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THE HUMAN RIGHTS TREATMENT AND THE ROLE OF THE INTERNATIONAL COMMUNITY IN THE SYRIAN WAR

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ABSTRACT

This paper is focused on the treatment of human rights during the devastating civil war in Syria, which has been witnessed by the entire international community for almost ten years. This war has opened many questions regarding violations of human rights and international humanitarian law, which probably will be debated for a long time. In order to make a contribution to this debate, we made an overview of the content of the official reports in which the UN Independent International Commission of Inquiry since 2011 has noticed the facts regarding the humanitarian catastrophe in Syria. The overview follows the chronology which reflects two paradoxes: 1. Increasing the intensity of the violence and the violations of the rules of war, throughout the years; 2. The inability of the international community and the United Nations through its mechanisms to deal with the challenge it faced during this war.

All those reports reflect the terrible situation with human rights violations, which is almost unprecedented in recent contemporary wars. International efforts for finding solution for this situation had limited success, pertaining solely to the destruction of the Syrian chemical weapons program. However, there has been little success in preventing war crimes, and at least so far, in locating responsibility thereof.

Hence, the aim of this paper is to highlight the cruelty and meaninglessly long duration of the Syrian civil war which will be remembered as a proxy war, violating everything the international community has built so far as standards of humane behaviour in war conditions.

Key words: human rights, International humanitarian law, civil war in Syria, the United Nations

1. INTRODUCTION

For almost ten years, a complex civil war has been happening on the territory of the Syrian Arab Republic, followed by war crimes, gross violations of international human rights law (IHRL) and international humanitarian law (IHL), a massive migrant crisis, and a humanitarian catastrophe, witnessed by the entire world public. Through the years, some attempts of the international community to resolve this situation have not only been delayed, but were completely

unsuccessful. The reasons for this are complex. Since the very beginning, the interest of certain geopolitical factors, as well as their contribution with logistics, and probably with fighters and money, was more than obvious. Hence, according to some authors, the term, “Syrian civil war” is a clear misnomer, because it is a regional conflict with global actors between two broad coalitions: those who support and those who oppose Assad and his government (See: Zambakari, 2018). One of the other reasons for unsuccessful international efforts is the religious diversity in Syria, despite the ethnically rather homogeneous composition of the population. This provoked a wide range of armed formations with each of the warring parties. Moreover, Syria is part of an unstable regional environment with the countries of Iraq, Lebanon, Israel, Turkey, and Jordan, which further complicates the situation.

As an instrument for resolving the conflict, many documents were adopted, especially UN resolutions, but they were probably not appropriately applied by the dysfunctional working bodies. Nor has the organized military intervention approved by the UN Security Council been frequently mentioned as an option, probably because of at least three reasons: 1. Possible and expected veto on that decision by some of the permanent members of the Security Council; 2. An overt attack on Syria could provoke a greater war in the Middle East and bring the U.S. into direct confrontation with Russia or even China; 3. The military analysis indicates that such an action is difficult to be carried out successfully, primarily because of the Syrian army’s capability and possible military assistance from other armies.

Having all this in mind, some legitimate questions regarding the Syrian war will remain open, as the question of lack of more decisive action by the international community, and especially by the UN in preventing human suffering in Syria, or the question of the geopolitical interests of influential countries which probably emerged above the interest in respecting international standards for humane behavior.

2. THE HUMAN DIMENSION OF THE INTERNATIONAL LAW

IHRL and IHL are legal branches that arise from the International public law, which regulates the relations between states in regular, peacetime conditions. As part of international public law, the focus of IHRL are individuals and the integrity of their personality, respect for their innate personal rights and other fundamental freedoms and rights. The ideas of human rights reflect the emancipated consciousness of people around the world, of the minimum standards of civilized behavior (See: Karpy, 2007), and IHRL aims primarily to protect individuals and groups from abusive action by states and state agents (Shelton, 2002, p. 1).

In the same direction, IHL regulates the principles and rules which limit the use of means and methods in times of armed conflict. In other words, IHL regulates the rules of warfare in order to prevent inhumane acts (See: Василевски, 2002).

These legal branches have humanity in their essence and strive to impose it as an imperative through legally binding international documents. With regard to IHRL, the generally accepted standard is the absoluteness of certain personal rights which cannot be reduced and must be respected regardless of the circumstances (life, prohibition of torture, inhuman or degrading treatment or punishment, legal certainty of criminal offenses and penalties, freedom of conscience, beliefs, conscience, etc). With regard to IHL, it is important that even for situations and circumstances that are not covered by the prescribed rules, the civilian population and participants in the war remain under the protection of the principles of international law arising from

established customs among civilized peoples, principles of humanity and the demands of public consciousness (the so-called Martenson clause).

Although deeply rooted since long ago, both human rights law and humanitarian law have in some way become an imperative in the mid-20th century. The reason for this is the fact that after the terrible human suffering during the two world wars, and particularly in World War II, the international community felt the need to take serious steps in order to prevent a recurrence of such events. The first step was the establishment of the United Nations the goal of which is, *inter alia*, to maintain lasting peace and security in the world. Regarding this aim, the UN Charter established three principles fundamental for modern international law – the principle of prohibition of the use of force or threat in relations between states; the principle of sovereignty and territorial integrity of states; and the principle of respect for fundamental human rights and freedoms.

The global human rights protection system established by the UN Universal Declaration of Human Rights of 1948, and later adopted in 1966 as a binding International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, has been upgraded with a number of other significant UN documents. Among them, it is worth mentioning the following conventions: Convention on the Prevention and Punishment of the Crime of Genocide (1951), Convention for Non-obsolence of War Crimes and Crimes against Humanity (1968), Convention for Elimination of All Forms of Racial Discrimination (1969), Convention for Elimination of All Forms of Discrimination against Women (1979), as well as many others.

On the other hand, the cornerstone of modern humanitarian law is the Geneva Conventions of 1949 and their additional 1977 protocols, upgraded by a number of other international legal acts that provide for a ban on the use of nuclear and thermonuclear weapons (1961), a ban on nuclear proliferation (1967), ban on the development, production and storage of toxic weapons and their destruction (1972), ban on the development, production, storage and use of chemical weapons and their destruction (1993), ban on nuclear tests (1996), ban on the use, storage, production and transfer of anti-personnel mines and their destruction (1997), etc.

However, despite all these documents, ensuring minimal respect for human rights during armed conflicts is a big challenge for the contemporary international community. Hence, a fundamental requirement for the human rights community in facing these challenges is to be constantly inspired by the inextricable links between human rights law, international humanitarian law and international refugee law, which emanate from the same basic concern: ensuring respect for human dignity in all times, places and circumstances (See: Hampson&Salama, 2005).

3. THE HUMAN RIGHTS AND THE HUMANITARIAN LAW THROUGH THE PRISM OF THE SYRIAN WAR

Various commissions, NGOs and news agencies have documented human rights and humanitarian rules violations since the start of the civil war in Syria in 2011. The reports of the Independent International Commission of Inquiry established by the UN Human Rights Council are based, among other things, on interviews with victims and witnesses of human rights violations, including civilians and deserters from the military and security forces. The very first Report of the Commission documented cases of summary execution, arbitrary arrest, enforced disappearance, torture, including sexual violence, as well as violations of children's rights (A HRC S-17 2 Add.1, 2011). As violations escalated dramatically in 2012, the Commission noted the escalation of violence in new areas, including more brutal warfare tactics (A HRC 19 69, 2012). In the following years, according to the Commission's findings, the behavior of the parties to the

military conflict significantly radicalized. Among other things, the two warring parties have violated the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, of which Syria is a party. In addition, in the July 2013 report, for the first time, the systematic imposition of sieges, the use of chemical agents, and cases of forced displacement, was mentioned (A HRC 23 58, 2013). The exact agents, delivery systems or perpetrators, at that time, could not be identified.

The reports of the Commission for the following years are almost identical, even worse, compared to the previous ones. Among the findings of continuing the intensity of crimes, recruiting children in armed conflicts (A HRC 24 46, 2013), the Commission noted the facts about more than 250,000 people besieged in Syria and subjected to relentless shelling and bombing, as well as denied humanitarian aid, food and other basic necessities (A HRC 25 65, 2014). The findings presented in the Report, based on 480 interviews and evidence collected between January and July 2014, show that the warring parties in Syria caused immense suffering to civilians (A HRC 27 60, 2014). According to the Commission findings, within the overall civilian population, some groups and communities have been specifically targeted by one or more of the warring parties and often individuals suffer on the basis of multiple aspects of their identity, including their gender, age, ethnicity, religion and profession (A HRC 30 48, 2015). Far from the battlefield, civilians and wounded fighters continue to disappear, be taken as hostage, tortured and subjected to sexual violence (A HRC 33 55, 2016). Later, in December 2016, hundreds of men and boys were separated from their families and forcibly recruited by the Syrian army following the occupation of eastern Aleppo by pro-government forces (A HRC 34 64, 2017). As a result of the offensive by the Syrian Democratic Forces and the international coalition to reject ISIL, during 2017 more than 190,000 people were displaced in Ar-Raka (A HRC 32 65, 2017).

Even now, when the conflict is almost over, it is unclear whether and when displaced people will be able to return. Huge population has been externally displaced, as well as displaced across the country because of this endless war, and this significantly burdens neighboring countries, as well as Europe. In this regard, the Commission has proposed recommendations to all warring parties aimed at resolving the huge number of problems affecting civilians displaced by the conflict, including securing their housing, land and property rights (A HRC 37 72, 2018) and signaled its intention to assist victims in achieving justice, which required confirmation from all concerned that victims' demands for justice and responsibility are a central component of any amicable and lasting solution to peace (A HRC 39 65 2018). In order to effectively address the complex issue of the return of internally displaced persons, the Commission also issued a series of pragmatic recommendations for the sustainable return of all displaced Syrian women, men and children (A HRC 40 70, 2019), as well as recommendations to member states, and especially to those providing support to the warring parties, reiterating that the international community as a whole bears joint responsibility for the enormous crimes committed against millions of Syrian women, men and children (A HRC 42 51, 2019).

Although by the end of 2018 there had been a reduction in the level of violence compared to previous years, in several parts of the country, between May 2019 and early January 2020, displacement of 700,000 civilians was caused again. The Commission's July 2020 report covers events in Idlib and surrounding areas, including 52 attacks from all sides that resulted in civilian casualties, damage to civilian infrastructure such as medical facilities, schools, etc. (A HRC 44 61, 2020).

In addition to these reports of the Commission of Inquiry, other sources of information also show that one of the basic targets of the government forces and the armed groups in Syria are women who are being used as human shields, often with their children. Incidents of gang rape,

sexual assault, and domestic abuse have risen with the intensity of the conflict, both throughout the country and in refugee camps across the region (The World News, 2013). Syrian women exposed to sexual abuses subsequently found themselves victimized not only by the crime itself, but also by enduring the silence that surrounds the crime and the social pressure related to it (The World News, 2013).

4. THE ROLE OF UN IN THE CONTEXT OF THE CIVIL WAR IN SYRIA

According to the Charter of the United Nations (Chapter VII) the Security Council shall determine the existence of any threat to the peace, breach of the peace, or act of aggression and shall make recommendations, or decide what measures shall be taken. However, regarding the war in Syria, from the very beginning, the situation was really complicated. What has made the strife more complicated was the intervention of foreign and regional powers from everywhere. In that chaotic situation, the airstrikes from different countries, directly or indirectly involved in this war, at times also targeted civilian areas outside government control. In this kind of circumstances, although the United Nations formally demonstrated readiness, it hasn't, in fact, been able to play a significant role in solving the conflict. The United Nations Special Advisers on the Prevention of Genocide and Responsibility to Protect, which come under the supervision of the Secretary-General, raised their voices from time to time against the mass breaches of human rights of Syrian people by the state and non-state actors, strongly condemned the increased number of government aerial attacks in Syria and the use of indiscriminate weapons (Mahmood&Javed, 2017).

The establishment of the Commission of Inquiry could be seen as one of UN's efforts to document human rights and IHL abuses during the Syrian war. However, the lack of access to information significantly prevented the Commission from fully fulfilling its mandate. The Commissions' appeals and recommendations in the reports which addressed the warring parties to take corrective action, were largely ignored. As stated in its reports, the members of this Commission were not aware that any efforts were made in accordance with international standards, by the Syrian Government or by anti-government armed groups in order to prevent or punish the crimes documented in its reports.

In March 2012, the Security Council underlined the importance of pulling back all the military forces and urgently implementing the six-point plan proposed by Kofi Annan, Joint Special Envoy of the United Nations and the League of Arab States, to end the crisis in Syria. In this regard and after the unsuccessful attempts to adopt appropriate resolutions as a result of the double veto of China and Russia, the Council nevertheless unanimously adopted two Resolutions: Resolution 2042 (2012), authorizing a team of up to 30 unarmed military observers "to liaise with the parties and to begin to report on the implementation of a full cessation of armed violence in all its forms by all parties"; and Resolution 2043 (2012), which established a 90-day period, a supervision mission (UNSMIS) to monitor a cessation of armed violence in all its forms by all parties. Later, with adoption of Resolution 2059 (2012), the Security Council decided to renew the mandate of UNSMIS for a period of 30 days. However, these attempts for finding a diplomatic solution to the crisis have proved unsuccessful. Instead, in August 2013, in several cases the UN inspectors confirmed use of sarin gas on Syrian territory. Therefore, many countries, including the USA, Russia and the EU, accused the Syrian government of conducting attacks using chemical weapon, especially the most serious attacks in Ghouta and Damascus in 2013. As a result of this international pressure, the Syrian Arab Republic deposited to the UN Secretary-General its instruments of accession to the Chemical Weapons Convention and declared that it would comply with its stipulations and observe them. In accordance with the decisions of the UN Executive

Council on the destruction of the Syrian chemical weapons program (EC-M-33/DEC.1) and on special procedures for the rapid destruction of the Syrian chemical weapons program (EC-M-33/DEC) the process of transferring chemical materials out of Syria began in January 2014, and by June of the same year, all declared materials for chemical weapons were destroyed or removed from Syria.

However, not only were these steps taken very late, but this international mission of transferring the chemical materials outside Syria was not sufficient to cease the suffering in Syria. The UN has consistently stressed that conventional weapons continue to kill while the Syrian conflict goes on. In this regard, we remember the UN High Commissioner for Human Rights Navi Pillay's statement from 2014, that war crimes were still being committed with total impunity on all sides in the conflict, and that it is a real indictment of the age we live in that not only has this been allowed to continue so long, with no end in sight, but it is also now impacting horrendously hundreds of thousands of other people across the border in northern Iraq, and the violence has also spilled over into Lebanon. (Reuters News, 2014).

The same year, the UN Security Council adopted two Resolutions: Resolution 2139, to initiate access for humanitarian aid in Syria, and Resolution 2165, reauthorized humanitarian aid to be supplied via four border crossings not controlled by the Syrian government. In the following years, several other resolutions were also adopted by the Security Council – in 2015, Resolution 2254 endorsed a roadmap for the peace process in Syria, setting out a timetable for talks between the government and opposition groups; in 2016 Resolution 2328, which demanded immediate, unhindered access for observation of monitoring civilian evacuation from Aleppo.

Beside all those official documents adopted by the Security Council, the flagrant violations of human rights and humanitarian law have continued unabated and war crimes have gone unchecked, even exacerbated by blatant impunity, and the resolutions remain largely unspoken and unimplemented. Despite documenting a number of IHL violations and gross human rights violations, the fact remains that the UN has generally not played its role properly in this war. As a global organization for ensuring world peace and security, the UN has had no success in preventing war crimes in that part of the World for almost a decade.

5. WHO IS RESPONSIBLE FOR HUMAN SUFFERINGS IN THE SYRIAN WAR?

Although the reports from the UN Commission on Inquiry indicate that Syrian pro-government forces are probably responsible for the majority of violations, there is also alleged responsibility on the opposite side. The Syrian regime led by Assad and affiliated militias probably were the sole perpetrators of the violations for the first several months, but later on other parties subsequently joined in, also violating the rights of Syrian citizens. Three former prosecutors of the International Criminal Tribunals for former Yugoslavia and Sierra Leone, examined thousands of Syrian government photographs and files recording deaths in the custody of the regime security forces from March 2011 to August 2013. The vast majority of the victims were young men and many corpses were emaciated, bloodstained and bore signs of torture. Some had no eyes; others showed signs of strangulation or electrocution. Only two years after the start of the conflict, Ann Harrison, Amnesty's deputy director for the Middle East and North Africa legitimately asked "How many more civilians must die before the UN Security Council refers the situation to the prosecutor of the International Criminal Court so that there can be accountability for these horrendous crimes?" (South China Morning Post, 2013). The situation additionally was completely out of control when many international organizations reported the terribly gross violation of human rights and huge use of chemical weapons. As early as March 2013, the UN Commission of Inquiry

undertook to submit to the UN High Commissioner for Human Rights a confidential list of individuals and entities believed to be responsible for crimes against humanity, violations of the international humanitarian law and gross human rights violations (A HRC 22 59, 2013).

Today, seven years after that and almost ten years after the beginning of the war, the world still has no answer to the question regarding responsibility, even though from the beginning of the civil war it was clear that the UN Security Council must refer war crimes committed by both sides in Syria to the International Criminal Court. On many occasions, the UN Commission of Inquiry stressed the urgent need for international action to end serious human rights violations and to end the unsolvable cycle of impunity. According to the Commissions' findings, the warring parties conduct hostilities with little, if any, regard for the rules of war and, in particular, its foundational principle of distinction. The majority of attacks are not directed at a specific military objective or fail to employ a method or means of combat that can be directed at a specific military objective. Despite all this, the Commission stated that the international community remains a witness of all suffering, without stronger efforts to bring the parties to the peace table ready to compromise, so that the trend of destruction was expected to continue in the foreseeable future (A HRC 30 48, 2015).

Several years after this, investigators from the Commission announced that they had found evidence of war crimes in Syria committed by nearly all sides in the conflict even during the second half of 2019 and into January 2020. In this regard, the recommendations contained in the Commission's reports – to the Syrian government, anti-government armed groups, the international community, the Human Rights Council and the Security Council – serve to emphasize the need to counter the growing culture of impunity by referring to justice nationally and internationally. However, we cannot assume why responsibility for war crimes has still not been identified, nor speculate whether at all and when the perpetrators of war crimes and the crimes against humanity committed in Syria will be brought in front of the International Criminal Court.

6. CONCLUSION

From today's perspective, it would not be an exaggeration if we said that the Syrian crisis that morphed into a long lasting proxy war, will be remembered as a war with no respect of human behavior standards and as the biggest humanitarian catastrophe of our era. There is almost no international document in the field of Human Rights Law and International Humanitarian Law the provisions of which were not violated during this war. From the very beginning, the relevant reports demonstrated that civilians were not only unintentional victims of violence in some cases, but they were often deliberately targeted through illegal means and methods of warfare. Summary execution, using the humanitarian aid as a weapon of war, arbitrary arrest, enforced disappearance, torture, violations of children's rights, involvement of children in armed conflict, systematic imposition of sieges, the use of chemical agents, forced displacement, damage to civilian infrastructure (such as medical facilities, schools, etc.) incidents of gang rape, using women as human shields, often with their children, sexual assaults both throughout the country and in refugee camps across the region, etc. are just some of the familiar and registered acts of violence in the Syrian war. This is not an exhaustive list and the violence is still present in some regions in Syria.

It seems that the international community, at least at the beginning of the war, had a lack of sufficient political will and decisive action to engage with serious efforts in resolving the difficult situation in Syria. Regardless of whether and what mechanisms the United Nations used and regardless of the expressed declarative commitments, the fact that population suffered in every possible way remains indisputable. Through this war, the UN system once again seems to have

shown its inability to prevent war crimes and other serious acts against humanity and international rules. The numbers of lost lives, abused children, women and men, forcibly displaced persons, but also the recruitment of children in hostilities, destroyed cities and cultural and historical sites, are staggering. Unfortunately, the situation regarding the Syrian war is a failure of the international community in general, and of the United Nations in particular. How else to explain the fact that the international efforts, at least so far, have only been successful in destroying the chemical weapons program. Although there have been serious allegations that war crimes and crimes against humanity were committed many times during the war in Syria, there are no official results in locating responsibility for violating international rules. Until now, we have witnessed total impunity for all violations of human rights and of humanitarian rules, which must be respected in military conditions.

Hence, the world really expects that the case of Syria will be seriously scrutinized, and all those who committed crimes against peace and humanity will be prosecuted. In this regard, we need allegations based on specific and clear evidence that massacres and the willful killings took place. Those are the preconditions for prosecution in the International Criminal Court, and thus efforts should be invested in order to identify accountability and to end the impunity.

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