

GENERAL ASSEMBLY: 65th plenary meeting, 76 session

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AGENDA ITEM: Prevention of Armed Conflict

SPEAKER: Ms. Catherine Marchi-Uhel, Assistant Secretary-General

Distinguished President of the General Assembly,
Excellencies, Ladies and Gentlemen,

I would like to start my address in Arabic.

(I am honoured to be here with you today. I thank the President of the General Assembly for inviting me to brief you under the agenda item “Prevention of Armed Conflict” and to present the eighth report of the International, Impartial and Independent Mechanism. The Mechanism was created by this Assembly in December 2016 to assist with investigations and prosecutions of core international crimes committed in the Syrian Arab Republic since March 2011. We are not a court or tribunal but mandated to assist competent jurisdictions in their pursuit of justice. We assist national courts that exercise jurisdiction for such crimes, and we will assist national, regional and international courts or tribunals that may become seized of the Syrian situation in the future. Our work is both: immediate and longer-term. I am pleased to report about our work in person today. I will continue in English.)

Excellencies, Ladies and Gentlemen,

The atrocities in Syria are among the most devastating and barbaric since the end of World War II, given the grave violations of international humanitarian law and gross human rights violations committed by a range of actors. These actions undermine the Charter of the United Nations and threaten our rules-based international order. After 11 years, while the media headlines have moved on, the international community has failed to deliver comprehensive justice to the Syrian people. After 11 years, violence continues and has become entrenched. We clearly see the ripple effect of pervasive impunity for war crimes and crimes against humanity today. Law has a deterrent effect only if those in power believe that they may have to explain their actions in front of a court of justice one day, whether at the national, regional or international level. We need such justice avenues because otherwise, those who are more powerful and higher up the chain of command are less likely to answer for their actions.

For critics, it has become increasingly easy to argue that the United Nations is no longer fit for purpose to address atrocities; that international laws are interesting theoretical constructs but unenforceable; and that hard power is all that matters.

The problems we are facing are not about legal challenges, but about the inability of the international community to speak with one voice to address atrocities. Historically, comprehensive justice or accountability has rarely been achieved while a conflict is ongoing, especially when big powers disagree. Refugees and internally displaced persons are not able to return safely to their homes if they continue to fear persecution. While hostilities continue, unlawful detention and related crimes persist and it remains challenging to provide families with credible information about their missing relatives and loved ones. Without a cessation of hostilities, without a peace process, without justice including transitional justice, without reconciliation, none of this is possible. I cannot tell you for how much longer the crimes in Syria will continue. I cannot tell you whether the general public will grow increasingly indifferent to images of bombed out Syrian cities or shift its attention to a different situation in which similar

offenses are being committed as we gather here today. The big test for this Assembly is two-fold: firstly, how effectively it has dealt with the ongoing situation in Syria, and secondly, how it will ensure that those most responsible for this catastrophe answer for their actions. It is hard to dispute that, notwithstanding the tireless efforts of many States and individuals, our response to the Syrian crisis has been inadequate. Regarding accountability, however, I am here to tell you that there is still an opportunity to work towards a future for Syria based on justice and the rule of law. I am here to tell you that justice efforts, even if small in scale and not yet targeting those most responsible, are progressing and give us cause for hope. International justice may be imperfect, but it is still a force to be reckoned with – once it is in motion.

Excellencies, Ladies and Gentlemen,

The Mechanism was created to collect, consolidate and analyse information and evidence of core international crimes committed in Syria with two objectives, namely to assist jurisdictions currently investigating and prosecuting such crimes, and to support future justice avenues, if and when available. Since the creation of the Mechanism in 2016, such justice opportunities have increased. We are currently cooperating with 13 different jurisdictions and have received more than 180 requests for assistance. These requests relate to over 150 distinct investigations, of which we have already supported close to 100 of them.

Most of these processes are still at the investigative stage and are not public, while others have proceeded to trial or have led to convictions, such as in Germany, Sweden and the Netherlands. A German court in Koblenz made headlines worldwide when it established, in two separate verdicts, that crimes against humanity were committed as part of a widespread and systematic attack against the civilian population by the Syrian State, through its security forces and secret services between April 2011 and September 2012. We were able to contribute evidence in support of these cases. A court in Frankfurt established that crimes against the Yezidis amount to genocide. A Swedish court in Stockholm recently found a woman guilty for a war crime committed against her own child as part of the non-international armed conflict. We cannot underestimate the importance of such legal findings. They might not be binding on other jurisdictions, but they provide authoritative guidance. They establish facts beyond doubt that cannot easily be disputed or interpreted differently for political ends. And more is in on the way. Several States have released information about their ongoing proceedings, including Austria, Belgium, France, Germany and Switzerland. Judicial authorities of States are also making increased use of joint investigative teams and cooperate more closely. The Netherlands, joined by Canada, has initiated a process arguing that the Syrian Arab Republic has breached its obligations under the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The list of relevant judicial developments grows each year. Demand for our work grows accordingly.

To assist such processes, we search and retrieve relevant material from our central repository of information and evidence, develop analytical work products, interview witnesses and collaborate with a large network of partners: States, UN entities, international organizations, NGOs and individuals. In our work on detention-related crimes, we continue to examine the composition and functioning of organizational structures and focus on the experiences of individual detainees to identify patterns reflected in their mistreatment and the objectives of the underlying criminal conduct. Our work on unlawful attacks has advanced and enabled us to open two new case files during the reporting period. They focus on events in Syria in 2015 and 2017, which involved the alleged use of chemical and conventional weapons, including against medical facilities. The Mechanism also finalized and shared an evidentiary module focussing on ISIL/Daesh establishing the existence of a systematic attack against a civilian population to support charges of crimes against humanity. This module also demonstrates how intersecting discriminatory grounds, such as religion, gender and age, were exploited by perpetrators as part of a persecution campaign.

All our work is underpinned by a commitment to a victim/survivor-centred approach, which aims to make visible the diverse of experiences of Syrians, including in relation to gender, age, sexual orientation, minority or disability status or other intersectional characteristics. Our gender strategy aims to counter the adverse impact of discriminatory gender hierarchies on prospects for justice by incorporating gender analyses and fostering gender competence in each of the Mechanism's sections and workflows. Following a similar rationale, the Mechanism's work on crimes against children and youth aims to counter an adult-centric approach to accountability by integrating a child-sensitive perspective into our work, which will enable jurisdictions to charge and prosecute the full range of offenses committed against children and youth. Both approaches benefitted from intense consultations with expert groups and peer groups during the last year, including with representatives of Syrian civil society.

Excellencies, Ladies and Gentlemen,

The Mechanism is continuously refining its work and trying to identify additional ways and means to facilitate justice. We focus on supporting investigations and prosecutions but also contribute to other elements of the justice spectrum, such as clarifying the fate and whereabouts of missing persons in the Syrian context. The Mechanism has developed a preliminary system to tag and capture information regarding missing persons and frequently shares such data with one of the entities mandated to search for missing persons. However, we understand the demands of Syrian civil society for new solutions to tackle this issue. I am regularly asked what else should be done and how the international community could better tackle the issue. As far as the Mechanism is concerned, we are assessing how best to contribute further. We are following the broader United Nations discussions closely. However, I believe we need to be honest with ourselves as to what can be achieved at this moment, assuming circumstances do not change, and adjust expectations accordingly. This is independent of the options that States may decide to pursue, whether it is creating a new entity, increasing capacities of existing actors or otherwise. Meanwhile, we can and should prepare for the time when access to more dentition facilities will be possible. A time when, when those held in camps in the North East of Syria, such as Al Hol, are presented with charges, where appropriate, and no longer interned indefinitely, especially women and children. A time when mass graves become accessible to forensic experts. By doing so, the international community can truly assist the efforts in relation to missing persons and all those whose fate and whereabouts are currently unknown.

Excellencies, Ladies and Gentlemen,

I am a lawyer and a judge by training, not a political scientist. Nevertheless, it is difficult to consider events in Syria in isolation, and not ask whether and to what extent they have affected other conflict situations. As I stated earlier, I believe that the relevance of this Assembly, and the legitimacy of our international system, will not only be judged by the last 11 years of atrocities in Syria. But it will also depend on whether and how we can build on existing efforts and judicial developments to pursue comprehensive accountability. We must close this chapter and lay the foundation for a future Syria based on the rule of law. I would like to echo the words of Benjamin Ferencz, Prosecutor at the Nuremberg Trials, who recently turned 102 and keeps saying: "Law not War!" I hope that we have learnt the lesson that no law leads to more war – in Syria and beyond.

I thank you.