

But that does not mean that the international community has turned away from the Syrian people or ignored the responsibility of the Syrian government to protect its civilian population. The Syrian government has been condemned for committing human rights violations by the General Assembly and the Human Rights Council; it has been placed under sanctions by the Arab League, the United States, and the European Union; and it has been the subject of a searching report by a UN Commission of Inquiry—which found credible evidence that it has committed crimes against humanity. . . . [T]he principle of a “Responsibility to Protect” vulnerable civilians, or R2P, itself recognizes the importance of pursuing such options. This list of actions does give a sense of how—consistent with the principle of R2P—we and our international partners have been continually seeking out, developing, and using the tools that are available to us and appropriate to the situation to advance the protection of the Syrian population.

*Third* and finally, a commitment to ensuring that the Assad regime cedes power and a commitment to denying impunity for gross human rights violations can and should be maintained simultaneously. Like so many aspects of the situation, this issue is a delicate one. But as I have already noted, the United States has strongly encouraged efforts to use emerging technologies to document and expose human rights abuses in Syria. . . . The international community must continue to work to uncover and tell the truth about what Assad and his thugs are doing, and ultimately, as Secretary Clinton has said, “there must be accountability for senior figures of the regime.” . . . We think it of the utmost importance that, we work with governments and NGOs alike to continue documenting human rights violations and collecting evidence to keep shining a light on the inexcusable actions the Assad regime is taking against its people, and so the international community can uncover and tell the truth about what is occurring.<sup>2</sup>

#### *United States Pursues Multitrack Strategy to Address Conflict in Syria*

As suggested by Legal Adviser Harold Hongju Koh’s March 2012 presentation to the American Society of International Law, the United States has pursued multiple avenues in seeking to address the conflict in Syria. As the internal conflict there intensified during the fall and winter of 2011–12, Russia and China, both supporters of the Assad regime, blocked a response by the Security Council; in October 2011, the two joined in a rare double veto of a U.S.-European resolution condemning Syria.<sup>1</sup>

As the conflict continued, casualties mounted, and the Security Council remained inactive, the United States looked to other strategies. As described by the Department of State spokesperson Victoria Nuland,

[I]n a situation where the Security Council has been blocked from acting in support of the Arab League Plan, in support of the defense of a democratic path for Syria, we’re going to have to take measures outside the UN to strengthen and deepen and broaden the international community of pressure on Assad.<sup>2</sup>

<sup>2</sup> *Id.*

<sup>1</sup> Colum Lynch, *Russia and China Block Syria Resolution at U.N.*, WASH. POST, Oct. 5, 2011, at A9; Neil MacFarquhar, *With Rare Double U.N. Veto on Syria, Russia and China Try to Shield Friend*, N.Y. TIMES, Oct. 6, 2011, at A6; Editorial, *Cowardly Vetoes*, WASH. POST, Oct. 6, 2011, at A20.

<sup>2</sup> U.S. Dep’t of State Daily Press Briefing, Feb. 6, 2012, at <http://www.state.gov/r/pa/prs/dpb/2012/02/183454.htm>.

At a February 2012 Senate hearing, U.S. Secretary of State Hillary Clinton noted the possibility of war crimes charges against Syrian President Bashar al-Assad.<sup>3</sup> In March, the United States joined with Turkey and other countries to provide “nonlethal” support, such as communications gear and medical supplies, to opposition groups in Syria.<sup>4</sup> In early April, Clinton described various measures taken by the United States, including travel bans on some senior Syrian leaders, increased humanitarian assistance, and U.S. nonlethal support to the opposition.<sup>5</sup> Saudi Arabia and several Persian Gulf states pledged to provide substantial financial support to the rebel forces.<sup>6</sup>

As the crisis continued, the Security Council began to act. In March 2012, the Security Council agreed on a presidential statement endorsing the negotiating efforts of former Secretary-General Kofi Annan on behalf of the United Nations and the Arab League.<sup>7</sup> Such statements require unanimous approval by the Council. An excerpt follows:

The Security Council expresses its gravest concern at the deteriorating situation in Syria which has resulted in a serious human rights crisis and a deplorable humanitarian situation. The Security Council expresses its profound regret at the death of many thousands of people in Syria.

....

The Security Council welcomes the appointment of Joint Special Envoy for the United Nations and the League of Arab States, Kofi Annan, following the General Assembly resolution A/RES/66/253 of 16 February 2012 and relevant resolutions of the League of Arab States.

The Security Council expresses its full support for the efforts of the Envoy to bring an immediate end to all violence and human rights violations, secure humanitarian access, and facilitate a Syrian-led political transition to a democratic, plural political system, in which citizens are equal regardless of their affiliations or ethnicities or beliefs, including through commencing a comprehensive political dialogue between the Syrian government and the whole spectrum of the Syrian opposition.<sup>8</sup>

Two weeks later, the Council adopted another presidential statement calling on Syria to observe commitments given to Annan.<sup>9</sup>

The Security Council calls upon the Syrian Government to implement urgently and visibly its commitments, as it agreed to do in its communication to the Envoy of 1 April, to (a) cease troop movements towards population centres, (b) cease all use of heavy weapons in such centres, and (c) begin pullback of military concentrations in and around population centres, and to fulfil these in their entirety by no later than 10 April 2012.

<sup>3</sup> J. David Goodman & Nick Cumming-Bruce, *Clinton and U.N. Official Issue Stern Warnings to Syrian Leader*, N.Y. TIMES, Feb. 29, 2012, at A4.

<sup>4</sup> Anne Barnard, *U.S. and Turkey to Step up 'Nonlethal' Aid to Rebel Groups in Syria*, N.Y. TIMES, Mar. 26, 2012, at A4.

<sup>5</sup> U.S. Dep't of State Press Release, Secretary Hillary Rodham Clinton, Intervention to the Friends of the Syrian People (Apr. 1, 2012), at <http://www.state.gov/secretary/rm/2012/04/187295.htm>.

<sup>6</sup> Karen DeYoung, *Arab States Agree to Pay Millions to Opposition Fighters in Syria*, WASH. POST, Apr. 2, 2012, at A9.

<sup>7</sup> Colum Lynch, *U.N. Security Council Backs Peace Plan for Syria*, WASH. POST, Mar. 22, 2012, at A2.

<sup>8</sup> Statement by the President of the Security Council, UN Doc. S/PRST/2012/6 (Mar. 21, 2012), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/271/91/PDF/N1227191.pdf?OpenElement>.

<sup>9</sup> Colum Lynch, *Security Council Urges Syria to End Attacks on Opposition*, WASH. POST, Apr. 6, 2012, at A8.

The Security Council calls upon all parties, including the opposition, to cease armed violence in all its forms within 48 hours of the implementation in their entirety by the Syrian Government of measures (a), (b), (c) above. . . .

. . . .

The Security Council reiterates its call for the Syrian authorities to allow immediate, full and unimpeded access of humanitarian personnel to all populations in need of assistance, in accordance with international law and guiding principles of humanitarian assistance. The Security Council calls upon all parties in Syria, in particular the Syrian authorities, to cooperate fully with the United Nations and relevant humanitarian organizations to facilitate the provision of humanitarian assistance.<sup>10</sup>

In mid-April, as a shaky truce developed, the Council unanimously adopted Resolution 2042, authorizing deployment of a UN monitoring mission.<sup>11</sup> The resolution does not expressly invoke Chapter 7 of the UN Charter, as is the Council's practice when its resolutions are intended to have binding legal effect. As described by U.S. Permanent Representative Susan Rice, the resolution

reaffirms the Council's support for all elements of [Envoy Kofi Annan's] plan, including an immediate end to violence, securing humanitarian access, and a Syrian-led political transition that meets the democratic aspirations of the Syrian people. The resolution stresses that the Syrian government must immediately fulfil its remaining obligations to bring about a full cessation of violence. It emphasizes the necessity of the Syrian government immediately withdrawing all its troops and heavy weapons from population centers and returning its soldiers and their equipment to their barracks.<sup>12</sup>

Excerpts from the resolution's operative paragraphs follow. In them, the Council

2. *Calls upon* the Syrian government to implement visibly its commitments in their entirety, as it agreed to do in its communication to the Envoy of 1 April 2012, to (a) cease troop movements towards population centres, (b) cease all use of heavy weapons in such centres, and (c) begin pullback of military concentrations in and around population centres;

3. *Underlines* the importance attached by the Envoy to the withdrawal of all Syrian government troops and heavy weapons from population centres to their barracks to facilitate a sustained cessation of violence;

4. *Calls upon* all parties in Syria, including the opposition, immediately to cease all armed violence in all its forms;

5. *Expresses* its intention, subject to a sustained cessation of armed violence in all its forms by all parties, to establish immediately, after consultations between the Secretary-General and the Syrian government, a United Nations supervision mission in Syria to monitor a cessation of armed violence in all its forms by all parties . . . ;

<sup>10</sup> Statement by the President of the Security Council, UN Doc. S/PRST/2012/10 (Apr. 5, 2012), available at <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N12/285/18/PDF/N1228518.pdf?OpenElement>.

<sup>11</sup> SC Res. 2042 (Apr. 14, 2012); see also Colum Lynch & Liz Sly, *U.N. Votes to Send Monitors to Syria Amid Shaky Truce*, WASH. POST, Apr. 15, 2012, at A8.

<sup>12</sup> U.S. Mission to the United Nations Press Release No. 2012/081, Explanation of Vote by Ambassador Susan E. Rice, U.S. Permanent Representative to the United Nations, at the Adoption of UN Security Council Resolution 2042 (Apr. 14, 2012), at <http://usun.state.gov/briefing/statements/187914.htm>.

....

10. *Reiterates* its call for the Syrian authorities to allow immediate, full and unimpeded access of humanitarian personnel to all populations in need of assistance, in accordance with international law and guiding principles of humanitarian assistance and calls upon all parties in Syria, in particular the Syrian authorities, to cooperate fully with the United Nations and relevant humanitarian organizations to facilitate the provision of humanitarian assistance. . . .<sup>13</sup>

The brief April ceasefire did not hold. A small and unarmed UN monitoring mission had little effect on the situation, and violence rose during May 2012. In late May, pro-government forces were implicated in the massacre of at least 108 civilians in Houla, including 49 children. The Security Council adopted a strongly worded statement condemning the massacre,<sup>14</sup> and the United States and ten other nations expelled senior Syrian diplomats to express condemnation.<sup>15</sup>

The ongoing violence in Syria has become a subject of political debate in the United States, with Republican presidential candidate Mitt Romney criticizing U.S. support for the Annan peace plan and calling for the United States to help arm Syrian resistance groups.<sup>16</sup> Senators Lindsey Graham, John McCain, and Joseph Lieberman have called for U.S. airstrikes to protect civilians.<sup>17</sup>

#### STATE JURISDICTION AND IMMUNITIES

##### *U.S. District Court Upholds Head of State Immunity for Sri Lankan President*

In March 2012, the U.S. District Court for the District of Columbia ruled that President Percy Mahendra Rajapaksa of Sri Lanka is immune from suit under the Torture Victim Protection Act<sup>1</sup> (TVPA) while in office.<sup>2</sup> The plaintiffs alleged that Rajapaksa was liable for extrajudicial killings of their relatives during Sri Lanka's internal conflict with the Liberation Tigers of Tamil Eelam and that the TVPA overrode the immunity of heads of state under federal common law. The United States filed a suggestion of immunity in the case. Judge Colleen Kollar-Kotelly found "that the United States' Suggestion of Immunity is binding on the Court and dispositive of the Court's jurisdiction" and dismissed the suit.<sup>3</sup> Portions of her thorough opinion follow:

The immunity of foreign sovereigns in United States courts is a common law doctrine recognized by the Supreme Court nearly two centuries ago. In *Schooner Exchange v. McFaddon*, 11 U.S. 116 (1812), Chief Justice John Marshall "concluded that, while the

<sup>13</sup> SC Res. 2042, *supra* note 11.

<sup>14</sup> Neil MacFarquhar, *Security Council Condemns Syria over Massacre*, N.Y. TIMES, May 28, 2012, at A1; Liz Sly & Colum Lynch, *U.N. Security Council Blames Syrian Government for Civilian Massacre*, WASH. POST, May 28, 2012, at A1; Editorial, *The Massacre at Houla*, N.Y. TIMES, May 29, 2012, at A20.

<sup>15</sup> Karen DeYoung & Liz Sly, *U.S., Allies Expel Syrian Diplomats over Massacre*, WASH. POST, May 29, 2012, at A1; Neil MacFarquhar, *10 Allies Join U.S. in Move to Expel Syria Diplomats*, N.Y. TIMES, May 30, 2012, at A1.

<sup>16</sup> MacFarquhar, *supra* note 14.

<sup>17</sup> Mark Landler, *Romney Calls for Action, but His Party Is Divided*, N.Y. TIMES, May 30, 2012, at A6.

<sup>1</sup> 28 U.S.C. §1350.

<sup>2</sup> *Manoharan v. Rajapaksa*, 2012 U.S. Dist. LEXIS 25732, at \*16 (D.D.C. Feb. 29, 2012) (mem. op.).

<sup>3</sup> *Id.* at \*2.