Introduction

Since 2011, Syria has been engulfed in a protracted civil war that began as part of the wave of Arab Spring protests against Middle East tyrants. The Syrian conflict has seen the rise and fall of the ISIS terrorist organization, the largest refugee migration since World War II, and the repeated use of chemical weapons against a civilian population. The situation is complicated by the fact that Russia, Syria’s long-time ally, has repeatedly used its veto in the UN Security Council to prevent the Council from taking actions related to the crisis. With all that, Syria has become a dynamic laboratory for the rapid creation of new international law.

develops quite rapidly. Some scholars call these transformative events that accelerate the formation of customary international law or occasion significant interpretive changes of the UN Charter “International Constitutional Moments,” likening them to the revolutionary change in American constitutional law that accompanied the New Deal. Others, including the coauthors of this book, prefer to describe the phenomenon as “Grotian moments,” a term named after Hugo Grotius, the fifteen-century Dutch scholar and diplomat whose masterpiece De Jure Belli ac Pacis helped usher in the modern system of international law. This book explores whether the Syria conflict (2011–2020) represents a Grotian moment.

5 North Sea Continental Shelf (Ger. v. Den., Ger. v. Neth.), Merits, 1969 I.C.J. 3, 71, 73–74 (Feb. 20). The Court stated:

Although the passage of only a short period of time is not necessarily . . . a bar to the formation of a new rule of customary international law . . . an indispensable requirement would be that within the period in question, short though it might be, State practice, including that of States whose interests are specially affected, should have been both extensive and virtually uniform in the sense of the provision invoked; and should moreover have occurred in such a way as to show a general recognition that a rule of law or legal obligation is involved.

Id. ¶ 74

While recognizing that some norms can quickly become customary international law, the ICJ held that the equidistance principle contained in Article 6 of the 1958 Convention on the Continental Shelf had not done so as of 1969 because so few states recognized and applied the principle. At the same time, the Court did find that that Articles 1 and 3 of the Convention (concerning the regime of the continental shelf) did have the status of established customary law.


7 See Bruce Ackerman, Reconstructing American Law 19 (1984); see also Bruce Ackerman, We the People: Transformations 385, 409 (1991) (coining the phrase “Constitutional moment”).

8 See generally, Michael P. Scharf, Customary International Law in Times of Fundamental Change: Recognizing Grotian Moments (2014); Milena Sterio, Humanitarian Intervention Post-Syria: A Grotian Moment, 20 ILSA J. Int’l L. 344 (2014). The term “Grotian moment” was first coined by Princeton professor Richard Falk. See International Law and World Order 1265–1266 (Burns H. Weston et al. eds., 4th ed. 2006). Grotius (1583–1645) is widely considered to have laid the intellectual architecture for the Peace of Westphalia, which launched the basic rules of modern international law. HEDLEY BULL et al., HUGO GROTIIUS AND INTERNATIONAL RELATIONS 1, 9 (1992). While the results of Westphalia may have been simplified by the lens of history, and Grotius’s role may have been exaggerated, Westphalia has unquestionably emerged as a symbolic marker and Grotius as an emblematic figure of changing historical thought. “Grotian moment” is thus an apt label for transformational events in customary international law.
The book begins by setting forth the history of the current conflict in Syria. Next, it discusses the principles and process of customary international law formation and the phenomenon of accelerated formation of customary international law. This is followed by chapters that examine how use of force against ISIS in Syria has changed the law of self-defense against non-state actors; how the allied air strikes in response to Syria’s use of chemical weapons have changed the law of humanitarian intervention; how efforts to prosecute Syrian perpetrators in national courts in Europe have sparked renewed use of novel conceptions of universal jurisdiction after they had largely fallen out of favor; how the mass exodus of Syrians fleeing the war led to transformation in the approach to immigration law and policy across the globe; and how the multilateral peace negotiations developed innovative approaches to post-conflict dispute resolution while ushering in a historic shift in power from the paralyzed UN Security Council to the UN General Assembly.

Written as the nine-year-long Syria conflict nears an end, this is the first book-length treatment of how the Syrian war has changed international law. The situation is analogous to the 1960s and 1970s when the Vietnam War led to transformational changes in international law, inspiring several notable books such as Richard Falk’s *The Vietnam War and International Law*; Telford Taylor’s *Nuremberg and Vietnam*; and John Norton Moore’s *Law and the Indo-China War*. This book in turn seeks to contribute both to understanding the concept of accelerated formation of customary international law and the specific ways the Syria conflict has led to development of new norms and principles in several areas of international law.