THE SYRIAN CIVIL WAR IN ITS SIXTH YEAR AND THE FAILURE OF THE RESPONSIBILITY TO PROTECT

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Introduction

Today, the protection of civilians has become an issue of priority in international law as conflicts continue to manifest themselves in different forms. From this perspective it is necessary to define the sovereignty of states as a responsibility, but not as a right. Because their primary duty is to protect the rights of their citizens. In parallel with the developments in human rights and international criminal law, individuals have also become a subject of international law. Following the inclusion of the individual in international law, the sovereignty of states has been shaped by the responsibility they bear towards the individual. At this stage, we encounter the concept of the responsibility to protect in order to eliminate the deficiency that has emerged.

What is the Responsibility to Protect?

The responsibility to protect is an alternative concept developed to be used instead of the controversial concept of humanitarian intervention. The responsibility to protect in its general sense means the protection of citizens from genocide, war crimes, ethnic cleansing and crimes against humanity by their governments. In other words, a state's main responsibility is to ensure the safety of the lives of the citizens who are within the boundaries of its sovereignty. Where governments are unable or unwilling to provide such safeguards and security, the international community must take action and undertake this responsibility by virtue of the arrangements laid down in the UN Treaty and will legitimately be able to exercise all

rights vested to it by international law, including the use of force.

According to the report dated 2001 and published by the International Commission on Intervention and State Sovereignty (ICISS), the primary responsibility of states is to protect their citizens from ethnic cleansing, genocide, war crimes and crimes against humanity. Here, two responsibilities are in question; namely internal and external responsibilities towards the state. Internal responsibility, as mentioned, is to undertake the protection of citizens' human rights, whereas external responsibility means the respect shown by states to the sovereign rights of other states. The final responsibility imposed on the states in the report is the responsibility of accountability specified for failed states in this respect. The report on the Responsibility to Protect prepared by ICISS in 2001 was finalized and submitted to a vote at the UN World Summit in 2005 and unanimously adopted by all members. The 2005 World Summit Outcome Document stated that the UN Security Council would be ready to serve in the name of the international community in the case of severe human rights violations.

Applications and Dilemmas

The responsibility to protect is built on three basic elements, namely the responsibility to prevent, the responsibility to react, and the responsibility to reconstruct. The most controversial part of the doctrine and that which concerns us the most regarding Syria is the responsibility to react involving the use of force. Pursuant to this, if preventive measures do fail, then the international community will take action by assuming responsibility without taking the consent of the state in question. Such action may include sanctions that do not result in the use of force, as required by Article 41 of the UN Charter, as well as involving international prosecution and military intervention under certain criteria. Listing the criteria for mandatory intervention, the fact that the UN General Assembly can enter the foray under a decision for "unity for peace" if the UN Security Council cannot come to any decision due to the mentioned veto has become a contentious issue. The principle of not interfering with the internal affairs of states assured by the UN on the one hand, and the severe violations of human rights in internal conflicts in the post-Cold War era on the other hand, has caused the situation to become more obscure than ever in terms of the international community's position with regards to these crises. The concept of the responsibility to protect has been put forward as a solution to the problem between state sovereignty recognized in the international law and human rights violated as the consequence of non-intervention in internal affairs. In this context, the doctrine of the responsibility to protect which has been put into practice against states that have imposed severe human rights violations but which has not yet become a norm of international law, was first applied against Libya.

In February 2011, Libya also got its share of the Arab Spring effect, which started in 2010 and soon spread across most of the Arab world, and opponents of Muammar Gaddafi started to take action towards ensuring a political regime change. After clashes between pro-Gaddafi and opposition forces, the country soon found itself in the midst of a civil war. Gaddafi's announcement to the opposing forces that he had "started a war against all insurgents" led the UN Security Council to take resolutions no. 1970 and 1973 based on the responsibility to protect. Subsequent to these decisions, the civil war ended upon the intervention of NATO and Gaddafi was shortly killed.

The reason that such rapid results were possible in Libya is that no vetoes were issued against the decision of the UN Security Council to intervene in Libya. The most problematic aspect of the concept of the responsibility to protect is that "the approval of the UN Security Council must be obtained in order to perform an intervention". If any permanent member state in the Council vetoes the decision regarding severe violation of human rights and ethnic cleansing, this will prevent the decision from being taken with regard to the region or the issue in question. This situation not only prevents the intervention from

being carried out, but also causes the severity of the oppression experienced to continue. Even though there are other ways to take the decision to act on the responsibility to protect, member states and the UN General Assembly do not generally include these in their agenda. When taken into consideration in this respect, the responsibility to protect is dependent on the interests of the states in the UN Security Council and should not conflict with the interests of the permanent members. In other words, in addition to preventing serious violations of human rights, decisions are taken by prioritizing state interests. The best example of this situation is that, while a timely intervention was made in the civil war in Libya, due to Russian and Chinese vetoes, no decision has been taken to issue a sanction to stop the civil war in Syria, despite the fact that five years have passed.

The Syrian Civil War and the Failure of the Responsibility to Protect

After five fatal years of civil war in Syria, the conflict still continues with the intensity of violence increasing day by day, endangering almost the entire Middle East. The destructive consequences of the war have affected Syria, as well as the neighboring countries of Iraq, Lebanon, Jordan and Turkey from the beginning. In this context, the principle of the responsibility to protect adopted at the UN World Summit in 2005 has played an important role in the severe massacres that have taken place during the Syrian Civil War and the attitude and approach of the international community towards oppression. Despite the fact that the intervention in Libya by the UN Security Council in 2011 received much criticism, governments, regional organizations and the UN are looking for many ways to approve and implement the responsibility to protect in the case of Syria. But while a resolution to act on the responsibility to protect has been awaited from the UN Security Council, the political divisions within the Council and the interests of different states have fueled new problems that have escalated the Syrian Civil War to a different dimension and will not be solved any time soon. In particular, Russia and China have vetoed decisions to end the civil war in Syria four times. The latest example of this was the draft resolution of May 2014, which brought the plight of the Syrians to the International Criminal Court (ICC). Every decision that has been vetoed causes the severity of the violence in Syria to increase, hence giving way to the flagrant spread of war crimes against humanity.

The best way to assess the Syrian Civil War in the context of the responsibility to protect is to assess the conflict in stages since the beginning of the internal conflict. In this way, it can be clearly seen at which stage severe human rights violations have been committed and when the international community should have stepped in.

The first phase began in March 2011 when a small group of students in the city of Daraa were detained for showing their support for the Arab Spring during its first months. When demonstrators protested their treatment, the Assad regime responded with disproportionate force, and caused protests to spread increasingly throughout the country. Intervention against the demonstrators by Assad's forces killed approximately 850 Syrians by mid-May.

The incidents that developed after the second half of 2011 can be considered the second phase of Syria being driven into the civil war. As of this date, there was a rapid increase in the number of individuals defecting from the Syrian security forces and joining the Free Syrian Army. The Free Syrian Army, which officially announced its foundation in July 2011, mounted a significant defense against the government forces.

With the Siege of Homs in early 2012, the government's offensive brought about the start of the third phase of the conflict. Assad's forces began to organize serious attacks against Homs, which had been identified as the most active center of the opposition. After a large section of Homs, inhabited by approximately 600,000 civilians with different ethnic backgrounds, was taken under the control of the Free Syrian Army, Assad's forces started their successive attacks and shelling of the Baba Amr region. According to research conducted by the Institute for the Study of War

and the Syrian Observatory for Human Rights, Assad's forces did not use their air force in the attacks they made against the insurgents from March 2011- February 2012, the date when the demonstrations started. But with the helicopter attacks that began in June 2012, civilians were exposed to heavy air bombing and in July, nearly 70 helicopter attacks were organized on civilians. With the beginning of the air strikes, the course of the internal conflict changed, as well as the attitude of the international community towards the conflict in Syria. On June 18, a draft resolution was issued at the UN Security Council calling on Syrian President Bashar Assad to resign, but no decision could be taken due to vetoes by Russia and China. Five days after the draft resolution was vetoed, Assad's forces began using fixed-wing aircraft during the attacks, encouraged by the severe human rights violations they had already committed. During the month of August, the regime forces organized more than 110 air strikes, mainly in residential areas, aiming to impose a collective punishment on heavily populated areas and starting a violent bombardment that spared neither schools, hospitals, nor bakeries.

Contrary to the first phase of the conflict, the use of the air force against defenseless civilians after the second half of 2012 was a turning point in causing the outbreak of total civil war. The International Committee of the Red Cross (ICRC) reported that the country had been dragged into a large civil war in May 2012.

In the first months of 2013, the civil war entered its fourth phase by reaching a military deadlock. During this process, while the government made progress with the military and financial support of Iran, Hezbollah and Russia, the opposition forces gained support mostly from the Gulf.

We can define the process since 2013 as the fifth stage. Since 2013, there has been a heavy political conflict in Syria where the primary discourse is sectarian. While the Sunnis, constituting the majority of the country's population, support the opposition forces, the minority Alevis and Christians are taking sides with the regime. The civil war in Syria is now being divided between several military forces with the country hosting many sectarian groups.

While no group has managed to completely dominate the region, the Kurds in the northernmost part of the country consider the ongoing civil war as an opportunity to establish an independent Kurdish state. The Euphrates River Valley, which extends from the southeast to the north of the country, is under the control by many opposing forces. While these forces do fight with the Assad forces on the one hand, they also fight with each other on the other in order to keep the territories they have seized. One of these is Daesh, which has become strong enough to declare the establishment of a state that runs towards the east of Mosul in Iraq with Raqqa as its capital city.

The economic and political disintegration emerging as the result of the civil war has condemned millions to a life of misery. According to a report published on Syria's war economy in April 2014, the human development index in the country has fallen behind that of 37 years ago. In the same report, it was stated that 30 years would have to pass in order for gross domestic product figures to reach those of 2010 again, even if the annual growth rate reaches 5%.

Besides Assad's forces, the opposition forces have also organized attacks that have damaged the medical infrastructure of the country during the war. At least 60% of the hospitals and 38% of the basic health clinics were destroyed or damaged within the period up to 2014.

UN Secretary General Ban Ki-moon described this situation in Syria as literally a proxy war, which means that emphasis has been laid on the fact that on one side there are armed regional players and on the other side there are armed international players. Iran and Hezbollah have taken sides with the regime and hence play an active role in pushing the opposition out of the territories it has seized. In June 2013, due to huge support from Hezbollah, the Assad regime took the city of Al-Qusayr on the Lebanese border back from the opposition forces. The Fall of Al-

Qusayr changed the balance of power and became an important turning point in the course of the civil war. While Iran, Hezbollah and Russia continued to support this regime, Turkey, Qatar, Saudi Arabia and many other countries behind these continued to give support to the opposition forces, in particular to the Free Syrian Army. Even though the regime forces cannot achieve a long-lasting victory, they regained control of many settlements on the Lebanese border and surrounding Aleppo and Damascus during 2013 and 2014.

Severe Human Rights Violations and Mass Crimes

Before the end of 2014, the UN Human Rights Council's Commission of Inquiry (COI) issued nine different reports related to severe human rights violations in Syria. The COI has provided considerable evidence that pro-government forces continue their criminal acts with widespread attacks on the unarmed civilian population, as well as acts of systematic killing, torture, rape and other crimes against humanity. Again in the same report, it is stated that the opposition forces are also involved in acts such as extrajudicial executions, torture and abduction, which are regarded as being in violation of international humanitarian law.

War Crimes and Crimes Against Humanity

- Murder
- Extermination
- Intent to harm
- Torture
- Enforced disappearance of persons
- Deportation
- Forcible transfer of population
- Persecution
- Torture
- Grave forms of sexual violence
- Imprisonment

Assad's forces have attacked the civilian population with weapons prohibited by international humanitarian law such as air crafts, tanks, and heavy artillery to terrorize the opposition forces and any of their supporters. The regime has used this ammunition to punish the civilian population in regions seized by opposition forces, such as Aleppo, Damascus, Daraa, Idlib and Raqqa. According to a report by the Human Rights Watch (HRW), 56 different bombings were organized by the regime between November 2012-September 2013. In addition to all this, air strikes were organized against schools in the territories seized by the opposition forces and in such attacks many pupils of high school age were burnt to death. On February 17, 2013, four ballistic missile attacks were launched on civilians in regions where opposition force supporters were living. According to the official figures, hundreds of people were killed as the result of these attacks, 71 of whom were children. According to the statement made by COI, the massacres and cruelty committed by the regime through the disregard of international humanitarian law are indisputably explicit and all attacks are reported in detail. Between July and October 2013, the regime forces organized intense bombings in many districts, focused mainly on Jabal Al-Zawiya district in Idlib and Sarabil's Kafr Nabl and Maara Al-Numan districts. On July 21, the marketplace in Ariha was bombed and a mass slaughter was committed. One of the massacres that has been documented is the attack on Homs and Idlib, where many civilians were killed. On May 25, 2012, the regime forces wandered from door to door in the village of Houla, north of Homs, killing families with knives and other weapons. According to the UN, 108 people were killed in this massacre, including 34 women and 49 children. The Assad regime protested that the massacre committed here was not without reason, stating its grounds as the extermination of the Sunni people who were supporting the opposition forces. In the COI's report, it is stated that in mid-September 2013, patients undergoing treatment at Mowasat Hospital were found dead in their rooms after an attack by government forces. On October 24, while soldiers of the Free

Syrian Army were accompanying an ambulance carrying wounded civilians and soldiers fighting against the regime outside of Al-Nashabeyah, it was stopped by the government's 22nd Brigade and the wounded were shot dead at close range. Doctors working in Aleppo told the COI that the civilians were being used by the regime forces as shooting targets. The pro-government forces not only targeted civilians supporting the opposition, but also murdered the doctors and medical service providers in the regions under the control of these opposition forces.

According to research conducted by the Physicians for Human Rights, 90% of the 150 attacks on 124 health facilities were organized by regime forces between March 2011-March 2014. More than 460 civilians were killed during these attacks, which lasted until March 2014; 157 of whom were doctors and 94 of whom were nurses. Besides the attacks, the admittance of medical supplies into the regions surrounded by the regime has also been prohibited. This situation constitutes a complete violation of international humanitarian law pursuant to the Fourth Geneva Convention.

The Responsibility to Protect and the UN

The failure to reach a common decision on the Syrian Civil War for five years due to international political divisions has led to irreversible consequences both in Syria and in the region. Not only has the UN Security Council failed to fulfill its basic functions, such as ensuring peace and security, but it has also failed to apply the doctrine of the responsibility to protect for the civilians massacred in Syria.

As noted above, Paragraph 138 and 139 of the 2005 UN World Summit Outcome Document include the "responsibility to protect" and this responsibility has been unanimously adopted by the states. The declaration states that the Security Council is ready to serve in cases where severe human rights violations are in question.

As happened in Libya, the rising crisis in Syria quickly turned into civil war. After the worsening of the situation in Syria in summer 2011, talks of military intervention against Syria began to be brought to the agenda. However, as the results of the ongoing military intervention in Libya were being witnessed, disagreements began to arise between the members of the UN Security Council regarding the imposition of the responsibility to protect and military intervention. While India, Brazil and South Africa, who are not permanent members of the UN and are known collectively as IBSA, wanted to abstain from acting on the responsibility to protect by defending the view that external intervention in Syria might lead a sectarian war to break out in the country, the Security Council was stuck tightly between those that favored the strict application of the responsibility to protect and those favoring the continuance of the Assad regime. In February 2012, while Russia and China vetoed the second draft resolution, 13 members of the Security Council (including India and South Africa) agreed on using international diplomacy and enforcing multilateral sanctions to end the inhumane massacre in Syria.

Despite the disagreements arising in the Security Council, the states began to take action individually and as regional organizations to put their responsibility to protect into practice. The Arab League, the European Union, Turkey, and other states sharing this view have shown an attitude that leaves the regime abandoned in the international arena, reprimanding the Assad regime by official means. Just one year after the beginning of the civil war, by March 2012 more than 49 countries had applied one-way sanctions against Syria, whereas more than 14 countries closed down their embassies in Damascus. Other UN institutions have also taken decisions to impose sanctions pursuant to their share of responsibilities. From 2011 to September 2014, the UN Human Rights Council passed 13 resolutions reprimanding the inhumane massacres being carried out in Syria and established an independent research commission to investigate the human rights violations in Syria.

In 2012, the situation in Syria, defined as a civil war by the ICRC, had reached a point where the international community needed to take certain

measures. The Assad regime's severe human rights violations directed at civilians are a crime against humanity and have come to the point where the responsibility to protect must be applied. The Syrian government is defined as a failed state for having imposed mass punishment on and massacred its people over the five-year course of this civil war. When a failed state fails to fulfill its national responsibility, the international community then has the responsibility to step in. Accordingly, the conflicting parties (the Assad regime and opposition forces) should be called for the provision of a ceasefire. But even though a call for ceasefire was made to the parties, the Annan Plan was put into practice, and the UN Security Council unanimously approved it with resolution no. 2042, the parties did not abide by the rules of the ceasefire. The sanctions imposed by the United States, the European Union and the Arab League against the Assad regime have not been effective either. Following the failure to get any results from these sanctions and the declaration of Syria as a failed state, it is imperative that the responsibility to react be put in place as the second element of the UN's Security Council responsibility to protect, seeing that the Syrian government has failed to fulfill its responsibility to protect its people, violating human rights and severely breaching the rules of international humanitarian law. However, this responsibility has not been implemented for five years due to the fact that China and Russia, among the permanent members of the UN Security Council, have vetoed such decision upon the grounds of territorial interests.

The Latest Situation in the Syrian Civil War

Since March 2011, more than 260,000 people have been slaughtered in the ongoing civil war in Syria. According to the UN Humanitarian Coordination Office, as of February 2016, 4.6 million people have been displaced from Syria as refugees due to the civil war, while at least 6.6 million people have been displaced within the country. There has been no such mass displacement in a civil war in the world until now. Besides this, while more than 13.5 million Syrians are in need of protection and humanitarian aid, 4.5 million Syrians are struggling to survive in regions where no aid can be delivered. The main reason why aid cannot be delivered is that these regions are under siege by the regime forces. The latest figures reveal that 400,000 people live under siege in Syria today.

On November 14, 2015, the International Syrian Support Group (ISSG), including the UN, the European Union, the Arab League and other countries, made a joint decision that the Assad regime and the opposition forces should come together under the UN's surveillance. Following such decision, the ISSG initiated the implementation of UN resolution no. 2254 after a meeting held in Munich from February 11-12, 2016. This draft contained articles regarding the acceleration of humanitarian aid deliveries and the need to end the violence across the country, excluding attacks on Daesh. Despite this, Russian and Assadi bombardments on the Syrian people continued. The USA and Russia signed a bilateral agreement on February 22 resolving to bring the violence to an end. The date on which this agreement would be put into effect was specified as February 27. The Assad regime and the opposition forces also agreed to come to an agreement and reached a consensus that the violence should come to an end. Even though this agreement regarding the termination of violence has been violated many times since March 15, the level of violence in Syria has dropped in general.

In the second report published by the COI on February 22, it was stated that the attacks by ISIS and the Assad regime have continued to constitute "crimes against humanity". Along with the military support from outside, the Assad forces have violated international humanitarian law turning the massacres they have committed into state policy. Again, the COI's report dated February 3 also included those have died/been killed while under arrest or in prison in Syria. It reports that killing, rape, torture, forced detention and other inhumane treatment of persons in prisons and under arrest have been committed. The COI and UN Secretary General emphasized that this issue

should be referred to the UCM. Following this announcement, the Assad regime organized an air strike on the region where civilians resided in violation of UN Security Council Resolution no. 2139, which was enacted on February 22, 2014. According to the Syrian Human Rights Watch, 17,318 barrel bombs were dropped in Syria in 2015 and 2,032 people were slaughtered. Added to this, the Assad regime also violated the draft laws of the UN Security Council no. 2165 and 2191 and prevented the delivery of cross-border humanitarian aid to those in need. After a six-month blockade by the government forces, aid convoys were finally allowed to enter Madaya near the intensely besieged Lebanese border on January 11 and food aid could be delivered to the town with a population of 42,000, making up almost 11% of the population living under siege in Syria. On January 14, the UN Secretary General referred to "the use of hunger as a weapon" as a war crime. It has also been confirmed by the Organization for the Prohibition of Chemical Weapons that the Assad regime has used chemical weapons in the civil war.

Meanwhile, Daesh has increased its effect in the region from day to day and is a direct threat to the people who live there. According to Syrian Human Rights Watch, Daesh executed a total of 3,700 people between June 2015 and December 2015, 2,000 of whom were Syrian citizens. A coalition of nine states has now started air strikes against Daesh since it has increased its influence in Syria. Again according to the Syrian Human Rights Watch, at least 3,547 Daesh militants and 250 civilians were killed during the attacks between September-November 2014.

On September 30, Russia launched attacks on Syria, pointing to Daesh as the target, but it was reported that most of the Russian air strikes were directed on opposition forces and cities inhabited by civilians.

The International Community's Response and UN Security Council's Draft Resolutions

The UN Security Council has not only failed to impose sanctions on the civil war in Syria, but has also failed to fulfill its obligations under the UN Charter. Four draft resolutions issued between 2011 and 2014 were vetoed by Russia and China. Finally, in 2014, the UN Security Council managed to pass draft resolutions no. 2139, 2165 and 2191, aiming to increase humanitarian aid and end the indiscriminate use of weapons prohibited by international humanitarian law.

On December 18, 2015, following the third meeting of the ISSG, the UN Security Council unanimously adopted a road map for peace and adopted draft resolution no. 2254 to end the nationwide conflict. On December 22, 2015, the Security Council passed draft resolution no. 2258 with regard to the issue that all parties involved in the internal conflict would perform their obligations under international humanitarian law. Draft resolutions no. 2254 and 2258 were issued against the Assad regime, which continues to massacre its people rather than fulfill its responsibility to protect them, and it was stated that the primary responsibility of the Syrian government is to protect its people.

On February 26, 2016, the Security Council unanimously adopted draft resolution no. 2268. According to this draft, all parties were requested to fulfill their ceasefire obligations and the parties were requested to allow aid materials to be delivered to people living in the territories under siege.

The UN Human Rights Council condemned the massacres in Syria and adopted the 15 draft resolutions. The last draft, adopted on October 1, regards the fact that all parties should take appropriate steps to protect civilians in Syria. And it is emphasized in this draft that the party primarily responsible for protecting the Syrian people is the Syrian government. As part of the peace plan, Viladimir Putin began to withdraw his military forces from Syria on March 14.

Conclusion

After five years of massacre, the ceasefire decision taken on February 27 and the resumption of talks in Geneva with the forces active in Syria give a slither of uncertain hope for the future of Syria. The two institutions established by the ISSG

have been assigned both to observe the course of the truce in Syria and to inspect whether the humanitarian aid has reached the thousands of Syrians trapped under siege. However, ending the hostility is not yet possible even though a permanent ceasefire has been established. A permanent solution that will bring the war to an end is still far from sight. Enormous diplomatic efforts and a considerable process are required to end the war.

The civil war in Syria has seen all fundamental principles of international law violated and these violations have always gone unpunished. The Syrian government has completely failed to fulfill its obligation regarding the protection of its own people and also committed war crimes against its own people. It has also continued to massacre unarmed civilians, violating all draft UN resolutions passed by the UN Security Council.

Today, the world is acutely aware of the human tragedy that has played out in Syria. However, the Syrian refugees who have escaped the massacres in their country are having difficulty in finding shelters. Many governments have closed their borders to Syrian refugees, ignoring their obligations under the 1951 Refugee Convention.

For five years, the international community, and the UN Security Council in particular, have observed the deepening and worsening of the civil war in Syria. In addition, the Security Council has also failed to fully implement the responsibility to protect, which is one of its major responsibilities.

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