

Prosecuting Assad: War Crimes, Mass Atrocities, and U.S. Policy

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Brief Analysis

Three experts discuss the trove of documentation behind Syrian war crimes, U.S. pursuit of transitional justice for the Assad regime, and how prosecutions might proceed.

On August 2, Wa'el Alzayat, Stephen J. Rapp, and Ben Taub addressed a Policy Forum at The Washington Institute. Alzayat is the senior policy advisor on Iraq and Syria to U.S. permanent representative to the United Nations Samantha Power, and a lecturer at the Georgetown School of Foreign Service. Rapp, the former U.S. ambassador-at-large for global criminal justice, currently serves as a Global Prevention Fellow at the Simon-Skjodt Center for the Prevention of Genocide and a distinguished fellow at The Hague Institute for Global Justice. Taub is a contributing writer with the New Yorker, where he authored the recent articles "[The Assad Files](http://www.newyorker.com/magazine/2016/04/18/bashar-al-assads-war-crimes-exposed)" (<http://www.newyorker.com/magazine/2016/04/18/bashar-al-assads-war-crimes-exposed>) (on documentation tying the regime to mass torture and killings) and "[The Shadow Doctors](http://www.newyorker.com/magazine/2016/06/27/syrias-war-on-doctors)" (<http://www.newyorker.com/magazine/2016/06/27/syrias-war-on-doctors>) (on regime targeting of doctors and hospitals). Reporting for "The Assad Files" was facilitated by a grant from the Pulitzer Center on Crisis Reporting. Andrew Tabler, the Martin J. Gross Fellow in the Institute's Program on Arab Politics, served as the event's moderator.

WA'EL ALZAYAT

The focus in Syria is usually on the crimes of the Islamic State and Jabhat al-Nusra, and these two groups are undoubtedly committing atrocious crimes. But the overwhelming number of crimes in Syria is being committed daily on behalf of the Syrian regime.

The U.S. government is focused on taking practical steps toward establishing transitional justice in Syria. These efforts include international organizations seeking to prosecute parties on all sides of the conflict, although most such efforts have been directed at the Syrian government. Beyond abuse of detainees and sexual violence against women, such efforts resulted in the Joint Investigative Mechanism (JIM), whose report on chemical weapons (CW) use in Syria is due out in September. Although fewer people have been affected by CW as compared to those displaced, detained, tortured, and so forth, a clear international consensus and UN Security Council resolutions exist to hold all parties in Syria accountable for CW use. Efforts to refer the CW file to the International Criminal Court (ICC) have been blocked on the Security Council by Russia and China. Indeed, Russia will not agree to measures that have a meaningful impact on the Syrian regime, although Moscow has provided support in the case of the JIM.

The Geneva Communique of June 2012 rightly calls for a comprehensive approach toward transitional justice. On this count, despite concerns that the United States may be pursuing an immunity deal with Assad, this is not the case. Broadly speaking, the United States is seeking a favorable political solution, in its view the only avenue toward sustainable peace. In its concomitant support for transitional justice, the United States supports a Syrian-led effort to ultimately establish criminal accountability. Many U.S. government officials are personally invested in ensuring accountability and will support such endeavors in whatever ways they can. In part because of Security Council constraints, efforts are now focused on collecting documentation and ending the conflict, thereby bringing about a phase during which transitional justice can begin.

STEPHEN J. RAPP

Five years ago, the Syrian uprising turned into a war. Millions of people have since been displaced, largely because of mass atrocities that have made life in Syria intolerable.

The documentation pointing to war crimes in Syria exceeds that from both the Bosnian and Rwandan cases. Besides the Assad files handled by the Commission for International Justice and Accountability (CIJA), files and more than 50,000 photos have emerged from a police investigator, code-named Caesar, who defected in August 2013 and had been assigned to photograph detainees, whose disfigured bodies bear the marks of torture. [Alzayat, another speaker at this event, was the first U.S. government official to review these photos, while based in Istanbul. Caesar himself sent a message through an intermediary thanking the CIJA for its work and applauding proposed U.S. sanctions legislation, namely the Caesar Syria Civilian Protection Act of 2016.] Indeed, the regime itself indexed the bodies by identification numbers and hospital placement. During the implementation of this system, 11,000 bodies were amassed in the Damascus area alone.

Alongside commendably brave individuals like Caesar, Ben [Taub] interviewed "Mazen," a secular activist arrested for bringing milk to a besieged neighborhood. An irony is that while Mazen was detained, the government announced periodic amnesties in which most of those released were jihadists, not secular protestors, allowing Assad to create a self-fulfilling prophecy whereby the opposition consisted entirely of terrorists.

For an international prosecutor, tracing responsibility for crimes committed in state detention facilities is comparatively easy, given the available documentation. Accounting for civilian deaths from bombardment is harder because of collateral damage and other uncertainties. But the Syrian regime's attacks on civilian and humanitarian targets makes even this case possible. Physicians for Human Rights has documented more than seven hundred

medical professionals killed by the regime, compared against twenty-seven by rebel groups. Such calamitous outcomes have resulted in part from the regime's use of siege warfare -- involving the cutoff of medicine and food from civilian areas, which, although practiced in the Middle Ages, is now considered a war crime.

Relatedly, the journalist Roy Gutman has called attention to the alarming situation in besieged Aleppo, where the Russians could impose "Grozny rules" -- that is, an effective declaration of "Get out, or you're all dead." The government announcement of humanitarian corridors for people departing Aleppo is particularly concerning for various reasons. The mass targeting of those who don't use the corridors could result in war crimes and crimes against humanity.

Such regime policies foster rather than eradicate terrorism and degrade the rule of law. It is unthinkable that the Russian role in Syria is productive, and that working with the Russians could help the United States fight the Islamic State. Currently, certain Russian commanders could be at risk of being prosecuted for aiding and abetting Assad's war crimes, according to information from Physicians for Human Rights. If Grozny rules were employed in Aleppo, these Russians could become direct perpetrators.

One day, these criminals will be held accountable in court, although not in the ICC owing to Russian and Chinese blockage of that path.

Documentation, however, will make these crimes prosecutable in certain jurisdictions, such as in countries where Syrian victims were dual nationals. Under the U.S. Foreign Sovereign Immunities Act, a civil case is being brought against the Syrian regime for the death of the American journalist Maureen Colvin, who was killed by a bombing in 2012. In top cases, officials including Bashar al-Assad's brother Maher and Ali Mamlouk are accused of direct responsibility. Such cases could also be considered murder under U.S. law, meaning they could be brought by the Human Rights and Special Prosecutions Section of the Justice Department.

Many countries besides the United States will offer no haven for perpetrators, some of whom are fleeing to Europe disguised as refugees -- some having been identified by victims and families. In these European countries, such escapees could be tried for cases committed abroad. European prosecution units are already working on Syrian cases, as they did during the Rwandan crisis. And, on the subject of a possible U.S.-brokered immunity agreement for Assad, under international law, amnesty for serious crimes is not considered a binding agreement barring prosecution.

As for the U.S.-Russia Joint Implementation Agreement to cooperate on fighting Jabhat al-Nusra, positive elements have emerged, including tighter adherence to the "cessation of hostilities" and improved Russian targeting. Generally, though, Russia has not shown good faith in its dealings on Syria, and the Americans should be wary in the future.

The crimes in Syria have led to the greatest refugee flows in human history. Victims, families, and organizations working on these cases may be disheartened now, but those with knowledge should, as possible, come forward and work with prosecutors to bring justice for the massive crimes committed and to deter future atrocities. The absence of trials today does not mean they will never occur -- and they will best occur in a future, democratic Syria with all communities represented (although this may not happen). Indeed, some cases may begin prosecution this year.

Ben Taub

Although the Assad regime has engaged in clear, systematic targeting of hospitals in Syria, the internal regime documentation collected by the CIJA focuses on the disappearance, detention, and torture of Syrian citizens. These practices have affected hundreds of thousands of Syrians -- millions, if one considers the impact on families. Over the past four years, a group of war crimes investigators who formed the CIJA have smuggled more than 600,000 documents out of Syria. The documents were mostly from regime security and intelligence facilities captured by

rebels whose commanders knew of the CIJA and contacted its members so that these documents could eventually be examined by lawyers in Europe. In some cases, these documents had to be stored and hidden underground until they could be brought across the border.

A large team of lawyers, translators, and analysts has sifted through this massive quantity of documents, building a case for the Syrian government's culpability for war crimes, including torture and murder committed in the detention facilities. The documents range in source from local intelligence branches in the Syrian provinces to the highest levels of Assad's security committee -- known as the Central Crisis Management Cell, formed in March 2011 in response to growing national protests -- including the documentation of detention policies the president personally approved.

Assad personally appointed the members of the Central Crisis Management Cell, including Maher al-Assad and the heads of several intelligence branches. Policies crafted during the cell's meetings were converted into orders and passed down through the respective intelligence agencies. The documents illustrate an obsession with coordination between the agencies: detailed information was being passed up and down the intelligence chains of command, to the extent that an anti-government piece of graffiti was reported all the way up to the cell. This coordination demonstrates the degree to which these high-level officials knew what was happening on the ground, including crimes in detention facilities.

The CIJA's case focuses not just on the crimes of detention but on the systematic policies behind them. The case focuses on the minutes for a meeting in which a policy was crafted to target protest organizers, activists, and those who "tarnish the image of Syria in foreign media." Also targeted were midlevel security personnel who were "irresolute or unenthusiastic" in carrying out their duties. The crimes the CIJA case is built around are the results of this policy's implementation.

Another key element of the Crisis Cell's targeting policy was extracting forced confessions from detainees. Pressure came down on interrogators to torture detainees into confessing to more serious crimes than acts of civil disobedience to provide a veneer of justice to the system. While many detainees were sent into regular prisons to undergo criminal proceedings for the crime they confessed to, others were acquitted by sympathetic judges. Those freed have provided important testimony to the crimes committed in Syrian security detention facilities, but the CIJA's case revolves around tracing criminal responsibility for the crimes, via the documents, to the highest levels of the Assad government.

This summary was prepared by James Bowker. ❖

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