

Monserrat Abad Castelos: *¿Es posible combatir el terrorismo yihadista a través de la justicia? El retorno de los combatientes del Estado Islámico tras sus crímenes* (Bosch, Barcelona, 2019).

Professor Montserrat Abad Castelos (Carlos III University of Madrid) has dedicated her monographic studies to very different and diverse topics of public international law, from the precautionary protection of the rights of States by the ICJ in 2002, to NGOs and civil society in 2004 or the marine renewable energy in 2013. Nevertheless, the study of international terrorism has been present among her research topics since the beginning of her already long university career. It must be stressed that she is the author of one of the first monographs on terrorism published in Spain from the perspective of public international law (*La toma de rehenes como manifestación del terrorismo internacional y el Derecho internacional*, Madrid, 1997), the result of research that, under the direction of Professor Manuel Pérez González, her mentor, earned her the Ph.D in Law degree.

The book I review is the product, therefore, of a research background of more than 20 years of Professor Abad Castelos, in which terrorism has been very present. It is enough to mention her contribution “Terrorism, international humanitarian law and current armed conflicts to the *Cursos de Derecho Internacional y Relaciones Internacionales de Vitoria-Gasteiz* in 2009 or to her collaborations in the books *Terrorismo y legalidad internacional*, directed by Professor Elena Conde Pérez and coordinated by Professor Sara Iglesias Sánchez, and *Lucha contra el terrorismo, Derecho Internacional Humanitario y Derecho penal internacional*, directed by Professor Manuel Pérez González and coordinated by Professor Elena Conde Pérez, both published in 2012. But this book is more than the result of her past and present research on international terrorism. Truly, the essential purpose of the book is the difficulties, inconsistencies and legal loopholes to avoid impunity for foreign terrorist fighters enlisted in the Islamic State (Da’esh), not so much for the crime of terrorism, but for the commission of the “atrocities crimes” (genocide, crimes against humanity and war crimes). More specifically, the object of study is those difficulties, inconsistencies and loopholes to avoid the impunity of foreign terrorist fighters for the commission of those crimes in Iraq.

Thus, appealing to perfectly understandable reasons, the author defines the object of study of the monograph according to three criteria. First, she is especially interested in the commission of the “atrocities crimes”, and not so others, such as terrorism. The atrocity, brutality or transcendence of those crimes is the main reason. It should be noted that, in one way or another, those crimes had previously been the object of the investigations of Professor Abad Castelos, for example, in publications from 1995-1996, 1998, 1999 or 2011. Second, she focusses the commission of such crimes in Iraq, not in Syria. Her starting point is the scenario post-conflict, that is, after the termination of the non-international

armed conflict(s) that took place in Iraq between mid-2014 and the end of 2017, and she takes for granted that the “atrocities crimes” have been committed (including genocide against the Yazidi minority, including perhaps against Christians and Shia Muslims). This limitation is justified by the consolidation of the termination of the conflict in Iraq and the fact that trials are taking place there, on the one hand, and, on the other, by the territorial scope of the mandate of the Investigative Team provided in the resolution 2379 (2017) of the Security Council. The author is aware, however, that many of the analysis can be transferred to the (more abundant) “atrocities crimes” committed by foreign terrorist fighters in Syria. In fact, allusions to Syria appear repeatedly throughout the book. But it is a reasoned choice. And, thirdly, the object of study is limited to the commission of crimes by foreign terrorist fighters, and not by other members of the Islamic State (Da’esh) or, in general, by other parties to the conflict. States seems to apply once more the victor’s justice... However, albeit tangentially, the Iraqi reaction to serious violations of IHRL and IHL committed by the other parties to the conflict is addressed. It must also be noted that, though the book deals with issues that properly affect returned foreign terrorist fighters or, in general, those who have left Iraq (for example, their persecution in third States’ national jurisdictions), the object of study is not limited to returned foreign terrorist fighters.

Bearing in mind the contents, that is, the questions and the answers to those questions contained in the book, I must review their correspondence with the title and subtitle of the book. I know that these are not random choice of the author and the editor. It should be noted, however, that neither one (Is It Possible to Combat Jihadist Terrorism Through Justice?) nor the other (The Return of the Fighters of the Islamic State After Their Crimes) are completely consistent with that essential object of the investigation. This despite the fact that the author herself refers to the multiple meanings of “justice”, other than the prosecution of foreign terrorist fighters, which are present in many contents of the book (for example, the issue of transitional justice in Iraq, the causes of terrorism or the role of equity as a fundamental ingredient in confronting jihadism). Interestingly, the author indicates that, if the book had an additional subtitle, it could be expressed by stating the essential object of the investigation aforementioned: Difficulties, Inconsistencies and Legal Loopholes to Avoid Impunity... (pp. 37-38).

The contents of the monograph are preceded by some Previous Words by the author and a Foreword by Mr. Enrique Mora Benavente, Director General of Foreign and Security Policy of the Spanish Ministry of Foreign Affairs, European Union and Cooperation. It does seem that a list of abbreviations is not necessary. In her Previous Words, among other things, the author reveals that, on the one hand, the monograph has been conceived and elaborated during a research visit at the Center for European Law and Internationalisation of the Law School of the University of Leicester which perhaps explains that, instead of some scattered references, Spain's response to the problem of foreign (and Spanish nationals) terrorist fighters is not specifically addressed and, on the

other, that it was part of her exercises in the competition to become a full Professor of Public International Law at the Carlos III University of Madrid.

After an Introduction, the contents of the book are structured in two Parts, followed by an Epilogue and the Conclusions. The bibliography and other sources of knowledge cited and included in the Annex (pp. 327-397) account for the scientific rigor and seriousness of the research. In the First Part (The scenarios and the actors), the following topics are addressed in different chapters: some relevant coordinates for the future of the country and its geopolitical environment; the Islamic State, the barbarism of its crimes in Iraq and the absence of adequate bases to ensure transitional justice; the foreign terrorist fighters, with special emphasis on Security Council resolutions 2178 (2014) and 2396 (2017) and Madrid Guiding Principles (2015/2018), particularly on the specific issue of women and children, which Professor Abad Castelos had already dealt with in 2011 and 2012; and the Investigative Team and its Terms of Reference.

In the Second Part (In the Labyrinth of Criminal Justice), an essential part of the investigation, the author addresses the difficulties in prosecuting foreign terrorist fighters for the commission of “atrocities crimes” in three chapters. First, in Iraq, where the “atrocities crimes” are not established as criminal offences, and there are problems with the situation in prisons, the guarantee of a fair trial and the validity of the death penalty. Then prosecution at the international level, encounters the (so far) lack of “objective” jurisdiction of the ICC and the inexistence of other competent international or hybrid criminal court. Finally, the prosecution in national jurisdictions other than the jurisdiction of Iraq meets with the option between alienation (non-return or non-repatriation), prosecution, rehabilitation or reintegration of foreign terrorist fighters. The third States are not always willing or able to exercise jurisdiction over their nationals and, even less, the universal jurisdiction, whose problems had already been studied by Professor Abad Castelos, particularly between 2012 and 2014. In the worst case, as the author rightly highlights, this lack of disposition manifests itself in targeted killings against foreign terrorist fighters.

Together with the analysis of these difficulties, Professor Abad Castelos openly completes in the Epilogue the essential object of the investigation, that is, addresses the inconsistencies of States facing foreign terrorist fighters and the loopholes to avoid impunity for foreign terrorist fighters enlisted in the Islamic State (Da’esh).

Among the conclusions, perhaps the most evident are that difficulties and inconsistencies are twofold based: on the relative preference for prevention (of terrorism and threats caused by terrorist acts, including those perpetrated by foreign terrorist fighters, and by the return of the foreign terrorist fighters in itself) over the repression (of “atrocities crimes”) and the reparation of the victims; and, as usual, on the determining character of the political will of the States. I would dare to underline another conclusions: the possibility of taking advantage of the revision provided in resolution 2379; the duty of States to request the extradition of their national (foreign) terrorist fighters; the novel

aspects related to the evidences of the commission of “atrocities crimes”; the aspects of the object of study on which it should be further investigated in the future; and the complex, heterogeneous, interconnected and global nature of the problems that are behind, and that has raised, the emergence of the Islamic State (Da’esh), beginning with the invasion of Iraq in 2003 (reviewer’s note: the aggression against Iraq). In the words of Professor Abad Castelos, “it is about meditating on the future we want for society” (p. 321).

Outstanding book, in short, that must be added to the debit of the Spanish public university, which has in its credit undoubtedly many serious problems, but also teachers, researchers and managers such as Professor Abad Castelos who are counterpoint and source of inspiration for overcoming those problems.

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