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Prospects for Justice and Accountability in Syria

Alexis Staubus, Emory & Henry College

Abstract

In recent years, the international community has closely monitored the actions of Syrian president, Bashar-al Assad. Since the outbreak of the Syrian Civil War in 2011, President Assad has continued to incite widespread violence throughout Syria by committing mass atrocities that violate international laws. There is evidence to provide proof of President Assad's connection to his crimes and that his crimes have killed and displaced millions of Syrians. However, the legalities of indicting a head of state and the special interests between the members of the United Nations Security Council create obstacles that make prosecuting President Assad near impossible in a traditional international court. This paper analyzes the prospects of President Assad being indicted by the international community and tried in a court for violating international laws. The cases of Slobodan Milošević and Charles Taylor are used to closely examine both the similarities and differences as they apply to President Assad. The close examinations and comparisons of these cases serve as the method in determining the best model for achieving an indictment and trial for President Assad. This paper

further examines how the creation and implementation of a special tribunal for President Assad's case is the best available option for indicting President Assad on international law charges and holding a trial for his case.

Syria has been devastated by civil war and contentious politics for nearly seven years. In 2011, a protest opposing Syrian President, Bashar al-Assad, turned into a full-scale civil war in Syria ("Why is there a War," 2018). However, the primary concern in Syria has not only been years of violent civil war and protests, but rather the focus has been on President Bashar al-Assad and his tactics for fighting in Syria's civil war (Human Rights Watch, 2018). During Syria's civil war, Assad has violated international laws and human rights by using torture, chemical weapons and nerve agents, starving and withholding humanitarian aid to Syrians, forcing disappearances and displacing thousands of Syrians (Human Rights Watch, 2018). These acts have resulted in the deaths of thousands of civilians and forced as many as 23 million pre-war Syrians out of the country (Ali & Escritt, 2018). Assad has clearly violated international law for years and has yet to face the international court for his crimes. This paper explores whether there is a possibility that Assad could be indicted by the international



community and tried in a court for violating international laws. If so, how should the international community pursue a trial and convict Assad of international crimes? This paper will evaluate the prospects of indicting and trying Assad by examining the cases of the former president of Yugoslavia, Slobodan Milošević and the former president of Liberia, Charles Taylor. This paper will draw on both of these cases as models for designing a special international tribunal to try Assad for violating international laws.

In 2000, following the death of Syrian President Hafiz al-Assad, Assad was elected to a seven-year term as Syria's president before being re-elected in 2007 (Bashar al-Assad, 2018). Though many Syrians opposed the transfer of power from father to son, Syrians along with much of the international community were hoping Assad's age, education, and exposure to western culture would usher in a new era of government characterized by democracy and economic growth. Assad promised Syrians a wide array of reforms such as reviving the economy, combating corruption, and implementing a more democratic means of government ("Syrian President," 2018). For the first time in decades, independent newspapers were permitted to publish and hold public political forums for those who were pressing for government reforms ("Syrian President," 2018). Assad also released hundreds of political prisoners, but despite the optimism of Syrians and the international community, Assad has continued to pursue hardline stances on policy and use authoritarian methods of governing. By 2001, not

only were the limitations on the press put back in place, but public political forums were closed and individuals leading opposition toward the Syrian government were arrested (Bashar al-Assad, 2018).

Assad's Atrocities

Following Assad's actions in March of 2011, after a number of teenagers were arrested and tortured for painting revolutionary slogans at a school, there was an outbreak of peaceful pro-democracy protests in the city of Derra. Government security forces sought to control the political uprisings by using live ammunition during protests resulting in the death of several protesters. This event triggered thousands of protesters to take to the streets throughout Syria to protest Assad's presidency and call for his resignation as Syrian president ("Syria: The Story," 2016). Government opposition forces began to take up arms as an act of defense and later used their weapons to oust government security forces from localities. As the violence throughout Syria escalated, Syria descended into a full-scale civil war. By June 2013, reports from the United Nations (U.N.) estimated the death toll to be at 90,000 people ("Syria: The Story," 2016). Seven years since the emergence of the Syria's civil war, as many as 400,000 people have been killed and at least five million have fled Syria; leading to the displacement of six million people internally (Human Rights Watch, 2018). Since the outbreak of the civil war in Syria, Assad's regime has resorted to fighting government opposition groups by means that violate international

laws and human rights (“Why is there a War,” 2018). Assad has guided deliberate and indiscriminate attacks against civilians and infrastructure belonging to civilians by using chemical weapons and nerve agents in areas under the control of opposition groups (Human Rights Watch, 2018). Government forces have led more than 100 chemical attacks resulting in the deaths of thousands of civilians (Shaheen, 2016). In 2015 alone, Assad was responsible for 69 chemical attacks and has continued to use chemical weapons with nerve agents on four occasions in 2016 and on at least four occasions in 2017 (Shaheen, 2016). In addition to these chemical attacks, Assad’s government forces have dropped chlorine on eight separate occasions (Human Rights Watch, 2018). Assad’s regime has also employed starvation, the withholding of humanitarian aid, and the forcible displacement of Syrians as tactics during the war. Reports from the U.N. indicate that by 2017 government and pro-government forces had trapped an estimated 540,000 persons in besieged areas with rapidly deteriorating humane conditions causing communities in besieged areas to surrender to Assad’s government forces (Human Rights Watch, 2018). The Syrian Network for Human Rights has documentation indicating over 4,000 arbitrary arrests have been conducted by Assad’s forces and as of 2017 more than 80,000 people remain disappeared. Such torture and ill-treatment in detention and forced disappearances have continued throughout Syria (Human Rights Watch, 2018).

Assad has persistently violated international laws and could be charged

with international crimes. Because of Assad’s use of chemical weapons, he could be charged with the illegal use of chemical weapons in addition to being charged with crimes that span the seven years of the civil war (Kelly & Whiting, 2018). These criminal acts punishable under international law include: attacking and detaining civilians and prisoners of war, subjecting civilians and prisoners to torture, and Syrians being forcibly displaced by the Assad regime (Kelly & Whiting, 2018). Each of these crimes are considered to be criminal acts worthy of punishment according to customary international laws, which are the Geneva Conventions. However, the International Criminal Court (ICC or the Court) has codified these customary laws and the ICC recognizes a separate statute, the Rome Statute. Each of the international crimes mentioned are categorized as international crimes under the Rome Statute (Kelly & Whiting, 2018). The Rome Statute was adopted on July 17, 1998 at a diplomatic conference in Rome, Italy. The Rome Statute was later ratified in 2002 and is supported by more than 120 different countries. This international treaty established the ICC and the Trust Fund for Victims (TFV), which is used to implement reparations by the ICC and provide both physical rehabilitation and psychological rehabilitation in addition to providing material support to victims (“Rome Statute”). The statute provides legal definitions for crimes like genocide, war crimes, crimes against humanity, and crimes of aggression. Essentially, the Rome Statute acts an instrument that guides the legalities of the ICC by elaborating on core legal texts that form much of the framework



of the ICC (“Rome Statute”). According to the Rome Statute, Assad’s actions over the course of the last seven years of the Syrian Civil War directly violate article seven in regards to crimes against humanity and torture and article eight in reference to war crimes and the use of prohibited weapons. Therefore, Assad, if indicted, could be charged with war crimes, crimes against humanity, the illegal use of chemical weapons, and torture in accordance with the Rome Statute (The International Criminal Court, 1998).

Assad has committed international crimes that violate the Rome Statute; however, the ICC only has the jurisdiction to indict and try offenders from states that signed the Rome Statute, and Syria is not a signatory of the Rome Statute. This is problematic when trying to indict Assad and put him on trial for war crimes, crimes against humanity, the illegal use of chemical weapons, and torture, there is another option (“Seeking Justice,” 2017). Another option to indict Assad is to get a referral to the ICC from the U.N. Security Council. The UN Security Council is comprised of a total of 15 members. Five of these members: The United States, the United Kingdom, France, China, and the Russian Federation are permanent members. In addition to these five permanent members, there are another ten non-permanent members that are elected to the U.N. Security Council by the General Assembly to serve two-year terms (“Members”). This referral would grant the necessary jurisdiction for the ICC to indict and try Assad. However, this is not likely to be a viable option because there has to be a unanimous vote from the U.N. Security Council to

refer Syria to the ICC (“Seeking Justice,” 2017). In 2014, the U.N. Security Council voted on a resolution to allow the ICC to go after officials in Syria for charges of crimes against humanity. Though the ten non-permanent members of the UN Security Council voted in favor of the resolution alongside three of the permanent members, Russia and China vetoed the resolution (Sengupta, 2014). Obstacles to Trying Assad for International Crimes

Both China and Russia have special interests in Syria. China has been offering the Assad regime financial support as well as expressing interest in playing a key role in the reconstruction of Syria after the civil war. China sees post-war opportunities to expand the Belt and Road Initiative (BRI) in key regions of the Middle East. Assad will need to make considerable investments in infrastructure reconstruction, services which BRI could provide and China sees this as a business opportunity (Kowalewski, 2018). Russia has military bases located in Syria and in 2015, Russian forces launched an air campaign as a symbol of support to the Assad regime (“Why is there a War,” 2018). Russia has special interests in Syria because Moscow exports arms to Syria and generates a profit and Russia’s motive to support Assad’s regime is also out of fear that Syria could collapse with Russia’s support (Hill, 2013). China and Russia have interests in Syria compelling both states to vote against any resolutions allowing the ICC to have jurisdiction in Syria. Therefore, other alternatives involving the international community will need to be utilized if Assad is going to be held accountable for the international crimes he has

committed during the Syrian Civil War.

The possible options available to seek the indictment of Assad rely greatly on the cooperation of the international community, there are questions as to if this will even be possible and how a special tribunal would be structured without the involvement of the ICC. Assad, being the head of state in Syria, also poses other unique concerns seeing how indicting and trying a head of state is a difficult process. Historically, the difficulty of this process comes from a customary principle in international law based on state immunity (Mandhane, 2011). Traditionally, a custom of international law is for the sitting head of state to have “personal” immunity while presiding in office where they will be immune from foreign criminal jurisdiction. State immunity recognizes the functions of the head of state making this custom of international law more expansive than diplomatic immunity or any other type of functional immunities. State immunity recognizes the high-levels of diplomacy, negotiations, and dispute settlements (Kiyani, 2013). A sitting head of state’s immunity is not exclusive to when the head of state is traveling for official government business, but state immunity may also apply when the head of state is traveling for pleasure. However, the “personal” component of state immunity afforded to a head of state belongs to that of the government, not the individual head of state. Therefore, state immunity is not permanent and may be waived by the government at any time. Subsequently, once the head of state no longer presides of the state’s office, state immunity will no longer be afforded to the head of state (Kiyani, 2013). As Syria’s head of

state, Assad is afforded immunity under customary international law, which further complicates the process of indicting Assad while he is still in power. Since the end of the Cold War, there have been less than seventy heads of state that have withstood trial for violating international laws. While holding leaders such as Slobodan Milošević and Charles Taylor accountable in a court may have seemed like a daunting and unachievable task, such tasks have been accomplished. Though the number of heads of state who have been indicted and put on trial is small, such indictments and trials of high authority government figures have been made possible due to a more recent emergence of special courts and tribunals (Mandhane, 2011). The last option of constructing a special court or tribunal is the most viable option for indicting and putting Assad on trial. Analyzing the cases of Milošević and Taylor are best for comparison and determining if holding Assad accountable for his crimes will ever be possible.

The Case of Slobodan Milošević

As previously mentioned, indicting and trying a head of state for violating international laws is a difficult process. However, the international community did have success in the case of Slobodan Milošević, former president of Serbia from 1980 to 1997 and former president of Yugoslavia from 1997 to 2000. Milošević was indicted and put on trial in an effort by the international community to convict Milošević for violating international laws during his presidencies (Allcock, 2018). In 1987, Milošević was elected as the President



of the Communist Party of Serbia and implemented a political style of government centered on populism. Milošević's populist style of government was appealing to Serbians, which allowed Milošević to gain popularity from Serbians who then began to call for an "antibureaucratic revolution" over the heads of the League of Communists of Yugoslavia (Allcock, 2018). This allowed Milošević to restore Serbia's control over Vojvodina and Kosovo and replace party leaderships in the provinces with his own party leadership while ousting the leadership of the League of Communists of Yugoslavia. Slovenia, Croatia, and Macedonia seceded in 1991. The Bosniaks and Croats of Bosnia and Herzegovina followed by a vote to secede in 1992 (Allcock, 2018).

Milošević's responses to these successions resulted in the Yugoslav Wars of Succession from 1991 to 1999 (Schulman, 2003). The Yugoslav Wars of Succession consist of four wars: the war in Slovenia in 1991; the war in Croatia from 1991 to 1995; the war in Bosnia and Herzegovina from 1992 to 1995; and the war in Kosovo from 1998 to 1999 ("Slobodan Milosevic," 2016). The Yugoslav Wars of Succession resulted in the redrawing of ethnic maps in Bosnian and Croatia where Milošević's primary purpose was to ethnically cleanse Bosnia and Croatia. This was done with excessive force causing 250,000 deaths and nearly 3.5 million persons to flee the country and become refugees (Schulman, 2003). To attack Croatia and Bosnia, Milošević utilized volunteer militias, and he also used the Yugoslavia army and joined forces with Franjo Tudjman of Croatia to help exercise forced movements of populations of

people living across Croatia and Bosnia (Schulman, 2003). In addition to these forces, Serbia Montenegro's Territorial Defense units, Serbian Ministry of Internal Affairs police units, and paramilitary units targeted, attacked, and seized control over and drove out populations of people residing towns, villages, and settlements within the territories of Bosnia and Croatia. Under the advisement of Milošević, these forces deported an estimated 170,000 Croats and other non-Serb civilians; exterminated Croats and other civilians who were of Serbian ethnicity; and imprisoned thousands of Croats and non-Serbs holding them in inhumane conditions ("Slobodan Milosevic," 2016). Following massive airstrikes that had been deployed in Bosnia against Serbian forces, the 1995 Dayton peace agreement was forced through to end the war (Schulman, 2003).

In 1997, Milošević was elected by Yugoslavia's federal parliament to serve as President of the Federal Republic of Yugoslavia. This allowed Milošević to maintain power since he had already served two terms as the president of Serbia and could not hold presidential office for a third term (Allcock, 2018). Later in 1998, there was a deteriorating relationship after years of dispute between Serbia and the ethnic Kosovo Albanians that led to the federal security forces and the guerrilla Kosovo Liberation Army to engage in open armed conflict. The consequences of the conflict were the killings of Serbian policemen and Serbian politicians and the Serbians launching an offensive to take out insurgents. Milošević then ordered an ethnic cleansing of the Kosovar Albanians.

This drove out hundreds of thousands of Kosovar Albanians out of the country and into neighboring countries as refugees (Allcock, 2018). In June of 1999, the Serbian military and forces from the Federal Republic of Yugoslavia began to use tactics such as terror and systematic and widespread violence in Kosovo to target the Albanian Civilian population. The widespread violence and chaos compelled NATO to launch a military campaign between March and June of 1999. This military campaign supported by NATO coerced Serbian forces to withdraw military troops and military actions from Kosovo (“Slobodan Milosevic,” 2016).

While president of the Federal Republic of Yugoslavia, Milošević violated international laws by allegedly leading a conspiracy in Kosovo to expel the Kosovo Albanian population. In addition to expelling nearly 800,000 Kosovo Albanian civilians from Kosovo, other international crimes committed by Milošević during this event include: the systematic killing of Kosovo Albanian men, women, and children under the command of President Milošević; sexual abuse of women; and the systematic destruction and looting of Kosovo Albanian property (“Indictments”). As a result of Milošević ordering such actions to take place in Kosovo, in May 24, 1999, Milošević was indicted by the International Criminal Tribunal for the Former Yugoslavia on counts of deportation, crimes against humanity, and violations of the customs of war (Scharf, 1999). After Milošević’s indictment in 1999, unrest under his leadership and faltering economy contributed to Milošević’s being defeated by Vojislav Kostunica in

the presidential elections in September 2000. Later in 2001, the Yugoslav government arrested Milošević and he was turned over to the International Criminal Tribunal for the Former Yugoslavia (ICTY) (Allcock, 2018).

After Milošević’s arrest and transfer of custody to the ICTY, he was indicted on October 8, 2001 for violating international laws while actively engaging in combat in Croatia. Soon after this indictment, the ICTY’s Office of the Prosecutor served Milošević with another indictment for violating international laws while fighting in combat in Bosnia and Herzegovina. In both of these additional indictments, prosecutors alleged that Milošević, who at the time was the sitting president of the Republic of Serbia, was leading a conspiracy to ethnically cleanse the population. Prosecutors asserted this conspiracy was similar to the Kosovo conspiracy (“Indictments”). In Croatia, Bosnia, and Herzegovina, forces under the command of Milošević attacked villages, towns, and municipalities and then proceeded to take control of such areas. Milošević’s military forces gained control over territories by using a system to prosecute non-Serbs in order to push these non-Serbs out of the surrounding territories. Force was used during this process to expel men, women, and children from their homes, they were then gathered together to be held in camps where the living conditions were inhumane. In such camps, thousands of non-Serbs were beaten, sexually assaulted, tortured, and murdered. Altogether, Milošević was indicted on 66 counts of violating international laws (“Indictments”). In July 2001, Milošević plead not guilty to all counts included in



the indictment for Kosovo; on October 29, 2001 Milošević pled not guilty to all the counts included in the indictment for Croatia; and on December 11, 2001 Milošević pled not guilty to all the counts included on the indictment for Bosnia (“Slobodan Milosevic,” 2016). Initially Milošević was charged on three separate indictments, during Milošević’s trial in February 2002 the Appeals Chamber of the ICTY moved to try the three separate indictments pertaining to Kosovo, Croatia and Bosnia and Herzegovina in one trial (“Slobodan Milosevic,” 2016).

Milošević was indicted on multiple charges of crimes against humanity as well as violations of the customs of war, a notably missing charge on the indictment for Milošević’s actions in Kosovo is genocide. Milošević was responsible for ethnic cleansing and charges of genocide, being the most serious charges within a tribunal’s jurisdiction, would strengthen the prosecutor’s case. However, genocide requires evidence to show a precise intent to cleanse a territory or a particular ethnic group (Scharf, 1999). This makes genocide the most difficult crime to prove. In this instance, in order to prove the crime of genocide, evidence in the courtroom must show the intent to partly or entirely destroy an ethnic group by: murdering members of a targeted group; by causing serious physical harm or mental harm to persons of the targeted group; there must be deliberate intent to inflict conditions upon members of the targeted group that will cause physical destruction to part of the group or to the group as a whole; proving there were actions taken that would prevent procreation within

the group; and by proving the exercise of force to transfer children of the targeted group to a different group (Scharf, 1999). Therefore, getting a conviction for the crime of genocide was less likely because the tribunal’s precedent of the murdering of 340 Kosovo Albanians would not likely be considered genocide when the population was that of 1.8 million (Scharf, 1999).

While still President of Yugoslavia, Milošević was indicted by the ICTY and then tried in this same international criminal tribunal. The ICTY, was established in May 1993 by the U.N. is located in The Hague in the Netherlands (“About the ICTY”). The creation of this special tribunal was initially sparked by the mass atrocities that were taking place in Croatia and Bosnia and Herzegovina at the time. The ICTY was created to specifically answer to war crimes that were committed during the various conflicts in the Balkans in the 1990’s as well as to prosecute persons who were most responsible for violating international laws (“About the ICTY”). The ICTY was the first war crimes court created by the U.N. and has an estimated regular budget of approximately \$180,000,000 (“The Cost of Justice”). The court was funded by contributions made from member states of the U.N. The court has continually received funding from U.N. member states and has received other funding from non-governmental organizations as well as other institutions (“Support and Donations”).

Milošević’s Trial

Milošević’s trial began on February 12, 2002 (Sadat, 2002). During the trial,

Milošević declined the appointment of a defense counsel and therefore represented himself throughout the extent of his trial (Scharf, 2006, 27). However, Milošević did have a team of legal experts who were helping him develop his case outside of the tribunal behind closed doors (Scharf, 2006, 28). Ultimately, the representation of himself in court affected the amount of testimony that could be presented by the prosecution at trial as well as the overall length of the trial. Milošević suffered from a number of medical conditions that reduced the number of days court proceedings were held. Instead of the tribunal holding trial proceedings five days, the number of trial days a week was reduced to three days a week in addition to cutting the length of trial days from eight hours a day to four hours a day (Scharf, 2006, 27). Other delays such as the court adjourning for a period of a few weeks at a time for Milošević's health conditions resulted in lost trial days. While Milošević's poor health conditions drew out the length of the trial, the death of one of the presiding judges, Richard May, delayed the trial even further as a new judge had to be appointed to the bench in Judge May's place (Scharf, 2006, 27). Other delays in the court include the uncooperativeness of Milosevic, whose defiant actions at times would have earned him expulsion in any other courtroom (Scharf, 2006, 28).

The tribunal agreed to hear charges relating to the Kosovo indictment first and then hear the charges relating to Croatia and Bosnia and Herzegovina during a second phase of the trial (Sadat, 2002). Throughout the duration of Milošević's trial, the

prosecution claimed Milošević used army chiefs, military staff, interior ministers, security services, and presidents and prime ministers all of which were regarded as top-level officials from the governments of Yugoslavia, Bosnia, and Croatia. Prosecutors claimed Milošević used these various government officials and military officials as his co-perpetrators ("Prosecution Case"). The prosecution also argued Milošević provided the finances, personnel, logistical planning, and operational support to his co-perpetrators so he would be able to seize territory in Croatia, Bosnia and Herzegovina, and Kosovo with better ease. Furthermore, prosecutors argued that the paramilitaries and police forces who committed the criminal acts had received orders to commit such crimes by Milošević and his co-perpetrators in addition to receiving appropriate funding and political support from Milošević ("Prosecution Case"). The prosecution made clear throughout their arguments how Milošević created an atmosphere that encouraged the victimization of civilians; an atmosphere that directly violates international laws, since according to international laws, political leaders, police forces, and military forces are legally obligated to protect the lives of civilians ("Prosecution Case").

In an effort to prove the credibility of their argument, the prosecution's evidence in the trial included testimony, audio files, video content, and documentaries which were presented over the course of 90 days during the trial. 293 witnesses were called upon by prosecutors during Milošević's trial to testify ("Prosecution



Case”). Witnesses testifying during the trial included police experts, military experts, legal experts whose testimony centered on how there was legal subordination between the military and Milošević; and victims who used their testimonies to describe how they had suffered from the crimes Milošević had perpetrated. Witnesses also made remarks on the evidence presented demonstrating that Milošević had undermined legal chains of command. Forensic experts testified and presented evidence to the tribunal showing bodies that had been exhumed from graves in Croatia, Bosnia and Herzegovina, and Kosovo and that those deaths had been caused by the commands of Milošević (“Prosecution Case”). Demographic experts showed the tribunal through their testimonies how there were drastic decreases in populations of people who were not Serbs living in territory controlled by Milošević. The court also heard testimony from international representatives and high-level officials. Testimony from these individuals provided information in regards to meetings that had been held with Milošević where the co-perpetrators gave reports on the acts of violence and crimes they were carrying out by following the orders of Milošević. Other witnesses who testified had worked under Milošević and were able to provide an insight into how Milošević operated (“Prosecution Case”).

The prosecution also submitted audio evidence, video evidence, and documentary evidence to the court. This evidence content amounted to 672 exhibits and over 29,000 pages of documents. This evidence provided the court with

minutes from meetings between Milošević and his co-perpetrators and voice audio recordings of their conversations (“Prosecution Case”). The video submitted into evidence showed Milošević overseeing military units, the same military units that were responsible for executing violate crimes that were in violation of international laws. Lastly, a preponderance of evidence was submitted to the court by prosecutors to stress that Milošević is the person who is most responsible for the suffering of thousands of victims (“Prosecution Case”).

As for the defense, Milošević represented himself during the trial. Despite his declining health, he proved to the court that his mental health and physical health were stable enough to act as his own defense. He proved the stability of his health to the tribunal as he routinely took command over cross-examining witnesses and the allegations asserted by the prosecution surrounding the atrocities he allegedly committed (Sadat, 2002). As for his defense strategies, rather than seeking a dismissal or an acquittal, Milošević repeatedly denied the legitimacy and legalities of the ICTY and wanted to publicly discredit the tribunal (Scharf, 2006, 32). This was his one consistent strategy in his defense throughout the trial. However, Milošević also consistently challenged and made efforts to damage the credibility of the witnesses brought forth by the prosecution and undermine witness testimonies (Sadat, 2002). Milošević’s defense largely concentrated on the Kosovo indictment (Slobodan Milosevic, 2016). Milošević focused on portraying himself as being a typical

civil servant to his country, and a president who had been kept in the dark about the major decision-making processes in reference to the events that occurred in Croatia, Bosnia and Herzegovina, and Kosovo throughout the 1990s (Bass, 2003). Milošević called on several witnesses to testify in his defense. Much of the defense's witnesses included those who were part of Serbian security forces and had remained loyal to him. Other witnesses included Richard Holbrook, a former United States assistant secretary of state. Holbrook testified to the tribunal how during conflicts with Bosnia in 1995 that Milošević was the one responsible for reigning in Bosnian Serbs and being a key component to helping pave the way for the Dayton Accord. In addition to the defense calling on witnesses to testify, other forms of evidence submitted to the court were letters in support of Milošević (Bass, 2003).

Milošević's trial began in 2002 and the trial was still ongoing by March 2006 (Slobodan Milosevic, 2016). Since 2001, Milosevic was being held in the U.N. detention center at The Hague. During the early morning hours on March 11, 2006 Milosevic was found dead in his holding cell (Simons & Smale, 2006). According to the autopsy report, Milošević's had suffered from a heart attack resulting in his death ("Preliminary Autopsy," 2006). Milošević's trial was dismissed on March 14, 2006. Despite the premature ending of Milošević's trial before a verdict could be reached, Milošević's trial is still a critical case to examine when evaluating the possibilities of trying and indicting Assad for violating international laws. Not only was Milošević the first sitting

head of state to be indicted and brought forth to answer before a special tribunal for allegedly violating international laws, but Milošević's trial marked the end of an era where a sitting head of state was immune to being held legally responsible for violating international laws. Milošević's trial set a precedent and since his trial heads of state like Saddam Hussein and Charles Taylor have been indicted and tried in special tribunals for violating international laws ("Weighing the Evidence," 2006).

Milošević's Case Serves as a Model for Assad

Milošević's case is applicable to Assad because the indictment and trial of Milošević is something many never thought could happen. Not only does Milošević's case demonstrate that this is possible, but the ICTY shows the possibility of designing a special tribunal with the capacity to try complex cases. Since the trial, the structure of the ICTY has been used as an example for how to structure other special tribunals. Therefore, using the ICTY as a model would be useful in creating a tribunal that would have success in trying Assad. Assad is similar to Milošević in that both, while heads of states, allegedly have engaged in criminal activities that have violated international laws such as crimes against humanity and war crimes (Groll, 2013). Both Assad and Milošević's means of carrying out such crimes have included torture, forcibly displacing thousands of native persons, and attacking civilians. A specific example of the parallels between the two cases can be seen between the events that took place Kosovo and those



happening in Syria under Assad. Serbs were being accused of systematically using force to displace a population of people and carrying out massacres to target and attack Albanians in Kosovo during the 1990's. Meanwhile, Assad has been utilizing security forces in Syria to exploit chemical weapons to attack territories being ruled by Sunni rebels (Groll, 2013). Assad and Milošević's cases overlap in terms of the crimes they both have committed and how they systematically carried out crimes that violated international laws. They are also similar in the aspect that Milošević

was once a ruling head of state and the international community was doubtful of ever having the opportunity to hold Milošević accountable and Assad is currently a head of state who the international community has doubts if his power will ever diminish and allow for justice to be served.

Table 1

A Similar Comparison of Slobodan Milošević and Bashar al-Assad

The Case of Charles Taylor

Milošević's case is not the only case to

Slobodan Milošević	Similarities	Bashar al-Assad
President of Serbia (1989-1997) President of Yugoslavia (1997-2000)	Milošević and Assad both violated international laws as sitting presidents.	President of Syria (2000-present)
Prompted the Yugoslav Wars of Succession (1991-1999)	Both initiating civil wars that caused years of widespread violence and killed and displaced millions of native residents in their countries.	Prompted the Syrian civil war that began in 2011 and is still ongoing and causing widespread violence throughout the Middle East.
Accused Serbs of systematically using force to displace an entire population and carry out massacres to target and attack Albanians in Kosovo.	Ordered the systematic killing of a population of people through a chain of command	Utilizes security forces in Syria to exploit chemical weapons to attack territories ruled by Sunni rebels.
Crimes: Ethnic cleansing, torture, murder, sexual assault, systematic destruction and property looting, forcible displacement	Milošević and Assad committed crimes that violate the Rome Statute putting them in violation of international laws.	Crimes: Rape, targeting civilians, sieges, forced disappearances and displacements, torture, murder, illegal use of chemical weapons
Charged: Crimes against humanity, violation of customs of war, deportation	Both leaders committed similar crimes charging Milošević with crimes against humanity and Assad's could also be charged with crimes against humanity.	Potential Charges: War crimes, illegal use of chemical weapons, crimes against humanity, torture.

serve as a blueprint for indicting and trying Assad for violating international laws. Charles Taylor was the president of Liberia from 1997 to 2003 and was the first head of state to successfully be tried and convicted in a special tribunal. While in office, his presidency was largely marked by rebellion and conflict as he encouraged and executed a number of crimes during the civil war in Sierra Leone throughout the 1990s. During the civil war in Sierra Leone, government forces were trying to oppose attempts of 'coup d'état' being made by two rebel groups: The Revolutionary United Front and the Armed Forces Revolutionary Council ("Charles Taylor," 2018). Both rebel groups received support from the National Patriotic Front of Liberia as Taylor provided support to the rebel groups in forms of money, materials, personnel, weapons, ammunition, and military training. As president of Liberia, Taylor encouraged military actions of the Revolutionary United Front and the Armed Forces Revolutionary Council alliance. These military actions supported and funded by Taylor include the launch of armed attacks targeting civilians, humanitarian aid workers, and the peacekeeping forces sent by the U.N. During these attacks, murders, mutilations, rape, and the pillaging and abducting of civilians to be used as sex slaves were crimes in which Taylor became notorious for encouraging and executing ("Charles Taylor," 2018). Taylor was also known for using war tactics involving the drugging of children and then utilizing them to mine for diamonds in order to pay for guns and gun ammunition. Taylor is responsible for the deaths of nearly 50,000 people and the forced relocation

of thousands of refugees and leaving Sierra Leone in debris as the country struggles to repair infrastructure and regain natural resources (Simons, 2012). Holding Taylor legally responsible in court for these serious crimes that he had a hand in executing during the civil war was made possible through the establishment of a special tribunal, The Special Court for Sierra Leone (SCSL). The physical establishment of the SCSL is located in Freetown, Sierra Leone and the Appeals Chamber of the court is placed in close proximity to The Hague in Leidschendam, Netherlands ("Charles Taylor," 2018). Locating the special tribunal in a neighboring country required the approval of the U.N. Security Council. The Security Council passed Resolution 1315 formally requesting the U.N. Secretary-General to begin negotiations with the Sierra Leone government to create a special tribunal. In 2002, after Resolution 1315 was passed, the U.N. Secretary-General and the Sierra Leone government signed the Agreement on the Establishment of a Special Court for Sierra Leone formally establishing the creation of the SCSL (Perriello & Wierda, 2006). The decision to locate the court in Sierra Leone was based on problems that the ICTY and other international criminal tribunals had faced with the tribunals being located in territories outside of where the atrocities were committed. Both tribunals had to find financial supporters to back the extraordinary expenses of the court, there were periods of slow progress, and lack of knowledge in regards to proceeding with victims under the court's jurisdiction. In addition to trying to minimize such difficulties faced by



international tribunals, Sierra Leone was willing to host the SCSL because the location would emphasize respect for the sovereignty of Sierra Leone and encourage legitimacy in the rule of law and in the country's domestic legal system (Perriello & Wierda, 2006).

Taylor's Trial

Taylor was indicted by the SCSL on March 7, 2003 on 17 counts of violating international laws. The 17 charges in the indictment included: war crimes for acts of terrorism, collectively punishing a civilian population, violence to life and persons, outrages of personal dignity, and the pillage and abductions of persons, all of which are prohibited by international laws. Taylor was also charged with crimes against humanity, which included the extermination of civilians, murder, rape, and the enslavement of persons ("Charles Taylor," 2018). At the time of the indictment, Taylor was traveling outside of Liberia, so an international arrest warrant was issued for Taylor to immobilize and pressure him to return to Liberia (Wladimiroff, 2005). After pressure from the international community, on August 11, 2003 Taylor resigned from his office as president of Liberia. Later in 2006, Taylor was arrested near Cameroon and handed over to SCSL when he pled not guilty to the international crimes that had been charged with ("Charles Taylor," 2018). However, on June 16, 2006, the SCSL was transferred to The Hague on the basis that the court proceedings being housed in Sierra Leone was inciting violence and threatening the peace and stability of West Africa. The trial

was held by the SCSL while utilizing ICC courtrooms and then later due to scheduling conflicts the SCSL utilized the courtroom at the Special Tribunal for Lebanon (Special Court for Sierra Leone). After the transfer of the court to The Hague, six of Taylor's charges were dropped to reduce the duration of the trial. Taylor's trial began in June 2007 at the SCSL in Freetown, Sierra Leone ("Charles Taylor," 2018). Before the commencement of his trial, Taylor had agreed to be represented by a defense team and was generally cooperative. The court sat three years and ten months, which was approximately 420 days of court ("Even a 'Big Man,'" 2012). As for evidence used in Taylor's trial, 1,522 exhibits were moved into evidence, 115 witnesses gave testimony, and 281 written decisions were issued. The prosecution called upon 94 witnesses to give testimony. Three witnesses testified as experts, 59 of the witnesses were persons who testified to the crimes that had been committed, and 32 of the witnesses were persons who testified to the links between the crimes that had been committed by Taylor himself. The prosecutors greatly relied on "insider" witnesses as an attempt to link Taylor to the serious crimes committed. These witnesses were those who were often suspected of committing serious crimes or had admitted to committing serious crimes ("Even a 'Big Man,'" 2012). The prosecution used their evidence to claim Taylor was the provider of military training and support to the rebel groups in Sierra Leone. Prosecutors also used their evidence to argue Taylor had knowledge of the crimes being committed by the rebel groups he supported, or he at least should

have had knowledge of such events, and he failed to reasonably act and prevent further crimes or punish the rebel groups (“Even a ‘Big Man’,” 2012). The Rome Statute outlines a number of actions that are considered to be crimes against humanity. Additionally, as head of state, Taylor had a legal responsibility to protect the civilian population. When a head of state has knowledge of such acts being systematically directed against a civilian population and does not condemn such criminal acts, then the head of state is legally responsible (“International Criminal Court,” 1998). To prove Taylor’s innocence, the defense argued Taylor was a maker of peace who, through the capacity of presidential office, was trying to make settlement negotiations in a conflicted time in Sierra Leone. Additionally, the defense made claims in their arguments that Taylor’s trial was a conspiracy by the West to remove Taylor from power (“Charles Taylor,” 2018). During the trial, the defense called upon twenty-one witnesses to testify in order to challenge the claims of the prosecution. The witnesses were comprised of individuals who were prior leaders and fighters from the Revolutionary United Front and the Armed Forces Revolutionary Council. Taylor also provided testimony during his trial (“Even a ‘Big Man’,” 2012).

On April 26, 2012, the Trial Chamber of the SCSL found Taylor guilty beyond a reasonable doubt on 11 counts of planning, abetting, and aiding war crimes in addition to be found guilty of crimes against humanity. Taylor was also found guilty of planning attacks on areas rich in diamonds in Sierra Leone. However, according to the court’s judges, the prosecution

failed to show proof of Taylor being individually responsible for the criminal acts committed beyond a reasonable doubt (“Even a ‘Big Man’,” 2012). Taylor was sentenced to serve 50 years in prison and following his conviction, he was transferred to Frankland Prison located in Durham, United Kingdom to serve his prison sentence (“Charles Taylor,” 2018). The location of where Taylor would serve his prison sentence if convicted was previously agreed upon by The Hague and the SCSL when the case was transferred. The Hague agreed to allow the SCSL to transfer the court to The Hague with the stipulation that if Taylor were convicted, then he would be imprisoned and serve his prison sentence in another country. The United Kingdom extended an offer to hold Taylor in a British prison if he were to be found guilty of the crimes. The Frankland Prison was chosen in particular because the Frankland Prison is a high-security prison with the capacity to house high-risk and high-profile criminals (Summers, 2012).

Taylor’s Case Serves as a Model for Assad

Charles Taylor’s case is significant because Taylor was the first head of state to be indicted and put on trial for international crimes since the Nuremberg trials (Mandhane, 2011). His case is also significant to finding a way to indict and try Assad because Taylor’s case can be seen as a blueprint for building a case against Assad. The current standings in Syria under Assad’s regime and Assad’s actions during the civil war in Syria share common elements with Taylor and the Sierra



Leone during the 1990s. For instance, Taylor was a head of state when he was indicted and Assad is currently is a head of state while perpetrating similar crimes to that of Taylor (Rose, 2012). Some of the crimes Assad has committed during the Syrian Civil War include: rape, targeting civilians, sieges, forced disappearances, forced displacements of thousands of Syrians, torture, and the murder of thousands of individuals throughout the country (Human Rights Watch, 2018). Each of these acts are considered to be war crimes and crimes against humanity (“Rome Statute”). During the civil war in Sierra Leone, Taylor committed crimes such as murder, the collective punishment of a civilian population, torture, abductions, and acts of terrorism. These actions are also considered to be war crimes and crimes against humanity (“Charles Taylor,” 2018). During Taylor’s trial the SCSL used reports from the U.N. in addition to media reports as evidence to prove Taylor had knowledge of the crimes being committed. As in the case with Assad, the U.N. has collected and continues to collect evidence for reports to show how the crimes committed are ongoing and the role Assad plays in such criminal acts (Rose, 2012).

In analyzing the similar characteristics between Assad and Taylor, Taylor’s case is an example of how indicting and trying Assad for violating international laws could be possible since Taylor was also a head of state who was under similar circumstances, committed similar crimes, and was still indicted and tried under pressure from the international community. In fact, some experts in international law agree that not only are the two cases

similar, but the case against Assad is stronger than Taylor’s case was when he was president of Liberia. For instance, the SCSL heavily relied on facts that Taylor was often in contact with the Revolutionary United Front and the Armed Forces Revolutionary Council forces to plan and carry out crimes; however, the court found Taylor’s orders were advisory in nature as he operated through aides and the orders were not obeyed (Rose, 2012). This resulted in Taylor being found not guilty of ordering soldiers to commit crimes under the concept of superior responsibility since soldiers who were ordered to go to Sierra Leone to fight in the civil war did not stay under Taylor’s control. In contrast, reports from the U.N. Human Rights Council provide relevant information to prove that Assad directs the day-to-day commands of the Syrian military. Reports also indicate how operations violating human rights have been carried out by Syria’s military in a way that requires direction from the state. Therefore, Assad’s case has the element necessary for the conviction of ordering and planning crimes, the element Taylor’s case lacked showing how the Assad’s case is even stronger than Taylor’s case (Rose, 2012). Overall, the case of Charles Taylor provides a blueprint for how Assad could be indicted and put on trial for his actions.

Table 2

A Similar Comparison of Charles Taylor and Bashar al-Assad

Charles Taylor	Similarities	Bashar al-Assad
President of Liberia (1997-2003)	Taylor and Assad have both violated international laws as sitting presidents.	President of Syria (2000-present)
Sierra Leone Civil war	Both leaders have spent a portion of their presidencies engaging in civil wars, perpetrating criminal being condemned by the international community.	Syrian civil war
Promoted civil war in Sierra Leone by supporting the rebel groups to overthrow the leadership in Sierra Leone.	Taylor and Assad both incited years of civil wars leading to widespread violence and the killing of hundreds of thousands of lives.	Prompted the ongoing Syrian civil war in 2011 to suppress uprising against the Assad regime.
Crimes: Murder, collectively punished civilians, rape, torture, abductions, acts of terrorism	Taylor and Assad have committed crimes that violate the Rome Statute putting them in violation of international laws.	Crimes: Rape, targeting civilians, sieges, forced disappearances and displacements, torture, murder, illegal use of chemical weapons
Charges: War crimes and crimes against humanity.	Taylor was charged with war crimes and crimes against humanity and Assad could also be charged with war crimes and crimes against humanity.	Potential Charges: War crimes, illegal use of chemical weapons, crimes against humanity, torture.

Limitations to Creating Special Tribunals

Despite the examples of the SCSL and the ICTY, which are tribunals that were both successfully created to try complex violations of international laws, many tribunals are never even an option to consider (Bass, 2003). International tribunals are often not considered or are unsuccessful because of the significant costs of creating the tribunal and the continued expenses for keeping

the tribunal running throughout the duration of a trial. The costs of tribunals are extensive because international tribunals are formed to investigate and try complex cases that involve terrorism, organized crime, white-collar crimes, as well as other crimes that fall under the category of war crimes and crimes against humanity. Such crimes are by definition widespread and systematic crimes. Investigations of these crimes involve the examination of thousands of incidents that have occurred over



a period of years that often occur in remote locations and in multiple languages (Skilbeck, 2008).

The tribunal bears the responsibility of providing the budget for crime scene analysis and forensic evidence services which require considerable resources. The tribunal's budget provides financing for travel expenses of the hundreds of victims, witnesses, and investigators called upon by the prosecution and the defense. Funds for a detention unit to transport and house suspects; security to protect the premises of the tribunal as well as the staffers, visitors, and suspects; and funds for building and facility costs and the salaries of staff members must also come from the tribunal's budget. ("The Cost of Justice"). Translation services are a necessity in tribunals as well as the reconciliation of civil law and common law in order to establish and implement procedural rules and rules of evidence. Both of these services are time consuming processes and in international tribunals the more time a tribunal takes to try a case, the more funding a tribunal will need to continue operation.

The cost of tribunals such as the ICTY and the International Criminal Tribunal for Rwanda (ICTR) individually reached as much as \$100 million per year (Dicker & Keppler, 2004). Costs of a tribunal before the commencement of a trial could be as much as \$708,000 as was the case in the ICTY. Unlike a simple murder trial in a national criminal justice that could last months, trials in international tribunals are so extensive because crimes being tried and the laws being applied are so complex. The set-up of the tribunal is

time consuming and the proceedings of the trial may take years leading to excessive and unpredictable costs (Skilbeck, 2008). When considering an international tribunal as an option, after the cost-benefit analysis ratio of a tribunal, states often argue the financial investments of a tribunal are better used in post-conflict regions to support reconstruction and development. The financial burdens of financing tribunals are often outweighed leading to the unsuccessful implementation of international tribunals, despite the successes of the SCSL and the ICTY (Malone, 2008).

Contrasts in the Cases of Assad, Milošević, and Taylor

There are similar comparisons between the cases of Assad, Milošević, and Taylor that allow for Milošević and Taylor's cases to be viewed as models when determining how to try Assad under international laws. However, Assad's case deviates from both Milošević's case and Taylor's case in ways that will likely pose new problems that the cases of Milošević and Taylor never had to contemplate. One of the most significant differences separating Assad from both Milošević and Taylor is how the Syrian Civil War has become a larger international conflict ("Why is there War," 2018). For instance, the conflict's actors are no longer just Assad and the rebel groups (Friedman, 2018). There are a number of state actors involved in Syria. For instance, Russia has military bases in Syria and has supported Assad by launching air campaigns. Russia has been a key influence in turning the Syrian civil war in Assad's favor. Iran is

also involved in Syria's civil war and has deployed hundreds of troops to assist Assad's military and has financially supported Assad with billions of dollars. Iraq, Afghanistan, and Yemen have each sent armed and trained Shia Muslim militiamen, mostly from the terrorist organization Hezbollah, to fight for Assad ("Why is there War," 2018).

The United States, France, and other Western countries have provided support to rebel groups in Syria. These states have carried out airstrikes against Assad and supported groups such as the Syrian Democratic Forces in an effort to capture territory from jihadists. Turkey has provided support to the rebels by containing the Kurdish military. Saudi Arabia has provided arms and financial support to the rebel groups. Israel has conducted hundreds of airstrikes against Syria in an effort to obstruct Iran's military entrenchment in Syria and to obstruct Hezbollah from receiving weapons from Iran ("Why is there War," 2018). Violence from the Syrian civil war has also spilled over into Jordan and is wearing on the social, economic, and political fabric of Jordan as the country has become a point of transit for external support for the rebel groups. This has led to Jordan being vulnerable to retribution from Iran's Quds Force, Hezbollah, and other agents associated with Assad's regime. The growing refugee population in Jordan is putting pressure on scarce water supplies and the state's security since Jordan no longer has the capacity to bear such large numbers of refugees and is also being used as a port of entry for Syrian fighters, weapons, and money (Young, Stebbins, Frederick, & Al-Shahery, 2014).

The Syrian civil war is recognized as an international conflict because of the number of states within the international community who have become entangled in the Syrian civil war. Additionally, many of the states have diverging interests with one another and their loyalties are split between Assad and the rebels triggering other conflicts between states. The Syrian civil war and diverging views of Assad's regime is just part of the complex web of this war. Syria is also about the confrontation between two of the world's largest military powers, the United States and Russia; two NATO members, the United States and Turkey; and sworn enemies, Israel and Iran. The Syrian civil war is at an intense international level, unlike that of the Balkans or Sierra Leone. States cannot make foreign policy or military decisions in Syria without taking into consideration the other states involved in Syria at the risk of starting another war (Friedman, 2018). This complicates solutions to indicting and trying Assad, especially since Assad has an ally like Russia who would likely provide Assad with protection from indictment and trial.

Kosovo suffered some of Milošević's worst atrocities and unlike Syria, the war in Kosovo was less internationalized as the conflict was essentially contained within the Southern Balkans and had a minimal chance of spillover into neighboring states threatening to destabilize or engage other regions in conflicts (Kaplan, 2013). Kosovo is located in Europe, where the states north of the Balkans have democratic forms of government (Khazan, 2013). States



that are democracies are generally more stable states (Quinn & Wooley, 2001). The more stable democratic states neighboring Kosovo were able to contain the ethnic conflict from spilling over into their borders and causing instability. In contrast, the undemocratic states surrounding Syria were already in the midst of instability themselves and Assad's civil war has been spilling over into other neighboring states such as Lebanon and Turkey. This made interventionist strategies a more secure policy option in targeting Milošević as there was less fear of inflaming unstable territories or causing conflicts between other states (Khazan, 2013).

Taylor's conflict in Sierra Leone was an internationalized civil war; however, the Sierra Leone civil war was not on the same international level as Syria. West Africa has long been a region of civil wars and violence, and the civil wars in this region of Africa in particular often intimately affect neighboring states (Bah, 2013). The Sierra Leone civil war was no different in this sense as the civil war was produced by conflicts that were spilling over the border from Liberia into Sierra Leone during the Liberian civil war. The civil war in Sierra Leone was largely confined to Sub-Saharan Africa. The interconnections between the Sierra Leone civil war and Liberian civil war did not incite any additional violence in the West African community (Fyfe, Sesay, & Nicol, 2018).

There were other outside actors who engaged in the conflict taking place in Sierra Leone such as the United Kingdom who sent troops to Sierra Leone in order to secure efforts for evacuations, provide security,

and provide operational training and support to government forces. Nigeria sent the Economic Community of West African States Monitoring Group (ECOMOG) to Sierra Leone to try to end the rebellion and maintain stability. The U.N. intervened and worked to create the United Nations Mission to Sierra Leone, a peacekeeping force designed to enforce the Lomé Peace Accord, which provided cease fires provisions and provisions for disarming combatants and utilizing power-sharing to create a political settlement (World Peace Foundation, 2015). As already noted, Liberia was a state actor involved in Sierra Leone since Liberian President Taylor is responsible for inciting a civil war in Sierra Leone. South Africa is also recognized as being engaged in Sierra Leone since the International Monetary Fund pushed South Africa to intervene because the International Monetary Fund was providing Sierra Leone government with financial support to destroy the rebellion in the country (World Peace Foundation, 2015). Lastly, the United States was involved in the Sierra Leone civil war, but the United States did not have direct involvement. The United States privately pressured the Sierra Leone government to make a negotiation with the rebel forces and negotiate a peace agreement. Despite members of the international community responding to the civil war in Sierra Leone and neighboring countries being affected by the civil war, some of the largest and most influential members of the international community, such as the United States and Russia were not directly involved in the civil war in Sierra Leone. Though this was an internationalized conflict,

conflicting interests between the states in regards to Sierra Leone did not foster risks of new wars between the states (World Peace Foundation, 2015).

Assad diverges again from Milošević and Taylor when comparing the leadership stability of Assad compared to the leadership stability of Milošević and Taylor. For instance, both Milošević and Taylor were ousted from political office, making both of the former presidents more vulnerable to being prosecuted for international crimes. Milošević began to fall from power in the spring of 1999 when NATO carried out an 11-week bombing campaign against the Federal Republic of Yugoslavia after NATO states had failed to individually or collectively create policies to prevent Milošević from continually provoking wars in the Balkans.

Milošević accepted the demands of NATO after rationally calculating that continuing to resist the international community he was risking everything and had nothing to gain. If Milošević continued to resist, he knew his actions would result in escalated bombings. His decision to capitulate rested on knowing a NATO military presence that would claim the rights to access all of Yugoslavia and having the ability to decide the future of Kosovo by the enforcement of a NATO referendum, which would cause a loss of all of Serbia. Overall, Serbia's control over Kosovo and Milošević's personal rule and physical survival was at risk if Milošević chose to resist (Lambeth, 2001). On June 10, 1999 Milošević fell to his resistance and agreed to a peace agreement with NATO. The peace agreement called upon Milošević to remove his Serb

forces from Kosovo, and Milošević's Serb forces were replaced with peacekeeping troops from NATO ("NATO Bombs Yugoslavia," 2018). The bombings not only resulted in Milošević's loss of Kosovo, but he was also stripped of his legitimacy and popularity from his deepest supporters and police forces at a time when his popularity was already dwindling. The NATO bombings created a united opposition who aligned with Vojislav Kostunica rather than Milošević during the 2000 election. This resulted in Milošević being defeated in the 2000 presidential election and falling from power (Erlanger, 2000).

Even though Milošević had been indicted in 1999 as a sitting president, his electoral defeat during the 2000 presidential election made him more vulnerable to prosecution. Once Milošević was no longer president, he was not afforded the benefits of state immunity, making the process of arresting the former president easier for the ICTY. Additionally, his loss of power motivated the prime minister of Serbia, Zoran Djindjić, to have Milošević extradited to an American airbase located in Bosnia, where he was then taken into the custody of the ICTY and put on trial (Penrose, 2010). The NATO bombings were significant in that they caused Milošević to lose his deepest supporters and his legitimacy and indirectly aided in his presidential election defeat and opening a window of opportunity to ease the process of the ICTY gaining custody and ensuring a trial (Erlanger, 2000).

As for Taylor, he was forced out of the Liberian presidency in 2003 and into exile. After the U.N. imposed sanctions on Liberia to punish Taylor



for his atrocities and refusal to negotiate a peace deal civil war in Sierra Leone continued to escalate. This prompted the international community to condemn Taylor as Liberian president and call for Taylor to relinquish his presidency (“Charles Ghankay Taylor,” 2017). After condemnation and continued widespread war and violence, Taylor and the rebels came to a peace agreement to end Liberia’s civil war, which would also declare the war to be over in Sierra Leone as well. In the peace agreement both parties agreed that the fighting would cease if Taylor stepped down as president of Liberia and was exiled from the country. Charles would only agree to the peace deal if he received asylum. Taylor accepted an offer from Nigeria for asylum and Taylor relinquished his power as president on August 11, 2003. Vice president, Moses Blah, ascended the Liberian presidency and the wars in Liberia and Sierra Leone ceased as planned and Taylor left the country to live in asylum in Nigeria (“Liberian President,” 2003).

Initially, under the terms of the agreement, when Taylor sought asylum in Nigeria he was still given immunity from being arrested and tried for international crimes. However, while living in exile in Nigeria, human rights groups found Taylor to be violating the terms of the peace agreement by interfering with politics in Liberia and trying to escape from Nigeria. Taylor was arrested by Nigerian authorities for his attempted escape and lost his rights to immunity under the peace agreement (“Charles Taylor ‘Duped,’” 2009). After violating the terms to the peace agreement, in March 2006, Liberia requested Taylor’s extradition

and Nigeria agreed to the extradition (“Charles Ghankay Taylor,” 2017). Once Taylor was turned over to Liberia, he was vulnerable to prosecution, and the SCSL seized the opportunity to apprehend Taylor and try him for international crimes (Romano & Nollkaemper, 2003). Assad’s situation conflicts with Milošević’s and Taylor’s because his leadership has more stability, which poses additional complications to indicting and trying him. For example, Syria, like Kosovo, has been the target of military style attacks as well. In 2007, as a form of retribution for using chemical weapons on civilians, the United States launched 59 tomahawk cruise missiles into Syria targeting a Syrian air base (Cooper, Gibbons-Neff, & Hubbard, 2018). In 2018, the United States and European allies once again launched airstrikes to punish Assad yet again for another chemical attack. Unlike Kosovo, the airstrikes failed to be instrumental in Assad losing legitimacy or shaking Assad into fear (Cooper, Gibbons-Neff, & Hubbard, 2018). Also, like Taylor, Assad has received international condemnation and has been asked to relinquish his presidency (Alrifai, 2017). However, Assad has no intentions to step down from his presidency. Assad has publicly addressed the calls for him to step down as Syria’s president by saying that Syria is facing a national challenge, and a president does not run from challenges and he will not be stepping down as president of Syria. Assad has denied requests to renounce his presidency; therefore, thinking Assad will be open to negotiating peace deals that would include sending him into exile is unrealistic (“Syria’s President,” 2012).

In contrast with Milošević and Taylor's cases, Assad's future as Syria's president seems to be more secure than ever. No one who remains on the battlefield in Syria is either unwilling or does not have the ability to topple Assad's regime. The rebel forces are weakening and beginning to embrace the possibility of the inevitable rule of Assad. Rebel occupied territories have shrunk, and international powers are losing interest in supporting the rebels and turning their focus to eliminating the Islamic State (Hubbard, 2017). President Trump has cancelled the clandestine American program that allowed the Central Intelligence Agency (C.I.A.) to covertly provide the Syrian rebel groups with arms and supplies. The program was ended because President Trump recognized the program was failing. He began to recognize that toppling Assad in the near future is unlikely (Sanger, Schmitt, & Hubbard, 2017). Regional powers and even foreign officials along with Syrians have started running operations as if Assad will remain in power. Assad's allies perceive Syria as an impending victory with talks about how the rebuilding of Syria will take place. Syria even hosted an international trade fair in 2017 where Assad signed an agreement with Iran to rebuild Syria's power grid (Hubbard, 2017).

Russia has also helped Assad's forces become more advanced, which has allowed for Assad to regain lost territory and have more success in the war since Russia's intervention (Hubbard, 2017). In 2017, Russia's president, Vladimir Putin, pledged Russia's full support to protecting the sovereignty of Syria as well as the

state's territorial integrity. Putin has remained committed to protecting the Assad regime and will likely provide protections to Assad if he is to be indicted on charges of violating international laws (Tétrault-Farber & Williams, 2017). Not only were Milošević and Taylor's conflicts not as internationalized as Assad's, but neither Milošević or Taylor had a state as influential as Russia to intervene and pledge to protect their state sovereignty and territory or provide them with such vast amounts of military and financial support.

How a Special Tribunal and Indictment Can Work for Assad

The primary focus of this paper is to evaluate the prospects of indicting and trying Assad for violating international laws, and after a detailed evaluation of the similar cases of Milošević and Taylor, the prospects of the international community holding Assad accountable in court for violating international laws are likely. The Commission for International Justice and Accountability (CIJA) prosecutes some of the worst human rights criminals throughout the world and works to deter human rights abuses through litigation, policy, and transnational justice strategies (The Center for Justice & Accountability). CIJA is located in at an undisclosed location in Western Europe and employs 150 workers, whom are non-Syrians who have experience working in special tribunals. Since the outbreak of the civil war in Syria in 2011, CIJA has been working underground to collect evidence and prepare indictments as if Assad or other high-ranking government



officials from his regime were to go trial any day (Carrillo, Frillmann, & Molinsky, 2016). Currently, CIJA has collected nearly a million documents that would be used as evidence at a trial in an effort to convict Assad and other high-ranking officials that are traced back to Assad's crimes. The information systems in Syria's government are not as advanced as those in the developed world, so a single sheet of paper has to be passed from desk-to-desk and each person must either sign or initial the paper with their comments. CIJA has been able to collect nearly a million of these government documents and use them to show Assad as presiding over the chain of command from the highest-level and ordering international crimes to be executed on a mass level across Syria. CIJA has also been able to link the crimes back to all of Syria's security branches and high-ranking officials (Carrillo, et al., 2016).

Several hundred victim witnesses have been interviewed by CIJA to secure patterns of perpetration as part of the pattern evidence (Carrillo, et al., 2016). Continuing to collect this kind of fresh evidence is vital because once the war in Syria ends, evidence collection will become an even more dangerous and difficult process. The more evidence CIJA collects generates a higher probability of Assad being held accountable for his crimes as saying no to holding Assad accountable in court will be difficult when there are mountains of evidence against him that have been collected (Kelly & Whiting, 2018). CIJA reports their evidence collection already provides sufficient links to Assad as well as to his deputies and to the widespread crimes being

committed in Syria. CIJA also reports that there is only a limited time before Syria's most serious perpetrators from Assad's regime are being brought to justice and Assad will then follow suit. And when Assad withstands trial, the court will be presented with the best evidence that a tribunal has seen since Nuremberg (Carrillo, et al., 2016).

One of the most challenging problems war crime tribunals face is having financial support to create the court and keep the court running because tribunals that are independent of the ICC come with a great financial expense (Keating, 2012). However, the independent investigations being conducted by CIJA to collect evidence for a trial are being funded without a court mandate by state governments committed to bringing Assad and his perpetrators to justice (Carrillo, et al., 2016). In addition to governments specifically funding the investigations of Assad and the members of his government, CIJA receives financial support from the U.N. as well as a great number of outside sources (The Center for Justice & Accountability, 2018). If states are already willing to fund the investigations of Assad's crime in preparation of one day bringing Assad to trial, then it is likely that such states throughout the international community will remain committed to providing the necessary financial support to create a tribunal where Assad will be held accountable. There is evidence to suggest that the international community disapproves of Assad's regime as there have already been efforts by the U.N. Security Council in 2014 to bring Assad to justice through the ICC. Vetoes from Russia and China

have been the most significant factors standing in the way of bringing Assad to justice through the ICC since 2014 (Sengupta, 2014). Additionally, the Secretary General of the U.N. has publicly condemned the acts of the Assad regime as well and has moved to create resolutions to try to bring the atrocities to an end (Secretary-General, 2018). Aside from opposition from Russia and China, the international community as a whole and the U.N. have tried to pass resolutions giving the ICC jurisdiction over Assad and are currently funding CIJA investigations in preparation of a trial. There is reason to believe members of the international community will financially support a special tribunal to bring Assad to justice.

The primary purpose of the tribunal is to try Assad for international crimes, but the court will also have the capacity to try high-level Syrian government officials who are linked to carrying out Assad's instructions. When considering the venue of the special tribunal, Syria is an unlikely location for the tribunal because the special tribunal will be designed to try highly politicized figures; therefore, locating the tribunal in Syria could incite violence and chaos while threatening the little stability and peace Syria has. The special tribunal would also be politically vulnerable to manipulation (Chadwick, 2017). Setting up the tribunal in Syria risks creating a special tribunal that is limited in charges and a rushed due process due to victims being unable to provide accurate testimony without fear of further persecution by the Syrian government. Syrian state agencies would also be unlikely to be willing to cooperate with the tribunal (Aboueldahab, 2017).

Creating a special tribunal in Syria may not be a viable option, however, there are other likely options for the venue of a special tribunal for Assad. For instance, the SCSL used to try Taylor was originally located in Sierra Leone rather than in Liberia, where Taylor was president (Special Court for Sierra Leone). Locating Assad's tribunal in a neighboring country such as Jordan or Turkey could be an option for Assad. Either Jordan or Turkey are ideal host countries for a special tribunal for Assad since both countries have been dramatically impacted by the spillover effects of the Syrian civil war. For instance, Jordan now hosts more than 600,000 Syrian refugees and 10 percent of the country's population is now Syrian and Turkey houses nearly 750,000 refugees from Syria (Van Schaack, 2014). If the venue of the special tribunal were to be established in either of the neighboring countries of Jordan or Turkey, then the tribunal could more easily facilitate the integration of Syrian jurors, lawyers, and other staff members into the special tribunal. Either of these locations would give the special tribunal a greater degree of ownership and legitimacy that would also contribute to building domestic capacity (Van Schaack, 2014). If Jordan or Turkey were to agree to host the special tribunal, then the host country would be authorized to exercise domestic jurisdiction over Assad for the flight of Syrian refugees into Jordan and Turkey, and the political consequences the millions of refugees have caused (Van Schaack, 2014).

A second option for the venue of the special tribunal is The Hague. The Hague is the location of a number of tribunals and courts, including the



International Court of Justice and Peace and the ICC. The Hague is thought of as being the international city of peace and justice, and is the chosen venue of government and political leaders, diplomats, institutions, non-profit organizations, and businesses when coming together to discuss solutions to global problems, resolve international disputes, or even to find solutions to avoid armed conflict. Not only is The Hague thought of as a city of international peace and justice, but The Hague is considered to be a neutral location, which often makes the location a logical choice for holding international conferences and addressing conflicts between countries throughout the international community (The Hague, 2017).

The Hague has as served as the location of both the ICTY and SCSL as well as the location for the Special Tribunal for Lebanon, the Extraordinary Chambers in the Courts of Cambodia, and the International Criminal Tribunal for Rwanda (“Courts and Tribunals”). As previously mentioned, The SCSL was relocated from Sierra Leone to The Hague due to Taylor’s trial provoking violence and threatening West Africa’s peace and stability (Special Court for Sierra Leone). Taylor, being the former president of Liberia who was indicted for violating international laws, attracted global attention to his trial making his case a high-profile and closely followed trial, which contributed to the violence and threats of instability. The Hague provided a neutral and more peaceful environment for Taylor’s high-profile trial to take place (Special Court for Sierra Leone). Assad is already a widely watched political figure as the

president of Syria. However, Assad is also extensively monitored for his violations of international law and much of the international community is skeptical as to if justice will be served and Assad will be indicted and tried for his crimes (Carrillo, et al. 2016). This would contribute to the high-profile nature of his trial as a president. Syria, along with the rest of the international community, would likely follow Assad’s trial closely, which poses the risk of inciting violence in areas where his atrocities took place if the trial were to be held in a neighboring country. The Hague is a venue option to consider because the location would provide a more neutral location, eliminating possible outbreaks of violence and threats to stability and peace.

The crimes committed by Assad are clear, there is ample evidence sufficiently linking Assad to the mass atrocities throughout Syria since 2011, and there is a likely chance that members of the international community would be willing to financially support the tribunal. However, due to Assad being a sitting head of state, Assad has immunity from foreign criminal jurisdiction making Assad’s indictment the most complicated and doubtful part of determining the likelihood of trying Assad for international crimes (Kiyani, 2013). A possible option to indicting Assad is by the use of universal jurisdiction as this principle is generally used when traditional forms of criminal jurisdiction do not exist.

Universal jurisdiction is the principle that a national court has the authority to prosecute individuals for more serious international crimes that occur in other territories. (International

Justice Resource Center). Universal jurisdiction is based on the principle of responsibility to protect. This principle promotes the idea that members of the international community are obligated to assist states in providing protection to individuals within the territory of a given state through intervention to prevent crimes like crimes against humanity, war crimes, genocide, and torture (International Justice Resource Center). Therefore, any state whose legislation that allows for universal jurisdiction to be invoked can actively prosecute a non-national individual for the most serious international crimes (Godhardt, 2017). Most states recognize universal jurisdiction and are signatories of conventions that provide the state to utilize universal jurisdiction when necessary (Human Rights Watch, 2008).

The most significant reason as to why universal jurisdiction is an option to consider when trying Assad in a special tribunal is because universal jurisdiction prevents the impunity of dignitaries while ensuring due process of law (Godhardt, 2017). While Assad does have immunity as the current president of Syria, he will not be afforded this advantage if universal jurisdiction is invoked. Assad's violations of international laws involve the illegal use of chemical weapons, crimes against humanity, war crimes, and torture (Kelly & Whiting, 2018). Each of the crimes Assad has committed qualify for a state to pursue the remedy of universal jurisdiction. There are several cases where universal jurisdiction has been used to successfully indict dignitaries. For example, Spain invoked universal jurisdiction to indict and extradite

former Chilean dictator Augusto Pinochet. Spain also invoked universal jurisdiction to prosecute Guatemalan officials involved in the Guatemalan genocide and in a separate case to prosecute an Argentine naval officer for committing crimes against humanity during the Dirty War (International Justice Resource Center). Universal jurisdiction has yet to be applied to Assad because first the civil war in Syria must come to an end with one or more of the parties involved in the conflict claiming victory so the 1949 Geneva Conventions may come into effect. The obligations of the Geneva Conventions will then enable the prosecution of Assad and other high-ranking officials from the Assad regime who are linked to systematically carrying out Assad's orders that violate international laws (Khen).

Is Bringing Assad to Justice Possible?

As the president of Syria, Assad has deliberately and indiscriminately attacked civilians in Syria since the outbreak of the Syrian civil war in 2011 (Human Rights Watch 2018). Assad has repeatedly used chemical weapons and nerve agents against civilian populations, employed starvation and withheld humanitarian aid, forcibly displaced Syrians and caused the disappearance of thousands of Syrians, and arbitrarily arrested and used methods of torture. This led to the deaths of more than 400,000 people and the displacement of millions of Syrians over the last seven years (Human Rights Watch, 2018). Assad's actions clearly violate international law under the Rome Statute allowing for Assad to be



charged with crimes against humanity, war crimes, the illegal use of chemical weapons, and torture (The International Criminal Court, 1998). After evaluating the cases of Milošević and Taylor, the most effective way for bringing Assad to justice will be through possibly invoking the legal remedy of universal jurisdiction and pursuing a trial through the creation of a special tribunal located in either a neighboring country or at The Hague. Additionally, the prospects of a guilty verdict are also likely with

the vast amount of sufficient that has been collected directly linking Assad to his crimes. Bringing Assad to justice for his crimes is not likely to take place in the near future and will present many challenges and complications. However, indicting and trying Assad for violating international laws is possible and Assad may likely be held accountable for violating international laws many years in the future.

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