

**Subcommittee on Africa, Global Health, Global  
Human Rights, and International Organizations**

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***The ISIS Genocide Declaration: What Next?***

**Introduction**

I want to thank this Subcommittee, its Staff, and in particular it's Chairman for the decade's long fight against the atrocities committed by state and non-state actors around the world.

I have been working with this Subcommittee since 2002 in that effort. It began while I was Chief Prosecutor of the international war crimes tribunal in West Africa called the Special Court for Sierra Leone. Over a period of three years, with the important bi-partisan support of this Subcommittee and the Foreign Affairs Committee, we were able to break up the blood diamond conspiracy; take down the most powerful warlord in Africa, President Charles Taylor; and build and manage an efficient justice mechanism that brought accountability to millions of victims there in West Africa.

I have been working on the tragedy of Syria and the Levant since the very beginning. In March 2011 I met with the Syrian National Congress to advise and to help them consider various justice mechanisms to hold those who committed atrocity in Syria. Through the Syrian Accountability Project at Syracuse University College of Law, which I founded, over the past five- plus years we have built a trial package that a domestic, regional or international prosecutor can consider in developing a case against all parties committing atrocity in the Levant. That package includes a conflict map, a crime base matrix, and other associated documents to include sample indictments. I used this very same technique in successfully prosecuting President Charles Taylor and his henchmen in West Africa.

Additionally, I came face to face with the beast of impunity in Syria when I investigated alleged torture of detainees as co-author of the Caesar Report which the House Foreign Affairs Committee held a hearing about a year or so ago.

We are in an age of extremes with adversaries never contemplated facing challenges that are most likely not solvable. The 21<sup>st</sup> Century is shaping up to be no better than the bloody 20<sup>th</sup> century where over 225 million people died of non-natural causes, over 100 million at the hands of their own governments. In the 21<sup>st</sup> Century conflict will be kaleidoscopic and dirty with one or all sides ignoring international law. Our current planning and preparation cycle makes us incapable of dealing with these kaleidoscopic events.

Despite this, we have seen the evolution of modern international criminal law which has now given us the practical and legal capability of holding dictators, thugs, and their henchmen accountable for atrocity, if there is a political will to do so. If there is that political will, we have the experience now to prosecute those who feed on their own peoples.

I will briefly answer the question--The ISIS Genocide Declaration: What Next? By briefly outlining the atrocities to date in the Levant, then focusing on the crimes there and committed by ISIS, followed by an answer to the extant question and then concluding with a few key "takeaways".

### **Atrocity in the Levant**

Over 300,000 persons have been killed since 2011. Over 10 million refugees move about the region with no homes or future.

There is a complete breakdown of the rule of law and accountability. The laws of armed conflict are ignored resulting in mounting civilian casualties.

There is an increased use of banned weapons systems such as barrel bombs and chemical weapons, along with the increase in various torture and execution methods not seen since the Dark Ages.

### **The International Crimes Being Committed by ISIS**

#### *War Crimes*

There is a body of international law and norms that protect those persons found on the battlefield and govern the types of weapons systems and how they are used through the principles of military necessity, proportionality, discrimination/distinction, and unnecessary suffering. A violation of these norms found mainly in the Geneva Conventions and The Hague Rules constitutes a war crime.

#### *Crimes against Humanity*

A catch-all category, a crime against humanity is a widespread and/or systematic attack on a civilian population usually by a government or an organized rebel group. No conflict is needed for a crime against humanity to happen.

#### *Genocide?*

The crime of genocide, enshrined in the Genocide Convention, is a specific criminal intent to destroy in whole or in part a peoples. This can be done through various means to include the destruction of the populace, their culture, religion, their art, literature, even their language.

Genocide is difficult to prove because of this specific intent. One almost needs a “smoking gun”. Should there be a genocide the convention requires signatories to act to stop the crimes and to prosecute. This rarely happens in modern times.

It is not entirely clear at this time whether there is genocide in the Levant. Though it appears that genocide has begun it will take a proper investigation by a future court of tribunal to legally establish that case.

### **What is next?**

First there must come a realization that the ISIS phenomenon is a decade’s long challenge. At this time we do not have a solution for this challenge. Until we do have a realistic and practical solution we must understand that we may not be able to restore international peace and security only manage some sense of security in the Levant. The conflict there truly is kaleidoscopic where if one thing changes everything changes. We cannot predict or plan for what happens next.

The cornerstone to a possible beginning of a solution is Arab resolve and cooperation. However, this may not be possible given political realities. The West cannot be seen as an interloper, only as a patient enabler and facilitator. We can’t be seen as launching the seventh crusade so to speak.

Over the next several years we must contain the ISIS threat regionally, stamp out ISIS attempts to further their cause elsewhere, and focus on achievable programs in the region, locally, and domestically. A young man or woman who has a job and some hope for a better future is less likely to turn to terror and to ISIS.

Essentially what I am saying is that we cannot defeat ISIS using kinetic energy alone. In reality it can only be done through economic revitalization...almost a Marshall Plan for the Middle East. A regional office managed by the International Monetary Fund (and the World Bank) could be the center point for this.

Additionally, we can take realistic steps to start an accountability mechanism for the region, particularly as it relates to ISIS atrocity. IF we have the political will we can establish:

A Truth Commission.

A domestic court or an internationalized domestic court.

A hybrid regional court.

These mechanisms can be headquartered in Iraq, Turkey, or Jordan supported by members of the Arab League. The international community could assist and train commission or court personnel as requested and needed. The ideal is having Arab states, prosecuting Arabs, for crimes against Arab peoples, in violation of Arab laws.

## **Conclusions**

The Levant is an unmanageable space. International peace and security cannot be restored using today's outmoded problem solving techniques, thus there are no foreseeable political or military solutions. This is a multifaceted and decade's long struggle. It truly is kaleidoscopic.

Our next steps should be to continue to try and contain ISIS. On the periphery create achievable regional and domestic programs. Consider that Marshall Plan!

Let's take away the reason for ISIS to be...no hope in the future. We have and can offer a better alternative—freedom and jobs plan.

It is within the realm of possibility to develop justice mechanisms outside the UN Security Council realm. The focus should be using regional and domestic arrangements to create these mechanisms.

We must not be discouraged. We must be patient and firm in our resolve for accountability, stability, and peace. A little over ten years ago, President Charles Taylor never thought he would be held accountable for his crimes in West Africa, but today he sits in a maximum security prison in Great Britain for the rest of his life paying the price for aiding and abetting the murder, rape, maiming, and murder of over 1.2 million people. We can hold ISIS accountable for their crimes and begin to establish some sense of peace in the Levant. Thank you Mr. Chairman for this time. I stand ready to answer any questions.