

سوريون
من أجل
الحقيقة
والعدالة
Syrians
For Truth
& Justice



4 September 2020



**Russia's and Turkey's Recruitment
of Syrian Mercenaries to Libya:
Two Faces of the same Colonialist**

Russia's and Turkey's Recruitment of Syrian Mercenaries to Libya: Two Faces of the same Colonialist Coin

*The absence of a structural reform of international law as a cause for
its imperial legacy, and its incapacity to preclude replications
of colonialism*

[Syrians for Truth and Justice's investigations into the recruitment and deployment of Syrians, for some civilians and children, to Libya by Turkey and Russia](#) as mercenaries has highlighted the dire need for a postcolonial reflection on Syria, focussed on its emancipation from foreign powers interfering in the context of Syria, and impeding any prospects for prosperity in the near future. While alarming, the recruitment of Syrians to fight alongside Turkey's and Russia's armies in Libya is only the result of an imperial policy conducted by both countries in Syria.¹

I. A short introduction to postcolonialism

A. The field of postcolonialism

It took centuries for people under colonial rules to overcome the obstacles imposed by colonial powers, build political movements and eventually triumph against colonial rule. Nonetheless, this was only to be the beginning of a still ongoing struggle, for former colonial powers have managed to impose a new kind of rule over these states newly formed. In that vein, postcolonial studies have been aiming at getting a grasp of cultural, social, economic and legal challenges faced by new states. Although not a homogenic discipline, postcolonial studies have at their roots founding ideas, including the claim that former Empires still dominate newly independent countries, that disparity must be fought, and that African, Asian and Latin American peoples have a right to access their resources. In the wake of this movement, new fields appeared, including postcolonial literature and postcolonial cinema. This analysis relies, for its part, on postcolonial legal studies.

B. Postcolonial legal studies

Born from European plans to justify and frame their colonial prospects, international law was never able nor, it seems, willing to overcome its problematic past. It took lawyers until recently to truly assess and come to terms with the original purpose of international law, and some today still refute the validity of such a lecture. Clues are, however, patent, and scholars go to such extent as to claim that “[s]ome of the most central concerns of international legal theorizing cannot be properly explored without taking imperialism into account.”²

Modern international law is, indeed, based on the remnants of a system created at the dawn of the discovery of the *New World*. Guidelines and rules were then urgently needed to provide for the management of Non-European lands and peoples. Evidently, Europeans came up with doctrines drafted in their interests and that perdure to date.

¹ Turkey's Recruitment of Syrian Mercenaries to Fight in Libya: Process and Legal Consequences, *Syrians for Truth and Justice*, 11 May 2020, <https://stj-sy.org/en/turkeys-recruitment-of-syrian-mercenaries-to-fight-in-libya-process-and-legal-consequences/>; In Collusion with the “Syrian Government”, a Russian Security Company Recruits Thousands of Syrians as Mercenaries to Fight in Libya alongside “Haftar”, *Syrians for Truth and Justice*, 28 July 2020, <https://stj-sy.org/en/in-collusion-with-the-syrian-government-a-russian-security-company-recruits-thousands-of-syrians-as-mercenaries-to-fight-in-libya-alongside-haftar/>

² Antony Anghie, “Imperialism and International Legal Theory,” in *The Oxford Handbook of the Theory of International Law* (Oxford, UK: Oxford University Press, 2016).

In a text hold as one of the first evidence of modern international law, *On the Indians Lately Discovered*, Vitoria shared his vision of the sovereignty Spain should claim over America following Columbus' exploration.³ Drawing upon natural law principles, he claimed that all people, including "Indians" were governed by natural law. For his acknowledging of the humanity of Indigenous people, that departed from common narratives, de Vitoria remains perceived as "a champion of the rights of indigenous and non-European peoples."⁴

De Vitoria continues, nonetheless:

Although the aborigines in question are (as has been said above) not wholly unintelligent, yet they are a little short of that condition, and so are unfit to found or administer a lawful State up to the standard required by human and civil claims. Accordingly, they have no proper laws nor magistrates, and are not even capable of controlling their family affairs.

As a result of this expertise, the legal scholar resolves that Spanish must rule over the indigenous people. He settles:

The Spaniards have a right to travel to the lands of the Indians and to sojourn there, so long as they do no harm, and they cannot be prevented by the Indians.

Would indigenous people come to impede the Spaniards' freedom of movements; they would commit an act of war.

Grotius, held today as a founding father of international law, later followed up and, in 1604-1606, justified the activities of the *Vereenigde Oostindische Compagnie* (VOC), that were then conquering today's Indonesia for its wealth and seemingly endless resources on the ground of the freedom of trade and on a seemingly artificial view of "common ownership" that dictated that "whatever has been produced in one region is regarded as a product native to all regions."⁵

And there were laid the foundations of international law.⁶

By not being party – for, of course they were not invited to – to the founding project of the *Treaty of Westphalia*, that proclaimed the sacrosanct principle of sovereignty, and of equality between states, non-European states were *de facto* and conveniently excluded of the "realm of sovereignty and power" by its designers, creating a "dynamic of difference" between the European and the non-European, one characterized as *civilised*, and the other

³ Francisco de Vitoria (1483-1546) was a Spanish legal philosopher and theologian.

⁴ Antony Anghie, *Imperialism, Sovereignty and the Making of International Law* (Cambridge, UK: Cambridge University Press, 2012).

⁵ Martti Koskenniemi, "The Subjective Dangers of Projects of World Community," in *Realizing Utopia: The Future of International Law*, ed. Antonio Cassese (Oxford, UK: Oxford University Press, 2012); Grotius (1583-1645) was a Dutch legal philosopher and one of the first authors to theorize international law.

⁶ Siba N'Zatioula Grovogui, *Sovereigns, Quasi Sovereigns, and Africans: Race and Self-Determination in International Law, African Affairs* (Minneapolis, US: University of Minnesota Press, 1996).

as *uncivilised*.⁷ The gap between the civilised and the uncivilised lies, according to Anghie, at the core of imperialism.⁸

Ever since, international law has never undertaken any profound revision of its foundations, even in the wake of decolonisation. The twentieth century might appear as a revolutionary turn for international law. The construction of the League of Nations and later of the United Nations, followed by the Nuremberg trials, the agreement on the Geneva Conventions to protect people in times of war, the establishment of the World Trade Organization in support of free trade, or the establishment of the International Criminal Court appear as evidence of an *avant-garde* and challenging field.⁹ Nonetheless, these advancements all point in the same direction and were all concerned primarily with the question posed in these terms by Anghie:

How is it possible to establish a legal order among equal and sovereign states?

Now, this was unintelligible for Third World states who were still asking, per Anghie:

How was it decided that non-European societies were lacking in sovereignty in the first place?

The wave of decolonisation brought about new questions for Third World states, that they endeavoured to discuss during the Bandung Conference held in the homonymous city of Indonesia in April 1955 – that Turkey attended. While some were still under European rules (mainly African countries) and other had recently become new states (India and Indonesia notably), the objective of the attending countries was to come to term with the challenges of European imperialism, and to situate themselves in the realm of international law. The diversity of the attendees, some communist, others pro-West, some post-colonial, other former Imperial countries (remarkably, Japan), shaped the discussions and the outcomes of the conference, as well as the fact that former colonised countries had developed colonial relationship with minorities.¹⁰ As history shows, the initiative failed to empower Third World states that longed for a position on the international scene that could have initiated a significant reform of international law and provided new states with a position of equality among sovereign states.

In the absence of a structural reform, international law is thus deeply loaded with its imperial legacy, and does not preclude replications of colonialism.¹¹ Anthony Anghie goes to the extent of saying:

⁷ Anghie, *Imperialism, Sovereignty and the Making of International Law*.

⁸ Anthony Anghie is an international law Professor at the University of Utah. He is the author of *Imperialism, Sovereignty and the Making of International Law*, 2012.

⁹ The Nuremberg Trials were a series of trials conducted after the end of World War II to prosecute leaders of the Nazi regime. It is often referred to as the first international trial.

¹⁰ Luis Eslava, Michael Fakhri, and Vasuki Nesiiah, *Bandung, Global History, and International Law: Critical Pasts and Pending Futures* (Cambridge, UK: Cambridge University Press, 2017).

¹¹ Anne Orford, "The Past as Law or History? The Relevance of Imperialism for Modern International Law," *International Law and Justice Working Papers*, 2012.

If my analysis is correct, then the tragedy for the Third World is that the mechanisms used by international law to achieve decolonization were also the mechanisms that created neo-colonialism; and that, furthermore, the legal structures, ideologies and jurisprudential techniques for furthering neo-colonialism largely were in place before Third World states actually attained independence

II. Mercenaries as a symptom of Turkey's and Russia's imperialism in Syria

C. A postcolonial appraisal of mercenaries

If one was to reflect on the law governing mercenarism, one would first come across an array of critics and a disinhibited reflection upon the impact of imperialism on the matter, that is not common in the field of international law.

According to Cassese, a practice from the past, used “in the Middle Ages and Renaissance, when the nation States had not yet emerged and there were no regular armed forces”,

[m]ercenarism reappeared - as a phenomenon of worrying dimensions - in 1960, following the downfall of colonialism and the emergence of new States. In this phase, mercenaries are to a large extent used by ex-colonial powers and, at least in some instances, by multinational companies.¹²

The use of mercenaries by former colonial powers to disrupt national liberation movements explains also that African states were at the forefront of the initiative aiming at regulating the use of mercenaries. Yet, from the UN, they only succeeded in obtaining a General Assembly's resolution, deprived of binding effects:

It was not until the late 1960s that the use of mercenaries against national liberation movements fighting for independence in colonial territories was declared a criminal act by UN General Assembly Resolution 2465, thus designating mercenaries as outlaws.¹³

Followed a number of international and regional conventions, that nonetheless failed to encompass the realities of the issue of mercenaries. Reflecting upon these instruments, Christopher Kinsey explains:

¹² Antonio Cassese, “Mercenaries: Lawful Combatants or War Criminals?,” *ZaöRV* 40 (1980): 1–30. Antonio Cassese (1937-2011) was an international legal scholar who published widely on international human rights and criminal law, and Presided over the International Criminal Tribunal for the former Yugoslavia (ICTY) and the Special Tribunal for Lebanon (STL).

¹³ Christopher Kinsey, “International Law and the Control of Mercenaries and Private Military Companies,” *Cultures & Conflicts*, 2008. The United Nations General Assembly (UNGA) is a UN body including representatives from 193 member states and meeting every year in September.

Indeed, they reflect international tension between the West and parts of the Third World, notably Africa, over what these states see as the West's willingness to tolerate mercenary activities beyond their borders. Such political tension was clearly evident during the 1960s and 70s in postcolonial Africa, and forced the international community to focus significant attention on the activities of mercenaries. Yet, such suspicions toward mercenaries have never been translated into outright legal condemnation through international law.¹⁴

To date, the topic is still contentious. A variety of states, including the US and Russia, employ Private Military Security Contractors (PMSCs).¹⁵ On the other hand, mercenaries and PMSCs come from a number of countries, including, but not only, Chad, Sudan, Cameroon, Niger or Russia.¹⁶ As mentioned in our first report, states avoid the qualification of *mercenary* provided by Article 47 of Additional Protocol I to the Geneva Conventions, in different ways:

- By employing the PMSCs over a long period, they do not recruit them for a specific conflict, overcoming the application of subparagraph *a*;
- By enjoining the personnel not to take part in the conflict directly, they do not meet the requirement of subparagraph *b*;
- By using combatants who have the nationality of the state party to the conflict, they avoid the application of subparagraph *d*.¹⁷

International law as under the guise of adopting a descriptive definition of mercenaries, actually adopts a normative one, that leaves enough space for combatants to escape the qualification, and, for states, accountability. Because law does not only prohibit. *A contrario*, as a result of the principle evidenced by the ICJ in the *Lotus case*, law also allows what it does not prohibit.¹⁸ By narrowing the definition of mercenaries to such a small scope, international law creates a category of combatants, between lawful combatants, non-state actors and mercenaries, who, although not belonging to the state, shall not be categorized as unlawful combatants, and who, although answering to the state, shall not be categorized as combatants. What we shall call *unlawful mercenaries* exist in a vacuum.

¹⁴ Kinsey. Christopher Kinsey is an International Relations reader at King's College, London.

¹⁵ Christopher Spearin, "NATO, Russia and Private Military and Security Companies: Loo King into the Dark Reflection," *RUSI Journal* 163, no. 3 (2018): 66–72.

¹⁶ Preliminary observations of the Working Group on the use of mercenaries at the conclusion of its visit to Switzerland 13-17 May 2019, *UN Working Group on the use of mercenaries*, <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=24622&LangID=E>; Preliminary Findings of the Working Group on the use of mercenaries Official Visit to Ghana, 8-15 December 2017, *UN Working Group on the use of mercenaries*

<https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=22595&LangID=E>; Discours de fin de mission en République Centrafricaine par le Groupe de travail sur l'utilisation de mercenaires, 19 October 2016, <https://www.ohchr.org/FR/NewsEvents/Pages/DisplayNews.aspx?NewsID=20696&LangID=F>

¹⁷ Turkey's Recruitment of Syrian Mercenaries to Fight in Libya: Process and Legal Consequences, *Syrians for Truth and Justice*, 11 May 2020, <https://stj-sy.org/en/turkeys-recruitment-of-syrian-mercenaries-to-fight-in-libya-process-and-legal-consequences/>. The Geneva Conventions are the main sources of International Humanitarian Law, aiming at protecting combatants and civilians in time of conflict.

¹⁸ *The Case of the S.S. "Lotus" (France v. Turkey)*, Permanent Court of Int'l Justice, P.C.I.J. (ser. A) No. 10 (1927). The *Lotus case* is a 1927 landmark case of international law, that established a number of principles still applied to date.

It is significant that the reform of the status of mercenarism, a matter upon which postcolonial African states have, by making use of their sovereignty, painfully attempted to legislate, is facing so much resistance given its nature fundamentally anti-sovereign. Indeed, mercenarism goes against everything international law stands for: unaccountability, sovereignty and the rule of law. By breaching the concept of sovereignty of the state against whom it is used, or preventing nationalist movements from blooming, mercenarism reframes the conflict in a position where sovereignty ceases to exist, where the state itself is absent of the conducting of the conflict. In that, the practice is fundamentally unsolvable in the concept of sovereignty, and in that of nation-state itself.

D. Behind mercenaries, imperialism

It is telling that both Turkey and Russia have endeavoured to recruit Syrians and send them to another of their battlefields. The use of mercenaries from Syria is in that sense not a coincidence, and appears to be a mere phenomenon, maybe even a fortuitous one, of imperialist endeavours of foreign powers in Syria, whose distinctive features, as put by Chimni, are two-fold. First, the fact “that universalizing capitalism penetrates and integrates national economies more deeply, imposing serious constraints on the possibility of a Third World state pursuing an independent path of development”. Second, the phenomenon of “accumulation by dispossession”, including “the appropriation of land and other natural resources”.¹⁹ Both countries who have participated in the deployment of Syrian mercenaries to Libya have coincidentally taken part in one or the other of these practices. The way they did merely depends on their position towards the Syrian government.

Thus, while Syria's unrest has drastically impeded the penetration of universalizing capitalism in the national economy, Russia, a fierce supporter of the Syrian government, nonetheless managed to integrate key sectors, including that of “energy, agriculture, tourism and the private security” ensuring a long-term presence within Syria's economy, although these plans might become challenged by the US's Caesar Bill.²⁰ On the other hand, Turkey's support to opposition armed groups, including Islamist and Jihadist ones, precluded it from integrating the Syrian economy through the same channels.²¹ Nonetheless, attempting to overcome the challenges to integrate the Syrian economy, it proved creative,

¹⁹ B. S. Chimni, “Anti-Imperialism: Then and Now,” in *Bandung, Global History, and International Law: Critical Pasts and Pending Futures*, ed. Luis Eslava, Michael Fakhri, and Vasuki editor. Nesiiah (Cambridge, UK: Cambridge University Press, 2017), 35–48. B. S. Chimni is an international law scholar associated with the Third World Approach to International Law (TWAAIL) movement.

²⁰ Moscow collects its spoils of war in Assad's Syria, *The Financial Times*, 1 September 2019, <https://www.ft.com/content/30ddfdd0-b83e-11e9-96bd-8e884d3ea203>; Has Russia grown tired of Syria's Bashar al-Assad?, *Al Jazeera*, 19 May 2020, <https://www.aljazeera.com/indepth/opinion/rift-moscow-damascus-200517173011730.html>; Sinan Hatahet, Russia and Iran: Economic Influence in Syria, *Chatham House*, March 2019, <https://www.chathamhouse.org/publication/russia-and-iran-economic-influence-syria/2019-03-08RussiaAndIranEconomicInfluenceInSyria.pdf>; The Caesar Act: Impacts and Implementation, *Syria Justice and Accountability Centre*, 20 February 2020, <https://syriaaccountability.org/updates/2020/02/20/the-caesar-act-impacts-and-implementation/>

²¹ “You Can Still See Their Blood”: Executions, Indiscriminate Shootings, and Hostage Taking by Opposition Forces in Latakia Countryside, *Human Rights Watch*, 10 October 2013, <https://www.hrw.org/report/2013/10/10/you-can-still-see-their-blood/executions-indiscriminate-shootings-and-hostage>

implementing in regions of Syria it occupies services companies, such as Turkish post services (PTT), and private companies such as the communications company Türk Telekom, and, eventually, pouring in these areas Turkish Lira, now commonly used as a result of the devaluation of the Syrian pound.²² On the opposite, its geographical proximity, history, and support for Syrian opposition armed groups offered the best chance to effectively implement mechanisms of *accumulation by dispossession*, in the shape of appropriation of lands, as well as houses and buildings, but also natural resources, such as water, olive crops and grain.²³

Similar dynamics can conversely be observed in Libya, where Russia and Turkey have significant presence.²⁴

It is essential to acknowledge that these powers have no interests in seeing Syria independent and flourishing, at the expense of their own prospects. From the support allocated to armed groups who committed heinous crimes, to that given to the Syrian government, enabling it to carry on international crimes, these interferences have no other consequence than the annihilation of Syria's potential.²⁵ Syrians, activists, and anyone working for the future of Syria, must reckon this and build a movement free of external influence.

To conclude, and in the words of the Final Communiqué drafted by a number of states, including Syria and Turkey, during the 1955 Bandung Conference:

*[C]olonialism in all its manifestations is an evil which should speedily be brought to an end.*²⁶

²² Turkish post office serves Syria's liberated Jarabulus, *Daily Sabah*, 10 March 2018, <https://www.dailysabah.com/syrian-crisis/2018/03/10/turkish-post-office-serves-syrias-liberated-jarabulus>; From Afrin to Jarabulus: A small replica of Turkey in the north, *Enab Baladi*, <https://english.enabbaladi.net/archives/2018/08/from-afrin-to-jarabulus-a-small-replica-of-turkey-in-the-north/#ixzz6TbtsemkB>; Fehim Tastekin, Why is Ankara pouring Turkish liras into Syria?, *Al Monitor*, 15 June 2020, <https://www.al-monitor.com/pulse/originals/2020/06/turkey-syria-ankara-pouring-turkish-lira-alleviate-sanctions.html#ixzz6Tbs4cBmK>

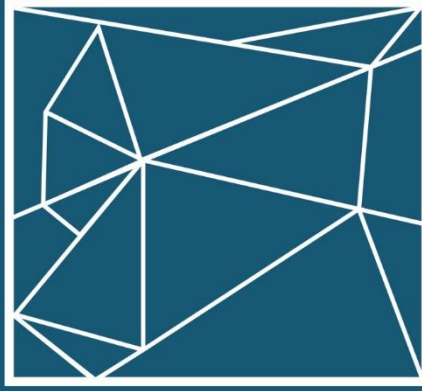
²³ Ninar Khalifa, Real estate seizures, utilization, and royalties... Who protects property rights in Afrin?, *EnabBaladi*, 29 July 2020, <https://english.enabbaladi.net/archives/2020/07/real-estate-seizures-utilization-and-royalties-who-protects-property-rights-in-afrin/#ixzz6TbITqYmE>; Afrin: Shaykh Al Hadid: Intimidation and Economic Tightening, *Syrians for Truth and Justice*, 9 March 2020, <https://stj-sy.org/en/afrin-shaykh-al-hadid-intimidation-and-economic-tightening/>; Turkey Continues to Weaponize Alok Water amid COVID-19 Outbreak in Syria, *Syrians for Truth and Justice*, 28 April 2020, <https://stj-sy.org/en/turkey-continues-to-weaponize-alok-water-amid-covid-19-outbreak-in-syria/>; Turkey in a pickle over Syrian olives, *BBC News*, 31 January 2019, <https://www.bbc.com/news/blogs-news-from-elsewhere-47069403>; Following Operation Peace Spring, Thousands of Tons of Grain Seized as "Spoils of War", *Syrians for Truth and Justice*, 22 June 2020, <https://stj-sy.org/en/following-operation-peace-spring-thousands-of-tons-of-grain-seized-as-spoils-of-war/>;

²⁴ Russia increases involvement in Libya by signing oil deal, *The guardian*, 21 February 2017, <https://www.theguardian.com/world/2017/feb/21/russia-increases-involvement-libya-signing-oil-deal-rosneft>; Turkey's strategic play in Libya to help reap economic gains, *DW*, 3 July 2020, <https://www.dw.com/en/turkeys-strategic-play-in-libya-to-help-reap-economic-gains/a-54037623>

²⁵ New Evidence Supporting the National Army's Accusations in the Murder of the Kurdish Politician Hevrin Khalaf, *Syrians for Truth and Justice*, 10 December 2019, <https://stj-sy.org/en/new-evidence-supporting-the-national-armys-accusations-in-the-murder-of-the-kurdish-politician-hevrin-khalaf/>; Northwestern Syria: Fresh Violent Airstrikes Target Jammed Marketplaces, *Syrians for Truth and Justice*, 7 March 2020, <https://stj-sy.org/en/northwestern-syria-fresh-violent-airstrikes-target-jammed-marketplaces/>

²⁶ Eslava, Fakhri, and Nesiah, *Bandung, Glob. Hist. Int. Law Crit. Pasts Pending Futur*.

سوريون
من أجل
الحقيقة
والعدالة
Syrians
For Truth
& Justice



History

Syrians for Truth and Justice was conceived during the participation of its co-founder in the Middle-East Partnership Initiative (MEPI) Leaders for Democracy Fellowship program, who was driven by a will to contribute to Syria's future. Starting as a humble project to tell the stories of Syrians experiencing enforced disappearances and torture, it grew into an established organisation committed to unveiling human rights violations of all sorts.

Convinced that the diversity that has historically defined Syria is a wealth, our team of researchers and volunteers works with dedication at uncovering human rights violations committed in Syria, in order to promote inclusiveness and ensure that all Syrians are represented, and their rights fulfilled.

-
- 🌐 www.stj-sy.org
 - 📘 [syriaSTJ](https://www.facebook.com/syriaSTJ)
 - 🐦 [@STJ_SYRIA_ENG](https://twitter.com/STJ_SYRIA_ENG)
 - 📷 [Syrians for Truth & Justice](https://www.instagram.com/Syrians_for_Truth_Justice)
 - ✉ editor@stj-sy.org