“Accountability in Syria”

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FEATURING
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Jon Alterman: Beth van Schaack is the State Department's ambassador-at-large for Global Criminal Justice. She's a former visiting professor at Stanford Law School and former executive editor of *Just Security*, an online forum for the analysis of national security, foreign policy, and rights. Beth, thanks so much for joining us on Babel.

Beth van Schaack: Thank you for having me.

Jon Alterman: You have spent a lot of your career looking at atrocities, and one of the central ideas that you focused on is the idea of accountability. What does accountability mean in your mind?

Beth van Schaack: I think accountability means a lot of different things. The simplest meaning is that individuals who are responsible for grave human rights abuses or the commission of international crimes should be held responsible in some way—in a formal manner—for what they have done and how they have harmed others. But if you take the field of transitional justice more broadly, we know that accountability can mean a number of things—including having truth available to victims as to what happened to them, their loved ones, why a particular repressive regime was put in place, how it operated, why they were chosen. Those are the sort of open questions that often really leave victims and survivors wondering why there were targeted and why they had to be subjected to what they had to be subjected to. We also can think about it in terms of reparation and rehabilitation—giving forms of redress to victims to enable them to restart their lives, psychosocial rehabilitation, livelihood assistance. Individuals who have experienced mass crimes have had their life plans dramatically disrupted by these events. We can also think about things like guarantees of non-repetition—what sort of measures should be put in place to reform institutions and to ensure that a society does not backslide? Accountability can mean a lot of different things. My office tends to focus on criminal accountability, but we're also really mindful about supporting other broader forms of restorative justice in addition to retributive justice.

Jon Alterman: It's easier to do that in a situation where the people committing the crimes lost, but when you have a situation, like in Syria, it feels like the people who've committed the crimes have won. They have jurisdiction over their own country. How do you think about accountability—not for losers but for victors over whom you have limited leverage?

Beth van Schaack: Syria presents a real conundrum when it comes to the question of accountability. There are no options internally. The Assad regime is unlikely to put its own agents on trial for the many abuses for which they are responsible and have been documented as being responsible. Then, we have to turn to the international level or to courts in other jurisdictions. At the international level—as I discuss in my book, and as is obvious—the UN Security Council has been largely foreclosed from really implementing any forms of coercive measures at all against Assad. Even the question of humanitarian corridors has been significantly limited by Russia's willingness to step in to protect the Assad regime. When the Security Council was considering a referral of the situation in Syria to the ICC, Russia—with China in tow—blocked that referral through the exercise of a double veto. Then, we now have to turn to international courts, and this is where we have seen incredible strides—mostly in European courts, but not exclusively—where prosecutor...
authorities have opened structural, broad-based investigations into the situation in Syria. European countries have started to press charges against individuals who are found in their midst when they have jurisdiction over those individuals, and they’ve been able to feature the testimony of witnesses, survivors, and victims who are also within their territory, and beyond. Much of this work has been facilitated by nongovernmental organizations (NGOs) and civil society organizations working together, but it has also been facilitated by the somewhat inextricable, interconnected networking of European prosecutorial authorities. Using tools like Eurojust and Europol, these prosecutorial authorities are increasingly interlinked. They’re sharing information. They’re sharing techniques. They’re watching each other. They’re learning from each other. That means that domestic courts are now increasingly adept at prosecuting the commission of international crimes, even when the events happened abroad and there’s no connection of nationality with respect to the key protagonists in these trials.

As you think about Syria, how is Syria different from other conflicts that you have looked at or worked on?

It’s extremely complicated, from the perspective of who the players are on the ground. In some respects, the Ukraine conflict is a classic international armed conflict. You have an aggressor state, Russia, engaging in a full-scale invasion of a second state, and there are formal armed forces embattled with each other. There are informal forces as well and territorial defense units, for sure, but it’s old school, law of armed conflict territory. Syria was quite complicated given the proliferation of armed actors. We had the democratic opposition, but then we had the Islamic State Group (ISG) and a number of splinter groups connected with each side. Then, there is wholesale intervention and involvement by other states—like Russia in support of its client state, Syria. We now have Turkey engaging and threatening incursions in the north. The United States supports some elements of the democratic opposition.

You also have Hezbollah.

Exactly. You also have other transnational organizations that want a piece of the action, so, it’s incredibly complicated even from the perspective of conflict classification. It’s also complicated to identify who is responsible for particular incidents. Then, imagining any form of not just accountability but even transitional justice is difficult. For example, is the Assad regime committed at all to reintegrating individuals who are forced to flee or who left, or who associated with the opposition in some way? At the moment, it seems like he is not, so you’re going to end up with a society that has deep fissures. Those fissures are unlikely to resolve themselves, so, that’s where the field of transitional justice should be helpful. So far, though, Assad has shown no interest at all in utilizing those tools and techniques to think about what a genuine reconciliation or the integration of the full population could look like. He has emerged triumphant, as you say, and as a result there will be refugee populations that will be very reluctant to return.

You are in the State Department, and you’re responsible for global criminal justice. There’s a U.S. Syria policy that is largely but not entirely managed by the Near Eastern Affairs Bureau. Where does accountability—the kinds of ideas that you’ve
Beth van Schaack: There are limited prospects for accountability, particularly in U.S. courts because of limitations within our own domestic law and the fact that there are not a lot of perpetrators that are going to slip through our immigration nets. It may happen, and we may be able to move forward on certain cases, but I do want to emphasize that accountability, broadly defined, remains a key pillar of U.S. Syria policy. It’s just stymied by the fact that we don’t have the ability to utilize the ordinary, multilateral institutions that we would normally be able to use because of Russia’s willingness to shield Syria. The United States is tracking very carefully the cases in European courts involving universal jurisdiction, and we have been reaching to prosecutorial authorities looking for ways to be supportive of those efforts. We have also found a number of civil society organizations that are doing documentation work—like the Syrian Justice and Accountability Center or the Commission on International Justice and Accountability. These civil society organizations are collecting information to a criminal law standard, preserving it, authenticating it, creating dossiers, doing refined analysis on that information, and then sharing that with prosecutorial authorities around the world to jumpstart their criminal proceedings. Those prosecutors don’t have to learn the Syrian conflict from scratch because these NGOs have been working on these issues for many years with continued funding from the United States. That is a way we’ve been able to continue to push this. Those of us in this field know that the goals of justice and accountability is a long game. We are playing a long game here. We’re very committed to keeping the prospects for accountability and justice alive. That’s why these documentation efforts are so important. There is no statute of limitations for war crimes or crimes against humanity. Prosecutors around the world have indictments at the ready. As soon as perpetrators start to travel, prosecutors will be ready, and perpetrators inevitably do travel after these conflicts. They want to go to Paris and shop. Their kids are going to college somewhere. They have a reason to travel. They’re attracted by investment, whatever purpose. When they do travel, prosecutors will be at the ready with indictments in hand.

Jon Alterman: Let me go even broader on the U.S. government. Just before the 2020 presidential election, you wrote a piece arguing that the U.S. government needed to have a much more organized and disciplined approach to atrocity prevention—including have a group at the White House that was focused on the issue. As you’ve gone from an advocacy role to a government position, what do you feel have been the easy wins to get people to think about atrocity prevention and accountability? What have people been most welcoming of that, in some ways, from the outside you’ve maybe been surprised have been easy wins?

Beth van Schaack: I’ve been really heartened to see this administration re-embrace the atrocities prevention and response imperative. In fact, I feel a wind at my back in a way that I didn’t before, even during the Obama administration. It’s really a core commitment of this administration. That’s made it easy for me to work with partners across the State Department and across the interagency to put forward ideas, innovations, and suggestions, and those have been picked up and people have been really keen to move them forward. Our Ukraine policy is very much about accountability. The
Atrocities Prevention Task Force has been reinvigorated, and we’ve actually made it much more multilateral. There’s an International Atrocities Prevention Working Group that meets on a regular basis. It met in the Hague a couple of weeks ago and will be meeting again during UN General Assembly high-level week to try and “multilateralize” this work. In that respect, it’s been really good to see. Ukraine is a great example. There have been real serious resources put towards promoting accountability for the war crimes and other atrocities being committed by Russia’s forces in Ukraine. This effort includes the creation of the Accountability Crimes Advisory Group with the United Kingdom and the European Union. It’s a really unique model that ensures that in doing our programming in civil society, we are highly coordinated across Europe, the United Kingdom, and the United States. Our implementing partners are working together on the ground in Ukraine—working with the prosecutor general’s office in Ukraine to advance accountability in domestic courts in Europe. We are also part of the Eurojust network and other international networks also focused on accountability. The Netherlands recently hosted a ministerial meeting in which this work was featured, and where states were encouraged to better cooperate to ensure against over-documentation, to protect against under investment, and to make sure that witnesses and victims are not being interviewed multiple times. We’re really moving into the state-of-the-art when it comes to coordinated focus amongst allies and partners on accountability.

As you think about Syria policy, there seems to be a way that a lot of the world is coming to accept the fact as we’ve described that Assad has essentially won. He is certainly not going anywhere in the near term. As the United States thinks about what early recovery means—about sort of normalizing the reality of Syria—how do you ensure that there’s always an element of thought about accountability and transitional justice in a process that is really driven by bilateral relations. How do you try to accommodate a broad number of countries, particularly regional countries, that have already begun to engage with Bashar al-Assad? How do you ensure that your views are included, and your concerns are included as the policy moves forward?

We have seen indications that some states are willing to consider moving towards a posture of greater normalization with the Assad regime. That is not the U.S. position, but to a certain extent, there is only so much that we can do in that regard, particularly when it comes to the regional states. There is still an opportunity, though, to try and advance ideas around transitional justice. That includes the move into a stage of reconstruction. Certain elements of support for the Assad regime—if reconstruction and multilateral supports to reconstruction are being contemplated—should be made conditional on Assad accepting certain obligations as the sovereign to welcome and to create a more holistic and broad-based coalition of Syrian society and to find ways to welcome back individuals who had had to cross an international border because of coercive acts within their particular communities, and to make sure they can take their property back. Property is an area of transitional justice that is often quite acute for families if their property has been seized. What is the incentive to come back, and for Assad to reverse some of his orders that did involve taking property from individuals who had left the country? There are lots of ways in which reconstruction assistance can be conditioned on Assad at least making some moves towards reconciliation. I do not
mean to imply that it would be the United States engaging in reconstruction, but to
the extent that friends, allies, and others are engaging in reconstruction, they should
be conditioning their participation and investment on seeing genuine moves
towards transitional justice to ensure that the, the next Syrian society is much more
inclusive than the society that Assad had been presiding over—which was gave rise
to the revolution 11 years ago.

Jon Alterman: Let's look forward now. With ubiquitous video capability and social media, we have
more evidence of these kinds of atrocities than we ever had before. People can get
numb. What do you think needs to be done, so that what we're seeing either in
Ukraine or in Syria is a tipping point for engagement on atrocities rather than
people saying, "You know what? The world is a horrible place. I'm going to pay
attention to the Kardashians"?

Beth van Schaack: It's a really compelling question, and I think there is a real possibility of psychic
numbing that can happen when people are overwhelmed with stories. That's where
we may need more art than we have. I think cultural expression can be a way to
activate different parts of our brain in a way that kind of mind-numbing statistics
don't. Syria has had a vibrant artistic community, and they're still engaged in trying
to capture the reality of the horrific violence that was unleashed within their
communities. I think there are ways for the international community to continue to
support that. We also need to hear more individual stories so that people are not
homogenized into numbers and statistics but can actually describe what they
experienced. One of the major open question has been what do about the
disappeared and the detained. There are still hundreds and thousands of people
who have not been accounted for from the Syrian conflict.

Jon Alterman: My understanding is that it is more than 100,000 people.

Beth van Schaack: The numbers are staggering. Many of them may still be alive in either formal or
clandestine detention centers that are run by the Assad regime. They may be being
held by other armed groups. They may be dead and buried somewhere—their
bodies never to be found. The families have an open wound, and it has not been
helped by the Assad regime's really cruel practice of issuing death certificates and
then, months or years later actually releasing the person. Suddenly, the family learns
that they had actually been alive all this time and in detention. The regime also
sometimes releases a death certificate with very vague information, so families are
never quite sure what happened. There may be always that little, tiny, hope that the
person is still alive. We call this ambiguous loss. And it's incredibly painful for the
families. This is one way, where if the Assad regime is really committed to be
reintegrated into the international community, he could create a system where
families could be told genuine, true, information about the locations of their loved
ones. If they are dead, what were the circumstances of what happened to them? If
they're alive, they could tell where they are and outline the plans are for them to
have a genuine justice process or to ultimately be released as a humanitarian
gesture and a gesture in keeping with international human rights obligations that
Syria has taken on by way of its treaty commitments. This is an open wound that I
think is going to make it very, difficult for Syrian families to feel fully integrated, and
it is an opportunity for the Assad regime to show some good faith here. There is a
movement afoot now amongst the survivor communities to work with the
international community to try and create some sort of a mechanism to enable this type of information sharing. It’s not an accountability mechanism, per se. It’s really motivated by a humanitarian ethos—based upon the rights of families to know the truth of what happened to their loved ones.

Jon Alterman: It sounds like grueling work that you’re doing—important work but grueling work. Are there things that you found you have to do to sort of recenter, to become passionate again, to avoid the numbness from thinking every day about the fact that thousands and thousands of people are suffering?

Beth van Schaack: It is difficult work, and those of us who are drawn to it have to be incredibly careful about our own self-care. I’m quite familiar with the concept of secondary trauma—secondarily taking on the trauma that you learn from others. Even though the events have not happened to you, they can nonetheless be internalized. My team has gone through a training with a former colleague of mine at Stanford who works on vicarious trauma. He has worked with lawyers, judges, advocates, and others to teach them how to recognize when you hit your own limitations on this work and also how to engage in certain coping and self-care mechanisms. What I find really important—and I always recommend it to my students who are interested in this work and to my colleagues—is to have some sort of a physical practice. I am a long-time yoga practitioner. It’s a moving meditation for me. I find that yoga teaches how to be calm in an uncomfortable position, how to handle physical and psychological pain, and how to work through that. Having a daily yoga practice has been something that has really helped keep me centered, but I also draw a lot of strength and inspiration from survivors. I try and meet with groups whenever I can—to bring them into the department or to go to where they are. I am leaving next week for a trip to the Central African Republic and Ethiopia, where I hope to meet with civil society organizations and others to hear their stories. They are always a source of inspiration to me— their never-ending quest for justice or their efforts to keep the hope alive that eventually they have some measure of justice and accountability. I get a lot of strength from speaking with communities in this regard, so I try and get out of the bureaucracy and of Washington to get out into the field and meet with people, take their stories on, and share their stories the best that I can. I try to be inspired by those stories, so that every morning I wake up and think, "What can I do today to advance justice and accountability somewhere around the world where survivors are demanding it."

Jon Alterman: Ambassador Beth van Schaack. Thank you very much for joining us on Babel.

Beth van Schaack: Jon, thank you so much for having me, Jon.