Overview

The conflict in Syria, which began on 15 March 2011 with popular protests that were inspired by the Arab Spring, grew nationwide by April 2011. The Syrian Arab Army was deployed to quell the uprising and soldiers fired on demonstrators across the country. After months of military sieges, the protests evolved into an armed rebellion mainly composed of defected soldiers and civilian volunteers, albeit without central leadership. The conflict is asymmetrical, given the disparity in material power between opposing actors involved. The Syrian Government is further upheld by military support from Russia and Iran, while Qatar and Saudi Arabia supply weapons to opposition forces. In July 2013, the Syrian Government controlled approximately 30-40 percent of the country’s territory and 60 percent of the Syrian population.

According to the United Nations, the death toll had reached 100,000 by September 2013.\textsuperscript{1} Tens of thousands of protesters have been imprisoned and there are reports\textsuperscript{2} of widespread torture and terror in State prisons. International organisations have accused\textsuperscript{3} both government and the military forces of


\textsuperscript{3} United Nations High Commissioner for Human Rights, Independent International Commission of Inquiry established pursuant to Resolution A/HRC/S-17/1 and extended through Resolution A/HRC/Res/19/22, Periodic update, 24 May
severe human rights violations, including sexual and gender-based violence and crimes against children. The UN and many international organisations have outlined the severity of the humanitarian disaster in Syria. More than four million Syrians have been displaced and more than two million Syrians fled the country and became refugees, while millions more were left in poor living conditions with shortage of food and drinking water. Chemical weapons have also been used in Syria on more than one occasion, triggering strong international reactions.

Whether the internal dynamics can be changed depends on breaking the expectation of impunity and rewards for violence, by building the strength of Syrian human rights activists and political actors to demand justice and accountability, and building the capacity of the judiciary and legal profession to play their part as justice-providers.

Side event summary

1.1. The participants

The panellists included Suheir Atassi, Vice President of the Syrian National Coalition and Head of the Assistance Coordination Unit; Haytham al-Maleh, Syrian human rights leader and President of the Legal Office of the Syrian National Coalition, in charge of accountability and transitional justice; and Hadi Al-Khatib, Syrian human rights activist and NPWJ Syria Team Leader. The side event was chaired by Niccolò Figà-Talamanca, Secretary-General of NPWJ. Among the participants there were representatives of States (from at least 15 different countries), civil society, the Arab League and the International Criminal Court. Overall, more than 80 people attended the side event.

1.2. The panel discussion

Mr Niccolò Figà-Talamanca opened the panel by stressing that Syria has been on the minds of those who dedicated their professional lives to the protection of human rights. It has become one of the worst conflicts in terms of civilian casualties in the Mediterranean region since the end of World War II. In terms of victims, war crimes and crimes against humanity, far more violations have been committed in Syria in almost three years than during the eight years of conflict in the former Yugoslavia. That’s why the situation gave rise to calls for accountability, which have remained unheard. This event has been organised in order to give the opportunity to three leaders of the Syrian political opposition (two of them are representatives of the Syrian National Coalition while the other is a civil society member) to speak out about accountability for Syria.

Mr Roberto Bellelli, representative of the Italian delegation, thanked NPWJ for taking this initiative and remarked that in the case of Syria, the fight against impunity has come to a crossroads between legal and political professionals. The debate, which has taken place in the international arena, is likely to be counter-productive because it has been split up into a two-fold approach of either pursuing peace or justice. An effort has been made to seek international criminal justice, as demonstrated by the letter that was sent in January 2013 to the UN Security Council, the so-called “Swiss Initiative”.4

Mr Haytham al-Maleh, President of the Legal Office of the Syrian National Coalition, began by speaking about his life experience. He was imprisoned twice for having protested against the regime. More than 48,000 people were killed in the Hama massacre that took place in February 1982. At that time, the Syrian Arab Army and the Defense Companies, under the orders of the country’s then-

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president, Hafez al-Assad, the father of Bashar al-Assad, besieged the town of Hama for 27 days. They did so to quell an uprising by the Muslim Brotherhood against al-Assad’s government. The number of people that went missing reached 70,000 and even though they were still alive, they were kept in civil detention. All of these crimes were perpetrated by the Syrian Arab Army, which also expropriated hundreds of houses and made 250,000 people flee the country to escape certain death. Until 1990, the situation in Syria didn’t change: terror and injustice were on the agenda. The ruling family ruled over all aspects of society. Nowadays, in Syria more than 500,000 people are detained; 250,000 people have become disabled; and a lot of hospitals, mosques and bakeries have been destroyed. This means that we are facing a real international humanitarian crisis while the international community is standing by idly and unresponsively.

Ms Suheir Atassi stressed the fact that in a civilized world, institutions and courts are the ones responsible for bringing justice. Assad’s regime perpetrated hundreds of crimes against humanity, such as forced disappearances, systematic rapes and the widespread use of chemical weapons: it needs to face international criminal justice. The UN Security Council is not a viable instrument due to the Russian and Chinese opposition. The international community claims to be incompetent but it is not: for the most part, it is simply unwilling. After the use of chemical weapons, it was able to act and even to bring the Russians on board. According to the Rome Statute, many war crimes have been committed. There is the need to join efforts, among politicians, diplomats, civil activists to stand shoulder to shoulder in solidarity and demand that all war criminals are brought to justice. It is essential, because there will be no reconciliation without accountability and therefore not all of the parties involved will be able to live together.

Mr Hadi Al-Khatib spoke about the NPWJ program in Syria, which targets different geographical areas in Syria and different groups of people. This program aims at bringing accountability for Syrians, therefore it entails bringing all those who perpetrated crimes to be brought to justice. Mr Al-Khatib questioned whether the international community supported the Syrian people enough in their struggle; by agreeing to destroy the chemical weapons in Syria, the international community became involved, but still over 7,000 people were killed after the chemical weapons were destroyed. The international community should play a bigger role. What Syria need is accountability: the situation is so dreadful it cannot be avoided for expediency’s sake.

1.3. Discussion from the floor

The discussion initially focused on the need for accountability for Syria; as of November 2013, there were prospects neither for national prosecutions, nor for a referral by the UN Security Council. One participant noted that while there have been fruitful and helpful steps in supporting and assisting documentation efforts, there has been a stunning and shameful failure of the international community as a whole to support accountability more generally. The failure of the international community was also highlighted with respect to the infiltration of Hezbollah extremists in the revolution. However, Syrians do not aim at establishing an Islamic State and therefore the international community should get more involved to help the Syrian people.

Participants argued that the only court that can prosecute crimes perpetrators in Syria is the ICC, because establishing a new (international or hybrid) court would be complicated in terms of resources (time and money). Therefore, having the support of the international community would be very important in order to bring justice and to secure people’s basic needs, like food and shelter. It was also pointed out that there is a widespread, general sense of distrust of the Syrian judicial system, since it will unlikely be able to ensure justice and therefore the ICC would represent the ideal court for answering the demands for impartiality and fairness. An intervention from the floor suggested that in order to put the issue of accountability on the agenda as soon as possible, the Syrian opposition should make a public declaration stating that it abides by international law and recognises the authority of the ICC.
Many participants shared a common understanding on the need of having a comprehensive view of the situation. There was general consensus on the fact that an ICC referral is not foreseeable in the very near future, so other measures should be taken in the short-term, such as working to promote expectations that there will be no impunity for perpetrators of serious crimes, to encourage demand and therefore enhance the chances of Syrians working towards this goal. Moreover, it was stated that it would be pivotal to understand what might be needed in Syria not only in the short-term, but also in the long-term, after the end of the conflict. Therefore, it was argued that the members of the UN Security Council that agree on ICC involvement should put pressure on the members that are vetoing this resolution.

Furthermore, on the issue of victims, it was also said that the Syrian Coalition formed the Assistance Coordination Unit in December 2012 in order to coordinate urgent relief efforts to all victims of the humanitarian crisis in Syria but, as of November 2013, its aid covers only 10% of the needs. There is a need for urgent support of this work, to alleviate the suffering and the humanitarian crisis.

Finally, one participant raised the point that it should be first of all a Syrian-led process and also that the Syrian national judicial system should be reinforced. On the other hand, a panellist noted that justice in the judiciary in Syria doesn’t exist, mostly because Bashar al-Assad changed the laws also with regard to the authority of the judges. It was emphasised that in the Legal Office of the Coalition, there is a special program for transitional justice, which among other aspects entails also the unification of the judiciary. The Coalition would like to establish offices in Turkey and in the liberated areas in Syria, because at the moment, various courts are operating there but they are not independent. Concerning Geneva II, the Coalition agreed to attend the conference only if certain conditions are met. The main condition is that immunity cannot be granted to criminals, therefore the international community should take a stand and provide more help.

Conclusions

This event discussed the situation in Syria and the current lack of sufficient action by the international community, which has only provided a unified and prompt response to the use of chemical weapons, putting pressure on Syria to destroy them. This was recognised as a positive development, but one that overlooks accountability for the tens of thousands of people killed in the conflict by conventional weapons as well as the hundreds of thousands of women and children victims of rape and other SGBV, unlawful detention and forced displacement. The issue of the unwillingness of the international community to act and the lack of concrete action taken against the perpetrators of crimes was raised many times.

The speakers stressed that accountability needs to be part of any peace talks that may hopefully be held, affirming that all perpetrators of crimes committed in the country must be held accountable if there is to be any hope for lasting stability, reconciliation and peace in Syria.

During the discussion, grave concerns on the Syrian humanitarian situation were brought to light. Many raised the point on having a comprehensive view of the situation in order to come up with plans in the short-term but also in the long run, when the conflict will come to an end.

Notwithstanding the fact that there was a general consensus on the need for an ICC referral, many expressed doubts whether a Security Council referral will happen in the foreseeable future. Nonetheless, there was general agreement on the overall need for accountability for the crimes perpetrated and the need to bring peace to the Syrian people.