

Testimony of
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Before the
United States House of Representatives
Subcommittee on Africa, Global Health, Global Human Rights and
International Organizations

October 30, 2013

The civil war in Syria has now entered its third year. Started initially by, of all things, children protesting in Daara, the protests blossomed into full scale civil war the following month. A part of the so-called "Arab Spring", the unrest in Syria has now turned ugly. The conflict has become personal and with that the brutality by all sides against combatants and civilians caught up in the melee has intensified. This was no more so than on August 21, 2013 when the regime of President Bashir Assad launched sarin gas projectiles into a suburb of his own capital, Damascus. The results were horrific. Almost 1500 people perished, hundreds of them children. For the third time in 30 or so years chemical weapons were used in the Middle East in violation of international law, clearly a war crime.

Mankind is better than this. Over the past 20 years the international community, in most instances led by the United States, has developed what I call the modern international criminal law system. Through trial and in some cases error, mankind has finally resolved to punish dictators, tyrants, and thugs who murder, rape, maim, and mutilate their own citizens. The two ad-hoc tribunals for Yugoslavia and Rwanda, the hybrid courts to include Sierra Leone and Cambodia have created the proper procedures, evidentiary rules, and the jurisprudence to deal with heads of state who kill and destroy. We have made great strides, but we are only at the beginning of a beginning.

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As the world's only permanent court, the International Criminal Court, tries to find its place in this evolution, we have come to realize that the future of modern international criminal law is not with the ICC but with domestic legal systems. This was even contemplated and called for in the Rome statute that created the ICC. It must be noted here that the ICC was designed to be a court of last resort, not one of first instance, therefore it is incumbent on the states-parties themselves to prosecute those who commit war crimes, crimes against humanity, or genocide if they are willing or able to do so.

We can prosecute heads of state for international crimes. The law now provides for this and we have done it once before in the likes of Charles Taylor, the now former President of Liberia a convicted international criminal whom I indicted in March of 2003. So how do we do this in Syria?

Allow me to digress and to brief this committee on efforts to date to build a case against Bashir Al Assad and his henchmen as well as the Syrian Resistance. Shortly after the Syrian unrest evolved into a civil war, Syrians and others began to discuss transitional justice mechanisms to hold accountable the Assad regime and over time, members of the resistance who violated both international and domestic law. Governmental and nongovernmental organizations began work on documenting and cataloging the atrocities committed in Syria. Human rights groups within Syria itself began to report and to feed key data to these organizations. Of note, the Syrian Human Rights Network has been a key source of information and they are to be commended for their dedication and bravery.

It soon became apparent that these organizations were at times working at cross purposes or were unaware of the work of other groups. Data was being collected in multiple systems unknown to the other. In the early days of all this, the Syrian resistance struggled, and still struggles, with a viable organizational structure from which to govern. This hampered human rights organizations who attempted to develop methodologies to assist the resistance in developing a justice mechanism should the conflict end favorably for them. Coordination became essential.

Over time the major organizations came together and meet twice a month to brief one another on their work, discuss areas of mutual support, and highlight upcoming training, conferences, and meetings. The Syrian

Accountability Project of which I founded and now chair, has become an umbrella organization in which all of these efforts are coordinated, pending perhaps the formal creation of a single data entry point.

Not only has an enormous amount of raw open source data and information been collected, the Syrian Accountability Project has taken that data and built a framework by which President Assad and his henchmen along with members of the opposition can be prosecuted openly and fairly either internationally, regionally, or domestically. Now into its third phase the project has mapped the entire civil war, developed a crime base matrix which catalogs most of the incidents chronologically and highlights the violations of the Rome Statute, the Geneva Conventions, as well as domestic Syrian criminal law. There even have been indictments drafted as templates for a future international or domestic prosecutor to consider. We have given the first two phases to the Prosecutor of the ICC, the United Nations, the US Department of State, and the Syrian resistance leadership. The methodology above has worked before as it was that methodology that I developed against a sitting head of state, Charles Taylor, President of Liberia back in 2003.

There are five possibilities for a justice mechanism in Syria. I will take them one at a time and review their strengths and weaknesses. I will then, Mr. Chairman, give you my recommendation and then take questions.

The first mechanism, the International Criminal Court. As the world's permanent international tribunal the so-called ICC was set up in Rome in the late 1990's to prosecute violations of the gravest of crimes. Under the principle of complementarity member states are encouraged to prosecute their own, the ICC being a court of last resort or if and when that member state is unwilling or unable to prosecute. The track record over the first decade of the ICC is spotty and questionable at best. It lacks the capability and the political and diplomatic sophistication to handle such a mandate. Coupled with the challenge of gaining jurisdiction over the atrocities the reality is that the ICC is not just up to the task. It can barely handle its current caseload and investigations.

A second option, an adhoc court created by the United Nations. There have been two adhoc tribunals, one for the Balkans the other for Rwanda. Each approaching their second decade, these tribunals have brought some justice and accountability to the victims of those atrocities, but at a huge

financial cost. Inherently inefficient and hampered by unrealistic mandates, location, and the byzantine personnel rules of the United Nations, adhoc are creatures of the past, politically unacceptable as a viable justice mechanism and model for future prosecutions. As an aside, the creation of such a mechanism would require UN Security Council approval under Chapter 7 of the UN Charter and that is unlikely given the position of Russia on Syria. In the end Russia or even China would veto any resolution creating such an adhoc tribunal.

A third option for justice is a regional court. A possible solution might be a regional court, a hybrid, fashioned along the lines of the Special Court for Sierra Leone where I was its founding Chief Prosecutor. Located at or near the scene of the crimes in Syria, such a model would be a visible mechanism for justice to the victims of the Syrian Civil War. Its mandate would be to prosecute those who bore the greatest responsibility for the war crimes and crimes against humanity perpetrated during that civil war on both sides. The effort could or would be an option backed by the Arab League with Arab jurists supplemented by Syrian jurists. It must be noted, Western assistance in any one of these options would be viewed skeptically in my view. *Arabs trying Arabs, Muslims trying Muslims or Syrians trying Syrians is the preferred option.* It must be noted, this tribunal would require some form of international sanction in the form of a Security Council resolution.

The fourth option is an internationalized domestic court. Similar to a hybrid regional court, an internationalized domestic court would be a Syrian chamber set up exclusively within the Syrian criminal system and supported by international personnel where needed. Again it would be mainly Arab personnel. This court might not need international sanction, but only region sanction.

And finally, a domestic court system. *This is the preferred option.* Let the Syrian people try those who committed violations of Syrian law. They do have the capacity to do this if given the leeway and time to settle into a sustainable piece. Justice and accountability are important, but first Syria needs to transition into a sustainable peace before viable accountability can be achieved, but I must reiterate this can be done.

Having been in this business of facing down impunity and tyranny for almost 40 years, and having taken down a sitting head of state under the

rule of law it is my considered opinion that an extraordinary chamber within the Syrian domestic court system is what the international community must support. Again, let the Syrians try Syrians under Syrian law for what Syrians have done to each other. We must ask ourselves, is the justice we seek the justice they want. Modern international criminal law is essentially western justice, a justice that does not take into account unique and important cultural and historical dynamics that only Syrian law can deliver. The other alternatives carry the weight discussed above and could be viable but are overwhelmed by the practical, political, and diplomatic hurdles each presents.

At the end of the day it is for and about the victims. The Syrian people want vengeance, retribution, and justice. We have to consider this and note and respect their views. If they, the people of Syria, the victims, feel justice was not served than getting them to resort to the rule of law in the future rather than the rule of the gun will be difficult and the efforts of this committee, the US, the international community writ large will have been to no avail.

I thank the Chairman for this time and stand ready for your questions.

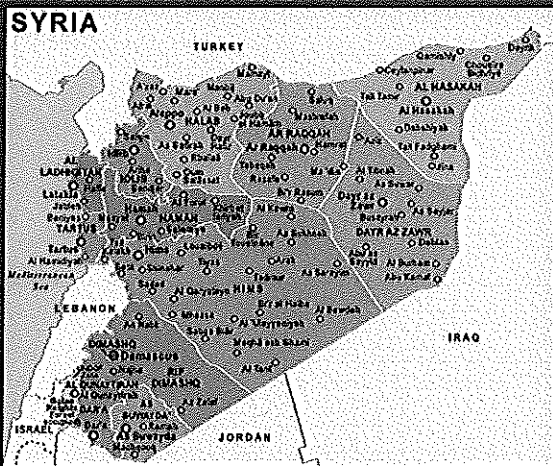
**NOTE THERE IS AN APPENDIX TO THIS TESTIMONY RELATED TO
THE SYRIAN ACCOUNTABILITY PROJECT.**



SYRIAN ACCOUNTABILITY PROJECT

Syracuse University College of Law

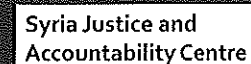
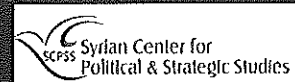
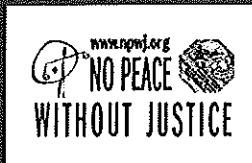
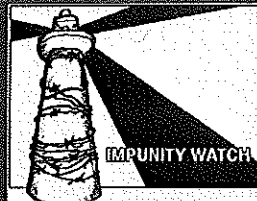
What is the Syrian Accountability Project ?



- Started at Syracuse University College of Law in 2011, The Syrian Accountability Project (SAP) is a cooperative effort between activists, Non-Governmental Organizations, students, and other interested parties to document war crimes and crimes against humanity in the context of the Syrian Crisis.
- Now in its third Phase, the project aims to produce impartial, high quality analysis of open source materials and to catalogue that information relative to applicable bodies of law; including the Geneva Conventions, the Rome Statute, and Syrian Penal Law.

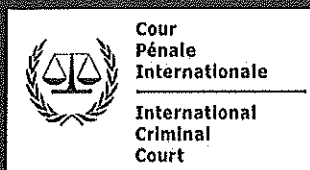
Who are SAP's Partners?

- SAP has recently been re-designated as a "special project" under the Umbrella of the Law Journal "Impunity Watch" (IW) at Syracuse University College of Law. This will enable the project to continue as long as necessary, and when it is finished, IW's good stewardship of our documents will ensure that Syracuse retains a strong Conflict Mapping capacity for the future.
- Additionally, as a member of the International Working Group on Syria, SAP works very closely with the organizations listed to the right.



Who are SAP's Clients?

- Since the primary objective of SAP is to help secure justice for the Syrian people by providing data or use by a future justice mechanism for Syria, our clients and consumers are primarily like-minded Government and International Organizations.
- SAP has worked closely with the Syrian National Coalition and other activist organizations to ensure that our approach is consistent with distinctly Syrian notions of justice.
- The organizations to the right are our primary clients.



Objectives of the Syrian Accountability Project

- **Impartial documentation:**

To provide the best open-source picture of the Syrian Conflict available by compiling and analyzing all relevant source material from an impartial stance and presenting data in a way which contributes to the reader's understanding of both daily events and the conflict as a whole.

- **Representational charging:**

To assist a future prosecution team in obtaining justice for the victims of the Syrian Conflict by providing resources that assist in the work of *representational charging*. While it is impossible to charge every crime that has been committed in a conflict this size, through representational charging we can ensure that each type of offense committed in each region is at least represented proportionally in the ultimate indictments. In so doing, we hope the Syrian people will be left with a sense that, even if every offense could not be charged, justice was still served through the scope of the indictments.

Work Product

- The project organizes its work product in two main documents:
 - Conflict Narrative: Organized by month, date, and region, the Conflict Narrative recounts the situation on the ground in Syria as a series of events. The Conflict Narrative also includes information on key geopolitical developments relative to the major players in the conflict.
 - Crime Base Matrix: Organized relative to applicable statutory law, the Crime Base Matrix catalogues those events which represent violations of the Laws of War and Syrian Penal Law.

Sources for Incident Reports

- SAP has used a variety of sources throughout the project. Most recently we performed an in depth source review guided by our partners at *No Peace Without Justice*, to determine which sources allowed us to present the best picture of daily events on the ground in a way that presents the positions of all sides of the conflict: activists, rebels, and the regime.
- The sources in the figure to the right represent the results of that review. We believe each of them has a unique role to play in assisting us in presenting a complete and impartial picture of the conflict.



Sources for Geopolitical Developments

- Equally important to understanding the conflict are the positions of Syria's neighbors and the International Community. As such, at the advice of *No Peace Without Justice* we have included several non-western news outlets in our source list.
- The sources to the right were chosen because they are English language news sources which accurately represent the position of Syria's allies and neighbors.
- By relying on these sources, instead of western reproductions, we hope to demonstrate a good faith effort towards understanding the conflict in the terms of those most directly involved.

The Moscow Times

THE DAILY STAR
LEBANON

HAARETZ
INTERNATIONAL

Hürriyet

Conflict Narrative

- The formatting of our Conflict Narrative is designed to provide both general and specific information in a way that is easily accessible to the reader.
- It is organized monthly, with a casualty count and Global Summary for each month, which presents the reader with the most consequential events from that time period.
- The Global Summary section primarily relies on data from the Violations Documentation Center in Syria, because they present data based on confirmation from activists on the ground and they distinguish between civilian and non-civilian casualties with a high degree of specificity as to manner of death.

Global Summary: April 2013

According to the Violations Documentation Center in Syria, 5491 people were killed in Syria in the month of April.⁹ Of that number, 1727 were regime soldiers¹¹ and 3764 were "martyrs" affiliated with the regime.¹² The vast majority of those deaths, 451¹³ on the Regime side and 3120¹⁴ "martyrs", were likely combat related, since the Violations Documentation Center reports their causes of death as either shooting, shelling or explosions. Additionally, reports say that 345 individuals unaffiliated with the regime were field executed, 276 were subjected to torture, and 18 died from "chemical or toxic gases."¹⁵ Below is a summary of the most severe or consequential incidents from April 2013.

Key Incidents:

Gas and Chemical attacks: Several gas and chemical attacks were reported in the month of April 2013, one in Aleppo on 13 April, allegedly carried out by the Syrian Air Force, killed two and injured sixteen. On 14 April, in the Damascus's suburb of Nabadah, 6 Syrians reportedly died due to "chemical shelling." "Chemical Shelling" was also reported in the Jobar neighborhood in Damascus on 16 April.

13 April: Government forces allegedly seized various supply caches, originating from the United Arab Emirates, which were being smuggled from Lebanon into Syria near the village of Ladhaya.

15 April: Syrian government troops broke a six-month rebel blockade of a vital highway in northern Syria which had confined the army to the Wadi al-Deif and Hama's military bases in 18th province.

17 April: The Free Syrian Army forces reportedly killed the commander of the Doha's Military Airport in Hama, during a clash that left 20 members of the Shabba militia and 10 members of Hezbollah dead.

19 April:

1 Shelling destroyed the "historic minaret of the Zaitouna Mosque" in Damascus.

Conflict Narrative

- Following each monthly section are daily subsections which present the reader with a picture of what sort of incidents have been reported in each Governorate in Syria for each day. These daily sections represent the best understanding we can assemble from both confirmed and unconfirmed reports we have reviewed, and will be the subject of further analysis as the project continues.
- To ensure our reports contain only useful information, we have developed a list of factors to guide us in determining what information to include. Accordingly, any reports detailing highly specific incident locations, unit and commander names, specific weapons used, especially egregious casualty counts or other information that will assist future investigators is automatically included.

April 13

On 13 April 2013 between 101¹⁶ and 169¹⁷ Syrians lost their lives. Best estimates recount that "65 civilians, 49 rebel fighters, 2 defected soldiers, 12 unidentified rebel fighters and at least 29 regular soldiers" were among the dead.¹⁸ Incidents of violence were reported throughout the country and included the following: torture, poison gas attacks, and artillery and rocket strikes in Aleppo; aerial bombardment in and around Damascus; skirmishes between the Free Syrian Army and regime forces in Hama; fighting between Government and Rebel forces over the base at Wadi Deif in Idlib; and engagements between the Free Syrian Army and the besieged 17th Brigade in ar-Raqqa.¹⁹

Aleppo

Syria's state-run news agency reported "a series of special operations in [the] Aleppo countryside" aimed at "destroying terrorist gatherings the areas of Meagha, al-Akhsaiye, Marasay, Ein Daghah, Kaffi Khusher, al-Maslanaye road, al-Bukra, Hamarat, al-Mansoura and Kwaytes."²⁰ Amidst the fighting in Aleppo, a woman and two children were killed and 16 people were injured in a gas attack by the Syrian Air Force.²¹ Witnesses reported two gas bombs being dropped from an army helicopter and further reported that victims "khalloated, vomited, had excess mucus and felt their eyes were burning."²² Several names of individuals who were allegedly tortured to death in Aleppo by

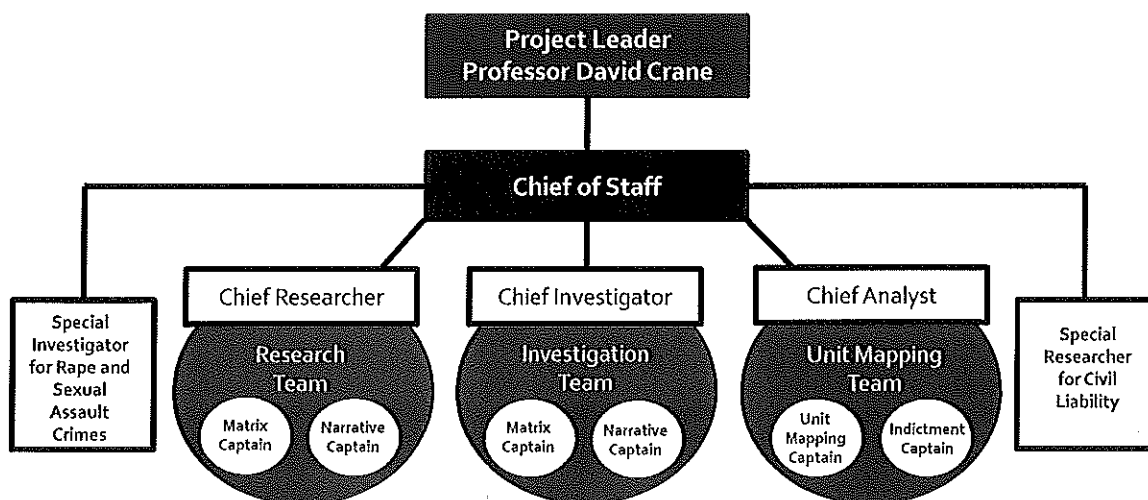
Crime Base Matrix

- Our Crime Base Matrix (CBM) serves as the raw material for such indictments as will eventually be drafted against those bearing the greatest responsibility for war crimes and crimes against humanity.
- The data in the CBM is intended to demonstrate the frequency and scale of specific crimes in order to assist with the task of representational charging.
- Rather than an absolute assertion of guilt, the CBM is better understood as a compilation of incidents presented relative to those sections of applicable law which we identified as most likely to apply to those incidents.

Syrian Accountability Project, Phase III: Crime Base Matrix: April 13, 2013 - August 31, 2013
Compiled by: A-M S. Rowell, Jr.; Stuart Smith; Christopher J. Miller; Brian Krenner; David Colley; Michelle Parker; and Caroline Cusack

DATE	LOCATION	SOURCE	DESCRIPTION OF INCIDENT	RESPONSIBLE PARTY	ROME STATUTE	GENEVA CONVENTION	SYRIAN PENAL CODE
Apr 13 2013	Aleppo	REUTERS, "Three killed in Syrian army gas attack 'suspected' prop", Apr 13, 2013, available at http://www.reuters.com/story/2013/04/13/syria-chemical-attacks-gas-13-apr-2013/	3 killed 16 injured from 2 gas bombs dropped by a helicopter	Syrian Air Force	Art. 7(1)(a), Art. 8(2)(v), Art. 8(2)(vii)(A), Art. 8(2)(vii)(B), Art. 9(1)(a), Art. 9(2)(vii)(A), Art. 9(2)(vii)(B)	GC Com. Art. 3(1)(a), AP II, Art. 4(1), AP II Art. 4(2)(b), AP II Art. 13	Art. 513-516, Art. 540
Apr 13 2013	Aleppo	SNNR, "Final casualties report - 13 April 2013", available at http://www.snnr.org.uk/index.php?option=com_content&view=article&id=1231:13-april-2013-syria-final-casualty-report-13-april-2013&Itemid=1231	Several individuals tortured to death in Aleppo by the Syrian Air Force at a Special Security Facility	Syrian Air Force Intelligence	Art. 7(1)(a), Art. 7(1)(b), Art. 8(2)(v), Art. 8(2)(vii)(A), Art. 8(2)(vii)(B), Art. 9(1)(a), Art. 9(2)(vii)(A), Art. 9(2)(vii)(B)	GC Com. Art. 3(1)(a), AP II, Art. 4(1), AP II Art. 4(2)(b), AP II Art. 13	Art. 301, Art. 513-516
Apr 13 2013	Damascus, Moadamiet	ICC Syria, "Syria Today 13-4-2013", Apr 13, 2013 available at http://www.icc-syria.org/1223	Force shelling of the rebel neighborhood of Moadamiet from the Fourth Division Headquarters	Syrian Army, Fourth Division	Art. 7(1)(a), Art. 8(2)(v), Art. 8(2)(vii)(A), Art. 8(2)(vii)(B), Art. 9(1)(a), Art. 9(2)(vii)(A), Art. 9(2)(vii)(B)	GC Com. Art. 3(1)(a), AP II, Art. 4(1), AP II Art. 4(2)(b), AP II Art. 13	n/a
Apr 14 2013	Damascus, Shtal	ICC Syria, "Syria Today 14-4-2013", Apr 14, 2013 available at http://www.icc-syria.org/1224	Indiscriminate deployment of chemical weapons	Syrian Air Force	Art. 7(1)(a), Art. 8(2)(v), Art. 8(2)(vii)(A), Art. 8(2)(vii)(B), Art. 9(1)(a), Art. 9(2)(vii)(A), Art. 9(2)(vii)(B)	GC Com. Art. 3(1)(a), AP II, Art. 4(1), AP II Art. 4(2)(b), AP II Art. 13	n/a

Organization of the Syrian Accountability Project Phase IV



Future Work Product

- While SAP recently finished its Phase III work product, our project is far from concluded. The following are examples of work product which will be completed in the near future:
- **Unit Mapping Projection:** Using Google Earth Pro, analysts from SAP's Unit Mapping Team will be plotting incidents from our Conflict Mapping Narrative and relevant source reports from other monitoring groups onto a physical map of Syria with an eye toward establishing the movements of individual armed units throughout Syria. Using this information we will establish those commanders who bear the greatest responsibility for specific crimes.
- **Sample Indictments:** Using the information from the Unit Mapping Projection, we will be drafting sample indictments charging those individuals who bear the greatest responsibility with applicable violations of both International and Syrian Domestic Law where appropriate.
- **Research and Revision:** SAP's research team will be working constantly to improve upon our data and update our Conflict Narrative and Crime Base Matrix as new and better source material becomes available

Unit Mapping Projection: Flashpoints

- The screenshot to the right is an example of an instance SAP was able to compile using google earth software and our Unit Mapping Projection Methodology developed this summer with input from *No Peace Without Justice*.
- Here, SAP investigators were able to identify a flashpoint between rebel and regime forces by plotting 4 independently reported incidents from the same day onto a physical map. In so doing, we were able to paint a picture for consumers which was previously unrecognized through the narrative and matrix alone.
- Using this flashpoint system, SAP hopes to be able to connect thousands of independently reported incidents into related chains of events like this one, and in so doing, track the movements of individual armed units across the conflict.



The Big Picture: the Chautauqua Blueprint

- In addition to producing its own deliverables, SAP is proud to support the recently unveiled Chautauqua Blueprint
- The Chautauqua Blueprint is a Draft Statute prepared by a panel of former international tribunal chief prosecutors, international judges, and leading experts which aims to provide a model for a Syrian Extraordinary Tribunal to Prosecute Atrocity Crimes. It reflects insights gained from a series of meetings and workshops over the past two years, which brought together Syrian lawyers, jurists, and civil society leaders with international experts to discuss an approach to transitional justice uniquely tailored to Syria.
- Given SAP's efforts to document atrocity in Syria, SAP is naturally supportive of the Chautauqua Blueprint. SAP continues its work in hopes that our data will one day be used in a Syrian Extraordinary Tribunal, like the one proposed in the Chautauqua Blueprint, to prosecute those who bear the greatest responsibility for war crimes and crimes against humanity.

