

Justice and accountability in Syria: report on a dinner discussion organized by ECFR in The Hague, 4 November 2013

This dinner discussion was held in connection with a conference on “Justice and the prevention of atrocities” organised by ECFR and the Hague Institute for Global Justice and held at the Hague Institute on 5 November 2013. On the eve of the conference, participants in the conference and other guests gathered to discuss the relationship of justice and atrocity prevention in the case of Syria. The dinner benefited from a presentation from Gilles Beschoor Plug, Director of the Middle East and North Africa Department at the Ministry of Foreign Affairs of the Netherlands.

Mr Plug opened his comments by saying that Syria was the most difficult situation in the region – an entrenched civil conflict that was also a classic example of a proxy war. The Netherlands had a clear view that the only solution would be a political one, while also regarding the Syrian National Coalition as the legitimate representatives of the Syrian people. However it was undeniable that radical groups were strengthening their position among rebel forces, and also that President Assad appeared to be consolidating his hold on power. The Netherlands supported the chemical weapons mission but did not envisage that it would provide a broader solution to the conflict; indeed it was possible that by dealing with the regime as an interlocutor on chemical weapons, the international community would contribute to increasing the perception of his legitimacy. This was an issue that arose in particular for the Netherlands, as the host country of the Organisation for the Prevention of Chemical Weapons (OPCW), because it was obliged with some discomfort to accept the return of Syrian diplomats representing the Assad regime when Syria joined OPCW. In the absence of other good options, it was important to continue supplying a large quantity of humanitarian aid to Syria, as the Netherlands did.

On the question of accountability, Mr Plug pointed out that the Netherlands had publicly supported the idea of referring the situation in Syria to the International Criminal Court. The Netherlands (along with 56 other countries) was a signatory of the letter organised by the Swiss government and delivered to the UN Security Council in January 2013 calling for a referral. At the same time, though, it was possible that the involvement of the ICC (International Criminal Court) might make Assad think twice about giving up power. Therefore there was an important question about how to reconcile accountability with the search for a political solution. In the meantime it was important that evidence be collected in order to help secure accountability of some form when it became possible in the future.

The discussion that followed centred on the topic of reconciling accountability and efforts to end the bloodshed. Participants asked whether there was any contradiction in the Netherlands’s support for a referral if that could make a political solution, which the Netherlands also supported, more difficult. One person asked whether support for the involvement of the ICC was premised on the assumption that a referral of Syria to the ICC was unlikely to pass the UNSC;

this might make it easier to support the ICC in principle without having to face the diplomatic complications that a referral could cause in practice. Another participant suggested that in the case of Darfur the involvement of the ICC had made negotiations more difficult, because of the court's inherent inflexibility, and asked whether the Netherlands might at some point hold back from pushing for a referral if it seemed at a particular moment that a deal was possible.

Replying to these points, Mr Plug explained that support for the ICC was a matter of principle for the Netherlands, even if it hardened the stance of President Assad. There was no calculation that it was safe to support a referral on the grounds that it was unlikely to go through. Instead the Netherlands wanted to continue looking for some formula that would bring together an end to the fighting with accountability in some form. This might take the form of a consecutive approach: first to reach a political solution, then to allow the transitional Syrian authorities to handle accountability for crimes committed during the conflict, including through accepting the jurisdiction of the ICC or transferring people for trial if a referral had already taken place. There was also room for consideration of how to deal with suspected war criminals; some international organisation should be empowered to talk to perpetrators, so that indictments did not automatically lead to diplomatic isolation. It was important that accountability should extend to both sides in the conflict.

In further discussion, one participant argued that since at the moment there was no immediate prospect of either peace or justice, it was best to try advancing both of them on parallel tracks and see if either could make progress. The ICC was only one aspect of accountability – in both Darfur and Libya the problems of accountability related to other factors apart from the referral. State parties needed to think about the diplomatic and financial support they gave the Court to make referrals effective. There was also room for the Court to reconsider its strategy and the latest strategic framework from the prosecutor was encouraging. One participant suggested that it was time for some soul-searching about the ICC and how it was working. Another argued that it was important not to overstate the influence that courts could exert in such situations, and not burden them with expectations they could not meet.

Finally, there was some discussion about the role of Assad and the attitude that should be taken to him. One European diplomat argued that the engagement of Syria in the OPCW should be welcomed rather than seen as an unpleasant necessity, as it would encourage Syria back towards engagement with international diplomacy. Building on this comment, another participant suggested that the difficult question about how to balance peace and accountability echoed a similar tension in Western policy toward Assad, as to whether his departure was a precondition for any peace agreement. Bringing together the themes of peace and justice, the discussion concluded with the observation that one way or another accountability would have to be one of the questions on the table if peace negotiations took off.