

Cambridge University Press
978-1-108-49153-2 — The Syrian Conflict's Impact on International Law
Michael P. Scharf, Milena Sterio, Paul R. Williams
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THE SYRIAN CONFLICT'S IMPACT ON INTERNATIONAL LAW

Written as the decade-long Syrian conflict nears an end, this is the first book-length treatment of how the Syrian war has changed international law. In *The Syrian Conflict's Impact on International Law*, the authors explain the history of the current conflict in Syria and discuss the principles and process of customary international law formation and the phenomenon of accelerated formation of customary international law known as Grotian moments. They then explore specific examples, including 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, and others. This book 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.

MICHAEL P. SCHARF is the Dean of the Law School and the Joseph C. Hostetler–BakerHostetler Professor of Law at Case Western Reserve University. He serves as Managing Director of the Public International Law and Policy Group, a Nobel Peace Prize–nominated NGO. He has led USAID-funded transitional justice projects in Uganda, Cote d'Ivoire, Libya, and Turkey (for Syria), and maritime piracy projects in Kenya, Mauritius, and the Seychelles. Scharf is the author of over 100 scholarly articles and nineteen books, four of which have won national book of the year honors. Since 2013, Scharf has been the producer and host of *Talking Foreign Policy*, a radio program broadcast on WCPN 90.3 FM and other NPR affiliates across the country.

MILENA STERIO is the Charles R. Emrick Jr.–Calfee Halter & Griswold Professor of Law at Cleveland-Marshall College of Law. Previously, she was an associate in the New York City firm of Cleary, Gottlieb, Steen & Hamilton, and an adjunct law professor at Cornell, where she taught in the International War Crimes Clinic. She has published numerous law review articles and six books. Professor Sterio is an editor of the prestigious IntLawGrrls blog. In the spring of 2013, Professor Sterio was a Fulbright Scholar in Baku, Azerbaijan, at Baku State University.

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DR. PAUL R. WILLIAMS holds the Rebecca I. Grazier Professorship in Law and International Relations at American University where he teaches in the School of International Service and at the Washington College of Law. Dr. Williams is also the co-founder of the Public International Law & Policy Group (PILPG), a *pro bono* law firm providing legal assistance to states and governments involved in peace negotiations, post-conflict constitution drafting, and the prosecution of war criminals. As a world-renowned peace negotiation lawyer, Dr. Williams has assisted over two dozen parties in major international peace negotiations and has advised numerous parties on the drafting and implementation of post-conflict constitutions. Dr. Williams has authored six books on various topics concerning international law, and has published over three dozen scholarly articles on topics of international law and policy.

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Authors' Biographies

Michael P. Scharf is the Dean of Case Western Reserve University School of Law, and the Joseph C. Hostetler–BakerHostetler Professor of Law. He is the host of *Talking Foreign Policy*, a radio program broadcast on WCPN 90.3 FM. In addition, Scharf serves as managing director of the Public International Law & Policy Group, a Nobel Peace Prize–nominated NGO. Scharf has led USAID-funded transitional justice missions to the Ivory Coast, Libya, and Uganda; he headed the Blue Ribbon Committee that drafted a statute for a War Crimes Tribunal for Syrian atrocities; he served as Special Assistant to the Prosecutor of the Cambodia Genocide Tribunal; and he served as a member of the international team of experts that provided training to the judges of the Iraqi High Tribunal. During the first Bush and Clinton administrations, Scharf served in the Office of the Legal Adviser of the US Department of State, where he held the positions of Attorney-Adviser for Law Enforcement and Intelligence, Attorney-Adviser for United Nations Affairs, and delegate to the United Nations Human Rights Commission. In 1993, he was awarded the State Department's Meritorious Honor Award "in recognition of superb performance and exemplary leadership" in relation to his role in the establishment of the International Criminal Tribunal for the former Yugoslavia. Scharf graduated from Duke University School of Law, with Order of the Coif and High Honors. He was a judicial clerk to Judge Gerald Bard Tjoflat on the US Court of Appeals for the Eleventh Circuit. He is the author of more than 100 scholarly articles and nineteen books, including *The International Criminal Tribunal for Rwanda*, which was awarded the American Society of International Law's Certificate of Merit for outstanding book, and *Enemy of the State: The Trial and Execution of Saddam Hussein*, which won the International Association of Penal Law's book-of-the-year award. His last five books have been published by Cambridge University Press. Dean Scharf

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continues to teach international law and was ranked as seventeenth most-cited author in the field since 2010 by the Leiter study.

Milena Sterio is Associate Dean for Faculty Enrichment and the Charles R. Emrick, Jr.–Calfee Halter & Griswold Professor at Cleveland-Marshall College of Law, Cleveland State University. Professor Sterio earned her law degree, *magna cum laude*, from Cornell Law School in 2002. At Cornell, she was Order of the Coif, general editor of the *Cornell International Law Journal* and a member of Phi Beta Kappa. In 2003, she earned a master's degree, *cum laude*, in private international law from the University Paris 1–Panthéon–Sorbonne; in 2002, she earned a *maitrise en droit franco-américain cum laude*, in political science and French literature from Rutgers College, New Brunswick, New Jersey. Before joining the faculty of Cleveland-Marshall, she was an associate in the New York City firm of Cleary, Gottlieb, Steen & Hamilton, and an adjunct law professor at Cornell, where she taught in the International War Crimes Clinic. Her research interests are in the field of international law, international criminal law, international human rights, law of the seas, and in particular maritime piracy, as well as private international law. She has published in the *American University Law Review*, the *Connecticut International Law Journal*, the *Fordham International Law Journal*, the *Cardozo Journal of International and Comparative Law*, the *Denver Journal of International Law and Policy*, the *Florida Journal of International Law*, and the *UC Davis of International Law and Policy*. She is the author of several books, including two that have been published by Cambridge University Press: *Prosecuting Maritime Piracy: Domestic Solutions to International Crimes* (with M. Scharf and M. Newton), and *The Legacy of Ad Hoc Tribunals in International Criminal Law: Assessing the ICTY's and ICTR's Most Significant Legal Accomplishments* (with M. Scharf), which won the Association Internationale de Droit Pénal's 2019 Book of the Year Award for Scholarly Contribution to the Field. Professor Sterio is one of six permanent editors of the prestigious IntLawGrrls blog.

Paul R. Williams holds the Rebecca I. Grazier Professorship in Law and International Relations at American University where he teaches in the School of International Service and at the Washington College of Law. Dr. Williams is also the cofounder and president of the Public International Law & Policy Group (PILPG), a *pro bono* law firm providing legal assistance to states and governments involved in peace negotiations, post-conflict constitution drafting, and the prosecution of war criminals. As a world-renowned peace negotiation lawyer, Dr. Williams has assisted over two dozen parties in major international peace negotiations and has advised numerous parties on

the drafting and implementation of post-conflict constitutions. Several of Dr. Williams's *pro bono* government clients throughout the world joined together to nominate him and PILPG for the Nobel Peace Prize. For the past six years Dr. Williams has been advising the Syrian opposition in the Geneva and Astana peace negotiations. During the peace negotiations, Dr. Williams has worked with the opposition on matters of negotiation strategy as well as proposals for a transitional governing body, a constitution-drafting process, power-sharing arrangements, human rights protections, the interpretation of UN Security Council Resolutions, the establishment of ceasefires and de-confliction zones, and the enforcement of OPCW findings. Dr. Williams has also advised them on matters of transitional justice and prosecution of war crimes. Dr. Williams has served as a senior associate with the Carnegie Endowment for International Peace, as well as an Attorney-Adviser for European and Canadian affairs at the US Department of State, Office of the Legal Adviser. He received his JD from Stanford Law School and his PhD from the University of Cambridge. Dr. Williams is a sought-after international law and policy expert. He is frequently interviewed by major print and broadcast media and regularly contributes op-eds to major newspapers. Dr. Williams has authored six books on various topics concerning international law and has published over three dozen scholarly articles on topics of international law and policy. Dr. Williams is a member of the Council of Foreign Relations and has served as a counsellor on the Executive Council of the American Society of International Law.

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Prologue

This is an academic book, but the authors are not strictly academics and our relation to the subject matter is not entirely scholarly. The three of us are the directors of the Public International Law and Policy Group, a Nobel Peace Prize-nominated NGO that for the past nine years has been involved in the Syrian peace process and in the effort to establish accountability for atrocities committed during the Syrian conflict.

For two of us (Scharf and Williams), the origins of this book began in June 2013 at an outdoor cafe on what started out as a sunny, languorous afternoon in one of the great cities of the world, Istanbul. We were enjoying Turkish coffee and baklava near Taksim Gezi Park while we prepared for an unusual meeting with two-dozen Syrian jurists who had braved countless governmental and rebel check points to work with us for a week on the blueprint for a Syrian Tribunal to hold regime officials responsible for war crimes and crimes against humanity.¹

Suddenly, we were surrounded by thousands of college students with cacophonous noise-making devices of every kind, waving giant red flags emblazoned with the visage of the great Turk secular leader, Ataturk. They were ostensibly protesting Prime Minister Recep Tayyip Erdoğan's urban development plan for one of the last remaining public parks in the city of fourteen million. But the protests were about more – attacks on freedom of expression, encroachments on secularization, and increasing government repression.

The protesters were followed close behind by hundreds of white-helmeted riot police, clad in black body armor and carrying large translucent shields. Moments later, our eyes began to burn as canisters of tear gas landed nearby,

¹ The blueprint we came up with is reproduced in the Appendix to this book.

spewing gray mist. Behind us we could hear the rush of cannons firing thousands of gallons of pressurized water into the crowd. And then the screams of the students.

We were instantly caught up in a stampede. Our fight-or-flight response kicked in and we ran with the jostling crowd at our top speed for nearly a mile, trying to gain distance from the riot police. Later we would joke that it was like running with the bulls at Pamplona. But, in that moment, our thoughts turned to one thing – survival. It was frightening, even for two individuals who have had a long history of encounters with dangerous situations in our work around the globe.

The next morning, we awoke to press reports of many injuries from the police clash with the protesters at Taksim. When we met with our Syrian counterparts at the hotel conference room, we asked them if they had witnessed the skirmish between the police and protesters the day before. They said that they had not only seen the confrontation, they joined in to show solidarity with the protesters. “Were you frightened?” we asked. “No,” was their emphatic reply. “Compared to being attacked by massive artillery, missiles, barrel bombs, and chemical weapons – this was nothing.”

We dedicate this book to these intrepid Syrian jurists and others like them that we have worked with over the years, some of whom have been forced into exile, some gave their lives in the struggle for their people’s rights, and some continue to fight for justice in their troubled country.