

Photos of the Atrocity: Bringing the Human Tragedy in Syria to International Law

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- **Do the photos of torture exposed in Syria provide sufficient evidence to charge the Baath regime in an international criminal tribunal?**
 - **What should be expected from international law in the face of the crimes committed against humanity in Syria?**
 - **Can the photos of torture affect the Geneva II Conference?**
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A few days ago, the world was exposed to a document with 55,000 photos of 11,000 Syrians who were tortured to death.¹ The photos were taken out of the country by a forensic medicine photographer. Gruesome photos from Syria have laid the facts about the Baath regime ruling the country with an iron-fist for decades, before the international community, which has been playing the “three monkeys” for long. These images have revealed that Syria is ruled by a “death-squad.” It has come to light once again that Bashar al-Assad regime lacks the merit to run the country and cannot represent the people of Syria under any ground of moral legitimacy.

THE REALITY OF SYRIA

First, it is necessary to point out that these photos have a value of evidence. In other words, authenticity of the images has been confirmed and the pictures provide enough evidence to bring charges of crimes of humanity and war crime against the Baath regime in an international criminal tribunal. It therefore seems reasonable to concentrate on the value of these pictures as sustainable evidence.

1. “Suriye’de Savaş Suçu Belgeleri,” *AA*, January 20, 2014

Second, these photos illustrate that the Baath regime in Syria used tortures as a method against its opponents. The opponents in detention were strangled, killed by electric shocks and subjected to starvation until death. Photos of their bodies were taken afterwards and numbered to indicate by which security unit they were murdered. That all this was a routine process puts the naked truth before eyes. The crimes of humanity in Syria were committed within a chain of command in the state and as a systematic and institutionalized policy. For this reason, all the authorities who used systematic torture, formulated the killings committed through the hands of the state as a “state policy”, took bureaucratic decisions to allow the implementation of the policy and carried out these tortures and murders (including President Bashar al-Assad) are partners in this crime against humanity and war crime.

Third, the photos have inflicted a blow to the arguments of certain circles in Turkey who secretly support the Assad regime by morally equating the barbarism of the Syrian regime to the occasional atrocities committed by armed opponent groups. From the resistance movements against colonialism to the armed struggles for rights and freedoms against tyrant

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regimes, almost all freedom fighters in history have committed cruel or arbitrary acts on their adversaries. This fact does not nullify the “righteousness” of these struggles in the eyes of history and humanity. Furthermore, the state is obliged to provide safety and security to its people by default, and has necessary institutional mechanisms to do as such. As opposed to the state, which has power and tools to prevent and punish violation of human rights, it is extremely difficult for armed opponent groups fighting in a loose coalition to control the human rights violators among themselves, as seen in the case of Syria. The horrifying photos from Syria will weaken the approaches and arguments considering those in power and in opposition morally equal in the context of the civil war in Syria.

Fourth, the photos indicate that a critical threshold has now been passed in Syria as far as the international community is concerned. Killing 11,000 people under detention in the hands of the state propounds the dimension of savagery in Syria. One should not forget that these photos were taken by an official working as a forensic medicine photographer. There are probably tens of thousands of other photos taken by other officials. All this means that the situation the massacres committed in Syria constitute an “extraordinary” example even according to the standards of crimes against humanity. Syria now looks like the Cambodia of the Pol Pot regime, whose fight with its opponents turned the country into a “field of death” between 1975 and 1979. In Syria opposition circles claim that about a half million people lost, while everyone knows that the Syrian security forces routinely arrest people as suspects belonging to opposition groups and take them to unknown locations.

Finally, these photos underline a critical threshold comparable to the Srebrenica Massacre, which targeted Bosnian Muslims in 1995. On the grounds of the UN Security Council resolutions taken during the Bosnian War of 1992-1995,² this incident had led to an armed international intervention by NATO. Similarly, a point of no return has been reached in Syria. Something must be done.

2. The UN Security Council Resolution No: 816, dated March 31, 1993.

THE PHOTOS AND INTERNATIONAL LAW

These photos clearly demonstrate that crimes of humanity and war crimes have been committed systematically in different forms by the Baath regime since the early days of the democratic uprising that commenced in 2011. The Assad regime is not only a “single-party dictatorship”, but also a regime that has adopted systematic killings, torture, and starvation to death as a “method” and routinely bombed civilian premises. Revealing that the crimes against humanity and war crimes have been committed by the regime in Syria the photos evince that all legal elements of a crime are present.

One of the most critical international law documents that makes it possible to categorize the offenses committed by Syria’s Baath regime as “crimes against humanity” and “war crimes” is the Statute of the International Criminal Court, signed in 1998 and entered in force in 2002. Article 7 of this document provides a description for “crimes against humanity.”³ Clause 1 of this article stresses the most characteristic quality of the crimes against humanity as follows: “For the purpose of this Statute, ‘crime against humanity’ means any of the following acts when committed as part of a widespread or systematic attack directed against any civilian population, with knowledge of the attack.” Major acts falling into the scope of Article 7 are: “(a) Murder; (b) Extermination [This term is described in the following paragraphs as: “Extermination includes the intentional infliction of conditions of life, *inter alia* the deprivation of access to food and medicine, calculated to bring about the destruction of part of a population.”] ... Imprisonment or other severe deprivation of physical liberty in violation of fundamental rules of international law; (f) Torture;... (k) Other inhumane acts of a similar character intentionally causing great suffering, or serious injury to body or to mental or physical health.”

The fact that the democratic uprising in Syria transformed into “armed struggle” due to the Baath regime’s armed suppression policy against the opposition and brought about a “civil war” makes it necessary to

3. The Rome Statute of the International Criminal Court, Part II: Jurisdiction, admissibility and applicable law –Article 78: Crimes against Humanity.

examine the issue also in terms of the law of war. The acts committed by the regime in Syria in the last three years correspond to the following war crimes specified in Article 8 of the Rome Statute of the International Criminal Court⁴ : “(i) Willful killing; (ii) Torture or inhuman treatment, including biological experiments; (iii) Wilfully causing great suffering, or serious injury to body or health;... Willfully depriving a prisoner of war or other protected person of the rights of fair and regular trial; ... Intentionally directing attacks against the civilian population as such or against individual civilians not taking direct part in hostilities; (iv) Intentionally launching an attack to cause incidental loss of life or injury to civilians.”

The Baath regime caused a civil war and deaths of at least 150,000 people.⁵ From the beginning of the uprising in 2011 to date, it has routinely organized barrel bomb attacks against civilian settlements, turned the country into rubbles, intentionally deprived the settlers of food and medicine by keeping settlement areas under siege for months, and used systematic torture against the detainees, most of whom were killed later on. Now, there is no doubt that the regime in Syria has committed crimes against humanity and war crimes, according to the elements described in the Rome Statute of the ICC.

What needs to be done from now on is to put the leading figures, decision-makers, and high-level bureaucrats of the Syrian regime, starting with al-Assad, on trial at the International Criminal Court in The Hague. To this end, the UN Security Council should assert that the human tragedy in Syria is detrimental to “international peace and security”. The most crucial evidence in hand is the refugees, who had no choice but to leave Syria in the last three years. The majority of them have taken shelter in neighboring countries: Turkey: 577,000; Lebanon: 884,000; Jordan: 590,000; Egypt: 132,000, Iraq: 212,000.⁶ As it was the case in Northern Iraq (1991) and Haiti (1994), if there are

violations of human rights resulting from “internal conflicts”, the UN Security Council can intervene on the grounds that the flow of refugees caused by the humanitarian crisis in the country damages regional peace and security. Another harm caused by the Syrian crisis to regional or international peace and security is that some countries in the region (Iran, Turkey, Saudi Arabia and Qatar) are directly or indirectly involved in the Syrian crisis, or as it happened in Lebanon, armed struggles are fuelled among different social groups who identify themselves with the belligerents in Syria. Even these two reasons alone are sufficient to show that the Syrian crisis is beyond “national” scale and the country has become an international area of crisis.

GENEVA II CONFERENCE AND THE PHOTOS

These gruesome photos have, without a doubt, weakened the hand of the Assad regime in the Geneva talks on the political future of Syria. The possibility that leading figures of the Baath regime may face charges in an international criminal tribunal will be the sword of Damocles for the Syrian authorities from now on. The situation is gravely serious for the countries backing the regime in Syria, i.e., Russia and Iran, as well.

Today, the most reasonable option for al-Assad is to step down and support the formation of an interim government in Syria. If the agreement is reached over the transitional government, the Assad regime will have no choice but to allow the deployment in the country of a UN peace force that would guarantee free and just elections, monitor the cease-fire between the regime and the opponents, and secure the process against infringements of the Baath regime. Since the end of the Cold War, UN missions have undertaken similar operations in a number of countries, including Angola (1992), the Republic of Democratic Congo (2006) and the East Timor (2001), in the frame of the “Second Generation Peacekeeping Operations”.

If the Assad regime objects to the formation of an interim government in Syria at the Geneva Conference, the crisis may be transferred once more to the UN Security Council. In this case, the Council will have two options: The first is that the Council may grant permission for an extensive military intervention in Syria in the scope of “the right to humanitarian intervention”

4. The Rome Statute of the International Criminal Court, Part II: Jurisdiction, admissibility and applicable law –Article 8: War Crimes.

5. “UN, humanitarian community urge protection, access to aid for Syrian children,” *United Nations*, January 22, 2014.

6. Numbers the UN Human Rights Watch Organization provides as of January 20, 2014: <http://data.unhcr.org/syrianrefugees/regional.php>

with the justification that a calamitous crime of humanity has been committed and the humanitarian crisis in the country has caused a refugee outflow and regional tensions. In case that Russia and China object to this option, the second option would be a “partial” military intervention to alleviate the human tragedy in Syria. This decision could involve the following options, all of which be backed by an international military force: Opening a humanitarian aid corridor in the Syrian territory and/or declaring a no-flight zone as in the case of Libya (2011), and/or declaring certain settlement areas in Syria as “safety zones” as done during the Bosnian War. As the second option will not involve a fully-fledged military intervention, Russia and China may consent to it as the least bad option.

SOME SUGGESTIONS REGARDING THE SYRIAN CRISIS

First, it should be stated that the arguments that consider the ruling power and the opposition in Syria morally equal because both parties have violated human rights and with this pretext, advise the international community to remain silent towards this human tragedy are no longer viable.

Second, the international community should keep on the table the options of an international military intervention (based on a UN resolution) and the trial of Baath leaders at the ICC or another International Criminal Tribunal for Syria that would be formed later (again based on the UN Security Council decision). If these two options are put aside at the Geneva Conference and an agreement is reached on paper to form an interim government without the removal of the Baath regime and its armed forces in Syria, this will obviously not create a permanent solution. A democratic reform process to be embarked upon by keeping the main structure of the Baath regime and its key cadres cannot bring a change in Syria. This fact should have its reflections in the conclusions of the Geneva II Conference.

Third, the international military intervention option should be carried out within the UN frame-

work. This is a must for the intervention to take place within the “boundaries” of international law. The deployment of a UN peace force in Syria is critically important for the maintenance of a prospective cease-fire and the realization of fair and just elections within international standards following the formation of an interim government.

Fourth, in order to convince the Baath regime and some countries supporting it, it will be proper to include in the prospective UN peace force soldiers of countries having close relations with the Syrian regime.

Fifth, during the UN-backed international intervention process to end the Syrian crisis the leading Western powers should refrain from “interfering” with the internal politics of Syria with the purpose of changing the domestic balances in favor of pro-Western actors. Moreover, these powers, particularly the United States, should commit beforehand to accept the results of free elections to be held at the end of the transition process.

Finally, as Turkey is not a signatory to the ICC, it would be improper for the Turkish government to appeal to the international tribunal court for the trial of Syrian authorities with the charge of crime against humanity. Instead, a human rights organization in Turkey should rather submit the evidence of crime (e.g., photos of thousands of persons subjected to torture or killed after being tortured, and testimonials of Syrian refugees in Turkey and the documents they present, if any) to the Prosecutor of the ICC and file a criminal complaint. As part of the crimes against humanity cited in the Turkish Penal Code (Article 77) and within the scope of “universal jurisdiction”, Turkey should launch an investigation against the Syrian officials and bring the charges to the court. Turkey, as a member to the Council of Europe and the Organization of Islamic Conference, should make efforts in international institutions for a decision of official condemnation against Syria and a declaration that the Baath regime in Syria is nothing but a “bloody guilty gang of crime” and therefore can no longer be the legitimate representative of the Syrian people.