

The Tyranny of Virtue? France, Universal Jurisdiction and Syria's "Assad's Regime"

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Universal jurisdiction is one of those legal beasts that frightens as much as it excites. The debate about such jurisdiction, which enables prosecutors from one state to effectively prosecute war crimes or crimes against humanity committed in another state is a highly contentious one.

The International Criminal Court is meant to provide a platform that has looked, largely because of circumstance and procedure, all too much like a body with an African bias. Regarding the Syrian conflict, there have been calls to bring its operations within the purview of ICC jurisdiction, one made difficult by Syria being a non-signatory to the Rome Statute. On May 19, 2014, 58 countries issued a statement and letter calling on the UN Security Council to adopt a French sponsored resolution doing just that.

The move was welcomed by Human Rights Watch, including its international justice counsel Balkees Jarrah. "The movement for justice for victims in Syria is gaining unprecedented momentum. By officially co-sponsoring the resolution for an ICC referral, countries will be taking a critically important stand for accountability for serious crimes by all sides." [1] Wheels, however, tend to turn slowly in the UN.

Retaining the colouring of an equally balanced prosecution, with an effort to evenly account for crimes created by all sides, is where such efforts tend to break down. But the ICC, in that sense, still retains some link to an internationalised procedure that can account for atrocities. Critics of the various sides in the conflict will, however, be impatient, and France, having taken the lead to bring the ICC into play, is charging out with its own suggestions.

Needless to say, these efforts haven't proven to be more selective. To that end, it is hard to envisage a situation of objectively contrived justice for Assad's "victims" and his prosecution without also placing French objectives for the region into perspective. The Hollande government wishes Assad out; its prosecutors wish to see him in the dock. Syria's victims provide the handy, if cynically manipulated alibis, to justify the action.

On September 30, the prosecutor's office in Paris announced that it will be opening an investigation into torture carried out by the Assad regime. It does not even purport to target other sides in the conflict, including Islamic State. In a conflict of competing cruelties, even this action seems calculating.

French Foreign Minister, Laurent Fabius, made it clear who he had in his legal sights. "Faced with these crimes that offend the human conscience, this bureaucracy of horror, faced with this denial of values of humanity, it is our responsibility to act against the

impunity of the killers.” The move was billed as “the world’s first criminal inquiry into torture under President Bashar al-Assad of Syria”.^[2]

This enterprise is already filled with a range of calculations, much of them based upon the assumption that this legal case will rile Assad and form the basis of negotiations for a future “settlement” of the conflict. For one, it involves the French foreign ministry, ever that intrusive figure of imperial valour in the Middle East, pushing upon prosecutors a dossier stacked with pictures of torture victims.

The pictures first made their appearance on CNN in January last year, suggesting that eleven thousand individuals had been systematically murdered in the Syrian prison system, mostly through a gruesome regime of torture. The graphic imagery had been the work of a photographer for the military police code-named Caesar, one tasked with taking pictures of bodies brought from prison detention.^[3] In escaping Syria, his stash of images numbered some 55 thousand. Denials about their authenticity followed.

Even legal outlets keeping an eye on the proceedings conceded that the moves had a stark political flavour. Russia’s efforts to “rehabilitate” Assad had to be countered by such measures, even if they needed Paris to identify a French victim or arrest a Syrian official.^[4]

Such zealous efforts are not necessarily going to ring sweetly in the corridors of power in the US and Israel. Both sides have made their opposition to universal jurisdiction, or at least instances of its use, before. Political expedience is cited as a prevailing poison in such affairs.

One of its strongest critics remains a figure who himself would look fitting in a criminal court – former US Secretary of State, Henry Kissinger. “The danger lies [in submitting international politics to judicial procedures] in pushing the effort to extremes that risk substituting the tyranny of judges for that of governments; historically the dictatorship of the virtuous has often led to inquisitions and even witch-hunts” (*Foreign Affairs*, Jul/Aug 2011).

One country that has shown a particular interest in universal jurisdiction is Spain. On October 31, 2010, Spanish Judge Ferdinand Andreu refused to grant former Internal Security Minister Avi Dichter immunity from prosecution for a trip to Spain where he was intent on participating in a peace summit.^[5]

Dichter was facing charges for war crimes and crimes against humanity for his involvement in the assassination of former senior Hamas member Salah Shedade. The operation, supervised by Dichter, saw the deployment of a one-ton bomb in Al-Daraj, a residential neighbourhood in Gaza that killed fourteen civilians, including eight children, and injured 150 others.

While it is tempting to see international law as a manifestation of higher workings, wise judges and legal briefings without political manipulation, the view is but an illusion. The French effort here to forge a prosecution through domestic mechanisms looks more political than substantial, even if there has been, over the last 25 years, an understanding that “enemies of the human race” – *hostes humani generis* – need to face some judicial procedure. But international law, for all its contentions, remains a product of the law of nations and national interest. Human rights protocols remain weapons used by governments against others.

While there is much to merit investigations and prosecutions of a range of horrendous crimes committed against civilians in Syria by a complex range of sides and powers, the specificity of these claims against Assad for torture, tend to dispel notions of a virtuous tyranny in action.

This is a warring environment that permits barrel bombs, chemical weapons, beheadings and torture. It is a hothouse of cruelties, and pulling the rabbit out of the hat specifically for Assad's criminality, in the absence of considering those he is battling against, will be a tall order. The only truly appropriate forum, should it ever come, will have to be a Syrian court, but do not expect that to be particularly balanced, either by local or international design, either.

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[1] <https://www.hrw.org/news/2014/05/20/syria-58-countries-urge-icc-referral>

[2]

http://www.nytimes.com/2015/10/01/world/europe/france-investigates-syria-torture-bashar-assad.html?_r=1

[3] http://www.un.org/ga/search/view_doc.asp?symbol=S/2014/244

[4] <https://www.lawfareblog.com/ahead-game-prosecuting-syrian-crimes-french-courts>

[5]

http://www.jadaliyya.com/pages/index/288/israel-versus-universal-jurisdiction_a-battle-for-

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