

**International
Commissions of Inquiry,
Human Rights and
Humanitarian Law: The
United Nations, Syria and
Beyond**



by

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International Commission of Inquiry
on the Syrian Arab Republic
(established by the United Nations).

This presentation: June 2013.



Case Study

Case Study

- Ivory Coast (Cote d'Ivoire), Africa
- Civil war/non-international armed conflict 2011
- Violations such as attacks on civilians, killings, rape, torture, burning of villages/pillage/destruction of property, destruction of religious sites such as churches and mosques
- What happened, Who did what, where, how ?
- Who are we to believe ?

- ▶ Lack of or inadequacy of national process to probe the facts and those responsible for violations
- ▶ An international process - Commission of Inquiry (COI) or fact-finding team - might be necessary to provide impartial and independent monitoring and assessment
- ▶ Thus COI was set up by the UN Human Rights Council in 2011: short term - work of three months

Independent International Commission of Inquiry (COI): Ivory Coast

- ▶ Established by the UN Human Rights Council 2011
- ▶ Mandated to report on what happened and who did what/who is responsible for the violations? What violations? Human rights (violations such as summary/extra-judicial killings/executions, torture in time of war or peace)

- ▶ international humanitarian law (violations in times of war – civil war and/or international wars(non–international and/or international armed conflicts) – such as failure to distinguish between military and civilian targets; indiscriminate attacks on civilians; destruction of protected sites and objects; use of various prohibited weapons)

- ▶ The COI reported back to the UN Human Rights Council in June 2013 and found violations, especially by the former Government under (ex) President Gbagbo, and some violations by armed opposition groups
- ▶ Parallel investigations by the International Criminal Court (ICC) led to transfer of Mr.Gbagbo to the court (in the Hague) for criminal proceedings/prosecution.

International Developments: Commissions of Inquiry (COI)

Independent International Commission(s) of Inquiry

- ▶ Established by the UN (Human Rights Council, possibly other parts of the UN: SC,GA, Secretary General...)
- ▶ Inquiry into:
 - ▶ What happened
 - ▶ Who did what
 - ▶ Who might be accountable/responsible for the violations....

- ▶ COI set up by the UN HRC
- ▶ Other channels, e.g. International Fact Finding Commission under Red Cross-related Treaty/Convention
- ▶ Fact finding Commission or COI set up by other actors (national COI, governmental COI).

- ▶ **This presentation** is about COI established by UN, especially UN Human Rights Council

Why, what, how, who ?

- ▶ If no national process to expose the facts and those responsible for the violations, an international process may be necessary....

- ▶ International Commissions of Inquiry.....
- ▶ Independent report under the UN umbrella, with independent Commissioners/experts (not UN staff) , supported by UN secretariat....

Human Rights and Humanitarian Law

- ▶ Human rights – rights advocated at least to/against the State; rights bind all actors
- ▶ International standards, such as UN resolutions (e.g. Universal Declaration of Human Rights) , UN treaties/Conventions (such as International Covenant on Civil and Political Rights, Convention against Torture, Convention on the Rights of the Child...).g.
- ▶ E.g. prohibition of extra-judicial killings, torture, arbitrary detention, enforced disappearances, violence v women/children

- (International) humanitarian law (IHL) – specific international law applying in times of war/armed conflict whether non-international (civil war) or international (international war)
- ▶ IHL rules such as:
 - The need to distinguish between military and civilians targets – indiscriminate attacks on the latter are war crimes

- the need to protect wounded soldiers/fallen soldiers and prisoners of war
 - where a person is accused of a wrongdoing, summary execution of the person is prohibited: thus, the right to be taken to a regularly constituted court/tribunal, even in times of war

- ▶ Prohibition of use of various weapons, such as chemical weapons, weapons causing unnecessary suffering or superfluous injury
- ▶ If the violations are widespread or systematic (backed up by policy) against the civilian population, they may be tantamount to crimes against humanity also.
- ▶ Possibly genocide? The ground of genocide is difficult to prove, as it needs special intent to target/harm a group.

The UN and COI

- ▶ COI set up by the UN HRC in recent years:
 - Ivory Coast (end of war; non-international armed conflict)
 - Libya (war; non-international, then international armed conflict)
 - Syria (since 2011) (war: non-international armed conflict)
 - Recently , Democratic People's Republic of Korea (war in early 1950s, with armistice; since then, longstanding situation of human rights violations)

- ▶ UN may set up an international COI to monitor a State, even if the latter does not consent
- ▶ Rationale: to offer international protection to the population, where the State unwilling or fails to offer national protection

Syrian Arab Republic (Syria)

- ▶ COI set up in 2011
- ▶ Without consent of Government/Syria
- ▶ No access to the country, although access to victims such as refugees and neighbouring countries
- ▶ Set up by UN HRC and mandate renewed for one year in early 2013
- ▶ Latest of COI reports: June 2013

10 Key Issues re (any) COI

- ▶ Context
- ▶ Mandate
- ▶ Methodology/Methods of work
- ▶ Facts: "Qualification des Faits"
- ▶ Law: "Qualification du Droit "

- ▶ Violations: standard of proof
- ▶ Victims: victim centrality and victim sensibility
- ▶ Perpetrators
- ▶ Accountability/Responsibility for crimes: especially war crimes and crimes against humanity
- ▶ Follow-up Measures

Context

- Political/legal context – at times, very inflamed
- COI as means to an end: prove a point through investigation, make suggestions to the UN and global community, including the country in question...but COI is not a panacea
- Report to the UN, know what to write and what not to write...
- Mobilise humanitarian action to help victims through credible information and impartial/independent/objective analysis

Mandate

- Investigate and report back to UN: HRC, GA, SC ?
- “establish facts and circumstances of violations..”
- Identify those responsible and bring them to justice (all sides!)
- Short term ? Fixed time-frame ? COI on Syria report for every session of UNHRC: now renewed for one year
- Field visits and teamwork – esprit de corps...

Methodology/Methods of Work

- ▶ Established by UN
- ▶ Independent commissioners – at least three, 4 in COI on Syria, supported by UN secretariat; pro bono commissioners: independent, objective, impartial
- ▶ Prepare report for UN to mobilise
- ▶ Field visits, even if no access to country in question; go to neighbouring countries, access refugees etc

- ▶ Build documentation: data base at UN with record of direct interviews with witnesses, documenting allegations of violations and violators: case by case documentation
- ▶ COI/Syria – now nearly 2,000 direct interviews, computerised at UN
- ▶ Secretariat team: investigators who carry out continual field visits, document victim/witness testimonies, and collect in UN database

- Although COI not a judicial investigation, collects information for possible use in future judicial proceedings at the national or international levels ..what happened, when, who did what, who is in the chain of command/responsibility...
- Use “corroboration” and cross check of information: not use media reports in case of violations but direct testimonies of witnesses, cross-checking with other sources....

- ▶ Access to the victims and be a voice for them

Qualification des Faits

- Establish the facts according to the (time-frame) set by the mandate/UN resolution
- Aim for the truth when many other sources are there claiming (many other) truth(s)... "COI is the only game in town"
- If a situation is inconclusive, we say so....
- Be careful with statistics
- Can refer to data from other UN agencies, but not necessarily so, as the COI has its own method of collecting information

Qualification du Droit

- ▶ Which law applies ?
- ▶ Human rights, international standards (while not forgetting local law if it complies with international standards ?); Human rights treaties, international customary rules/UN inputs such as UN resolutions
- ▶ Regional conventions: e.g. Arab Charter of Human Rights

- International Humanitarian law
 - 1949 Geneva Conventions (4 Conventions)
 - 1977 Protocols to the 4 Geneva Conventions
 - Other relevant treaties and customary rules, e.g. On prohibition of use of chemical weapons:
 - 1925 Geneva Protocol for the Prohibition of the Use in War of Asphyxiating, Poisonous or Other Gases, and of Bacteriological Methods of Warfare

-1997 Convention on the Prohibition of
the Development, Production,
Stockpiling and Use of Chemical
Weapons and their Destruction

-Note: what is the threshold for “qualifying”
a situation as a situation of war or armed
conflict, to bring into play international
humanitarian law? Intensity of conflict
(not just small, isolated incidents).

- ▶ Even if IHL does not apply, human rights
apply.
- ▶ In international law, there is no
“jurisdictional vacuum” for protecting people.
It always protects victims, even though
violations regrettably take place.

Violations

- ▶ List/extent of human rights violations, e.g. massacres, other unlawful killings, arbitrary arrest and detention, hostage taking, enforced disappearance, torture and other forms of illtreatment, sexual violence, violations of children's rights (e.g. use of child soldiers – under 15)

- ▶ List of humanitarian law violations (overlap with above):
 - Unlawful attacks, attacks on protected persons and objects, pillage and destruction of property, illegal weapons, sieges, forced displacement
- ▶ Standard of proof? “Reasonable grounds to believe” that violations have taken place. Not judicial test of proving “beyond all reasonable doubt”.

- ▶ Based on credible, reliable information, direct testimonies of witnesses and corroboration..

Victims

- ▶ Identify and record, with respect for privacy and victims' protection
- ▶ Not raise expectations
- ▶ Not reveal their names publicly
- ▶ Possible follow up measures to help them, e.g. contact with local UN presence
- ▶ Special care with gender and issue of sexual violence against women...cultural sensitivity

Perpetrators

- ▶ COI covers all sides of conflict, government and non-government
- ▶ In Syrian case, violations by the government authorities more intensive and extensive, e.g. use of aerial bombardments on civilian targets by the authorities, while armed opposition groups have no airforce/airpower.

- But some violations by armed opposition groups in Syria, e.g. unlawful killings and executing captured soldiers without proper trial by regularly constituted court
- COI gives confidential list of those close to the violations – to the UN High Commissioner for Human Rights to be kept in a safe for possible future use, possibly in criminal proceedings

- Why confidential list ?
- We do not reveal the names because the alleged perpetrators have not yet been through “due process of law”, e.g. the right to be heard in judicial proceedings/ the right to legal representation....

- COI is not a judicial inquiry but a human rights inquiry....of an initial, preliminary (prima facie) nature.

Accountability/responsibility

- ▶ State responsibility – to protect human rights, to prevent violations, to ensure remedies
- ▶ Individual criminal responsibility:
 - War crimes
 - Crimes against humanity
 - Genocide....
 - Linkage with International Criminal Court Statute

- Even where a country such as Syria is not a party to the ICC, individuals can be cross-referred by the UN Security Council to the Court – if the UNSC has the will to do so.
- Not forget possible mechanisms at national, local levels including local courts and truth/reconciliation commissions
- Criminal responsibility might be paralleled by civil liability....

Follow-up

- › Influence rest of the UN to act, especially UNSC
- › Press for humanitarian access by UN to victims even in war situation; enlarge humanitarian space in areas occupied by government and areas occupied by opposition to deliver basic services/necessities, e.g. food, water, medicine, schooling

- ▶ Mobilise the international community to act...to use the information/COI report well to protect victims and their rights.

Syrian situation: 2013

- ▶ Escalation
- ▶ Sectorianisation
- ▶ Radicalisation (extremists from various countries)
- ▶ Victimisation (multiplied brutalities)
- ▶ Regionalisation/internationalisation – spill-over..... It is about Syria and it is about much more than Syria.....

Violations ? Mid 2013

- ▶ Government forces and affiliated militia committed murder, torture, rape, forcible displacement, enforced disappearance and other inhumane acts. Many= part of widespread or systematic attacks against civilians and constitute crimes against humanity

- ▶ War crimes and gross human rights violations also, e.g. summary execution, arbitrary arrest and detention, unlawful attack, attacking protected objects, pillage and destruction of property

- ▶ Anti-government armed groups also committed war crimes: murder, sentencing and execution without due process, torture, hostage-taking and pillage.
- ▶ Endanger civilians by positioning military objectives in civilian areas

- ▶ The violations and abuses committed by anti-Gov armed groups did not, however, reach the intensity and scale of those committed by Government forces and affiliated militia
- ▶ There are reasonable grounds to believe that chemical agents have been used as weapons. The precise agents, delivery systems or perpetrators could not be identified.

List of alleged violators

- ▶ To date:
- ▶ three confidential lists given to the UN High Commissioner for Human Rights
- ▶ Covers alleged perpetrators without discrimination...

Conclusions/recommendations from COI June 2013 report

- ▶ No military solution; need comprehensive political process
- ▶ Need de-escalation of conflict
- ▶ Call for respect for human rights and humanitarian law
- ▶ Accountability
- ▶ Humanitarian access to victims/civilian population needed

- ▶ **Recommendations to international community: e.g.**
- ▶ Support peace process
- ▶ Restrict arms transfers
- ▶ Sustain humanitarian funding

- ▶ **Recommendations to all parties:**
- ▶ Reject sectarian rhetoric as a tactic of war
- ▶ Help preserve material evidence of violations
- ▶ Allow immediate and full humanitarian access by humanitarian organisations to all areas affected by fighting

- ▶ **Recommendations to Government of Syria:**
- ▶ Constructively participate in peace process
- ▶ Allow COI access to the country
- ▶ Respect human rights and humanitarian law

- ▶ **Recommendations to anti-Government armed groups:**
- ▶ Join the peace process in a constructive spirit
- ▶ Reject extreme elements, and compel all groups to respect human rights and humanitarian law

- ▶ **Recommendations to OHCHR and UN agencies:**
- ▶ Consolidate presence of OHCHR in the region
- ▶ Reinforce the protection of civilians through effective inter-agency UN presence in the country

- ▶ **Recommendations to UN HRC:**
- ▶ Support COI recommendations and access to UNSC
- ▶ Transmit COI report to UNSC through UN Sec-Gen

- ▶ **Recommendations to UN GA:**
- ▶ Support work of COI, inviting it to provide regular updates
- ▶ Uphold COI recommendations and exert influence toward a peaceful solution for the country

- ▶ **Recommendations to UNSC:**
- ▶ Support COI work and enable it to have access to UNSC
- ▶ Facilitate and underpin comprehensive peace process
- ▶ Commit to ensure the accountability of those responsible for violations including possible referral to international justice

Thank You !