

An Important Absence in the Syria War Crimes Accountability Act of 2017

by Kevin Jon Heller

On Monday, my friend Beth van Schaack posted [an excellent analysis](#) at *Just Security* of the **Syria War Crimes Accountability Act of 2017**, a bipartisan Senate bill “[t]o require a report on, and to authorize technical assistance for, accountability for war crimes, crimes against humanity, and genocide in Syria.” Beth summarises the most important aspects of the bill; in this post I want to focus on Section 7, which authorises US technical assistance to certain non-US accountability mechanisms. The most important paragraph in Section 7 is this one (emphasis mine):

*(a) IN GENERAL.—The Secretary of State (acting through appropriate officials and offices, which may include the Office of Global Criminal Justice), after consultation with the Department of Justice and other appropriate Federal agencies, is authorized to provide appropriate assistance to support entities that, with respect to war crimes, crimes against humanity, and genocide perpetrated by **the regime of President Bashar al-Assad, all forces fighting on its behalf, and violent extremist groups in Syria** beginning in March 2011—*

(1) identify suspected perpetrators of war crimes, crimes against humanity, and genocide; (2) collect, document, and protect evidence of crimes and preserve the chain of custody for such evidence; (3) conduct criminal investigations; (4) build Syria’s investigative and judicial capacities and support prosecutions in the domestic courts of Syria, provided that President Bashar al Assad is no longer in power; (5) support investigations by third-party states, as appropriate; or (6) protect witnesses that may be helpful to prosecutions or other transitional justice mechanisms.

There a very interesting — and potentially very important — absence in Section 7(a). As the bolded text indicates, the paragraph only authorises the US to provide technical assistance to entities that are investigating international crimes committed by pro-Assad forces and “violent extremist groups.” Note what is missing from that construction: *Syrian rebel groups*. The bill does *not* permit the US to support any entity investigating war crimes, crimes against humanity, and acts of genocide committed by rebels.

Lest anyone think I am reading Section 7(a) too narrowly, consider the wording of Section 3(1), which summarises acts that the US “strongly condemns” (emphasis mine):

*(A) the ongoing violence, use of chemical weapons, targeting of civilian populations with barrel, incendiary, and cluster bombs and SCUD missiles, and systematic gross human rights violations carried out by the Government of Syria and pro-government forces under the direction of President Bashar al-Assad; and (B) all abuses committed by **violent extremist groups and other combatants involved in the civil war in Syria.***

It is difficult to see who “other combatants involved in the civil war in Syria” might be if they are not rebels. Indeed, Section 5(a), which requires the Secretary of State to submit a report on international crimes to Congress, *explicitly* distinguishes between “violent extremist groups” and rebel groups (emphasis mine):

*(b) ELEMENTS.—The reports required under subsection (a) shall include— (1) a description of alleged war crimes, crimes against humanity, and genocide perpetrated during the civil war in Syria, including— (A) incidents that may constitute war crimes, crimes against humanity, or genocide committed by the regime of President Bashar al-Assad and all forces fighting on its behalf; (B) incidents that may constitute war crimes, crimes against humanity, or genocide committed by **violent extremist groups, anti-government forces, and any other combatants in the conflict.***

In light of Section 5(a), it is clear that Section 7(a) does not authorise the US to support an entity that is investigating international crimes committed by rebels.

That said, the bill is unclear in one important respect: whether the US can support an entity that investigates international crimes committed by *both* pro-Assad forces and rebel groups. On a literal reading of Section 7(a), the answer would seem to be no. But the sponsors of the bill might disagree. Journalists?

I agree with Beth that the Syria War Crimes Accountability Act of 2017 is an important step forward for accountability in Syria. Unfortunately, it also reflects the US’s tendency to take international crimes committed by rebel groups much less

seriously than those committed by Assad's forces and by ISIS.

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4 Responses

Many thanks to Beth for her excellent analysis and to you Kevin for drawing further attention to this. While your narrower interpretation is one of possible reasonable interpretations, I read the language more broadly to include non-(pro) Assad forces. I don't think "anti-government forces" and "violent extremist groups" are mutually exclusive and a particular actor could fall under both headings. Granted, the language could be more straight forward to capture all perpetrators of crimes. But I image the desire to highlight "extremist" is more a node to political discourse in the US than anything else. An investigator in State or GCJ could read the mandate broadly to collect information (or provide technical assistance in collecting information) on Syrian rebels and other groups, if the political will is there.

4.13.2017

at 1:23 am EST

Shahram Dana

I fail to see how "violent extremist groups" can include "anti-government forces" when the bill specifically distinguishes between the two in one of its key sections (and implies there is a difference in another section). No canon of statutory interpretation I know would allow such a reading.

4.13.2017

at 2:40 pm EST

Kevin Jon Heller

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