

NOTES & COMMENTS

The Geneva II Peace Talks and the Syrian Conflict: Neglected Legal Elements

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The Syrian conflict consists of political and legal components that can be managed under the UN Charter by both political and legal measures. As a result of Russian and Chinese vetoes, the UN Security Council has failed to resolve the conflict by forcible measures, although the Council was able to convene the Geneva II peace talks between the Syrian government and the Syrian opposition on January 24, 2014. The legal aspect of this conflict has been referred to in numerous reports from UN bodies that have emphasized that war crimes have been committed by the Syrian government. Thus, we believe that the UNSC has an obligation to submit this case to a court with appropriate international jurisdiction for its legal resolution. This legal solution should be part of a compromise that satisfies Russia and China pursuant to a Security Council resolution under Chapter VII of the Charter that accompanies the peace talks.

Keywords

Syrian Conflict, UN Security Council, Geneva II peace talks, Geneva Convention, Crimes against Humanity, HRC, IICISAR, Rome Statute

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DOI: <http://dx.doi.org/10.14330/jeail.2014.7.1.06>

1. Introduction

As with any conflict between a State and rebel groups, the current conflict in Syria consists of both political and legal elements. On the one hand, this conflict may be resolved politically through either force (military resolution) or peaceful methods (peace talks, negotiation and/or mediation) that may be prescribed by the United Nations Security Council (“UNSC”) under the United Nations Charter. On the other hand, a legal resolution can only be determined through measures that accord with the UNSC’s power under both the UN Charter and the Rome Statute of the International Criminal Court [hereinafter Rome Statute or “RSICC”]. These two methods could be invoked, albeit separately, to find a peaceful resolution to the Syrian conflict.

When the UNSC proposed the convening of the Geneva II peace talks between the Syrian government and the Syrian opposition, it considered these approaches under the Charter as possibilities to end the conflict. However, when the first session began on January 24, 2014, the topic of discussion was mainly political; in fact, the key legal component of this conflict was not included in the agenda.

The double-pronged objective of this article is to shape the tangible legal component of this conflict and to persuade the parties to the Geneva II peace talks to pay appropriate attention to such legal component in the future. This article consists of six parts, including Introduction. Part two will critically evaluate the effectiveness of the political methods (including forcible measures) that have been undertaken by the UN bodies and the UNSC in attempting to manage the conflict. Part three will discuss the UNSC’s peaceful measures for defining the legal nature of the Syrian conflict and its fact-finding missions. Part four will analyze the violation of legal rules governing the rights and obligations of the parties to the conflict. Part five will touch upon crimes committed during the conflict under RSICC. Finally, Part six will suggest a potential legal remedy to the conflict.

2. The Evolution of the Syrian Crisis and UN Political Measures

The Syrian conflict began with peaceful protests demanding the democratization of