end and prevent child recruitment and use by the MILF, including the creation of the Inter-Agency Committee on Children in Armed Conflict and the monitoring, reporting and response system on children affected by armed conflict.⁷⁰⁵

Some of the direct accusations are addressed to the BIFF and concern attacks against schools and hospitals, as well as the recruitment and use of children as human shields. In addition, the ASG has been called on to stop abductions of children, including kidnapping for ransom and extortion. On the other hand, the state has also been criticized in regard to the detention of children on national security-related charges, for information-gathering purposes, and the violation of due process for all children detained for their association with armed groups.⁷⁰⁶

9. THE ARMED CONFLICT IN SOMALIA: ESCALATING FATALITIES

Caroline Stewert

Classification of the Conflict

The Federal Republic of Somalia, supported by Kenyan, and African Union Mission in Somalia armed forces, continued to be involved in a non-international armed conflict (NIAC) with al-Shabaab in 2017. The United States has also sent armed drones into Somalia to target al-Shabaab members and is therefore a party to the conflict. In November 2017, Ethiopia sent troops into Somalia, with the latter's consent, making it another party to the NIAC with al-Shabaab.

A. HISTORY OF THE CONFLICT⁷⁰⁷

Somalia gained independence from the United Kingdom and Italy in 1961. In 1969, Mohamed Siad Barre staged a coup against the elected government of the United Republic of Somalia and took power.

In 1991, the military regime under the leadership of Siad Barre was overthrown,

703 Ibid, §§203–207.

704 'Hundreds of MILF Child Soldiers Released in Philippines', *Al Jazeera*, 11 March 2017, <http://www.aljazeera.com/news/2017/03/hundreds-milf-child-soldiers-released-philippines-170311064133681.html>.

705 A. P. Santos, 'Ending the Use of Child Soldiers in the Philippines', *DW*, 26 September 2017, <http://www.dw.com/en/ending-the-use-of-child-soldiers-in-the-philippines/a-35890128>.

706 UNSC, Report of the Secretary-General on Children and Armed Conflict in the Philippines, supra fn 701.

707 'Somalia Country Profile', *BBC News*, last updated 4 January 2018, <http://www.bbc.com/news/world-africa-14094503>.

instigating the ongoing internal armed conflict. Rival warlords began fighting in the vacuum he left behind, leading to chaos throughout most of the country and the breakaway of the two northern regions Somaliland and Puntland. In 2006, the Islamic Court Union (ICU), a coalition of Islamist organizations, took over control of the capital, Mogadishu, from the the internationally backed government. This led to the intervention first of Ethiopian, then African Union troops. The current government continues to fight against al-Shabaab, the former youth wing of the ICU and, today, an independent armed group.

Al-Shabaab also stages attacks in neighbouring Kenya, which has led to the intervention of Kenyan troops – independent of African Union Mission in Somalia (AMISOM) – on Somali soil. Due to the chaos, pirates began operating off the coast of Somalia around 2005. Only an international naval operation in 2015 managed to rein in this threat. However, the halting of this operation led to renewed incidents of piracy in 2017.

In 2012, the first formal parliament in over 20 years was sworn in, and the first presidential elections since 1967 took place. In February 2017, the country elected a new government under President Mohamed Abdullahi Mohamed, also known as Farmajo.

B. PARTIES TO THE CONFLICT

In 2017, the parties to the NIACs in Somalia were the Somali armed forces and al-Shabaab. Kenyan, AMISOM and US Armed Forces are also parties to the armed conflict, and Ethiopia, too, was a party to the conflict with al-Shabaab in 2017.

1. Somali Armed Forces

According to the latest figures, it is estimated that active Somali military personnel currently number 15,900.⁷⁰⁸

2. Kenyan Armed Forces

Kenya has sent troops to Somalia since 2011, following repeated incursions by al-Shabaab into Kenyan territory. By 2012, heavy fighting was being reported between Somali and Kenyan forces and al-Shabaab in the south of Somalia. While Kenya has also contributed troops to AMISOM since 2012, it continues to conduct operations outside of this framework. These operations make the Kenyan armed forces an individual party to the conflict. Kenya has been the object of several major attacks by al-Shabaab on its own territory over the years, such as the 2013 Westgate Mall attack and the 2015 Garissa University attack.⁷⁰⁹

708 GlobalFirepower, '2017 Somalia Military Strength', https://www.globalfirepower.com/country-military-strength-detail.asp?country_id=somalia (last accessed 28 February 2018).

709 'Who Are Somalia's Al-Shabab?', *BBC News*, 9 December 2016, <http://www.bbc.com/news/world-africa-15336689>.

3. United States Armed Forces

The US has been conducting clandestine operations against al-Shabaab as part of a larger operation against al-Qaeda-affiliated groups in East Africa since the 9/11 attacks. It began conducting airstrikes in 2007, and drone strikes in 2011. These operations have become more frequent since 2014 in order to support AMISOM peacekeeping efforts.⁷¹⁰

4. Ethiopian Armed Forces

Ethiopian troops entered the country in December 2006 to help Somalia's interim government oust the ICU, which had taken control of much of southern Somalia. Ethiopian troop presence was violently opposed by Somali non-state armed groups.⁷¹¹ In early 2009, Ethiopia withdrew its troops under an agreement between the transitional Somali government and moderate Islamists.⁷¹² In March 2012, however, Ethiopian troops re-entered Somalia and fighting ensued, with deaths reported on both sides.⁷¹³ Ethiopia withdrew its armed troops from Somalia in 2016, citing a lack of international support and notably a cut in EU funding for foreign troops in Somalia.

On November 2017, it was reported that hundreds of heavily armed Ethiopian troops crossed into Somalia, reportedly to assist a Somali government offensive against al-Shabaab militants.⁷¹⁴

5. The African Union Mission in Somalia (AMISOM)

The African Union Mission in Somalia (AMISOM) is an active, regional peacekeeping mission operated by the African Union with United Nations approval. It was created by the African Union's Peace and Security Council on 19 January 2007 with an initial six-month mandate paving the way for some 8,000 troops to enter the country, but leaving the origin of those forces unclear.⁷¹⁵ AMISOM's mandate is to provide support to the Somali Government in its efforts to stabilize the situation in the country and advance dialogue and reconciliation; to facilitate the provision of humanitarian assistance and to create conducive conditions for long-term stabi-

710 The Bureau of Investigative Journalism, *Somalia: Reported US Actions 2017*, <https://www.thebureauinvestigates.com/drone-war/data/somalia-reported-us-covert-actions-2017> (last accessed 29 August 2017).

711 'Ethiopia in Somalia: One Year On', 28 December 2007, *BBC News*, news.bbc.co.uk/2/hi/africa/7155868.stm.

712 'Somalia Profile Timeline', 7 January 2018, *BBC News*, <http://www.bbc.com/news/world-africa-14094632>

713 A. Guled, 'Somali, Ethiopian Troops Seize Town, Fighters Flee', *Boston.com*, 22 March 2012, www.boston.com/news/world/africa/articles/2012/03/22/somali_ethiopian_troops_seize_town_fighters_flee/.

714 M. O. Hassan, 'Ethiopian Troops Enter Somalia, Back Offensive Against Al-Shabab', *VOA*, 1 November 2017, <https://www.voanews.com/a/ethiopia-troops-somalia-offensive-al-shabab/4095621.html>.

715 AMISOM, 'AMISOM Background', March 2007, amisom-au.org/about/amisom-background/ (last accessed 10 May 2013).

lization, reconstruction and development in Somalia. 716 Troops were contributed by Uganda, Burundi, Djibouti, Kenya and Ethiopia.⁷¹⁷ However, Uganda announced the withdrawal of its troops by the end of 2017.⁷¹⁸ As the formal authority for the mission appears to lie with the African Union and not the individual troop-contributing states, only AMISOM's military component is a party to the conflict.

6. Al-Shabaab

Al-Shabaab, also written as al-Shabab, translates as 'The Youth' from Arabic and indeed emerged as the militarized youth wing of the ICU. The latter appeared in the 1990s as a group trying to restore law and order in the chaos following the fall of Siad Barre's regime. It became the most powerful military actor in Somalia for a while, gaining control over Mogadishu for six months in 2006. The ICU fell apart in 2006–2007, leaving only its military youth wing, al-Shabaab, which in turn became a powerful actor in the conflict.⁷¹⁹

In 2009–10, the group controlled most of central and southern Somalia. Since 2011, al-Shabaab has suffered a series of significant territorial and strategic setbacks.⁷²⁰ Apart from fighting the Somali Government and AMISOM troops, the group has also repeatedly threatened the US and has demonstrated its capacity to strike beyond Somalia's borders, especially in Kenya.

C. KEY DEVELOPMENTS IN 2017: ESCALATING FATALITIES

In February 2017, Somalia elected Mohamed Abdullahi Mohamed, also known as Farmajo, as President.⁷²¹ Al-Shabaab, in response, threatened to target anyone collaborating with the new President.⁷²² It began an assassination campaign against

716 AMISOM, Status of Mission Agreement (SOMA), 6 March 2007, amisom-au.org/status-of-mission-agreement-soma/ (last accessed 28 February 2018).

717 For further information, see 'AMISOM Military Component', <http://amisom-au.org/mission-profile/military-component/> and 'AMISOM Mandate', <http://amisom-au.org/amisom-mandate/> (last accessed 28 February 2018).

718 'Uganda to Withdraw Troops From Somalia's Amisom Force', *BBC News*, 23 June 2016, <http://www.bbc.com/news/world-africa-36606194>.

719 'Somalia: Who Supports Who?', *BBC News*, 28 December 2006, <http://news.bbc.co.uk/2/hi/africa/5092586.stm>.

720 C. Felter, J. Masters and M. A. Sergie, 'Al-Shabab', Council on Foreign Relations, 5 February 2013, www.cfr.org/somalia/al-shabaab/p18650?breadcrumb=%2Fpublication%2Fpublication_list%3Ftype%3Dbackground%26page%3D4 (last accessed 28 February 2018); see also C. Anzalone, 'Al-Shabab's Tactical and Media Strategies in the Wake of its Battlefield Setbacks', 6 *CTC Sentinel* 3 (March 2013), <https://ctc.usma.edu/app/uploads/2013/03/CTCSentinel-Vol6Iss3.pdf> (last accessed 28 February 2018).

721 'Somalia's Mohamed Abdullahi Farmajo Chosen as President', *BBC News*, 8 February 2017, <http://www.bbc.com/news/world-africa-38904663>.

722 'Somalia Profile – Timeline', *BBC News*, 4 January 2018, <http://www.bbc.com/news/world-africa-14094632>.

government ministers in the capital, Mogadishu, at the end of June 2017.⁷²³

In March, the problem of piracy off the Somali coast began to re-emerge with the seizing of a tanker, the first major vessel to be captured in the region since 2012. Only weeks later, an Indian commercial ship was hijacked.⁷²⁴

In April, President Mohamed reportedly offered al-Shabaab the possibility of negotiations.⁷²⁵ However, he had previously 'declared war' on them, vowing to eliminate them within two years,⁷²⁶ and later vowed to retaliate and avenge attacks carried out by al-Shabaab.⁷²⁷

In May, President Mohamed called for the lifting of an arms embargo imposed by the UN on Somalia in 1992, in order to defeat al-Shabaab. He claimed that access to heavier weapons would allow the Somali army to defeat al-Shabaab within a few years.⁷²⁸ In August, a former deputy leader of al-Shabaab reportedly defected from the group.⁷²⁹

In October 2017, Mogadishu was hit by a massive car-bomb blast, described by witnesses as the biggest explosion they had ever experienced.⁷³⁰ The death toll of the incident rose to 358 within a week.⁷³¹ The Somali Government blamed al-Shabaab for the attack, but the group did not confirm its responsibility.⁷³² Further car-bomb attacks took place in October, claiming dozens more lives.⁷³³

723 Armed Conflict Location & Event Data Project (ACLED), *Conflict Trends* no 60, *Real-time Analysis of African Political Violence*, July 2017, p 2, https://www.acleddata.com/wp-content/uploads/2017/07/ACLED_Conflict-Trends-Report_No.60-July-2017_pdf.pdf (last accessed 28 February 2018).

724 'Somali Pirates Hijack Indian Commercial Ship', *Al Jazeera*, 3 April 2017, <http://www.aljazeera.com/news/2017/04/somali-pirates-hijack-indian-commercial-ship-170403102533248.html>.

725 A. R. A. Shaban, 'Days After War Declaration: Somali President Wants Talks With Al-Shabaab', *Africa News*, 12 April 2017, <http://www.africanews.com/2017/04/12/days-after-war-declaration-somali-president-wants-talks-with-al-shabaab/>.

726 'Somalia Leader Declares Country a "War Zone"', *Al Jazeera*, 6 April 2017, <http://www.aljazeera.com/news/2017/04/somalia-leader-declares-country-war-zone-170406131513405.html>.

727 'Somalia President Reiterates Pledge to Defeat Al-Shabaab', *Africa News*, 9 June 2017, <http://africanews.com/2017/06/09/somalia-president-reiterates-pledge-to-defeat-al-shabaab/>.

728 H. Mohamed, 'Farmajo Calls for Arms Embargo End to Defeat Al-Shabab', *Al Jazeera*, 11 May 2017, <http://www.aljazeera.com/news/2017/05/farmajo-calls-arms-embargo-defeat-al-shabab-170511134001952.html>.

729 'Al-Shabaab's Former Deputy Leader Defects to Government – Military', *Africa News*, 14 August 2017, <http://www.africanews.com/2017/08/14/al-shabaab-s-former-deputy-leader-defects-to-government-military/>.

730 'Massive Car Bomb Blast Rocks Somalia's Mogadishu', *Al Jazeera*, 14 October 2017, <http://www.aljazeera.com/news/2017/10/massive-car-bomb-blast-rocks-somalia-mogadishu-171014142943624.html>.

731 'Mogadishu Bombing Death Toll Rises to 358', *Al Jazeera*, 21 October 2017, <http://www.aljazeera.com/news/2017/10/mogadishu-bombing-death-toll-rises-358-171020223155870.html>.

732 'Farmajo Blames Al-Shabab for Mogadishu Blast', *Al Jazeera*, 18 October 2017, <http://www.aljazeera.com/news/2017/10/farmajo-blames-al-shabab-mogadishu-blast-171018073200556.html>.

733 'Mogadishu: 11 Killed Week After Deadliest Blast', *Al Jazeera*, 22 October 2017, <http://www.aljazeera.com/news/2017/10/mogadishu-11-killed-week-deadliest-blast-171022104607855.html>; 'Deadly Double Bombing Strikes Mogadishu', *Al Jazeera*, 29 October 2017, <http://www.aljazeera.com/news/2017/10/double-car-bombing-strikes-mogadishu-171028152255706.html>.

In terms of casualties, in 2016, the number of fatalities from armed clashes involving al-Shabaab increased by 48 percent.⁷³⁴ From 150 in February 2017, occurrences of conflict peaked at over 200 in April 2017, with 200 in June 2017. Reported fatalities resulting from these events rose from nearly 300 in February to nearly 600 in June.⁷³⁵ In July 2017, the Armed Conflict Location and Events Data Project (ACLED) classified Somalia's conflict trajectory as 'escalating'.⁷³⁶ The areas in which al-Shabaab operates are among the most deadly in the whole of Africa.⁷³⁷ The crisis in Somalia was the most active in 2016.⁷³⁸ Activities of insurgent groups remained high and fueled the overall conflict level. In the first six months of 2017, over 2,500 fatalities occurred.⁷³⁹

Until September 2017, only two US drone attacks in Somalia were reported, killing nine, as well as five additional attacks conducted by the US, resulting in 15–23 dead and 10 people injured,⁷⁴⁰ all suspected al-Shabaab members.⁷⁴¹ In October 2017, the US reported having carried out two more drone strikes against suspected Islamic State (IS) targets in Somalia.⁷⁴²

Al-Shabaab retains a heavy presence in southern regions of Somalia, but has started to spread north once more, operating in Puntland.⁷⁴³ This may be in response to increasing activities of an IS franchise group, the Islamic State in Somalia (ISS), in Puntland.⁷⁴⁴

Before conducting attacks against government officials in Mogadishu, al-Shabaab handed out leaflets to civilians advising them to avoid government buildings.⁷⁴⁵ However, it also uses the tactic of placing large improvised explosive devices (IEDs) or explosives-laden vehicles in crowded places such as markets, hotels and military checkpoints.⁷⁴⁶

734 ACLED, *Conflict Trends* no 55, *Real-time Analysis of African Political Violence*, February 2017, p 8, https://reliefweb.int/sites/reliefweb.int/files/resources/ACLED_Conflict-Trends-Report-No.55-February-2017-pdf.pdf (last accessed 28 February 2018).

735 ACLED, *Conflict Trends* no 60, *supra* fn 723, p 1.

736 *Ibid.*

737 ACLED, *Conflict Trends* no 58, *Real-time Analysis of African Political Violence*, May 2017, p 1, https://www.acleddata.com/wp-content/uploads/2017/05/ACLED_Conflict-Trends-Report_No.58-May-2017_pdf.pdf (last accessed 28 February 2018).

738 ACLED, *Conflict Trends* no 55, *supra* fn 734, p 3.

739 ACLED, *Conflict Trends* no 60, *supra* fn 723, p 2.

740 The Bureau of Investigative Journalism, *Somalia: Reported US Actions 2017*, *supra* fn 710.

741 The Bureau of Investigative Journalism, *US Strikes in Somalia, 2007 to Present*, last viewed 29 August 2017. Among the persons killed in US operations, none were civilians.

742 'US Africa Command Conducts Air Strikes in Somalia', *Al Jazeera*, 3 November 2017, <http://www.aljazeera.com/news/2017/11/africa-command-conducts-air-strikes-somalia-171103202800400.html>.

743 ACLED, *Conflict Trends* no 60, *supra* fn 723, p 2.

744 ACLED, *Conflict Trends* no 58, *supra* fn 737, p 4.

745 ACLED, *Conflict Trends* no 60, *supra* fn 723, p 2.

746 ACLED, *Conflict Trends* no 58, *supra* fn 737, p 3.

Al-Shabaab also caused a high number of casualties in neighbouring Kenya during 2016 and 2017. Various incidents occurred, including the setting off of IEDs and roadside bombs planted by al-Shabaab, attacks on villages and police stations and gun battles.⁷⁴⁷ This caused 120 casualties up to 3 August 2017. Of these, 43 were civilian casualties, 69 were police or security officers, 1 was a member of the military and 5 were al-Shabaab militants.⁷⁴⁸

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS

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

On 29 September 2017, the UN Human Rights Council adopted Resolution 36/27 in which it '

expresses particular concern at the abuses and violations perpetrated against girls and women, including sexual and gender-based violence, child, early and forced marriage and female genital mutilation, expresses concern at the abuses and violations committed against children, including the unlawful recruitment and use of child soldiers and children in armed conflict, killing and maiming, rape and other sexual and gender-based violence, and abductions, and emphasizes the need for accountability and justice for all such violations and abuses.⁷⁴⁹

747 ACLED, *Conflict Trends* no 60, *supra* fn 723, p 9.

748 *Ibid.*

749 UN Human Rights Council Res 36/27, 29 September 2017, §4.

10. TURKEY IN 2017: A FOCUS ON THE KURDISH QUESTION AND MILITARY FORMATIONS IN MIDDLE EASTERN BATTLEFIELDS

Vicken Cheterian

Classification of the Conflict

Turkey and its armed and security forces were involved in a non-international armed conflict (NIAC) with the Kurdish Workers' Party in the southeast of the country and the Kurdistan region of Iraq in 2017. Turkey is also involved in a NIAC with the Kurdish People's Protection Unit in northern Syria.

A. HISTORY OF THE CONFLICT⁷⁵⁰

Three factors of Kurdish history must be underlined in order to understand the current dynamics of the Kurdish question. First, Kurdish autonomous states (Kurdish emirates), which survived for centuries on both sides of the Ottoman–Iranian division, were disbanded in the course of the twentieth century. When the Ottomans incorporated the Kurdish areas after their victory in the Battle of Chaldiran (1514), they preserved Kurdish autonomous political structures as border military forces against the Safavids and Qajars of Iran. Even in the nineteenth century, when the Ottoman Empire destroyed the Kurdish emirates in its modernizing and centralizing drive, these policies were soon revised. Sultan Abdul Hamid II rearmed Kurdish tribes in what was called the Hamidiye Cavalry, again for borderland defence against the Russians.⁷⁵¹ Even after the 1908 Young Turk revolution, when the Hamidiye Cavalry was initially dissolved, the old structure was soon revived under a new name: the Tribal Light Cavalry. Throughout the twentieth century, state interventions to suppress, modernize, assimilate or utilize Kurdish tribal military forces would cause many frictions, uprisings and wars.

Second is the diverse tribal, religious, ethnic, regional, social and political identities of what we came to call Kurds. Kurdish nationalism is a new phenomenon, largely influenced by older social structures, identities and differences. The majority of Kurds are Sunni Muslims, but other religious groups also exist, such as Shiite Kurds (Feyli Kurds), Alevis, Yazidis, Ahl ul-Haq (also known as Yarsani or Kakai), etc. Tribal and regional differences are equally important, and linguistic diversity (Kurmanji, Zazaki, Sorani, Palewani) often reflects ethnic and geographic specificities.⁷⁵² Therefore, any expectation of uniform Kurdish political behaviour under an imagined Kurdish nationalist myth is potentially misleading.

750 *The War Report 2016* described the history of the conflict between Turkey and the PKK. This year's *War Report* focuses on a slightly different but related question, addressing the relationships and dynamics of the military Kurdish formations in the region (including in Syria and Iraq). This section is an edited version of an article by Vicken Cheterian published by the Geneva Academy and available at <https://www.geneva-academy.ch/joomla-tools-files/docman-files/Kurdish%20Military%20Formations%20in%20Middle%20Eastern%20Battlefields.pdf>. It has been revised in accordance with the format of *The War Report*.

751 J. Klein, *The Margins of Empire: Kurdish Militias in the Ottoman Tribal Zone*, Stanford University Press, 2011.

752 M. S. Kaya, *The Zaza Kurds of Turkey: A Middle Eastern Minority in a Globalised Society*, I.B. Tauris, 2011; N. Fuccaro, *The Other Kurds: Yazidis in Colonial Iraq*, I.B. Tauris, 1999.

Finally, Kurdish tribal confederations lived for centuries next to largely sedentary, urban or agricultural Christian populations, namely Armenians and Assyrians,⁷⁵³ whose numbers in what is today considered to be Kurdistan were greater than that of the Kurds. Yet, the Ottoman Turkish leadership in a series of deportations and massacres, in which some Kurdish tribes played an active role, exterminated those populations. The outcome was that, for the first time in history, Kurdish populations had continuity over vast areas of West Asia, reinforcing Kurdish nationalism: 'With the disappearance of the Armenians, most of eastern Anatolia became almost exclusively Kurdish territory ... A Kurdish nation state was now feasible.'⁷⁵⁴

The dissolution of the Ottoman Empire led not only to the division of Kurdish-inhabited areas by a series of new and rigid international borders, but also to unprecedented pressure on the political autonomy and social fabric of the Kurds. In Turkey, with the establishment of the Republic, Kurdish areas came under forced centralization, leading to a series of Kurdish revolts, often under the leadership of tribal sheikhs. The last such revolt took place in Dersim (1937–1938), resulting in thousands of casualties and the remaining civilian population being deported.⁷⁵⁵ In Iran, after the withdrawal of Soviet troops from the north, the Kurdish Republic of Mahabad quickly fell to the armies of the Shah (1946). In Iraq, Kurdish tribes revolted against British occupation; yet, after independence they fought a series of wars against Baghdad, the last being against Saddam Hussein in the infamous Anfal campaign of forced Arabization, the most notorious episode of which was the chemical attacks in Halabja (March 1988) where an estimated 5,000 people perished.⁷⁵⁶ At a time when modern nation-states were emerging in the Middle East, even the most basic Kurdish national rights, such as speaking Kurdish in public, were repressed. These tensions in a modernizing Middle East led to the emergence of a series of Kurdish guerrilla groups in Iraq, Iran, Turkey and Syria, revolting against the nation-state system of the Middle East that negated Kurdish rights and even Kurdish identity.

The Iraqi invasion of Kuwait in 1990 changed the geopolitical equilibrium of the Middle East, and constituted a historic opportunity for the Kurds. For the first time since the fall of the Ottomans, a global power established an alliance with them: the imposition of 'no-fly zone' to the north of 36th parallel protected Kurdish Peshmerga from reprisals by Saddam Hussein's armies. The United States' invasion of Iraq in 2003 further accelerated those trends, as Kurdish guerrillas played a key

753 In some cases, Assyrians, namely the Nestorians (Assyrian Church of the East) of Hakkari and the Syriacs (Jacobites) of Tur Abdin, had nomadic and tribal social structures similar to those of tribal Kurds.

754 M. van Bruinessen, *Agha, Shaikh and State: The Social and Political Structures of Kurdistan*, Zed Books, 1992, p. 277. See also V. Cheterian, *Open Wounds: Armenians, Turks and a Century of Genocide*, Oxford University Press, 2015, pp. 263–272; S. G. Donabed, *Reforging a Forgotten History: Iraq and the Assyrians in the Twentieth Century*, Edinburgh University Press, 2016.

755 H. Bozarslan, 'Les révoltes Kurdes en Turquie kémaliste (quelques aspects)', *Guerres mondiales et conflits contemporains* 151 (1988), 121–136.

756 C. Tripp, *A History of Iraq*, 3rd edn, Cambridge University Press, 2007 p. 236. For a detailed report on the al-Anfal campaign, see Human Rights Watch, *Genocide in Iraq: The Anfal Campaign Against the Kurds*, July 1993, <https://www.hrw.org/reports/1993/iraqanfal/> (last accessed 6 november 2017).

role in the US invasion from the north and were the only recognized native military structure after the dissolution of the Iraqi army. The outcome was the creation of a Kurdish entity in northern Iraq that has all the attributes of statehood with the exception of international recognition.

Today, three distinct political-military groups that emerged from the conflicts of the second half of the twentieth century dominate the Kurdish space: the Kurdistan Workers' Party (PKK), Kurdish Democratic Party (KDP) and Patriotic Union of Kurdistan (PUK), with a number of smaller guerrilla groups originating from Iran but based in northern Iraq, such as the Kurdistan Democratic Party of Iran (KDP-I) and the Komala Party of Iranian Kurdistan. These groups represent distinct interests and have contradictory alliances with regional and global powers. For example, Kurdish factions in Iraq allied in different periods with neighbouring Iran, both under the Shah and after the 1979 revolution, to fight the Baghdad government, while inside Iran the Kurdish national movement was continuously repressed. Another example is the alliance and close cooperation between the Iraqi KDP and Turkish authorities while the PKK carried out an armed struggle inside Turkey.

For 400 years, Kurdish tribes have largely been loyal to the Ottoman sultans, guarding their eastern frontiers against the Iranians or Russians. Kurdish loyalty to the Turkish leaders was frustrated only when Mustafa Kemal betrayed his previous promises of Kurdish autonomy and dissolved both the Ottoman Empire and the Caliphate. The initial Kurdish revolts, such as that of Sheikh Said, were led by religious leaders, in the name of Islam, and largely orchestrated by former Hamidiye Cavalry members. Turkish–Kurdish relations deteriorated further after the Turkish military coup of 1980, in which over half a million people – including many Kurds – went through ‘filtration camps’ and torture, and the PKK armed rebellion starting in 1984, which led to over 35,000 dead and the destruction of thousands of Kurdish villages. Yet, all of the above, from Sheikh Said to the PKK rebellion, could be represented as a conflict between Kurds of various social strata and ideological convictions (traditionalist-Islamist, nationalist, third-worldist, etc.) and Turkish nationalism. Recep Tayyip Erdoğan’s accession to power with the Justice and Development Party (AKP) and its conservative-Islamist ideology opened new possibilities. In fact, the AKP argued that it was nationalism that divided Turks and Kurds (as well as other Muslim nations that were part of the Ottoman Empire), and that Islam could rally them once again, thus resolving the conflict of national character.⁷⁵⁷

On two occasions, the AKP and PKK tried to negotiate a peaceful solution. The first was in 2009, after the AKP made some gestures towards Kurdish cultural rights, including the broadcasting of Kurdish-language television programmes by the official channel TRT 6. The parties began indirect talks aimed at major political reforms to give Kurds their cultural rights, local self-governance and an amnesty for their fighters, and at reaching a ceasefire accommodation. Yet, political repression against Kurdish political figures continued and the first groups of disbanded guerrillas were arrested, which ended the peace process. Guerrilla attacks on one

757 N. Fisher Onar, ‘Turkey’s Future: Erdoğan, Elections and the Kurds’, *Open Democracy*, 7 April 2015, <https://www.opendemocracy.net/nora-fisher-onar/turkey%27s-future-erdog-er-elections-and-kurds>.

side and repressive measures by government forces on the other escalated between 2010 and 2012.

The Arab Spring and the collapse of Syria opened up new perspectives. In January 2013, the parties to the conflict declared yet another ceasefire. Both Turkey and the PKK were busy with the developments inside Syria and were contemplating a possible alliance. If Ankara had given basic rights to the Kurds and allowed them to participate in the internal Turkish political processes, then Turkey could have succeeded in creating an alliance with the PKK–PYD in north Syria, much like the US has done in the same period. Yet, two developments put an end to the ceasefire and to the possible Turkish–Kurdish rapprochement. The first was the battle of Raqqa. Erdoğan, himself belonging to a party espousing political Islam, had strong sympathies towards Syrian Islamist groups,⁷⁵⁸ including the salafi-jihadi Ahrar al-Sham and Jabhat al-Nusra, and sustained an ambiguous stance towards the Islamic State (IS).⁷⁵⁹ For many Islamists, including Erdoğan, the jihadi groups were considered a part, albeit excessive, of the ‘family’ of political Islam. Therefore, when the IS attack on Kobani began in September 2014, creating 300,000 refugees and great anxiety among Kurds everywhere including in Turkey, the ambiguous Turkish position came as a shock to many Kurds. Erdoğan, in a public declaration, equated ISIS with the PKK, while the Turkish foreign minister said, ‘How can you say that this terrorist organization is better because it’s fighting ISIS? They are the same. Terrorists are evil. They all must be eradicated.’⁷⁶⁰ Many Turkish citizens of Kurdish ethnicity who traditionally voted for the AKP felt betrayed and did not vote for the ruling party in the June 2015 general elections, instead voting for the Kurdish People’s Democratic Party (HDP). The 2015 elections and their outcomes constitute the second turning point for Erdoğan and Turkey’s Kurdish electorate. The events in Syria galvanized the Kurdish electorate around the HDP, which received over 13 percent of the votes and thus passed the 10 percent threshold for entering parliament.⁷⁶¹ This was the first time a pro-Kurdish party achieved such success. This Kurdish triumph was at the expense of the AKP, which failed to get a parliamentary majority to pass Erdoğan’s constitutional reforms. The Kurdish factor in internal Turkish politics was not acceptable to the AKP, nor to the majority of Turkish voters. The security situation deteriorated immediately after the elections.⁷⁶² Soon, Kurdish-inhabited towns in southern Turkey, along the border with

758 Islamist is used in the sense of a political organization that holds an Islamic worldview and strives to introduce Islamic law.

759 D. L. Phillips, ‘Turkey-ISIS Oil Trade’, *Huffington Post*, 11 September 2014, http://www.huffingtonpost.com/david-l-phillips/research-paper-turkey-isi_b_8808024.html. B. Guiton, ‘“ISIS Sees Turkey as Its Ally”: Former Islamic State Member Reveals Turkish Army Cooperation’, *Newsweek*, 7 November 2014 <http://www.newsweek.com/isis-and-turkey-cooperate-destroy-kurds-former-isis-member-reveals-turkish-282920>.

760 R. Collard, ‘Why Turkey Sees the Kurdish People as a Bigger Threat than ISIS’, *Time*, 28 July 2015, <http://time.com/3974399/turkey-kurds-isis/>.

761 C. Letsch and I. Traynor, ‘Turkey Elections: Ruling Party Loses Majority as Pro-Kurdish HDP Gains Seats’, *The Guardian*, 7 June 2015, <https://www.theguardian.com/world/2015/jun/07/turkey-election-preliminary-results-erdogan-akp-party>.

762 On 20 July 2015, a pro-Kurdish solidarity gathering was bombed by ISIS, killing 33 and wounding many more. The HDP accused the government of not providing the necessary protection.

Syria and Iraq, became conflict zones. Hundreds of Kurdish activists were arrested, including elected parliamentarians and mayors of the HDP. Turkish–Kurdish relations were back at the previous level of antagonism, and even political Islam failed to provide a solution.⁷⁶³

B. PARTIES TO THE CONFLICT

The parties to the NIAC in 2017 were Turkey and its armed forces against the PKK and the Kurdish People's Protection Unit (YPG/YPJ) in northern Syria. As *The War Report 2017* wishes to address the relationships between the different Kurdish military formations in the region, this section will also describe the origins of the Iraqi Peshmerga. These, however, are not a party to the conflict with Turkey.

1. Turkish Armed Forces

The Turkish Armed Forces have been estimated to be 382,850 strong, with 360,565 reservists.⁷⁶⁴ The Turkish army is said to be the largest in size after the US within NATO.⁷⁶⁵

2. The Kurdistan Workers' Party (PKK)

The roots of the PKK lie in the leftist movement in Turkey itself, influenced by guerrilla movements of the 1970s, especially the Palestinian guerrillas. The PKK, founded in 1978, was a latecomer to Turkish leftist movements, which is one of the explanations for its radicalism and tendency to use violence against the Turkish state as well as possible rivals. The initial logistic base of the PKK was the Lebanese Bekaa Valley, in camps controlled by the Democratic Front for the Liberation of Palestine (DFLP), one of the Palestinian guerrilla groups of the Palestine Liberation Organization (PLO). From 1980–1982, some 300 PKK activists received military training from the DFLP.⁷⁶⁶ The Israeli invasion of Lebanon in 1982 destroyed the PLO infrastructure there, driving the PKK into the lap of the Syrian security agencies, the infamous Mukhabarat. The Syrian Baath regime intended to use the Kurdish guerrillas as leverage against Ankara. By the time the PKK launched its attacks within Turkey in 1984, most of its training bases were either in Syrian controlled Bekaa or Syria itself. The PKK could also recruit from among Syrian Kurds, and in return these young men were freed from Syrian military service. As a result, over a third of PKK recruits were Syrian Kurds and the vast majority of the rest were Turkish Kurds. Yet, the PKK did not limit its assets to areas under the control of Damascus, but developed two additional dimensions. One was the strong network among the growing Kurdish diaspora, especially migrant workers and asylum seekers in

763 T. Bachel and S. Noel, 'The Justice and Development Party and the Kurdish Question', in M. Casier and J. Jongerden (eds), *Nationalisms and Politics in Turkey: Political Islam, Kemalism and the Kurdish Issue*, Routledge, 2011, pp 101–120.

764 Global Firepower, '2017 Turkey Military Strength', https://www.globalfirepower.com/country-military-strength-detail.asp?country_id=turkey (last accessed 7 March 2018).

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

766 A. Marcus, *Blood and Belief: The PKK and the Kurdish Fight for Independence*, New York University Press, 2009, p 57.

Europe following the 1980 Turkish military coup and the severe repression that followed. These networks would prove valuable for funding and lobbying. The second was the military camps established in northern Iraqi Kurdistan's Qandil Mountains, in the frontier triangle between Iraq, Turkey and Iran. The bases in Iraq would prove extremely important after Turkish military threats forced the Syrian authorities to expel Abdullah Ocalan and the PKK militants from both Syria and Lebanon's Bekaa Valley in 1999. They would also permit the PKK to operate and develop its influence among Iranian Kurds.⁷⁶⁷

PKK violence can also be explained by the fact that it was attempting to revive Kurdish national identity, which was largely forgotten between the 1930s and 1980s. While the PKK was largely successful in recreating Kurdish national identification, it also – indirectly – contributed to the revival of tribalism among Kurds: to counter guerrilla violence, the Turkish Government recruited, armed and financed 'village guards' – over 50,000 in the 1980s – reminiscent of the tribal Hamidiye Cavalry.⁷⁶⁸ In spite of its use of violence, the PKK had from the beginning a 'civilian wing' that differed with the military activists on the principle of negotiations with the Turkish authorities, use of force and the final aim of the struggle. In fact, even Ocalan, years before his arrest, declared a 'unilateral ceasefire' in 1992, 1995 and 1998, called for reforms rather than secession and made gestures towards Ankara showing readiness to negotiate.⁷⁶⁹

3. The Democratic Union Party (PYD)/ People's Protection Units (YPG)

In Syria, while Kurdish basic political and cultural rights were violated by successive administrations, with up to 300,000 Kurds deprived of their citizenship,⁷⁷⁰ there was no Kurdish political activism against the Syrian state. Not only the PKK, but also the two major Iraqi Kurdish Parties, the KDP and PUK, used Syrian Kurds as a logistic base for their activities, thus cutting deals with the Damascus authorities. In other words, when mobilized, Syrian Kurds struggled for Kurdish rights either in neighbouring Iraq or Turkey but not for their own rights. One major explanation for this phenomenon could be that Kurdish presence in parts of what became Syria is relatively recent: Syrian Kurdish areas, especially those in the Jazira region (northeast Syria) were established in the twentieth century during the French Mandate.⁷⁷¹

While the PKK originates from Turkey and is perceived as a Kurdish armed non-state actor (ANSA) from there, the reality is that from the start it has had strong

767 J. Jongerden and A. H. Akkaya, 'Born from the Left: The Making of the PKK', in M. Casier and J. Jongerden (eds), *Nationalisms and Politics in Turkey: Political Islam, Kemalism and the Kurdish Issue*, Routledge, 2011, pp 123–142.

768 McDowell, *A Modern History of the Kurds*, I.B. Tauris, 2005, pp 423–425.

769 M. van Bruinessen, 'Turkey, Europe and the Kurds After the Capture of Abdullah Öcalan', *Kurdish Ethno-Nationalism Versus Nation-Building States*, ISIS Press, 2000, pp 1–11.

770 'Syria's Assad grants nationality to Hasaka Kurds', *BBC News*, 7 April 2011, <http://www.bbc.com/news/world-middle-east-12995174>.

771 van Bruinessen, *Agha, Shaikh and State*, supra fn 754, p 95.

bases inside Syria and has recruited heavily from among Syrian Kurds, who comprise a third of its casualties. In the early 2000s, the PKK underwent a transformation through the creation of a number of institutions: 'PKK militants attempted to create new parties with the double objective of escaping state repression while maintaining support from its thousands of members and sympathizers. In doing so, the PYD (Democratic Union Party), [was] founded in 2003'.⁷⁷² Its armed wing – the People's Protection Units (YPG) – was formed in 2004. The Kurdistan Free Life Party (PJAK), a PKK-related ANSA, has been active in Iran since 2004. Yet, these changes are largely formal and do not touch the core of the organization, which remains a nationalist, military formation with hierarchical control, engaged in an ferocious armed struggle since its foundation.

Several questions arise in this regard: first, what is the nature of relations between the PKK and PYD today? Second, is the Syrian territory held by the PYD a priority project for self-rule, similar to the Kurdish entity in north Iraq, or will it serve as a logistic base for the PKK armed struggle inside Turkey? Is the PYD an independent structure from the PKK?

There is little doubt about the influence of the PKK over the PYD on the command level.⁷⁷³ One study, looking at Kurdish casualties in Syria in the period January 2013–January 2016, based on the official YPG released data, shows that 49.24 per cent – more than the number of Syrian Kurd casualties – were Turkish Kurds.⁷⁷⁴ The military strategy of the PKK–PYD inside Syria was to try and create geographic unity between the three Kurdish areas: Jazira in the northeast, Kobani in the north centre and Afrin in the northwest. While Jazira was united with Kobani, the Turkish military intervention in Syria aimed to prevent them linking with Afrin. Whether the PKK–YPG leadership will attempt to develop a northern Syrian de facto Kurdish entity similar to the KRG in Iraq will largely depend on external factors. In Turkey, there is a strong Kurdish-leftist popular political movement engaged in a legal, political struggle for reform and democratization, which could have helped transform the military wing, but continuous violence on multiple fronts has hindered such a possibility.

Since 2012, Kurdish armed groups have emerged as a major force in northern Syria. The withdrawal of Syrian governmental troops from the area in July 2012 created a power vacuum, which two separate Kurdish political forces tried to fill: the PKK and its associate PYD/YPG, and the Iraqi KDP and its allies in Syria. The KDP, through its Syrian associates of 16 formations allied through the 'Kurdish National Council', tried to create a Syrian-Kurdish force of 1,600 fighters by recruiting from

772 J. Tejel, *Syria's Kurds: History, Politics and Society*, Routledge, 2011, p 79.

773 An International Crisis Group report describes the YPG as a PKK 'affiliate' in Syria. See International Crisis Group, *The PKK's Fateful Choice in Northern Syria*, Middle East Report no 176, 4 May 2017, p 1, <https://www.crisisgroup.org/middle-east-north-africa/eastern-mediterranean/syria/176-pkk-s-fateful-choice-northern-syria> (last accessed 6 November 2017).

774 A. Stein and M. Foley, 'The YPG-PKK Connection', *Atlantic Council*, 26 January 2016, <http://www.atlanticcouncil.org/blogs/menasource/the-ypg-pkk-connection>.

among Syrian army deserters who found refuge in Northern Iraq in mid-2012.⁷⁷⁵ Yet, it was the PKK–PYD who would emerge as the masters of northern Syria, impose their military dominance over the Kurdish areas there and become the barrier that stopped the IS wave that spread through Syria and Iraq in the summer of 2014, and would later, with the help of the US-led coalition, roll back IS gains.

4. The Iraqi Peshmerga

Iraq was home to continuous Kurdish revolts. With the end of World War I and the establishment of the British Mandate, Sheikh Mahmud Barzanji, a sufi Qadiriya religious figure and member of the Barzanji tribe in Suleymaniyah, revolted against the British in 1919 and again in 1922–1924. One of his followers was the young Mustafa Barzani, who would later become the leading figure of Kurdish nationalism. With his brother, Ahmed Barzani, he took part in the anti-British revolt of 1931, and in 1945 he joined the short-lived Mahabad Republic declared by Qazi Muhammad in Iran. With the fall of Mahabad, Mustafa Barzani and a group of his followers escaped to the Soviet Union, only to return to Iraq after the 1958 overthrow of the Hashemite monarchy by Abdel Karim Qasim. Barzani is the founder of the KDP and, after relations with Qasim deteriorated, he led yet another revolt known as the First Iraqi–Kurdish War (1961–1970). A peace agreement signed in 1970 was not respected, much like earlier agreements, leading to yet another revolt, the Second Iraqi–Kurdish War (1972–1975). Mustafa Barzani would establish a strong leadership among Kurdish tribes thanks to his nationalist discourse but mainly his success in developing an irregular military force known as Peshmerga.

The defeat of Barzani in 1975, largely caused by the Shah of Iran reaching an agreement with Baghdad, led to internal divisions within the KDP, and one of its members, Jalal Talabani, founded the rival PUK, with its own military wing. The rivalry and in-fighting between the KDP and PUK has deep historic, social and regional specificities, the KDP having its power base in Erbil while the PUK's base is in the Suleymaniyah region. The PUK also had a more radical-left ideology and allied with Syria and Iran.⁷⁷⁶

Both the KDP and PUK leadership have been accused of nepotism and corruption. In the 2009 elections, a division appeared within the PUK with the emergence of a new movement named Gorran (Movement for Change), which managed to receive 51 per cent of the votes in Suleymaniyah province. The referendum on independence on 25 September 2017, which was the project of Massoud Barzani, succeeded in mobilizing the population of the Kurdistan Regional Government (KRG) around the idea of independence. Yet, the challenges ahead remain immense. First, the problems of governance remain;⁷⁷⁷ second, the essential challenge of the referendum is not the recognized limits of the KRG, but the disputed territories and mainly the Kirkuk

775 V. Cheterian, 'Chance historique pour les Kurdes', *Le Monde diplomatique*, May 2013, <https://www.monde-diplomatique.fr/2013/05/CHETERIAN/49062>.

776 D. McDowell, *A Modern History of the Kurds*, supra fn 768, pp 343–348.

777 C. Hardi, 'The Kurdish Referendum: Dream of Independence and Fear of Dictatorship', *Middle East Eye*, 25 September, 2017, <http://www.middleeasteye.net/columns/internal-view-kurdish-referendum-2142158935>.

region and its fate;⁷⁷⁸ third, the KRG continues to remain divided between three military influences: Peshmerga forces loyal to the KDP, Peshmerga forces loyal to the PUK, and PKK militants stationed in the Qandil and Sinjar Mountains.

On 1 August 2014, IS launched a surprise attack on Peshmerga positions in Zumar, a town northwest of Mosul, between Dohuk and Sinjar, and rapidly occupied it. On 3 August, IS launched another surprise attack on Sinjar, from where Peshmerga forces were withdrawn in panic without fighting, for fear of encirclement, leaving the local Yazidi population without protection.⁷⁷⁹ These attacks came two months after IS' blitz of Mosul, where Iraqi army positions fell in a matter of hours, leaving large quantities of arms and ammunition to the jihadi fighters. In the following days, IS fighters took over the Assyrian town Qaraqosh in the Nineveh valley. What followed can be described as genocide: IS assassinated Yazidi and Shia-Turkmen men, kidnapped thousands of Yazidi girls and women, forcing them into slavery, and forced Assyrian Christians to convert, pay *jizya* (tax) or depart.⁷⁸⁰ Several thousand Yazidis, Assyrians, Shabak, Shias and Kakai (ahl ul-Haq) escaped their homes into internally displaced people camps in areas under Peshmerga control.⁷⁸¹ Thousands of Yazidi civilians were trapped and encircled at the top of the arid Sinjar Mountain, where many vulnerable people perished because of lack of water, food or medication. A military operation by PKK-PYD fighters from Syria opened a small corridor to the north of the mountain, evacuating the civilians.

The IS attack and PKK counter-attack heightened already existing tensions between Kurdish political-military formations. The Peshmerga withdrawal in the early hours of 3 August 2014 has engendered bitterness among the Yazidi population, whose trust in the KRG has been shattered as much as their trust in their Arab neighbours to the south. On the contrary, the PKK military operation has made its fighters popular among the Yazidis. The Yazidi areas liberated from IS, including the town of Sinjar, are divided into two zones of influence, between the PKK on one hand and the KDP Peshmerga on the other.⁷⁸²

Halfway from Erbil to Suleymaniyah, the flags change from yellow to green, as do the posters of martyred fighters. This is the non-official border between the KDP and the PUK, which, in spite of both being part of the KRG, have distinct command structures. The two parts of the KRG have equally different political orientations: while the KDP is close to Ankara and has tense relations with Baghdad, the PUK has close relations with Baghdad as well as with Tehran. Although there

778 F. Hawramy, 'Kirkuk Teetering on the Brink of War', *Al-Monitor*, 24 September 2017, <http://www.al-monitor.com/pulse/originals/2017/09/kurdistan-independence-referendum-kirkuk.html#ixzz4thNF6lhd>.

779 On the history of the Yazidis, see Fuccaro, *The Other Kurds*. I.B. Tauris, 1998.

780 See V. Cetorelli, I. Sasson, N. Shabila, and G. Burnham, 'ISIS' Yazidi Genocide: Demographic Evidence of the Killings and Kidnappings', *Foreign Affairs*, 8 June 2017, <https://www.foreignaffairs.com/articles/syria/2017-06-08/isis-yazidi-genocide>.

781 V. Cheterian, 'Les Yézidis, éternels boucs émissaires', *Le Monde diplomatique*, January 2017, <http://www.monde-diplomatique.fr/2017/01/CHETERIAN/56969>.

782 F. Tstekin, 'How are Iraq's Yazidis Faring Amid Kurds' Confrontations?' *Al-Monitor*, 9 May 2017, <http://www.al-monitor.com/pulse/originals/2017/05/turkey-iraq-sinjar-what-is-happening-in-yazidi-land.html>.

are tensions today between the two sides, we are far from the bloody internal war of 1994–1997, which led to thousands of casualties. More recently, tensions rose around questions such as budgetary allocations and political and administrative posts including the KRG presidency. More urgent today is the question of Kurdistan's independence, which, should it take place, could see the birth of a new state in the Middle East.

C. KEY DEVELOPMENTS IN 2017: A FOCUS ON THE KURDISH QUESTION AND MILITARY FORMATIONS IN MIDDLE EASTERN BATTLEFIELDS

The referendum on independence in KRG areas that took place on 29 September 2017, reshuffled the political cards in the Middle East, but long-term challenges persist. Will the tacit alliance between the Syrian Government and PKK-PYD survive the defeat of IS and the marginalization of al-Nusra and other forces? Is the new alliance between the US authorities and the PKK-PYD a tactical or strategic choice? Equally important, will the various Kurdish military forces refrain from inter-Kurdish violence in spite of their contradictory alliances with regional and global powers? The KDP is close to Ankara, while the PKK and PUK are struggling against Turkey and close to Baghdad–Damascus. While the PKK-PUK are close to Baghdad, the PUK is equally close to Tehran and the PKK-affiliated PJAK is at war with the Iranian Government.

Probably the most fundamental challenge for all Kurdish political forces is the ideological shift in the larger Middle Eastern environment. Kurdish political forces operate on the basis of nationalism, to which the Kurds are latecomers. When Turkey, Iran and Arab states were enthusiastically nationalist, Kurdish political formations and the public at large were still under the influence of former social divisions led by feudal lords (aghas) and traditional religious sheikhs, and created by tribal alliances. Today, the Kurdish nationalist phenomenon is an anomaly in a region where the nation-state is collapsing, and where neo-Islamism is widespread, influenced by salafi-jihadism and sectarian divides. The influence of jihadi groups such as al-Qaeda and IS has largely been taboo, although there is enough circumstantial evidence concerning the important influence of salafi-jihadism in all four areas of Kurdish political reality.⁷⁸³ In fact, the Iraqi Kurdish Ansar al-Islam was the group that provided logistic support to Abu Musi'b al-Zarqawi when he first moved to Iraq with a handful of loyalists. The group also provided many of the fighters of Ansar al-Sunna, a radical armed group that fought against the US-led occupation of Iraq. Recent IS attacks inside Iran reveal the influence of jihadi ideology among marginalized Kurdish sectors of Iran. Will the young Kurdish nationalism be a shield against the Middle Eastern trend of Islamization and sectarianization?

783 On the rise of IS influence on Iranian Kurds, see F. Hawramy, 'Iran Wakes up to Salafi Recruitment in Kurdish regions', *Al-Monitor*, 9 June 2017, <http://www.al-monitor.com/pulse/en/originals/2017/06/iran-tehran-isis-attacks-kurdistan-salafist-recruitment.html>. On ISIS' influence in the KRG, see R. Collard, 'Kurdish ISIS Recruits Threaten Identity and Security of Kurdish State', *Time*, 23 January 2015, <http://time.com/3679970/kurds-isis-recruits/>. On Kurdish fighters who joined ISIS in the battle of Kobani, see A. Speri, 'Not All Kurds are Fighting Against the Islamic State – Some are Joining it', *Vice News*, 7 November 2014, <https://news.vice.com/article/not-all-kurds-are-fighting-against-the-islamic-state-some-are-joining-it>.

Further reading: International Crisis Group, *The PKK's Fateful Choice in Northern Syria*, Report no 176, 4 May 2017, <https://www.crisisgroup.org/middle-east-north-africa/eastern-mediterranean/syria/176-pkk-s-fateful-choice-northern-syria>; M. Chulov, 'More than 92% of voters in Iraqi Kurdistan Back Independence', *The Guardian*, 28 September 2017, <https://www.theguardian.com/world/2017/sep/27/over-92-of-iraqs-kurds-vote-for-independence>.

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS

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

11. ARMED CONFLICTS IN YEMEN IN 2017: AN INCREASINGLY COMPLICATED MOSAIC

Sari Arraf

Classification of the Conflicts

Yemen and the consolidated forces led by Saudi Arabia (Bahrain, Jordan, Egypt, Kuwait, Saudi Arabia, Sudan, the United Arab Emirates and the United States) continued to be involved in a non-international armed conflict (NIAC) against Houthi rebels in the North and al-Qaeda in the Arabian Peninsula (AQAP) in the South of Yemen, as well as with the Southern Movement. 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.

A. HISTORY OF THE CONFLICT

Although the conflict in Yemen is widely presented as being between two distinct blocs – a Houthi–Saleh alliance against forces loyal to the internationally recognized President of Yemen, Abdrabbo Mansour Hadi, backed by a Saudi-led coalition – this description can be misleading. Neither camp is cohesive as both feature armed groups or regional players with divergent ideologies and political goals. From secessionists in the south, to Salafists in Taiz and Aden and tribal leaders in the north, there are smaller groups in Yemen who are not necessarily under the control of Hadi or the Houthi–Saleh alliance.⁷⁸⁴ Even states participating in the Saudi-led coalition seem to have different agendas in Yemen, as evidenced recently in mounting tensions between Hadi and the United Arab Emirates (UAE) over the latter's alleged support for secessionist groups in South Yemen who operate quite independently from Hadi.⁷⁸⁵ In addition, the presence of al-Qaeda in the Arabian

784 P. Salisbury, *Yemen: Stemming the Rise of a Chaos State*, Chatham House, 25 May 2016, p 4, <https://www.chathamhouse.org/sites/files/chathamhouse/publications/research/2016-05-25-yemen-stemming-rise-of-chaos-state-salisbury.pdf>.

785 S. A. Seche, 'Shaping the South: The UAE in Yemen', The Arab Gulf States Institute in Washington, 4 May 2017, <http://www.agsiw.org/shaping-south-uae-yemen> (last accessed 8 March 2018).

Peninsula (AQAP) and Islamic State (IS) in Yemen render the Yemen conflict mosaic more complicated.

In early 2011, Yemeni protesters took to the streets of major cities in Yemen calling on the then President, Ali Abdullah Saleh, to step down from office after more than 30 years in power.⁷⁸⁶ The protests appeared to have been organized and directed by a coalition of Yemeni opposition parties (the Joint Meeting Parties, or JMP).⁷⁸⁷ Saleh was pushed to make several economic concessions and political promises, yet his moves did not succeed in placating the protests. Several casualties were reported as the security forces' response to the protests was heavy-handed.

On 18 March 2011, at least 45 persons were killed after Saleh loyalists dressed as civilians fired on an anti-government rally in Sana'a. This episode marked a shifting point in the protests as it prompted General Ali Mohsin al-Ahmar, commander of the First Armoured Division and commander of the northwestern military zone, to break away from Saleh two days later, announce his support for the opposition and vow to defend protesters.⁷⁸⁸ In effect, Mohsin's announcement split the military–security apparatus. In addition to the First Armoured Division and the northwestern military zone, he also brought with him many other regular army and air force commanders, including the eastern region commander, Mohammed Ali Mohsin. Nevertheless, powerful military–security forces that were historically devised to be loyal to Saleh remained largely intact, most notably the Presidential Guard – the biggest and best-equipped unit in the Yemeni army – and the Central Security Forces.⁷⁸⁹

On 23 November, after stalling and renegeing on his announcements several times, Saleh signed an agreement proposed by the Gulf Cooperation Council (GCC) to step down from power.⁷⁹⁰ Under the agreement, Saleh would transfer power to his then deputy, Abdrabbo Mansour Hadi, in exchange for immunity from prosecution. The agreement was supplemented by a United Nations-sponsored implementation mechanism for the transition period, which revolved around three principal tasks: holding a national dialogue with the goal of addressing the country's political issues and producing a new constitution; addressing issues of transitional

786 Saleh served as President of northern Yemen (officially, the Yemen Arab Republic, YAR) from 1978 until 1990, when unification with southern Yemen occurred. He then served as President of the Yemen Republic from 1990 until 2012.

787 R. Burrowes and M. Wenner, 'Mounting Challenge to the Saleh Regime', *Encyclopedia Britannica*, 6 April 2017, <https://www.britannica.com/place/Yemen/Mounting-challenge-to-the-Salih-regime> (last accessed 8 March 2018).

788 'Top Army Commanders Defect in Yemen', *Al Jazeera*, 21 March 2011, <http://www.aljazeera.com/news/middleeast/2011/03/2011320180579476.html>.

789 International Crisis Group, *Yemen's Military–Security Reform: Seeds of New Conflict?*, 4 April 2013, p 12, <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/yemen/yemen-s-military-security-reform-seeds-new-conflict> (last accessed 8 March 2018).

790 B. Whitaker, 'Yemen's Ali Abdullah Saleh Resigns – But It Changes Little', *The Guardian*, 24 November 2011, <https://www.theguardian.com/commentisfree/2011/nov/24/yemen-ali-abdullah-saleh-resigns>. The agreement was brokered by the former UN Secretary-General's Special Envoy to Yemen, Jamal Benomar.

justice; and reforming the armed forces into a unified military.⁷⁹¹ On 21 February, being the only candidate on the ballot, Hadi was elected as President of Yemen with 99.6 percent of the vote.⁷⁹² The Houthis and members of the Southern Movement (Hirak) had announced earlier that they would be boycotting the elections.⁷⁹³

The GCC initiative did not succeed in restoring stability to the country. In fact, the agreement was perceived by many as a power-sharing deal between Yemen's political elites that ignored local dynamics and historically marginalized groups and neglected to address the decrepit economic situation of the country.⁷⁹⁴ With the collapse in social services and the scarcity of basic goods, local conflicts crystallized in the security void that resulted from the fracturing of the old regime, and this in turn led to a weakened sense of national identity.⁷⁹⁵ Consequently, marginalized groups such as the Houthis, Hirak and tribes in resource-rich parts of the country were able to effectively challenge the central government.⁷⁹⁶ AQAP, and to a lesser extent IS, also benefited from the security void in the country, and the former went on to seize and exert control over territories in southern Yemen.⁷⁹⁷

On top of this, the agreement did not manage to dislodge Saleh from the political scene. Although he stepped down as President, he continued to act as head of Yemen's leading party, the General People's Congress (GPC), and enjoyed the loyalty of powerful units in the army. Indeed, one of the major undertakings of Hadi during the transitional period was the reforming and restructuring of the army. This step was in the natural order of things given that Hadi arrived at his presidency as a fairly weak figure lacking a wide support base, either political or military, whereas the Saleh network was still operative and powerful.⁷⁹⁸ Hadi tried to curb Saleh's influence by first moving Saleh loyalists and family members from key positions in the military–security apparatus, mainly the command of the Presidential Guard and Special Security Forces. Although he removed Ali Mohsin from his position as Commander of the First Armoured Division as well, he was still believed to be quietly empowering the latter's network and Ali Mohsin retained

791 Crisis Group, *Yemen's Military-Security Reform*, supra fn 789, p 1. For the English version of the Agreement on the Implementation Mechanism for the Transition Process in Yemen in Accordance with the Initiative of the Gulf Cooperation Council (GCC), see http://peacemaker.un.org/sites/peacemaker.un.org/files/YE_111205_Agreement%20on%20the%20implementation%20mechanism%20for%20the%20transition.pdf (last accessed 8 March 2018)..

792 M. Jamjoom, 'Yemen Holds Presidential Election with One Candidate', *CNN*, 22 February 2012, <http://edition.cnn.com/2012/02/21/world/meast/yemen-elections/index.html>.

793 A. Saeed and M. Bin Sallam, 'Houthis and Southern Movement to Boycott February Election', *Yemen Times*, 30 January 2012, <http://www.yementimes.com/en/1542/news/246/Houthis-and-Southern-Movement-to-boycott-February-election.htm>.

794 Salisbury, *Yemen*, supra fn 784, p 4.

795 Ibid, p 3.

796 Ibid, p 13.

797 International Crisis Group, *Yemen's al-Qaeda: Expanding the Base*, 2 February 2017, p i, <https://www.crisisgroup.org/middle-east-north-africa-and-arabian-peninsula/yemen/174-yemen-s-al-qaeda-expanding-base> (last accessed 8 March 2018).

798 Whitaker, 'Yemen's Ali Abdullah Saleh Resigns', supra fn 790.

an influential position as a military adviser despite his formal demotion.⁷⁹⁹ By late 2014, Hadi would order the disbandment of both the Presidential Guard and the First Armoured Division.⁸⁰⁰

By 2014, Yemen's political transition was buckling under the weight of political infighting.⁸⁰¹ Although the National Dialogue Conference (NDC) concluded on 25 January 2014 with a final document outlining its results and paving the way for a new constitution, the accord was never implemented.⁸⁰² Notably, the document's recommendation to organize the country around a federation composed of six regions was ill-received by members of Hirak as well as the Houthis.⁸⁰³ Another contentious point in the document was the extension of Hadi's term in office by one year in order to allow for government reforms and drafting a new constitution.⁸⁰⁴

The transition period saw important military gains for Houthi forces against Sunni Islamists and tribal opponents in the country's north, as well as the emergence of an alliance between Houthis and Saleh loyalists who felt marginalized by the ongoing transition.⁸⁰⁵ In June 2014, the government's decision to cut fuel subsidies set off a wave of protests.⁸⁰⁶ This led Abdulmalek al-Houthi, leader of the Houthi forces, to issue a public warning to the government that if it did not go back on its decision, he would call for an uprising to overthrow it.⁸⁰⁷ On 18 August, thousands of Houthi supporters flocked to the capital protesting the cut in fuel subsidies and calling on the government to step down.⁸⁰⁸

Tensions in Sana'a rose over the following weeks, and on 19 September fighting broke out on the outskirts of the capital between Houthi forces and military units under the command of Ali Mohsin. On 21 September, Houthis took control over Sana'a after Mohsin's troops stood down under instructions from the ministry of

799 Salisbury, *Yemen*, supra fn 784, p 25.

800 'Yemen's President Shakes up the Army', *Al Jazeera*, 20 December 2012, <http://www.aljazeera.com/news/middleeast/2012/12/2012122053621353659.html>.

801 Crisis Group, *Yemen's al-Qaeda*, supra fn 797, p 8.

802 For the original text in Arabic, see http://www.ndc.ye/ndc_document.pdf (last accessed 8 March 2018).

803 Y. Bayoumy, 'Yemen's Federal Plan a Bold Idea, but Many Hurdles Remain', *Reuters*, 23 February 2014, <http://www.reuters.com/article/us-yemen-politics-analysis/yemens-federal-plan-a-bold-idea-but-many-hurdles-remain-idUSBREA1M05720140223>. See also 'Yemeni Factions Hold National Dialogue', *Al Jazeera*, 26 January 2014, <http://www.aljazeera.com/news/middleeast/2014/01/yemen-wraps-up-thorny-national-dialogue-2014125152420400484.html>.

804 A. I. Al-Moshki, 'National Dialogue Conference Concludes', *Yemen Times*, 28 January 2014, <http://www.yementimes.com/en/1750/news/3398/National-Dialogue-Conference-concludes.htm>.

805 Crisis Group, *Yemen's al-Qaeda*, supra fn 797, p 8.

806 'Yemen Fuel Subsidy Cut Drives Poorest Deeper into Poverty', *The Guardian*, 26 August 2014, <https://www.theguardian.com/global-development/2014/aug/26/yemen-fuel-subsidy-cut-drives-poorest-poverty>.

807 Salisbury, *Yemen*, supra fn 784, p 21.

808 'Houthis Push into Yemeni Capital amid Rallies', *Al Jazeera*, 20 August 2014, <http://www.aljazeera.com/news/middleeast/2014/08/houthis-push-into-yemen-capital-amid-protests-2014820191016804628.html>.

interior.⁸⁰⁹ On the same day, the government signed a UN-brokered peace agreement with the Houthis – the Peace and National Partnership Agreement (PNPA) – which envisaged the formation of an inclusive government and the appointment of Houthi and Hiraq representatives as presidential advisers. In addition, the agreement called for reforms in the security and economic sectors, including the reinstatement of fuel subsidies.⁸¹⁰ The seizure of Sana'a by Houthi forces, backed by Saleh loyalists, sounded the death knell for the transition period.

Following the signing of the PNPA, stability was initially restored in the capital and Houthis were integrated into the security establishment.⁸¹¹ However, the situation quickly deteriorated on 17 January 2015 following the presentation of a draft constitution that envisaged the introduction of a federal system with six regions.⁸¹² The Houthis were aggravated by the proposal and occupied the Presidential Palace with support from military units loyal to Saleh.⁸¹³ Hadi was virtually put under house arrest, and on 22 January he submitted his resignation, along with Prime Minister, Khaled Bahah, and the rest of his cabinet.⁸¹⁴ In early February, the Houthis completed their takeover of power by announcing the dissolution of the parliament and setting up an interim authority, the Supreme Revolutionary Committee (SRC), which would be in charge of forming a new parliament that would in turn establish a five-member presidential council to replace Hadi.⁸¹⁵ On 21 February, one month after resigning under pressure, Hadi managed to escape house arrest in Sana'a and fled to Aden, where he announced that he was still President and declared all political decisions made since September invalid.⁸¹⁶ Several Gulf states announced the relocation of their embassies to Aden in order to bolster Hadi's claims.⁸¹⁷

On 19 March 2015, the situation of violence escalated as fighting erupted between military units loyal to Saleh and Hadi-aligned forces in Aden, and Hadi's residence

809 M. Transfeld, 'Capturing Sanaa: Why the Houthis Were Successful in Yemen', *Muftah*, 27 September 2014, https://muftah.org/houthis-successful-yemen/#.WasnpgX_IW.

810 M. Transfeld, 'Houthis on the Rise in Yemen', Carnegie Endowment for International Peace, 31 October 2014, <http://carnegieendowment.org/sada/57087> (last accessed 8 March 2018); see also A. Longley Alley, 'Yemen's Houthi Takeover', International Crisis Group, 22 December 2014, <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/yemen/yemen-s-houthi-takeover>. For the translated text of the PNPA, see http://www.europarl.europa.eu/meetdocs/2014_2019/documents/darp/dv/darp20141204_05_/darp20141204_05_en.pdf (last accessed 8 March 2018).

811 Salisbury, *Yemen*, supra fn 784, p 24.

812 The Houthis do not reject the introduction of a federal system per se, but rather the division of the country's north into three different federal regions, which they seek to control. See M.-C. Heinze, 'The Primacy of Stability over Real Change', *Qantara.de*, 30 January 2015, <https://en.qantara.de/content/the-crisis-in-yemen-the-primacy-of-stability-over-real-change>.

813 Ibid.

814 Security Council Report, 'February 2015 Monthly Forecast', 30 January 2015, http://www.securitycouncilreport.org/monthly-forecast/2015-02/yemen_13.php (last accessed 8 March 2018).

815 H. Häggglund, 'Yemen's Houthi Rebels Announce Government Takeover', *The Guardian*, 6 February 2015, <https://www.theguardian.com/world/2015/feb/06/yemen-houthi-dissolves-parliament>.

816 H. Almasari, 'Protests Support Yemeni President After He Escapes House Arrest', *CNN*, 23 February 2015, <http://edition.cnn.com/2015/02/22/world/yemen-unrest/index.html>.

817 K. Fahim, 'Houthi Rebels Release Detained Yemeni Ministers', *The New York Times*, 16 March 2015, <https://www.nytimes.com/2015/03/17/world/middleeast/houthi-rebels-release-yemeni-officials-from-house-arrest.html>.

in the city was bombed.⁸¹⁸ On the next day, Sana'a witnessed suicide bombings at two Zaydi mosques in the capital, which reportedly killed 137 people. Islamic State claimed responsibility for the attack, which was the first to be carried out by the group in Yemen.⁸¹⁹ The IS branch in Yemen had been announced earlier in mid-November 2014, and unlike AQAP, its members are largely drawn from non-Yemenis.⁸²⁰ Following the attack, Abdulmalek al-Houthi announced, on 21 March, the mobilization of the armed forces for a campaign in Yemen's south under the guise of fighting AQAP and its affiliates – among whom he counts Hadi.⁸²¹ On the same day, Hadi declared Aden the temporary capital of the country.⁸²²

As the Houthi–Saleh alliance advanced further south, on 24 March the Hadi government asked the GCC for a military intervention in order to protect the country from the Houthi incursion.⁸²³ When Houthi–Saleh forces reached the outskirts of Aden the next day, Hadi fled to Saudi Arabia.⁸²⁴ Shortly afterwards, the Saudi-led coalition of nine Arab countries (Saudi Arabia, the UAE, Bahrain, Egypt, Jordan, Kuwait, Morocco, Qatar and Sudan) announced the beginning of Operation Decisive Storm to counter the Houthis and restore Hadi to power.⁸²⁵ Although the intervention of the Saudi-led coalition against the Houthis was supposedly aimed at countering a perceived Iranian influence by portraying the group as an Iranian proxy in the Arab Peninsula, critics point out that these allegations have been exaggerated. While the Houthis do receive some support from Iran, this has remained marginal and mostly political with minimal financial and military assistance.⁸²⁶

Despite the airstrikes conducted by the Saudi-led coalition, by early April the Houthi–Saleh alliance made major gains in Aden, notably by seizing Aden's central Crater neighbourhood.⁸²⁷

818 'Soldiers Loyal to Yemen's Former President Storm Aden Airport', *The Guardian*, 19 March 2015, <https://www.theguardian.com/world/2015/mar/19/soldiers-loyal-former-yemen-president-aden-airport-dead>.

819 Security Council Report, 'May 2015 Monthly Forecast', 1 May 2015, http://www.securitycouncilreport.org/monthly-forecast/2015-05/yemen_16.php (last accessed 8 March 2018).

820 Crisis Group, *Yemen's al-Qaeda*, supra fn 797, pp 17–19.

821 Security Council Report, 'May 2015 Monthly Forecast', supra fn 819; see also K. Al-Karimi, 'Southerners Prepare for Houthi Invasion', *Yemen Times*, 23 March 2015, <http://www.yementimes.com/en/1870/news/4994/Southerners-prepare-for-Houthi-invasion.htm>.

822 'Yemen's President Hadi Declares New "Temporary Capital"', *Deutsche Welle*, 21 March 2015, <http://www.dw.com/en/yemens-president-hadi-declares-new-temporary-capital/a-18332197>.

823 'UN-led Talks on Yemen to Begin in Doha as Saudi Arabia Backs Hadi', *Middle East Eye*, 24 March 2015, <http://www.middleeasteye.net/news/un-brokered-yemen-talks-begin-doha-1864580777>.

824 A. Al-Haj and M. Michael, 'Yemen's President Flees Aden as Rebels Close in', *The Star*, 25 March 2015, <https://www.thestar.com/news/world/2015/03/25/yemen-president-hadi-flees-aden-palace-as-houthi-rebels-near-officials-say.html>; see also K. Abdallah and S. Aboudi, 'Yemeni Leader Hadi Leaves Country as Saudi Arabia Keeps up Air Strikes', *Reuters*, 26 March 2015, <http://www.reuters.com/article/us-yemen-security/yemeni-leader-hadi-leaves-country-as-saudi-arabia-keeps-up-air-strikes-idUSKBNOMLOYC20150326>.

825 Security Council Report, 'May 2015 Monthly Forecast', supra fn 819.

826 M. Transfeld, 'Iran's Small Hand in Yemen', Carnegie Endowment for International Peace, 14 February 2017, <http://carnegieendowment.org/sada/67988> (last accessed 8 March 2018).

827 M. Mukhashaf, 'Yemen's Houthis Seize Central Aden District, Presidential Site', *Reuters*, 3 April 2015, <http://www.reuters.com/article/us-yemen-security-aden/yemens-houthis-seize-central-aden-district-presidential-site-idUSKBNOMTOG820150403>.

Besides military units under the command of Hadi, other groups with different ideologies fought against the Houthi incursions in the south. These included the so-called 'Popular Committees' – militias mobilized by Hadi before the war to defend his home governorate Abyan – southern secessionists, local tribesmen and AQAP.⁸²⁸ In the midst of this chaos and power vacuum, AQAP succeeded in early April in seizing the port city Mukalla, the fifth largest city in Yemen and the capital of the Hadhramaut governorate.⁸²⁹ This was also due to the fact that the fighting was largely concentrated against the Houthis.

On 14 April 2015, the UN Security Council adopted a resolution that reaffirmed its support for the legitimacy of Hadi and demanded that the Houthis withdraw from all the areas they had seized. Importantly, it established an arms embargo against the Houthis and forces loyal to Saleh, as well as imposing sanctions against Abdulmalek al-Houthi and the former president's son, Ahmed Ali Abdullah Saleh.⁸³⁰ By July, the war scene changed as Hadi loyalists and southern forces managed to retake Aden, aided by the deployment of ground troops from the UAE and Saudi Arabia. Subsequently, Hadi forces turned their eyes towards other cities that separate southern Yemen from Sana'a.⁸³¹ However, the security situation in the city and the wider south remained fragile, as evidenced by several IS attacks that hit the city after its recapture.⁸³²

Al-Qaeda fighters were driven out of Mukalla in late April 2016, almost one year after the group initially seized the city, at the hands of Hadi-aligned forces aided by UAE ground troops.⁸³³ Yet, AQAP is far from defeated and continues until today to exert control over certain territories in southern Yemen, in the governorates of Hadhramaut, Shabwa and Abyan. In the same month, UN-brokered peace talks started in Kuwait between Yemeni parties with the aim of reaching an agreement to end the violence.⁸³⁴ Throughout the talks there were several breaches of agreed ceasefires, and the peace process eventually collapsed in August as fighting intensified.⁸³⁵

828 Security Council Report, 'May 2015 Monthly Forecast', supra fn 819; see also Salisbury, *Yemen*, supra fn 784, p 27.

829 S. Al-Batati and K. Fahim, 'Affiliate of Al Qaeda Seizes Major Yemeni City, Driving Out the Military', *The New York Times*, 3 April 2015, <https://www.nytimes.com/2015/04/04/world/middleeast/al-qaeda-al-mukalla-yemen.html>.

830 UNSC Res 2216, 14 April 2015, http://www.securitycouncilreport.org/atf/cf/%7B65BFCF9B-6D27-4E9C-8CD3-CF6E4FF96FF9%7D/s_res_2216.pdf.

831 M. Knights and A. Mello, 'The Saudi-UAE War Effort in Yemen (Part 1): Operation Golden Arrow in Aden', The Washington Institute, 10 August 2015, <http://www.washingtoninstitute.org/policy-analysis/view/the-saudi-uae-war-effort-in-yemen-part-1-operation-golden-arrow-in-aden> (last accessed 8 March 2018).

832 Salisbury, *Yemen*, supra fn 784, pp 33–34.

833 T. Joscelyn, 'Arab Coalition Enters AQAP Stronghold in Port City of Mukalla, Yemen', *FDD's Long War Journal*, 25 April 2016, <http://www.longwarjournal.org/archives/2016/04/arab-coalition-enters-aqap-stronghold-in-port-city-of-mukalla-yemen.php>.

834 UN News, "'Make Peace Your Choice' Urges UN Envoy, as Yemen Talks Begin in Kuwait', 21 April 2016, http://www.un.org/apps/news/story.asp?NewsID=53750#.Waw2fNGx_IU.

835 'Yemen Peace Talks Collapse as Fighting Intensifies', *Al Jazeera*, 7 August 2016, <http://www.aljazeera.com/news/2016/08/yemen-peace-talks-collapse-fighting-intensifies-160807042106210.html>.

On 28 July 2016, Saleh and Abdulmalek al-Houthi reached a power-sharing agreement that saw the establishment of a ten-member Supreme Political Council (SPC) with equal representation for both camps.⁸³⁶ Subsequently, the Supreme Revolutionary Committee handed power to the SPC which came to be presided over by Salah al-Sammad.⁸³⁷ On 19 September, Hadi fired the Central Bank governor and announced the relocation of the bank to Aden, thus destabilizing an already crumbling economic system and complicating the process of a negotiated settlement with the Houthi-Saleh alliance.⁸³⁸ On 28 November, the SPC announced the formation of a government under Abdelaziz Bin Habtour, an active General People's Congress (GPC) member affiliated to Saleh.⁸³⁹ This event marked a further tightening of the Houthi-Saleh alliance on the political level, although military units loyal to Saleh and Houthi forces remain largely distinct. The alliance between the two camps is often described as an 'alliance of convenience' which is unlikely to endure until the end of the conflict.⁸⁴⁰

B. PARTIES TO THE CONFLICT

There are currently multiple parallel and overlapping non-international armed conflicts taking place in Yemen, most notably between the government and the consolidated forces led by Saudi Arabia (Bahrain, Jordan, Egypt, Kuwait, Saudi Arabia, Sudan, the UAE and the US) and the Houthis; the government and AQAP, and the Southern Movement, as well as between armed groups.

At this stage it is not possible to consider Iran as a party to the NIAC. While the Houthis do receive some support from Iran, this has remained marginal and does not shape their decision-making as much as local alliances and conflict dynamics do.⁸⁴¹ The military support provided to the Houthis since 2011 has largely been limited to training, mostly channelled through Hezbollah.⁸⁴² According to the UN Panel of Experts on Yemen, there is no sufficient evidence to confirm any direct large-scale supply of arms from the Iranian Government given the coalition's tight grip on Yemen's air and maritime spaces.⁸⁴³ Following the Houthis takeover of Sana'a, there has been an intensification of sectarian rhetoric, which tends to de-

836 UN Security Council (UNSC), Final Report of the Panel of Experts on Yemen, UN doc S/2017/81, 31 January 2017, §20.

837 'SRC Hands Over Authority to SPC', *Saba News*, 15 August 2016, <http://sabanews.net/en/news437023.htm>.

838 International Crisis Group, 'Central Bank Crisis Risks Famine in Yemen', 29 September 2016, <https://www.crisisgroup.org/middle-east-north-africa/gulf-and-arabian-peninsula/yemen/central-bank-crisis-risks-famine-yemen>.

839 UNSC, Final Report of the Panel of Experts, supra fn 836, §21.

840 Ibid, §47.

841 Transfeld, 'Iran's Small Hand', supra fn 826.

842 Ibid. For a detailed analysis of Iran's role in Yemen, see F. Al-Muslimi, 'Iran's Role in Yemen Exaggerated, but Destructive', Sana'a Center for Strategic Studies, 29 May 2017, <http://sanaacenter.org/publications/analysis/4348> (last accessed 8 March 2018).

843 UNSC, Report of the Panel of Experts, supra fn 836, §62.

scribe the Houthis as Iranian-backed Shias in Yemen. However, Zaydi Shiism – the faith followed by Houthi members – is very different from the Twelver Shia tradition predominant in Iran, and is actually much closer in practice to Sunni Islam.⁸⁴⁴

1. Yemeni Armed Forces

The Yemeni Armed Forces are estimated to be 43,500 strong.⁸⁴⁵ 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'.⁸⁴⁶

2. The Saudi-Led Coalition

Formed in late March 2015 with the declared goal of countering Houthi forces and restoring Hadi to power. It was originally made up of nine Arab countries (Saudi Arabia, the UAE, Bahrain, Egypt, Jordan, Kuwait, Morocco, Sudan and Qatar); however the latter was cast out from the coalition in June 2017 following the Qatari diplomatic crisis. The military operations of the coalition are spearheaded by Saudi Arabia and the UAE, although these two states seem to have divergent agendas in Yemen. The coalition's air operations are under the operational control of a joint headquarters led by Saudi Arabia and based in Riyadh.⁸⁴⁷ As for ground operations, Saudi Arabia retains operational control in Marib while the UAE has control over ground operations in Aden and the vicinity of Mukalla.⁸⁴⁸ The Saudi-led coalition is believed to be implicated in widespread violations of international humanitarian law (IHL) in Yemen.⁸⁴⁹

3. The United States

With a virtual *carte blanche* from the Hadi government, the US has continued to pursue its air and drone campaign against AQAP targets in Yemen, which dates back to Saleh's era.⁸⁵⁰ Following a controversial ground operation in Yemen in early 2017, the Hadi government was reported to have withdrawn its permission for the US to run ground missions against suspected terrorists in the country.⁸⁵¹ The

844 Transfeld, 'Iran's Small Hand in Yemen', *supra* fn 826.

845 GlobalFirepower, '2017 Yemen Military Strength', https://www.globalfirepower.com/country-military-strength-detail.asp?country_id=yemen (last accessed 8 March 2018).

846 UN News, 'Yemen: Ban, Security Council Welcome Efforts to Reform Armed Forces', 12 April 2013, www.un.org/apps/news/story.asp?NewsID=44638#.UZCwtXZBvX4 (last accessed 8 March 2018).

847 UNSC, Final Report of the Panel of Experts, *supra* fn 836, §30.

848 *Ibid.*

849 International Committee of the Red Cross, 'Yemen: Airstrikes Against Civilians Are an Alarming Trend', 8 August 2017, <https://www.icrc.org/en/document/yemen-airstrikes-against-civilians-are-alarming-trend> (last accessed 8 March 2018); see also *ibid.*, paras 119–134.

850 Crisis Group, *Yemen's al-Qaeda*, *supra* fn 797, p 7.

851 See S. Osborne, 'Yemen Raid that Killed 30 Civilians and US Navy SEAL Uncovered "No Actionable Intelligence", Officials Say', *The Independent*, 2 March 2017, <http://www.independent.co.uk/news/world/americas/uspolitics/yemen-raid-us-navy-seal-30-civilians-killed-donald-trump-first-operation-no-intelligence-actionable-a7607181.html>; D. Sanger and E. Schmitt, 'Yemen Withdraws Permission for U.S. Antiterror Ground Missions', *The New York Times*, 7 February 2017, <https://www.nytimes.com/2017/02/07/world/middleeast/yemen-special-operations-missions.html>.

US has been supplying weapons on a large scale to Saudi Arabia, including cluster bombs which pose a particular threat to civilians.⁸⁵² In addition, it has been providing logistic and intelligence support to the Saudi-led coalition, as well as refueling the coalition's fighter jets that conduct airstrikes in Yemen.⁸⁵³

4. Saleh-Aligned Forces

The Saleh network has three main components: tribal, political and military. The tribal element is centred on his Sanhan tribe, whereas the political component revolves around the GPC, which he still heads today. The military component is the most important for Saleh's continued influence on the political scene, as he still enjoys the personal loyalty of several high-ranking officers whom he appointed during his presidency.⁸⁵⁴ Despite Hadi's efforts to reform the army during the transitional period, many military units have remained loyal to Saleh.

5. The Houthis (also called Ansar Allah)

The Houthis are a Zaydi 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 Houthis were engaged in six rounds of conflict against the Saleh regime between 2004 and 2010 (commonly referred to as the Six Wars), and participated in the uprisings in early 2011 that called for him to step down. The power vacuum created by Yemen's uncertain transitional period has drawn more supporters to the Houthis.

Later, the Houthis struck an alliance with their old foe and took hold of the capital in September 2014. Although their political alliance with Saleh seems to have tightened over the course of the last year, military units loyal to Saleh and Houthi forces remain largely distinct.⁸⁵⁵ Militarily, the Houthis rely on a network of militias, which rotate frequently through areas under Houthi control, as well as former military units who broke away from Hadi and joined the Houthi movement. Many, though certainly not all, of these officers are Zaydis from Sayyid families.⁸⁵⁶

6. The Southern Movement or Southern Transitional Council

Since March 2015, several military units have remained loyal to the former president or have defected to join the Houthis. In February 2016, Hadi appointed Ali Mohsin, Saleh's former ally, as Deputy Supreme Commander of the armed forces

852 J. Mechanic, 'The Ongoing U.S. Role in the Decimation of Yemen', *The Huffington Post*, 18 February 2017, http://www.huffingtonpost.com/entry/the-ongoing-us-role-in-the-decimation-of-yemen_us_58a65d82e4b026a89a7a2913.

853 *Ibid.*; see also O. Pawlyk, '2 Years Into Yemen War, US Ramps Up Refueling of Saudi Jets', *Military.com*, 15 February 2017, <http://www.military.com/daily-news/2017/02/15/2-years-yemen-war-us-ramps-up-refueling-saudi-jets.html> (last accessed 8 March 2018).

854 UNSC, Final Report of the Panel of Experts, *supra* fn 836, §42.

855 *Ibid.*, §47.

856 *Ibid.*, §50.

in an attempt to gather support from local tribes and military leaders.⁸⁵⁷ Mohsin is an influential figure in Yemen with a wide network of allies, and he is reported to also have strong ties with the Islamist Islah party. On the other hand, Hadi does not enjoy the full allegiance of forces fighting under the banner of the Yemeni military or security forces. This is arguably the case for the Security Belt forces and Hadrami Elite forces, which are nominally under the control of the Yemeni Government but are actually under the operational control of the UAE.⁸⁵⁸ Here, it should be noted that although Hadi hails from the southern governorate of Abyan, many southerners are distrustful of him in view of his role in the 1994 Yemeni Civil War, during which he fought on the side of the northern army.⁸⁵⁹

7. Al-Qaeda in the Arab Peninsula (AQAP)

The group emerged in January 2009 through a union of the Saudi and Yemeni branches of al-Qaeda in the Arab Peninsula.⁸⁶⁰ During the uprising, AQAP evolved from a primarily internationally focused jihadist organization to one with a significant local insurgency component that seeks to establish territorial control. Consequently, in 2011 it created a parallel group, Ansar al-Sharia, to widen its domestic appeal and separate its local component from its international brand.⁸⁶¹ Capitalizing on the security vacuum, during 2011 the group took control over territories in the south and started its own experiment in local governance.⁸⁶² Although AQAP was driven out from Mukalla in 2016, it is far from defeated and is still present in the governorates of Hadhramaut, Shabwa and Abyan.⁸⁶³

857 'Yemen President Appoints Ali Mohsin as Deputy Supreme Commander', *The New Arab*, 23 February 2016, <https://www.alaraby.co.uk/english/news/2016/2/23/yemen-president-appoints-ali-mohsin-as-deputy-supreme-commander>.

858 UNSC, Final Report of the Panel of Experts, supra fn 836, §132; see also R. Goodman and A. Moorehead, 'UAE, a Key US Partner in Yemen, Implicated in Detainee Abuse', *Just Security*, 15 May 2017, <https://www.justsecurity.org/40978/uae-key-partner-yemen-implicated-detainee-abuse>.

859 N. Al-Dawsari, *Breaking the Cycle of Failed Negotiations in Yemen*, POMED – Project on Middle East Democracy, May 2017, http://pomed.org/wp-content/uploads/2017/05/PolicyBrief_Nadwa_170505b-1.pdf (last accessed 8 March 2018).

860 Crisis Group, *Yemen's al-Qaeda*, supra fn 797, p 4.

861 Ibid, p 6.

862 Salisbury, *Yemen*, supra fn 784, p 13.

863 Crisis Group, *Yemen's al-Qaeda*, supra fn 797, p 19.

C. KEY DEVELOPMENTS IN 2017: AN INCREASINGLY COMPLICATED MOSAIC

In January, the Saudi-led coalition announced the launch of Operation Golden Arrow aimed at retaking the western coast and cutting off a key Houthi–Saleh alliance supply line.⁸⁶⁴ By the next month, pro-Hadi forces managed to capture the strategic port of Mocha.⁸⁶⁵ Meanwhile, in late January US special forces conducted a ground operation in the Yakla area of the Al-Bayda governorate in Central Yemen for the purpose of intelligence gathering against AQAP. The operation drew strong criticism as it led to the death of around 30 civilians and fell short of achieving its declared goals.⁸⁶⁶ Reportedly, the Yemeni Government withdrew permission for the US to run ground missions against suspected terrorists in Yemen following the raid.⁸⁶⁷ On 25 March, a court in Sana'a sentenced Hadi and six other government officials to death in absentia for high treason.⁸⁶⁸

By late April, tensions intensified between Hadi and the UAE over the latter's support to southern pro-secession groups that seek a different agenda to that of the internationally recognized president. After an earlier armed standoff between UAE-backed Security Belt forces and forces loyal to Hadi in Aden, on 22 April the so-called Inclusive Hadramout Conference was held by pro-secession local governor, Ahmad Bin Braik, under the implicit patronage of the UAE, calling for greater autonomy for the province.⁸⁶⁹ This aggravated Hadi who responded on 27 April by dismissing a number of UAE-linked officials in the south, most notably the governor of Aden, Aidarous al-Zubaidi, and Minister of State Hani Bin Braik who also commands the Security Belt forces.⁸⁷⁰

Hadi's decision to dismiss al-Zubaidi and Bin Braik sparked wide protests across southern Yemen. On 4 May, the factions of Hirak released the 'Aden Historic Declaration', which denounced Hadi's decision and entrusted al-Zubaidi with establishing a leadership for governing and representing southern Yemen.⁸⁷¹ Consequently, on 11 May al-Zubaidi announced the formation of the Southern Transitional Council.

864 Arab Center for Research and Policy Studies, *Operation Golden Arrow: The Prospects for a Resolution to the Yemeni Conflict in 2017*, 8 March 2017, https://www.dohainstitute.org/en/PoliticalStudies/Pages/Operation_Golden_Arrow_the_Prospects_for_a_Resolution_to_the_Yemeni_Conflict_in_2017.aspx (last accessed 8 March 2018).

865 'Gulf-Backed Yemeni Forces Capture Red Sea Coast City', *Reuters*, 7 February 2017, <http://uk.reuters.com/article/uk-yemen-security/gulf-backed-yemeni-forces-capture-red-sea-coast-city-agency-idUKKBN15M2LU>.

866 Osborne, 'Yemen Raid that Killed 30 Civilians and US Navy SEAL', supra fn 851.

867 Sanger and Schmitt, 'Yemen Withdraws Permission for U.S. Antiterror Ground Missions', supra fn 85.

868 'Pro-Houthi Court Sentences Yemen President to Death for Treason', *Reuters*, 25 March 2017, <http://www.reuters.com/article/us-yemen-security-court/pro-houthi-court-sentences-yemen-president-to-death-for-treason-idUSKBN16W0UF>.

869 Sana'a Center for Strategic Studies, 'Yemen at the UN – April 2017 Review', 7 May 2017, <http://sanaacenter.org/publications/yemen-at-the-un/99> (last accessed 8 March 2018). The conference was convened with the sponsorship of Bin Braik and under the protection of the UAE-aligned Hadrami Elite forces. See Seche, 'Shaping the South', supra fn 785.

870 Seche, 'Shaping the South', supra fn 785.

871 'Adan's Historic Declaration authorizes Al-Zubaidi to declare a political leadership led by him to run and represent the South', *Almasdar Online*, 4 May 2017 <http://www.almasdaronline.com/article/90915> (in Arabic).

cil, effectively creating a third government in Yemen. The Transitional Council is presided over by al-Zubaidi himself whereas Hani Bin Braik serves as his Vice-President.⁸⁷² Challenged by the announcement, Hadi rejected the move and considered the formation of the council an act that ‘targets the country’s interests, its future and social fabric’.⁸⁷³ The GCC backed Hadi on his position and rejected the move as well.⁸⁷⁴ By 31 May, the UAE reportedly came to exert indirect control over Aden International Airport after clashes erupted between the airport’s UAE-backed security director, Saleh al-Amri, and his deputy, al-Khader Kurdah, who supports the Hadi government.⁸⁷⁵

In the wake of the Qatari diplomatic crisis that broke out in early June, the repudiated emirate was expelled from the Saudi-led military coalition.⁸⁷⁶ On 15 June, the UN Security Council adopted a presidential statement on the importance of keeping all Yemen’s ports functioning, including Hodeida port, as a critical lifeline for humanitarian support and other essential supplies.⁸⁷⁷ The statement came against the backdrop of the Saudi-led coalition plans to launch an offensive on Hodeida, raising fears of catastrophic humanitarian consequences of famine and a cholera outbreak as the city’s port receives 70 percent of humanitarian aid and commercial goods imported into the country.⁸⁷⁸

On August 2017, fighting broke out in Sana’a on 26 August between a convoy carrying Saleh’s son and Houthi forces that stopped it at a checkpoint.⁸⁷⁹ The incident left at least two people dead and took place against the background of mounting tensions in the Houthi–Saleh alliance. Saleh had rallied thousands of supporters in Sana’a on 24 August in a show of force a day after Houthi fighters decried him as ‘evil’ for having earlier described them as a ‘militia’.⁸⁸⁰ On 31 August, the GPC released a statement that stressed the need to heal the rift between the Houthis and Saleh supporters and maintain a united alliance against their opponents.⁸⁸¹

872 S. Uqba, ‘Yemen’s “Third Government” Emerges in Southern Yemen’, *The New Arab*, 11 May 2017, <https://www.alaraby.co.uk/english/indepth/2017/5/11/Yemens-third-government-emerges-in-southern-Yemen>.

873 ‘GCC Rejects Formation of Yemen Transitional Council’, *Al Jazeera*, 13 May 2017, <http://www.aljazeera.com/news/2017/05/gcc-rejects-formation-yemen-transitional-council-170513141733873.html>.

874 Ibid.

875 ‘UAE tightens its control on Aden airport after incidents described as “a play” and hands it over to ‘Shalal’’, *Mareb Press*, 31 May 2017, http://marebpress.net/mobile/news_details.php?sid=128573 (in Arabic).

876 Sana’a Center for Strategic Studies, ‘Yemen at the UN’, *supra* fn 869.

877 UNSC, Statement by the President of the Security Council, UN doc S/PRST/2017/7, 15 June 2017.

878 Security Council Report, ‘July 2017 Monthly Forecast’, 30 June 2017, http://www.securitycouncilreport.org/monthly-forecast/2017-07/yemen_29.php (last accessed 8 March 2018).

879 M. Al Qalisi, ‘Pro-Saleh Colonel Killed in Fighting with Houthi Allies in Sanaa’, *The National*, 26 August 2017, <https://www.thenational.ae/world/mena/pro-saleh-colonel-killed-in-fighting-with-houthi-allies-in-sanaa-1.623118>.

880 ‘Houthis and Saleh Forces Clash in Sanaa, at Least Two Dead’, *Reuters*, 26 August 2017, <https://www.reuters.com/article/us-yemen-security/houthis-and-saleh-forces-clash-in-sanaa-at-least-two-dead-idUSKCN1B600G>.

881 B. Carpowich, C. Neafsey and M. Morton, ‘Gulf of Aden Security Review’, *Critical Threats*, 31 August 2017 <https://www.criticalthreats.org/briefs/gulf-of-aden-security-review/gulf-of-aden-security-review-august-31-2017> (last accessed 8 March 2018)..

According to the Rulac update in February 2018, ‘[d]ivisions and infighting between allies towards the end of 2017 and beginning 2018 added additional layers of complexity to the ongoing non-international armed conflicts in Yemen between the Houthis and the internationally recognized government of President Hadi.

First, in December 2017, the Houthi-Saleh alliance broke down and former President Saleh was killed during the fighting between the former allies in Sana’a. Second, in January 2018, fighting erupted in Aden between forces loyal to the Hadi government and the Southern Transitional Council / Southern Movement, a separatist group that had emerged in 2007 and allied itself with the Hadi government. The fighting between forces loyal to the Hadi government and the Southern Transitional Council / Southern Movement brought to the forefront divergences within the Saudi-led international coalition. The Saudi-led international coalition has been intervening in Yemen with the consent of the Hadi government since 2015. During the recent infighting, Saudi Arabia supported the Hadi government while the United Arab Emirates backed the Southern Transitional Council / Southern Movement.

In parallel, the United States significantly expanded its airstrikes against suspected al-Qaeda in the Arabian Peninsula members in 2017.’

Further reading: RULAC, ‘RULAC: Updates on the Armed Conflicts in Iraq, Libya, Syria, South Sudan, Turkey, and Yemen’, 18 February 2018, <http://www.rulac.org/news/rulac-updates-on-the-armed-conflicts-in-iraq-libya-syria-south-sudan-turkey> (last accessed 23 April 2018). See also RULAC, ‘Non-international Armed Conflicts in Yemen’, last updated 22 March 2018, <http://www.rulac.org/browse/conflicts/non-international-armed-conflicts-in-yemen> (last accessed 23 April 2018).

D. WAR CRIMES ALLEGATIONS, INVESTIGATIONS AND PROSECUTIONS

Yemen has signed but not ratified the 1998 Rome Statute of the International Criminal Court.

The UN High Commissioner for Human Rights reported on March 2017, that since the beginning of the Yemeni conflict in March 2015, at least 4,773 civilians have been killed and another 8,272 injured by the violence.⁸⁸² Food insecurity has reached critical levels as 17 million people (around two-thirds of the population) are estimated to be severely food insecure, among whom 7 million are close to famine.⁸⁸³ The country witnessed a cholera outbreak in October 2016, which has since led to at least 1,740 deaths with a further 320,000 suspected cholera cases.⁸⁸⁴ Cholera flourished amidst a collapsing health care system and around 16 million people not having access to adequate water, sanitation or hygiene.⁸⁸⁵

882 UN Office of the High Commissioner for Human Rights, ‘Over 100 Civilians Killed in a Month, Including Fishermen, Refugees, as Yemen Conflict Reaches Two-Year Mark’, 24 March 2017, <http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21444&LangID=E> (last accessed 8 March 2018).

883 UNSC, Security Council Meeting, UN doc S/PV.7999, 12 July 2017.

884 Ibid, p 4.

885 Ibid.

According to Human Rights Watch, Saudi-led coalition military operations in Yemen, supported by the US and United Kingdom, against Houthi forces and Saleh-aligned forces 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 international IHL rules on the conduct of hostilities.⁸⁸⁶ The UAE was also alleged to be running secret detention facilities in Yemen where detainees are subjected to torture.⁸⁸⁷ Similarly to the Saudi-led coalition, the Houthi–Saleh alliance is also believed to be implicated in violations of IHL.⁸⁸⁸

The UK and France have also been supplying weapons and military equipment to the Saudi-led coalition on a large scale. Since the coalition's military campaign began in March 2015, the UK has licensed over £3.3 billion of arms and military equipment despite evidence of repeated breaches of IHL by the coalition.⁸⁸⁹ A legal challenge to the UK Government's arms sales to Saudi Arabia was dismissed by the High Court in London in July 2017.⁸⁹⁰ France has reportedly provided training to Saudi fighter pilots in addition to stepping up its arms and military equipment sales to the Saudi-led coalition after March 2015.⁸⁹¹ Officers from the UK and France, as well as other countries, are present at the joint headquarters that oversees the coalition's air operations in Yemen.⁸⁹²

886 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> (last accessed 8 March 2018).

887 M. Michael, 'In Yemen's Secret Prisons, UAE Tortures and US Interrogates', *Associated Press*, 22 June 2017, <https://apnews.com/4925f7f0fa654853bd6f2f57174179fe>.

888 UNSC, Final Report of the Panel of Experts, *supra* fn 836, p 3.

889 Campaign Against Arms Trade, 'UK Arms Sales to Saudi Arabia', 3 February 2017, <https://www.caat.org.uk/campaigns/stop-arming-saudi/arms-sales> (last accessed 8 March 2018).

890 Amnesty International, 'Court Ruling over UK Arms Sales to Saudi Arabia a "Deadly Blow" to Yemeni Civilians', 10 July 2017, <https://www.amnesty.org/en/latest/news/2017/07/court-ruling-over-uk-arms-sales-to-saudi-arabia-a-deadly-blow-to-yemeni-civilians/> (last accessed 8 March 2018)..

891 W. Mohamed and T. Fortin, 'Exposed: France's Arms Dealers Making a Killing in Yemen', *The New Arab*, 19 September 2017, <https://www.alaraby.co.uk/english/comment/2017/9/19/exposed-frances-arms-dealers-making-a-killing-in-yemen>.

892 UNSC, Report of the Panel of Experts, *supra* fn 836, §30, fn 836.

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