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Imagining justice for Syria : water always finds its way

Schaack, E.M. van

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Elizabeth Maria Van Schaack

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Promotor: Prof. dr. C. Stahn

Copromotoren: Dr. J.C. Powderly
Dr. G. Pinzauti

Promotiecommissie: Prof. dr. N.M. Blokker
Prof. dr. K.J. Heller (University of Amsterdam)
Dr. M. Wierda (Ministry of Foreign Affairs, The Hague)
Prof. dr. A.M. O'Malley
Dr. J.M. Iverson

To The People of Syria
and
To Those Who Tried To Do More

“When I am Overcome By Weakness”

I bandage my heart with the determination of that boy they hit with an electric stick on his only kidney until he urinated blood. Yet he returned and walked in the next demonstration.

I bandage it with the steadiness of a child’s steps in the snow of a refugee camp, a child wearing a small black shoe on one foot and a large blue sandal on the other, wandering off and singing to butterflies flying in the sunny skies, butterflies and skies seen only by his eyes. ...

I bandage it with the outcry: “Death and not humiliation.”

NAJAT ABDUL SAMAD, WHEN I AM OVERCOME BY WEAKNESS (Ghada Alatrash trans.), quoted in Leigh Cuen, *A ‘New Poetry’ Emerges from Syria’s Civil War*, AL JAZEERA, Sept. 8, 2013.

“Death and not humiliation” was a frequent utterance of Syrian protesters.

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Preface

This project emerged from my years of work in the field of international justice—as a prosecutor, defense counsel, plaintiffs’ counsel, diplomat, and professor. Having served in the U.S. State Department as Deputy to the previous Ambassador-at-Large for War Crimes Issues, the indomitable Stephen J. Rapp, for the early days of the Syrian conflict, I worked extensively to advance options for justice along a number of different fronts both within the U.S. interagency process and with partners in multilateral fora. Other states were actively involved, both working to advance (France, Switzerland, and Liechtenstein come immediately to mind) and impede justice. There were dozens of options explored, some more feasible than others, but none came to fruition. This PhD was inspired by my ambition to capture these various models and proposals in one place and explore what commends them and the geopolitical, legal, and practical challenges to implementing them. At first glance, the crisis in Syria suggests that the international community’s experiment with international justice is essentially a failure. I hope in these pages to show that it was not entirely so, and that the conflict generated many creative ideas around justice, advanced the practice of international criminal law documentation and investigation, and empowered different actors to operate in this field. This manuscript will be published in 2020 by Oxford University Press as part of the United States Military Academy at West Point’s innovative Lieber Series. Given this background and my own nationality, much of this text focuses on U.S. policy toward justice and accountability in Syria. Needless-to-say, the views expressed herein (and all errors) are entirely my own and do not reflect the position of the U.S. State Department or government writ large (although at times I wish they did).

Stanford, CA, USA
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Acronyms & Abbreviations

ASP	Assembly of States Parties
AU	African Union
CAR	Central African Republic
CIJA	Commission for International Justice & Accountability
COI	Commission of Inquiry
CWC	Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction
DRC	Democratic Republic of the Congo
ECCC	Extraordinary Chambers in the Courts of Cambodia
EU	European Union
FFM	Fact-Finding Mission
FSA	Free Syrian Army
FOSP	Friends of the Syrian People
HRC	U.N. Human Rights Council
ICC	International Criminal Court
ICJ	International Court of Justice
ICRC	International Committee of the Red Cross
ICTJ	International Center for Transitional Justice
ICTR	International Criminal Tribunal for Rwanda
ICTY	International Criminal Tribunal for the former Yugoslavia
IDP	Internally-Displaced Person
IHL	International Humanitarian Law
IIIM	International, Impartial and Independent Mechanism to Assist in the Investigation and Prosecution of Persons Responsible for the Most Serious Crimes

under International Law Committed in the Syrian Arab Republic since March 2011

ISIL	Islamic State in Iraq and the Levant
ISSG	International Syria Support Group
JIM	Joint Investigative Mechanism
NATO	North Atlantic Treaty Organization
NGO	Non-Governmental Organization
NPWJ	No Peace Without Justice
OHCHR	Office of the High Commissioner for Human Rights
OIR	Combined Joint Task Force—Operation Inherent Resolve
OPCW	Organization for the Prohibition of Chemical Weapons
OTP	Office of the Prosecutor
PTC	Pre-Trial Chamber
P-5	The permanent five members of the Security Council
R2P	Responsibility to Protect
SCSL	Special Court for Sierra Leone
SDG	Sustainable Development Goals
SJAC	Syria Justice & Accountability Centre
STL	Special Tribunal for Lebanon
TDA	The Day After
TRC	Truth & Reconciliation Commission
UNGA	United Nations General Assembly
UNHCR	United Nations High Commission for Refugees
UNSMIS	United Nations Supervision Mission in Syria
USIP	United States Institute of Peace
YPG	Kurdish People’s Protection Units