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## **“Establishing a Syrian War Crimes Tribunal?”**

*Excerpts of Remarks by Chairman Chris Smith  
Subcommittee on Africa, Global Health, Global Human Rights, and Int'l Orgs.  
2172 Rayburn HOB  
October 30, 2013*

Good afternoon. The two-year-old Syrian civil war has produced increasingly horrific human rights violations, including summary executions, torture and rape. Most recently, both government and rebel forces have targeted medical and humanitarian aid personnel. Snipers are reportedly targeting pregnant women and children. Since the Syrian civil war began, more than 100,000 people have been killed and nearly seven million people have been forced to leave their homes. By December of this year, it is estimated that neighboring countries such as Turkey, Lebanon and Iraq could see as many as 3.5 million Syrian refugees.

Those who have perpetrated human rights violations among the Syrian government, the rebels and the foreign fighters on both sides of this conflict must be shown that their actions will have serious consequences.

H. Con. Res. 51, introduced on September 9<sup>th</sup>, calls for the creation of an international tribunal that would be more flexible and more efficient than the International Criminal Court to ensure accountability for human rights violations committed by all sides. This hearing will examine the diplomatic, political, legal and logistical issues necessary for the establishment of such a court. Today's hearing will examine controversial issues such as sovereignty, the ICC versus ad hoc regional tribunals and the sponsorship of such a tribunal.

Perhaps the most famous war crimes tribunals were the Nuremburg and Tokyo trials – the post-World War II trials of Axis military officers and government functionaries responsible for almost unimaginable crimes against humanity. The Cold War rivalry between the United States and the former Soviet Union prevented the international cooperation necessary for war crimes tribunals to be convened by the United Nations. After the end of that international political conflict, there have been three particularly notable international tribunals to hold accountable those guilty of genocide or crimes against humanity: in the former Yugoslavia, in Rwanda and in Sierra Leone.

Each of these tribunals has achieved a level of success that has escaped the International Criminal Court. The Yugoslavia tribunal has won 69 convictions, the Rwanda tribunal has won 47 convictions and the Sierra Leone tribunal has won 16 convictions. Meanwhile, the ICC – costing about \$140 million annually – has thus far seen only one conviction.

The ICC process is distant and has no local ownership of its justice process. It is less flexible than an ad hoc tribunal, which can be designed to fit the situation. The ICC requires a referral. In the case of the President and Deputy President of Kenya, it was Kenya itself that facilitated the referral. That is highly unlikely in the case of Syria. Russia in the UN Security Council would likely oppose any referral of the Syria matter to the ICC, but might be convinced to support an ad hoc proceeding that focuses on war crimes by the government and rebels – one that allows for plea bargaining for witnesses and other legal negotiations to enable such a court to successfully punish at least some of the direct perpetrators of increasingly horrific crimes. And Syria, like the United States, never ratified the Rome Statute that created the ICC, which raises legitimate concerns about sovereignty with implications for our country which this panel will also address.

There are issues that must be addressed for any Syria war crimes tribunal to be created and to operate successfully. There must be sustained international will for it to happen in a meaningful way. An agreed-upon system of law must be the basis for proceedings. An agreed-upon structure, a funding mechanism and a location for the proceedings must be found. There must be a determination on which and how many targets of justice will be pursued. A timetable and time span of such a tribunal must be devised. And there are even more issues that must be settled before such an ad hoc tribunal can exist.

David Crane, one of today's witnesses, has suggested five potential mechanisms for a Syrian war crimes tribunal:

- 1) An ad hoc court created by the United Nations.
- 2) A regional court authorized by a treaty with a regional body.
- 3) An internationalized domestic court.
- 4) A domestic court comprised by Syrian nationals within a Syrian justice system.
- 5) The ICC.

Each of these first four models have some benefits – some more than others. The ICC can be ruled out, and a domestic court in the near future seems highly unlikely. However, we are not here today to decide which of these models will be chosen. Rather, our objective in this hearing is to promote the concept of a Syria War Crimes Tribunal whatever form it eventually takes.

Again, those who are even now perpetrating crimes against humanity must be told that their crimes will not continue with impunity. Syria has been called the world's worst humanitarian crisis. According to the World Health Organization, an epidemic of polio has broken out in northern Syria because of declining vaccination rates. One might reasonably also consider it the worst human rights crisis in the world today. Therefore, the international community owes it to the people of Syria and their neighbors to do all we can to bring to a halt the actions creating these crises for Syria and the region.

We have assembled a distinguished panel to discuss the pros and cons of creating and sustaining a Syrian war crimes tribunal. This is not an academic exercise. We must understand the difficulties of making accountability for war crimes in Syria a reality. Therefore, we must understand the challenges involved so that we can meet and overcome them and give hope to the terrorized people of Syria. Their suffering must end, and the beginning of that end could come through the results of today's proceeding.