

Testimony of Dr. Alan W. White
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House Committee on Foreign Affairs
Subcommittee on Africa, Global Human Rights, Global Health and International Organizations
“Establishing a Syrian War Crimes Tribunal?”
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Chairman Smith, Ranking Member Bass, and distinguished Committee Members, I am honored and pleased to be able to testify before this committee on such a significant issue. I am profoundly aware of the Chairman's outstanding global leadership on the protection of human rights. I have experienced the Chairman's support first-hand while serving as the Chief of Investigations for the United Nations Backed Special Court for Sierra Leone. In large part, the Court's success in bringing some of the world's most notorious war criminals to justice, such as former Liberian President Charles Taylor, would not have been possible without your support as well as other members of Congress. Former President Taylor's involvement and support of the rebels, who committed unspeakable war crimes and crimes against humanity, impacted over 1.2 million victims in Sierra Leone and Liberia.

Today we are faced with a similar crisis in Syria as we experienced in Sierra Leone. We have another brutal dictator who is embroiled in a civil war and engaged in wide-scale and systematic killings of innocent human beings with impunity. It is alleged President Assad has taken evil to the next level by employing the use of chemical weapons, killing thousands of defenseless innocent women and children. Unfortunately, he is protected by his staunchest ally, Russia, which will undoubtedly block any formal referral from the United Nations Security Council to the International Criminal Court, allowing Assad to escape accountability with no justice for the victims. Most would agree, an immediate alternative needs to be aggressively pursued.

To ensure Assad and other perpetrators committing war crimes and crimes against humanity within Syria are held accountable and brought to justice, there must be an independent criminal court created to achieve justice. The establishment of a Syrian War Crimes Tribunal, proposed in your Congressional

Resolution, is a legitimate and viable solution. Further, in my judgment, the tribunal must be created immediately with the full support of the US government and the international community.

A Syrian War Crimes Tribunal could be established as a hybrid tribunal with international authorities specifically mandated to investigate and prosecute those who bear the greatest responsibility for the commission of war crimes, crimes against humanity, and genocide. The Syrian War Crimes Tribunal could be backed by the United Nations similar to the Special Court for Sierra Leone. It would be unwise and dangerous to establish the main tribunal in Syria while the country is engaged in a civil war. However, to expedite operations and minimize costs the tribunal could be established in The Hague, utilizing the current office space of the Special Tribunal for Lebanon with a regional office set up in a neighboring country to Syria. As mentioned previously, it is imperative that the tribunal be accountable to the victims and geographically located nearby. We now have years of experience to draw upon and it important we benefit from such experience ensuring this is tribunal is set up correctly, staffed properly, and financed definitively.

It is my experience that most of the evidence used by prosecutors in an international criminal court will be witness testimony. Maintaining trusted and close professional relationship is essential in making sure witnesses will be available and willing to testify when necessary. Unfortunately, this has been a major problem plaguing the International Criminal Court. Consequently, it will be absolutely crucial the investigators develop a trusted relationship at the onset to secure the best evidence and witness testimony. I know from my own experience that our physical presence in the region greatly contributed to our success in effectively gathering witness testimony. Being able to access witnesses and informants regularly unequivocally contributed to the success of the Special Court's prosecutions. The trusted relationship with our witnesses provided them with the necessary confidence to be able to provide courageous testimony on the world stage. Undoubtedly the strong witness testimony was the bulk of our evidence and contributed significantly to the successful prosecution of all cases. All of the convictions and sentences were upheld by the Appeals Chambers which is a testament to the strong evidence presented in court.

Although witness testimony is vital at any trial it is especially true when prosecuting war crimes and crimes against humanity involving country's engaged in civil war or have emerged from civil war. All too often physical and documentary evidence may have been destroyed during the war so witness testimony is weighted heavily. Many of the witnesses will be victims and a great deal of them will have been traumatized by the atrocities committed. For example, rape is often a tool of war and many victims are reluctant to talk about what happened particularly with strangers. War crimes investigations are routinely complex by their very nature and require a unique skill set to be able to conduct such investigations.

It can take months for investigators to be able to develop a trusted relationship with a victim as well as witnesses. In many cases witnesses will tell you a story as if they had witnessed the crime personally, yet they are only passing on a story they heard from a family member or friend. This is particularly true in developing countries where tribes and clans living in villages are present and oral history is a tradition and a common day practice. Thus, it will require an investigator who is skilled and experienced in conducting such investigations to be able to get the facts in a timely manner. Inexperienced investigators may take statements later deemed to be inaccurate because the witness did not actually observe an atrocity being committed which can create unnecessary exculpatory issues. This is another major reason that investigators need to be located either in the country or in the region for sheer logistical purposes. The investigators will be continuously conducting investigations, gathering facts and evidence. There will always be a need to conduct routine follow up interviews on a regular basis. The key elements of proof in war crimes cases involve determining who was involved; was there a plan; was it wide-scale and systematic; military structure; chain of command; weapons involved; command responsibility, as well as identifying crime based events.

Conducting war crimes investigation is one of the most challenging, if not the most difficult and demanding type of investigation within the international criminal justice system requiring the most highly skilled, competent and talented criminal investigator. In my judgment, war crimes investigators must

be experienced criminal investigators (10-15 years) with international experience, high moral character, good judgment, well educated (Graduate degree preferred), overseas experience, multi-lingual, excellent interpersonal skills, witness protection training, confidential informant training, and war crimes investigations training and/or experience.

In my own experience I met regularly with witnesses from Liberia and Ivory Coast and during my tenure both countries were engaged in civil war. Being situated nearby my staff and I were able to meet with witnesses regularly allowing us to develop a trusted relationship and execute our duties in a timely manner. For example, some witnesses had vital inside information, yet reticent to cooperate for fear of being identified and/or suspected of being a witness which would undoubtedly pose an immediate danger to themselves or family members. Without a trusted relationship it is extremely difficult, if not impossible to convince witnesses in a war torn region to come forward and become a witness unless they have complete trust and faith in you being able to provide for their safety and well-being.

In those instances where the witness testimony was deemed vital for prosecution you must be able to act immediately and decisively to demonstrate to the witness you can deliver on any assurances provided. Otherwise the investigators credibility could be questioned and the operational effectiveness could be marginalized. Personally, I faced many exigent circumstances which required immediate action and a need to make command decisions. Being in the region and equipped with the appropriate resources allowed me to deal with very challenging and dangerous matters. For example, one of my key witnesses was the former Commanding General of the Liberian Armed Forces and was in Accra, Ghana at the military medical facility receiving treatment for torture injuries inflicted by Chucky Taylor, the son of former President of Liberia Charles Taylor and currently serving a 97 year sentence in a US Prison for torturing my witness. The injuries were life threatening and so severe the General's wife pleaded with Taylor to allow her husband to go to Ghana for treatment and in return she offered herself and family as human collateral as a guarantee her husband would return. At the time, Taylor knew of the Special Courts existence and was very paranoid

about anyone who could be a potential witness for the court leaving Liberia. While undergoing treatment in Ghana I made contact with the General and received vital evidence against Taylor and the rebel groups he supported in Sierra Leone. After vetting this information a decision was made that he would be a major witness for the prosecution and he needed to be relocated out of the region. Without an established witness protection program in place I coordinated with the US Department of State and sought their support to allow me to relocate the General and his family to the United States under the Significant Public Benefit Program. The US was the only place I could relocate the General without fear of Charles Taylor being able to physically harm him or his family.

With my operational contacts in the region I was able to smuggle the wife and eight children one by one to Accra, Ghana and then onto the US with the assistance of the US Embassy and the International Migration Office. While this was ongoing Taylor had sent some of his henchman to Accra looking for the General and once they learned he was no longer at the military hospital they started canvassing the UN Liberian Refugee camps in Accra as well as the city. The day we left Accra they learned the whereabouts of the hotel where the General was staying and we narrowly escaped their pursuit and went to the US Embassy. Taylor's henchman later showed up that same night at the Accra International Airport and located us in the lounge area while waiting to board. They attempted to breach security and were held at bay by the local airport authorities at the request of a US Immigration and Naturalization Service Agent, who was armed and intervened while we boarded the aircraft. Meanwhile the General's wife and children had been smuggled out of Liberia and were enroute to Ghana. Due to safety concerns for the General, we departed Ghana, flew to Amsterdam and then onto the United States without incident. The family was later reunited safely one month later in the United States safe and sound. The moral to this story is quite simple, if I had not been in the region and had contacts in place I could not have been able to carry out this mission and key witness and his family likely killed.

Currently, due to funding and staffing issues the ICC has been unable to establish a full-time presence in many of the country's where they are actively engaged. As a result, they are experiencing serious witness issues involving their willingness to testify. The lack of a trusted relationship will have a major impact on any investigation and subsequent prosecution. This reinforces the need to establish a Syrian War Crimes Tribunal singularly focused and accountable to the victims of Syria and located closest to the people.

Clearly, the witnesses associated with having any knowledge of war crimes being committed in Syria will undoubtedly have trust issues and an obvious reluctance to reporting information to anyone outside of their family, their tribe, their clan and and/or their village. Consequently, developing a trusted relationship from the immediate onset is in my opinion the most crucial stage of any investigation, especially a war crimes investigation. Therefore, it is absolutely vital an investigator be regularly and personally engaged to nurture the trust with the witness, otherwise it will dissipate and have a major impact on the investigation and related prosecution. If there isn't a robust witness management and witness protection program in place the risk of a witness being killed, seriously injured, or physically threatened can occur and if it does it will undoubtedly have a chilling effect on any investigation and prosecution.

The recent reports of ICC witnesses being killed, bribed, and threatened in regards to the ongoing trial of the Kenya Deputy President as well as the impending trial of the Kenya President highlight this very issue. We had over 600 witnesses at the Special Court and although not all of them were deemed necessary to testify, many did and did so credibly which accounted for the convictions attained. Although witness protection is the responsibility of the Registrar, we felt strongly that the Office of the Prosecutor must have this capacity to effectively carry out our mission. As a result, with the concurrence of the Registrar we created our own Witness Management Unit to manage all the witnesses of the Office of the Prosecutor. Based on our experience the Witness Management and Protection responsibility should rest with

the Office of the Prosecutor and not the Registrar. This must be taken into consideration when creating this tribunal.

This is a major flaw and impacts investigations and prosecutions and certainly needs to be addressed if a Syrian War Crimes Tribunal is created. Witness testimony and vital information will dry up quickly if this very important phase of the criminal justice process is not implemented properly at the onset.

Finally, I would like to address the accountability of a court to the victims and not merely to the international community. The ICC is also plagued with being viewed as a political instrument and not as a system of justice for the victims. The recent investigations in the Ivory Coast which have led only to the prosecution of three members of the former government, including the former President, his wife, and former Minister of Sports are being viewed as politically motivated and not balanced. Members of the current administration, including the current Speaker of the Parliament have been documented by the United Nations and numerous human rights organizations as perpetrators of war crimes, yet no one has been prosecuted. It is important that all warring factions be aggressively investigated and prosecuted; otherwise the lack of a balanced prosecution can undermine the peace and reconciliation process. It must be kept in mind the rule of law in the Ivory Coast must be built on restorative and retributive justice and the best way to achieve these goals is through local accountability. Towards that end a specifically and singularly mandated hybrid tribunal, such as the Syria War Crimes Tribunal with international authorities conducting its affairs under international law responsible to the victims is the best way forward.

In conclusion, I believe this Subcommittee's influence, support, and persistence can lead to the creation of a Syrian War Crimes Tribunal which will ultimately lead to the prosecution of those involved in committing war crimes and crimes against humanity. By bringing Charles Taylor, former President of Liberia to justice we've demonstrated that no one is above the law. Now all we need is political will to support this just and noble cause.

I want to thank you again Mr. Chairman and other distinguished Members of Congress for allowing me the opportunity to share my thoughts and experiences in pursuit of a successful outcome for the victims of the Syrian civil war.

SYRIAN WAR CRIMES TRIBUNAL
THE HAGUE, THE NETHERLAND



Recommended Court Location

Special Tribunal for Lebanon – shared facilities

- *Office of the Prosecutor*
- *Office of the Registrar*
- *Trial Chambers*

SYRIAN WAR CRIMES TRIBUNAL REGIONAL OFFICE



Optional Locations

Office of Investigations

1. Amman, Jordan – Distance to Damascus, Syria – 109 miles
2. Ankara, Turkey – Distance to Aleppo, Syria – 347 miles