

Written Testimony

before

The Commission on Security and Cooperation in Europe

By

Chris Engels

Deputy Director for Investigations and Operations

The Commission for International Justice and Accountability

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Please let me begin by thanking you, Chairman Smith, Co-Chairman Wicker, distinguished Commissioners, and the U.S. Helsinki Commission, for your steadfast support over the decades for the establishment of the rule of law and the promotion of human rights around the world. Let me also thank the Chairman and all the members of this Commission for their continued engagement to address the ongoing conflicts in Syria and Iraq, specifically the mass atrocities being inflicted upon the people by their own government as well as by militant extremist groups like the Islamic State. In this regard, I am honored to testify before this august Commission on efforts to combat these mass atrocities through individual criminal accountability.

By way of introduction, my name is Chris Engels and I serve as Deputy Director for Investigations and Operations at the Commission for International Justice and Accountability, or CIJA for short. In my testimony today, I will begin by introducing CIJA, how the organization came about in response to a serious lack of engagement by public institutions, and the intricacies of our atrocity investigative work in Syria and Iraq. Thereafter, I will discuss how CIJA's work relates to the subject of today's hearing, the *Iraq and Syria Genocide Relief and Accountability Act of 2016*, a much-needed, not to mention overdue, piece of legislation sponsored by Chairman Smith, with the co-sponsorship of other distinguished Members of the House of Representatives. Finally, I will conclude by putting forth recommendations for U.S. action that support U.S. interests in Syria and Iraq, namely the cessation of atrocities, the establishment of long-term peace and security, and the eradication of terror being unleashed by the Assad regime, the Islamic State, and other parties to this horrid conflict.

This Commission is already familiar with the extent of the mass atrocities occurring in connection with the Syrian civil war and its spill over into Iraq. Some members of this Commission personally heard testimony from the Assad regime defector, known as "Caesar", who smuggled thousands of images from Syria showing the Assad regime's systematic torture and murder of individuals – deemed "enemies" – in security centers throughout Syria. By passing House Resolutions 75 and 121 so overwhelmingly, Representatives have denounced the horrific war crimes, crimes against humanity, and genocide (collectively called atrocity crimes) being perpetrated by the Islamic State, the Assad regime, and others militant actors in Syria and Iraq.

For years now, human rights groups, as well as the United Nations, have sounded alarm bells in the wake of the blatant disregard for humanity and catastrophic displacement occurring in Syria and Iraq. In addressing the Commission, my role today is not to elaborate on these facts which, unfortunately, are known all too well. Instead, I am here to talk about individual criminal accountability for these terrible crimes and the current, as yet untapped, opportunities for the U.S. government to support organizations working to ensure those responsible see the inside of a courtroom. My role is, further, to highlight the concrete steps being taken, as well as additional steps that can be taken, now to secure justice for the victims of the continuing atrocities in Syria and Iraq. Like CIJA, I am sure this Commission and other members of Congress want to see such discussion take the form of concrete action.

So, what is CIJA? In short, CIJA is a non-governmental organization that carries out criminal investigations of atrocity crimes that adhere to the highest standards found in any international or domestic jurisdiction. Its senior leadership is made up of individuals with many years of experience in international and hybrid courts and tribunals as well as domestic war crimes units. Operating in active conflict zones, CIJA's 130 personnel collect evidence, ensure its safe storage, and undertake legal analysis with a view to preparing trial-ready case files for present-day and future criminal prosecutions in domestic and international jurisdictions. The fact that CIJA does this work as a non-governmental organization, as opposed to a domestic or international legal authority, is truly unprecedented.

With respect to our evidence collection, I would like to emphasize that our analytical interest extends beyond merely documenting the crimes themselves, something the UN Commissions of Inquiry and a number of human rights NGOs already do very well. Rather, CIJA's focus is on collecting, corroborating, and storing "linkage evidence", which is information that "links" superiors, national leaders and remote organizers of atrocities to the atrocity crimes committed on the ground.

This "linkage evidence" is the most pivotal part of an atrocity crimes investigation, and as any good prosecutor or criminal investigator knows, criminal investigations done contemporaneously with the criminal acts are essential to ensuring later accountability. Otherwise, as we have seen in the past, evidence is lost and those responsible for these mass human rights violations go unpunished, able to commit more crimes and create more instability in the current or future conflicts. Whether in Syria, Iraq or beyond, the goal of this

work is to prevent such mistakes from reoccurring once accountability mechanisms are in place – be it in the short term or in the next ten years.

However, it should be made clear that accountability options exist today and they do not require the establishment of an international court or tribunal to have impact. Evidence collected today is key to facilitating present-day accountability efforts in national jurisdictions where perpetrators can be prosecuted without the need for an international justice mechanism. For instance, CIJA currently assists various countries in their domestic prosecutions of regime officials found in their jurisdictions, Islamic State foreign fighters returning home, and other members of extremist groups who have been apprehended.

This assistance takes various forms.

In Syria, CIJA has roughly 40 investigators on the ground, handling multiple operations throughout the country. The primary mission of these investigators is to collect voluminous amounts of evidence on the Assad regime for later exploitation for evidentiary and legal analysis at CIJA’s headquarters. To date, this operation has resulted in the accumulation and safe storage of over 600,000 pages of regime documentation, including a significant amount of regime military and security intelligence records, all while ensuring chain of custody to a criminal law standard.

With this wealth of information, CIJA has been able to create a names database of over one million regime officials – including individuals from the highest to lowest levels of its military, security intelligence, and political bodies. This type of database has long-term potential as an information resource for countries, such as the United States, in support of their criminal accountability, immigration, and targeted sanctions efforts as well as future state-building and lustration efforts.

This evidence is the basis for multiple “pre-trial” legal case files, developed by CIJA’s legal team, which a domestic or international prosecutor could present to judges before trial. For example, the first three case files contain evidence against twenty-five high-ranking Assad regime officials – including President Assad, himself – establishing the role of these governmental officials in the mass torture, the likes of which the House of Representatives saw in the aforementioned Caesar testimony.

In Iraq, CIJA works according to a memorandum of understanding with the Kurdistan Regional Government that provides us with logistical and security support as well as human resources. Approximately 20 CIJA personnel are currently deployed in Iraq, with teams in three different locations. CIJA's work in Iraq focuses squarely on atrocities perpetuated by the Islamic State, including those against ethnic Yazidis, Christians, and other minority groups in the Ninevah Governorate. In its first Iraq-oriented case file, CIJA identified two dozen suspects involved in orchestrating Islamic State slavery operations that resulted in appalling rates of sexual violence and servitude, primarily against minority women and girls.

Again, the brave victims who have spoken out, as well as the work of NGOs and UN reports, have highlighted the plight of these women and girls. Through our work, we have established the patterns of these crimes and, in turn, have identified a number of responsible individuals. In addition to the abovementioned file, CIJA continues to build a number of legal dossiers against Islamic State fighters and senior leaders behind these atrocities.

In sum, the six case files completed by CIJA to date identify over 60 individual perpetrators, reaching up the hierarchy of the Syrian regime and the Islamic State, who are responsible for a wide array of atrocity crimes. Of course, many more individuals are responsible for crimes in the region, and CIJA continues to investigate and build case files to address ongoing atrocities. However, the number of suspects in our legal briefs is already too high to be addressed by the ICC, even in the case of the referral of both Syria and Iraq. Indeed, prosecuting such cases would keep any future *ad hoc* or hybrid court busy for many years.

I will now refer to a few, key recommendations for incorporating individual criminal accountability within the international, as well as the U.S., agenda on Syria and Iraq.

Recommendation #1 – Support atrocity accountability efforts despite the lack of an international court with criminal jurisdiction in Syria or Iraq.

With intervention by the ICC or any other international tribunal for Syrian and Iraqi atrocity crimes still unlikely, many question the point of criminal accountability work today. Examples from the past 25 years demonstrate that even in conflicts where accountability is not addressed during the conflict, discussions often turn to justice soon after a return to peace.

Preparing for that possibility today, before evidence is destroyed or made otherwise unavailable, is key to ensure these future efforts are successful.

There is no need to wait for an international court of tribunal, however. There are criminal accountability options available, which should be utilized today. At CIJA, for example, we receive a dozen requests for assistance each month from war crimes, counter-terrorism, and immigration authorities throughout Europe. While the Syrian conflict continues, these efforts constitute a credible recourse to criminal accountability and, indeed, demonstrate to Syrians and the world that perpetrators found in European and North American jurisdictions will be prosecuted for their crimes.

Recommendation #2 – Support the creation of competent local courts to try atrocity crimes based on already collected evidence demonstrating the culpability of individuals for these crimes.

In addition to accountability in European and North American criminal courts, there is an even more immediate road to justice in Iraq. A number of high-ranking IS officials could be put on trial in a specially equipped court in Erbil, the Kurdistan Region of Iraq (KRI). An Iraqi chamber would hear complex cases against members of the Islamic State, applying the Iraqi penal code. With the assistance of international experts and professionals, such a chamber would be mandated to hear those cases in line with the highest international standards of fair trial and due process.

Placing the court in KRI would ensure security guarantees which cannot be currently replicated in Baghdad while at the same time provide an opportunity to hear sexual enslavement of Yazidis cases in the vicinity where those atrocities took place, closer to the victims' home, and where most of the perpetrators are currently held and likely to be in the future. Such a chamber could be established swiftly and efficiently, at minimal cost. What is more, depending on the changing security situation, the court could be replicated in other Iraqi cities.

Based on our experience on the ground, based on interviews with a wide swath of affected groups, the majority want legitimate criminal justice, whether in an international or

domestic court, or both. After enduring shocking atrocities, these groups are eager to cooperate and await a judicial forum to do so.

CIIA's proposal has already garnered support from the Kurdistan Regional Government (KRG), and it is possible that similar support may come from Baghdad soon. We are currently engaged in discussions with the KRG on training their judges, prosecutors, attorneys, and other relevant professionals to get this chamber up and running. In sum, all elements are in place to start the prosecution of IS members in a competent court of law.

Recommendation #3 – Support criminal investigations to ensure that individual criminal accountability for atrocity crimes and all of its attendant benefits that flow from it can be realized.

Congress's clear intent in the *Iraq and Syria Genocide Relief and Accountability Act of 2016* is to hold individuals, whether from the Assad regime, the Islamic State, or other parties to atrocities in Syria and Iraq, criminally responsible for atrocity crimes. This intent is reflected not only in this bill, but in many resolutions passed over the past five years. Yet, to effectuate this intent, criminal investigations into these atrocity crimes must be supported and bolstered.

The atrocities are unfortunately not waning, but expanding. As Mr. Chairman, Mr. Co-Chairman, and each Commissioner have seen for themselves, before this most recent ceasefire, the Assad regime has continued its use of barrel bombs, and a retreating Islamic State has left behind more mass graves than previously thought. Collecting evidence, storing, analyzing, and preparing it for trial, and doing all of the above to the highest international standard available, is essential to present day and future accountability aspirations.

No matter how critical, the above efforts require further support. Some of the U.S.'s closest allies have helped make these atrocity crime investigations a reality, because they see the present-day and future benefits. Canada and Germany, in particular, were the first to support efforts to ensure accountability for Islamic State crimes in Iraq.

One such tangible benefit is the bolstering of the overall rule of law capacity in Syria and Iraq. Training and mentoring Syrian, Iraqi, and other regional investigators, lawyers, and

analysts to do atrocity crime work today will have a significant impact on the quality of justice tomorrow. With a view to a post-conflict scenario, sustained capacity-building support in both countries will not only reinforce the legitimacy and efficacy of whatever existing or new international tribunal is bestowed jurisdiction, but it will also be an investment in the long-term establishment of the rule of law in a future Syria and Iraq.

Recommendation #4 – Unwavering support of individual criminal responsibility for atrocity crimes, regardless of policy complications, is the most proven way of establishing durable peace and security. Otherwise, the risk of future atrocities and destabilization increases greatly.

Why does atrocity accountability and criminal justice in Syria and Iraq matter to the United States and, more importantly, to its interests in the region? As Dr. Martin Luther King, Jr., proclaimed, and is now inscribed in marble just down the street from here at his national memorial, “[t]rue peace is not merely the absence of tension; it is the presence of justice.” Dr. King’s words echoed those of the American founders who, likewise, knew that a properly developed society does not rest solely on security, but on a rule of law that applies to all equally regardless of stature.

For the violence to end, but more importantly for Syria and Iraq to evolve into stable, peaceful, and just societies, it is simply not enough to broker a political settlement to the Syrian civil war, nor to defeat the Islamic State and reclaim the territory it has taken in Iraq and Syria. Assad regime leaders and Islamic State fundamentalists must face a court of law, confront credible evidence of their criminality, and if proven beyond a reasonable doubt, found guilty. These trials have the power to serve as tangible examples to all in the region that the rule of law is here, and here to stay.

Without actual and symbolic justice, the seeds of future conflict, cataclysmic destabilization, unprecedented human displacement, and militant terrorism lay undisturbed and ready to grow. These considerations may sound like lofty ideals, but the United States serves as the best example that respect for the rule of law and human rights results in a thriving, stable, and just society. The same principles undoubtedly apply elsewhere.

Recommendation #5 – Ensuring individual responsibility for atrocity crimes is an untapped resource for Countering Violent Extremism efforts that will help tilt public relations power away from militant extremist groups like the Islamic State.

Holding militant extremists criminally responsible for atrocity crimes is drastically underutilized as a Countering Violent Extremism (CVE) tool, and this Act will help reverse this trend. To explain, for the U.S. and its allies to better serve its interest in stamping out violent extremism – whether in the form of Islamic State or other like groups – governments must broaden their conception and use of the rule of law. Currently, the vast majority of militant radicals are prosecuted under terrorism laws, often for material support to terrorism. An unintended consequence of prosecution under these laws is that it sends the message to vulnerable youth – in particular Muslim males – that the “West” labels them as “terrorists.” In turn, fundamentalist enablers are empowered to push the “clash of cultures” narrative.

An alternative to the above is to support and complement anti-terrorism laws with domestic and international mechanisms devised to prosecute members of militant groups, such as the Islamic State, as murders, torturers, rapists, slavers, war criminals, or even *génocidaires*. With these individuals seen as criminals of epic proportion, vulnerable youth will be far less likely to see them as “defenders of the Muslim faith,” but rather those who twist Islam for criminal ends. Prosecution of these individuals as atrocity criminals provide fact-based counter-messaging to the “clash of civilizations” narrative that is currently so effective. With access to quality evidence of these specific crimes, such prosecutions become more effective and more likely.

In summation, please let me conclude with the statement that this Act is emblematic of some of the United States’ best values: adherence to the rule of law, the protection of human rights, and the delivery of humanitarian assistance. These values underpin a just and peaceful society, especially those trying to transition out of the throes of chaos and tragedy. It is for these and other reasons that CIJA and a broad range of humanitarian organizations, including faith-based groups, support the prompt passage of this legislation. Thank you.

Overview of support received by CIJA from individual donors (2013 – 2016)

Donor	Activities Financed	Period Financed	Total Financial Support (EUR)	Total Financial Support (USD)
United Kingdom (FCO)	Syria	2013 - 2017	GBP 4,401,023	USD 6,672,238
European Union	Syria	2013 - 2017	EUR 4,999,830	USD 5,949,329
Canada	Syria / Iraq	2015 - 2018	CAD 4,918,104	USD 3,810,918
Denmark	Syria	2014 - 2016	DKK 10,103,513	USD 1,643,392
Norway	Syria / Iraq	2014 - 2016	NOK 9,900,000	USD 1,575,258
Germany	Syria / Iraq	2014 - 2016	EUR 1,130,771	USD 1,355,797
IREX	Syria	2013 - 2014	USD 777,225	USD 777,226
Switzerland	Syria / Iraq	2014 - 2016	EUR 286,900	USD 350,521