

**Trapped! Current Syrian Government' Entry and Exit Restrictions as Part of
Human Rights: A Comparative Analysis of Syria and the Soviet Union**

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Abstract

Movement restrictions in Syria included restrictions on citizens' rights to exit and enter the country; an effective ban on individuals traveling abroad; and other administrative and bureaucratic restrictions that hampered the exercise of the right to movement. This thesis examines the Syrian government's policy of restricting the right to entry and exit and compares it to the Soviet Union's policies. The thesis examines the right to enter and exit the country including one's own, as well as the permissible limitations on this right, in light of human rights treaties and texts, particularly the International Covenant on Civil and Political Rights (or ICCPR). The Syrian government has abused its powers and exceeded the permissible limits in restricting the right to movement, depriving Syrian citizens of one of their fundamental rights, the right to enter and exit the country. The restrictions on mobility in Syria were and continue to be comparable to those that existed in the Soviet Union, since the policies of the two governments in regulating movement were dictated by centralization and bureaucracy, and violating Human rights. However, international law has not been able to oblige states to respect the right to enter and exit and has not been able to change their policies regarding restrictions imposed on this right, since the Syrian government continues to violate its commitments under international human rights law and treaties to this day.

Acknowledgment

This thesis is devoted to my family in Syria, whom I have not seen in years due to the Syrian government's policies limiting the right to leave.

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1 Introduction

The Syrian government has consistently abused its powers and exceeded the permissible limits in restricting the right to movement as stipulated in international human rights law, depriving Syrian citizens of one of their fundamental rights, the right to enter and exit the country. The modern history of Syria (1920–2022) witnessed considerable limits on rights and freedoms, notably the right to enter and exit the country.¹ The Syrian government has been determined to maintain control over citizens' geographical movement by establishing restrictions on the right of entry and exit through various laws and policies, whether announced or not.² However, although successive Syrian constitutions underlined the importance of freedom of movement, the Syrian government continued to restrict Syrians' right of entry and exit.³ Syrian citizens' right to mobility continued to be denied by the Syrian regime when the Syrian government delegated broad discretionary powers to administrative authorities and security branches in order to limit the right of entry and exit.⁴

¹ Radwan Ziadeh, *Power and policy in Syria* (Bloomsbury Publishing 2012).

² Dina Hadad, 'Human Rights in Syria: The Never-Ending Emergency' (2009) 41 *International Journal of Middle East Studies* 545.

³ Syrian Arab Republic Constitution dated 1973, Art 33:

(1) A citizen may not be deported from the homeland.

(2) Every citizen has the right to move within the state's territory unless forbidden to do so by a judicial sentence or in implementation of public health and safety laws.

Syrian Arab Republic Constitution dated 2012, Art 38:

1. No citizen may be deported from the country, or prevented from returning to it;

2. No citizen may be extradited to any foreign entity;

3. Every citizen shall have the right to move in or leave the territory of the state, unless prevented by a decision from the competent court or the public prosecution office or in accordance with the laws of public health and safety.

⁴ "The Emergency Law grants to the Syrian police wide authorities to ban thousands of citizens from leaving Syria based on security orders. The banning targets political opponents, human rights activists, former detainees, and intellectuals" See: Freedom House, 'UPR Stakeholder Submission: Syria' (Freedom House, 2011)<

The Syrian regime has imposed entry and exit restrictions based on political, economic, and security considerations, among other considerations.⁵ Many dissidents⁶ were forbidden from leaving the country due to travel bans and the denial of official documents, and many other groups, including employees and youth, were required to serve in the military and faced numerous administrative restrictions and bureaucratic hurdles in exchange for being allowed to leave.⁷ As a result of the bureaucratic procedures and security threats involved, acquiring travel permits and exit visas has become a concern for many Syrians.⁸ Even after the Syrian revolution in 2011, the Syrian government maintained its policy of restricting entry and exit rights for opponents and citizens. The Syrian government went even farther, using the country's deteriorating economic conditions as justification for imposing taxes on citizens wishing to enter Syria, thereby restricting citizens' ability to exercise one of their fundamental rights.⁹

This thesis examines the Syrian government's policy limiting individuals' rights of entry and exit from Syria in the period between 1920 and 2022. The thesis provides context for the Syrian situation in order to understand how the Syrian government's policies have hindered people's rights to enter and exit the country. The thesis then analyzes the Soviet Union (or USSR) mobility control policies (1970–1991) and compares them to the Syrian government's policies (1970-2022) restricting mobility. The thesis compares the legal frameworks for controlling

https://www.ohchr.org/sites/default/files/lib-docs/HRBodies/UPR/Documents/session12/SY/Freedom_House-eng.pdf> accessed 12 June 2022.

⁵ Joshua Landis and Joe Pace, 'The Syrian Opposition' (2007) 30(1) the Washington Quarterly 45.

⁶ Zeina Karam, '3 Syrian oppositions figures banned from travel' (The San Diego Union Tribune, 28 August 2011)< <https://www.sandiegouniontribune.com/sdut-3-syrian-opposition-figures-banned-from-travel-2011aug28-story.html>>accessed 21 April 2022.

⁷ Aziz Abu-Hamad and Andrew Whitley, *Throwing Away the Key: Indefinite Political Detention in Syria*. (Human Rights Watch, 1992).

⁸ Center for Operational Analysis and Research, 'Syria's Passport Crisis Continues as 'Reforms' Create New Platform for Corruption'(COAR, 2022) < <https://coar-global.org/2022/02/28/syrias-passport-crisis-continues-as-reforms-create-new-platform-for-corruption/>> accessed 12 June 2022.

⁹ Salam Lab, 'Syrians must pay al-Assad regime to return to their country'(29 April 2021)< <https://salamlab.pl/en/syrians-must-pay-al-assad-regime-to-return-to-their-country/>>accessed 10 June 2022.

mobility in Syria and the Soviet Union in the 1970s and afterward. Since the international framework for the right to enter and exit a country, including one's own, began to become clearer.¹⁰ Through establishing regulations prohibiting mobility and tightly controlling immigration,¹¹ the USSR comprehensively regulated population movement. In the Soviet Union, immigration policy was driven by security and political restrictions to defend national security, with the purpose of limiting immigration, citizen movement, and human contact as much as possible. It is critical to compare both systems in order to understand how mobility controls operate in both of them and whether these policies are similar, since restrictions on the right to movement in the Soviet Union have always been regarded as a clear example of repressive restrictions on this right. Finally, the thesis analyzes the right to enter and exit the country, as well as the permitted limitations on this right, in light of international human rights treaties and conventions, particularly the International Covenant on Civil and Political Rights (or ICCPR).¹² The thesis then looks at the policies of the Syrian government through the lens of the ICCPR to analyze how the Syrian government abused its power and went beyond what was allowed when it limited citizens' rights to entry and exit.

The thesis argues that the Syrian government's policies limit citizens' ability to enter and exit the country, and that Syria exceeded the permissible limits in restricting the right to enter and exit as stipulated in international human rights law, notably ICCPR.

¹⁰ With the adoption of the International Covenant on Civil and Political Rights (ICCPR) in December 1966 and its entrance into force in 1976, the right to enter and leave the state came into focus more clearly. Article 12 of the covenant affirms the freedom to enter and exit the country in a clear and comprehensive manner.

The Soviet Union ratified the ICCPR on 16 October 1973, while Syria ratified the ICCPR on April 21, 1969.

¹¹ "In the past, people usually emigrated only when their governments were so hostile or demanding or economic conditions Nowadays, people who want to leave are forbidden to do so in, for example, the Soviet Union, which also retaliates harshly against the most active dissidents. And in Asia and Africa, people have been banished from their homelands, unceremoniously dumped across borders or set on stormy seas to fend for themselves" See: Alan Dowty, *Closed borders: The contemporary assault on freedom of movement* (Yale University Press, 1989) X.

¹² International Covenant on Civil and Political Rights (adopted 19 December 1966, entered into force 23 March 1999 UNTS 171.

The thesis is divided into three chapters. After Introduction, **Chapter 2** examines Internal and External Mobility Control in Modern Syria (1920-2022). In this chapter, I analyze the Syrian government's policy on establishing exit and entry criteria for citizens prior to and following the 2011 Syrian revolution, as well as the Syrian constitutional and legal frameworks governing the right of entry and exit. **Chapter 3** examines migration and internal and external mobility in the Soviet Union (1970-1991). In this chapter, I will analyze immigration and movement limitations in the Soviet Union, and then compare Syrian policies restricting the freedom of movement to those in the Soviet Union in the period between 1970–1991, both in terms of centralization, bureaucracy, and other considerations. **Chapter 4** discusses human rights and Syria's entry and exit restrictions. Here I will discuss entry and exit rights in light of international human rights laws, particularly the ICCPR.

Chapter 2: Internal and External Mobility Control in Modern Syria (1920-2022)

2.1 Introduction

In order to understand the Syrian government's policies on restricting the right of entry and exit, it is necessary to put into context these policies within their historical context in order to determine how the variations and conflicts that Syria has experienced have impacted the country's current movement policies and controls. This chapter first discusses the situation in Syria and the constraints on the right of entry and exit from 1920 to 2011, which corresponds to the era preceding the Syrian uprising.¹³ Following that, the chapter will discuss the limits placed following the start of the Syrian revolution in 2011, as these restrictions remain in place.¹⁴ The primary goal is to provide more contexts on the Syrian situation and existing policies in order to understand how the Syrian government's policies and restrictions have undermined people's rights to enter and exit their own country, and how the Syrian government has abused its authority and gone beyond acceptable limits in restricting this right.

2.2 Mobility Control and Entry and Exit Limitations in Syria before 2011

Mobility control and restrictions on rights are not new in modern Syria, where civil and political rights have been suspended since the beginning of the French Mandate over Syria in 1920.¹⁵ The French mandate established policies that functioned in multiple directions, limiting the exit of Syrian skilled overseas, where they perceived the migration of laborers as an economic

¹³ *Supra* Note 1 (Ziadeh).

¹⁴ United State Department of State.Bureau of Democracy.Human Rights and Labor, 'Country reports on Human Rights Practices for 2020/Syria 2020 Human Rights Report'(2020).

¹⁵ Stacy D Fahrenthold, 'Arab Labor Migration in the Americas, 1880–1930.' (2019) Oxford Research Encyclopedia of American History<
[https://oxfordre.com/americanhistory/oso/viewentry/10.1093\\$002facrefore\\$002f9780199329175.001.0001\\$002facrefore9780199329175-e-598;jsessionid=21971374BF5AF9D87722CD6E04A9EEFA](https://oxfordre.com/americanhistory/oso/viewentry/10.1093$002facrefore$002f9780199329175.001.0001$002facrefore9780199329175-e-598;jsessionid=21971374BF5AF9D87722CD6E04A9EEFA)>accessed 07 June 2022.

and demographic drain.¹⁶ The French mandate also worked with receiving countries to establish tight immigration quotas for Syrians in order to limit Syrian migration.¹⁷ However, The French government strove to attract intellectuals since the beginning of the mandate; France has attempted to encourage Syrians to study at its universities by providing scholarships and travel opportunities, resulting in the return of a small number of students who traveled to finish their studies there.¹⁸

After gaining independence in 1946, Syria's politics were dominated by revolutionary patterns, as several constitutions were established in the years following the coups,¹⁹ and the country's confrontation with Israel remained antagonistic.²⁰ As a response to the clashes and the several coups, the country's emergency law was enacted: the **legislative degree No. 51**,²¹ established the state of emergency as well as restrictions and actions that might be enforced during an emergency. A state of emergency was imposed on March 8, 1963,²² based on decree No. 51, and it lasted nearly half a century.²³ Article 1 of decree No. 51 outlined the conditions for declaring a state of emergency, which includes a state of war; the threat of war; endangering security or public order in Syria or a part of it; as well as the occurrence of internal disturbances or public disasters.²⁴ Syrian nationals' freedom to stay, travel, and move within the country has

¹⁶ *Ibid.*

¹⁷ "The annual quota for Syria and Lebanon under the US National Origins Act of 1924 was only 100 people, a restriction that persisted until 1965". See: *Ibid.*

¹⁸ Sherif Mohamed Badi and others, *Historical Studies in the Modern Arab Renaissance* (The Anglo-Egyptian Library, 1958) 433. (Author's own translation) Pp 474-456.

¹⁹ Eliezer Be'eri, 'The waning of the military coup in Arab politics.' (1982) 18(1) *Middle Eastern Studies* 69.

²⁰ Onar Aanestad, 'The Israeli-Syrian Conflict: Israeli-Syrian conflict' (1997) MS thesis.

²¹ Moh'd Anjarini, 'Oppressive Laws in Syria (1 of 5)' (2003) The Syrian Human Rights Committee<
<https://www.shrc.org/en/?p=19812>>accessed 16 April 2022.

²² Kathy A Zahler, *The Assads' Syria* (Twenty-First Century Books, 2009) P 61.

²³ *Supra* Note 2 (Hadad).

²⁴ Legislative Decree 51, 22 dated December 1962.

been curtailed since the establishment of the state of emergency.²⁵ According to Article 4 of the degree No. 51, the customary ruler or his deputy may issue written orders restricting people's ability to meet, reside, travel, and pass in specific areas or times.²⁶ The emergency law suspended fundamental liberties, limited the right to seek redress in civil courts, and inflated the authority of the security branches.²⁷ Furthermore, no time limit was set for the termination of the state of emergency, and the provisions outlined in decree No. 51 were ambiguous and erroneous, leaving the wording of the decree dependent on interpretations and government policies at the time.²⁸ All of this set the way for the criminalization of some human rights activities and the restriction of individuals' movement.²⁹

The emergency law empowered security branches³⁰ to make orders restricting mobility and prohibiting travel against opponents without judicial authority and without detailing the grounds.³¹ Furthermore, opponents or individuals impacted by these decisions were unable to

²⁵ Human Rights Watch, 'No Room to Breathe: State Repression of Human Rights Activism in Syria' (16 October 2007)< <https://www.hrw.org/report/2007/10/16/no-room-breathe/state-repression-human-rights-activism-syria>>accessed 30 May 2022.

²⁶ "Under the ongoing State of Emergency Law.....the security forces had the power to restrict meetings or travel, make arrests, censor speech or writing, seize property, or evacuate entire neighborhoods at any time in the name of national security." See: *Supra* note 22 (Zahler) P 64.

²⁷ Although the Syrian regime granted the security branches the status of judicial police, but the security services that belong to the internal security forces, such as military security and secret police, do not have the status of police officers, according to the Syrian Code of Criminal Procedures promulgated by Legislative Decree No. 112/1950. See; Violation Documentation Center in Syria (VDC), 'Special Report on Counter Terrorism law No.19 and the Counter Terrorism Court in Syria' (2015)< <https://www.vdc-sy.info/pdf/reports/1430186775-English.pdf>>accessed 01 June 2022 P14.

²⁸ Emergency law also allowed security branches to transfer civilian defendants and human rights advocates to extraordinary tribunals like the Supreme State Security Court and field courts. See: Reinoud Leenders, 'Authoritarianism and the judiciary in Syria' (2010) Knowledge Programme Civil Society in West Asia Working Paper/17 < <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.656.8059&rep=rep1&type=pdf>> accessed 17 April 2022.

²⁹ Farid N Ghadry, 'Syrian reform: What lies beneath' (2005) 12(10) Middle East Quarterly 61.

³⁰ Several decrees in Syria granted security branches immunity against the crimes they commit, including Legislative Decree No. 549 of 1969 and Legislative Decree No. 69 of 2008, which prohibited the prosecution of members of the internal security services, political security, or customs, except by a decision of the Commander-in-Chief of the Armed Forces and the Army (The President). See: Syrian Network for Human Rights, '204 Arbitrary Arrest/Detentions documented in Syria in October 2021'(SNHR, 2 November 2021)< https://snhr.org/wp-content/pdf/english/204_Arbitrary_Arrests_Detentions_Documented_in_Syria_in_October_2021_en.pdf>accessed 09 June 2022.

³¹ James A Paul, *Human rights in Syria* (Middle East Watch, 1990).

appeal them because the decree did not establish avenues for challenging decisions that reduced citizens' rights.³²

In line with the Emergency law, the Syrian government implemented a nationalization plan in which it took responsibility for a substantial amount of the investment,³³ resulting in an economic collapse in the country as a result of the capital emigration that sustained the Syrian economy.³⁴ Syrians have migrated to various nations throughout the world as a result of the regime's economic failures and rising unemployment.³⁵ At the time, the inflow of Syrians resulted in a shortage of high-level skills and experience,³⁶ prompting the government to restrict the movement of qualifications outside of state-approved missions. For example, **Legislative Decree No. 70 of 1971** authorized study missions overseas, but delegates were compelled to return to Syria within a month at most according to Article 48, paragraph (e).³⁷ If the delegates did not return within a month, they or their guarantors were required to return double the wages

³² Human Rights Committee, 'Concluding Observations of the Human Rights Committee: Syrian Arab Republic' (2001) UN Doc CCPR/CO/71/SYR.

³³ Glenn E Robinson, 'Elite cohesion, regime succession and political instability in Syria.' (1998) 5(4) *Middle East Policy* 159.

³⁴ Linda Matar, 'SYRIA'S ECONOMIC.' (2020) *The Oxford Handbook of Contemporary Middle Eastern and North African History* 409.

³⁵ There was a substantial exodus of trained personnel and capital from the private sector, a trend that continued in the 1970s' See: Thomas Collelo, *Area handbook series. Syria, a country study*. (LIBRARY OF CONGRESS WASHINGTON DC, 1987).

³⁶ At the middle of 1973, the Syrian Minister of Industry stated that a large number of skilled workers leaving the country were one of the biggest problems facing the Syrian industry. This caused a shortage of skilled workers in some fields. See; Onn Winckler, 'Syrian migration to the Arab oil-producing countries.' (1997) 33(1) *Middle Eastern Studies* 107 P 111.

³⁷ Article 48 of the Legislative Decree No. 70 of 1971 :

The delegate has the following duties: e-to return to the homeland within a period of one month at most from the end of his studies and the success of the certificate for which he was delegated, and to put himself at the disposal of the Directorate of Scientific Missions in the Ministry of Higher Education within a period of one week at most from the date of his arrival to the homeland so that this Directorate puts him at the disposal of the interested those delegated for their own account or for their benefit. If they are delegates for review or training, they must return directly to their work in their departments within a maximum period of one week from the end of their delegation period if the delegation period does not exceed a year and within a period of two weeks at most if this period exceed a year. See: Legislative Decree No. 70 dated 1971.

and costs paid to them during their dispatch according to Article 65.³⁸ The Syrian government has made it so that the movement of competencies could only take place under its control and in missions that it has approved.

Syria's human rights situation continued to deteriorate from the early 1980s³⁹ until the turn of the twenty-first century, as the government worked to further restrict the right to freedom of movement.⁴⁰ Throughout the 1980s, anti-regime groups such as the Muslim Brotherhood,⁴¹ as well as leftist political parties, flourished in the country.⁴² This flourishing of anti-regime groups and political parties prompted the regime to implement punitive measures on these groups and parties, such as restricting their freedom of movement by prohibiting them from traveling.⁴³ Moreover, Syrian dissidents and activists experienced a barrage of restrictions on their freedoms after the year 2000 at the hands of the Syrian government.⁴⁴ The country had a wave of civil movements as well as an intellectual and cultural revival, which manifested itself in a range of events, notably the Damascus Spring in 2005.⁴⁵ The Syrian government broadened the scope of its anti-activist campaign with a huge number of arbitrary arrests, civil rights violations, and

³⁸ Article 65: If the delegate (with a scholarship, scholarship or study leave) violates the provisions of Paragraph (e) of Article 48, the Executive Committee must ask him and his sponsor to refund double the salaries and expenses spent on him during the period of his delegation.

³⁹ The Syrian regime committed Hama massacre in 1982 which resulted the death of tens of thousands of Civilians. "The army laid siege to the city and exposed it to air and artillery bombardments without any distinction between civilians or dissidents. As a result, between 10,000 and 25,000 people were killed" See: Yavuz Güçtürk, 'War Crimes and Crimes Against Humanity in Syria' Insight Turkey 17.1 (2015).

⁴⁰ *Supra* note 5 (Landis) P 60.

⁴¹ The Syrian government issued Law No. 49 in 1980, which stated in the first article that anyone affiliated with the Muslim Brotherhood would be executed. See: Raphaël Lefèvre, *Ashes of Hama: The Muslim Brotherhood in Syria* (Oxford University Press, USA 2013), See also: Samer N Abboud, *Syria: Hot spots in global politics* (John Wiley & Sons, 2018).

⁴² *Supra* Note 31 (Paul) P 34.

⁴³ *Supra* Note 5 (Landis) P 60.

⁴⁴ Human Rights Watch, 'A wasted decade' (16 July 2010) < <https://www.hrw.org/report/2010/07/16/wasted-decade/human-rights-syria-during-bashar-al-asads-first-ten-years-power> > accessed 30 May 2022. See also: Human Rights Watch, 'Syria: Civil Society Activists banned from Travelling' (HRW, 2006) < <https://www.hrw.org/news/2006/07/11/syria-civil-society-activists-barred-traveling> > accessed 15 June 2022.

⁴⁵ Jonas Bergan Draege, 'The formation of Syrian opposition coalitions as two-level games' (2016) 70(2) *The Middle East Journal* 189. See also: Samir Aita, "Syria, What Reforms While a Storm is Building?" (2006). *Arab Reform Brief* 6.

house arrests.⁴⁶ The Syrian security services have arbitrarily and without legal justification issued numerous travel restriction lists⁴⁷ for those involved in political or human rights activities, barring them from leaving the country.⁴⁸ As a result, whenever these activists wished to travel, they had to go through security branches to obtain a passport.⁴⁹ It was absolutely necessary to obtain a passport in order to leave Syria, as Syrian residents were not authorized to leave or return to Syria without a valid passport, according to Article 1 of the **Passport System Law No. 42 of 1975**.⁵⁰ As a result, obtaining a passport was essential for these activists, as well as all individuals, in order to leave Syria. Moreover, there were no guarantees that citizens would be able to obtain a passport; whereas article 7 of Law No. 42 stated that passports might be issued to any Syrian citizen who met certain requirements, these requirements were not specified.⁵¹

The Syrian government imposed additional restrictions on citizens' freedom of movement by requiring Syrians to get an exit visa whenever they intended to leave the country.⁵² The ministry of interior published **Resolution No. 1016 in 1999**,⁵³ which provided facilities for Syrian citizens' travel, departure, and return procedures, as well as directions for providing passports and exit permits.⁵⁴ According to the resolution, any Syrian could apply for a departure

⁴⁶ Carsten Wieland, *Syria: A Decade of Lost Chances* (Cune Press, 2012).

⁴⁷ Civil society organizations documented 400 cases; at the time it is thought that there were many more because accessing the lists was difficult because the security branches did not recognize these policies and the Immigration and Passports Department did not reveal these lists. *See*: Syria Center for Media and Freedom of Expression, 'Problem of The Travel Ban in Syria 2009' (SCM, 2009) < <https://scm.bz/wp-content/uploads/2011/01/SCM-Problem-of-The-Travel-Ban-in-Syria-2009-AR-PDF.pdf> > accessed 08 June 2022.

⁴⁸ David W. Lesch, 'The Arab spring—and winter—in Syria' (2011) 23(3) *Global Change, Peace & Security* 421.

⁴⁹ *Supra Note 31* (Paul) P 41.

⁵⁰ Passport System Law No. 42 dated 1975.

⁵¹ *Ibid* Art 7.

⁵² Human Rights committee, *Supra note 32* Para 21.

⁵³ Resolution No. 1016 dated 1999.

⁵⁴ The resolution also excused certain Syrians from seeking a departure visa, including individuals over the age of fifty, those exempted from military service, and women over the age of 18.

visa for up to a year.⁵⁵ However, the resolution did not identify any criterion for granting or rejecting a visa, leaving it entirely up to the state's discretion.⁵⁶ Furthermore, the resolution made no mention of the visa status of Syrians living abroad and who did not have a passport and sought to return to Syria.⁵⁷

During the early twentieth first century, the regime also codified travel restrictions and imposed forced leave policies on some groups, such as employees.⁵⁸ Due to the constraints, state employees experienced the same challenges, prohibitions, and bureaucratic procedures in exercising their right to enter and exit their own country.⁵⁹ The **basic workers' law no. 50** was enacted in 2004, article 114 stated that state personnel who intend to leave Syria must get travel clearance and exit permits before leaving the country.⁶⁰ According to article 114 (a), the travel permit, which was only for one month and can only be used once, requires approval from the responsible minister and a number of workers assigned to this responsibility, which makes the employees face many bureaucratic obstacles.⁶¹ Employees who got travel permission but did not

⁵⁵ “The fact than many designated categories of nationals are still required to obtain an exit visa each time they wish to leave the country is a matter of concern to the committee and constitutes a violation of article 12, paragraph2, of the covenant.” *See: Human Rights Committee Supra Note 32 Para 21.*

⁵⁶ *Ibid* Paras 21-22.

⁵⁷ *Ibid* Para 22.

⁵⁸ In the initial report submitted by Syria to the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families in 2006, as well as in its discussion of regulations for Syrians' departure and the system for issuing exit visas, the Syrian government stated that employees require permission from their employers, and that this is the case for Syrians. *See: Committee on the Protection of the Rights of all Migrants Worker and Members of their families, ‘Consideration of Reports Submitted by States Parties undr Article 73 of the Convention. Initial reports of States parties due in 2006 : Syria’ (2007) UN Doc CMW/C/SYR/1.*

⁵⁹ According to Law No. 50, employees are needed to have a lot of administrative and bureaucratic procedures, which are reflected by gaining several approvals from employers in order to receive a travel permit and an exit visa that enables them to leave Syria.

⁶⁰ Basic workers' law no. 50 dated 2004.

⁶¹ “Obtaining and retrieving papers is embedded in broader relations of power and control fractured by different forms of sociability tied to state apparatuses” *See: Veronica Ferreri, ‘The wondrous life of legal documents. Transformations and continuities in the encounter of Syrian papers with German bureaucracy’ (2022) Leibniz-Zentrum Moderner Orient* 31<https://www.zmo.de/fileadmin/Inhalte/Publikationen/PDFs/workingpapers/zmo_working_paper_31_2022_ferreri.pdf>accessed 01 June 2022.

return to their workplaces or country because of various reasons will be regarded to have committed the crime of leaving work, as defined in **Article 364** of the Syrian Penal Code No. 148 which is punishable by imprisonment for three to five years.⁶²

2.3 Mobility Control and Entry and Exit Limitations in Syria after 2011

Since the start of the Syrian revolution in 2011,⁶³ the Syrian government has maintained limitations on freedom of movement and the right to entry and exit.⁶⁴ These restrictions⁶⁵ remained in place even after the country's state of emergency was lifted by Decree No. 16 of 2011.⁶⁶ The Syrian government repealed the Emergency Law in favor of Counter-Terrorism Law

⁶² Art 364 of the Syrian Penal code dated 1948:

a-Anyone who works in ministries, departments, institutions, public bodies, municipalities, municipal institutions, any of the public sector entities or The contributor, prior to the issuance of the deed, accepted his resignation from the competent authorities, as well as all those who were deemed to have resigned by virtue of their leaving work or interrupting them for a period of fifteen days.

b-The same penalty shall be imposed on anyone who fails to fulfill his obligation to serve in the entities set forth in Paragraph (a) of this Article, whether the obligation is a result of being dispatched with a mission, scholarship, or study leave, and his movable and immovable funds shall be confiscated.

c-In all cases, those covered by the provisions of this article are deprived of their rights with the state and are, in addition, obligated to pay all damages resulting from leaving or discontinuing work.

d-The discretionary mitigating causes shall not be applied to the crimes punished under the provisions of this article, nor shall the provisions of stay of execution stipulated in Article 168 and what follows of the Penal Code apply to them.

e Whoever returns to service or puts himself at the disposal of the state within three months from the date of initiating a public case against him shall be exempted from punishment for one time. (*Author's own translation*)

⁶³ An estimated 6.8 million Syrian refugees and asylum seekers are a result of the ongoing conflict in Syria. Numerous Syrians fled the country via smuggling networks, which allowed them to reach Jordan, Lebanon, and Turkey. Some Syrians have also used fake passports and identities, or the identities of relatives who do not have trouble with the Syrian regime, to leave the country. *See*: Mohammad Hardan, 'Smuggling across Syrian-Turkish border grows despite risk' (Al-Monitor, 24 April 2022) < <https://www.al-monitor.com/originals/2022/04/smuggling-across-syrian-turkish-border-grows-despite-risks> > accessed 09 June 2022. *See also*, The Ministry of Foreign Affairs of the Netherlands, Country of origin information report Syria (The Hague, June 2021) 52. *See also*: Fact Finding Mission Report, SYRIA: Military Service, National Defense Forces, Armed Groups Supporting Syrian Regime And opposition' (2016) < https://coi.euaa.europa.eu/administration/finland/PLib/Report_Military-Service_Final.pdf > accessed 12 June 2022.

⁶⁴ Hanny Megally and Elena Naughton, 'Gone Without Trace: Syria's Detained, Abducted, and Forcibly Disappeared' International Center for Transitional Justice Policy Paper < https://www.ictj.org/sites/default/files/ICTJ_PolicyPaper_Syria_Gone_Without_a_Trace_web.pdf > accessed 17 April 2022, 11.

⁶⁵ 'The number of activists believed to be affected by a travel ban was reportedly in the tens of thousands during 2011.' *See*: Operational Guidance Note Syria, 'Draft Syria OGN v 7. 3 October 2012' < <https://www.refworld.org/es/pdfid/506c31e62.pdf> > accessed 14 June 2022 p 5.

⁶⁶ Vivian Salama, 'Covering Syria.' (2012) 17(4) the International Journal of Press/Politics 516.

No. 19 of 2012⁶⁷ and Degree No. 22 of 2012, which established the Counter-Terrorism Court.⁶⁸ The Counter-Terrorism Court specializes in terrorism offences and hears cases referred to it by security branches.⁶⁹ The prosecution judges in the court automatically release the precautionary seizure of the defendants' money and issue travel bans.⁷⁰ The government endorsed the court's power by passing Legislative Decree No. 63 of 2012,⁷¹ which authorized the judicial police to request the Minister of Finance to take similar preventative steps as the court and prohibit defendants from traveling.⁷² These rules enabled the court to issue extensive travel ban lists against numerous people based on their political beliefs, restricting their movement and right to leave the country.⁷³

The Syrian government's laws restricting the right of entry and exit have evolved to include many groups of Syrian citizens. For example, the Syrian government expanded the scope of restrictions to include young individuals who finished compulsory duty but were compelled to remain in reserve.⁷⁴ Although the military service laws that control conscripts in Syria are not new, dating back to the French Mandate period and beyond, after 2011 the Syrian government hastened to put more legal, administrative, and financial barriers in place. These hurdles are intended to keep young people who are required to serve in the military but do not choose to do

⁶⁷ The counter-terrorism law did not mention in its text the travel ban and movement restrictions as penalty or a preventive measure. Movement was prohibited by prosecution judges automatically and without legal provision. *See*: Counter-Terrorism Law, Law No. 19 dated 2012.

⁶⁸ Counter-Terrorism court/ Degree No. 22 dated 2012.

⁶⁹ The Syrian regime issued degree 55 in 2011 and revised it with degree 109 in 2011 to insert an amendment to the criminal procedure law that allows judicial police officers to assign their duty to others without identifying any of the latter. The degree permitted police officers to transfer their mission to security branches, which covered the detainee's referral to the Counter-Terrorism Court. *See*: *Supra Note 27 (VDC)* P 33.

⁷⁰ *Ibid.*

⁷¹ Legislative Decree No. 63 dated 2012.

⁷² *Supra note 27 (VDC)* P 22.

⁷³ *Supra Note 27 (VDC)*.

⁷⁴ Reuters, 'Syria Tightens travel restriction on military age men' (Reuters, 2012)<<https://jp.reuters.com/article/uk-syria-travel-idUKBRE82P0LP20120326>> accessed 16 April 2022.

so from fleeing Syria.⁷⁵ The Syrian government issued Decree No. 33 of 2014, which amended Article 49 of the **Military Service Law No. 30 of 2004** to require young men who are needed for reserves, civil workers, and those delegated to study, among other categories, to obtain travel approval from the General Recruitment Directorate before leaving Syria.⁷⁶ Young expats who lived in an Arab or foreign country for at least four years and were unwilling to serve in the army were spared from service under certain conditions.⁷⁷ According to **law No.30 of 2004**, young expatriates could be spared from service and could return to Syria in exchange for a monetary allowance of 8,000 USD.⁷⁸ Due to the obvious difficulty in acquiring travel authorization and their fear of participating in the army, many Syrian youth flee illegally,⁷⁹ risking their lives in order to seek asylum in neighboring and foreign countries.⁸⁰

Despite the fact that a passport is required to leave and enter Syria through official borders, the Syrian government has made it difficult and bureaucratic for Syrians to obtain one.⁸¹ The Syrian government has tried through its institutions and agencies to postpone the procedures for

⁷⁵ Military service is sacred and mandatory, according to Article 46 of the Syrian Constitution of 2012. The Syrian government does not recognize the right to conscientious objection to military service. *See*: Syrian Arab Republic: Constitution dated on 2012, Article 46.

⁷⁶ Decree No. 33 dated 2014.

⁷⁷ *Ibid.*

⁷⁸ Article 13 of the Decree No. 33 dated 2014:

First: The cash allowance shall be accepted from the taxpayer residing outside the territory of the Syrian Arab Republic in Arab or foreign countries according to the following:

Eight thousand US dollars for those whose residence was permanent for a period of no less than four years. (*Author's own translation*).

⁷⁹ Carmen Kareem, 'Military Service . Every Young Syrian's Nightmare' (Daraj, 2020) < <https://daraj.com/en/49384/>> accessed 12 June 2022. *See also*: *Supra Note 63* (Fact Finding Mission Report).

⁸⁰ In November 2020, the European Court of Justice (ECJ) issued a preliminary ruling on draft evaders' eligibility for asylum. The court reached this conclusion based on the case of a Syrian asylum seeker in Germany, whose asylum application was denied because German authorities considered his desertion from the army was insufficient reason to grant him asylum. According to the European Court of Justice, "refusal to perform military service, particularly where it is punishable by heavy sanctions, suggests that there is a high degree of conflict in political or religious values and opinions between the person concerned and the authorities of the country of origin." *See*: Case C-238/19 EZ v Bundesrepublik Deutschland [2020] OJ 238-19.

⁸¹ Center for Strategic& International studies, 'Supply and Demand: The Industry of Syrian Passports' (GSIS, 20 January 2016) < <https://www.csis.org/analysis/supply-and-demand-industry-syrian-passports>> accessed 05 June 2022.

granting passports and arranging appointments at immigration offices.⁸² Furthermore, the Syrian government increased the financial value of the passport for Syrians living within the country to double what it was before 2011, as well as increasing its value for Syrians residing abroad.⁸³ The Syrian regime authorized an amendment to **Legislative Decree No. 17 of 2015**,⁸⁴ which set the consular charge for issuing or renewing a passport or travel document for Syrian residents residing outside Syria at 800 USD for the urgent passports and 300 USD for the role system.⁸⁵ The increased financial worth of the passport made getting it difficult for a large number of Syrians, which led to limiting their ability to exercise their right to enter and exit the country.⁸⁶

The Syrian government continues to restrict entry into and exit from Syria by adopting Resolution No. 46, which requires Syrians to pay indirect taxes and other entry fees.⁸⁷ The Presidency of the Council of Ministers published **Resolution No. 46 in 2020**,⁸⁸ in which it urged Syrians seeking to enter their country to transfer \$100 USD or its equivalent into Syrian pounds. According to the Central Bank of Syria in 2020, the dollar was worth approximately 1250 Syrian pounds in 2020.⁸⁹ In comparison, the dollar black market value at the time was approximately 4,200 Syrian pounds.⁹⁰ Due to the poor economic conditions in Syria,⁹¹ the resolution created a

⁸² *Supra* Note 8.

⁸³ Syrian Network for Human Rights, 'The Syrian Regime Uses Passport Issuance to Finance Its War and humiliate Its Opponents' (SNHR, 2019) < https://snhr.org/wp-content/pdf/english/The_fourth_worst_passport_and_the_highest_material_cost_in_the_world_en.pdf> accessed 01 June 2022.

⁸⁴ Legislative Decree No. 17 dated 2015.

⁸⁵ *Supra* Note 83 (SNHR) p 4.

⁸⁶ *Ibid.*

⁸⁷ *Supra* Note 9 (Salam Lab).

⁸⁸ Syrian Arab Republic, Resolution No. 46, 2020.

⁸⁹ Online Currency Converter 'United States dollar (USD) and Syrian pound (SYP) Year 2020 Exchange Rate History' <https://freecurrencyrates.com/en/exchange-rate-history/USD-SYP/2020> accessed 15 June 2022.

⁹⁰ Reem Salahi, 'Strapped for dollars, the Syrian government is forcing its citizens to pay up' (Atlantic council, 5 April 2021) < <https://www.atlanticcouncil.org/blogs/menasource/strapped-for-dollars-the-syrian-government-is-forcing-its-citizens-to-pay-up/>> accessed 18 April 2022.

⁹¹ United Nations Economic and Social Commission for Western Asia (ESCWA), Syria at War: Eight Years On (24 September 2020).

big financial dilemma for a large number of Syrians,⁹² as the average monthly wage is comparable to 24–30 USD. As a result of the conversion process into US dollars upon admission, Syrians lose the equivalent of their wage for two or three months due to the transfer discrepancy, which is something many Syrians cannot afford.⁹³ This resolution reaffirmed the Syrian government's strategy of blackmailing citizens by levying taxes, which posed a significant barrier to Syrians exercising their most basic rights.

2.4 Conclusion

Syria's history has seen several transformations and fluctuations, which have been reflected in the controls and limits imposed on citizens' rights to enter and exit their own country. Controls on mobility were imposed through a series of legislation, laws, and administrative procedures, beginning with the French Mandate period and continuing through the declaration of a state of emergency in 1963 and ending with Law No. 46 of 2020. These controls and limits were implemented for a variety of reasons, including national security and political and economic stability. These restrictions were and continue to be used against large groups of Syrians, most notably the opposition, activists, employees, and youth required for military service, by granting security branches broad discretion and making restrictions on the right to enter and exit into Syria an oppressive, administrative, and commonly bureaucratic issue.

The following chapter compares the Soviet Union's mobility policies and regulations to those of Syria to assess how similar or dissimilar they are.

⁹² Sara Kayyali, 'Syria's 100 Dollar Barrier to Return, New Government Policy Prevents Syrians from Returning Home' (Human Rights Watch, 23 September 2020) < <https://libguides.bournemouth.ac.uk/referencing-international-law/bu-referencing-intllaw-websites> > accessed 30 January 2022.

⁹³ *Supra* Note 90 (Salahi).

Chapter 3: Migration and Internal and External Mobility in the Soviet Union (1970-1991)

3.1 Introduction

This chapter first explores the Soviet Union's movement restriction policies and the impact of these policies on individuals' freedom of movement between the 1970s and 1991, to understand the constraints and reasons for restricting the right of movement. The second part will compare the policies of the Soviet Union after the 1970s and the policies of the Syrian government since that time in terms of the free movement of nationals from the two countries. Finally, it is critical to compare both systems in order to understand how mobility controls work in both Syria and the Soviet Union and to what extent they are similar or different.

3.2 Soviet Migration and Mobility Control Policies (1970-1991)

The major borders and characteristics of immigration control in the Soviet Union were established after the revolution of 1917.⁹⁴ The mobility control after 1917 was defined by increased border control as a way of restricting travel to, from, and within the USSR,⁹⁵ which was a defining element of the immigration system during the Soviet era.⁹⁶ During that time, the maximum length of time for which inhabitants of the Soviet Union were allowed to remain abroad was set at five years, and anyone who did not return during that time was punished with

⁹⁴ Matthew A Light, 'What does it mean to Control Migration? Soviet mobility policies in comparative perspective.' (2012) 37(2) Law & Social Inquiry 395 p 400.

⁹⁵ In his book 'Russian Citizenship: From Empire to the Soviet Union', Erich Lohr argues that the Soviet Union used citizenship policies and entry and exit constraints as a "filter" through which immigration policies and restrictions of movement were used to improve the social or national composition of the population while maintaining political dependability or profitability. See: Eric Lohr, *Russian Citizenship: From Empire to Soviet Union* (Harvard University Press, 2012) P 8.

⁹⁶ Andrea M. Chandler argues that the isolation caused by border restrictions was an affirmation of the state for Soviet officials at the time. See: Andrea M Chandler, *Institutions of Isolation: Border Controls in the Soviet Union and its Successor States, 1917-1993* (McGill-Queen's Press-MQUP, 1998).

deportation or confiscation of their possessions.⁹⁷ Regarding nationals residing abroad whose return to the country was not desired, the policy of deprivation of nationality was utilized to limit their right to return during that time period.⁹⁸ Moreover, citizens who wanted to leave the Soviet Union needed special permission from the Commissariat of Foreign Affairs.⁹⁹ Restrictions did not end at entry and exit from the USSR but also included restrictions on the right of mobility within the country, as this policy concentrated primarily on internal migration and was motivated by political and economic concerns.¹⁰⁰ The Propiska Internal Passport¹⁰¹ was issued to all citizens sixteen years of age and older, and it was used to restrict people's ability to move within the Soviet Union's boundaries.¹⁰²

Immigration policies and limits on freedom of movement persisted during and after the 1970s and 1980s¹⁰³ but these policies underwent various changes, which were seemingly reflected by relaxing some restrictions while maintaining others.¹⁰⁴ Movement controls became less brutal and rigorous, as these limits were lifted and certain ethnic groups were allowed to

⁹⁷ Mikhail Denisenko, 'Historical and current trends in Emigration from Russia' (RIAC, 14 August 2013) <http://russiancouncil.ru/en/analytics-and-comments/analytics/historical-and-current-trends-in-emigration-from-russia/?sphrase_id=705758> accessed 14 April 2022.

⁹⁸ Yuri Felshtinsky argues that the authorities utilized citizenship revocation for Russians living abroad or in non-Soviet countries to prevent undesirables from returning. See Yuri Felshtinsky, 'The legal foundations of the immigration and emigration policy of the USSR, 1917–27.' (1982) 34(3) *Soviet Studies* 327. P 341.

⁹⁹ *Supra* note 94 (Light) p 400.

¹⁰⁰ Matthews Mervyn argues that the goal was "to secure the deportation from these places of persons who are not connected with industry or with work in offices and schools, and also to cleanse these places of kulak, criminal, and other anti-social elements finding refuge there." See: Matthews Mervyn, *The passport society: Controlling movement in Russia and the USSR* (Westview Press, 1993).

¹⁰¹ The passport is regarded as a residence permit, and registration in it was seen as mandatory in order to acquire a job, since housing authorities were required to give employment and places of residence only to individuals who possessed a valid residence permit. See: Marc Garcelon, 'Colonizing the Subject: The Genealogy and Legacy of the Soviet Internal Passport' in the Jane Caplan and John Torpey (Eds), *Documenting Individual Identity. The Development of State Practices in the Modern World* (Princeton University Press, 2001).

¹⁰² Some Scholars argue that the internal passport system was not as effective as it though: "the passport system restrained peasant movement, both temporary and permanent, from villages to towns very little." See: Robert Davies and Stephen Wheatcroft, *The years of hunger: Soviet agriculture, 1931–1933*. (Springer, 2016).

¹⁰³ Delia Rahmonova-Schwarz, 'Migrations during the Soviet period and in the early years of USSR'S dissolution: a focus on Central Asia.' (2010) 26(3) *Revue européenne des migrations internationales* 9.

¹⁰⁴ *Supra* Note 94 (Light) p 407.

return to their original homelands.¹⁰⁵ The Soviet government's approach toward its opponents also shifted, with the Soviet government forced political opponents to exile overseas rather than keeping them inside the country, contrary to what was prevalent before.¹⁰⁶ Furthermore, in the 1970s, internal passport rules were relaxed, allowing farmers under the age of 15 to receive internal passports that allowed them to travel wider distances, whereas before passports were only available to people aged 16 and up.¹⁰⁷ Additionally, the Soviet authorities worked with various nations to facilitate the mass immigration of members of particular ethnic groups.¹⁰⁸ For example, the late 1960s and early 1980s saw a large-scale emigration of Jews from the Soviet Union, where the flow out of the country at the time had a marked ethnic uniqueness.¹⁰⁹

Moreover, in the 1970s and 1980s, trade cooperation became more international, needing the Soviet Union regime to grant citizens more freedom of movement in order for them to move around.¹¹⁰ As a result, the Soviet Union restructured its economic policies and immigration system at the time in order to focus on removing limits on the freedom of movement.¹¹¹ The reconstruction of the Soviet economic and political system liberalized the society and borders¹¹² and eased immigration and movement constraints.¹¹³ Furthermore, in 1975, Soviet

¹⁰⁵ *Ibid* P 407.

¹⁰⁶ According to Matthew A Light, this measure was important for the Bolsheviks to eliminate the hostile elements of the political system rather than allowing them to undermine it from inside. *See: Ibid* 395.

¹⁰⁷ *Supra Note 103 (Schwarz)*.

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Supra Note 94 (Light) P 423.*

¹¹¹ *Ibid P 423.*

¹¹² In the report of the Human Rights Committee of the 1985, the State representative of the USSR explained in his reply that, according to Article 9 of the Fundamentals of Civil Legislation of the USSR and Union Republics, Soviet citizens had the right to choose their place of residence and were permitted to travel abroad, for which the USSR issued passports. *See: United Nation General Assembly (UNGA), 'Report of the Human Rights Committee, Official Records: Fortieth Session Supplement No.40 (A/40/40) ' (1985) P 55.*

¹¹³ "against the background of renewal and democratization of all aspects of life in Soviet society, the introduction of a new political thinking in international practice, development of modern forms of multilateral cooperation of the USSR with foreign countries" *See: Supra note 97 (Denisenko).*

Union delegates signed the final act of the so-called "Helsinki Accords,"¹¹⁴ which acknowledged the right to emigrate. Given the fact that the final act did not place legally binding responsibilities on participating states under international law, it provided that members would comply with its terms.¹¹⁵ The Final Act contains the procedural assurances offered connected to the participating countries' agreement to a number of particular procedures involving family reunion, as well as the general commitment to process exit visa applications in a humane manner.¹¹⁶ Regulations governing leaving the country for those having a family abroad were lifted in 1987, allowing people of foreign origins, such as Germans and Jews, to travel abroad.¹¹⁷

Despite all of the changes in Soviet Union policies and the endeavor to incorporate democracy into aspects of Soviet society, some limitations on the freedom of movement remained in the period after 1970, apart from a strong centralization. The Soviet constitution did not guarantee freedom of movement,¹¹⁸ and the ability of Soviet citizens to leave and emigrate remained a privilege provided by the state and wholly dependent on its will.¹¹⁹ Some ethnic groups faced discrimination and continued to face particular residence restrictions, such as German Volga residents,¹²⁰ whose freedom of movement was restricted until 1991. The immigration and movement control institutions, represented by the police, the passport, and the

¹¹⁴ The Final Act of the Conference on Security and Cooperation in Europe, Aug. 1, 1975, 14 I.L.M. 1292 (Helsinki Declaration).

¹¹⁵ Jeffrey Barist and others, 'Who May Leave: A Review of Soviet Practice Restricting Emigration on Grounds of Knowledge of State Secrets in Comparison with Standards of International Law and the Policies of Other States.' (1986) 15 *Hofstra L. Rev.* 381 P 391.

¹¹⁶ *Ibid* P 393.

¹¹⁷ *Ibid* p 430.

¹¹⁸ *Ibid* P 429.

¹¹⁹ "Some Soviet legal scholars acknowledge the existence of a right of Soviet citizens to initiate the process of emigration, all are careful to emphasize that the outcome of such initiative depends entirely on the will of the state" See: *Supra* note 115 (Barist) P 429.

¹²⁰ *Ibid* P 407.

KGB, among other organizations, remained unchanged and continued their bureaucratic and authoritarian approach to monitoring and controlling mobility.¹²¹

Further, the Soviet government attempted to impose taxes in order to stop a brain drain caused by immigration.¹²² The Soviet authorities levied an "education tax" on immigrants who wanted to leave the country in August 1972 to compensate the Soviet state for the free education they had received.¹²³ For these regulations, the cost of immigration has increased to ten years' worth of employee earnings in some circumstances.¹²⁴ Nevertheless, until 1986, **Decree No. 801 of 1970** was the only Soviet decree pertaining to the issuance of exit visas and passports, as the decree did not provide criteria for granting or refusing visas.¹²⁵ Article 18 of the decree merely states that the applicable procedure is based on written requests from appropriate USSR ministries, agencies, or organizations.¹²⁶ In 1987, a new chapter was introduced to this decree to address requests to enter or exit the Soviet Union for private business.¹²⁷ As indicated in the previous section, the main motive for permitting citizens to leave the Soviet Union at the time was family reunification.¹²⁸ However, this new chapter established for the first time the grounds under which Soviet citizens may not leave the country and when permission to leave may be refused.¹²⁹ The grounds include,

¹²¹ Matthew A. Light argues that the Soviet system governed immigration more bureaucratically and, in some respects, more repressively than modern liberal democracies. See: *Supra* note 94 (light) p 1.

¹²² *Supra* note 103 (Schwarz).

¹²³ *Ibid.*

¹²⁴ *Ibid.*

¹²⁵ *Supra* note 115 (Barist) P 430.

¹²⁶ "The issuance of documents for exit from the USSR, residence abroad, and return to the USSR shall be in the established procedure upon the written applications of the ministries, departments, or organizations of the USSR concerned, as well as upon the applications of citizens who are going abroad for private business." See: *Ibid* 430.

¹²⁷ The Soviet Law on Emigration, Decree No. 1064 dated 1987.

¹²⁸ *Supra* note 115 (Barist) P 430.

¹²⁹ *Ibid* P 431.

but are not limited to, keeping state secrets, keeping state security, and meeting financial obligations.¹³⁰

The harsh restrictions on right to enter and exit ceased with the dissolution of the Soviet Union and the adoption of the **law of May 20, 1991** by the Soviet Union prior to its dissolution.¹³¹ The law included procedures for exit and entry into and out of the Union, and indeed, the Soviet Union vowed to completely respect Soviet citizens' mobility.¹³² Despite the collapse of the Soviet Union, the Soviet immigration policies and regulations of the time were critical, and they may serve to understand and provide insight into similar policies. It may also aid in the analysis of prospective mobility limits in our present and future worlds. The following section contrasts Soviet mobility restrictions with Syrian mobility restrictions, in order to understand how mobility controls work in both Syria and the Soviet Union and to what extent they are similar or different.

3.3 The Policies of Mobility in the Soviet Union and Syria in Comparison

Both Syria and the Soviet Union imposed centralized restrictions on freedom of movement. Movement restrictions in both countries were the result of a closed central process within authoritarian governments. These countries were characterized by authoritarian regimes that limited and restricted citizens' rights to enter and exit or travel within the country, as was the case

¹³⁰ "Article 25 provides, in part: Leaving the U.S.S.R. on private business is not allowed to a citizen of the Union of Soviet Socialist Republics:

- a. if he is privy to state secrets or if there are other reasons involving state security - until the circumstances which prevent exit have become ineffective;
- b. if this would affect significant rights and legitimate interests of other citizens of the U.S.S.R.;
- c. if he has unfulfilled duties towards the state or financial obligations connected with material or legal interests of the state, co-operative or other social organizations - until these duties and obligations have been fulfilled;
- d. if there are legitimate reasons to start criminal proceedings against him - until the end of the proceedings; e. if he has been convicted of a crime - until he has served his penalty or has been released from punishment;
- f. if it has been established that the inviting person is staying abroad in violation of the procedure for leaving the U.S.S.R. or staying abroad - until such circumstances have been regularized." See: *Supra note 115 (Barist)* P 431.

¹³¹ *Supra note 97 (Denisenko)*.

¹³² *Ibid.*

in the Soviet Union.¹³³ Controls on the freedom to move were established by a slew of national laws and regulations based on a variety of agencies, including immigration offices and administrative and security agencies.¹³⁴ Consequently, both countries' policies were ruled by repressive processes and procedures that were entirely controlled by the state and centered on it.¹³⁵ This control has been increased by integrating movement limitations and restrictions into the administration control system.

Both the Soviet Union and Syria imposed controls on all citizens' movement within state borders through exit visa and passport systems that worked by selecting the most bureaucratic procedures.¹³⁶ Citizens in both systems had to seek multiple approvals and wait for travel documents or visas for long periods of time to exit or enter their own countries.¹³⁷ Moreover, individuals were placed in a condition of ambiguity as a result of the lack of clarity in the legislative documents regarding the requirements for granting passports and visas, which were solely at the disposal of the state.¹³⁸

In line with Soviet Union's objectives, the Syrian authorities controlled immigration and exit, to stop brain drain¹³⁹ and competence emigration, by enacting legislation and levying fees that imposed additional administrative and financial barriers on people seeking to leave the

¹³³ Rami Giant argues that there was a substantial rapprochement between Syria and countries of the Soviet bloc from 1963 to 1966: "Although the Syrian leaders declared their adherence to a policy of non-alignment, they were in fact ideologically and politically closer to the Eastern bloc than to the West". See: Rami Giant, 'The Soviet Union and the Syrian Ba'th regime: from hesitation to rapprochement' (2000) 36(2) *Middle Eastern Studies* 150.

¹³⁴ *Supra* note 94(Light) 409.

¹³⁵ *Ibid* P 423.

¹³⁶ *Ibid* Pp 413-418.

¹³⁷ *Supra* Note 8 (COAR). See also: *Supra* Note 94 (Light) p 418.

¹³⁸ *Supra* Note 115 (Barist) p 431. See also: *Supra* Note 50 (passport System Law).

¹³⁹ "The case of brain-drain-related restrictions is particularly unfortunate, since it is impossible to demonstrate, in a convincing way that the problem which such restrictions aim to address actually exists in practice." See: Dimitry Kochenov, 'The Right to Leave Any Country Including Your Own in International Law.' (2012) 28 *Conn. J. Int'l L.* 43. p 69.

country.¹⁴⁰ Both Syria and the Soviet Union have seen multiple waves of immigration over their long history, which have increased and reduced depending on the country's circumstances.¹⁴¹ Thus, the regime was determined to guarantee that the movement of competencies and minds occurred under its supervision in many situations and within the confines of state-approved missions or initiatives.

The movement restrictions, particularly against the opposition movement, in Syria were more restrictive than in the Soviet Union. While the Soviet Union's policy was predicated on enforcing opponents to exile rather than imprisoning and executing them, Syria went to harsher brutality by keeping them within its borders.¹⁴² The Syrian government has consistently prohibited the opposition from leaving the country, particularly since the declaration of the state of emergency in 1963.¹⁴³ Apparently, one can argue that Syria's history has seen many occasions where the opposition in exile organized against the Syrian regime regimes and supported liberation movements at home.¹⁴⁴ Because of this, the Syrian regime had to limit the number of political views in Syria that were against it.

While the Soviet Union controlled its internal migration through its passport system,¹⁴⁵ Syria did not put much emphasis on internal movement within the country.¹⁴⁶ However, unlike

¹⁴⁰ *Supra* Note 103 (Schwarz) *See also: Supra* Note 90 (Salahi), *See also: Supra* Note 92 (Kayyali).

¹⁴¹ Adam R Moody, 'Report: Reexamining brain drain from the former Soviet Union.' (1996) 3(3) *The Nonproliferation Review* 92.

¹⁴² *Supra* Notes 25 and 44 (HRW).

¹⁴³ *Supra* note 31 (Paul) P25.

¹⁴⁴ 'The Syrian Muslim Brotherhood, which has operated in exile since the suppression of the 1982 uprising in Hama, has always sought to topple the Assad regime' *See: Petra Becker, 'Syrian Muslim Brotherhood still a crucial actor: Inclusivity the order of the day in dealings with Syria's opposition' (2013) SWP Comments No. 34/2013. See also: Supra* Note 5 (Landis).

¹⁴⁵ "Passportization" (i.e., the issuing of internal passports) was initially limited to 25 major cities and the districts around them, together with a 100-kilometer strip along the USSR's western border. The system was gradually expanded to include towns, district centers, "machine-tractor stations" (depots containing agricultural equipment), areas within a 100-kilometer radius of certain large cities, frontier zones, building sites, and state farms." *See: Supra* note 94 (Light) P 404.

the Soviet Union, the Syrian government's policies on restricting internal movement were unclear, if non-existent. Employee and worker movement in Syria is not as complicated as it was in the Soviet Union, where workers in Syria could accept or reject positions anywhere in the country.¹⁴⁷ One could argue that the geographical element had an effect on putting restrictions on internal migration within the Soviet Union because, with roughly one-sixth of the world's land surface, the Soviet Union was the world's largest country. Thus, the existence of the passport system was required to prevent the dispersal of labor, particularly from rural areas to major cities where job opportunities are more widely available,¹⁴⁸ whereas in Syria the geographical area is considered smaller and individuals do not require much control. Furthermore, the Syrian regime did not place a high priority on the countryside and thus did not care about labor migration from the countryside.¹⁴⁹

Finally, both regimes failed to comply with international laws and treaties requiring them to grant movement rights. Despite the fact that Syria joined the International Covenant on Civil and Political Rights in 1969 and the covenant entered into force on March 23, 1976, Syrian legislation has not been aligned with the provisions of the covenant.¹⁵⁰ Keeping in mind that the Syrian constitution provides for international agreements and treaties to be in accordance with the

¹⁴⁶ Syrian citizens can move freely inside Syria based on their personal identity, allowing anyone to travel from anywhere to anywhere within Syria's borders. *See*: Legislative Decree No. 26 dated 2007.

¹⁴⁷ According to Article 31 of the basic workers' law no. 50, an employee may change jobs and change his home to any region in Syria only upon written request.

¹⁴⁸ Matthew Light Argues that The internal passport policy focused mainly on internal migration and was driven either by economic motives, such as the dispersal of labor, or political motives to control and monitor the opposition. *See: Supra Note 94 (Light).*

¹⁴⁹ "This city-centric nepotism marginalized a peasant class frustrated by mismanaged resources and scarce economic opportunity. It also accelerated a decade of mass rural-urban migration." *See*: David Kilcullen and Nate Rosenblatt, 'The Rise of Syria's Urban Poor: Why the War for Syria's Future Will Be Fought Over the Country's New Urban Villages.' (2014) 4 *Prism* 32.

¹⁵⁰ Once ratified and issued, an international convention, treaty, or agreement becomes part of Syrian law. *See*: Human Rights Committee, 'Consideration of Reports Submitted by States Parties under Article 40 of The Covenant, Initial reports of States parties due in 1977' (1978) UN Doc CCPR/C/1/Add.31 P1.

provision of the constitution,¹⁵¹ Syrians are prevented from using this right in practice.¹⁵² This is similar to the Soviet Union's approach, which ratified the ICCPR on 16 October 1973 and legally acknowledged this right,¹⁵³ but did not allow its citizens to exercise it on the ground.¹⁵⁴

3.4 Conclusion

The Soviet Union strictly monitored population movement by enacting policies restricting mobility and controlling immigration. After 1970s the Soviet Union's immigration and movement policies changed slightly, as evidenced by an easing of restrictions on movement and the implementation of less repressive measures.¹⁵⁵ In spite of this, the primary institutions of Soviet immigration control remained in place, as did the strict rules and decrees governing entry and exit. However, despite the fact that regulation of the right to movement is a common phenomenon in most countries, it is important to note that the objectives and methods of restricting movement can vary and, in some cases, may be similar, as in the case of the Soviet Union and Syria's mobility policies. Controls on the right of movement in both countries were motivated by the same centralization, bureaucratic procedures, political and security concerns, and fear of brain drain, in addition to the absence of human rights compliance. Restrictive controls on the right to exit and enter did not end with the dissolution of the USSR and will not end with the change of the Syrian government. These policies will pave the way for the future

¹⁵¹ Article 104 of the Syrian constitution dated 1973 states that :

“The President of the Republic concludes treaties and international agreements and abrogates them in accordance with the provisions of the Constitution.” *See; Ibid.*

¹⁵² *Ibid.*

¹⁵³ According to Dimitry Kochenov, “The USSR was very active (and moderately successful) in blocking any further study of the right. Following the failure to influence the working of what later became Article 12(2) ICCPR aimed at deluding the right,” the Soviet Union's position was that the right was marginal and could not distract the energy of the UN bodies from addressing more pressing problems.” *See: Supra Note 139 (Kochenov)* p 51.

¹⁵⁴ “All the countries of the Soviet bloc - albeit formally recognizing this right, and although parties to ICCPR - were not providing their citizens with any possibility to use this right in practice.” *See: Supra Note 139 (Kochenov).*

¹⁵⁵ Matthew A Light, ‘Regional migration policies in post-Soviet Russia: From pervasive control to insecure freedom.’ (Yale University, 2006.) dissertation.

emergence of restricted policies on movement, which may differ in terms of means but will have the same effect of preventing individuals from exercising their right to free movement.

The next chapter will examine the right of entry and exit, as well as the limitations put on this right, in light of international human rights standards, to determine whether the Syrian government's policies have exceeded these limits and violated them.

Chapter 4: Human Rights and Syria's Entry and Exit Restrictions

4.1 Introduction

To understand how the Syrian government abuses its power and goes beyond permissible limits in restricting Citizens' right of enter and exit, it is necessary to consider the right to enter and exit within the framework of human rights laws, international treaties, and conventions. This chapter addresses the right of entry and exit and its constraints under international laws and treaties, especially the ICCPR. Then, the chapter analyses the Syrian government's entry and exit policies from the ICCPR's perspective to determine whether they comply with ICCPR standards.

4.2 Right of Entry and Exit from the International Human Rights Perspective

The freedom of movement manifests itself through the right to exit any country, including one's own, and the right to enter.¹⁵⁶ The right to exit any country is not tied to a permanent, short-term, or long-term departure or a specific reason for departing.¹⁵⁷ In addition, based on this right, citizens have the right to get passports or other travel documents from their home country, although this may be limited by later considerations.¹⁵⁸ As for the right to enter, it encompasses anyone's right to enter their country and not revoke it arbitrarily.¹⁵⁹ The right to enter is not restricted to formal nationality but may include those who cannot be regarded as mere foreigners due to ties to a country or entitlements there.¹⁶⁰

¹⁵⁶ Jane McAdam, 'An intellectual history of freedom of movement in international law: the right to leave as a personal liberty.' (2011) 12(1) Melbourne Journal of International Law 27 P4.

¹⁵⁷ Human Rights Committee, General Comment No. 27, Freedom of Movement (Art. 12) (1999)U.N.Doc.CCPR/C/21/Rev.1/Add.9 Para 2.

¹⁵⁸ *Ibid* Para 2.

¹⁵⁹ *Ibid* Para 4.

¹⁶⁰ *Ibid* Para 4.

Several international human rights treaties acknowledge the freedom of movement, including entry and exit. The Universal Declaration of Human Rights 1948 (or UDHR) in Article 13 declares that 'Everyone has the right to freedom of movement and residence within the borders of each state' and that 'everyone has the right to leave any country, including his own, and to return to his country.'¹⁶¹ Despite not being legally enforceable, the UDHR is important because it establishes a global map of rights and freedoms that protect individuals worldwide. The UDHR's call for freedom of movement became a commitment to state human rights when international treaties and instruments of a more binding nature confirmed its significance. **Article 12 of the ICCPR** declares that "Everyone shall be free to leave any country, including his own." and "No one shall be arbitrarily deprived of the right to enter his own country."¹⁶² The Human Rights Committee adopted **General Comment No. 27** ¹⁶³ on freedom of movement in 1999 to interpret Article 12 of the ICCPR and to confirm that freedom of movement is vital for free human development.¹⁶⁴ Other treaties, like Article 15 of the Convention on the Elimination of All Forms of Discrimination against Women, 1981,¹⁶⁵ Article 8 of the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990,¹⁶⁶ and Article 5 of the international convention on the elimination of racial discrimination, 1969,¹⁶⁷ also include and stress the importance of freedom of movement.

¹⁶¹ Universal Declaration of Human Rights (adopted 10 December 1948 UNGA Res 217 A (III) (UDHR).

¹⁶² Rosalyn Higgins, 'The Right in International Law of an Individual to Enter, Stay in and Leave a Country.' (1973) 49(3) International Affairs (Royal Institute of International Affairs 1944) 341 P 343.

¹⁶³ Human Rights Committee *Supra Note*, 157.

¹⁶⁴ "Liberty of movement is an indispensable condition for the free development of a person." See: *Ibid* para1.

¹⁶⁵ Convention on the Elimination of All Forms of Discrimination against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

¹⁶⁶ The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (adopted 18 December 1990, entered into force 1 July 2003) 45 UNTS 185.

¹⁶⁷ International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195.

The right to freedom of movement is a fundamental component of individual liberty¹⁶⁸ and a natural part of human history, yet it can be restricted in certain circumstances.¹⁶⁹ **Article 29 (2)** of the UDHR states: "in the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order, and the general welfare in a democratic society."¹⁷⁰ In contrast, the wording of paragraph 3 of **Article 12 of the ICCPR** was different when it came to the exceptional circumstances in which the rights guaranteed in paragraphs 1 and 2 could be limited: "The above-mentioned rights shall not be subject to any restrictions except those which are provided by law, are necessary to protect national security, public order (*ordre public*), public health or morals, or the rights and freedoms of others, and are consistent with the other rights recognized in the present Covenant."¹⁷¹ Consequently, states may be entitled to impose a number of restrictions on the freedom of individuals, which are imposed within the context of respect for the laws of the state, protection of public order, and observance of public rights and freedoms. In any event, to ensure the legality of such restrictions, they must be interpreted in good faith in accordance with Article 31 of the Vienna Convention on the Law of Treaties, so that they are interpreted in good faith in accordance with the meaning given to their words within the context of their object and purpose.¹⁷² These constraints must also be examined in light of **Article 29 of the UDHR**, which

¹⁶⁸ Supra Note 156 (McAdam).

¹⁶⁹ International Commissions of Jurists, 'Report & Conclusions of the conference of jurists on right to Freedom of Movement' (1968).

¹⁷⁰ "We have already stated that since article 29 (2) is restrictive in character, no limitations not contemplated therein are permissible under the Declaration. This arises from the principle of *inclusio fnius e.l:clusia alterius*." See: Jose D. Ingles, 'Study of Discrimination in Respect of the Right of Everyone to Leave any Country, Including His Own, and to Return to His Country' (1963) U.N. Doc. E/CN.4/Sub.2/220/Rev. P 62-63.

¹⁷¹ *Ibid* p 13.

¹⁷² Supra Note 139 (Kochenov) P64.

only permits deviations from the rights enumerated in the UDHR.¹⁷³ Furthermore, national law should not be used to justify restrictions on the right to enter and exit the country.¹⁷⁴

It is crucial that the possibility of restricting the right to entry and exit does not provide states with a justification to impose illegal restrictions and use arbitrary and disproportionate measures. Therefore, in order to ensure that the limitation is lawful and complies with the requirements of **Article 12(3) of the ICCPR**, such restrictions must be enshrined in the laws of the states, and the specific reasons for which the limitation is sought to be validated must be specified.¹⁷⁵ According to **General Comment No. 27**, restrictions not provided by law are incompatible with the requirements of the ICCPR. In addition, these limits must be the least invasive means of achieving the desired outcome, and the ability to review decisions to restrict movement must fall under the "*Provided by law*" requirement.¹⁷⁶ Although General Comment No. 27 stipulates that, while adopting laws incorporating the restrictions permitted by Article 12(3), states must always be guided by the idea that constraints shall not affect the substance of the right.¹⁷⁷ Therefore, if state legislatures adopt any of these limits, they must narrowly define their scope in the interest of individual freedom of movement.¹⁷⁸ Consequently, these restrictions must be reasonable, necessary,¹⁷⁹ and proportionate in operation and application and must not be

¹⁷³ "All the possible limitations mentioned in Article 12(2) of the ICCPR should be assessed in the light of the limited wording of Article 29 of the UDHR, which only allows for the departure from the rights recognized by the Universal Declaration" See: *Ibid* P 64.

¹⁷⁴ *Ibid* P 65.

¹⁷⁵ "The principle of proportionality has to be respected not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law. States should ensure that any proceedings relating to the exercise or restriction of these rights are expeditious and that reasons for the application of restrictive measures are provided." See: *Supra* Note 157 at Para 15.

¹⁷⁶ Hurst Hannum, *The right to leave and return in International Law and practice* (BRILL, 2021) Pp 24-25.

¹⁷⁷ *Supra* Note (Human Rights Committee) 157.

¹⁷⁸ *Supra* Note 139 (Kochenov) P 55.

¹⁷⁹ "Although there was no U.N. debate on this term, international judicial decisions and scholarly commentary indicate a consensus as to its meaning. As summarized by the Siracusa Conference: Whenever a limitation is required in the terms of the Covenant to be "necessary," this term implies that the limitation: (a) is based on one of the grounds justifying limitations recognized by the relevant article of the Covenant, (b) responds to a pressing

arbitrary,¹⁸⁰ which means that even interference provided by law must be in accordance with the provisions, aims, and objectives of the ICCPR and reasonable under special circumstances.¹⁸¹ This is applicable to all state actions, whether legislative, administrative, or judicial.¹⁸²

Lastly, the country's interests, national security, and public order may necessitate the use of powers by some governments to restrict the right to enter and exit the country.¹⁸³ It is the responsibility of states to maintain order and secure their existence so that, some circumstances, such as war and emergency, there is no absolute freedom for individuals. However, the interests of the state should not trump those of individuals; rather, states should create a balance between their own interests and those of individuals.¹⁸⁴

The next section will analyze how Syria has violated its commitments under the ICCPR in its application of the permissible limitations on the right of entry and exit from Syria.

public or social need, (c) pursues a legitimate aim, and (d) is proportionate to that aim. Any assessment as to the necessity of a limitation shall be made on objective considerations.” See: *Supra Note 115* (Barist) P 401.

¹⁸⁰ *Supra Note 176* (Hannum) p 26.

¹⁸¹ In General Comment No. 35 on Liberty and security of person, the Human Rights Committee stated in paragraph 12 that the concept of arbitrariness should be interpreted broadly to include “elements of inappropriateness, injustice, lack of predictability and due process of law, as well as elements of reasonableness, necessity and proportionality” See: UN Human Rights Committee, General comment No. 35, Liberty and security of person (Art. 9) (2014) UN Doc CCPR/C/GC/35.

¹⁸² “The principle of proportionality has to be respected not only in the law that frames the restrictions, but also by the administrative and judicial authorities in applying the law. States should ensure that any proceedings relating to the exercise or restriction of these rights are expeditious and that reasons for the application of restrictive measures are provided.” See: Human Rights Committee *Supra Note 157* at Para 15.

¹⁸³ The Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities Jose D. Ingles in his study for 1963 stated that :

“It may thus be necessary to accept the inevitability of the exercise by Governments of some measure of discretionary powers. But, on the other hand, the legitimate and paramount interests of the individual must also be recognized and protected. It is true that in a number of countries, procedures have been developed which attempt to do justice both to the cause of the State and to the cause of the individual. But it is a sad commentary that the present state of the world that only 62 very few countries, if any, have achieved a happy balance between these two interests.” See: *Supra Note 170* (Ingles) P 62-63.

¹⁸⁴ “Indeed, national security could be interpreted so broadly as to deny the basic right altogether. For example, such a ground might be cited as a pretext for prohibiting all nationals from going abroad for any purpose whatsoever.” See: *Ibid* P 40.

4.3 Syria's Policies in the Lens of the International law

Syria joined the member states that endorsed the UDHR, which established the right to movement in Article No. 13. Syria also ratified the ICCPR on April 21, 1969,¹⁸⁵ which is regarded as the most widely acknowledged affirmation of this right.¹⁸⁶ However, the Syrian government has continued to limit Syrian citizens' ability to enter and exit the country. The Syrian constitution came into being in 1973,¹⁸⁷ and Article 33-2 of the constitution stipulates the guarantee of freedom of movement within the state's lands, as well as the inadmissibility of forcibly removing citizens from Syrian lands unless they are prevented from doing so by a court ruling or in the implementation of public health and safety laws.¹⁸⁸ However, the right to enter and exit the country was not addressed in the constitution of 1973,¹⁸⁹ but it was in the constitution of 2012.¹⁹⁰ The ICCPR went into effect on March 23, 1976, but Syria's laws did not harmonize with the provisions of the convention.¹⁹¹

The Syrian government has failed to meet its obligations under Article 12 of the ICCPR as it has worked to thwart permissible restrictions on the right of entry and exit through a number of laws and decrees, citing national security and public order concerns.¹⁹² The Syrian government relied on the state of emergency, which lasted from 1963 until 2011,¹⁹³ before invoking the counter-terrorism law after 2012. The Syrian government justified the continued state of

¹⁸⁵ Ratified by Syria under the Legislative Decree No.4.

¹⁸⁶ *Supra Note 115* (Barist) P 387.

¹⁸⁷ Syrian Arab Republic constitution dated 1973.

¹⁸⁸ *Ibid* Art 33.

¹⁸⁹ *Supra Note 3*.

¹⁹⁰ *Supra Note 3*.

¹⁹¹ Human Rights Committee *Supra Note 32*.

¹⁹² *Ibid*.

¹⁹³ *Supra Note 66* (Salama).

emergency¹⁹⁴ by using the possible war with Israel as a reason, necessitating an exceptional situation in terms of restricting rights and thus issuing legislation and granting great discretionary powers to the various agencies to ensure the administration's ability to act quickly in the face of imminent threats.¹⁹⁵ Therefore, the legality of the restrictions imposed by the Syrian government on the right to entry and exit during the state of emergency that the country has experienced since 1963, and the restrictions imposed under the counter-terrorism law after 2012 can be evaluated from the perspective of the ICCPR during two distinct time periods. The first period goes from 1976, when the ICCPR entered into force, to 2011, when the state of emergency was lifted, and the second period extends from 2012, when the Counter-terrorism Law, which replaced the emergency law, was enacted, until now.

In discussing the legality of these restrictions in the first period (1976-2011), it is possible to argue that the Syrian government has violated Article 12 paragraph 3 of the ICCPR in term of necessity and proportionality. It should be noted that, according to **Article 4 (1) of the ICCPR**, any state party to the Covenant may, in exceptional cases of emergency that threaten the life of the nation whose establishment has been officially declared, take measures that do not limit the nation's obligations under the Covenant.¹⁹⁶ Article 4 (3) stipulates that each state that has exercised its right of derogation must immediately inform the other state parties of the provisions they have not adhered to and the reasons for doing so, as well as the date the derogation

¹⁹⁴ “However, since the Syrian Arab Republic is faced with continuing external aggression and threatened by a constant danger imperiling all fundamental human rights it is obliged to have a law making provision for a state of emergency to deal with that situation.” *See*: Human Rights Committee, *Supra Note 150*.

¹⁹⁵ “Not only did Israel still continue to occupy Syrian territory and expel inhabitants, but it threatened to expand its occupation, thus creating an exceptional situation which required Syrian troops to remain on perpetual alert in order to meet any emergency.” *See*: Human Rights Committee, ‘Consideration of reports submitted by States parties under article 40 of the Covenant (continued) Second periodic report of the Syrian Arab Republic’ (2001) UN Doc CCPR/C/SR.1916.7. *See also*: Human Rights Committee, ‘Consideration of reports submitted by States parties under article 40 of the Covenant (continued) Third periodic report of the Syrian Arab Republic’ (2005) UN Doc CCPR/C/SR.2291.

¹⁹⁶ *Supra Note 31 (Paul) Pp. 25-26.*

terminates.¹⁹⁷ In examining the legitimacy of the Syrian government's restrictions in light of Articles 4 and 12 (3) of the ICCPR, it should be noted that although the Syrian government officially declared a state of emergency 4 (1) and despite the emergency law specified in Article 1 Conditions under which rights can be restricted, such as a state of war or endangering security or public order 12 (2) with regard to the '*Provided by law*' requirement, this is insufficient to justify the limits on entry and exit imposed by the Syrian government. In term of temporary nature, the Syrian's government has not established a particular timeframe in which the date of restriction expires 4 (3), as the state of emergency in Syria was formally removed in 2011 after nearly half a century.¹⁹⁸ In addition, the emergency law gave the security branches broad discretionary powers to restrict freedom of movement using procedures that are as close as feasible to administrative procedures.¹⁹⁹ Moreover, the text of the emergency law does not include an appeals process for negative rulings against individuals that limit this right.²⁰⁰

Moreover, in terms of the constraints' necessity, proportionality, and the degree to which these restrictions address an urgent or immediate public need and fulfill a valid aim, the Syrian government has justified the maintenance of the state of emergency for many years by using the possible war with Israel as a reason, which required an extraordinary situation.²⁰¹ However, for many years, the Syrian government has not provided convincing explanations regarding the connection between these exceptions and restrictions on the right of movement and the conflict

¹⁹⁷ Ibid Pp. 25-26.

¹⁹⁸ Supra Note 66 (Salama).

¹⁹⁹ See: Supra Note 28, See also: Supra Note 30.

²⁰⁰ Supra note 31 (Paul) P 26.

²⁰¹ Human Rights Committee, Supra Note 32, and Supra Note 195.

with Israel, nor has it provided explanations regarding the necessity of these exceptions to meet the requirements of the situation allegedly resulting from the conflict.²⁰²

Regarding the legality of the restrictions imposed by the Syrian government in the second period (2012-2022), when the state of emergency was officially lifted and therefore Article 4 of the Covenant ceased to apply, it is possible to argue that the Syrian government has violated Article 12 paragraph 3 in terms of "provided by law" requirements. The Emergency Law was replaced by the Counter-Terrorism Law No. 19 of 2012 and the Counter-Terrorism Court Law No. 22 of the same year.²⁰³ The counter-terrorism law did not emphasize movement restrictions or travel bans in its text, nor did it mention them as punishments.²⁰⁴ Therefore, the imposed restrictions have no basis in this law, as the prosecutors have issued travel bans against opponents and restricted their freedom of movement without a legal provision. These restrictions were also exclusively administrative or executive in nature and gave a great deal of discretionary power to the government authorities.²⁰⁵

Finally, the Syrian government has erected several barriers to the exercise of the right of entry and exit and has not met its positive responsibilities. In addition to charging high fees for the issuance of passports,²⁰⁶ the Syrian regime imposed bureaucratic impediments on the issuance of passports and travel documents for individuals and denied passports to political opponents.²⁰⁷ This is in accordance with **Article 2 (1)** of the ICCPR, which stipulates that each state signatory

²⁰² "After Twenty-eight years of a state of emergency without interruption, however, there is now an overwhelming presumption that the "emergency" is an excuse for the regime to suppress its legitimate domestic opposition." *See: Supra Note 31 (Paul)* p 26.

²⁰³ *Supra Note 67, See also: Supra Note 68.*

²⁰⁴ *Ibid.*

²⁰⁵ *Supra Note 67.*

²⁰⁶ *Supra Note 83 (SNHR).*

²⁰⁷ *Supra Note 31 (Paul), See also: Supra note 48 (Lesch).*

to this covenant must respect and safeguard these rights for all citizens within its jurisdiction.²⁰⁸

In addition, the government has breached Article 12 by imposing travel permits and exit visas on Syrian citizens, a significant impediment to their ability to leave the country.²⁰⁹ The Syrian government also violated Article 12 by enforcing Resolution No. 46 of 2020, which required citizens to convert \$100 into Syrian currency upon their return to the country.²¹⁰ The Human Rights Committee, in General Comment No. 27, addressed the legal and bureaucratic obstacles and barriers that states can place and affect the full enjoyment of the rights of individuals to move freely and leave a country, which include the requirement of a cash deposit to return to the country of origin.²¹¹

4.4 Conclusion

Unquestionably, the right to enter and exit is a right inscribed in international laws and treaties, and it is essential for individuals to be able to exercise their freedom. In spite of this, it is evident that international law cannot fully ensure respect for this right, nor can it compel nations to comply with its requirements or alter the administrative practices of these states. Moreover, all of these treaties lack a thorough description of the right to guide states parties on its scope and

²⁰⁸ *Supra* Note 139 (Kochenov) P 61.

²⁰⁹ “Moreover, the fact that many designated categories of nationals are still required to obtain an exit visa each time they wish to leave the country is a matter of concern to the Committee and constitutes a violation of article 12, paragraph 2, of the Covenant.” See: Syria Report (Human Rights committee) *Supra* Note 32 at Para 21.

²¹⁰ *Supra* Note 92 (Kayyali).

²¹¹ General Comment No. 27 detailed a variety of practices taken by states to impede the enjoyment of this right by its citizens, such as the:

“lack of access for applicants to the competent authorities and lack of information regarding requirements; the requirement to apply for special forms through which the proper application documents for the issuance of a passport can be obtained; the need for supportive statements from employers or family members; exact description of the travel route; issuance of passports only on payment of high fees substantially exceeding the cost of the service rendered by the administration; unreasonable delays in the issuance of travel documents; restrictions on family members travelling together; **requirement of a repatriation deposit or a return ticket**; requirement of an invitation from the State of destination or from people living there; harassment of applicants, for example by physical intimidation, arrest, loss of employment or expulsion of their children from school or university; refusal to issue a passport because the applicant is said to harm the good name of the country” See: Human Rights committee *Supra* note 157 at Para 17.

implementation. This was evident in Syria, which, despite being one of the first countries to ratify the ICCPR, continued to violate citizens' rights to entry and exit, making its ratification a mere formality.

5 Conclusions

This thesis aimed first to discuss the history of Syria and the restrictions on Syrian citizens' rights to enter and exit their country. Second, I discussed mobility and immigration control policies in the Soviet Union in the period between 1970 and 1991 and compared the mobility control policies in the Soviet Union to the mobility control policies in Syria. Lastly, I addressed the right to enter and exit as established in international agreements and treaties and analyzed the Syrian government's policies through the lens of the ICCPR.

I concluded that the Syrian government restricted right to enter and exit based on a variety of considerations, including national security and economic considerations. In addition, these policies have been and continue to be used against large groups of Syrians by granting the government broad discretionary powers and putting limits on the right to enter and exit Syria through administrative and bureaucratic procedures. In addition, I concluded that despite changes in policy to restrict mobility in the Soviet Union after the 1970s and the less severe restrictions on movement, the basic institutions of Soviet immigration and movement control remained in place and kept controlling movement. In addition, I found that the restrictions on freedom of movement in Syria and the Soviet Union had a number of similarities, including centralization, bureaucratic procedures, political and security concerns, and a fear of brain drain. Last but not least, I reached the conclusion that Syria has violated its obligations under the ICCPR and exceeded permissible restrictions on the right to enter and exit the country.

The right to enter and exit a country is one of the fundamental rights and is essential to personal liberty. However, international law still lacks the binding power necessary to guarantee full respect for the right of leave and entry, and international law cannot oblige states to

implement its standards. Such as in Syria, which continues to violate the right to enter and exit despite having ratified numerous international agreements and treaties. Therefore, international law must establish an obligation for states to respect this right, and it must seek, in its texts and documents, to describe the right to enter and exit in sufficient depth so as to prevent states from violating it. States must respect the rule of law and apply the right to enter and exit in a way that strikes a balance between the freedom of movement of individuals and the interests of states, which may be a real challenge.

Finally, Obtaining documents and passports is frequently taken for granted, as if states issue them to citizens merely because they enjoy their nationality. In addition, it is commonly believed that exiting or entering one's own country without limitations is the norm and that constraints are the exception. It is never acknowledged, however, that a person's place of birth influences their rights and privileges and that belonging to a geographical region and citizenship is "too often a legal tool that justifies violence, humiliation, and exclusion."²¹² As Dimitry Kochenov argues, the right to enter a country, including one's own, and the right to exit are abstractly intertwined and that "the two rights only make sense when existing and exercised together, side by side."²¹³ Therefore, in the case of Syria, Syrians' suffering will not end within the geographical territory known as Syria, nor will it end if they are permitted to leave. The suffering of Syrians will continue as long as the borders of several countries remain closed to the refugees, who may have been fortunate in terms of their ability to flee Syria and escape the regime, but unlucky in terms of the strict control and pushback that they faced and continue to face at the borders. Finally, if we defend the right to exit the country of origin, we must also

²¹² Dimitry Kochenov, *Citizenship*. (Mit Press, 2019).

²¹³ Supra Note 139 (Kochenov) Pp. 46-47.

recognize the existence of a right to enter other countries, so that both the right to exit and the right to enter serve the essence of the right to freedom of movement.

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