

GENOCIDE AND THE RULE OF LAW

HEARING

BEFORE THE

SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY

OF THE

COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

OCTOBER 23, 2007

Serial No. 110-123

Printed for the use of the Committee on the Judiciary



Available via the World Wide Web: <http://judiciary.house.gov>

U.S. GOVERNMENT PRINTING OFFICE

38-508 PDF

WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512-1800; DC area (202) 512-1800
Fax: (202) 512-2104 Mail: Stop IDCC, Washington, DC 20402-0001

COMMITTEE ON THE JUDICIARY

JOHN CONYERS, JR., Michigan, *Chairman*

HOWARD L. BERMAN, California	LAMAR SMITH, Texas
RICK BOUCHER, Virginia	F. JAMES SENSENBRENNER, JR., Wisconsin
JERROLD NADLER, New York	HOWARD COBLE, North Carolina
ROBERT C. "BOBBY" SCOTT, Virginia	ELTON GALLEGLY, California
MELVIN L. WATT, North Carolina	BOB GOODLATTE, Virginia
ZOE LOFGREN, California	STEVE CHABOT, Ohio
SHEILA JACKSON LEE, Texas	DANIEL E. LUNGREN, California
MAXINE WATERS, California	CHRIS CANNON, Utah
WILLIAM D. DELAHUNT, Massachusetts	RIC KELLER, Florida
ROBERT WEXLER, Florida	DARRELL ISSA, California
LINDA T. SANCHEZ, California	MIKE PENCE, Indiana
STEVE COHEN, Tennessee	J. RANDY FORBES, Virginia
HANK JOHNSON, Georgia	STEVE KING, Iowa
BETTY SUTTON, Ohio	TOM FEENEY, Florida
LUIS V. GUTIERREZ, Illinois	TRENT FRANKS, Arizona
BRAD SHERMAN, California	LOUIE GOHMERT, Texas
TAMMY BALDWIN, Wisconsin	JIM JORDAN, Ohio
ANTHONY D. WEINER, New York	
ADAM B. SCHIFF, California	
ARTUR DAVIS, Alabama	
DEBBIE WASSERMAN SCHULTZ, Florida	
KEITH ELLISON, Minnesota	

PERRY APELBAUM, *Staff Director and Chief Counsel*

JOSEPH GIBSON, *Minority Chief Counsel*

SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

ROBERT C. "BOBBY" SCOTT, Virginia, *Chairman*

MAXINE WATERS, California	J. RANDY FORBES, Virginia
WILLIAM D. DELAHUNT, Massachusetts	LOUIE GOHMERT, Texas
JERROLD NADLER, New York	F. JAMES SENSENBRENNER, JR., Wisconsin
HANK JOHNSON, Georgia	HOWARD COBLE, North Carolina
ANTHONY D. WEINER, New York	STEVE CHABOT, Ohio
SHEILA JACKSON LEE, Texas	DANIEL E. LUNGREN, California
ARTUR DAVIS, Alabama	
TAMMY BALDWIN, Wisconsin	
BETTY SUTTON, Ohio	

BOBBY VASSAR, *Chief Counsel*

MICHAEL VOLKOV, *Minority Counsel*

CONTENTS

OCTOBER 23, 2007

	Page
OPENING STATEMENT	
The Honorable Robert C. “Bobby” Scott, a Representative in Congress from the State of Virginia, and Chairman, Subcommittee on Crime, Terrorism, and Homeland Security	1
The Honorable Louie Gohmert, a Representative in Congress from the State of Texas, and Member, Subcommittee on Crime, Terrorism, and Homeland Security	2
WITNESSES	
Mr. Eli M. Rosenbaum, Director, Office of Special Investigations, Criminal Division, United States Department of Justice, Washington, DC	
Oral Testimony	4
Prepared Statement	7
Ms. Diane F. Orentlicher, Professor, Washington College of Law, American University, Washington, DC	
Oral Testimony	15
Prepared Statement	17
Mr. Jerry Fowler, United States Holocaust Memorial Museum, Washington, DC	
Oral Testimony	21
Prepared Statement	23
Ms. Gayle E. Smith, Senior Fellow, Center for American Progress, Washington, DC	
Oral Testimony	25
Prepared Statement	27
APPENDIX	
Material Submitted for the Hearing Record	39

GENOCIDE AND THE RULE OF LAW

TUESDAY, OCTOBER 23, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON CRIME, TERRORISM,
AND HOMELAND SECURITY
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 1:40 p.m., in room 2141, Rayburn House Office Building, the Honorable Robert C. “Bobby” Scott (Chairman of the Subcommittee) presiding.

Present: Representatives Scott, Johnson, Forbes, Gohmert, Coble, and Chabot.

Staff present: Ameer Gopalani, Majority Counsel; and Veronica Eligan, Majority Professional Staff Member.

Mr. SCOTT. The Subcommittee will now come to order.

I am pleased to welcome you today to the hearing before the Subcommittee on Crime, Terrorism, and Homeland Security on “Genocide and the Rule of Law.”

Following the mass atrocities committed before and during World War II, the international community sought to condemn genocide. The slaughtering of individuals simply because they are a member of a certain ethnic or racial group has occurred throughout history, but until the 1940’s, the crime did not have a name.

Raphael Lemkin, a holocaust survivor and the architect of the Genocide Convention, an international treaty ratified by over 100 countries, fashioned the term “genocide” from the Greek word “genus,” meaning race or tribe, and the Latin term for killing, “cide.” But the invention of the word did not prevent genocide from happening.

As we witnessed, as many as 800,000 Tutsi minority men and women and children were murdered in Rwanda. Mass violence also occurred against citizens in Bosnia, where up to 8,000 Muslim men and boys were systematically executed.

Obligations of the United States under the Genocide Convention are in the criminal code, in Title 18, beginning at Section 1091. Genocide is defined in that section as having the specific intent to destroy, in whole or in part, a national ethnic, racial or religious group. The code offers severe punishment for anyone who commits genocide within the United States.

The law also makes it a Federal crime for a U.S. national to commit genocide anywhere in the world. Fortunately, there has not been a need to use the law against anyone now covered by it. However, by only covering genocide if it is committed in this country

or committed by a U.S. national, we leave a gap which allows non-U.S. persons who commit genocide elsewhere to come to this country with impunity under our laws.

Genocide continues to be a threat in the world and we should attack it wherever we find it. We see what the lack of enforcement against genocide evolves to most clearly today in Darfur. In that region, we see the tragic replay of the suffering and death. Hundreds of thousands of innocent people have been killed, raped, tortured, forced to flee, and over two million people have been driven from their homes.

For them, the commitment of “never again” after the holocaust rings hollow.

So we must ask ourselves why this is so. Is the failure of law, or of will, or both? This hearing will probe ways that we may, as a country, contribute to the prevention and punishment of genocide through more effective implementation of relevant parts of the conventions against genocide.

In that regard, we will examine our own laws against genocide to assure that they provide for the prosecution and punishment of all acts of genocide wherever they occur and by whomever they are committed.

To this end, the gentleman from California, Mr. Berman, and the gentleman from Indiana, Mr. Pence, have introduced the Genocide Accountability Act, H.R. 2489, legislation designed to amend Title 18 of the U.S. Code, to allow for prosecution of non-U.S. nationals in the United States who have committed genocide outside of the United States, just as U.S. nationals can now be prosecuted.

The United States should have the ability to prosecute those who find safe haven in the United States for their acts of genocide. The Genocide Accountability Act would end this impunity gap in the genocide law.

With that said, I will recognize the gentleman from Texas, who is standing in for the Ranking Member, the gentleman from Texas, Mr. Gohmert, for his statement.

Mr. GOHMERT. I thank you, Chairman Scott. I want to thank you for scheduling this hearing.

We are honored to have the distinguished panel of witnesses to share their views on this important and timely issue.

Perpetrators of genocide have committed some of the most heinous crimes ever carried out. Genocide is a crime not only against the specific victims targeted for extermination, but it is also a crime against humanity.

History is replete with horrible images of human suffering, where victims are selected based on their human characteristics. In the modern era, we have seen technological advances used for destructive reasons in carrying out genocide.

The idea that individuals, hundreds, thousands, and hundreds of thousands, are singled out and systematically targeted for extermination offends any person’s belief in humanity or the rule of law.

In recent decades, we have seen ethnic cleansing during the civil war in the former Yugoslavia, systematic mass killings in Rwanda, Sierra Leone and, of course, there is the ongoing suffering in Darfur.

The United States government has long been a key participant in global law enforcement efforts to help end genocide, war crimes, and crimes against humanity.

Our government trains and assists the prosecutors and judges who handle genocide cases in the international tribunals and domestic courts. Further, our government extradites perpetrators of genocide and other human rights violators found in this country to courts and tribunals for prosecution.

In cases where our government discovers that suspected war criminals have become naturalized citizens or have illegally obtained visas to visit our country, the government has charged them—imposed denaturalization and removed them from this country.

I welcome the opportunity to hear from the witnesses how we can continue to bring the perpetrators of genocide to justice. I look forward to working with my friend, Mr. Scott, on this important issue, because it is clear crimes of this devastating nature that occur elsewhere, if not stopped, will come to roost here in our midst.

Thank you. I yield back.

Mr. SCOTT. Thank you.

We have a distinguished panel of witnesses here today to help us consider the important issues that are currently before us.

Our first witness is Eli Rosenbaum, Director of the Office of Special Investigations in the Criminal Division of the Department of Justice. He is the longest serving prosecutor-investigator of Nazi criminals in world history, having worked on these cases at the Department of Justice for more than 20 years.

He is a graduate of the Wharton School of the University of Pennsylvania, where he received his MBA, and of the Harvard Law School.

Our next witness is Professor Diane Orentlicher, currently serving as special counsel to the Open Society Justice Initiative, while on a 1-year leave from the Washington College of Law at American University, where she is professor of international law.

She is a founding director of the law school's War Crimes Research Office and is co-director of its Center for Human Rights and Humanitarian Law. In 2004, the United Nations Secretary General appointed her to serve as the United Nations Independent Expert on Bombing Impunity.

We next have Jerry Fowler, who is the founding director of the U.S. Holocaust Memorial Museum's Committee on Conscience, taught at George Washington University Law School and George Mason University Law School, and is a graduate of Stanford Law School and Princeton University.

From 1983 to 1987, he was stationed in Germany as an office of the U.S. Army. From 1993 to 1995, he served as a special litigation counsel for the U.S. Department of Justice.

Before joining the museum, he was legislative counsel for the Lawyers' Committee for Human Rights.

And, finally, we will have Gayle Smith, senior fellow at the Center for American Progress. She previously served as special assistant to the president and senior director for African affairs at the National Security Council from 1998 to 2001 and as senior advisor

to the administrator and chief of staff of the U.S. Agency on International Development from 1994 to 1998.

She was based in Africa for over 20 years as a journalist, covering military, economic and political affairs issues. She is a member of the Council on Foreign Relations and serves on the board of the African-American Institute, USA for Africa and the National Security Network.

Each of the witnesses' written statements will be made part of the record. I would ask each witness to summarize his or her testimony in 5 minutes or less. And to stay within that time, there is a lighting device at the table. It will go from green to yellow to red when the time is up.

We will now begin with Mr. Rosenbaum.

TESTIMONY OF ELI M. ROSENBAUM, DIRECTOR, OFFICE OF SPECIAL INVESTIGATIONS, CRIMINAL DIVISION, UNITED STATES DEPARTMENT OF JUSTICE, WASHINGTON, DC

Mr. ROSENBAUM. Thank you, Chairman Scott and distinguished Members of the Subcommittee, for holding this important hearing.

It is a privilege to appear before you today. As the director of the Justice Department's Office of Special Investigations, I am pleased to discuss the department's ongoing efforts against perpetrators of genocide, war crimes, and crimes against humanity.

My office, OSI, which has been handling denaturalization and removal cases against World War II era Nazi criminals since its creation for that purpose in 1979, had its mission expanded in 2004, so that it now also handles certain cases of genocide and other crimes perpetrated abroad since the conclusion of the second World War.

Bringing these perpetrators to justice obviously is a mission of the very greatest importance.

On a personal note, participating in the quest for justice on behalf of the victims of genocide has been the great privilege of my professional life. I would like to think that in doing so, I have, in some sense, continued the work that my father, who died just this past July, did in Europe.

He served his country and the causes of freedom and humanity during and after World War II in the Third Infantry Division and then in the United States Seventh Army, and his responsibilities at war's end included questioning Nazi war crimes suspects.

When he tried to tell me once, when I was 15 years old, what he had seen at the Dachau concentration camp upon his arrival there 2 days after its liberation, his eyes welled with tears and he was unable to speak. He never could tell me, but I understood.

In May, I was in Rwanda and made an unforgettable visit to the genocide memorial in Kigali, where the First Lady had laid a wreath during her 2005 visit.

When I came to work at OSI, I could hardly have imagined that genocide would again be perpetrated. I would like to add that Sigal Mandelker, the deputy assistant attorney general, to whom I report, and who would be testifying here today but for a prior commitment outside the country, is the granddaughter of three grandparents who did not survive Hitler's horrific genocide of six million Jews.

Her mother was orphaned by the Holocaust, and her father lost his mother at the age of just 5. This is an issue about which she feels deeply, both personally and professionally, as do I and all of my colleagues who work on these cases at the Department of Justice.

The department continues to utilize all tools available against perpetrators of these crimes, including prosecution, extradition and removal, and provision of assistance to countries and tribunals that prosecute these crimes.

First, the Department of Justice makes use of civil and criminal charges to ensure that the perpetrators of such crimes don't find safe haven in the United States. For the past 28 years, the Office of Special Investigations has identified, investigated and brought civil denaturalization and removal cases against World War II Nazi perpetrators and we have successfully pursued more than 100 of these cases.

In addition, U.S. attorney's offices around the country, OSI and the Criminal Division's Domestic Security Section criminally prosecute individuals who allegedly participated in genocide, war crimes, and crimes against humanity for offenses such as visa fraud, unlawful procurement of naturalization and false statements.

For example, a number of Bosnian Serbs, including individuals who served in units implicated in the Srebrenica massacres, have been arrested by Immigration and Customs Enforcement and charged with immigration related crimes for concealing their prior service in the Bosnian Serb military.

Two of those men who have been removed by ICE to Bosnia were indicted last December by Bosnian authorities on charges of murder and other serious offenses.

Third, we extradite individuals wanted for human rights violations. For example, in March of 2000, following the conclusion of hard fought litigation, the United States turned over Elizaphan Ntakirutimana to the International Criminal Tribunal for Rwanda.

This individual, a pastor at the time of the Rwanda genocide, was accused of devising and executing a lethal scheme in which Tutsi civilians were encouraged to seek refuge in a local religious complex, to which he then directed a mob of armed attackers. With his participation, the attackers thereupon slaughtered and injured those inside.

In 2003, Ntakirutimana, a one-time Texas resident, was convicted by the tribunal of aiding and abetting genocide and he was sentenced to 10 years imprisonment. Moreover, a Department of Justice prosecutor played a crucial role in bringing those charges.

Finally, the United States continues to provide substantial assistance to foreign governments and to various international tribunals that are investigating and prosecuting human rights cases abroad, including the international criminal tribunals for both Rwanda and the former Yugoslavia.

Indeed, the U.S. has been the largest contributor to both of these tribunals. The department has also loaned a number of experienced law enforcement professionals to the ICTY, including the former head of DSS.

Under the leadership of the Criminal Division's Office of Overseas Prosecutorial Development and Training and, also, the Division's International Criminal Investigative Training Assistance Program, we have also operated major training programs and provided capacity-building assistance in the investigation and prosecution of war crimes, including to the various countries and jurisdictions of the former Yugoslavia.

Mr. Chairman, thank you again for holding this important hearing today. We are very grateful for the tools that Congress has provided U.S. in these enormously important cases, and I welcome any questions you may have.

[The prepared statement of Mr. Rosenbaum follows:]

PREPARED STATEMENT OF ELI M. ROSENBAUM

**Statement of
Eli M. Rosenbaum
Director
Office of Special Investigations
Criminal Division
Department of Justice**

**Before the
Subcommittee on Crime, Terrorism and Homeland Security
Committee on the Judiciary
United States House of Representatives**

**Concerning
Genocide and the Rule of Law**

October 23, 2007

Chairman Scott, Ranking Member Forbes, and distinguished Members of the Subcommittee, thank you for inviting the Department of Justice to testify at this hearing. Perpetrators of genocide have participated in the commission of some of the ghastliest crimes in modern history, and so long as these individuals are at liberty they pose a continuing danger to the civilized world. As the Director of the Criminal Division's Office of Special Investigations, I am pleased to address the Department of Justice's ongoing efforts against the perpetrators of genocide, war crimes and crimes against humanity.

Bringing these perpetrators to justice is a mission of the very highest importance. As Ambassador Alejandro Wolff, the then-Acting U.S. Permanent Representative to the United Nations, said earlier this year in introducing a landmark U.S.-drafted General Assembly resolution to condemn Holocaust denial, "all people and all states have a vital stake in a world free of genocide."¹ Acting on President Bush's injunction that those who commit war crimes must face justice, both "to advance the cause of justice ... [and] to consolidate peace and promote the rule of law,"² we continue to utilize all avenues available against human rights violators and

¹Statement of the United States Permanent Representative on the Introduction of the Resolution on Holocaust Denial, January 25, 2007. www.state.gov/p/io/rls/rm/79424.htm The resolution, which had 104 co-sponsors, was adopted by consensus the following day. See State Department January 26, 2006, press release at <http://usinfo.state.gov/xarchives/display.html?p=washfile-english&y=2007&m=January&x=20070126160123eafas0.887356>, reprinted at http://media-newswire.com/release_1042289.html.

²Statement by the President on Bringing War Criminals to Justice, August 3, 2001, www.whitehouse.gov/news/releases/2001/08/20010803-15.html ("Those who commit war crimes must face justice. As I said in Kosovo, we must not allow difference to be license to kill, and vulnerability an excuse to dominate.")

war criminals found in this country – including criminal prosecution, denaturalization, extradition and removal. The United States also continues to provide assistance to foreign governments and to various international tribunals that are investigating and prosecuting cases abroad against these individuals.

Federal efforts directed against participants in genocide are part of an important and time-honored national commitment. The United States government has long been a key participant in global law enforcement efforts to help end impunity for genocide, war crimes and crimes against humanity. Thus, for example, our nation has taken a leading role in establishing and supporting such notable institutions as the Nuremberg and Tokyo Tribunals after World War II and, more recently, the International Criminal Tribunals for Rwanda³ and the former Yugoslavia, the Special Court for Sierra Leone, and the Iraqi High Tribunal. Both the chief prosecutor at Nuremberg and the American judge at the tribunal were former attorneys general, and the chief prosecutor at the Tokyo trial had served as assistant attorney general in charge of the Criminal Division. Most recently, the United States has been the worldwide leader in diplomatic efforts to stop the unspeakable atrocities in Darfur. In 2004, the U.S. State Department commissioned an Atrocities Documentation Team which, on only a few weeks notice, assembled a team of experienced law enforcement investigators and legal experts, including Department of Justice personnel. The team interviewed over 1,100 Darfuri refugees who had taken shelter in refugee camps in neighboring Chad. Based on the information elicited in those interviews, then-Secretary of State Powell was able to conclude and state publicly that genocide has been committed in Darfur.

The Department of Justice provides training and other assistance to national and international investigative and prosecutorial authorities that are pursuing justice in the aftermath of conflicts that were characterized by large-scale human rights violations and war crimes. By way of example, the Department of Justice loaned a significant number of experienced law enforcement professionals to the International Criminal Tribunal for the Former Yugoslavia (ICTY) during the period of the ICTY's most intensive activity. Indeed, the former head of the Domestic Security Section of the Department's Criminal Division was detailed to that tribunal by the Department, as was a senior Federal prosecutor who now serves in the State Department as the Ambassador-at-Large for War Crimes Issues. The Justice Department provides extensive assistance to authorities in countries in which human rights violations and war crimes took place,

³The full name of the Rwanda Tribunal is "The International Tribunal for the Prosecution of Persons Responsible for Genocide and Other Serious Violations of International Humanitarian Law Committed in the Territory of Rwanda and Rwandan Citizens Responsible for Genocide and Other Such Violations Committed in the Territory of Neighboring States."

in part via the training programs that the Department operates for foreign prosecutors and judges through its international network of Resident Legal Advisors.

Three components of the Justice Department's Criminal Division provide much of the assistance given to foreign law enforcement authorities. The Office of International Affairs (OIA) takes the lead in executing foreign requests for evidence or other legal assistance and works closely with the State Department in matters relating to international extradition. OIA has responded to dozens of requests for assistance in matters relating to genocide, war crimes and crimes against humanity. Similarly, the Criminal Division's Office of Overseas Prosecutorial Development and Training (OPDAT) and the Division's International Criminal Investigative Training Assistance Program (ICITAP) take the lead for the Department in providing training and assistance in criminal justice sector reform and development.

OPDAT has provided capacity-building assistance in the investigation and prosecution of war crimes to the various countries and jurisdictions of the former Yugoslavia, principally Serbia and Bosnia-Herzegovina, as well as Croatia, and to a lesser extent (and more recently) Kosovo, Macedonia and Montenegro. This has included provision of training services; advice on legislation; assistance in the development of witness protection programs; videoconferencing equipment (to allow witnesses in criminal cases, including war crimes cases, to testify from one country to another); and assistance to promote the exchange of information and cooperation among the countries and jurisdictions in the region. Prosecutors and other personnel of the National Security Division's Counterterrorism Section, the U.S. Attorney's Office for the District of Columbia, and the Criminal Division's Office of Special Investigations have also participated in the training programs in Croatia.

The Justice Department's efforts in the former Yugoslavia have been coordinated with the ICTY. For example, we have sponsored study tours by Bosnian prosecutors to the Tribunal (at The Hague), and ICTY representatives have participated in conferences that we have sponsored, such as a regional conference held last October in Montenegro. Earlier this month, OPDAT, in cooperation with the U.S. Ambassador-at-Large for War Crimes Issues, conducted a follow-on war crimes conference in Croatia attended by officials from Serbia, Croatia, Bosnia and Herzegovina, Montenegro, and Macedonia. This conference focused on ICTY transition issues and on cooperation between the countries of the region on war crimes cases.

The assistance that we have provided in the former Yugoslavia, as elsewhere, is given in large part with a view toward increasing the ability of these countries and jurisdictions to prosecute war crimes cases. This capability is especially important now that the ICTY is progressing towards its U.N. Security Council-endorsed closure and transfers a number of cases to the individual countries in the region for investigation and prosecution.

ICITAP has similarly provided assistance directly to foreign law enforcement authorities in the former Yugoslavia. In Bosnia and Herzegovina, Croatia and Serbia, ICITAP conducted extensive assessments of the needs of law enforcement authorities responsible for investigating and prosecuting war crimes cases. Equipment, software, and training that ICITAP subsequently

supplied has significantly enhanced the capacity of the local authorities to identify and investigate complex and politically charged crimes. In Croatia, ICITAP, in coordination with OPDAT, provided specialized training to members of the criminal justice system who are directly responsible for the investigation and prosecution of war crimes cases. That training focuses on evidence collection, courtroom presentation, and witness protection. The work undertaken in this field by OPDAT and ICITAP draws extensively on the resources of Federal investigating agencies and the U.S. Attorney's Offices. It is an integral part of the Justice Department's commitment to assisting cognizant foreign governments and tribunals.

When evidence surfaces that implicates residents of this country in genocide, war crimes or crimes against humanity, the Federal government moves swiftly to investigate and take legal action where possible. In some instances of offenses committed outside the United States, Federal criminal prosecution is possible. However, even when offenders are not subject to prosecution here (for example, when the crimes were committed before the applicable Federal statutes were enacted, as was the case with World War II-era Nazi criminals, among others), the U.S. government can often employ other effective law enforcement tools, such as extradition; denaturalization and/or removal; or domestic prosecution for other crimes such as visa fraud, unlawful procurement of naturalization, and making false statements.

Among the numerous Federal agencies involved in these law enforcement efforts are the Department of Justice's Criminal Division (primarily through the Domestic Security Section, the Office of International Affairs and the Office of Special Investigations) and National Security Division (through its Counterterrorism Section), the United States Attorneys Offices, the Federal Bureau of Investigation, and the U.S. Immigration and Customs Enforcement (ICE) within the Department of Homeland Security. Their efforts receive important support from the State Department and other components of the Federal government.

At the Justice Department, we have made great efforts to facilitate the criminal prosecution abroad of the perpetrators of genocide, war crimes and crimes against humanity found in this country. For example, in March 2000, following the conclusion of hard-fought litigation,⁴ the United States turned over Elizaphan Ntakirutimana to the International Criminal Tribunal for Rwanda (ICTR). He had been a pastor in Rwanda at the time of the 1994 genocide. Ntakirutimana was accused of devising and executing a lethal scheme in which Tutsi civilians were encouraged to seek refuge in a local religious complex, to which he then directed a mob of armed attackers. With his participation, the attackers thereupon slaughtered and injured those inside. The United States surrendered Ntakirutimana to the ICTR in response to a request made by the Tribunal pursuant to an Executive Agreement by which the U.S. agreed to transfer Rwandan suspects in its territory to the ICTR for trial.⁵ Indeed, this is the only case to date in

⁴See *Ntakirutimana v. Reno*, 184 F.3d 419 (5th Cir. 1999), *cert. denied*, 528 U.S. 1135 (2000).

⁵Agreement on Surrender of Persons Between the Government of the United States and the ICTR, Jan. 24, 1995, U.S.-Int'l Trib. Rwanda, KAV No. 4529, 1996 WL 165484 *as*

which an international tribunal has made a formal request to the United States for the arrest and transfer of a suspect. In 2003, Ntakirutimana, a onetime Texas resident, was convicted by the Tribunal of aiding and abetting genocide and he was sentenced to ten years' imprisonment. A prosecutor from the Justice Department played a significant role in charging Ntakirutimana.

The United States has extradited other perpetrators to other countries to stand trial in their domestic courts. A recent extradition of an accused human rights violator in the bilateral context was the January 2006 extradition of Mitar Arambašić to Croatia. Arambašić had been convicted in absentia in Croatia and sentenced to twenty years' imprisonment for crimes against humanity and war crimes perpetrated against civilians during the break-up of the former Yugoslavia. The charges included the murder of two Croatian police officers in 1991 and the beheading of civilians with an axe. The Department of Justice vigorously and successfully pursued this extradition, which was contested by Arambašić in litigation spanning three years, and he was returned to Croatia, where he faced a trial in person. The Justice Department also accomplished the extradition of several accused participants in World War II-era Nazi crimes between 1973 and 1993 (when the last such extradition request was received).

Extradition matters are coordinated within the Justice Department by the Criminal Division's Office of International Affairs, which also responds each year to thousands of requests and inquiries from foreign law enforcement authorities for assistance in their investigations and prosecutions. The Federal government works diligently to locate international fugitives and return them to the countries in which their alleged crimes were committed. Extradition, however, is contingent upon receipt of a request from a foreign government with which the United States has an extradition treaty, and the United States has received relatively few such requests in these cases.

implemented by National Defense Authorization Act, Pub. L. 104-106, § 1342, 110 Stat. 486 (1996).

Perpetrators in this country who have violated Federal criminal laws are prosecuted for those violations by the Department of Justice. Although the Title 18 genocide statute, which was enacted in 1988, is limited to cases in which genocide has either been committed in the United States or committed abroad by a U.S. national,⁶ the Justice Department makes use of other criminal and civil charges to ensure that the perpetrators of genocide, war crimes and crimes against humanity do not find safe haven in the United States. The Criminal Division's Office of Special Investigations has compiled a 28-year record of identifying, investigating, and bringing civil denaturalization and removal actions against World War II-era participants in genocide and other Nazi crimes. OSI has successfully pursued more than one hundred of these criminals and it is widely considered to be the most successful law enforcement operation of its kind in the world. One of the program's most recent victories was recorded on January 3, when a U.S. immigration judge ordered the removal of Josias Kumpf of Racine, Wisconsin. By his own admission, during a mass killing operation in occupied Poland in 1943 Kumpf stood guard at a pit containing dead Jewish civilians and others he described as "halfway alive" and "still convuls[ing]," with orders to shoot to kill anyone who attempted to escape. Also this year, OSI accomplished the denaturalization of Ivan (John) Kalymon after proving in federal district court in Detroit that he had shot Jews while serving in a Nazi-sponsored police unit during the 1942 liquidation of a Jewish ghetto in L'vov, Poland. Just last month, OSI accomplished the denaturalization and return to Germany of Martin Hartmann of Mesa, Arizona, based on his admitted participation in Nazi-sponsored acts of persecution while serving as an armed SS Death's Head guard at the infamous Sachsenhausen Concentration Camp and several of its subcamps in Germany during World War II.

To date, some 60 Nazi criminals have been returned to countries of Europe that possess the criminal jurisdiction that the United States lacks in the World War II cases. OSI continues to work with prosecutors overseas to facilitate the criminal prosecution of Nazi criminals, including, of course, those perpetrators whom we succeed in removing from the United States. Those efforts have borne fruit in a number of important instances. For example, in Vilnius, Lithuania, in 2001, former OSI defendant Kazys Gimzauskas became the first person ever convicted on genocide charges in any of the successor states to the former Soviet Union. Year after year, in recognition of its commitment to, and success in, pursuing justice in the World War II Nazi genocide cases, the United States government has been the only government in the world to receive the "A" rating of the Simon Wiesenthal Center, the Los Angeles-based organization named after the renowned Nazi-hunter.

In 2004, the Intelligence Reform and Terrorism Prevention Act expanded OSI's mission to include investigating and bringing civil denaturalization cases and criminal prosecutions for unlawful procurement of U.S. citizenship against post-World War II participants in genocide, extrajudicial killings and torture perpetrated under color of foreign law. With this law, OSI became only the newest component of a comprehensive Federal interagency effort to ensure that

⁶See 18 USC 1091.

perpetrators of these terrible crimes find no sanctuary in this country. A leading role in this effort is played by the Department of Homeland Security, particularly ICE and its Human Rights Violators and Public Safety Unit and Human Rights Law Division, as well as Citizenship and Immigration Services. Other components of the Department of Justice that participate in this effort are the Criminal Division's Domestic Security Section and Office of International Affairs, the National Security Division's Counterterrorism Section, the FBI and the U.S. Attorneys Offices. In 2005, seeking to strengthen their collaborative work on these often very challenging cases, the aforementioned agencies, along with the Department of State and the Central Intelligence Agency, formed the Ad Hoc Interagency Working Group on Human Rights Violator Cases. The member agencies meet frequently to share information and to coordinate enforcement strategies.

This law enforcement partnership has achieved numerous significant successes by employing a variety of legal tools, including criminal prosecution for such Federal offenses as visa fraud, unlawful procurement of naturalization, and false statements, as well as seeking civil and administrative remedies like denaturalization and removal. For example, in April 2005, ICE removed Enos Kagaba from this country to his native Rwanda on the basis of his participation in the genocide that ravaged his country in 1994. His removal was effected on the grounds of a provision of the Immigration and Nationality Act, added by Congress in 1990, that renders any alien who "engaged in conduct that is defined as genocide" by the International Convention on the Prevention and Punishment of Genocide removable from this country.⁷ In 2004, Jean-Marie Vianney Mudahinyuka was convicted in Chicago of lying on his U.S. immigration forms to gain entry to the U.S. as a refugee. He was sentenced to 51 months in prison for that offense and for assaulting Federal officers who arrested him. Upon his release from prison, Mudahinyuka will also be subject to removal. He is wanted in Rwanda on charges of genocide and crimes against humanity.

In September 2005, more than a dozen Bosnian Serbs who lied on immigration forms about their prior service in the Bosnian Serb army were arrested by ICE in Phoenix and indicted by the U.S. Attorney's Office on immigration-related charges. Two of those who have since been removed by ICE to Bosnia were indicted last December 13 by Bosnian authorities on charges of murder and other serious offenses.⁸ Also in December of last year, sixteen individuals in six states were charged with criminal violations in connection with their efforts to obtain refugee status in the United States by concealing their prior service in the Bosnian Serb military. One of the defendants is described in a Federal affidavit as having been a commander of a police unit that cooperated with other Bosnian Serb entities in the Srebrenica massacres. All but one of the defendants face criminal charges that include immigration fraud and/or making false statements. The maximum sentence for making false statements is five years in prison,

⁷Section 212(a)(3)(E)(ii) of the Immigration and Nationality Act, 8 USC 1227(a)(4)(D).

⁸ The two men are Zdravko Bozic and Mladen Blagojevic, who were arrested in Phoenix in 2005 and subsequently convicted there on visa fraud and related charges.

while the maximum sentence for immigration fraud is 10 years imprisonment. One defendant is a naturalized U.S. citizen, and he has been charged with unlawful procurement of citizenship and making false statements, offenses that carry maximum potential sentences of 10 and 5 years, respectively. The cases were investigated by ICE special agents with assistance from the Justice Department's Office of Special Investigations, and both agencies are actively reviewing other cases for further action. The U.S. Attorney's Offices that have prosecuted these cases include those in the Middle District of Florida; Eastern District of Wisconsin; Middle District of North Carolina; District of Colorado; Eastern District of Michigan; Northern District of Ohio, District of Oregon, District of Utah and District of Arizona. (The Office of Special Investigations is also participating in the prosecution of the U.S. citizen defendant, in Tampa, Florida, and a Bosnian Serb defendant in Utah.)

The Kelbessa Negewo case is another example of Federal agencies working together to pursue justice in human rights violator cases. Negewo served as a local official under the repressive military regime that ruled Ethiopia from 1974 to 1991. He subsequently immigrated to the United States, settled in Georgia, and obtained U.S. citizenship. Three Ethiopian women later filed suit against him under the Alien Tort Claims Act in U.S. District Court in Atlanta, alleging that they had been tortured in a jail that he had controlled. The district court found that Negewo had both supervised and directly participated in the torture of the women, and the court awarded damages. A civil denaturalization action was filed against Negewo in May 2001 by the U.S. Attorney's Office in Atlanta. His U.S. citizenship was revoked in October 2004 pursuant to a settlement agreement negotiated by that office. Removal proceedings were initiated by ICE in 2005 following Negewo's denaturalization. These proceedings were the first to charge participation in torture and extrajudicial killings, charges that were added under amendments made to the Immigration and Nationality Act by the 2004 Intelligence Reform and Terrorism Prevention Act. This past October, Negewo was removed to Ethiopia and handed over to Ethiopian authorities, where he had already been convicted in absentia of numerous human rights violations, including murder, disappearance, torture, and unlawful taking of property.

In conclusion, Mr. Chairman, I would like to express to you and the Subcommittee the Justice Department's appreciation for this opportunity to discuss the government's ongoing efforts to ensure that justice is pursued both here and abroad on behalf of the victims of genocide, war crimes and crimes against humanity. We are very grateful for the tools that Congress has provided for law enforcement use in these enormously important cases. We will continue to wield those tools, both to bring the perpetrators of these terrible crimes to justice and, it is to be hoped, to hasten the arrival of the day in which the post-Holocaust imperative "Never Again" becomes, at long last, not just a slogan or a barely imaginable aspiration, but a *reality*.

I would be pleased to answer any questions that the Subcommittee may have.

Mr. SCOTT. Thank you.
Ms. Orentlicher?

TESTIMONY OF DIANE F. ORENTLICHER, PROFESSOR, WASHINGTON COLLEGE OF LAW, AMERICAN UNIVERSITY, WASHINGTON, DC

Ms. ORENTLICHER. Mr. Chairman and distinguished Members of this Subcommittee, I am grateful for the opportunity to share my views about a subject that could hardly be more important or consequential—the role of the United States in combating genocide through the rule of law.

As a party to the 1948 Convention on Genocide, the United States has long recognized that genocide is a crime under international law and has vowed to prevent and punish it.

Yet we haven't always honored our commitment to prevent or halt genocide when we have been in a position to act, and the principal law implementing our treaty obligation to punish genocide does not go far enough. In particular, as the Chairman already has noted, it does not empower U.S. authorities to bring genocide charges against foreigners who are believed to have committed genocide abroad and who have then sought sanctuary in our own country.

My remarks will focus on this gap, whose problematic implications can be easily resolved through legislation that falls squarely within the province of this Subcommittee.

First, though, I want to say that this hearing honors a point that was central to the life project of Raphael Lemkin, who, as the Chairman has noted, was the Polish scholar who famously gave genocide its name and then devoted himself to persuading States to condemn genocide as a crime under international law.

In his view, it was absolutely essential to confront genocide through law, not just an all-too-fragile code of conscience but an enforceable code of law.

His tireless crusade culminated in 1948, when the U.N. General Assembly adopted the Genocide Convention. But Lemkin did not live long enough to realize another goal that was also important to him—United States ratification of the Genocide Convention.

That didn't happen until 1988, almost 30 years after Lemkin's death.

The convention itself is brief. It recognizes that genocide is a crime under international law. It defines genocide in the terms that the Chairman already summarized, and it imposes two simple obligations—states must prevent and punish genocide.

The first duty, to prevent genocide, begins at home but transcends national borders. That is, the treaty counts on states to take measures in their own countries to combat conditions that are conducive to genocide. But it also recognizes that the risk of genocide anywhere engages the responsibilities of states everywhere.

In its first and so far only judgment applying the Genocide Convention, last February the International Court of Justice ruled that parties to the genocide convention “must employ all means reasonably available to them so as to prevent genocide as far as possible.”

What is significant about that judgment is that the Court affirmed that the duty to prevent genocide outside your own boundaries is not merely aspirational, but is legally binding.

The second duty is the one I am going to focus on in the rest of my remarks. That is the duty to punish genocide in situations where we have already failed to prevent it. Obviously, the two duties are related. If states routinely punished genocide when it occurred they would dispel the impunity that sustains people who commit genocide.

The question I would like to address in my remaining time is whether U.S. law adequately fulfills our obligations of punishment under the Genocide Convention.

In brief, our law does not go far enough to ensure prosecution of genocide suspects found in our own territory. Although, as the Chairman noted, the United States can prosecute people believed to have committed genocide here or U.S. nationals thought to have committed genocide abroad, we cannot bring genocide charges against people who commit genocide outside our borders and then seek haven here.

The Genocide Accountability Act of 2007, which was introduced in the House in May, addresses this gap. In my written testimony, I describe how the principal U.S. law that implements the Genocide Convention, the Proxmire Act, largely fulfills the letter of our treaty obligation to ensure that people who commit crimes of genocide in U.S. territory can be prosecuted here.

But I have no doubt that if the genocide convention were enacted today, it would include a provision requiring states who signed the convention to enact legislation making it possible to prosecute foreigners in their territory who committed the crime of group annihilation abroad.

More recent international conventions, such as the Convention against torture and the Convention against Enforced Disappearance, routinely include provisions of this sort. In fact, as a party to the Torture Convention, the United States has enacted legislation enabling Federal prosecutors to bring torture charges against aliens suspected of committed torture abroad who are found in the United States.

Many other countries do the same for genocide and have used their laws to prosecute perpetrators from Rwanda and the former Yugoslavia.

Looking beyond our own courts, the United States has played a leading role in supporting various international courts that have jurisdiction over genocide, as well as strengthening local courts in countries that have been ravaged by mass atrocities.

As Mr. Rosenbaum's testimony highlights, legislation enacted in recent years goes farther, enabling us to denaturalize, deport or exclude genocidaires. U.S. authorities can, as he has indicated, prosecute people who lie about their background in relation to genocide, but they can only do so on charges such as visa fraud.

An additional advance, but one that also highlights the limits in our law, is that in 2004 Congress enacted legislation directing the attorney general, when deciding on legal options relating to aliens who have in the past been involved in genocide, to consider options

for prosecution. That is, when he considers legal options he is supposed to consider options for prosecution.

But there is a glaring problem.

Mr. SCOTT. Could you summarize the rest of your testimony, please?

Ms. ORENTLICHER. Yes. The attorney general's options are limited, and let me try to illustrate that very briefly by citing a case that was reported earlier this month in the *Cleveland Plain Dealer*.

The case that was described in this news article involved someone who was prosecuted for lying about his involvement in a military unit that was connected to the 1995 massacre in Srebrenica, which has been legally judged to be a genocide.

He was not prosecuted, however, for genocide itself. He was convicted of lying about his service in this Srebrenica unit. As the *Cleveland Plain Dealer* reported, "Jurors heard little about the Srebrenica genocide or about Maslenjak's specific duties."

Instead, the judge who tried the case "repeatedly told jurors that Mskebhaj was on trial for immigration violations, not war crimes."

Now, while this case and many others demonstrate our commitment to ensure that the United States is not a sanctuary for genocidaires, it also highlights the gap in our law that I have mentioned before.

Whenever we can deport people to countries where they will be prosecuted for genocide committed in that territory, we should, and the United States has made great strides in strengthening legal systems in countries like Bosnia.

But in other countries that have been ravaged by genocide, the legal system is in shambles, and let me just quickly say, for example, in Rwanda, which, at one point, had 130,000 genocide suspects in jail waiting for prosecution, only 11 lawyers survived the genocide.

So while our attorney general is directed to consider options for prosecutions, very often, when the person in his hands is a suspected genocide perpetrator, his options are illusory.

In closing, Mr. Chairman, those who commit genocide count on our acquiescence, confident that they will not be held accountable for crimes that we have a hard time even imagining.

The Genocide Convention was meant to shatter that confidence and transform our enabling silence into mobilized action, grounded in law. By passing the Genocide Accountability Act of 2007, Congress would strike a major blow against the impunity that sustains perpetrators of genocide.

Thank you, Mr. Chairman.

[The prepared statement of Ms. Orentlicher follows:]

PREPARED STATEMENT OF DIANE F. ORENTLICHER

Mr. Chairman, Ranking Member Forbes, and distinguished members of this Subcommittee, it is an honor to appear before you. I am especially grateful for the opportunity to share my views about a subject that could hardly be more important and consequential—the role of the United States in combating genocide through the rule of law.

As a party to the Convention on the Prevention and Punishment of the Crime of Genocide ("Genocide Convention"), which the United States ratified in 1988, the United States has recognized that genocide is a crime under international law and

has vowed to prevent and punish it.¹ Yet we have not always honored our commitment to prevent genocide when we have been in a position to act, and the principal law implementing our treaty obligation to punish genocide does not go as far as it should. In particular, it does not empower U.S. authorities to bring genocide charges against foreigners who are believed to have committed genocide abroad and have sought sanctuary in our country. My remarks this afternoon will focus on this gap, both because of its significant implications and because of the ease with which this problem can be fixed.

As a foundation for my remarks, I would like to place the significance of current U.S. legislation concerning genocide against the broader backdrop of our decades-long national struggle to confront this extraordinary crime.

As a nation, we have at times provided extraordinary leadership in confronting genocide and other mass atrocities—and, at critical times, we have faltered or failed when our consciences should have summoned us to respond to a real-time campaign of extermination.

In our failures, we have scarcely stood alone. Every genocide that has been allowed to take place—or to continue unchecked once under way—represents an indelible stain on global conscience. For every State that has the capacity to counter the consuming carnage constituting genocide has a responsibility to do what it can to stop it in its tracks.

LEMKIN'S LAW-MAKING GENOCIDE AN INTERNATIONAL CRIME

This point may seem morally obvious, but it was an uphill struggle even to make genocide a crime in international law, much less to assure implementation of that law. Raphael Lemkin, the Polish scholar who devised the word *genocide* and then campaigned relentlessly for a treaty outlawing it, thought it unthinkable that international law did not criminalize violence whose aim is to obliterate a human community, not because of something they had done but because of who they are—members of a religious community, an ethnic clan or a racial group. In fact, Lemkin realized, this all-too-familiar crime of annihilation did not even have a name that captured its unique depravity.

Lemkin gave the crime a name, fashioned from the Greek word *genos*, meaning race or tribe, and the Latin root for killing, *cide*. It took longer, however, to persuade world leaders to outlaw genocide, although Lemkin campaigned relentlessly to make this happen. For Lemkin, it was essential to confront genocide through law—not an all-too-fragile code of conscience, but an enforceable law of humanity. Thus Lemkin would have been gratified by the premise implied by the name of this hearing, “Genocide and the Rule of Law.”

Lemkin's tireless crusade culminated in 1948 when the fledgling United Nations General Assembly adopted the Convention on the Prevention and Punishment of the Crime of Genocide. But Lemkin did not live long enough to see his adoptive country, the United States, become a party to the treaty. Lemkin died in 1959, 29 years before the United States ratified the Genocide Convention.

THE GENOCIDE CONVENTION

The Convention itself is brief, imposing just two principal duties: In its first article, the treaty confirms that genocide is a crime under international law which States parties undertake to both to *prevent* and to *punish*. Before the treaty elaborates on these two obligations, Article II sets forth what has become the authoritative definition of genocide under international law.

To those who are unfamiliar with this area of law, the treaty's definition of genocide may seem surprisingly narrow. To constitute genocide, a perpetrator must have committed at least one of five enumerated acts and must have done so with the very specific and narrow intent to destroy, in whole or in part, a national, ethnic, racial or religious group “as such.” It is not enough that the perpetrator killed a large number of people who share, say, a common ethnic affiliation. Instead, the perpetrator must have intended through his acts to destroy the ethnic group itself, in its entirety or in substantial part.

The five acts constituting genocide when committed with genocidal intent are:

- (a) Killing members of the targeted group;
- (b) Causing serious bodily or mental harm to members of that group;
- (c)

¹Article I of the Convention provides: “The Contracting Parties confirm that genocide, whether committed in time of peace or in time of war, is a crime under international law which they undertake to prevent and to punish.”

Deliberately inflicting on the group conditions of life calculated to bring about its physical destruction;

- (d) Imposing measures intended to prevent births within the group; and
- (e) Forcibly transferring children of the group to another group.

THE DUTY TO PREVENT GENOCIDE

As noted earlier, the first duty imposed by the Genocide Convention is to prevent genocide. For countries that have ratified the treaty, including of course the United States, this means not only taking action to combat conditions that are conducive to genocide in their own societies, but also taking effective action to stop genocide when they see it taking place *beyond* their shores. In short, the Convention recognizes, *wherever* genocide occurs, it engages the responsibility of countries' *everywhere* to take action in their power to bring it to an end.

THE DUTY TO PUNISH GENOCIDE

The second duty assumed by parties to the Genocide Convention is to *punish* genocide when it occurs. The Convention provides not only that individuals committing genocide "shall be punished," but also that conspiracy to commit genocide, direct and public incitement to commit genocide, attempt to commit genocide and complicity in genocide "shall be punished."² Of particular relevance to this hearing, the Convention requires States parties to enact legislation to give effect to the treaty, particularly by providing "effective penalties for persons guilty of genocide" or related acts, such as attempting to commit genocide.³

The two obligations imposed by the convention—to prevent and to punish genocide—are related, of course: If each country made good on its promise to punish genocide whenever it occurred, the scope for this horrific brand of carnage would be radically diminished.

UNITED STATES RATIFICATION AND IMPLEMENTATION OF THE GENOCIDE CONVENTION

Once the United Nations adopted the Genocide Convention, it took the United States another forty years to ratify it. Congress paved the way for U.S. ratification in 1988 by enacting the Genocide Convention Implementation Act of 1987, known as the Proxmire Act for the Senator who (like Lemkin) tirelessly campaigned on behalf of the Genocide Convention—this time for U.S. ratification.

It is the duty to *punish* genocide that the United States sought to implement through the Proxmire Act. That act, codified in section 1091 of title 18 of the United States Code, makes it a federal crime to commit genocide; to attempt its commission; or to directly and public incite others to commit genocide when the offense is committed in the United States or the alleged offender is a U.S. national.

When read together with other provisions of the federal criminal code concerning conspiracy and complicity, the Proxmire Act for the most part fulfills the legislative obligations concerning punishment set forth in the Genocide Convention. In fact, by making genocide a crime when committed abroad by a U.S. national, the Proxmire Act goes farther than what is required by the explicit text of the treaty. Article VI of the Genocide Convention explicitly requires prosecution only by the State in which genocide occurs or by an international criminal court, while not excluding other venues for prosecution.

GAPS IN U.S. LAW

But if the Proxmire Act largely fulfilled the explicit legislative obligations relating to punishment imposed by the Genocide Convention, both the treaty itself and our implementing legislation have become anachronistic in light of broader developments in international criminal law during the past two decades. More important, our legal framework is not sufficient to ensure punishment of individuals who commit genocide and then seek sanctuary in this country.

Let me first explain why the framework of prosecution reflected in current U.S. law is anachronistic. Specialized human rights treaties of more recent vintage than the Genocide Convention, such as the 1984 Convention against Torture and the 2006 Convention on Enforced Disappearance, require States parties to establish their criminal jurisdiction over persons suspected of committing the core treaty crime—torture, for example, or enforced disappearance—not only when the crime was committed in their own territories or by one of their nationals, but also when it was committed outside their territories, even when the victims were not their na-

² Article IV, read in conjunction with Article III.

³ Article V.

tionals, when the alleged perpetrator is in their territory and is not extradited for trial in another jurisdiction or transferred to an international tribunal.

States have long recognized that this option—that is, the ability to prosecute foreign nationals who have committed atrocious crimes abroad—must be available, not as a tool of first resort but instead one of last resort. For obvious reasons, this option must be available in situations where a person believed to have committed a crime of global concern enjoys impunity in the country where he or she committed her crimes and no other appropriate forum is available for prosecution. What has changed in recent decades is a markedly greater willingness by States to exercise jurisdiction in these situations. This change is reflected, among other ways, in the approach taken in the two treaties I just mentioned.

Several developments have led a significant number of countries to adopt or enforce legislation establishing jurisdiction over genocide, wherever committed, if the perpetrator is in their territory. The developments underlying this trend include, tragically, the 1994 genocide in Rwanda and “ethnic cleansing” in the former Yugoslavia, which included the 1995 Srebrenica genocide. These and other recent episodes of mass atrocity gave rise to the creation of several international tribunals, starting in 1993. To our credit, the United States took the lead in establishing these tribunals and has provided crucial support to their operation.

The very establishment of these tribunals signaled a new international resolve to ensure that perpetrators of atrocious crimes would be prosecuted, and helped nurture an expectation that they would in fact face the bar of justice. Yet none of these tribunals would be able to prosecute more than a small fraction of perpetrators. In this setting, some countries began to prosecute perpetrators of mass atrocities, including genocide, who had sought haven in their territories.

In contrast, the United States cannot prosecute foreigners who have committed international crimes other than torture and various acts of terrorism and then seek sanctuary here. Remarkably, we can prosecute a foreigner for torture but not genocide. Thus, if we discover that a notorious alleged perpetrator of the 1994 genocide in Rwanda is living in the United States—and in fact this has happened—our genocide law does not allow federal prosecutors to bring genocide charges against the suspect; we can only deport him.

During the past eleven years, we have narrowed the impunity gap created by this loophole in our law, but we still have not done nearly enough. For example, a law enacted in 1996⁴ permits the United States to transfer individuals indicted by either the International Criminal Tribunal for Rwanda or the International Criminal Tribunal for the former Yugoslavia, both of which have jurisdiction over genocide, to the relevant tribunal, and the United States has done so. But the Rwanda and Yugoslavia tribunals are in wind-up phase: they are no longer taking on new cases, and they never had the capacity to try more than a fraction of the atrocities that led to their creation.

In 2004, Congress took another important step by amending our immigration law to expand grounds for denying admission to and excluding aliens on human rights grounds.⁵ Congress also directed the Attorney General, when considering appropriate action against aliens believed to be responsible for certain offences that include genocide, to give “consideration” to “the availability of criminal prosecution under the laws of the United States” or “of extradition . . . to a foreign jurisdiction that is prepared to undertake a prosecution” for the conduct that may underlie removal or denaturalization.⁶ While this is an important acknowledgment that persons suspected of genocide should be prosecuted in an appropriate jurisdiction, the Attorney General’s options are unwisely limited.

As I have already noted, under current law the United States cannot prosecute a foreign national for genocide committed abroad, even if the victims included U.S. citizens. As for extradition to a foreign jurisdiction, in countries that have recently been scourged by genocide the judiciary is likely to be in shambles. Consider Rwanda. The Rwandan government estimates that over half a million people participated in the 1994 genocide and at one point had jailed some 130,000 suspects. Yet when the 1994 genocide was over, only eleven Rwandan lawyers reportedly survived. While estimates vary, at least 60,000 suspects are still believed to be in custody awaiting trial in Rwanda on charges relating to the 1994 genocide.

And so when the Attorney General is directed to consider options for prosecuting a genocidaire in our midst, his options may prove largely illusory.

The Genocide Accountability Act of 2007, which was adopted by unanimous consent in the Senate and has been introduced in the House, would fill the most signifi-

⁴National Defense Authorization Act, Pub. L. No. 104–106, § 1342, 110 Stat. 486 (1996).

⁵8 U.S.C. §§ 1182(a)(3)(E)(ii), 1227(a)(4)(D).

⁶8 U.S.C. § 1103(h)(3).

cant gap in our law against genocide: It would make it possible for federal prosecutors to issue genocide indictments against foreign nationals who allegedly committed genocide abroad and then sought sanctuary here.

In doing so, the legislation would hardly break new legal ground, even under United States law. As a party to the 1984 Torture Convention, the United States enacted legislation⁷ enabling U.S. courts to exercise criminal jurisdiction when the alleged offender is a U.S. national or when he or she “is present in the United States, irrespective of the nationality of the victim or alleged perpetrator.” Last December, the United States brought its first indictment under this law.

Nor would the Genocide Accountability Act of 2007 establish the United States as a forum of first resort for prosecuting *genocidaires* found in our territory. We would still be able to extradite a genocide suspect for trial abroad in a forum that may be more appropriate than the United States. But what the proposed law *would* do is enable U.S. prosecutors to ensure prosecution of those who have committed one of the most serious crimes imaginable when there is no realistic prospect of a fair prosecution in another forum. In doing so, we would strike a powerful blow against the impunity that encourages atrocious crimes.

CONCLUSION

Those who commit genocide count on our acquiescence, confident that they will not be held to account for crimes that we can scarcely bear to imagine. The Genocide Convention was intended above all to shatter the confidence of *genocidaires*, transforming our enabling passivity into mobilized action grounded in law. Yet the United States is now legally disabled from taking one of the more effective steps we could and should take to deal with *genocidaires* in our own midst—bringing them to justice. By passing the Genocide Accountability Act of 2007, Congress would make a major contribution in combating the impunity that sustains *genocidaires*.

Mr. SCOTT. Thank you.

Mr. Fowler?

TESTIMONY OF JERRY FOWLER, UNITED STATES HOLOCAUST MEMORIAL MUSEUM, WASHINGTON, DC

Mr. FOWLER. Thank you, Chairman Scott and distinguished Members of the Subcommittee, for this opportunity to address one of the most urgent problems confronting humanity, the problem of genocide.

Your leadership on this issue is vitally important, and I thank you for it.

I have the privilege of being the director of the Committee on Conscience at the United States Holocaust Memorial Museum, and one of the ways in which the museum seeks to honor the memory of those who suffered in the holocaust is working to prevent and stimulate effective responses to contemporary genocide.

This key aspect of our living memorial was part of the original vision articulated by Elie Wiesel and the President’s commission on the holocaust in 1979, who saw the need to prevent genocide as an obligation of a holocaust memorial. As they put it, “A memorial unresponsive to the future would violate the memory of the past.”

Today, we are confronting genocide in the Darfur region of Sudan. It is a massive catastrophe and a hugely complex one, as well. It is vital to acknowledge the complexity, but not lose sight of the moral contours of the situation, and the moral contours are these.

Hundreds of thousands of civilians have perished and over two million have been driven from their homes. Thousands of women and girls have been raped and hundreds of thousands of lives are hanging in the balance, even as we speak today.

⁷ Torture Convention Implementation, codified at 18 U.S.C. §§ 2340–2340B.

The primary responsibility for this catastrophe rests with the government of Sudan. Not only has that government manifestly failed to protect its citizens from this massive violence, in the vast majority of cases, the government has actually instigated it.

In May 2004, I went to Chad and traveled along the Chad-Sudan border, meeting refugees from Darfur, listening to their stories, seeing the incredibly harsh desert into which they had been driven. And I should add that at that point in time, the people in Chad were receiving international assistance, but the government in Sudan was still blocking international aid and assistance to people driven into the desert who were not able to leave Darfur.

One day near the end of that trip, I met a woman named Hawa. I interviewed her in the small makeshift hut she had constructed out of sticks and some plastic sheeting that the U.N. had given her.

We were inside this hut along with her four children, an elderly woman, and my translator. Outside it was well over 100 degrees and inside, the atmosphere was oppressive. She told me about the day her village was attacked. She told me that her father was killed, her brother was killed, a cousin was killed, 30 people in her village were killed that day, and her mother disappeared.

And I have to admit that I suddenly felt overwhelmed by her suffering and by all the suffering that I had heard from refugees day after day after day, and I felt compelled to get out of that hut.

So I thanked her for sharing her story and I started to crawl out, when she started talking in a low voice. And I looked over at her and tears were streaming down her cheeks and she was asking, "What about my mother? What about my mother? I don't know if she is alive or if she is dead."

And I felt as though she was asking me for an answer, which I couldn't possibly give her. All I could think to do was to ask her her mother's name and promise to bring her name back to Americans. And her mother's name is Khadiya Ahmed. Khadiya Ahmed.

So I am telling you that name and telling you that as vast as this catastrophe is, as genocide always is, as many people as it has affected, it is also about one woman who didn't know where her mother was and probably won't until there is peace and security in Darfur.

One thing that I have come to believe with all my heart is that what we do, whether we act or remain indifferent has an effect on those around us. If we are silent, others believe silence is permissible, perhaps even necessary. If we speak out, others will be encouraged to speak out.

As Elie Wiesel has said many times, "Silence only helps the perpetrators, never the victims."

In the main hall of the Holocaust Memorial Museum is inscribed a passage from the book of Isaiah, "You are my witnesses." This passage works on several levels. Most obviously, it is underscoring the fact that visitors to the museum are themselves becoming witnesses to the enormity of the holocaust.

That passage from Isaiah also is a challenge, a challenge, using the present tense, to imply a continuing obligation on all of us to bear witness to the crimes and injustice of today, as well as the crimes and injustice of yesterday.

The Holocaust Memorial Museum has been an essential part of and has helped stimulate a burgeoning constituency of conscience that is standing up and speaking out for those whose lives are hanging in the balance.

Citizens from all walks of life have joined together to say that they will not stand silently by while genocide happens on their watch, and more join that constituency every day. They are standing up and bearing witness and shaping society by their reactions.

That constituency of conscience is growing, and any political leader who ignores its voice does so at his peril. By authorizing the creation of the Holocaust Memorial Museum, a memorial to victims of a particular genocide, Congress placed in the metaphorical heart of our nation the memorial core of Washington, DC, the universal principle that indifference to genocide is not an American value.

Living up to this principle is an enormous task, but not an impossible one, and the challenge that faces each and every one of us is to transform that principle into a practical reality.

Thank you.

[The prepared statement of Mr. Fowler follows:]

PREPARED STATEMENT OF JERRY FOWLER

Chairman Scott, Ranking Member Forbes, distinguished members of the subcommittee, thank you for this opportunity to address one of the most urgent problems confronting humanity—the problem of genocide. As my testimony will make clear, your leadership on this issue is vitally important and I thank you for it.

I have the privilege of being the director of the Committee on Conscience at the United States Holocaust Memorial Museum. As you know, the Holocaust Memorial Museum is our national memorial to victims of the Holocaust, a public-private partnership supported both by the Federal government and the generous donations of thousands upon thousands of ordinary Americans. In the relatively brief period that it has been open, it has achieved worldwide stature as a steward of Holocaust memory and a voice of moral authority.

One of the ways in which we seek to honor the memory of those who suffered in the Holocaust is by working to prevent and stimulate effective responses to contemporary genocide. This key aspect of our *living* memorial was part of the original vision articulated by Elie Wiesel and the President's Commission on the Holocaust back in 1979. In their report to President Jimmy Carter recommending the creation of a national memorial, they noted that of all the issues they looked at, none was more perplexing or more urgent than trying to prevent future genocide. And they saw the need to prevent genocide as an obligation of a Holocaust memorial. As they put it, "a memorial unresponsive to the future would *violate* the memory of the past." Memory, in other words, imposes obligations.

Events since the Museum opened in 1993 have proved the sad wisdom of the Commission's words. Even as the Museum was being dedicated in April 1993, mass violence was being used against civilians in Bosnia as the former Yugoslavia disintegrated. That violence did not incite an effective international response, but it did bring us a new euphemism for genocide and crimes against humanity: "ethnic cleansing." And before it was over, in July 1995, the world witnessed the worst single massacre on the European continent since the end of the Holocaust, near a place called Srebrenica. More than 7,000 Bosnian Muslim men and boys who had taken refuge with their families in a so-called "UN safe area" were separated from their wives and daughters and sisters and handed over to the Bosnian Serb military, who proceeded to systematically execute them. The two individuals most responsible for that massacre, incidentally, Radovan Karadzic and Ratko Mladic, are still at large even though they have been under indictment by the International Criminal Tribunal for the former Yugoslavia for more than a decade.

A year to the month after the Museum opened, in April 1994, genocide began in the tiny central African country of Rwanda. In 100 days, as many as 800,000 people were murdered in a campaign that was planned and executed by extremist leaders of the country's Hutu majority. And I want to emphasize that it, like all genocides, was *planned and executed*. It was not ancient tribal hatreds erupting. It was not, as was suggested at the time, what "those people do from time to time." It was a

conscious crime, organized by human beings making deliberate choices. Three out of every four members of the Tutsi minority were slaughtered. Mass rape of Tutsi women was also used as part of the program of destruction, as indeed it was in Bosnia as well.

These events confirmed, if such confirmation was necessary, that genocide and related crimes against humanity did not end with the Holocaust. Far from it. The willingness of political leaders to use mass violence against civilians to achieve their goals is an ever present menace to humanity and will be so long as those leaders believe that their crimes will be met with indifference and impunity.

The juxtaposition of Bosnia and Rwanda with the opening of the Holocaust Memorial Museum gave added urgency to a question facing the Museum's leadership—how should the nation's Holocaust memorial respond when genocide or related crimes against humanity threaten today? The Museum's governing Council, recalling the Presidential Commission's view of the obligations of memory, concluded unanimously that silence was not an option. It created a Committee on Conscience to guide the Museum's genocide prevention and response activities—in short, to alert the national conscience to threats of genocide and related crimes against humanity.

But all of this begs the larger question: what is our responsibility—collectively and individually, whether we be private citizens or public servants—when genocide is threatened or actually occurring?

To answer that question, let me start by invoking the work of Ervin Staub. He was a young boy in Hungary who was rescued from the Nazis by Raoul Wallenberg, the courageous Swedish diplomat who rescued thousands of Hungarian Jews, including a distinguished member of this House, Congressman Tom Lantos. Today, Staub is a psychologist at the University of Massachusetts-Amherst. He has written a classic work about the Holocaust and mass violence called *The Roots of Evil*. In it, he asks, as a psychologist, how did this happen? In a chapter on bystanders, he explained that

[b]ystanders, people who *witness* but are not directly affected by the actions of perpetrators, help shape society by their reactions. . . . They can define the meaning of events and move others toward empathy or indifference. They can promote values and norms of caring, or by their passivity or participation in the system they can affirm the perpetrators.

That is a powerful truth he has articulated: "*People who witness . . . help shape society by their reactions. . . . They can promote values and norms of caring, or . . . they can affirm the perpetrators.*"

What we do, whether we act or remain indifferent, has an effect on those around us. If we are silent, others believe silence is permissible, perhaps even necessary. If we speak out, others will be encouraged to speak out. As Elie Wiesel has said many times, silence only helps the perpetrators, never the victims.

In the main hall of the Holocaust Memorial Museum is inscribed a passage from the book of Isaiah, "You are my witnesses." This passage works on several levels. Most obviously, it is underscoring the fact that visitors to the Museum are themselves becoming witnesses to the enormity of the Holocaust.

It also echoes the explanation that General Dwight Eisenhower gave for insisting on visiting newly liberated camps. "I made the visit deliberately," he said, "in order to be in a position to give first hand evidence of these things if ever, in the future, there develops a tendency to charge these allegations to propaganda." Witness, in other words, protects against the distortion or denial of history.

Finally, the passage from Isaiah is a challenge—a *challenge*—using the present tense to imply a continuing obligation on all of us to bear witness—to the crimes and injustice of today as well as the crimes and injustice of yesterday. And as Professor Staub says, "People who witness help shape society by their reactions."

Today, we are confronting genocide in the Darfur region of Sudan. It is a massive catastrophe, and a hugely complex one as well. It is vital to acknowledge the complexity, but not lose sight of the moral contours of the situation. And the moral contours are these: hundreds of thousands of civilians have perished, and over two million have been driven from their homes. Thousands of women and girls have been raped. And hundreds of thousands of lives are hanging in the balance even as we speak today. The primary responsibility for this catastrophe rests with the government of Sudan. Not only has that government manifestly failed to protect its citizens from this massive violence, in the vast majority of cases the government has actually instigated it.

In May 2004, I went to Chad and traveled along the Chad-Sudan border, meeting refugees, listening to their stories, seeing the incredibly harsh desert into which they had been driven. The daily temperatures at that time of year rose to 115 to 120 degrees. On many days there was a sandstorm, cutting visibility to a hundred

yards. One day near the end of that trip, I met a woman named Hawa. I interviewed her in the small makeshift hut she had constructed out of sticks and some plastic sheeting that the UN had given her. We were inside this hut along with her four children, an elderly woman and my translator. Outside it was well over 100 degrees, and inside the atmosphere was oppressive.

She told me about the day her village was attacked. She told me that her father was killed, her brother was killed, a cousin was killed. Thirty people in her village were killed, and her mother disappeared.

I have to admit that I suddenly felt overwhelmed by her suffering, by all the suffering I had been witnessing in those days and felt compelled to get out of that hut. I thanked her for sharing her story and started to crawl out, when she started talking in a low voice. I looked over at her, and tears were streaming down her cheeks. She was asking, "What about my mother? What about my mother? I don't know if she is alive or if she's dead?"

I felt as though was asking me for an answer, which I could not possibly give her. All I could think to do was to ask her her mother's name and promise to bring her name back to Americans. Her mother's name is Khadiya Ahmed—actually a common woman's name in Darfur. So I'm telling you that name, and telling you that as vast as this catastrophe is, as many people as it has affected, it also is about one woman who didn't know where her mother was and probably won't until there is peace and security in Darfur.

The Holocaust Memorial Museum has been an essential part of, and has helped stimulate, a burgeoning constituency of conscience that is standing up and speaking out for those whose lives are hanging in the balance. We joined with colleagues to found the Save Darfur Coalition and worked with a tireless group of Georgetown students to help them launch Students Taking Action Now: Darfur (STAND), which now has expanded to hundreds of campuses worldwide. Citizens from all walks of life have joined together to say that they will not stand silently by while genocide happens on their watch and more join every day. They are standing up and bearing witness and shaping society by their reactions. That constituency of conscience is growing, and any political leader who ignores its voice does so at his peril.

By authorizing the creation of the Holocaust Memorial Museum, a memorial to victims of a *particular* genocide, Congress placed in the metaphorical heart of our nation—the memorial core of Washington, DC—the *universal* principle that indifference to genocide is not an American value. Living up to this principle is an enormous task, but not an impossible one. And the challenge that faces each and every one of us is to transform that principle into a practical reality.

Mr. SCOTT. Thank you.

Ms. Smith?

**TESTIMONY OF GAYLE E. SMITH, SENIOR FELLOW, CENTER
FOR AMERICAN PROGRESS, WASHINGTON, DC**

Ms. SMITH. Good afternoon, Mr. Chairman, and thank you for the invitation to testify.

I am not testifying here today as a lawyer. I am one of the few people in Washington who is not an attorney. I am here as a practitioner and base my remarks and views on having spent considerable time in the field where I have seen genocide up close and personal, and as a former policymaker, where I grappled with it in government.

The Genocide Accountability Act, in my view, is of extreme importance, first and foremost, as a matter of principle. U.S. prosecutors have jurisdiction over cases involving terrorism and torture, even if the action occurred outside the United States.

Logic demands that if tortures can be held accountable in U.S. courts, so, too, must the perpetrators of genocide. But equally as important, I think it is good policy, and I want to briefly outline five reasons why I think that is so.

First, it reinforces our commitment to the rule of law and, in particular, lends weight to the convention on the prevention and punishment of the crime of genocide, a genocide that has been weak-

ened by the world's modern failures and is in desperate need of practical application.

Second, it will contribute to breaking the cycle of impunity. Genocides often occur in cycles. What we saw in Rwanda in 1994 was not the first of its kind.

Third, by an enacting legislation that will amend our laws to hold the perpetrators of genocide to account, we send a real-time signal to perpetrators of genocide today that there is a mechanism for accountability and a cost for their actions.

One of the challenges we face in Darfur right now is that the government and its proxy forces in the militia believe that there is no cost for their actions. This is a small, but extremely significant signal that, yes, indeed, there is a price to be paid.

Fourth, as a matter of policy, it puts us on the road starting to act on the responsibility to protect, the doctrine that posits that government can't or won't protect its own people, the international community will act. It is a doctrine that embraces our common humanity, but one that is, at present, empty. This one move can start to put flesh on the bones of the doctrine that might signal to the rest of the world that we stand for and believe and hope in their futures.

But, finally, Mr. Chairman, at the end of the day, this will make a difference in people's lives. You may recall a case in the 1990's where a young Ethiopian woman working as a cleaner in a hotel in Atlanta stood before the elevator, and when the doors opened, she was facing the man who had tortured her during a period in that country's history known as the "red terror."

She called her friends who were held with her and confirmed his identity. She had them sneak a peak at him from behind closed doors. They confirmed that this was the man that had held them upside down, prodded them with electrical wires, and tortured them repeatedly for weeks.

Because of our law, they were able to bring him to trial on grounds of torture in the United States. Because of our law, they won. The woman said afterwards that she had remained quiet for 15 years, and when she won, she said, "Before, when I saw him, I was tied up and hanging upside down. But this time, I am standing up and facing him. I don't have to be afraid of him."

She went on to say that "This is everybody's case and not just mine."

Mr. Chairman, genocide knows no borders. This is not just someone else's case or someone else's crime. It is ours, and I am encouraged that we will soon act to make that so.

Thank you.

[The prepared statement of Ms. Smith follows:]

PREPARED STATEMENT OF GAYLE E. SMITH

House of Representatives
Committee on the Judiciary
Subcommittee on Crime, Terrorism and Homeland Security
"Genocide and the Rule of Law"
2141 Rayburn House Office Building
October 23, 2007

Testimony Submitted By:

Gayle E. Smith
Senior Fellow
Center for American Progress
Co-Founder, ENOUGH Project

Mr. Chairman, and Honorable Members of the Subcommittee:

Thank you for giving me this opportunity to testify on an issue that has plagued us in the past, challenges us today, and will confront us in the future. I testify here today not as a legal authority, but as someone who has lived all sides of the issues that give rise to genocide. I have spent 20 years living and working in Africa as a journalist, NGO worker, and specialist on development and conflict. I also served as a policymaker at USAID and the National Security Council, where I was the Senior Director for African Affairs, during the Clinton Administration. Today, I am a Senior Fellow at the Center for American Progress, where I co-founded the ENOUGH Project to end mass atrocities and genocide.

I believe that H.R. 2489, the Genocide Accountability Act, is of critical importance as a matter of both principle and policy. Genocide is a crime without borders. As a matter of principle, amending the law to allow the prosecution of non-U.S. nationals resident in the United States for acts of genocide committed outside our borders is, quite simply, the right thing to do. For other grave international crimes, Congress has rightly extended the jurisdiction of U.S. courts to include non-U.S. citizens or actions taken beyond American borders. U.S. prosecutors have jurisdiction over cases involving terrorism and terrorist financing, hijacking and hostage taking, and torture, even if the action occurred outside the United States. Logic demands that if tortures can be held

accountable in U.S. courts, so too must the perpetrators of genocide.

We can also right a perverse wrong, as the prevailing situation allows perpetrators of genocide who may enter or who reside in the United States to use the loophole in existing law to provide what is in essence safe haven from prosecution. Even more important, we can send a signal to the world, and to both those who are victims of genocide and its perpetrators, that the United States stands against genocide wherever it may occur, and will not allow its perpetrators to avoid justice in the United States. As a matter of principle, we should do no less.

There are three ways that genocide can be brought to a halt: the international community can intervene; its victims can militarily defeat its perpetrators; or the actions of the international community can force the perpetrators to alter their calculations. Even though this legislation focuses on punishment, it can significantly impact the latter of these methods, strengthening the tools available to policymakers in their efforts to end genocide. If would-be perpetrators know that the long arm of U.S. law can reach out and hold them accountable for their actions, that may change the equation and serve as a meaningful deterrent to launching a campaign of genocide and mass atrocity.

There are also important matters of policy at stake, and across the board, closing the loophole that now prevents the prosecution of non-U.S. nationals within the United States will have a positive impact:

First, it will reinforce America's commitment to the rule of law. Significantly, H.R. 2489 will give teeth to the Convention on Prevention and Punishment of the Crime of Genocide, to which the United States is a signatory. Despite the passion underpinning and potency of this Convention, the failure of the international community to act swiftly upon it - in, for example, Rwanda and Darfur - has weakened it. By ensuring that the perpetrators of genocide can and will be prosecuted in the United States, we can uphold our commitment to the Convention and begin the arduous but necessary process of rendering the Convention a tool for change rather than a lofty but powerless statement of intent.

Second, it will contribute to our and other international efforts to break the cycle of impunity that allows for and perpetuates acts of genocide. In many cases, genocide and crimes against humanity occur in cycles, and those cycles are not broken until and unless justice is served. The wave of killings that constituted the Rwandan genocide, for example, were not the first in modern history. The U.S. government knows of individuals who were involved in the genocides in Bosnia and Rwanda that currently live in the United States. It is unconscionable that we know of people accused of these grave crimes yet we are powerless to prosecute them in our courts. David Scheffer, U.S. Ambassador at Large for War Crimes from 1997 to 2001, has often described his ultimately fruitless struggle to find the legal means to detain and put on trial Pol Pot and other senior Khmer Rouge figures due to the inability to prosecute him in U.S. courts. He eventually did find a third country willing to hold Pol Pot, but the drawn out negotiating process meant that he died before he could be captured and the deal subsequently collapsed. By closing the loophole in current law, the United States can contribute to broader efforts to break the cycle of impunity by ensuring that non-U.S. citizens who commit acts of genocide can and will be prosecuted in the United States.

Third, it will send a real-time signal to perpetrators who remain outside the law that there is a mechanism in place to hold them accountable for their crimes. This point is critical, as in Darfur today, one of the primary challenges we face is that the Government of Sudan and its proxy, the janajaweed militia, have no reason to believe that there is a cost for their actions. They have defied the will of the international community and rejected the findings of the International Criminal Court. However reprehensible their denial of responsibility may be, it is understandable. There has been no cost because the international community's words have not been reinforced by actions. Though in and of itself, closing this loophole is not sufficient to change this dynamic, it can make clear that the United States will impose a price for the commission of genocide.

Fourth, it could - in a small but significant way - initiate the critical but tardy process of giving meaning to the doctrine of the responsibility to protect. Endorsed by a majority of members of the United Nations, and invoked

in many a speech given by American policymakers, the doctrine of the "responsibility to protect" posits that where a government is unable or unwilling to protect its own citizens, the international community has a responsibility to act. It is a principled doctrine that aspires to translate into policy the best features of our common humanity.

It is also, at present, an empty doctrine. I have just returned from Darfur, where, as they enter the fifth year of abuse, violence, directed attacks, rape and displacement, the people of Darfur are waiting for a UN force - agreed a full four years after their nightmare began - that as yet has received no offers of armored helicopters or the other equipment necessary for a successful protection mission.

They are experiencing first-hand our failure to act on the responsibility to protect. They are watching as those indicted by the International Criminal Court continue in positions of power, and those known to have played a role in the destruction of their homes, livelihoods and communities roam free. Amending our laws will not protect them today or tomorrow; it will, however, provide us with the legal means to take action against the perpetrators in the United States and could thus serve to protect Darfur's people in the future.

Fifth and finally, it will affect people's lives. You may recall a case in the 1990s, when a young Ethiopian woman working in an Atlanta hotel came face to face with the man who had tortured her during what was called the "Red Terror" in Mengistu Haile Mariam's Ethiopia. Because hers was a case of torture, U.S. law allowed her to bring suit in the United States, ultimately with success. One of the women who attended the trial - a victim herself, told the *New York Times* that "Before I was tied up and hanging upside down. But this time I am standing up and facing him. I don't have to be afraid of him." She went on to say that "This is everybody's case, not just mine."

Honorable Chairman and Members of the Subcommittee, this is the point - amending our laws to ensure that non-U.S. citizens who commit acts of genocide can be tried in the United States is everybody's case. It is obviously of paramount importance to genocide's victims, but the case is also ours if we are to stand up for accountability, the rule of law, and justice.

Mr. SCOTT. Thank you. And I want to thank all of our witnesses for their testimony.

We will now recognize Committee Members for questions for 5 minutes. Then I will recognize myself for the first 5 minutes and start with Mr. Rosenbaum.

The present jurisdiction for prosecutions for genocide, how do they compare with the present jurisdiction for torture?

Mr. ROSENBAUM. As has been said by other witnesses, in the case of genocide, the crime has to have been committed either within the United States or by a United States citizen for a Title 18 genocide prosecution.

That, of course, doesn't cover extradition and removal and other tools that are available to us.

In the case of torture, the perpetrator has to be either in the United States or a U.S. national abroad.

Mr. SCOTT. And if they are in the United States, they can be prosecuted for the torture that happened abroad.

Mr. ROSENBAUM. Yes, Mr. Chairman.

Mr. SCOTT. Now, you have found people who allegedly committed genocide in the United States and you have prosecuted them, but not for genocide, is that right?

Mr. ROSENBAUM. There have, as of yet, been no Title 18 prosecutions for genocide.

Mr. SCOTT. But you have been able to prosecute them for other things.

Mr. ROSENBAUM. Yes, sir.

Mr. SCOTT. In some cases, you have been able to extradite them back to the country of origin and they can get prosecuted there, right?

Mr. ROSENBAUM. Yes, Mr. Chairman.

Mr. SCOTT. OKAY. What new law do you need to be able to prosecute them here?

Mr. ROSENBAUM. Well, I am not in a position, this being an oversight hearing, to offer an opinion on legislation that is needed. Obviously, there is the Genocide Accountability Act that has been mentioned.

Mr. SCOTT. Let me ask, without giving an opinion, would the Genocide Accountability Act give you the jurisdiction that would allow the prosecution in the United States?

Mr. ROSENBAUM. It would not give us any jurisdiction over people who are in the United States who already participated in genocide, but, yes, in future cases, future genocides, there would be some number of cases presumably where individuals come here and we would then have jurisdiction to prosecute.

Mr. SCOTT. Let me make sure I understand this. You are saying that genocide that has already occurred would not be prosecutable, but prospectively, they would be subject to jurisdiction under the Genocide Accountability Act.

Mr. ROSENBAUM. As I read that statute, yes, Mr. Chairman.

Mr. SCOTT. And under that act, when would the court determine whether or not genocide had occurred? Would that have to be decided independently by the United Nations or some independent or would that be decided during the trial itself?

Mr. ROSENBAUM. I assume the latter. I don't see any reference in the statute or in the bill to who makes that decision. So I assume that it would be the case that it is done in the manner of other criminal offenses.

Mr. SCOTT. Thank you. My time is probably up.

The gentleman from North Carolina, Mr. Coble?

Mr. COBLE. Thank you, Mr. Chairman.

Good to have you all with us.

Mr. Rosenbaum, let me follow up on the Chairman's question, to be sure I understand it.

Is it true that we cannot indict someone for genocide if it was committed outside the United States, even if the victim or the accused is an American citizen?

Mr. ROSENBAUM. We can indict, Congressman, if the perpetrator is an American citizen.

Mr. COBLE. Now, what benefit will be forthcoming if H.R. 2489 is passed? Which I happen to think is a good piece of legislation, by the way.

Mr. ROSENBAUM. Well, I am not here to, with respect, Congressman, to opine on benefits. I can say what the statute would do, and I say that because there is, at this point, no formal Administration position on the bill.

That having been said, of course, the Department of Justice broadly supports the goals of bringing genocidaires to justice.

Mr. COBLE. I think the goals are indeed commendable.

Let me try maybe a modified extension of the other question.

Can we indict one for torture, material support for terrorism, terrorism financing, and hostage-taking if these acts occur outside of the United States' territorial boundary?

Mr. ROSENBAUM. I am not an authority on all of those statutes, Congressman. I do know something about the torture statute and generally about terrorism offenses, and so the answer to your question is, so far as I know, generally, yes.

Mr. COBLE. Professor, is it your belief that H.R. 2489, if enacted, is constitutional?

Ms. ORENTLICHER. I can't think of any reason why it wouldn't be constitutional.

Mr. COBLE. I am sure some naysayers probably will find some reason for it. But as I said before, I think this is a good approach, and I embrace it warmly.

Mr. Fowler, if enacted, the bill at hand, and, also, Ms. Smith, what impact would it have upon other countries, in your opinion?

Mr. FOWLER. Well, I think on an issue like this, in particular, the United States sets a standard for what other countries do, and countries look at our practices, for better or for worse, in modeling their own behavior. So I think it would set a standard.

Mr. COBLE. I would think it would not negatively impact. Would you concur with that?

Mr. FOWLER. Yes, sir.

Mr. COBLE. Ms. Smith?

Ms. SMITH. Yes. And I would simply add that for countries that may, in fact, at present, be committing acts of genocide, it would send the reverse signal, and I think cause them to think twice both, obviously, before sending people here believing they can seek

safe haven in the United States, but also, again, understanding the United States will impose a cost for their action.

Mr. COBLE. I got you. Thank you all for your testimony.

I yield back, Mr. Chairman.

Mr. SCOTT. Thank you.

The gentleman from Georgia, Mr. Johnson?

Mr. JOHNSON. Thank you, Mr. Chairman.

I would like to commend the members of the panel for your work in this very important field, which is often something that is taken for granted, perhaps, by persons who have never been victimized or even understand what genocide is.

Certainly, I am sure that your work doesn't pay a whole lot and you are not in it for the money, you are in it for this pursuit of justice. And so I must commend you for your involvement in this area.

I would take the opportunity to make sure that the public at large knows what genocide actually is. In 1948, the United Nations General Assembly adopted the convention on the prevention and punishment of the crime of genocide, and it imposes two core obligations on participating states.

First, states parties undertake to prevent genocide and, second, they commit to punish genocide, as well as several related acts, such as attempting to commit genocide.

And in 1987, Congress enacted legislation to bring U.S. law into conformity with the genocide convention and the genocide convention defines genocide as one of five enumerated acts, when they are committed with the intent to destroy, in whole or in part, a national ethnical, racial or religious group, as such.

The acts that constitute genocide, when committed with this very specific intent, are the killing of members of the group; B, causing serious bodily or mental harm to members of that group; C, deliberately inflicting on the group conditions of life calculated to bring about its physical destruction; D, imposing measures intended to prevent births within the group; and, E, forcibly transferring children of the group to another group.

To constitute genocide, these acts must be undertaken with the aim of destroying the targeted group or a substantial part of that group, as such.

Having said that, I would like to ask how many countries have adopted legislation establishing jurisdiction over genocide. Anyone could answer.

Ms. ORENTLICHER. I don't know the exact number, but quite a few countries have for some time been able to do that. An increasing number of states in recent years have adopted legislation that enables them to prosecute genocide that occurs outside their territory.

During the 1990's, a number of countries, including Germany, prosecuted people for genocide committed during the conflict in the former Yugoslavia and in Rwanda.

Those events, in fact, provided one of the main impetuses for countries to either enforce statutes they had had on the books for a long time but had not an occasion to use, or to pass legislation that they suddenly saw a need for.

In the wake of these conflicts, refugees were having experiences much like the type of experience Ms. Smith described in Atlanta. They would see the people who had committed genocide enjoying refuge in Germany, for example, and they would say, "This is the person who participated in the genocide that claimed my family."

And so prosecutions have taken place in a number of countries. So we are not, unfortunately, in the lead on this, but it is not unusual to have this kind of legislation.

Mr. JOHNSON. Now, Ms. Smith, the case that you spoke of in Atlanta, was the person who was spotted by the victim, was he actually prosecuted or was it a civil proceeding, a civil suit? Was it a criminal prosecution?

Ms. SMITH. No. It was a civil suit. But I think, interestingly, I was living in Africa at the time and I will tell you that the story of that suit spread across the continent like wildfire. It was known in Ethiopia, it was known in Rwanda, it was known in the Congo, it was known in Sudan.

And, again, it may seem a small and single suit, but it is one that sent a message I believe prosecutions for genocide would also do.

Mr. JOHNSON. Certainly. Was there any reason why that individual was not prosecuted criminally?

Ms. SMITH. I would have to defer to my colleagues, who are lawyers. Do you know?

Ms. ORENTLICHER. We have had a law, I think it is for about 10 years, that enables us to bring—this was the law that was discussed earlier—that enables us to bring torture prosecutions against foreigners particularly in these kinds of situations.

It has been difficult to develop the evidence to bring those cases, and so far there has actually been only one prosecution instituted for torture as a crime under the law. The first indictment was brought last December.

Mr. JOHNSON. Did you have something to add, sir?

Mr. ROSENBAUM. I am generally familiar with that case, and I believe it was the case and, of course, it is a torture case, not a genocide case—that the crimes took place before our Federal torture statute in Title 18 went into effect, which was in November 1994.

Mr. JOHNSON. Have there been any genocide prosecutions in the United States, that you know of, Mr. Rosenbaum?

Mr. ROSENBAUM. No, Congressman, there have not.

Mr. JOHNSON. And what would be the reason for that?

Mr. ROSENBAUM. In general, our approach has been to extradite and remove individuals believed to have taken part in genocide to the countries in which those crimes took place, so that the people of those countries can judge the perpetrators, the alleged perpetrators, and see up close justice being done.

There are, as has been mentioned, as well, the terms of the statute which have to be satisfied in order for us to be able to prosecute.

Mr. SCOTT. The gentleman's time has expired.

Mr. JOHNSON. Thank you.

Mr. SCOTT. The gentleman from Ohio, Mr. Chabot?

Mr. CHABOT. Thank you very much, Mr. Chairman.

I want to thank the witnesses for their testimony here this afternoon. I know we have a vote on the floor, so I will try to be relatively brief.

Two months ago, I was in Darfur with a couple of my colleagues, Sheila Jackson Lee from Texas and Adrian Smith from Nebraska. We went to a refugee camp. Abu Shouk was where we were, which is in, actually, northern Darfur, and we obviously learned a lot.

We have been following this, to the degree that one can in Congress when you are on the other side of the world, but seeing it firsthand is something else. And it really is, to my knowledge, one of the greatest human tragedies that we have seen in many years on earth, really, 200,000 to 400,000 people having lost their lives, 2.5 million people who have been displaced either over into Chad or in camps within Darfur itself.

And, of course, there are 6,000 troops there, African Union troops. The hybrid force is going to be going in there, but the Sudanese government seems to be dragging its feet, finding excuses to draw this process out, and now there have been attacks on NGO folks and people just trying to help are being attacked.

Some of it seems to be banditry, car-jackings and the rest. Some of it seems to be really intimidation. But as you all know, what ultimately happened is you had the—typically, what would happen is you would have a village that would be bombed, either by plane or helicopter, and then the Janjaweed would come in shortly after on horseback or on camels and would rape and pillage and destroy.

And the horrors that took place and the stories that we heard, and you have all heard them, as well, Mr. Fowler, in particular. You mentioned what you saw in the camps in Chad.

My question is, and I have got a number of them, but I will just limit it to one at this point, the Janjaweed was essentially used by the government—

Mr. SCOTT. If the gentleman would suspend for just a minute.

Mr. CHABOT. I would be happy to.

Mr. SCOTT. There is a situation outside the door. I would ask people not to use these two doors for a few minutes.

The gentleman can—

Mr. CHABOT. To what extent could government officials in Sudan or leaders in the Janjaweed be subject to either existing laws or this legislation, if it would become law, and how could that be a tool for improving conditions on the ground, I guess is pretty much what I wanted to go to.

Ms. Smith?

Ms. SMITH. Sure. There are members of the government, a member of the Janjaweed militia, as well as, in fact, one of the rebels who had been indicted by the international criminal court. So there are cases internationally, but they have been indicted for crimes against humanity and not genocide.

In our case, given that both the executive branch and the Congress have deemed this crisis genocide, I would think that it would be possible to, on that basis, be able to either move against or at least question some senior government officials by virtue of their presence in the United States.

I think the other thing that it would do, quite frankly, is, again, reinforce this notion that there is a cost. It is an extraordinary

thing. For almost 5 years, over two million people have been ripped from their homes. Women have been raped. Their communities have been destroyed.

It goes on. There is now more violence in the camps. It is absolutely unchecked. I was out there just a couple of weeks ago, and it grows worse by the day.

But, quite frankly, the government and the militia forces have gotten away with it. The signal from the international community is it is really a shame, but never mind.

So, again, I think that this does offer us the opportunity to say to the Sudanese government, as the United States government, "We are serious about this, you will not find safe haven in the United States and if, indeed, you commit acts of genocide, we will hold you accountable."

I don't think it is enough to tip the balance. I do think it is enough to, at least around the edges, force them to recalibrate their calculations.

Mr. CHABOT. Thank you. I would just note that even in the camps, as you mentioned, the people aren't really safe. There is gunfire at night that scares the heck out of the kids. You have got men coming in over the walls or over the fences and intimidating and attempting to rape women in the places and, of course, when they go out for firewood, they are subject to the Janjaweed.

I think Mr. Rosenbaum wanted to say something. Then I will yield back after him, if I can.

Mr. ROSENBAUM. Thank you, Congressman.

If I might add, perpetrators in Darfur will know that this is not a country in which they have any possibility of finding safe haven. As Ms. Smith noted, our cases are reported in Africa and around the world.

We have a very robust program that we run in conjunction with our partners at Immigration and Customs Enforcement (ICE), an extraordinary partnership in excluding perpetrators of genocide, war crimes, and crimes against humanity, identifying any who might come here and bringing whatever legal action we can, usually with the goal of removing them to a place in which they can be prosecuted criminally.

But when we can prosecute criminally here, that is almost always the preferred recourse and the one to which we turn.

I would note that the Assistant Attorney General in charge of the Criminal Division, Alice Fisher, recently appointed a counsel solely to handle these kinds of cases, to advise her, I should say, on these kinds of cases.

We have had a Criminal Division since well before World War II, and this is the first time, the first Administration in which someone has been designated to serve in that capacity, and I think it is a very good indication of the Justice Department's commitment to ending impunity.

Mr. CHABOT. Thank you. Thank you, Mr. Chairman.

Mr. SCOTT. The gentleman's time has expired.

The gentleman from Virginia, Mr. Forbes?

Mr. FORBES. Mr. Chairman, I would yield my time to the Chairman.

Mr. SCOTT. I just had one follow-up question, Mr. Rosenbaum, and that is you had indicated that the Genocide Accountability Act may not cover past acts of genocide.

This being just a jurisdictional bill, why would that be subject to ex post facto consideration?

Mr. ROSENBAUM. I should be careful and say that I am not speaking on the basis of having seen an analysis of the bill, but rather just on my assumption as a career Federal prosecutor, that a bill that covers or that renders people prosecutable has to be prospective, lest it violate the ex post facto clause of the United States Constitution.

But we have two other lawyers here, one of whom is a law professor, and I haven't conferred with them. I don't know what their view would be.

Mr. SCOTT. Do either of the law professors have a different view on that?

Ms. ORENTLICHER. I have not seen an analysis of this issue either, and I am not sure how it would come out. As you suggest, this could be seen as simply a jurisdictional bill and, certainly, under international law, there would not be any retroactivity issues.

That is, the prohibition of retroactive punishment under international law does not bar prosecuting someone for genocide, which has long been established as a crime under international law.

This legislation, as you suggest, would provide another forum for prosecuting something that is already criminal. But I also would not be surprised if Mr. Rosenbaum's assumption about legislative intent were correct.

Mr. SCOTT. We will do an analysis then. Appreciate the answers. Are there any other questions?

If there are no further questions, the hearing standards adjourned at this point. If someone could ascertain whether or not the hall has been opened.

Pending that, the Committee hearing is now adjourned. I thank the witnesses for their testimony.

[Whereupon, at 2:37 p.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF THE HONORABLE MAXINE WATERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

I thank Chairman Bobby Scott and Ranking Member Randy Forbes for organizing this hearing on “Genocide and the Rule of Law.”

GENOCIDE AND THE LAWS OF THE UNITED STATES

In 1948, the United Nations General Assembly adopted the “Convention on the Prevention and Punishment of the Crime of Genocide,” also known as the Genocide Convention.

The Genocide Convention requires states to make efforts to prevent genocide as well as punish acts of genocide. The purpose of today’s hearing is to discuss ways to update and revise U.S. laws to allow us to prosecute genocide more effectively, when we have the opportunity to do so.

Under current law, the United States cannot prosecute a person for an act of genocide, unless the act was committed within the United States, or unless the alleged offender is an American citizen. In contrast, many other federal crimes, such as torture, hostage taking, and terrorism financing, allow extraterritorial jurisdiction for crimes committed outside the United States by non-U.S. nationals. The Justice Department reportedly has identified individuals who are living in the United States and who participated in the Rwandan and Bosnian genocides. However, the Justice Department cannot arrest or prosecute these individuals, because they are not American citizen and the genocides in which they participated did not take place in the United States.

In order to close this loophole, my colleague from California, Congressman Howard Berman, introduced H.R. 2489, the Genocide Accountability Act of 2007. Congressman Berman’s legislation amends the federal criminal code to allow the prosecution of acts of genocide committed by an alleged offender who is a permanent resident of the United States, or who is brought into or found in the United States, even if the offense occurred outside the United States. I am proud to support H.R. 2489, and I ask Congressman Berman to add my name as a cosponsor.

GENOCIDE IN DARFUR

Even as we speak at this hearing, a genocide is being committed in Sudan against the people of Darfur. More than 200,000 people have been killed by Sudanese government forces and armed militias since 2003, and another 200,000 people have died as a result of the deliberate destruction of homes, crops and water supplies and the resulting conditions of famine and disease. More than 2.5 million people have been displaced.

According to a recent United Nations report, attacks against humanitarian aid workers have increased 150 percent in the past year. There are 13,000 humanitarian aid workers in Darfur, providing aid to more than 4 million people, and violence limits their ability to reach people in need. In June, approximately one in six humanitarian convoys leaving the capitals of Darfur provinces were ambushed by armed groups. About two-thirds of the population of Darfur is dependent upon these courageous aid workers and the aid they bring.

Early in 2006, I visited the Darfur region with my good friend from California, Speaker Nancy Pelosi, and I was deeply disturbed by what I saw. As far as the eyes could see, there were crowds of displaced people who had been driven from their homes, living literally on the ground with nothing but little tarps to cover them. That was almost two years ago, and yet this genocide has been allowed to continue.

SUDAN LEGISLATION

I introduced H.R. 3464, the Stop Importing Gum Arabic from the Genocidal Government of Sudan Act. This bill would tighten economic sanctions against Sudan by eliminating an exemption for gum arabic. Gum arabic is a substance derived from a plant with a variety of commercial uses. Gum arabic is plentiful in Sudan, and the United States imports an estimated 4,000 to 5,000 tons of Sudanese gum arabic every year, despite the government of Sudan's continuing genocide against the people of Darfur. I introduced this bill because I believe it is time for the United States to get serious about stopping this genocide. This bill is cosponsored by Congressman Howard Berman and Congressman Barney Frank.

I also introduced H.Res. 628, a resolution to express the sense of Congress that the President should take action to boycott the Olympic Games in China, unless the Chinese government acknowledges and condemns the genocide taking place in Darfur and ends its military and economic support for the government of Sudan. China is the world's largest supplier of military arms and equipment to Sudan, and Sudan is using these supplies to commit genocide in Darfur. I introduced this resolution because I believe that the spirit of the Olympics is not compatible with any actions directly or indirectly supporting genocide. This resolution is cosponsored by another one of my colleagues from California, Congressman Dana Rohrabacher.

CONCLUSION

Genocide is a heinous and despicable crime, which contradicts all of the values we in America hold dear. We must use every tool at our disposal to stop genocide from occurring and to hold those who commit genocide responsible for their actions. I look forward to the testimony of the witnesses and the suggestions they have for improving our ability to prevent and prosecute genocide wherever and whenever it occurs.

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, SUBCOMMITTEE ON CRIME, TERRORISM, AND HOMELAND SECURITY

Thank you, Mr. Chairman, for convening this important hearing on "Genocide and the Rule of Law." The hearing is particularly important since it will explore how Congress can develop and revise laws to respond more vigorously to prosecute genocide. In particular, the hearing will examine how the United States can more effectively implement its obligations as a party to the Genocide Convention.

Mr. Chairman, it is very sad that the 20th century which excelled in technological innovation and great accomplishments in arts and letters will most likely be remembered for events which tragically symbolized the man's inhumanity to man. The genocide in Rwanda, the Armenian genocide, the Holocaust, the Khmer Rouge genocide to name a few, showed us the excesses of totalitarian regimes and the monstrosities of efforts to annihilate entire ethnic, racial and religious groups.

Sadly, the trend is continuing with the deplorable situation in Darfur, a region I had an opportunity to visit recently and witness first-hand the plight of the Darfurians who are victims of the systematic annihilation attempt supported by the Government of Sudan.

Not since the Rwandan genocide of 1994 has the world seen such a systematic campaign of displacement, starvation, rape, mass murder, and terror as we are witnessing in Darfur for the last three years. At least 400,000 people have been killed; more than 2 million innocent civilians have been forced to flee their homes and now live in displaced-persons camps in Sudan or in refugee camps in neighboring Chad; and more than 3.5 million men, women, and children are completely reliant on international aid for survival.

Unless the world stirs from its slumber and takes concerted and decisive action to relieve this suffering, the ongoing genocide in Darfur will stand as one of the blackest marks on humankind for centuries to come.

Efforts to prevent genocide and prosecute its perpetrators are an important measure of the reaction of the civilized world to this barbaric phenomenon. In that sense, the 1948 Convention against Genocide lead the way to confront this phenomenon and create a legal basis to combat it.

In 1948, the United Nations General Assembly adopted the “Convention on the Prevention and Punishment of the Crime of Genocide.”¹ As its title suggests, the treaty imposes two core obligations on participating states: first, state parties undertake to prevent genocide; and second, they commit to punish genocide as well as several related acts, such as attempting to commit genocide. In 1987, Congress enacted legislation to bring U.S. law into conformity with the Genocide Convention.

The Genocide Convention contains a number of substantive provisions. The Genocide Convention establishes our core obligations in combating the genocide phenomenon—preventing and punishing Genocide.

The document gives the UN a broad license to deal with genocide. In addition, individual states are expected to do all they can to prevent genocide. It also gives responsibility to state parties to prosecute the perpetrators of genocide.

Mr. Chairman, I speak for many Americans when I say that the US should do it’s very best to prosecute the crime of Genocide. The Proxmire Act is a valiant legislative effort to fulfill the spirit of the Genocide Convention.

The “Proxmire Act” (The Genocide Convention Implementation Act of 1987) is the key U.S. law implementing the Genocide Convention. When read together with other provisions of the federal criminal code concerning conspiracy and complicity, the Proxmire Act addresses the explicit obligation set forth in Article VI of the Genocide Convention concerning prosecution of genocide and related criminal acts in courts of the State where genocide occurs. In addition, the Proxmire Act makes it a federal crime for a U.S. national to commit genocide anywhere.

The number of civil wars accompanied by ethnic cleansing and outright genocide which chartered the end of the 20th century anywhere from Bosnia-Herzegovina to the civil wars in Somalia and Liberia produced a number of perpetrators of genocidal acts who ended up on American shores. This fact revealed a shortcoming in our current laws under which, the United States cannot indict someone for genocide committed outside the United States, even when the victim is an American citizen, unless the perpetrator is a U.S. national.

In contrast, the laws on torture, material support for terrorism, terrorism financing, hostage taking, and many other federal crimes allow for extraterritorial jurisdiction for crimes committed outside the United States by non-U.S. nationals.

Realizing this legal gap in our obligations to prosecute perpetrators of Genocide I commend my colleagues Mr. Berman and Mr. Pence for introducing the Genocide Accountability Act., H.R. 2489 in May of 2007.

Mr. Chairman, this legislation would close a legal loophole that prevents the U.S. Justice Department from prosecuting people in our country who have committed genocide. The bill specifically amends Title 18 to establish federal criminal jurisdiction over the crime of genocide wherever the crime is committed. This jurisdiction should be exercised when the alleged offender is present in the United States and he or she will not be vigorously and fairly prosecuted by another court with appropriate jurisdiction.²

Many countries have adopted or enforced legislation establishing jurisdiction over certain international crimes, including genocide, wherever committed if the alleged perpetrator is in their territory and any additional requirements are satisfied. This will be a further step in the right direction so that no perpetrator of Genocide living on US soil can go unpunished and a good step toward fulfilling our duty to remove this deplorable phenomenon from the face of earth.

Thank you, Mr. Chairman for convening this important hearing and I look forward to hearing from our distinguished witnesses. I yield back the balance of my time.

¹Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277, 280.

²The loophole in genocide law has real-life consequences. The Justice Department has identified individuals who participated in the Rwandan and Bosnian genocides and who are living in the United States under false pretenses. Under current law, these individuals cannot be arrested or prosecuted, because they are not U.S. nationals and the genocides in which they were involved did not take place in the United States.

Senator Tom Coburn, M.D.
Statement on the Genocide Accountability Act of 2007
Subcommittee on Crime, Terrorism, and Homeland Security
House Judiciary Committee
“Genocide and the Rule of Law”
October 23, 2007

In the Senate, I serve as Ranking Member on the new Judiciary Subcommittee on Human Rights and the Law, of which Senator Dick Durbin serves as Chairman. Both Senator Durbin and I care deeply about the issue of genocide and, accordingly, the first hearing that we held in our subcommittee was titled “Genocide and the Rule of Law.” That hearing allowed us to identify some changes that should be made to U.S. law to help the country better respond to the atrocious crime of genocide. Shortly after the hearing was held, Senator Durbin introduced S. 888, the *Genocide Accountability Act of 2007*, and I proudly joined as the lead Republican cosponsor. I speak today in support of this important piece of legislation. It is my hope that the bill, which passed the Senate by unanimous consent, will also quickly pass the House so that it may be signed into law as soon as possible.

This country has a long history of opposing genocide. The United States is a signatory of the Convention on the Prevention and Punishment of the Crime of Genocide, which provides that the contracting parties must “undertake to prevent and to punish” the crime of genocide. We have also passed a law implementing the Genocide Convention.

However, as our Senate hearing demonstrated, there are changes that need to be made in law and foreign policy to respond to the ongoing genocide in Sudan and to any genocide that may occur elsewhere in the future. Fortunately, one of these changes can be accomplished with passage of S. 888.

The *Genocide Accountability Act of 2007* will ensure that our justice system has the authority to prosecute an individual who has committed genocide if that person is found in or brought into the United States. Under current law, the United States can deny admission to and exclude aliens from the United States on human rights grounds. The Attorney General can also consider avenues for the prosecution of aliens who have committed certain crimes, including genocide. However, the Attorney General can only

prosecute a perpetrator of genocide if he committed his crimes within the United States or is a U.S. national.

What does this mean? It means that if a person who plans or participates in the genocide occurring right now in Darfur travels to the United States on vacation, business, or even to live here for an extended period of time (as a refugee or student, for instance), a court in the United States cannot touch him. The best our justice system can do is deport him once his crime is discovered.

Without question, it may be more appropriate in some cases to extradite someone who commits genocide to his home country or turn him over to an international tribunal. However, there are also times when a person's home country may not be willing to prosecute him, and there is no viable alternative for prosecution. In these cases, extraditing a criminal would be no different than setting him free. This bill will not force our justice system to prosecute those who commit genocide just because they are found on our soil – it simply gives us the option. Nonetheless, in America we are blessed with great resources and the most effective and just legal system in the world. With these blessings comes great responsibility. It is contrary to our system of justice to allow perpetrators of genocide to go free without fear of prosecution.

It simply makes no sense to withhold from our justice system the authority to prosecute someone who is found in the United States and who committed a crime as atrocious as genocide, just because he is not American and did not commit the crime here. We have passed tough laws that ensure that we can prosecute anyone found in the United States who has committed terrorist acts or who supports terrorism. We do not want to become a safe haven for terrorists, so I ask: do we want to be a safe haven for those who have committed genocide? The answer should be clear.

Fundamentally, we must decide if genocide is a bad enough crime, no matter where it happens, that it warrants the same treatment as terrorism-related crimes. I deeply believe that it is, and that is why I am proud to cosponsor this bill and speak on behalf of its passage today. I am encouraged by this subcommittee's interest in the matter and thank the Chairman for holding this important hearing today.

Statement Submitted by Senator Richard J. Durbin for the Record
House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security
Hearing on "Genocide and the Rule of Law"

October 23, 2007

The legal prohibition against genocide remains an unfulfilled promise. With far too few exceptions, we have failed to prevent and stop genocide. We have seen this most clearly recently in Darfur in western Sudan. In this region of six million people, hundreds of thousands of people have been killed and as many as 2.5 million people have been driven from their homes. For them, the commitment of "never again" rings hollow.

States have a responsibility to protect populations from genocide, crimes against humanity and war crimes. States should prevent such mass atrocities by addressing the root causes of conflicts and reacting to ongoing atrocities through sanctions, prosecutions and, in more extreme cases, military intervention. In the aftermath of such atrocities, especially where the response to mass atrocities has involved military intervention, states should assist affected populations in the process of rebuilding.

The responsibility to protect populations at risk of mass atrocities is independent of whether the crimes committed meet the definition of genocide set forth in the Genocide Convention. In too many instances, debates about the legal definition of genocide have delayed action or served as an excuse for the failure of governments to act. States should not wait until they have concluded that mass atrocities being committed amount to genocide before acting to prevent these crimes. The determination of whether someone has the specific intent required for genocide, "to destroy, in whole or in part, a national, ethnic, racial or religious group, as such" is one that should be made by courts holding perpetrators of massive atrocities accountable once they have had an opportunity to examine the evidence.

S. 888, the Genocide Accountability Act of 2007, represents an important step towards ridding the world of genocide by preventing those who commit or incite genocide from seeking refuge in our country without fear of prosecution for their actions. Under current law, genocide is only considered a crime if it is committed within the United States or by a U.S. national outside the United States. This means the United States cannot indict someone for genocide committed outside the United States, even when the victim is an American citizen, unless the perpetrator is a U.S. national. This bill will close the legal loophole that currently prevents the U.S. Justice Department from prosecuting people in the United States who have committed genocide in other countries.

There is no safe haven for the hundreds of thousands of Sudanese who have faced genocide in Darfur and yet our country could potentially provide a safe haven for their killers. The current legal loophole in our genocide laws has real-life consequences. Salah Abdallah Gosh, the head of security in the Sudanese government, has reportedly played a key role in the government's genocidal campaign in Darfur. In 2005, Gosh came to Washington to meet with senior Administration officials. Under current law, the FBI could not even interview Gosh about his involvement in the Darfur genocide, much less charge him with a crime. While genocide rages in Darfur, the United States must commit to holding those guilty of genocide accountable.

The Justice Department has identified individuals who participated in the Rwandan and Bosnian genocides and who are living in the United States under false pretenses. Under current law, these individuals cannot be arrested or prosecuted, because they are not U.S. nationals and the genocides in which they were involved did not take place in the United States. In contrast, the laws on torture, material support for terrorism, terrorist financing, hostage taking, and many other federal crimes are still considered crimes when committed outside the United States by non-U.S. nationals.

The failure to prevent and adequately respond to genocide in Darfur, Rwanda and other places results from a failure of political will and a failure of law. The Genocide Accountability Act would remedy one aspect of this failure of law by allowing for prosecution of those individuals found in the United States who have participated in horrific acts against humanity.

Creating mechanisms and tools for holding those who have committed mass atrocities accountable helps to prevent future atrocities. The recent escalation of atrocities in Darfur in the lead-up to peace talks at the end of this month reflects how little fear perpetrators of atrocities in Darfur have that they will be held accountable for their actions. By increasing the likelihood that perpetrators of atrocities will be held accountable, the Genocide Accountability Act would move the world a little bit closer to fulfilling our pledge of "never again."