

THE SYRIAN CRISIS, THE GROSS VIOLATIONS OF HUMAN RIGHTS, THE EXTENDED USE OF CHEMICAL WEAPONS AND THEIR DESTRUCTION, AND THE REFUGEES - IS THERE ANY END IN THIS VICIOUS CIRCLE?

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I. THE HISTORY OF THE CRISIS, THE GROSS VIOLATIONS OF HUMAN RIGHTS AND THE REFUGEES

The freighter "Baris", under the flag of Kiribati state, became ungovernable at dawn of Tuesday, on November 25, 2014, while sailing in hellenic waters and particularly 30 miles southeast of Ierapetra of Crete. The weather conditions were terrible at that point. The frigate "Hydra" of the Hellenic Navy was responsible to coordinate the procedure and help the freighter. "Hydra" was the local administrator under the mandate of the Coordination Center for Research and Preservation of the Ministry of Merchantile Marine. Near the ship were also sail merchant ships, while a Super Puma Air Force helicopter was there since the very first moment. The frigate "Hydra" finally reached out to tow the freighter to Crete.

The disembarkation process of the refugees from the freighter «Baris» was completed approximately at 6:30 pm of Thursday evening. Earlier in the morning and more specifically, at 10:00 am, the freighter anchored half mile off the coast of Ierapetra, after a long tow from the frigate "Hydra". On the first count, it seems that 595 persons were in «Baris» including 396 men, 99 women and 100 children. The vast majority of them are Syrians and some Afgans.

Up to this point 9 persons were arrested. Seven crew members and two Kurdish smugglers¹.

This is not the first case with refugees from Syria in Greece. This terrible incident was happening through the whole week and I could

not resist to report it in this article because cases like that actually happen very often since the Syrian Crisis in the early spring of 2011. At this point, I have to say that there are now 3 and a half years that the Syrian Crisis is present. Bashar al-Assad is the President of Syrian Arab Republic. He was sworn in for his third seven-year term, on July 16, 2014, in the presidential palace in Damascus. After so many violations of human rights, the extended use of chemical weapons and so many refugees that every day leave their country in order to save their lives, the international community observes all the details of the Syrian Civil War with actually no power to save or control the situation. Greece is one of the first countries that saw the consequences of the Syrian Civil Crisis.

The Syrian Civil War or also known as the Syrian Uprising, is an ongoing armed conflict taking place in Syria. It actually began in the early spring of 2011 within the context of Arab Spring protests, with nationwide protests against President Bashar al-Assad's government, whose forces responded with violent crackdowns. Soon the situation went out of control and the conflict gradually became an armed rebellion. At first, the armed opposition consisted of groups such as the Islamic Front and the Free Syrian Army.

There were protests, civil uprising, defections and armed insurgency until October 2011, an escalation between November 2011 until March 2012, a ceasefire attempt with Kofi Annan's peace plan for Syria in April- May 2012 but the fighting renewed between June- July 2012 and the battles of Damascus and Aleppo continued in July-October 2012.

In 2013 Hezbollah entered the war in order to support the Syrian Army. In the east, a jihadist militant group originating from Iraq- the Islamic State of Iraq and Levant (ISIL) made very rapid military gains in both Syria and Iraq, eventually conflicting with the other rebels. By July 2014, the ISIL controlled one third of Syria's territory and most of its oil and gas production. As a result, by July 2013 Bashar al-Assad's government was in control of approximately 30-40% of the country's territory and about 60% of the Syrian population lives in government-controlled areas, while the rebels effectively control 60% to 70% of the actual territory². That is because the rebels are strongest in less populated rural areas.

A United Nations report of 2012 described the conflict in Syria as "*overtly sectarian*"³ between the Alawite government forces, militia and other Shia groups⁴ fighting against Sunni- dominated rebel groups⁵. But both parties, the government forces and the opposition forces answered that this is not true. The Syrian National Council answered that: "The Syrian revolution is neither sectarian nor bloody"⁶, and added that: "The revolt against President Bashar Assad will not divide Syrian society according to religious or ethnic lines. The only division that Syrian society is witnessing is between a bloodthirsty, oppressive regime... and people calling for freedom and equality"⁷.

For his part, Hezbollah's leader, Nasrallah responded by warning that opponents of his party and the Assad regime "were trying to create a sectarian war in the region (...) the crisis in Syria is not pitting two sects against each other, the battle in Syria is not sectarian, but those who consider it as such are those who are weak and those who are losing out"⁸.

The situation was completely out of control when many international organizations reported the terribly gross violation of human rights and the extended use of chemical weapons. In March 2013 Amnesty International mentioned that the UN Security Council must refer war crimes committed by both sides in Syria's two-year conflict to the International Criminal Court. Amnesty's deputy director for the Middle East and North Africa, Ann Harrison 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?"⁹.

Meanwhile, Jen Psaki, the U.S. State Department Spokesperson said that "these atrocities are exactly why we have supported efforts

like the one that occurred in the UN Security Council to refer the Syrian regime to the ICC"¹⁰. According to three eminent international lawyers the officials of the Syrian government could face war crimes charges in the light of a huge cache of evidence smuggled out of the country showing the "*systematic killing*"¹¹ of about 11,000 detainees.

The three former Prosecutors of the International Criminal Tribunals for the former Yugoslavia and for Sierra Leone, examined thousands of Syrian government photographs and files recording deaths in the custody of 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.

It is a chilling figure that 191,369 men, women and children reported killed in Syria between March 2011 and the end of April 2014¹².

The U.N. High Commissioner for Human Rights Navi Pillay mentioned that: - "The killers, destroyers and torturers in Syria have been empowered and emboldened by the international paralysis (...) There are serious allegations that war crimes and crimes against humanity have been committed time and time again with total impunity, yet the Security Council has failed to refer the case of Syria to the International Criminal Court, where it clearly belongs"¹³.

She also pointed out that the total number of killings is more than double the number documented a year ago and that the new U.N. figure is based on analysis of 318,910 reported killings, in which the name of the victim, as well as the date and location of the death, had to be documented. In order to do so five different sources of data were used to confirm details and exclude repetitions. Pillay called for governments to take "serious measures to halt the fighting and deter the crimes, and above all stop fueling this monumental, and wholly avoidable, human catastrophe through the provision of arms and other military supplies"¹⁴.

For its part, the Independent International Commission of Inquiry on Syria stated, in an update on gross violations of humans rights and casualty figures resulting from the conflict, to the Geneva-based U.N. Human Rights Council that: "The vast majority of serious violations were committed by the Syrian army and security services as part of military or search operations in locations thought to host defectors or armed people, and those seen as supporters of anti-government armed

groups¹⁵” and added that: “A series of explosions have taken a heavy toll on human life in the capital, Damascus, and the cities of Idlib and Aleppo and other places¹⁶, and condemned the indiscriminate nature of the attacks.

Furthermore, the Commission investigated human rights abuses, and confirmed at least 9 intentional mass killings in the period of 2012 to mid-July 2013, having identified as perpetrator the Syrian governmental regime and its supporters in eight cases and the opposition in one¹⁷. The Commission’s chairman (P.S. Pinheiro) said that most casualties result from unlawful attacks using conventional weapons and any response to end the conflict “must be founded upon the protection of civilians¹⁸”.

The basic targets of the government forces and the armed groups in Syria are the women because of their vulnerability or for political issues such as bonds or affairs with opposition members or government- related members¹⁹. The *Report* also stated that women are being used as human shields, often with their children²⁰. Approximately 6,000 women have been raped or gang-raped since the start of the conflict in March 2011 according to the Euro-Mediterranean Human Rights Network (EMHRN) report with the title “*Violence against Women, Bleeding Wound in the Syrian Conflict*”²¹. But it is really necessary to have in our mind that the vast majority of the wounded women of Syria never really reported their rape because they felt very lonely, isolated from their families or in the worst case scenario extremely humiliated.

More than 6.5 million Syrians have been displaced by the war, according to the United Nations until September, 2013. Two million of them have fled to neighboring countries, and one in three are now living in Lebanon²². The others have fled to Turkey, Jordan and Iraq. Turkey seems to have accepted more than 1.000.000 refugees and have placed them in camps under the direct authority of Turkish Government. Satellite images confirmed that the first Syrian camps appeared in Turkey in July 2011²³. Antonio Guterres, the U.N. High Commissioner for Refugees declared that: “The Syrian crisis has become the biggest humanitarian emergency of our era, yet the world is failing to meet the needs of refugees and the countries hosting them²⁴”.

II. THE INTERNATIONAL REACTION AND THE FIRST SANCTIONS

Under the Charter of the United Nations, the Security Council has the primary responsibility

for the maintenance of international peace and security. The Security Council also takes the lead in determining the existence of a threat against the international peace and security or an act of aggression. During the conflict in the area of Syria, on 14 April 2012, the Security Council unanimously adopted the 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”.

As a result, the 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. It called all the parties to ensure the safety and free movement of the advance team in order to carry out its mandate. It reminded to the Syrian government its primary responsibility and it also reiterated its call for the authorities to allow immediate and unimpeded access of humanitarian personnel to all populations in need of assistance.

After a little more than a week, specifically on 21 April 2012, the Security Council unanimously adopted the Resolution 2043 (2012), which established for an initial 90-day period, a supervision mission, known as United Nations Supervision Mission In Syria (UNSMIS), comprising an initial and expeditious deployment of up to 300 unarmed military observers, including an appropriate civilian component and air transportation assets, to monitor a cessation of armed violence “in all its forms by all parties” as well as the full implementation of the United Nations Joint Special Envoy’s six-point proposal to end the conflict.

After a while, on 20 July 2012, the Security Council unanimously adopted the Resolution 2059 (2012). With this resolution the Security Council “decided to renew the mandate of UNSMIS for a final period of 30 days, taking into consideration the Secretary-General’s recommendations to reconfigure the Mission, and taking into consideration the operational implications of the increasingly dangerous security situation in Syria”.

There were also sanctions for the Syrian regime from the European Union. In particular, on 20 October 2012, the Council of the European Union, having regard to the Treaty on the Functioning of the European Union, having regard to Council Regulation (EU) n. 36/2012 (of 18 January 2012) concerning restrictive measures

children, who appeared to have been the victims of a gruesome chemical weapons attack in the Ghouta area of Damascus. A United Nations fact-finding mission was requested by various member states in order to investigate 16 alleged chemical weapons attacks in Syria since October last year.

Following their investigation of the Sarin attacks that killed hundreds near Damascus on August 21st, and based on the reports they had received, the U.N. inspectors eliminated nine of these from its inquiry for lack of "sufficient or credible information"²⁵, leaving six to be investigated- in addition to the attacks on August 21st. In four cases the U.N. inspectors confirmed use of sarin gas.

In contrast to the August 21st attacks, where the inspectors said there were "clear and convincing evidence" that chemical weapons were used against civilians "on a relatively large scale", their findings in relation to other instances were a lot more tentative.

Many countries, including the United States, Russia and the European Union have accused the Syrian government of conducting many chemical attacks, the most serious of them being the 2013 Ghouta and Damascus attacks. There was huge international pressure for the destruction of Syria's chemical weapons right after the above mentioned attacks. The attack served as an impetus to diplomatic efforts to find a way to eliminate the chemical weapons programme of the Syrian Arab Republic. Those efforts produced the Framework for Elimination of Syrian Chemical Weapons dated on September 14, 2013, agreed upon between the Russian Federation and the United States of America in Geneva.

The United States Secretary of State (John Kerry) and the Minister of Foreign Affairs of Russia (Sergey Lavrov) met in Geneva in order to find a solution and "a common ground"²⁶ in the matter of the chemical weapons of Syria. Mr Kerry and Mr Lavrov and their teams of chemical weapons experts plunged into talks aimed at finding agreement on how to dismantle the chemical weapons of Syria and the whole danger that was caused because of them. The International Envoy for Syria (Lakhdar Brahimi) was also there in order to have meetings with both of them.

On the same day, the Syrian Arab Republic deposited with the U.N. Secretary-General its instruments of accession to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction (Chemical Weapons

Convention), and declared that it would comply with its stipulations and observe them faithfully and sincerely, applying the Convention provisionally pending its entry into force in the Syrian Arab Republic, - a move which was very much welcomed by the Russian President Vladimir Putin, who called it "an important step towards the resolution of the Syrian crisis" and added: "This confirms the serious intention of our Syrian partners to follow this path"²⁷. Finally Mr Lavrov mentioned that the initiative must proceed "in strict compliance with the rules that are established by the Organisation for the Prohibition of Chemical Weapons"²⁸.

On 27 September 2013, "the Security Council, deeply outraged by the use of chemical weapons on 21 August 2013, in Rif Damascus as concluded by the United Nations investigation team, endorsed the expeditious destruction of Syria's chemical weapons programme, with inspections to begin by October 1, 2013 and agreed that in the event of non-compliance on behalf of Syria, it would impose "Chapter VII measures"²⁹. It also condemned the killing of civilians that resulted from it, affirmed that the use of chemical weapons "constitutes a serious violation of international law", and stressed that "those responsible for any use of chemical weapons must be held accountable"³⁰.

As a result, the Security Council unanimously adopted the Resolution 2118 (2013) in a fast-breaking evening meeting, which determined that the use of chemical weapons anywhere in the world constituted a threat to international peace and security. On exactly the same day, the OPCW Executive Council adopted the historic decision EC-M-33/DEC.1, on the destruction of Syrian chemical weapons programme. This decision was endorsed by the unanimous adoption of the U.N. Security Council resolution.

The Executive Council's decision set out an accelerated programme for achieving the elimination of Syrian chemical weapons by mid-2014. It required inspections in Syria to begin in October 2013 and called for ambitious milestones for destruction which were to be set by the Executive Council by November 15. The decision was informed by the preexisting Framework Agreement on the Elimination of Syrian Chemical Weapons, reached by the Russian Federation and the United States of America (S/2013/565), on 14 September 2013; it facilitated the request by the Syrian Arab Republic that the Chemical Weapons Convention be

transfer of the chemical materials outside of Syria started on January 7, 2014. The first delivery of priority chemical materials was removed from two sites to the Syrian port of Lattakia. Speaking to reporters after briefing the Security Council on the following day, Special Coordinator Sigrid Kaag noted that "this movement was very important because it was the first important step in an expected process of continued movement for the destruction out of Syria"³⁸.

May I here point out that there is a contradiction between the whole multinational mission-process of the transfer of the chemical materials outside of Syria and Article I (on General Obligations of the Chemical Weapons Convention) which clearly mentions that: - "Each State Party to this Convention undertakes never under any circumstances: To develop, produce, otherwise acquire, stockpile or retain chemical weapons, or transfer, directly or indirectly, chemical weapons to anyone"³⁹.

As one can understand from the principle in this Convention, it is prohibited to transfer directly or indirectly any chemical weapon and, according to International Law and the Law of the Treaties, this different approach is somehow difficult. In an interview that I recently had with the Legal Adviser of the OPCW in the headquarters of the Organization in The Hague, I asked if this general obligation did not apply due to the implementation of "broad interpretation" that induces fewer obligations of the parties. As he responded that "exceptional cases implement extraordinary measures".

Up to this point, it is crystal clear that, in case of any chemical accident, the Organization for the Prohibition of Chemical Weapons, like the United Nations, bears no responsibility. In particular in respect of the neutralization on board the Cape Ray, the United States' Navy assumes all liabilities which would arise in case of an accident.

As it has been previously observed, this was a multilateral task in which the OPCW's primary role was strictly limited to the verification of the full completion of the destruction of chemical weapons of the Syrian Arab Republic in accordance with the Chemical Weapons Convention. As a result, in case of a chemical accident the vessels would take full responsibility for their own actions.

This mutual understanding is also reflected in a letter from the U.N. Secretary General Ban Ki-moon, dated 17 December 2013, to the President of the U.N. Security Council, which states: -

"Once on board the maritime vessels, relevant Member States will assume their respective responsibilities through the multilateral legal framework established by the Security Council in its resolution 2118 (2013) and by the decisions of the OPCW Executive Council".

This understanding is also reflected in paragraph 15 of the Plan for the Destruction of the Syrian Chemical Weapons Outside the Territory of the Syrian Arab Republic in which it is said that: - "With respect to their responsibilities, the States Parties assisting in the destruction of Syrian chemical weapons, transporting Syrian chemical weapons from the territory of the Syrian Arab Republic to a State Party hosting destruction activities, or hosting destruction activities on their territory ('Assisting States Parties ') have arrived at certain common understandings. Accordingly, it is recognized that the United Nations Security Council resolution 2118 (2013) and the relevant Executive Council decisions establish a multilateral legal framework for the activities of the Assisting States Parties. The responsibilities of the Assisting States Parties, including liability for claims will be determined according to the circumstances, to the extent of their respective roles, and in light of the purposes of resolution 2118 (2013) and applicable Council decisions. Should an unexpected contingency arise in this regard, the Assisting States Parties could raise the situation to the United Nations Security Council or the OPCW Executive Council. An exchange of letters on this matter took place between the Secretary-General of the United Nations and the President of the United Nations Security Council on 11 December 2013"⁴⁰.

As already noted, under Article IV (on Chemical Weapons), the paragraphs 10-12 of the Chemical Weapons Convention are very descriptive about the responsibility of the State Parties. As it is mentioned: -"Each State Party, during transportation, sampling, storage and destruction of chemical weapons, shall assign the highest priority to ensuring the safety of people and to protecting the environment. Each State Party shall transport, sample, store and destroy chemical weapons in accordance with its national standards for safety and emissions. Any State Party which has on its territory chemical weapons that are owned or possessed by another State, or that are located in any place under the jurisdiction or control of another State, shall make the fullest efforts to ensure that these chemical weapons are removed from its territory not later than one year after this Convention enters into force for

the staff members from both the U.N. and the OPCW, noting that the mission had successfully conducted its work under extremely challenging and complex circumstances.

The United Nations has consistently stressed that conventional weapons continue to kill while Syria's conflict goes on, and urged the international community to step up efforts to end the fighting through a peaceful political solution. The U.N. Secretary-General has also repeatedly stressed the need for a world free of chemical weapons and reiterated his call to those States that have not done so to accede to the Chemical Weapons Convention.

IV. CONCLUSIONS

It seems that the international community can at last act very drastically when it is really necessary, but the fact of the destruction of the Syrian chemical weapons cannot be in any case something we can be proud of. Resolution 2118 (2013) of the U.N. Security Council about the destruction of the chemical weapons was adopted very late. The same applies to the decision EC-M-33/DEC.1 of the Executive Council of OPCW. We have mourned so many victims before the international reaction finally came up and the international community took control of the situation. No country has the right to possess weapons of mass destruction.

The proliferation of weapons of mass destruction (nuclear, chemical, biological weapons), their delivery systems and the related technologies, are one of the most serious threats

for international peace and security nowadays. The use of weapons of mass destruction is in stark contrast with the principles of International Law and, particularly, of International Humanitarian Law and International Human Rights Law. The possession of such weapons by a country can be a threat not only to international peace and security but against humanity itself. Libya and Syria are typical examples of it nowadays.

Mankind has experienced two world wars, and yet it seems that it does not realize what has happened, and that it has not learned from past mistakes. World history has shown that only when peoples are united they can thrive and not fight and not cause pain to each other. It is like humanity is doomed and cannot really evolve in a society of individuals. Only technological and medical advances seem to be respected.

The responsibility of States does exist. The responsibility of international organizations is a very difficult and highly controversial issue. The responsibility of the individual is explored further: there must be very specific and clear evidence, in order to have a chance to stand in front of the International Criminal Court for a case like the massacres and the willful killings which took place in Syria. So, would it be the case that maybe eventually the case of Syria should be viewed seriously, and all those who committed crimes against peace and humanity should be brought before the International Criminal Court? We must answer this and many other questions, but the most essential is this one: Is there any end soon for this vicious circle? And if yes, how many more victims do we still have to mourn?

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