Report: Side Event on
“Accountability and the Prospect of a Political Solution to Conflict in Syria”

25 November 2015 13:15 – 14:45
Africa Room, World Forum

14th Session of the Assembly of States Parties of the International Criminal Court

This side-event was co-sponsored by the governments of Belgium, Canada, France, Italy, Liechtenstein, The Netherlands, United Kingdom, the National Coalition of Syrian Revolution and Opposition Forces and No Peace Without Justice and organised with the financial support of the European Union.
Overview

The conflict in Syria has reached further peaks of brutality where human life, democratic values and cultural human heritage is destroyed daily. More importantly, international legality and the rule of law have been violated for five years in an attempt to establish the rule of the might. National laws and international conventions protecting the rights of individuals have been crushed by terrorism, foreign interventions and regional and geopolitical logic that have turned Syria into a territory of conquest. The conflict is increasingly driven by international and regional powers, primarily in accordance with their respective geostrategic interests. The role played by external powers is leading toward a situation where Syrians are gradually losing control over the course of events, including how to find a negotiated solution to the war. With each passing day, the goal of regaining ordinary life is increasingly distant and exponentially harder to reach.

The UN Independent International Commission of Inquiry (CoI) continues to report periodically well-documented patterns of serious violations of international humanitarian law and gross violations of human rights. These transgressions are massive in extent and scope and with no end in sight.

Any solution to the conflict has to take this background into consideration and address accountability and redress for all victims of these atrocities, enabling a Syrian-led political process that meets the legitimate aspirations of the Syrian people, enables them independently and democratically to determine their future and ensures that crimes will not go unpunished and that those who bear the greatest responsibility not be part of the future of Syria. Syria’s people are looking for reprieve and for redress, while increasingly unable to believe this will ever happen. The consequences do not fall on those who are breaking the law, but on those whom the law should protect, namely the civilian population of Syria, particularly in areas unreachable by aid efforts. Continued impunity has fed the violence; the lack of credible signals that there is an expectation of accountability for what is happening has created a situation where impunity is the norm, breeding extremism, terrorism and widespread violence.

Against this backdrop, this side event in the margins of the ICC Assembly of States Parties looked at the fundamental issue of redress for victims and accountability as an essential component of any political solution to the conflict, addressing some of the difficult questions that will arise. The meeting also served as a reminder that a lasting political solution to the Syrian war requires an inclusive and participatory process capable to ensure redress for all victims of violence, violations and abuses of human rights and violations of international humanitarian law, irrespective of their ethnic, religious and political affiliation, and accountability mechanisms to foster national reconciliation, ensure no repetition, respect of international and humanitarian laws and the end of impunity.

Side event summary

1.1. The participants

Panellists of the meeting - co-chaired by Niccolò Figà-Talamanca, Secretary General of No Peace Without Justice, and Hussein Sabbagh, Secretary General of Euro-Syrian Democratic Forum - included Rami Nakhla, NPWJ Syria Project Coordinator; Ayman Ghojal, Human Rights Defender; Raheb Alwany, Human Rights Defender; and Stephen Rapp, former Prosecutor of the Special Court for Sierra Leone, former US Ambassador on War Crimes Issues. Welcome remarks were made by Alexandra Valkenburg, Head of the Human Rights Division of the Ministry of Foreign Affairs of The Netherlands. Closing remarks were made by Elizabeth Evenson, Senior Counsel, Human Rights Watch.

1.2. The panel discussion

In her welcome remarks, Ms Valkenburg provided an overview of the situation in Syria so far while stressing particular issues which have occurred in the past year, remarking that the situation has not improved. She noted that it is useful to discuss and include the views of human rights activists in Syria in
the discussion. Ms Valkenburg stressed that more needs to be done on the political side and that the new diplomatic efforts initiated in Vienna at the end of October 2015 offer small hope at the moment. Furthermore, she acknowledged the importance of accountability and its role as a crucial element of a solution to the crisis. She noted that at a UN level, accountability and Syria have received little attention, therefore arguing that more lobbying should be done to have Syrian activists speak at the UN General Assembly. She expressed her support for civil society organisations that document and collect evidence of war crimes, but also noted that there is a clear need for further training and better coordination and management in this area.

Co-Chairs Mr Figà-Talamanca and Mr Sabbagh led the panellists through a number of questions designed to explore the complexities of what is happening in Syria and potential responses. This approach drew out the panellists’ views on issues relating to the prevailing sense of impunity, the impact of atrocities and the lack of a clear strategy on how to address these issues and end the conflict. A question was also posed to the panellists on the influence of Assad and ISIS as parties to the conflict and what potential role they might have in a political solution.

Ms Alwany stressed that the current scenario for Syria seems to be one in which one has to choose between ISIS or Assad. She pointed out that this scenario is the biggest of evils for the Syrian people. She stressed that the reason behind any accountability so far is the glaring gap of impunity: by failing to punish a criminal regime such as Assad’s, the international community has let him keep his political position even after the use of chemical weapons by the regime forces. The agreement that he could stay in power as long as he ceased the chemical weapons attacks further strengthened the sense of impunity. Ms Alwany also noted that the focus should be on him and the atrocities committed by the regime, as opposed to focusing solely on extremism and terrorism, which are symptoms rather than fuelling factors and causes of the conflict. Thus, Ms Alwany said the international community’s approach is misdirected: further bombing of ISIS would only lead to more refugees and civilian casualties, but would not end the crisis as it would not address the root “disease” of the country, which is the regime. Furthermore, Ms Alwany argued that there is a need to stop viewing women solely as victims of this conflict. On the contrary, they have been active on the ground and in peacebuilding efforts and should be included in the political process and in the transitional justice process.

Mr Ghoujal also reiterated the point that the international community is fighting the wrong opponent: the biggest threat was and remains the Assad regime, which was the reason the terrorist regime of ISIS grew, even if at the moment Assad is trying to fight them. At the beginning of the revolution, the Syrian President made the mistake of letting all extremists out of prison and this fuelled the rise of extremism and ISIS. Mr Ghoujal concluded by saying that the current message of impunity and lack of accountability is the wrong one to send to the future generations and that the Syrian people need to have a voice in the peace negotiations.

Ambassador Rapp noted that 80% of the crimes committed in the conflict have been committed by government forces and its allies, thus ruling out any possibility for Assad to be a part of the political solution to the conflict. Ambassador Rapp also acknowledged that it will be difficult to have a peace deal with a population the majority of which has been victimised and even more impossible if the perpetrators of those crimes will be involved in the negotiations. Thus, the victims need justice first in order to achieve peace later. Amnesty for mass killings and atrocities would not be a viable option, since those crimes cannot be forgiven and amnesty would not address the impunity gap. Ambassador Rapp concluded by stressing that transitional justice processes need to be included in any peace plans and that the Syrian population will have to play an active role in these processes, which will have to ensure that those who bear the greatest responsibility will held to account.

Mr Nakhla stressed that it is crucial for the international community to avoid giving the Syrian people the impression of doing too little and too late in terms of accountability, since that would further increase their
mistrust in the international community and its commitment to finding a solution to the conflict. He argued that Syrians should be the main actors in the accountability process and that they will need to be involved in how this process works and in its design. This process should serve the needs and interests of the victims of the conflict rather than being designed to appeal to the international community.

1.3. Discussion from the floor

A central issue highlighted during the discussion was what more could be done by various actors towards contributing to accountability and justice in Syria. Ambassador Rapp noted that documentation and investigative efforts such as the Caesar files so far have been a crucial step towards providing evidence of the atrocities that have been committed, which could be used for their prosecution. He also noted that further effort is needed on the side of States Parties, especially on the part of EU countries, which have a vested interest in justice and thus resolving the refugee crisis.

The second issue discussed reflected on lessons learned from Libya and what could be done differently in terms of rhetoric and military strategy in Syria. Speaking in his individual capacity, Mr William Pace, Coalition for the International Criminal Court, highlighted the need for an alternative rhetoric in the Syrian case, since one that is solely focused on regime change could cause terrible damage. He noted that a political solution is needed as quickly as possible, but cannot be done with regime change as a focus and starting point. Ambassador Rapp reiterated his point that those who bear the greatest responsibility should be held accountable, but also remarked that the Syrian people will not tolerate a scenario in which Assad is still in power. Mr Nakhla underlined that there needs to be a concrete blueprint plan for the future and that in the present we must focus on advocating to include justice mechanisms in any political decisions that are taken.

The representative of the United Kingdom raised the question of what the international community and more specifically what States can do to ensure accountability in Syria. Ambassador Rapp noted that governments can also start prosecuting at the national level and that they need to provide more resources to find out who is responsible and who to prosecute. He added that the documentation of evidence needs to be increased and that Syrian people need be involved more in the process. Raheb Alwany answered that stopping the sale of arms to Syria and the violence against the refugees at the borders would be a good start for governments. Speakers also agreed that the international community should improve its credibility of delivering justice and working towards a solution of the crisis. Preventing further atrocities on the ground and against Syrian refugees in Europe, as well as further documentation with the involvement of the Syrian people are all steps speakers identified as strategies to send a clear signal towards the Syrian people that the international community has not abandoned them.

The issue of prosecution at levels other than international was discussed. Ambassador Rapp spoke about the possibility of a hybrid court that would work both at international and national level, but he emphasised that for now the possible alternative is to work with countries that might have jurisdiction to conduct investigations in Syria. The panellists generally agreed that this could be an important step for justice in Syria and could have an impact within Syria, provided it is managed well and steps are taken to ensure that the Syrian people know about these initiatives and see them as part of their accountability process.

Conclusions

Elizabeth Evenson offered closing remarks starting by echoing other panellists’ comments about the importance of seeing so many people interested by this issue, as this sends the message that the international community is not unaware and uninterested by the situation in Syria. She noted that State Parties, the International Criminal Court and civil society should stand together to fight against impunity in Syria. She added that civil society should pressure ICC States Parties to give enough resources to the ICC in order to fight impunity and to continue sending the powerful message given by the ICC’s existence. She explained that the commitment of the people in the room sends that message and that we should keep
having a consensus on the commitment to have justice. Ms Evenson also agreed with the panellists that impunity is a cause of the crisis in Syria and that it favoured a growth of extremism. On the issue of how to reach a political solution, she referenced to existing efforts, such as the UN Commission of Inquiry and the work done by civil society organisations on documentation and gathering of evidence. She also mentioned the importance of extraterritorial jurisdiction and insisted on the importance of justice mechanisms outside the international context and the importance of making these mechanisms visible. She concluded that a political solution is still possible to obtain and that it will be critical to involve the Syrian population in the process. She ended by saying that as we search for justice, we cannot forget to address ongoing human rights violations in Syria and to protect civilians and that there is no way forward that does not go through justice.