

An Arab War-Crimes Court for Syria
By Aryeh Neier
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[Genocide Watch proposed the idea of an Arab and Islamic-led court in its “Genocide and Mass Atrocities Alert: Syria,” dated 16 February 2012, and is pleased Aryeh Neier has endorsed this idea in his Op-Ed article.]

The United States and other governments don't want to intervene militarily in Syria. That's understandable; hardly anyone wants another Middle East war.

In seeking other ways to ensure that the Syrian government and its henchmen pay a price for slaughtering their citizens, United States officials are seeking ways to bring them to justice. A war crimes tribunal run by the Arab League could be the solution. The experience of war-torn countries like Bosnia has proved that such tribunals can work, if properly designed.

Last weekend, Secretary of State Hillary Rodham Clinton said that the United States would “support and train Syrian citizens working to document atrocities, identify perpetrators, and safeguard evidence for future investigations and prosecutions.” A difficulty with this plan, however, is how to use the evidence that is collected. Syria is not a party to the treaty for the International Criminal Court in The Hague, and Russia and China would most likely use their veto power to block any United Nations Security Council effort to refer the case to the court.

To overcome such obstructionism, another innovation is required: an Arab League tribunal to deal with the crimes against humanity that are taking place in Syria. Such a tribunal could have Arab judges, Arab prosecutors, Arab investigators and Arab defense attorneys and conduct its proceedings in Arabic. The Arab League could give it jurisdiction over crimes against humanity and war crimes as the treaty for the International Criminal Court defines them. And such a court should have jurisdiction over all crimes, including those committed by rebels. It is essential to uphold the principle that, no matter the justice of the cause or the crimes committed by one's opponents, all must be held to the same standards.

Because it would take time to establish such a tribunal and because there is an urgent need to stop Syrian forces from committing more crimes, the Arab League could specify that prosecutions for crimes committed after the resolution's adoption would have priority. That would put the forces of Syria's president, Bashar al-Assad, on notice that the surest way to end up in the dock is to persist in the crimes they have been committing.

We should not grant them impunity for crimes committed up to now. But the urgent need to prevent further atrocities justifies giving them an incentive to stop. Of course, some of those responsible for crimes would imagine that they would never be apprehended and brought to justice. Yet the record of other international tribunals makes it increasingly necessary for them to take such courts seriously.

Something similar took place during the Bosnian war, which began 20 years ago this week. Neither the administration of President George Bush nor that of President Bill Clinton was ready to intervene militarily. But both expressed outrage at the crimes of ethnic cleansing in that conflict. That led to American support for the establishment of what became the International Criminal Tribunal for the Former Yugoslavia. At the time, few took it seriously.

It had no capacity on its own to get hold of those accused of crimes. Hardly anyone imagined that the leading perpetrators could be brought to justice. Yet the court has been remarkably successful. Of the 161 people on all sides of the Balkan wars whom the court indicted for war crimes, crimes against humanity and genocide, all were eventually apprehended and brought to The Hague except those who died or had their indictments withdrawn; 64 were convicted and sentenced, and 13 were acquitted. The rest are appealing their convictions, are still on trial, have died or have had their cases referred to courts at home.

Indeed, national courts in Serbia, Croatia and Bosnia have conducted scores of high-quality trials of lower-ranking defendants accused of war crimes.

As a result, most of those principally responsible for the ghastliest crimes in the former Yugoslavia, like the murder of 8,000 Muslim men and boys at Srebrenica in 1995, have been forced to serve long prison sentences. A process that some initially supported only as a substitute for more forceful action has turned out much better than expected. It provided a substantial measure of justice in the Balkan conflicts, and it has led to the establishment of several other ad hoc international criminal tribunals and the International Criminal Court. And it has contributed to national prosecutions, in many countries, of dictators, warlords and guerrilla leaders responsible for crimes against humanity.

Establishing the Balkan court in 1993 was an innovation in international law, and creating a tribunal for Syria today would be a bold decision for the Arab League — one that could ensure that those who committed atrocities would face consequences.

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