

...

There is also a clear ethical duty to respond to the cholera epidemic in Haiti. Not a single one of these cases should have occurred. For this reason, the United States welcomes the Secretary-General's acceptance of the UN's moral responsibility for the cholera outbreak and his statement last month in Haiti expressing regret for the resulting loss of life. While the UN and the international community have made strides in containing and preventing the further spread of the disease, the U.S. recognizes that more must be done and supports the UN's ongoing efforts to design an assistance package for those most affected by cholera.

...

We welcome the Secretary-General's apology today and the proposed new approach as meaningful symbols of atonement to the Haitian people, and important steps in restoring the credibility of the United Nations. And we look forward to working with the Secretary-General and his successor to ensure that this initiative has a positive and lasting impact for those most affected.³⁶

USE OF FORCE AND ARMS CONTROL

U.S.-Russian Agreements on Syria Break Down as the Syrian Conflict Continues doi:10.1017/ajil.2016.5

Starting in February 2016, the United States and Russia reached a series of agreements aimed at establishing a cessation of hostilities in the Syrian civil war and facilitating a political settlement of the underlying conflict. Although the agreements showed initial promise, various breakdowns led the United States to suspend bilateral communications with Russia regarding maintenance of the agreements by October 2016.

The United States and Russia have each used armed force during the civil war, mostly by conducting air strikes. Since September 2014, the United States has directed air strikes against Syrian positions of the Islamic State of Iraq and the Levant (ISIL).¹ Russia's air strikes began one year later at the request of Syria's president, Bashar al Assad.² Russia justified its air strikes as targeting terrorist groups and "actively promot[ing] the political process" of settling the conflict.³ While Russia's assistance has facilitated the Assad regime's expansion of territorial control, opposition groups continue to occupy large portions of the country.⁴

In October 2015, the United States and Russia convened meetings among a group of nations to discuss a potential ceasefire and political resolution to the Syrian

³⁶ United Nations, Ambassador Isobel Coleman, U.S. Representative to the UN for UN Management and Reform, U.S. Mission to the United Nations, Remarks at an Informal Briefing by the Secretary-General on the United Nations' New Approach to Cholera in Haiti (Dec. 1, 2016), at <https://usun.state.gov/remarks/7582>.

¹ Kristina Daugirdas & Julian Davis Mortenson, *Contemporary Practice of the United States*, 109 AJIL 199, 203 (2015).

² See Ministry of Defence of the Russ. Fed'n Press Release, Russian Aviation Performed High-Accuracy Strikes Against International Terror Organization ISIS (Sept. 30, 2016), at http://eng.mil.ru/en/news_page/country/more.htm?id=12059172@egNews; see also Ministry of Foreign Aff. of the Russ. Fed'n Press Release, Foreign Minister Sergey Lavrov's Remarks and Answers to Media Questions Following a Meeting with US Secretary of State John Kerry, New York, September 30, 2015 (Oct. 1, 2015), at http://www.mid.ru/en/web/guest/foreign_policy/news/-/asset_publisher/ckNonkJE02Bw/content/id/1819477 [hereinafter Sergey Lavrov's Remarks].

³ See Sergey Lavrov's Remarks, *supra* note 2.

⁴ Office of the Director of National Intelligence, *Worldwide Threat Assessment of the US Intelligence Community* 17–18, 22–23 (Feb. 9, 2016), at https://www.dni.gov/files/documents/SASC_Unclassified_2016_ATA_SFR_FINAL.pdf.

conflict.⁵ Eventually, this group grew to include seventeen nations and representatives of the Arab League, the European Union, and the Organization of Islamic Cooperation.⁶ The United States and Russia formally co-chair the group, which is now called the International Syria Support Group (ISSG).⁷

On February 22, 2016, the United States and Russia, as co-chairs of the ISSG, agreed to a Cessation of Hostilities (COH),⁸ an international instrument directed at three goals: (1) limiting hostilities between the Syrian government and opposition groups; (2) permitting humanitarian aid to reach civilians; and (3) advancing a political settlement to the conflict.⁹ While ISIL and the Al Qaeda affiliated group al-Nusra¹⁰ were precluded from joining the agreement, the instrument invited all other opposition groups as well as the Armed Forces of the Syrian Arab Republic (Syrian Army) to agree to its terms.¹¹

The precise legal status of the instrument was at least initially ambiguous. At a press briefing to announce the undertaking, a State Department spokesperson stated that “it’s incumbent on [signatories] to live up to the obligations and to buy into the cessation of hostilities.”¹² Subsequent statements have indicated a political agreement. The day after he announced the conclusion of the agreement, Secretary of State John Kerry referred to the COH as “this proposed arrangement,”¹³ and subsequent iterations have been described by the State Department as “an arrangement, in the form of understandings.”¹⁴ Russian descriptions of the agreement have emphasized its importance, but have not labeled the COH a treaty.¹⁵

⁵ U.S. Dep’t of State Press Release, Joint Press Availability with Russian Foreign Minister Sergey Lavrov and UN Special Envoy Steffan de Mistura (Oct. 30, 2015), at <https://2009-2017.state.gov/secretary/remarks/2015/10/249019.htm>.

⁶ U.S. Dep’t of State Press Release, Statement of the International Syria Support Group (Feb. 11, 2016), at <https://2009-2017.state.gov/r/pa/prs/ps/2016/02/252428.htm>.

⁷ *Id.*

⁸ U.S. Dep’t of State Press Release, Joint Statement of the United States and the Russian Federation, as Co-Chairs of the ISSG, on Cessation of Hostilities in Syria (Feb. 22, 2016), at <https://2009-2017.state.gov/r/pa/prs/ps/2016/02/253115.htm> [hereinafter U.S.-Russia Joint Statement on COH].

⁹ *See id.*

¹⁰ Daugirdas & Mortenson, *supra* note 1, at 209. In July 2016, al-Nusra’s leader announced that the group would henceforth call itself “Jabhat Fath al Sham.” *See* U.S. Dep’t of State Press Release, State Department Amendments to the Terrorist Designation of al-Nusra Front (Nov. 10, 2016), at <https://2009-2017.state.gov/r/pa/prs/ps/2016/11/264230.htm>.

¹¹ U.S.-Russia Joint Statement on COH, *supra* note 8. (“The nationwide cessation of hostilities is to apply to any party currently engaged in military or paramilitary hostilities against any other parties other than ‘Daesh,’ ‘Jabhat al-Nusra,’ or other terrorist organizations designated by the UN Security Council.”).

¹² U.S. Dep’t of State Press Release, Daily Press Briefing (Feb. 22, 2016), at <https://2009-2017.state.gov/r/pa/prs/dpb/2016/02/253123.htm>.

¹³ U.S. Dep’t of State Press Release, Remarks with Chinese Foreign Minister Wang Yi (Feb. 23, 2016), at <https://2009-2017.state.gov/secretary/remarks/2016/02/253164.htm>.

¹⁴ U.S. Dep’t of State, Fact Sheet on U.S.-Russia Arrangement on Reducing Violence in Syria (Sept. 9, 2016) [hereinafter U.S.-Russia Arrangement Fact Sheet].

¹⁵ *See, e.g.*, Ministry of Foreign Aff. of the Russ. Fed’n Press Release, Foreign Minister Sergey Lavrov’s Remarks at the UN Security Council High-Level Briefing on the Situation in the Middle East and North Africa (Sept. 21, 2016), at http://www.mid.ru/en/web/guest/general_assembly/-/asset_publisher/lrzZMhfojRUj/content/id/2458378 (“Russia and the United States as the ISSG co-chairs worked for over six months to coordinate concrete agreements”); *id.* (referring to coalition air strikes as a “blatant violation of the cessation of hostilities regime”); Pres. of Russia Press Release, Readout of Telephone Conversation with Federal Chancellor of Germany Angela Merkel (Sept. 29, 2016), at <http://en.kremlin.ru/events/president/news/52990> (“The President of Russia again stressed how important it is for the United States to fulfil its promises to ensure the separation of the so-called moderate opposition from terrorist groups.”).

As a matter of substance, the COH committed all signatories to accept parallel “responsibilities,” *mutatis mutandis*. It listed “[t]he responsibilities of the Syrian armed opposition” as follows:

1. To take part in the cessation of hostilities, armed opposition groups will confirm—to the United States of America or the Russian Federation, who will attest such confirmations to one another as co-chairs of the ISSG by no later than 12:00 (Damascus time) on February 26, 2016—their commitment to and acceptance of the following terms:
 - To full implementation of UN Security Council Resolution 2254,¹⁶ adopted unanimously on December 18, 2015,—including the readiness to participate in the UN-facilitated political negotiation process;
 - To cease attacks with any weapons, including rockets, mortars, and anti-tank guided missiles, against Armed Forces of the Syrian Arab Republic, and any associated forces;
 - To refrain from acquiring or seeking to acquire territory from other parties to the ceasefire;
 - To allow humanitarian agencies[] rapid, safe, unhindered and sustained access throughout areas under their operational control and allow immediate humanitarian assistance to reach all people in need;
 - To proportionate use of force (i.e., no greater than required to address an immediate threat) if and when responding in self-defense.¹⁷

In a separate paragraph, the COH then stated that signatory opposition groups would “observe[]” the abovementioned commitments, provided that “the Armed Forces of the Syrian Arab Republic, and all forces supporting or associated with the Armed Forces of the Syrian Arab Republic” also undertook a parallel set of “responsibilities”:¹⁸

2. The above-mentioned commitments will be observed by such armed opposition groups, provided that the Armed Forces of the Syrian Arab Republic, and all forces supporting or associated with the Armed Forces of the Syrian Arab Republic have confirmed to the Russian Federation as co-chair of the ISSG by no later than 12:00 (Damascus time) on February 26, 2016[,] their commitment to and acceptance of the following terms:
 - To full implementation of UN Security Resolution 2254, adopted unanimously on December 18, 2015, including the readiness to participate in the UN-facilitated political negotiation process;
 - To cease attacks with any weapons, including aerial bombardments by the Air Force of the Syrian Arab Republic and the Aerospace Forces of the Russian Federation, against the armed opposition groups (as confirmed to the United States or the Russian Federation by parties to the cessation of hostilities);

¹⁶ S.C. Res. 2254 (Dec. 18, 2015). Resolution 2254 asked the secretary-general to “convene representatives of the Syrian government and the opposition to engage in formal negotiations on a political transition process on an urgent basis.” *Id.*, para. 2. The Resolution also demands “that all parties immediately comply with their obligations under international law” and “[c]alls on the parties to immediately allow humanitarian agencies rapid, safe and unhindered access throughout Syria by most direct routes, [and to] allow immediate, humanitarian assistance to reach all people in need, in particular in all besieged and hard-to-reach areas.” *Id.*, paras. 12–13.

¹⁷ U.S.-Russia Joint Statement on COH, *supra* note 8.

¹⁸ *Id.*

- To refrain from acquiring or seeking to acquire territory from other parties to the ceasefire;
- To allow humanitarian agencies[] rapid, unhindered and sustained access throughout areas under their operational control and allow immediate humanitarian assistance to reach all people in need;
- To proportionate use of force (i.e., no greater than required to address an immediate threat) if and when responding in self-defense.

The United States and Russia established a communications hotline to prevent hostilities between the parties to the COH, and a Ceasefire Task Force was tasked with delineating the territory held by various groups and resolving allegations of noncompliance.¹⁹

At first, the COH succeeded in diminishing hostilities between the Syrian Army and opposition groups. In February and March 2016, United States officials repeatedly praised the COH. Secretary Kerry stated that the COH had led to an “80 to 90 percent reduction in the level of violence.”²⁰ Moreover, Kerry recognized that the deal had permitted

the delivery of emergency supplies to communities inside Syria . . . some of which had not seen assistance in years. More than 300 trucks have now provided aid to least 150,000 people—about one third of the almost half of a million people who are living in absolutely besieged or hard-to-reach areas.²¹

Nonetheless, the United States acknowledged that there were ongoing violations of the agreement. For example, Kerry accused the Assad regime of stealing humanitarian supplies and carrying out “[a]erial bombardments” against parties to the COH.²²

The United States and Russia attempted to bolster the COH with a follow-up agreement in March 2016.²³ The agreement established a standard operating procedure for the United States and Russia to monitor alleged violations of the COH.²⁴ Specifically, the agreement required the United States and Russia to exchange information concerning alleged breaches and required all parties to the COH to prioritize peaceful means of resolving disputes.²⁵ In addition, during a visit by Secretary Kerry to Moscow in March 2016, the United States and Russia agreed to bolster their humanitarian efforts under the COH. According to Secretary Kerry,

We agreed today that the United States and Russia would push for expanded humanitarian access in order to reach all parts of Syria, while at the same time preventing any party from interfering

¹⁹ *Id.* The United Nations Security Council endorsed the COH in Resolution 2268. S.C. Res. 2268 (Feb. 26, 2016). The resolution called on the parties to the COH to comply with international law, reduce hostilities, permit access to humanitarian aid, and engage in political negotiations for a final settlement. *Id.*, paras. 5–8. See also Samantha Power, U.S. Ambassador to the United Nations, Explanation of Vote at the Adoption of UN Security Council Resolution 2268 on the Cessation of Hostilities in Syria, Remarks Following UN Security Council Vote (Feb. 26, 2016), at <https://2009-2017-usun.state.gov/remarks/7156>.

²⁰ U.S. Dep’t of State Press Release, Joint Press Availability with French Foreign Minister Jean-Marc Ayrault, German Foreign Minister Frank-Walter Steinmeier, British Foreign Secretary Philip Hammond, EU High Representative Federica Mogherini, and Italian Foreign Minister Paolo Gentiloni (Mar. 13, 2016), at <https://2009-2017.state.gov/secretary/remarks/2016/03/254644.htm>.

²¹ *Id.*

²² *Id.*; see also U.S. Dep’t of State Press Release, Adherence to the Cessation of Hostilities (Mar. 11, 2016), at <https://2009-2017.state.gov/r/pa/prs/ps/2016/03/254633.htm>.

²³ U.S. Dep’t of State, March 26 – U.S.–Russia Standard Operating Procedures to Support the Cessation of Hostilities (Sept. 9, 2016), at <https://2009-2017.state.gov/documents/organization/262413.pdf>.

²⁴ *Id.*

²⁵ *Id.*

with the deliveries of essential supplies. We agreed that the regime and the opposition need to begin releasing detainees, and they need to begin as soon as possible starting with those who are the most vulnerable. We agreed on a target schedule for establishing a framework for a political transition and also a draft constitution,²⁶ both of which we target by August.²⁷

After approximately one month of reduced hostilities, Russia and Syria announced an April offensive against rebels in Aleppo. U.S. Ambassador Samantha Power raised concerns that attacking Aleppo would undermine the COH:

And on the cessation of hostilities, we're very alarmed by the Syrian prime minister's public announcement that he and the Russian Federation are going to launch an offensive around Aleppo—that would be devastating for the people of Aleppo of course, but also to this intricate process where the cessation of hostilities, humanitarian access, and political negotiations are all related to one another.²⁸

After Russia and Syria began their offensive in Aleppo, U.S. officials stated that the campaign was inconsistent with the COH. On April 28, 2016, the United States condemned an attack against the al-Quds hospital in Aleppo, which the United States claimed “killed dozens of people, including children, patients, and medical personnel.”²⁹ Following the attack, Kerry stated:

The United Nations today assessed the situation in Aleppo to be catastrophic, and the regime's most recent offensive actions there—despite the cessation of hostilities—compound the violence and undermine the cessation of hostilities. Russia has an urgent responsibility to press the regime to fulfill its commitments under UNSCR 2254, including in particular to stop attacking civilians, medical facilities, and first responders, and to abide fully by the cessation of hostilities.³⁰

In addition to condemning the offensive in Aleppo, U.S. officials continued to raise concerns that the Assad regime was interfering with the delivery of humanitarian aid. Ambassador Power stated that in March the Assad regime confiscated at least 4.5 metric tons of humanitarian aid from UN convoys.³¹ Moreover, Power stated that because of “deliberate obstruction by the Syrian regime,” the United Nations in 2016 had “been permitted to reach just 249,000 people . . . out of 4.1 million—or a little more than six percent of those in hard to reach areas.”³²

²⁶ In November 2015, the ISSG called on Syria to establish “credible, inclusive and non-sectarian governance” and “[f]ree and fair elections . . . pursuant to [a] new constitution . . .” U.S. Dep't of State Press Release, Statement of the International Syria Support Group (Nov. 14, 2015), at <https://2009-2017.state.gov/r/pa/prs/ps/2015/11/249511.htm>. The ISSG additionally stated that the United Nations should supervise new elections consistent with “the highest international standards of transparency and accountability, with all Syrians, including the diaspora, eligible to participate.” *Id.* The ISSG echoed the Geneva Communiqué of 2012, which also called for a new constitution and inclusive government. Action Group for Syria Final Communiqué (June 30, 2012), at <http://www.un.org/News/dh/infocus/Syria/FinalCommuniquéActionGroupforSyria.pdf>.

²⁷ U.S. Dep't of State Press Release, Remarks with Russian Foreign Minister Sergey Lavrov (Mar. 24, 2016), at <https://2009-2017.state.gov/secretary/remarks/2016/03/255138.htm>.

²⁸ Samantha Power, U.S. Ambassador to the United Nations, Remarks Following UN Security Council Consultations on Syria (Apr. 12, 2016), at <https://2009-2017-usun.state.gov/remarks/7220> [hereinafter Power Remarks April 12].

²⁹ U.S. Dep't of State Press Release, Attack on al-Quds Hospital in Aleppo, Syria (Apr. 28, 2016), at <https://2009-2017.state.gov/secretary/remarks/2016/04/256697.htm>.

³⁰ *Id.*

³¹ Power Remarks April 12, *supra* note 28.

³² Samantha Power, U.S. Ambassador to the United Nations, Remarks at a UN Security Council Open Debate on the Middle East (Apr. 18, 2016), at <https://2009-2017-usun.state.gov/remarks/7231>.

The United States and Russia pursued several diplomatic efforts in May 2016 to repair the COH. On May 4, 2016, the United States and Russia agreed to specify explicitly that the agreement applied to Aleppo.³³ The State Department announced in a press release that:

We expect all parties to the Cessation of Hostilities to abide fully by the renewed cessation in Aleppo and throughout the entire country, pursuant to the terms of the arrangements established in Munich in February 2016. Attacks directed against Syria's civilian population can never be justified, and these must stop immediately.³⁴

Moreover, on May 9, 2016, the United States and Russia reaffirmed their commitment to the COH and agreed to take several steps to reduce hostilities, enhance humanitarian assistance, and pursue a political settlement.³⁵ According to the agreement, Russia agreed to “work with the Syrian authorities to minimize aviation operations over areas that are predominantly inhabited by civilians or parties to the cessation.”³⁶ Moreover, the United States and Russia “reaffirm[ed] that all parties must allow immediate and sustained humanitarian access to reach all people in need, throughout Syria, particularly in all besieged and hard-to-reach areas, in accordance with UNSCR 2254.”³⁷

Despite renewed diplomacy between the United States and Russia, violence in Syria worsened during the summer of 2016. In June 2016, Assad spoke before the Syrian parliament and stated that the Syrian Army would escalate its offensive in Aleppo to combat terrorist groups and to counter alleged interventions by Turkey.³⁸ Shortly thereafter, Russia announced that it would contribute air support for Syria's offensive in Aleppo and defended Assad's claim that the campaign would target terrorists. Russian Foreign Minister Sergey Lavrov stated that “[w]hat is now happening in Aleppo and around it—we warned the Americans about this in advance,” and “[t]he U.S. knows that we will be providing air support to the Syrian army to prevent territories from being seized by terrorists.”³⁹ Moreover, Lavrov stated that he informed Kerry that the United States “defaulted on its obligation to separate the opposition groups loyal to it from Jabhat al-Nusra” and that the United States had failed to comply with its promise “to prevent infiltrations of militants and weapons from Turkey.”⁴⁰

As Russia and Syria continued their campaign in Aleppo, the United States and Russia reached an arrangement on July 15, 2016, to shore up the COH and to coordinate attacks against ISIL.⁴¹ The parties stated that the agreement was

³³ U.S. Dep't of State Press Release, Reaffirming the Cessation of Hostilities in Aleppo, Syria (May 4, 2016), at <https://2009-2017.state.gov/r/pa/prs/ps/2016/05/256865.htm>.

³⁴ *Id.*

³⁵ U.S. Dep't of State Press Release, Joint Statement of the Russian Federation and the United States on Syria (May 9, 2016), at <https://2009-2017.state.gov/r/pa/prs/ps/2016/05/256998.htm>.

³⁶ *Id.*

³⁷ *Id.* Resolution 2254 “[c]alls on the parties to immediately allow humanitarian agencies rapid, safe and unhindered access throughout Syria by most direct routes, [and to] allow immediate, humanitarian assistance to reach all people in need, in particular in all besieged and hard-to-reach areas . . .” S.C. Res. 2254, *supra* note 16, para. 12.

³⁸ President Assad's Parliament Speech (June 7, 2016), at http://www.presidentassad.net/index.php?option=com_content&view=article&id=1529:president-assad-s-parliament-speech-june-7-2016&catid=323&Itemid=496.

³⁹ *Russia to Provide Active Support for Syrian Army to Prevent Terrorists from Seizing Aleppo*, TASS RUSS. NEWS AGENCY (June 6, 2016), at <http://tass.com/defense/880324>.

⁴⁰ *Id.*

⁴¹ U.S. Dep't of State Press Release, Joint Press Availability with Russian Foreign Minister Sergey Lavrov (July 15, 2016), at <https://2009-2017.state.gov/secretary/remarks/2016/07/260134.htm> [hereinafter Kerry Lavrov

designed to promote a political settlement of the Syrian conflict, and to allow Russia and the U.S. to work together to bring about the destruction of Nusra and Daesh . . . in the context of a strengthened COH with all COH parties adhering to COH terms.⁴²

In a press conference with Foreign Minister Lavrov announcing the deal, Secretary Kerry stated:

[T]he Assad regime has relentlessly continued indiscriminate attacks contrary to the agreements of the ISSG and the UN Security Council. But on the other side, the terrorist group Jabhat al-Nusra, the al-Qaida branch in Syria, has also launched its own offensives, sometimes with members of different oppositions joining with them.

And the result has been a cycle of excuses for continuing to fight each other, with a steady deterioration of a hard-fought-for cessation of hostilities in the process. And that has resulted in the killing of civilians, more refugees, more displaced persons, more radicalization, more terrorism, and ultimately an increasing sense of hopelessness among the people of Syria.⁴³

The agreement called for the United States and Russia to establish a Joint Implementation Center to “[s]hare intelligence and develop actionable targets for military action against Nusra in designated areas.”⁴⁴ The agreement stated that Syria would halt air missions in certain areas as the United States and Russia carried out coordinated attacks against ISIL and al-Nusra.⁴⁵

Despite the July 2016 agreement between the United States and Russia, violence in Aleppo continued to worsen throughout July and August. Russian and Syrian forces concentrated their attacks on eastern Aleppo where the rebel forces maintained control.⁴⁶ U.S. officials again argued that the Russian and Syrian offensive violated the COH. In a UN Security Council briefing on Syria, Ambassador Power criticized the Russian and Syrian offensive in Aleppo and stated that their actions had severely limited the delivery of humanitarian aid:

Eastern Aleppo is quickly falling victim to the Assad regime’s typical pattern of starve and surrender tactics. Over the last month, the Assad regime flagrantly violated the cessation of hostilities by attacking Aleppo. The regime and its supporters have cut off Castello Road, the only remaining supply route for more than 250,000 Syrians living in the eastern part of the city, severing their access to food, fuel, medicine, clean water, and other essential supplies. . . . [A]lternative options for delivering humanitarian aid are diminishing rapidly; airstrikes by the Assad regime and by Russia are making the use of other roads totally precarious.⁴⁷

Ambassador Power held Russia responsible for the deterioration of the COH and for the worsening humanitarian crisis. According to Power, “Russia, as a co-sponsor of the cessation of hostilities, must halt these attacks and persuade the regime to do the same. And they must ensure the reopening of the Castello Road.”⁴⁸ To improve the humanitarian crisis, Power

Press Availability July 15]; U.S. Dep’t of State, July 15 – Approach for Practical Russian-American Efforts Against Daesh and Jabhat al-Nusra and Strengthening the Cessation of Hostilities (Sept. 9, 2016), at <https://2009-2017.state.gov/documents/organization/262413.pdf> [hereinafter July 15 U.S.-Russia Agreement]; see also U.S.-Russia Arrangement Fact Sheet, *supra* note 14.

⁴² July 15 U.S.-Russia Agreement, *supra* note 41.

⁴³ Kerry Lavrov Press Availability July 15, *supra* note 41.

⁴⁴ July 15 U.S.-Russia Agreement, *supra* note 41, para. 4(a).

⁴⁵ *Id.*, para. 4(c–d).

⁴⁶ Samantha Power, U.S. Ambassador to the United Nations, Remarks at a UN Security Council Briefing on the Situation in Syria (July 25, 2016), at <https://2009-2017-usun.state.gov/remarks/7381>.

⁴⁷ *Id.*

⁴⁸ *Id.*

stated that, “Russia, the Assad regime, and other groups fighting around Aleppo should heed the UN’s call for a weekly 48 hour pause to allow for deliveries of essential supplies.”⁴⁹ Around August 8, rebel groups temporarily broke the siege of eastern Aleppo,⁵⁰ but Russia and Syria quickly responded with increased attacks.⁵¹

On September 9, 2016, the United States and Russia reached a new agreement to reaffirm the COH.⁵² In a press conference announcing the deal, Secretary Kerry stated that the United States hoped the arrangement would “reduce violence, ease suffering, and resume movement towards a negotiated peace and a political transition in Syria,” and that the deal represented a “more proscriptive and far-reaching approach” than the parties had taken in the past.⁵³

The new agreement integrated the previous arrangements that the United States and Russia had reached on February 22, March 26, and July 15, 2016.⁵⁴ It also contained several additional components. First, the deal required that the parties to the COH on Day D (September 12, 2016) “recommit to the CoH and honor its terms in full, as set forth in the February 22, 2016 Joint Declaration of the Russian Federation and the United States, for a 48 hour period.”⁵⁵ The agreement emphasized provisions of the original COH that called for ceasing hostilities, unimpeded access to humanitarian aid, and proportionate use of force in self-defense.⁵⁶ On day D+2, the agreement stated that “if the CoH in Syria has continued to hold to the mutual satisfaction of the Sides, they will extend it for a mutually agreed upon period of time.”⁵⁷ Second, the agreement contained special provisions to ensure humanitarian aid could reach Aleppo,⁵⁸ such as requiring forces to pull back from Castello Road.⁵⁹ Third, the agreement required the Syrian Army to cease air operations in designated areas where the opposition groups were present.⁶⁰ Fourth, if Syria complied with the prohibition on air operations, the agreement again called for a Joint Implementation Center between the United States and Russia to target ISIL and al-Nusra.⁶¹ In an annex, the September 9 agreement also stated that “[e]ach Side reserves the right to withdraw from this arrangement if they believe the terms have not been fulfilled.”⁶²

⁴⁹ *Id.*

⁵⁰ Samantha Power, U.S. Ambassador to the United Nations, Remarks at a UN Security Council Open Arria-Formula Meeting on Aleppo (Aug. 8, 2016), at <https://2009-2017-usun.state.gov/remarks/7397>.

⁵¹ U.S. Dep’t of State Press Release, Daily Press Briefing (Aug. 16, 2016), at <https://2009-2017.state.gov/r/pa/prs/dpb/2016/08/261082.htm>.

⁵² U.S.-Russia Arrangement Fact Sheet, *supra* note 14.

⁵³ U.S. Dep’t of State Press Release, Remarks with Russian Foreign Minister Sergey Lavrov and UN Special Envoy Steffan de Mistura at a Press Availability (Sept. 9, 2016), at <https://2009-2017.state.gov/secretary/remarks/2016/09/261722.htm>.

⁵⁴ See U.S. Dep’t of State, September 9 – U.S./Russian Arrangement Reducing Violence, Restoring Access, and Establishing the JIC (Sept. 9, 2016), at <https://2009-2017.state.gov/documents/organization/262413.pdf> [hereinafter U.S.-Russian Arrangement Reducing Violence, Restoring Access, and Establishing the JIC]; see also U.S.-Russia Arrangement Fact Sheet, *supra* note 14.

⁵⁵ U.S.-Russian Arrangement Reducing Violence, Restoring Access, and Establishing the JIC, *supra* note 54, para. 1.

⁵⁶ *Id.*

⁵⁷ *Id.*, para. 2.

⁵⁸ *Id.*, para. 3.

⁵⁹ *Id.*

⁶⁰ *Id.*, para. 4.

⁶¹ *Id.*, para. 5, ann.

⁶² *Id.* at ann.

Shortly after the United States and Russia agreed to further strengthen the COH, two controversial bombings jeopardized the agreement. First, the United States conducted an air strike on September 17 that killed approximately sixty Syrian Army soldiers in Dayr Az Zawr, Syria.⁶³ The U.S. Central Command stated that coalition forces believed that the strike was against ISIL and that “[t]he coalition airstrike was halted immediately when coalition officials were informed by Russian officials that it was possible the personnel and vehicles targeted were part of the Syrian military.”⁶⁴ Moreover, Central Command stated that “coalition members in the Combined Air Operations Center had earlier informed Russian counterparts of the upcoming strike” and that “[i]t is not uncommon for the Coalition Air Operations Center to confer with Russian officials as a professional courtesy and to deconflict Coalition and Russian aircraft, although such contact is not required by the current U.S.-Russia Memorandum of Understanding on safety of flight.”⁶⁵

Syrian and Russian officials condemned the U.S. attack. The Russian Foreign Ministry stated in a press release that “[t]he operations of coalition pilots, who, we hope, did not act on Washington’s orders, are on the verge of criminal negligence and are directly pandering to ISIS terrorists.”⁶⁶ Moreover, the statement accused U.S.-backed rebel groups of violating the COH by continuing to conduct attacks against Syrian forces, and it stated that “[w]e once again insistently urge Washington to exert the necessary pressure on US-patronised illegal paramilitary units and force them to unfailingly honour the ceasefire.”⁶⁷ Russia called an emergency meeting of the UN Security Council to address the incident, and Ambassador Power commented on the strike in a statement to press before the meeting.⁶⁸ Although Power acknowledged the strike and claimed that it was an error, she called the meeting “a stunt replete with moralism and grandstanding” and “uniquely cynical and hypocritical.”⁶⁹ Furthermore, Power faulted Russia for failing to convince Syria to honor the agreement by grounding its air force and by continuing to prevent humanitarian assistance from reaching those in need.⁷⁰

⁶³ U.S. Cent. Comm. Press Release, *Coalition Halts Airstrike in Progress Against Possible Syrian Military Position* (Sept. 17, 2016), at <http://www.centcom.mil/MEDIA/PRESS-RELEASES/Press-Release-View/Article/947839/coalition-halts-airstrike-in-progress-against-possible-syrian-military-position> [hereinafter Cent. Comm. Press Release]; Ministry of Foreign Aff. of the Russ. Fed’n Press Release, *Comment by the Information and Press Department on U.S.-Led International Anti-ISIS Coalition’s Air Strike Against Syrian Government Forces’ Positions Near Deir ez-Zor* (Sept. 18, 2016), at http://www.mid.ru/ru/foreign_policy/news/-/asset_publisher/cKNonkJE02Bw/content/id/2444527?p_p_id=101_INSTANCE_cKNonkJE02Bw&_101_INSTANCE_cKNonkJE02Bw_languageId=en_GB [hereinafter Russian Foreign Ministry Statement on U.S. Attack Against Syrian Troops].

⁶⁴ Cent. Comm. Press Release, *supra* note 63.

⁶⁵ *Id.* The United States and Russia signed a memorandum of understanding on air safety in Syria on October 20, 2015. U.S. Dep’t of Defense Press Release, U.S., Russia Sign Memorandum on Air Safety in Syria (Oct. 20, 2015), at <http://www.defense.gov/News/Article/Article/624964/us-russia-sign-memorandum-on-air-safety-in-syria>.

⁶⁶ Russian Foreign Ministry Statement on U.S. Attack Against Syrian Troops, *supra* note 63.

⁶⁷ *Id.*; see also *Al-Jaafari: Terrorist War on Syria Disclosed Fragility of International Law*, SYRIAN ARAB NEWS AGENCY (Sept. 19, 2016), at <http://sana.sy/en/?p=88431>.

⁶⁸ Samantha Power, U.S. Ambassador to the United Nations, *Remarks Before UN Security Council Consultations on Syria* (Sept. 17, 2016), at <https://2009-2017-usun.state.gov/remarks/7437>.

⁶⁹ *Id.*

⁷⁰ *Id.*

Two days after the controversial U.S. bombing, a bombing destroyed a UN convoy delivering aid to the Aleppo region. According to the United Nations, the strike damaged eighteen out of thirty-one trucks in the convoy,⁷¹ which contained “vital food and medical assistance.”⁷² The Syrian Arab Red Crescent (SARC), which organized the convoy together with the United Nations, stated that “[a]round twenty civilians and one SARC staff member were killed, as they were unloading trucks”⁷³ UN Secretary-General Ban Ki-moon called the attack “sickening, savage, and apparently deliberate” and said that “[a]ccountability for crimes such as these is essential.”⁷⁴ In a statement, the UN Under-Secretary-General for Humanitarian Affairs said: “Let me be clear: if this callous attack is found to be a deliberate targeting of humanitarians, it would amount to a war crime. I call for an immediate, impartial and independent investigation into this deadly incident.”⁷⁵

While none of the combatants took responsibility for the attack, U.S. officials stated that it had been perpetrated by either Russia or Syria. In a press briefing, the White House press secretary stated that because the bombing was an air strike, “there only could have been two entities responsible, either the Syrian regime or the Russian government.”⁷⁶ The United States condemned the attack, and it reiterated earlier statements calling on Russia to honor the recent agreement by restraining Syria and by permitting deliveries of humanitarian aid. The State Department issued a press release stating that:

[f]or more than a week, we have urged Moscow to fulfill the commitments it made in Geneva to facilitate the unimpeded flow of humanitarian aid to the Syrian people. And for more than a week, the Syrian regime repeatedly denied entry to these UN convoys, preventing them from delivering urgent food, water and medical supplies to desperate Syrian citizens. Only today did the regime finally grant permits for some convoys to proceed.⁷⁷

The United States also issued a joint statement with France, Italy, Germany, the United Kingdom, and the High Representative of the European Union condemning the bombing.⁷⁸ The joint statement “call[ed] on Russia to take extraordinary steps to restore the credibility of

⁷¹ *UN Relief Agency Calls for Prompt Investigation into the Attack on Aid Convoy in Syria*, UN WEB TV (Sept. 20, 2016), at <http://webtv.un.org/meetings-events/watch/un-relief-agency-calls-for-prompt-investigation-into-the-attack-on-aid-convoy-in-syria/5134269761001>.

⁷² *Syria: UN Officials Condemn Attacks Against Aid Convoy and Warehouse in Rural Aleppo*, UN NEWS CENTRE (Sept. 20, 2016), at <http://www.un.org/apps/news/story.asp?NewsID=54969#.WB-X2OErKRss>.

⁷³ *Syria: Attack on Humanitarian Convoy Is an Attack on Humanity*, INT’L FED’N OF RED CROSS & RED CRESCENT SOCIETIES (Sept. 20, 2016), at <http://www.ifrc.org/en/news-and-media/press-releases/general/syria-attack-on-humanitarian-convoy-is-an-attack-on-humanity>.

⁷⁴ Ban Ki-moon, UN Secretary-General, Address to the General Assembly (Sept. 20, 2016), at <https://www.un.org/sg/en/content/sg/speeches/2016-09-20/address-general-assembly-bilingual-delivered-version>.

⁷⁵ Stephen O’Brien, Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator, Statement on Convoy to Urum al-Kubra (Sept. 19, 2016), at https://docs.unocha.org/sites/dms/Documents/ERC_USG%20Stephen%20OBrien%20Statement%20on%20Urum%20al-Kubra,%20SYRIA%2019Sept16.pdf.

⁷⁶ White House Press Release, Press Briefing by Press Secretary Josh Earnest and Ben Rhodes (Sept. 20, 2016), at <https://www.whitehouse.gov/the-press-office/2016/09/20/press-briefing-press-secretary-josh-earnest-and-ben-rhodes>.

⁷⁷ U.S. Dep’t of State Press Release, Strike on Humanitarian Aid Convoy in Syria (Sept. 19, 2016), at <https://2009-2017.state.gov/r/pa/prs/ps/2016/09/262151.htm>.

⁷⁸ U.S. Dep’t of State Press Release, Joint Statement on Syria by the Foreign Ministers of France, Italy, Germany, the United Kingdom, the United States, and the High Representative of the European Union (Sept. 24, 2016), at <https://2009-2017.state.gov/r/pa/prs/ps/2016/09/262382.htm>.

our efforts, including by halting the indiscriminate bombing by the Syrian regime of its own people, which has continually and egregiously undermined efforts to end this war.”⁷⁹

Russian officials denied accusations that the Russian air force attacked the convoy, stating “with all responsibility that neither Russian, nor Syrian aviation has conducted any strikes against the UN humanitarian convoy on the southwestern outskirts of Aleppo.”⁸⁰ Russian Defense Ministry Spokesperson Igor Konashenkov suggested that opposition groups may have fired artillery at the convoy, or that the convoy may have caught fire.⁸¹ Konashenkov stated that “Everything shown on the video is the direct consequence that the cargo caught fire and this began in a strange way simultaneously with carrying out a massive offensive of militants in Aleppo.”⁸² Foreign Minister Lavrov also denied that Russia or Syria was responsible and instead suggested that the U.S.-led coalition might have conducted the attack. According to Lavrov, video footage of the scene showed “traces of aluminum dust, characteristic of ammunition used by Predator UAVs . . .”⁸³ Moreover, Russia claimed that it complied with the COH by halting air strikes in agreed zones and by convincing Syria to pull back from Castello Road.⁸⁴ Russia accused the United States of failing to separate al-Nusra from moderate groups, failing to persuade the opposition to retreat from Castello Road, and failing to provide detailed coordinates of opposition locations.⁸⁵

On the same day as the attack on the UN convoy, the Syrian Army announced that the “effect of [the COH] truce regime . . . under the Russian-US agreement has ended.”⁸⁶ The Syrian Army claimed that armed terrorist groups had committed three hundred breaches of the COH in the week since September 12 and that the attacks had killed and injured tens of civilian and military personnel in Aleppo, Hama, and Quneitra.⁸⁷ Syria stated that it did its best to comply with the COH and that it exercised self-restraint in responding to attacks.⁸⁸

After Syria and Russia resumed attacks in Aleppo, the United States suspended bilateral communications with Russia to sustain the COH and canceled plans to establish the Joint Implementation Center.⁸⁹ The State Department explained the United States’ decision and

⁷⁹ *Id.*

⁸⁰ Ministry of Foreign Aff. of the Russ. Fed’n, Comment by the Information and Press Department on an Attack on a Humanitarian Convoy in Syria (Sept. 20, 2016), at http://www.mid.ru/en/web/guest/foreign_policy/international_safety/conflicts/-/asset_publisher/xIEMTQ3OvzC/content/id/2453130.

⁸¹ *Russia, Syria Did Not Deliver Strikes on UN Aid Convoy Near Aleppo—Ministry*, TASS RUSS. NEWS AGENCY (Sept. 20, 2016), at <http://tass.com/world/901003>.

⁸² *Id.*

⁸³ Ministry of Foreign Aff. of the Russ. Fed’n, Foreign Minister Sergey Lavrov’s Television Interview for the Pozdnyakov Programme on NTV, September 26, 2016 (Sept. 26, 2016), at http://www.mid.ru/en/web/guest/meropriyatiya_s_uchastiem_ministra/-/asset_publisher/xK1BhB2bUjd3/content/id/2470301.

⁸⁴ *Russian Defense Ministry Says US, Syrian Opposition Fail to Fulfil Geneva deal*, TASS RUSS. NEWS AGENCY (Sept. 19, 2016), at <http://tass.com/politics/900792>.

⁸⁵ *Id.*

⁸⁶ *Army General Command: Truce Effect Ended, Armed Terrorist Groups Didn’t Commit to Any of Its Terms*, SYRIAN ARAB NEWS AGENCY (Sept. 19, 2016), at <http://sana.sy/en/?p=88500>; see also *Syria Declares End of Ceasefire, US Seeks Clarification from Russia*, RT (Sept. 19, 2016), at <https://www.rt.com/news/359892-syria-ceasefire-over-army>.

⁸⁷ *Army General Command*, *supra* note 86.

⁸⁸ *Id.*

⁸⁹ U.S. Dep’t of State Press Release, Suspension of Participation in Bilateral Channels with Russia Established to Sustain the Cessation of Hostilities in Syria (Oct. 3, 2016), at <https://2009-2017.state.gov/r/pa/prs/ps/2016/10/262704.htm>.

accused Russia of failing to abide by the terms of the COH and its other international law obligations:

Russia failed to live up to its own commitments—including its obligations under international humanitarian law and UNSCR 2254—and was also either unwilling or unable to ensure Syrian regime adherence to the arrangements to which Moscow agreed. Rather, Russia and the Syrian regime have chosen to pursue a military course, inconsistent with the Cessation of Hostilities, as demonstrated by their intensified attacks against civilian areas, targeting of critical infrastructure such as hospitals, and preventing humanitarian aid from reaching civilians in need, including through the September 19 attack on a humanitarian aid convoy.

The U.S. will also withdraw personnel that had been dispatched in anticipation of the possible establishment of the Joint Implementation Center. To ensure the safety of our respective military personnel and enable the fight against Daesh, the United States will continue to utilize the channel of communications established with Russia to de-conflict counterterrorism operations in Syria.⁹⁰

Although the United States suspended bilateral discussions with Russia related to the COH, the White House stated that “the President directed his team to continue multilateral discussions with key nations with a vested interest in the region to encourage all sides to support a more durable and sustainable diminution of violence and, more broadly, a diplomatic resolution to the civil war.”⁹¹

On the same day that the United States suspended cooperation under the COH, Russia announced that it would suspend the Plutonium Disposal and Nuclear Management Agreement between the United States and Russia.⁹² The conflict in Syria continues.

Russia Suspends Bilateral Agreement with United States Disposal of Weapons-Grade Plutonium
doi:10.1017/ajil.2016.9

In October 2016, Russian President Vladimir Putin suspended the Plutonium Management and Disposition Agreement (PMDA), a bilateral treaty between Russia and the United States governing the disposal of surplus weapons-grade plutonium.¹ A Russian Foreign Ministry director explained that the decision was prompted by a “dramatic change in the situation . . . brought about by the unfriendly steps taken by the United States.”² He also cited “the United States’ obvious inability and unwillingness to honour its obligations . . .

⁹⁰ *Id.*

⁹¹ White House Press Release, Readout of the President’s National Security Council Meeting (Oct. 14, 2016), at <https://www.whitehouse.gov/the-press-office/2016/10/14/readout-presidents-national-security-council-meeting>.

⁹² President of Russ. Press Release, Draft Law Suspending the Russia-U.S. Plutonium Management and Disposition Agreement Submitted to the State Duma (Oct. 3, 2016), at <http://en.kremlin.ru/acts/news/53009>; see also U.S. Dep’t of State Press Release, Unofficial Composite Text of the United States-Russian Federation 2000 Plutonium Management and Disposition Agreement, as Amended, at <http://www.state.gov/documents/organization/213493.pdf>; Kristina Daugirdas & Julian Davis Mortenson, *Contemporary Practice of the United States*, 111 AJIL __ (2017).

¹ Ministry of Foreign Aff. of the Russ. Fed’n Press Release, Remarks by Mikhail Ulyanov, Director of the Foreign Ministry Department for Non-Proliferation and Arms Control and Representative of the Russian Federation at the First Committee of the 71st Session of the UNGA, New York, October 3, 2016 (Oct. 4, 2016), at http://www.mid.ru/en/general_assembly/-/asset_publisher/lrzZMhfojRUj/content/id/2486599 [hereinafter Remarks by Mikhail Ulyanov].

² *Id.*