



OVERVIEWS

IN SEARCH OF A ROLE TO PLAY: THE EU AND THE WAR IN SYRIA

TABLE OF CONTENTS: I. Downward Spiral. – II. Security provider. – III. Humanitarian assistant. – IV. Mediator. – V. Transitional justice supporter.

I. Many predicted that the situation in Syria would have to get worse before it gets better. The United Nations (UN) has stopped issuing figures about the death toll but according to a statement by its Special Envoy Staffan de Mistura in April 2016, the war in Syria had by then already killed more than 400,000 people and displaced around 12 million – more than half of the population, thus triggering the worst refugee crisis from a single conflict in a generation.¹ Recent events in the country plumb new depths in what has been a downward spiral since 2011.

As the devastating and intractable war in Syria entered its seventh year, US President Donald Trump momentarily stepped into the fray, citing the red line on the use of chemical weapons that his predecessor laid down but shied away from enforcing. While former US President Barack Obama worked with Russia to get rid of Syria's chemical weapons in pursuance of United Nations Security Council Resolution (UNSCR) 2118 of 27 September 2013,² Trump's air-strike on one of Bashar al-Assad's military bases thought to have been used for the chemical attack on Khan Sheikhoun, a small town in Idlib province, has now pitted the US against Vladimir Putin's Russia, which backs the Syrian regime.³ Trump's security advisers have said that Assad cannot be involved in the future of Syria. In barely one week's time at the beginning of April, Trump thus effectively did a double volte-face, reverting to the Obama doctrine – all but in name, of course – and going against his alleged master in the Kremlin.

As a result of the worsening situation in Syria, recent weeks also saw glimmers of hope in the form of renewed diplomatic activity, some of it catalysed by the EU. This raises the twofold question of whether the conflict has now reached a tipping point and, if so, which objective the EU should be pursuing to resolve it.

¹ See D. JOHNSON, *Syria envoy claims 400,000 have died in Syria conflict*, in *United Nations Radio*, 22 April 2016, www.unmultimedia.org.

² Security Council, Resolution 2118 of 27 September 2013, UN Doc. S/RES/2118 (2013).

³ See M. BROWNE, N. RENEAU, M. SCHEFFLER, *How Syria and Russia spun a chemical strike: Video evidence shows that they distorted the facts after Syria's sarin gas attack*, in *New York Times*, 26 April 2017, www.nytimes.com.

II. Conscious of its weakened position on the international stage and its internal divisions, the 2016 Global Strategy adopted the concept of ‘principled pragmatism’ to guide EU external action in the years ahead.⁴ This somewhat elusive phrase encapsulates an approach to EU foreign policy that is premised on security and building resilient states and societies on its outer periphery. This is not the finger-wagging missionary EU that some outsiders have come to know over the past 25 years. Although the EU is still bound by the constitutional duty of Art. 21 TEU to promote its values abroad, and indeed respect for international law writ large, it is approaching the world in a more realist fashion.

This new approach to EU external action could be helpful in dealing with the deeply fractured Middle East, where circumstances, not preferences, dictate policymaking. The most imminent strategic goal is to contain and defeat Daesh. This was confirmed by the Foreign Affairs Council of 23 May 2016, which adopted conclusions on the EU regional strategy for Syria and Iraq as well as the Daesh threat, outlining its priorities in working to achieve lasting peace, stability, security in Syria, Iraq and the wider region.⁵ Here, the EU – as an international organisation with an underdeveloped military arm – is barely present.⁶ But individual Member States are active in the air and on the ground: France, Germany, the United Kingdom (UK) and other EU countries have entered the US-led coalition against Daesh in Iraq and Syria. Some have done so in response to France’s activation of the EU’s collective self-defence clause in the wake of the November 2015 Paris terrorist attacks.⁷ Other configurations of Member States (including Croatia, Czech Republic, Denmark, Estonia and Hungary) are arming and training Peshmerga forces in Iraq, and supporting the EU’s humanitarian aid effort for refugees and internally displaced people in the ‘free’ Kurdistan Region of Iraq.⁸ This provides the stepping stone for the kind of resilience-building that the European Union could engage in, but so far these activities have not branched out of Iraq, into Syria.

“When elephants fight, the grass suffers”. This Asian proverb applies as much to the fight between the ‘cold warriors’ (Russia and the US) and their proxies, as it does to the plight of Syrians who are trapped in the conflict or have been forced to find refuge

⁴ EEAS, *Shared Vision, Common Action: A Stronger Europe. A Global Strategy for the European Union’s Foreign And Security Policy*, June 2016, www.eeas.europa.eu, p. 8.

⁵ Council Conclusions of 23 May 2016 on *The EU Regional Strategy for Syria and Iraq as well as the Da’esh threat*.

⁶ Early efforts by France and the UK to convince other Member States that the EU should arm opposition groups fell on stony ground. See M.E. O’CONNELL, *Europe and Syria: Diplomacy, Law, and War*, in *European Papers*, 2017, Vol. 2, No 1, www.europeanpapers.eu, p. 15 *et seq.*

⁷ See C. HILLION, S. BLOCKMANS, *Europe’s self-defence: Tous pour un et un pour tous?*, in *CEPS Commentary*, 20 November 2015, www.ceps.eu.

⁸ See S. BLOCKMANS, *Can the EU help prevent further conflict in Iraq and Syria?*, in *CEPS Commentary*, 25 November 2016, www.ceps.eu.

elsewhere. It also applies to the EU, which is not a military player in the conflict but seems side-lined – again – to play the role of payer.

III. The EU does not shy away from providing humanitarian assistance. On the contrary, the EU institutions and Member States derive immense prestige from collectively being the world's largest donor to the Syrian people. High Representative Federica Mogherini relished being in the spotlight of the 2017 Syria donor conference which she co-hosted in Brussels on 4-5 April. Building on previous years' conferences in Kuwait and London, representatives of more than 70 countries and international organisations gathered to pledge €5.6 billion for this year and an additional €3.47 billion until 2020.⁹ If and when paid, the co-chairs of the donor conference (the EU, UN, Germany, Kuwait, Norway, Qatar and the UK) will have gathered the lion's share of the €7.36 billion requested by the UN for 2017 to cover assistance and protection needs inside Syria and its neighbouring countries.

Sadly though, this provisional success was overshadowed by the chemical attack on Khan Sheikhoun on the eve of the Brussels event. While the conference issued a call that "the use of chemical weapons by anyone, anywhere, must stop",¹⁰ Russia subsequently vetoed a draft resolution of the UN Security Council (for the eighth time) condemning the Syrian government for the use of these weapons. This consistent denial of international law and responsibility stands in sharp contrast to the EU Council's conclusions from April 3rd that those responsible for violations of human rights and international humanitarian law "must be held accountable",¹¹ and the call by the co-chairs of the donor conference to support the implementation of UN General Assembly Resolution 71/248 establishing an International Impartial and Independent Mechanism (IIIM).¹² This mechanism, an initiative of Liechtenstein and Qatar, ought to ensure accountability for systematic, widespread and gross violations and abuses of international humanitarian law and human rights in Syria. The IIIM will collect, consolidate, preserve and analyse evidence; and prepare files on individual suspects, in order to facilitate and expedite fair and independent criminal proceedings in national, regional or international courts, in accordance with international law. Given that alternative paths towards international criminal accountability are currently blocked, the creation of the IIIM is a valuable step towards transitional justice for Syria and deserves support.

⁹ Supporting the future of Syria and the Region, Co-Chair's Declaration – Annex: Fundraising, in European Council Press Release 188/17 of 5 April 2017.

¹⁰ *Ibidem*.

¹¹ EU-Syria Strategy of 3 April 2017, in Council Press Release 180/17 of 3 April 2017, para. 2.

¹² General Assembly, Resolution 71/248 of 11 January 2017, International, impartial and independent mechanism to assist in the investigation and prosecution of persons responsible for the most serious crimes under international law committed in the Syrian Arab Republic since March 2011, UN doc. A/RES/71/248.

IV. Driven by the recognition that more needs to be done, the European Commission and the High Representative published a joint communication with “elements” for an EU strategy for Syria, which the Council complemented with conclusions and adopted as a strategy on the eve of the Brussels donor conference.¹³ The EU’s aim was to seek endorsement for its brand-new strategy at the conference, thereby defining internationally how the EU could play a bigger role in contributing to a lasting political solution in Syria under the existing UN-agreed framework (including UNSCR 2254 of 18 December 2015¹⁴ and the 2012 Geneva Communiqué¹⁵), help build stability and support post-conflict reconstruction once a credible political transition is underway. The latter element of the strategy includes the EU’s insistence on the “special responsibility for the costs of reconstruction [that] should be taken by those external actors who have fuelled the conflict”.¹⁶ While it is understandable that the EU does not want to pay for what other external actors have destroyed, it is difficult to see how the EU will make Russia and others pay for laying waste to Aleppo and other places. A first step towards greater accountability would be to enable the creation of effective tools to verify any complicity in fuelling the conflict. From this perspective, it is mind-boggling that the EU, as a co-chair calling for support of the IIM, has not (yet) committed to financially support it.

However difficult it may be for the EU to implement its new Syria strategy, the military and political fall-out of the chemical attack on Khan Sheikhoun has delivered an immediate blow to the EU’s strategic aims, which were to be served by the donor conference in strengthening international support for the UN-led political process.¹⁷ The failure of the EU to attain this political objective works to the obvious benefit of Bashar al-Assad and his overlords in Moscow and Tehran, who are engaged in the Astana talks with Turkey and its Syrian proxies to determine the conditions for a ceasefire to the conflict. In spite of having been endorsed by UNSCR 2336 of 31 December 2016¹⁸ and supported by the EU, the Astana talks in practice do not aim to complement the Geneva process but rather to replace it by determining the conditions for a military ‘solution’ to the conflict, without too much external interference.¹⁹ Suspicions of such a tactic were confirmed when Moscow tried to take advantage of the presidential transition period in

¹³ EU-Syria Strategy (2017), cit.

¹⁴ Security Council, Resolution 2254 of 18 December 2015, UN Doc. S/RES/2254 (2015).

¹⁵ General Assembly, Security Council, Identical letters dated 5 July 2012 from the Secretary-General addressed to the President of the General Assembly and the President of the Security Council, Annex: Final communiqué of the Action Group for Syria, UN Doc. A/66/865-S/2012/522.

¹⁶ EU-Syria Strategy (2017), cit.

¹⁷ The absence of Turkey and the low-level participation by Russia, Iran, the US and other key states in the donor conference did not help either.

¹⁸ Security Council, Resolution 2336 of 31 December 2016, UN Doc. S/RES/2336 (2016).

¹⁹ See Al Jazeera Centre for Studies, *Between Astana and Geneva: The outlook of conflicting agendas in the Syrian crisis*, 1 March 2017, studies.aljazeera.net.

the US at the beginning of 2017 by putting forward the idea of Russian experts drafting a new Syrian constitution.

Russia and its allies are engaged in a race against the clock, knowing that the military tide has turned in their favour but that the proof of their heinous crimes is being collected and will become harder to ignore and deny if the IIIM becomes operational. Perhaps the thinking in Moscow, Damascus, Tehran and Ankara is that a ticket out of such international criminal responsibility might lie in a peace deal brought about by them. Rather than allowing war criminals to determine the contours of a final agreement, the EU should push harder for the ceasefire talks to be brought back into the fold of the Geneva Process, where Russia co-chairs the International Syria Support Group with the US.

V. Apart from recalibrating its tactical posture, the EU should more actively promote transitional justice for the Syrian people. As stated by Human Rights Watch: "Justice is an antidote to continued crimes. It can motivate people not to join armed groups opposing Assad, and it can motivate people to defect from Assad's forces".²⁰ As a confidence-building measure, and as a signal sent to both the victims and the perpetrators of human rights violations and war crimes, the EU should therefore commit financial support to the International, Impartial and Independent Mechanism, facilitate its establishment, and assist in every way possible to secure its success.

Steven Blockmans*

²⁰ L. LEICHT, *EU Should Step Up and Fund War Crimes Investigations in Syria*, in *Human Rights Watch*, 13 April 2017, www.hrw.org.

* Head of EU Foreign Policy at the Brussels-based think tank CEPS, Professor at the Amsterdam Centre for European Law and Governance (ACELG) of the University of Amsterdam, and member of the board of the Centre for the Law of EU External Relations (CLEER); steven.blockmans@ceps.eu. The author is indebted to Astrid Viaud for her research assistance.

