

UNITED STATES COMMISSION ON
INTERNATIONAL RELIGIOUS FREEDOM
and
TOM LANTOS HUMAN RIGHTS COMMISSION

HEARING ON ENDING GENOCIDE:
ACCOUNTABILITY FOR PERPETRATORS

Wednesday, July 28, 2021

10:30 a.m.

Virtual Hearing

P A R T I C I P A N T S

USCIRF COMMISSIONERS PRESENT:

Nadine Maenza, Chair, USCIRF
Nury Turkel, Vice Chair, USCIRF
Anurima Bhargava, USCIRF

TLHRC COMMISSIONERS PRESENT:

Rep. James McGovern, Co-Chair, TLHRC
Rep. Chris Smith, Co-Chair, TLHRC

C O N T E N T S

	<u>PAGE</u>
Welcome - Nadine Maenza, Chair, USCIRF	5
Opening Remarks:	
Rep. James McGovern, D-MA	5
Co-Chair TLHRC	6
Rep. Chris Smith, R-NJ	
Co-Chair, TLHRC	10
Nadine Maenza, Chair, USCIRF	20
Nury Turkel, Vice Chair, USCIRF	23
Panel I:	26
Jonathan Agar Legal Officer United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD)	27/45
Panel II:	28
Stephen Rapp Former Ambassador Office of Global Criminal Justice U.S. Department of State	30
Carmen Cheung Executive Director Center for Justice and Accountability	53
Alim Seytoff Director Uyghur Service Radio Free Asia	61

	5
M. Arsalan Suleman Counsel, Foley Hoag Former Acting Special Envoy to the Organization of Islamic Cooperation U.S. Department of State	74
Q&A	83
Adjourn	120

P R O C E E D I N G S

CHAIR MAENZA: Good morning and thank you for attending the U.S. Commission on International Religious Freedom and the Tom Lantos Human Rights Commission's joint hearing on Ending Genocide: Accountability for Perpetrators.

Thanks very much to our distinguished panel of witnesses for joining us today and thanks also to the Tom Lantos Human Rights Commission and Co-Chairs Representative Jim McGovern and Representative Chris Smith for your partnership in this important work.

Our two commissions have worked closely together over the years on many issues, including the founding of the Defending Freedoms Project almost ten years ago to increase efforts on behalf of prisoners of conscience around the world.

We are very grateful for your leadership in Congress on international and human rights, and I'd like to start by giving the floor to share opening remarks.

So, Representative McGovern, we'll start with you. Representative McGovern, I think there is something wrong with your sound. We're not quite getting it.

If not, we can go to Representative Smith while we're waiting for yours to be fixed. There we go. We hear you now. Wonderful.

MR. McGOVERN: Did you hear anything I said, or should I start again?

CHAIR MAENZA: Please start again. I'm so sorry. I thought it was my end at first. So go right ahead.

MR. McGOVERN: Okay. First I want to thank Chair Maenza and Vice Chair Turkel in welcoming everyone to today's joint U.S. Commission on International Religious Freedom and the Tom Lantos Human Rights Commission hearing.

Both Chair Smith and I are in multiple hearings and meetings at this point so we may be in and out, but although USCIRF has often appeared before the Human Rights Commission, this is the

first time that we've co-hosted a hearing together.

And I think it's a good practice for human rights' bodies to coordinate when it makes sense to do so. In that spirit, we appreciate the invitation to co-host this morning.

Now, we have an excellent group of witnesses with us today, and I thank them for their commitment to human rights and for taking time to share their expertise. And I especially want to welcome back former Ambassador Stephen Rapp, who we know very, very well.

Today's topic, accountability for perpetrators of genocide and other grave human rights violations, is near and dear to my heart.

Over the years, I've met with many survivors and descendants of victims of grave human rights abuses, war crimes, crimes against humanity, and even genocide. What I have seen is that their search for justice and accountability is unceasing, but far too often is met with disappointment.

The massacre of El Mozote in El Salvador

is but one example. In December 1981, over the course of three days, more than a thousand people were killed in cold blood by members of a U.S.-trained military battalion.

Last April, nearly 40 years after the slaughter, 16 of the soldiers alleged to be responsible finally went to trial.

In between, there was some important, if partial, victories: a ruling of state responsibility from the Inter-American Court of Human Rights; an apology to the victims by the state; two ex-generals living comfortable lives in the U.S. deported back to El Salvador for trial.

But still 40 years have passed, and during those years many survivors died with their right to justice left unfulfilled. And looking at El Salvador today, it is far from clear that what happened in 1981 could never happen again.

So, in this hearing today, our focus is on accountability for grave crimes committed against communities whose religious identity is among the

reasons that they have been victimized to the point of genocide, including Uyghurs, Yazidis and the Rohingya.

These are situations that members of Congress are deeply concerned about. And we have repeatedly called for accountability for the states and non-state actors who are responsible for their suffering.

But I'm not sure we always think deeply enough about the meaning of accountability, nor ask ourselves enough questions about how to ensure it.

Often we talk about the imposition of economic sanctions as accountability. But sanctions are usually about naming and shaming perpetrators and imposing costs on them. They aren't necessarily designed to fulfil the rights of victims to truth, justice and reparations, or to make sure that the communities will not suffer the same crimes again in the future.

So I very much welcome this discussion today. I am interested in hearing about the

lessons the witnesses draw from their experiences pursuing justice, and I look forward to their recommendations for those of us working to ensure that the U.S. government is doing its part to prevent future abuses and restore the rights of those who have been grievously harmed.

And, again, I thank you very much, and I admire the work of USCIRF very, very much. I yield back.

CHAIR MAENZA: Thank you so much. We so much appreciate that.

Representative Smith, we would love to go to you now. And you'll have to unmute.

MR. SMITH: This many sound crazy, but I actually have three screens going.

[Laughter.]

MR. SMITH: The Foreign Affairs Committee, meeting with the Speaker and Richard Gere, a member of the diaspora. As a matter of fact, Jim McGovern was just at that same meeting. So--

CHAIR MAENZA: Well, thank you for joining

us. We appreciate it.

MR. SMITH: So thank you so very much.

I'd like to begin by thanking the U.S. Commission on International Religious Freedom and Chair Nadine Maenza and Vice Chair Turkel for inviting the Lantos Commission to sponsor jointly today's hearing.

I would also like to note for the record how grateful I am, and I know my good friend and colleague Jim is as well, for their past appearances at the Lantos Commission hearings just earlier this month and Nury last year.

We absolutely value your opinion. It enlightens; it inspires. The factual record you provide on a myriad of religious freedom issues--I always read your reports. I'm not the only one. My staff does it as well. And that really is informative and it's always motivating to a very great extent.

The topic of today's hearing is an issue of great import for survivors of atrocities, their

families, and all who are committed to promoting human dignity and accountability for those who commit genocide.

We have seen time and time again the limits to justice that have existed because of limitations of our existing national and international legal systems and, ultimately, the lack of political will to pursue perpetrators of genocide. Remember Darfur. Nobody wanted to raise the issue of Darfur. I went to the U.N. Commission Human Rights Council meetings in Geneva, and the issue kept getting sidelined and put on the back burner.

The history of the 20th century was replete with some of the most horrific genocides: Armenia; the Holocaust. The evil ideologies of Communism and Nazism were steeped in blood.

Ethnic hatred fueled killings from Bangladesh to Rwanda. And there was the class-based auto-genocide deranged leaders like Pol Pot and Mao Zedong inflicted on their own people in

Cambodia and in China.

And, sadly, this century is no better. Despite their barbarity and the countless number of victims, some of the gravest atrocities have been unacknowledged by the governments that perpetrated them for decades upon decades, such as the 1915 to '23 genocide of Armenians committed by Turkey.

Indeed, our own country has been slow to label the terrible attempted eradication of the Armenian people a genocide. It was not until October 2019 that Congress passed a resolution condemning the Armenian Genocide in a total comprehensive way, and not until this year that a U.S. administration formally recognized it.

When governments do not accept responsibility, when the barbarians directly responsible for such atrocities roam free, and when survivors and their families are kept out of sight, the repercussions of genocides linger and true peace has not been achieved.

We are here today because we know that we

must do better for those who still save and honor the memories of those they have and we have lost.

We are here today for the several million Uyghurs who are detained in Xinjiang with little hope of seeing their loved ones.

We are here today for the nearly 750,000 Rohingya who have been forcibly displaced since 2017 and no longer hold any citizenship. We are here today because of the places that have become flashpoints for potential genocide, such as Nigeria.

Genocide Watch has labeled Nigeria a "genocide emergency," and the reports we are receiving from people on the ground about religious and ethnic-based violence are truly alarming. I've chaired a number of hearings on Nigeria, and we are deeply, deeply concerned about the deterioration. It's not just Boko Haram. It's the Fulani. There is unfortunately a march towards more bloodshed.

Today's witnesses will examine the track records of institutions that hold perpetrators

criminally accountable and provide remuneration to victims' families and explore viable alternatives that enable the pursuit of lasting justice.

As several of our witnesses have observed, there are serious shortcomings in the international legal system that make it more difficult to prosecute even the most heinous of crimes, which fall under the categories of genocide and crimes against humanity.

The RFA Uyghur Service Director Alim Seytoff, one of our witnesses, succinctly explains these shortcomings and the innovative solution of an independent people's tribunal in the context of the Uyghur genocide.

Because of those shortcomings, some have pushed for alternative courts, such as regional courts, hybrid courts, and independent tribunals, as I have done.

Most recently I had a hearing on the need for a court to fulfil the mandate in law in Liberia. Yes, we had the court for Sierra Leone,

led so ably by David Crane, the Chief Prosecutor. We all know that Charles Taylor got a 50-year sentence. But there are so many other people who are never prosecuted and remain at large.

Due to a variety of situations in which countries find themselves and the many crimes under which perpetrators can be prosecuted, there is no one-size-fits-all solution for any given situation, and the lumbering bureaucracy that is the International Criminal Court has demonstrated that is it incapable of achieving widespread, swift accountability.

Justice delayed is justice denied, and since 2002, there have only been ten ICC convictions, at a cost of over \$176 million a year.

However, much can be done to create an international legal system that is more supportive of victims and their families, and there is much history we can draw from the U.S. and abroad for this project.

In 2018, Madam Chair, as you know, a bill

I authored, the Iraq and Syria Genocide Relief and Accountability Act of 2018, became law, providing a pathway to humanitarian, stabilization and recovery assistance for Iraq and Syria and prosecution of war criminals.

Similar frameworks can potentially be applied to other beleaguered and endangered ethnic and religious minorities at both the country and international level.

More needs to be done. As pointed out by former Ambassador-at-Large of the Office of Global Criminal Justice in the U.S. Department of State, Stephen Rapp, we are not using--and I'll say it again--we are not using, as he says, the full array of tools in our arsenal to prosecute those who commit egregious crimes of global import.

The U.S. Genocide Act and U.S. War Crimes Act have been gathering dust for decades. It would do for those of us in the Congress to reflect on why that is and make amendments to those provisions of the U.S. Code if that is deemed necessary.

Another frequent theme is the legal distinction between genocide and crimes against humanity. The former is more difficult to establish in a court of law because intent must be proven on the part of the guilty government.

On the other hand, crimes against humanity encompass 12 crimes, including murder, enslavement, and torture, in addition to having a lower evidentiary standard, making conviction more likely.

Perhaps the time has come for America to join its allies in creating a Crimes Against Humanity statute, as Ambassador Rapp suggests.

We have seen special courts for Rwanda, Sierra Leone, and the former Yugoslavia, to name a few. Going forward, we need to consider how such courts can help achieve justice, and in the process build up legal systems, by mixing prosecutors and judges from abroad with domestic ones. I had proposed that in 2013 first with an op-ed that I wrote to The Washington Post, and then a bill that

passed in the House, never got through the Senate, but that was for Syria--never came to fruition.

Before such courts are established, evidence from fragile locales and war zones must be preserved, as attested again by Ambassador Rapp and Carmen Cheung, in particular. I know that David Crane, the former chief prosecutor of the Special Court of Sierra Leone, has also been very active in the collection and preservation of evidence in Syria.

More needs to be done along these lines, but let's remember, this is not the sole domain of professionals. Brave citizen journalists and nonprofit organizations put their lives on the line everyday to preserve a record of what happened.

Finally, I would close with the eloquent statement of one of our witnesses, Mr. Seytoff, who attests that, quote, "true justice will not be achieved unless there are real consequences for the people who created this 21st century crisis of humanity."

Again, I think you so much for having this important hearing. I am in a markup, and I have to speak on, of all things, another terrible crime that's being committed by Daniel Ortega. I had a hearing on that on the Lantos Commission just a few days ago. We had the wives of two of the husbands who had been arrested. They're presidential candidates, and Ortega has put them behind bars.

We also had Bianca Jagger testify, who did a magnificent job in laying the groundwork for what needs to be done, including visits to those prisons, which we're going to undertake. I'm hoping to go there and maybe get into those prisons.

I last met with Ortega back in 1984, when he was Commandant Ortega and nothing has changed. It's gotten worse.

So thank you so much for having this hearing. I do need to get to the Foreign Affairs Committee. I'll try to get back.

CHAIR MAENZA: Thank you.

That was so powerful. We really appreciate that, and we're hoping you can come back and ask some questions later on. Good luck.

I'm pleased to see that we have just had Representative Sheila Jackson Lee join as well, and we'd love to invite her to make comments if she would like.

And she may be multi-tasking as well. So if she is not prepared at this moment, we'll go ahead and move on, and at any point in time when she does turn her camera back on, we will invite her to make remarks as well.

As most of you know, the U.S. Commission on International Religious Freedom, or USCIRF, is an independent, bipartisan U.S. government advisory body created by the 1998 International Religious Freedom Act, or IRFA.

The Commission uses international standards to monitor the freedom of religion or belief abroad and makes recommendations to the President, the Secretary of State, and Congress.

Religious communities around the world continue to be targeted by genocide and other mass atrocities, as seen in Burma, Iraq, Syria and China.

Given the scale of this violence globally, this is USCIRF's second hearing in our series on ending genocide. The first hearing examined how the United States government makes genocide determinations and what can be done to effectively halt and prevent ongoing mass atrocities against religious groups.

Today, we will expand on findings from that hearing and consider how to promote accountability for perpetrators of these horrific crimes.

The 1948 Genocide Convention confers obligations on states to punish the crime of genocide. Criminal prosecutions deter serious human rights abuses, provide reparations for devastated communities, restore the dignity of survivors, and support broader transitional justice

processes that deal with the legacy of conflict.

Yet, many survivors are not able to access justice. In Iraq and Syria, ISIS waged a genocidal campaign in 2014 to commit unfathomable crimes against humanity that targeted Yazidis, Christians and Shi'a Muslims.

While some criminal investigations are ongoing and the United Nations Investigative Team for Accountability of Da'esh or ISIL, known as UNITAD, was established to collect and preserve evidence in Iraq, justice has remained elusive for most of ISIS' victims, including the Yazidi community.

UNITAD's investigation has collected clear and convincing evidence of genocide as a first step towards justice, but now a court is needed to fairly prosecute these crimes.

The United Nations has raised concern that domestic trials in Iraq and Syria do not conform with international standards. ISIS members continue to undergo prosecution in European courts

under principles of universal jurisdiction, but these trials are limited in number. Without other options for credible trials, the Yazidi community has called for international trials to end the cycle of violence and impunity.

I will now turn to Vice Chair Turkel to further discuss the prosecution of genocide in the international legal system and the importance of documenting ongoing atrocities to support future justice efforts.

VICE CHAIR TURKEL: Thank you very much, Chair Maenza. I'd like to join in welcoming you all to today's hearing.

While too often states fail in their obligation to prosecute crimes of genocide, there are some positive developments, particularly in relation to accountability for international crimes committed against Rohingya.

In November 2019, The Gambia, on behalf of the Organization of Islamic Cooperation, initiated proceedings against Burma for its alleged genocide

against the Rohingya people at the International Court of Justice, or ICJ.

The International Criminal Court, or ICC, is also investigating crimes against the Rohingya people although its jurisdiction is limited.

USCIRF's 2021 Annual Report recommends that the United States government actively support efforts to hold Burmese officials accountable through the international legal system, including by strengthening the documentation of mass atrocities.

In the wake of Burma's military coup, which brought many of the perpetrators of the violence against the Rohingya community into power, accountability is urgently needed.

In the context, the pathways to justice for genocide victims are less clear. This is the case of Uyghurs and other Turkic Muslims in China, who are victims of genocide and crimes against humanity.

The ICC will not initiate an investigation

to the crimes committed against the Uyghurs because China is not a party to the court, and China would veto any attempt by the Security Council to refer the situation to the ICC or create an ad hoc tribunal. The ICJ is also not an option, as China has submitted a reservation to the Genocide Convention's jurisdiction.

With the international courts inaccessible, civil society launched the Uyghur Tribunal this year in London as an independent investigation into the crimes that have occurred. While the Tribunal's efforts are not state-sanctioned, its work is providing a voice for survivors and creating a collection of evidence that might someday contribute to a criminal process.

Other efforts to document the ongoing genocide, such as the work of journalists who are reporting on the horrors in China, are also important for strengthening the legal arguments for international accountability mechanisms to hold

those Chinese officials to account.

I wanted to thank you very much for our witnesses for taking the time out of their busy schedules and important work to join us and sharing their knowledge and their wisdom with us. I look forward to hearing what you have to say about these important topics.

CHAIR MAENZA: Thank you, Vice Chair Turkel.

VICE CHAIR TURKEL: Thank you, Chair Maenza.

CHAIR MAENZA: Thank you, and thank you, Vice Chair Turkel.

Now we are going to move to our first panel to focus on the United Nations Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL, better known as the acronym UNITAD.

So first up we will have Jonathan Agar, who is a Legal Officer in the Office of the Head of UNITAD.

He joined in October 2018 as they planned

deployment to Iraq, and he's now responsible for cooperation with national authorities, U.N. entities, pursuant to UNITAD's mandate to support domestic efforts to take forward proceedings in relation to ISIS crimes in Iraq.

So, Mr. Agar, we will go to you.

MR. AGAR: [Unintelligible audio.] --to the panels--ability for them to take forward investigations and prosecutions on the ground.

We work closely--try to address those challenges--forensic evidence--ability to access crimes and engage with specifically and suffered from the crimes ISIL in Iraq.

The overall message, the evidence is available, and the evidence is there. It's a question now of working together in partnership with domestic authorities in order to take that evidence and put it before--visual representation through our evidence and deal with national authorities and support them in presenting that--International Court.

CHAIR MAENZA: Jonathan, we are having problems hearing you. You are cutting out. I don't know if you--

MR. AGAR: The focus today will be on the Yazidi investigation--I think--my apologies.

CHAIR MAENZA: It might could be better broadband in order to hear you and watch the video that you have. Let's give that shot.

So we may segue to our second panel and work on some logistics and hopefully get better broadband at this point in time if that's okay with Mr. Agar because we really want to hear your testimony and unfortunately we're having, we're struggling to get a good broadband with him.

So we'll have him come back in and try again. If our other witnesses are prepared to move to our second panel, and then we'll just kind of reverse the order because we want everyone to be able to share. This is all such important information.

So now moving on to our other panel, I'll

just give a brief couple of sentences about each of them. They all have such impressive backgrounds. We would love for you to take a look at the links we have shared, but also we will share their biographies on the uscirf.gov website about the hearing.

So first we're going to read all four of our panelists, and then each of them will give their presentation and then we'll open it up for questions.

First, we have Ambassador Stephen Rapp, and he's a Senior Fellow at the U.S. Holocaust Memorial Museum's Center for Prevention of Genocide and at Oxford University.

And he was Ambassador-at-Large heading the Office of Global Criminal Justice at the U.S. Department of State in 2009 to '15.

Carmen Cheung is Executive Director at the Center for Justice and Accountability, which is dedicated to working with impacted communities to seek truth, justice and redress for crimes against

humanity.

Next, we have Alim Seytoff, who is the Director of Radio Free Asia's Uyghur Service. During his work there in 2017, they have led the world in first reporting about the mass arbitrary detentions of Uyghurs in Xinjiang.

And then we have Arsalan Suleman, who is counsel at Foley Hoag's International Litigation and Arbitration Practice, which focuses on representing sovereign states in international disputes.

So we're going to start, first of all, Ambassador Rapp, with you.

MR. RAPP: Okay. Well, thank you very much, Chair Maenza, and also thank you for the participation of the Lantos Commission in this joint hearing with the U.S. Commission on International Religious Freedom, and the participation of Congressmen McGovern and Chris Smith, who are the co-chairs of the Lantos Commission.

As they indicated, the business of achieving accountability for mass atrocities, including crimes committed against religious communities, is very challenging and becomes more challenging because of the blockages in the international system, the almost assured vetoes of China and Russia when we seek some kind of international tribunal or jurisdiction of the International Criminal Court.

But it is possible to succeed, and today I'll talk about ways that we can do that and ways that we can do that in the United States.

The first I think is the need, the absolutely critical need, and others I'm sure will deal with this as well, for contemporary documentation because that's the key, both to opening the door to justice and then succeeding in justice in convicting the high level of perpetrators once there is a court with jurisdiction.

Of course, it's important to know the

extent and gravity of atrocities and of all the human suffering, what we prosecutors call the crime base evidence. But the justice for the victims at that crime base cannot be achieved without probative evidence that links the high-level perpetrators to the crimes on the ground and also evidence which shows the necessary intent in order to achieve convictions of crimes like genocide.

The successful prosecution of high-level perpetrators, which you'll hear me talking about, and that's only one aspect, I should say, of transitional justice, but a key one, but going after those high-level perpetrators is essential for the deterrence of future atrocities because these are the individuals that are almost always the true authors of the crime.

They may act through others. They may conscript others. They may incite others to actually do the dirty work, but they are the ones that are making these crimes happen for their own selfish interests.

And they're also individuals who have reached positions of power because they were adept at calculating risk and avoiding courses of action that would create significant dangers to themselves.

And so if a significant risk of prosecution is there, at least before that leader is all in on the mass atrocities, it can be possible to deter that crime, those crimes, protect those victims and have the kind of prevention that we hope to have.

Now, powerful documentation frankly has also made possible trials that wouldn't have happened if we didn't have it. I think most prominently of my good friend Ben Ferencz, who is now 101 years old and is still with us, and if you've heard him tell the story of how he came to find in the Ministry of Foreign Affairs in Berlin the records of the Einsatzgruppen, the daily reports that came back and were circulated in German ministries about the murder of a million

Jews that followed the invasion by the Nazi forces into Russia.

And those are reports that listed each day the number killed, and Ben went with his adding machine, and when he reached a million, he went to his boss, then the Chief Prosecutor at the Nuremberg Tribunal, Telford Taylor, and said we have to do the case, and there wasn't space to do the case. There wasn't a senior lawyer who was available, and Ben took it on himself, and Taylor supported it, and so we had convictions in what was the greatest murder trial, indeed, a genocide, but a million specific victims in that case, and 22 individuals that were put on trial and convicted.

And more recently, in the case of Hissene Habre, the former leader of Chad, who was overthrown in 1990 and emptied the whole treasury and moved to Senegal, there wouldn't have been justice in that case if the victims hadn't found a report that had been sent to him from those in the dungeons where they were being tortured and

murdered, and there weren't on those reports his own, his own direction, "no one leaves this particular prison alive."

So because there was evidence, it was possible to find the door and open that door to justice.

In my own "Media Trial," I was a senior trial attorney and Chief of Prosecutions at the International Criminal Tribunal for Rwanda and Tanzania that prosecuted those responsible for the Rwandan genocide.

We wouldn't have been able to succeed in obtaining the first convictions of Media actors for direct and public incitement to genocide were it not for hundreds of individuals who courageously recorded the broadcasts of RTLM hate radio on their cassette players, and a survivor, who was an expert, who was able to decode the proverbial Kinyarwanda language and show us the explicit direction and power of the genocidal messages.

And, today, similar evidence is being

brought out of Syria and Burma and other scenes of mass atrocities by brave individuals and civil society groups. It's their evidence that to a large extent is then being gathered, collated, verified and shared in places like UNITAD, and I hope we'll hear from Jonathan soon in regard to the crimes of ISIS, or the Syria IIIM in regards to crimes in Syria, which includes the crimes of ISIS there, and in Myanmar specifically on the crimes against the Rohingya on a religious and ethnic basis.

And without that, without those individuals actually producing, recording, getting that evidence, those mechanisms, which have only limited capacity to investigate themselves, wouldn't have the probative material to provide to prosecutors. And these groups and individuals require our continued support, including financial support, and protection, if they're going to continue the dangerous work of bringing out this evidence from the ground, particularly the key

linkage evidence, which is necessary, as I said, to charge and convict individuals.

There is also powerful evidence available from open sources, including the social media messages that incite violence, and you've certainly seen that in the case of Myanmar where Facebook and accounts actually controlled by the military with up to a million individuals among their followers incited and built the hatred against the Rohingya group and made possible to recruit and incentivize those that did the killing and all of the other mass atrocities, the sexual violence and burning that killed tens of thousands, but also drove those 750,000 over the border in 2017, and those crimes continue and are enabled further because of the coup d'etat in February.

There is also digital evidence from closed sources, and before I get to the closed sources, I'll also mention that quite often among the cohorts of killers, they sometimes share images of their crimes, and if one can get to that

information, as we've had in a number of situations, you can connect the inciting messages actually with the crimes on the ground.

But I also want to mention the closed sources, and I know UNITAD is dealing with this in Iraq, but information, for instance, now in Syria, the smartphones of thousands of ISIS combatants that are being held by the Syrian Kurds, and we need to access the information on those phones in order to know where those individuals were, in order to know who they were taking instructions from, in order to tie them to the mass atrocities, including the genocide of the Yazidis.

This requires that investigative bodies have the tools and expertise to preserve the digital information before it's erased and then connected to crimes on the ground.

This is all about the importance of documentation. I haven't yet got to the question of access to justice, but part of it is that when you do have the evidence, when you have the

powerful evidence, it's possible to persuade justice actors and for third countries to get involved and find a way into court.

I come from the state of Iowa. We're famous for the "Field of Dreams" in Dyersville. The idea if you build it, they will come, well, if you build the evidence, you can sometimes make the judges come. And I note, you know, the field of dreams was referring the ghosts of the Black Sox or the White Sox of 1919, and actually in two weeks, we'll have the White Sox and Yankees of 2021 coming to Dyersville so these things do work.

Then, on the second point, how do you provide access to justice, and what can we do in the United States? We need to provide for the prosecution of the full range of international crimes and for the exercise of recognized forms of extraterritorial jurisdiction.

Under the Genocide Convention are exacting requirements for proving this crime of crimes and for convicting perpetrators or holding states

responsible in a court like the ICJ. And that is this specific intent to destroy in whole or a substantial part a national, ethnical, racial or religious group as such.

Frankly, many of the worst crimes in history, many of those that Congressman Smith mentioned, wouldn't qualify. This is why it's so important to have a Crimes Against Humanity statute to prosecute crimes of violence committed as part of a widespread or systematic attack against a civilian population.

Now there's a specific offense under Crimes Against Humanity, which were first prosecuted at Nuremberg, which is called Persecution as a Crime Against Humanity.

It requires that the attack, the violent attack, be committed on a national, political, ethnic, racial or religious grounds. It's easier to prove than genocide. It covers all of the world's worst crimes and should be viewed, I think, fundamentally by many groups as equivalent to

genocide.

At the Rwanda tribunal in the Media trial, we thought it was very important to prosecute those who delivered the messages that led to the mass killing, not only as direct and public incitement to genocide of the Tutsis, but also to get convictions, which we did, of Crimes Against Humanity Persecution based on those messages, and particularly to cover the vicious broadcasts directed not against the Tutsis but at the Hutus who were protecting them.

The U.S. Genocide Act and the U.S. War Crimes Act have never been used. Even in the so-called "Beatles case," you have British ISIL members, Alexandra Kotey and El Shafee Elsheikh, now being prosecuted in the Eastern District of Virginia in Alexandria, they're implicated in the kidnapping and killing of Americans James Foley, Steven Sotloff, Kayla Mueller, and Peter Kassig. Those suspects are not charged with genocide or war crimes.

I imagine having been a former United States Attorney that the U.S. Attorney there would find it challenging to tie them to the genocide of the Yazidis or to show the required nexus to an armed conflict to have a war crime. But if there were a U.S. Crimes Against Humanity statute, there would be a strong case for conviction of the Crime Against Humanity of murder, of imprisonment, of torture, of other inhumane acts and of persecution.

Except for a handful of cases in Germany, all the prosecutions of ISIL members, despite their involvement in genocide and massive religious persecution, are for material support of a terrorist organization.

As a prosecutor, I like that charge because it's easier than proving conduct, but it is also easier for the defendants and their followers to see those on trial as martyrs for their beliefs rather than as the cruel and sadistic perpetrators of horrific violence upon children and other helpless and innocent victims.

Almost all of our allies have a Crimes Against Humanity statute, and the U.S. needs one as well. We also need to join efforts for an international Crimes Against Humanity Convention, an initiative led for more than a decade by the American Leila Sadat, a professor at Washington University in St. Louis, and shepherded through the International Law Commission by Professor Sean Murphy of George Washington Law School in Washington, D.C.

Then the International Court of Justice could hear cases, not only for state responsibility for genocide, the case that Suleman is working on and fighting on and advocating on on behalf of The Gambia in the ICJ, and where there is, as there has been before, the risk that technical legal requirements of genocide would not be met.

But also so that there could be such cases based upon state responsibility for Crimes Against Humanity, including religious persecution.

The U.S. statute should also be amended to

provide for the exercise of recognized forms of extraterritorial jurisdiction. This would include jurisdiction over perpetrators present in the United States, making use of our hospitality and programs, but having been, in fact, war criminals and genocideres [ph].

Current law does not allow prosecution of war crime perpetrators who are present on U.S. soil or cases where a U.S. citizen is the victim of a crime, as our torture and genocide statutes do not allow presently for such prosecution.

We're almost alone in that. Why do we have this strange carveout that we can't really do cases when we've got the statute. We've not written into them the kind of jurisdiction that's well-recognized and used in other cases.

Finally, we must recognize that an international court is sometimes necessary, and given that the U.N. Security Council is often blocked by Russian or Chinese vetoes, and the worst crimes are being committed outside the territories

of ICC member states, a new route must be developed.

The answer is for a coalition of nations like our own to consider pooling their jurisdiction and personnel, as well as their power of influence, into an agreement-based court, as permitted by international law, in situations where there is no other path to independent justice in order to investigate, prosecute and try the perpetrators of the worst crimes known to humankind.

Thank you, Madam Chairman. I look forward to questions from the Commission. Thank you.

CHAIR MAENZA: Thank you so much, Ambassador Rapp.

We are now going to go ahead and really combine the panels, and we're going to go back to Mr. Agar and let him lay out the evidence for us in his presentation, and then we will go on to Ms. Cheung.

Thank you.

Mr. Agar.

MR. AGAR: Thank you so much, and I do apologize for the connection issues. I hope it will work through now.

I will attempt it without the visuals so as to try to reduce the bandwidth used from my side, but just to say, you know, obviously, UNITAD's mandate is particularly to the crimes committed by ISIL in Iraq.

They are recognized as being particularly challenging to prosecute by national authorities, both in terms of the breadth and scope of the crimes that have been undertaken by ISIL, of course, geographically, and this was an entity that controlled the territory within which it undertook the majority of those crimes and within Iraq at the time they were undertaken in terms of access to crime scenes, in terms of access to witnesses and survivors, and who were able to actually tell their accounts.

These are all significant challenges based on national authorities, whether it's Iraq, but

also, you know, as we've been discussing already, authorities in other states--European states and United States. Often the criminality of Da'esh can seem like a black box that nationals enter into, but then which the actual ability to connect those individuals to specific acts, to specific crimes, can often seem almost impossible because of the lack of direct connection to crime scenes because of the lack of access to digital evidence and testimonial evidence.

So the overall picture that I'd like to kind of project from our side, you know, after three years of working on the ground in Iraq I think is a positive one. I think we are in a much better position. The landscape is much more stable and open to potential prosecutions based on the cooperation we've had with Iraqi authorities using advanced technology and really working on the ground with communities in Iraq in order to empower communities, particularly those who have been most impacted by the crimes, by survivors of sexual

violence, for example, to assist them in coming forward with their accounts.

I'll go through very briefly just two or three examples and be quite concrete about it in terms of how we as the international community and United Nations can assist authorities both in Iraq and in third countries to draw on this evidence.

With respect to forensic evidence, mass grave sites, one of the key steps forward I think we've taken with Iraqi authorities during this time is to really take a perspective previously of purely identification of persons and move into a crime scene analysis modality.

And we've done that by assisting them in their standard operating procedures, how to collect information, working with communities to collect DNA samples so they can match with those located within crime scenes. Also then the storage of evidence: how we can take the existing practices in Iraq and improve those to assist in the storage of forensic evidence.

And we're now specifically working with them to work on a DNA basis to identify, for example, individuals who were found in 17 mass grave sites in Kocho village in the Sinjar region, but UNITAD has worked to expedite in cooperation with the Iraqi authorities.

As Ambassador Rapp referred to, I think digital evidence and particularly call data records and information extracted from ISIL databases and ISIL digital assets are extremely important in making that linkage to specific individuals.

Something that's been I think probably the most significant step for us as an entity with, again, the cooperation with the KRG and Iraqi authorities, is to use the ISIL internal administrative system against ISIL as an entity, against individuals, use the digital fingerprints left by ISIL through their recordkeeping in order to tie specific individuals--to tie them to particular acts.

Many of you will be aware that ISIL was

highly administrative in its approach. There are thousands upon thousands of databases detailing the payments made to foreign terrorist fighters, how many slaves those individuals owned, how many wives those individuals had, and also areas such as medical records, the immigration system, quite a detailed immigration system that ISIL had from people moving from Iraq into Syria.

So based on those internal documents that we've been obtained from battlefield evidence, we can put together a picture of the actual actions and movements of individuals based on their own internalized documentation.

So in relation to a specific case at the moment before U.S. in the Eastern District of Michigan, we have submitted evidence, battlefield evidence, in relation to an individual, Musaibli, who was a member of ISIL, and using those internal records, we identified medical records showing his involvement in battlefield action and submitted those as part of the prosecutions against that

individual.

The crime base, of course, is massive, and so it's impossible to do this without advanced technological approaches, and we've sought to do that with Microsoft recently through a new project entitled Besetio project [ph] in which we use artificial intelligence and machine learning to analyze ISIL, particularly ISIL videos and audio files, which through the automatic analysis identifies, for example, facial images of individuals, immediately extracts all facial images and places them into a central database.

We now have over 250,000 facial images within UNITAD's facial imagery database, extracted automatically from ISIL's own propaganda videos.

A huge step forward for us as well is use of machine learning for machine translation, and so through that, we've been able to machine translate thousands of ISIL documents into English that allows us to search those much more effectively.

And even for video files, automatically

take the audio from a video file, convert that into text, and then search that, using that. So using technology, using partnership with Iraqi authorities, we're hoping to unlock assets that can be used globally in domestic prosecutions.

Finally, you know, in terms of the landscape, I really like the phrase from Ambassador Rapp, build the evidence and the judges will come. I think, I think, I think that that actually, you know, applies in some sense to what UNITAD is doing as well.

I think once the initial trepidation or the assumption that these forms of prosecutions will be near impossible or very difficult to take forward, once we can show the evidence, which I was hoping to do today visually, but I instead had to describe myself, once we can communicate this is available--you know, we received 30 to 35 requests now from different states for assistance. In the majority of those cases, we have identified the specific individuals they're investigating inside

the internal ISIL documentation--the UNITAD--

So this is not a kind of needle in a haystack anymore. We can be very, very specific and targeted in finding those individuals, many of whom, you know, anecdotally, are quite surprised when the relevant information is put before them, thinking, of course, that this was kind of, you know, long-lost evidence that would never be found again, and, in fact, we've been able to put that before them and use that to assist in prosecutions.

As a final note, I think the actual action landscape is changing as well. In Europe, I think a much more concerted effort to look at these crimes, again, as Ambassador Rapp mentioned, not just as crimes of terrorism, but as crimes, war crimes, crimes against humanity, and genocide, and in doing so really reflecting, you know, what the survivor communities are saying to us.

I don't believe that the Yazidi community believed themselves to be victims purely of terrorism. They believe themselves to be victims

of crimes targeting their specific community, and as we said, we found very recently clear and convincing evidence of genocide.

So it's a positive outlook, I think. It's a message we're trying to send out that this is not impossible anymore. You know, this is possible through cooperation, through technology, and I hope next time my connection is a little bit more stable and I'll be able to provide this visually, but I hope that provides a little bit of an insight from our side in terms of what is possible and how we're trying to configure that.

So thank you so much.

CHAIR MAENZA: Thank you so much.

Hopefully, we can maybe put a link to that on our website. I know that you, the UNITAD, has put together some really insightful videos to help us better understand all the evidence you've collected.

And I know that previous folks, people working in UNITAD, had said that UNITAD was really

evidence looking for a court you were collecting, and I always thought that was another good way of looking at it, and hopefully it will get to that point like you said where it will get prosecuted.

So now we're going to go to Ms. Cheung and thanks for your patience.

MS. CHEUNG: Thank you very much, Madam Chair, and my thanks to you, to Vice Chair Turkel, to Chair McGovern, Chair Smith, and both of your commissions for your work on this pressing issue and for the opportunity to present today.

I've been asked to speak on some of the challenges when it comes to accountability, and through our work at the Center for Justice and Accountability, we know that accountability can take many forms, but ultimately it's about nonrecurrence, ensuring that atrocity does not beget atrocity.

My remarks will focus on legal accountability, the type that we seek through prosecutions and other legal processes.

A key barrier to accountability is insufficient support for local civil society. As Ambassador Rapp has so eloquently articulated, there can be no legal accountability without evidence.

Often it is local civil society that is first on the scene to document an atrocity since immediate access may be difficult for professional investigators and international organizations like ours. This necessary work is often conducted at serious personal risk, during Internet shutdowns and communication blackouts.

We've seen this over the past several months with activists in Burma documenting the extrajudicial killings of protesters and citizen journalists collecting evidence of mass killings and sexual violence.

The international justice community is increasingly recognizing the importance of citizen evidence. As Ambassador Rapp mentioned, some of the most significant prosecutions involving

atrocities in Syria are the result of criminal complaints that have been initiated by non-governmental organizations and Syrian documentation groups.

In the context of the Rohingya genocide and war crimes against ethnic and religious minorities in Burma, it has been Burmese civil society that has led the collection of evidence that ultimately fed into the U.N.'s International Fact-Finding Mission and that is feeding into the IIMM today.

International justice relies on the work of local civil society and local actors need to be supported for this work.

Accountability for genocide also requires long-term commitment to local civil society. Legal cases involving mass atrocity can take years to build and generating political will for prosecutions may take even longer.

Sustained support ensures that when legal accountability is finally possible, there are

domestic actors able to advance an accountability agenda.

And to be clear, impunity for international crimes as serious as genocide is not an option. Prolonged impunity for human rights abuses takes a devastating toll on societies and creates risk for international security and stability.

The current crisis in Burma is a clear example. 60 years of near impunity for the Tatmadaw atrocities have led to this moment where the architects of the Rohingya genocide are leading the military junta that has arrested the civilian leadership and now purports to govern Burma.

Impunity emboldens oppressors and creates a cycle of ever-escalating violations. When it comes to justice for survivors, a significant barrier can be the system itself when legal accountability is insufficiently inclusive.

Inclusivity means creating space for survivors and accountability processes. We've seen

important efforts on this front from victim participation in the genocide trials of the Khmer Rouge, to UNITAD's important engagement with civil society.

Yet more remains to be done. Not all voices are equally recognized within survivor communities. Women and religious, ethnic and sexual minorities can often be excluded from decision-making around accountability. And this exclusion impacts everything from prioritizing which atrocities to investigate to how mass graves are exhumed.

And so accountability needs to reflect the desires of the impacted community, particularly it's most marginalized.

As others have already alluded to, inclusivity also means ensuring that legal accountability reflects the full scope of the perpetrators' wrongdoing. An important example comes from our work on the Yazidi genocide.

We represent Yazidi women and girls who

were enslaved and tortured by Umm Sayyaf, the widow of a senior ISIL leader. She's currently in Kurdish custody in Iraq, transferred there by the U.S. forces who captured her. In 2016, U.S. federal prosecutors filed a criminal complaint against Umm Sayyaf with a single count: providing material support to a terrorist organization.

Umm Sayyaf's crimes go far beyond support of ISIL. Yet, the United States has not yet ensured that the charges against her can properly reflect totality of her crimes, including complicity in the Yazidi genocide.

And meanwhile our government has yet to seek her extradition to stand trial in the U.S. even though there is a federal warrant for her arrest.

Inclusive accountability demands that prosecutors consider the full scope of the crimes committed by a perpetrator, particularly their human rights crimes.

Finally, legal accountability is only

possible if we have the framework for it. For over 20 years, CJA has held perpetrators of atrocity accountable using civil litigation in U.S. courts.

Early in our history, we brought cases for genocide and crimes against humanity under the Alien Tort Statute. It would be difficult to bring those same cases now. Judicial erosion of the ATS has radically narrowed the range of human rights claims that can be heard in our courts, particularly those involving genocide and crimes against humanity.

And while perpetrators of torture and extrajudicial killings can still be held civilly liable through the Torture Victim Protection Act, no equivalent statute exists for genocide or crimes against humanity.

There are also significant barriers to accountability for corporations that aid and abet atrocity, such as the American manufacturers of the surveillance systems being used by the Chinese government in its oppression of the Uyghurs.

But crimes on the scope and scale of a genocide cannot be committed without aiders and abettors. This was recognized in the Nuremberg Trials, which included prosecutions of those who supplied poison gas for Nazi concentration camps.

There is a legislative solution. We join in Ambassador Rapp's call for legislation on Crimes Against Humanity. We also recommend that Congress amend the Alien Tort Statute to make its extraterritorial application explicit and to codify a civil cause of action for genocide and crimes against humanity.

In closing, the United States has an important role to play in promoting accountability for genocide. We can set a strong example for survivor-centered accountability by ensuring that local civil society actors are supported and strengthened, that accountability processes are inclusive in the broadest sense of the word, and that our own domestic legal framework is conducive for accountability.

Thank you for drawing attention to these important issues, and I would be pleased to answer any questions you might have.

CHAIR MAENZA: Thank you so much, Ms. Cheung. That was so helpful.

And now we're going to move to Mr. Seytoff. Great. Thank you.

MR. SEYTOFF: Yes. First, I want to thank U.S. Commission on the International Religious Freedom Chair Maenza and Vice Chair Nury Turkel for inviting me to testify today.

I also want to acknowledge and extend my gratitude for the long-standing support of RFA and the Uyghur Service by Congressmen James McGovern and Chris Smith.

And before I go into detail on the current efforts underway to hold the perpetrators accountable for what the U.S. and six Western parliaments declared as genocide, I'd like to give a brief overview of RFA Uyghur Service and our coverage of China's policies in Xinjiang Uyghur

Autonomous Region since Chen Quanguo was appointed as the new party secretary in August '16.

Prior to Chen's arrival, RFA has long documented the restrictions on Uyghur language, culture, history, traditions, and religion for nearly two decades.

RFA Uyghur Service is one of the first, if not the first, news service to alert the world on the establishment of internment camps and mass detention of Uyghurs, the use of Uyghur forced labor, the creation of high-tech police state in the Xinjiang Uyghur Autonomous Region.

Back in 2017, RFA first started to document what we recognize as a major human rights crisis affecting an entire Uyghur population in China.

RFA's journalists zeroed in on intensified efforts by authorities that went above and beyond what came before. The service's journalism became one of the few reliable sources of information happening inside the Uyghur region. Our audience

in the region started giving us more tips, speaking with us, knowing that RFA was among the few, if only, ways that their story could be shared or known by the outside world.

We found that camps were using forced labor schemes, that detainees were being transferred outside the Uyghur region to work in factories in Chinese provinces. We learned about detainees' deaths because of inadequate medical care and abuse. We spoke with former detainees who detailed the horrors of torture, gang rape, and forced sterilizations.

RFA's reports later were picked up and cited by major news sources, human rights groups, and by the annual reports, State Department, U.S. Congress, and the Commissions.

These reports, which made our reporters targeted by the Chinese government, made it impossible for China to deny the existence of the camps and the extrajudicial detentions. It also made it impossible for authorities to claim that

the camps were somehow voluntary training centers, but a disturbing component of a nightmarish security state.

Our reports did not escape notice of Chinese authorities, who immediately took immediate steps to stymie RFA's journalists.

Today, China is on a war footing against Radio Free Asia Uyghur Service because of the critical role we have played over the past four years in uncovering the detention of more than a million Uyghurs and other indigenous people in the internment camps.

There has been a hard price for our journalists. Just last month, Chinese Foreign Ministry spokesperson Zhao Lijian, the "wolf warrior," baselessly claimed that RFA is a "CIA broadcast operation" and accused our leading investigative reporter Shohret Hoshur of allegedly encouraging people to "carry out violent attacks."

In April, the Xinjiang government's spokesperson said without any evidence that our

reporter Gulchehra Hoja was "listed as a target of online pursuit by the police for being suspected of joining an alleged terrorist organization."

In addition to demonizing RFA and discrediting the Uyghur Service, China has arbitrarily detained and sentenced family members of eight Uyghur Service employees, most of whom are U.S. citizens, since 2017.

The rest of the undetained family members are practically being held hostage by China. Most of us have no information about the whereabouts and conditions of our loved ones and family members.

I have no information regarding my sister's family. She's married with two kids. I'm not sure if she has been freed, detained or sentenced, even if she were not detained. I'm sure she lives in fear because of her relation to me.

Our deputy director Mamatjan Juma's brothers were detained. One of them was arbitrarily sentenced to 14 years. Another was said to have been released.

Our senior editor Eset Sulayman's brother was detained. Our digital content producer Bahram Sintash's 70-year-old father was detained.

Our reporter Qurban Niyaz's brother was sentenced to five years in prison. Our reporter Nuriman Abdurashid's father and younger brother were sentenced to 16 years, her mother to 13 years, and another brother to seven years.

I believe China went after our loved ones in order to silence RFA Uyghur Service, the only news service in the world specifically focused on reporting the atrocities that have taken place in the Xinjiang Uyghur Autonomous Region.

Obviously, China is not only targeting RFA Uyghur Service. China is also targeting internationally recognized Uyghur organizations and influential Uyghur activists, who are requesting meaningful action from the international community to stop the ongoing Uyghur genocide.

For example, China has been aggressively demonizing the World Uyghur Congress and its

President Dolkun Isa in recent months. That is because a Uyghur Tribunal was established in the United Kingdom last year at the request of Mr. Dolkun Isa to determine whether or not China was committing genocide and crimes against humanity against the Uyghur and other indigenous Turkic peoples.

The Uyghur Tribunal is chaired by Sir Geoffrey Nice QC, who had prosecuted the former Serbian leader Slobodan Milosevic. China is deeply worried by the creation of the Tribunal. In late March, China sanctioned Sir Geoffrey Nice for leading the Uyghur Tribunal.

And the Uyghur Tribuna held its first round of official hearings in early June. We live-streamed for four days. Many Uyghur and other camp survivors and witnesses testified about their ordeals. In addition to that, American and European scholars, including Dr. Adrian Zenz, shared their research findings and views on what China was committing.

While China took a dismissive approach to the Tribunal hearings, it is clear from the overreaction and demonization of the Tribunal by the Chinese Foreign Ministry that China is deeply troubled by the eventual determination of the Tribunal.

Many experts believe the reason China's deeply worried about the final determination of the Uyghur Tribunal is because its determination will once and for all put an end to China's baseless claims that the United States fabricated these genocide allegations to prevent China's rise.

Thus, while China can decry the U.S. condemnations of the Uyghur genocide as politically motivated, the final determination of China committing genocide against the Uyghur people by an independent tribunal, which is not associated with any country or government, would remove China's pretext to justify its ongoing genocide.

The World Uyghur Congress officially decided to request the formation of an independent

Uyghur Tribunal because President Isa didn't see that the International Criminal Court or the International Court of Justice would take up the case of Uyghur genocide. Although these two international courts were better situated in adjudicating the crime of Uyghur genocide, due to China's position at the U.N. and its global influence, these venues were not readily available.

First, China is not a party to the International Criminal Court. Therefore, ICC doesn't have jurisdiction over what happens inside China unless Uyghur genocide is referred to ICC by the U.N. Security Council.

As one of the five members, permanent members of the U.N. Security Council, China will veto any such attempts by other members of the Security Council or NGOs.

Second, China is an original member of the International Court of Justice. However, only a member state can bring a legal case against another member state. Therefore, the Uyghur organizations

have no standing to bring a case against China at the ICJ. There must be a state willing to take up the case of Uyghur genocide at the ICJ against China. So far no state has taken up the case against China like Gambia did against Burma.

This doesn't mean that there will not be another state in the future that will take up the case.

Apparently, there is no clear pathway to seek justice at the moment for the Uyghurs because the genocide is still ongoing. Their biggest hope is the U.S.-led Western democracies because they're deeply disappointed by the inaction of the U.N. and the silence of the majority-Muslim states.

They are profoundly grateful for all the actions taken by the U.S. and its allies to stop the genocide, including sanctioning of Chinese party secretary Chen Quanguo for implementing the policy of genocide. Repeated condemnation of China's genocide at the U.N. is certainly effective to put on the Uyghur genocide in the spotlight.

Coordinated American and European sanctions of senior Chinese officials and their issuance of business advisories play a positive role in increasing the price China pays for continuing the genocide.

Reading from Chinese reactions, it's clear China has felt a lot of pain after the U.S. sanctioned the Xinjiang Production & Construction Corp, banned Xinjiang cotton, tomato, and polysilicon products.

While the actions and sanctions of the U.S. and its allies are critical in eventually stopping China's genocide of the Uyghurs, but they're inadequate at this stage. Uyghurs in exile expect that the international community must take more decisive actions and sanctions to slow down, if not stop, China from continuing its atrocities.

Many Uyghurs in exile expect the U.S. and its allies to sanction further Chinese, American and European companies that are implicated with Uyghur genocide and use of forced labor. They

believe there should be a blanket ban on all products produced in Xinjiang due to forced labor implications, as suggested by Dr. Adrian Zenz.

In addition, they urgently anticipate that the U.S. and its allies pass legislation to grant Uyghur refugees a special status for protection and create special grants and scholarships for Uyghur students. They also expect the U.S. and its partners to establish institutions to preserve the Uyghur language, culture, history, heritage and traditions.

For the Uyghurs whom RFA speaks with, I feel I can say generally justice means the end of the genocide, the closure of all internment camps, the release of all Uyghurs and other indigenous Turkic people from the internment camps and prisons, the return of Uyghurs to their homes from forced labor in all factories across China, the return of Uyghur children to their parents, and the removal of Chinese cadres from Uyghur homes.

Obviously, the return of their lands,

properties, businesses, and the personal belongings make reparations for the pain and suffering they have endured due to China's genocide.

Countless Uyghurs have expressed this to us in our reports, our profiles, in our interviews, which we do not anticipate ceasing as long as these policies, as long as this abuse, as long as these camps continue.

For many who have witnessed and experienced these incredible acts of brutality and suffering, they tell us that true justice will not be achieved unless there are real consequences for the people who create this 21st century crisis of humanity. This means trying all the perpetrators of the Uyghur genocide by a special international court, much like the one that tried Nazi officials at the end of the World War II at the Nuremberg.

For those who have lived through this, who have survived, there cannot be a future, let alone a life, without a reckoning. For them, and for the world, RFA and RFA's Uyghur Service will continue

to tell their stories in pursuit of the truth.

Thank you.

CHAIR MAENZA: Thank you so much. We appreciate your testimony.

And now we're going to Mr. Suleman for the final testimony although last, but not least. We're really looking forward to it.

MR. SULEMAN: Thank you, Chair Maenza, thank you Vice Chair Turkel, Congressman McGovern, Congressman Smith, members of Congress, commissioners, for inviting me to testify at this important hearing.

My testimony will focus on the ongoing efforts to hold perpetrators accountable for genocide and other international crimes committed against the Rohingya. I will also discuss lessons learned from these efforts.

At the outset, I want to express my deepest respect for and solidarity with all victims of genocide and other grave international crimes. As counsel to The Gambia in its case against

Myanmar at the International Court of Justice, I have had the honor to meet many Rohingya survivors, to hear their stories, and to include their testimony in The Gambia's case.

It is only because of their courage and perseverance as well as that of journalists and human rights defenders that we have been able to learn the truth about the Rohingya genocide.

My remarks will focus on three prominent international accountability efforts:

First, The Gambia's enforcement of Myanmar's state responsibility under the Genocide Convention.

Second, the International Criminal Court's investigation of crimes against the Rohingya.

And third, a universal jurisdiction proceeding pending in Argentina.

The 1948 Convention on the Prevention and Punishment of the Crime of Genocide confirms that genocide is a crime under international law, and it obligates states parties to the convention to

prevent and punish genocide. The prohibition of genocide has the character of a preemptory norm under international law, and the obligations under the Convention are owed by each of the convention's 152 states parties to the international community generally and to each of the other states parties specifically.

Article IX of the Genocide Convention provides a mechanism for states parties to enforce those obligations.

Thus, Myanmar, which is a state party to the Genocide Convention, is obligated under it to prevent, to punish and to not commit genocide.

To its great and everlasting credit, The Gambia decided to bring its dispute with Myanmar to the ICJ to hold Myanmar to account. When The Gambia filed its case in November 2019, it asked the ICJ to impose provisional measures to protect the rights of the Rohingya during the pendency of the case.

Such measures operate as a sort of

temporary restraining order, and after a published hearing in December 2019, the ICJ issued an historic, unanimous order in January 2020, approving the measures requested by The Gambia to prevent further acts of genocide from occurring against the Rohingya group in Myanmar.

This provisional measures order was a momentous victory for The Gambia and the Rohingya, marking the first time ever that Myanmar was being held to account for its violations of the convention.

All of the court's orders are binding upon Myanmar under international law, and the case is active and ongoing.

It's important to note that the ICJ is the only forum in which Myanmar state responsibility under the Genocide Convention can be adjudicated.

The next two accountability mechanisms deal with individual criminal responsibility, not state responsibility. Normally, a state's own courts and judicial systems would be expected to

prosecute culpable individuals. However, there is no prospect for justice for the Rohingya in Myanmar's legal system.

But Myanmar is not a state party to the statute of the International Criminal Court so absent a referral to the ICC by the United Nations Security Council, there is no basis for ICC jurisdiction over crimes committed entirely within the territory of Myanmar.

However, the ICC prosecutor has an open investigation regarding the crime of deportation and any other crime against humanity consummated on the territory of Bangladesh, which is a state party to the ICC statute.

So though limited in scope and by the challenge of obtaining suspects and the court's actual custody, the ICC investigation does open an important possibility for some individual prosecutions.

The last effort I'll cover is the Argentina universal jurisdiction proceeding. The

principle of universal jurisdiction is that some crimes, such as genocide, piracy, and torture, are of such exceptional gravity that national authorities of any state are able to investigate and prosecute perpetrators of such crimes.

In November 2019, the Burmese Rohingya Organization of the UK asked the Argentinean authorities to investigate and prosecute senior military and civilian leadership for international crimes committed against the Rohingya, including genocide.

That effort is still ongoing and is being adjudicated in the Argentinean judiciary. A universal jurisdiction investigation such as the one requested in Argentina would suffer from the same challenge of obtaining physical custody over the alleged perpetrators as is faced by potential ICC--

These three accountability efforts are part of the broader toolkit that states have for promoting justice and accountability for

international crimes. As has been mentioned, additional tools include sanctions, suspension of aid and diplomatic censure.

We can draw some lessons from the three efforts that I mentioned.

First, the importance of truth-telling. Genocide, crimes against humanity, and other international crimes are not just historic wrongs. Their impact reverberates through time, scarring generations of its victims and their descendants. And the struggle for justice and accountability for these crimes is first and foremost a struggle for truth.

It was critical that human rights NGOs and other credible experts began to call what happened to the Rohingya by its proper term--genocide. And governments must also speak the truth about such situations, and the United States and others should make a genocide determination regarding the Rohingya.

That brings me to my second point, which

is that international mechanisms work when they are used effectively. The U.N. Fact-Finding Mission on Myanmar was created through a U.N. Human Rights Council Resolution. Through its credible reporting, the mission successfully informed the international community about the facts that support a finding of genocidal intent.

These actions by the U.N. Human Rights Council and the Mission are a shining example of how multilateral institutions can be used effectively to protect human rights.

When the United States engages and leads in multilateral forums like the Human Rights Council, we're able to make these institutions more effective, and we are able to protect and advance our national interests through them.

I look forward to the United States rejoining the Human Rights Council under the Biden Administration.

The third point is that leadership is critical. One question everyone asks about the ICJ

case is why The Gambia? Why would a small country in West Africa thousands of miles away from Myanmar file this case?

Well, the simple answer is leadership and commitment to human rights. They decided to do the right thing and stand for justice and accountability. The Gambia's example is one that other states can and should follow. There are mechanisms that can be used to respond to other genocides like the Uyghur genocide if states only take the bold step to invoke them.

And if I may give a slight supplement to my co-panelist's Mr. Seytoff's remarks, there actually is an interstate mechanism under the Convention for the Elimination of Racial Discrimination that would allow states to bring a formal complaint against China regarding its treatment of the Uyghurs. It may not be necessarily a genocide complaint, but it's a complaint under the CERD Convention itself, and that interstate communication could lead to a

report that would be completed by a conciliation commission convened under the CERD Convention.

I'm happy to talk about that further in questions and answers.

But finally, justice and accountability must be national security priorities. It should surprise no one that the same military that carried out genocidal attacks on the Rohingya would go on to overthrow the elected government in Myanmar in February of this year as was mentioned by our co-panelist Ms. Cheung.

Decades of impunity for human rights violations and atrocities ensures that such violent and destabilizing actions will occur again in the future, and the lesson is true for many other states and regions across the world.

In conclusion, I thank the chair, the vice chair, representatives and other commissioners for holding this hearing and drawing attention to these important issues and would be pleased to answer any questions that you might have.

CHAIR MAENZA: Great. Thank you so much. We appreciate your testimony.

First, I want to see if Representative Chris Smith is available. I know he's got a couple other things going on, and there's a possibility, of course, others may jump in although I know it's a busy day today on the Hill.

So we'll go ahead and start with the commissioners with questions. I'll go ahead and start with Ambassador Rapp or really whoever else would want to weigh in.

What is the likelihood of a Nuremberg style tribunal in someplace like Raqqa, which has invited these tribunals to prosecute the ISIS genocide?

MR. RAPP: It's possible though challenging. And, frankly, the Syrian Kurds under international law have a responsibility to proceed with the people that they've detained and treat them humanely and to try them as recognized by the ICRC.

And they would welcome international assistance, and I'm involved in one NGO that is working with them. Of course, it's a very insecure area, and the Syrian forces are active. The border between Turkey and that part of Syria is challenged, of course, by the Turkish incursion, and so it is a difficult place to work.

But that is a possibility. I would note that European countries have pushed for the establishment of a hybrid court, and there's a report that will soon be issued by a British Royal United Services Foundation on behalf of, for the UK government and 56 others, that does recognize or call for a hybrid court and call for countries to pool their jurisdiction together at least in the case of the foreign terrorist fighters.

And, as you know, in Europe, their counterterrorism statutes aren't very strong, and when they do do these cases on terrorism, a member of ISIL, they sometimes only get a two-year sentence. The people are released, and then like

we saw in Austria last November, the guy is out there shooting students in the street.

And so they would like to--they're worried about their own court systems, and in the absence of the sort of evidence that we've discussed, that Jonathan was talking about, they can't make the cases on genocide or crimes against humanity or war crimes.

Hopefully, that will be strengthened from Iraq and strengthened with more exploitation of the material in Syria. And so they look for another alternative, and this is one. I think those of us are sort of quite interested in this idea. The U.S. isn't so much because we've taken our people back, and we've prosecuted them, and we have very tough laws that generally provide a 20-year sentence, at least, in the case of material support to a terrorist organization, and obviously more serious penalties if the person is implicated in specific violence or death.

So whether this will happen, I don't know,

and, of course, just to do it for foreign terrorist fighters doesn't deal with the sort of the leaders, some of whom are out there in the world right now in places like Turkey that were, some of whom were reported dead, and that was exaggerated, that are really the leaders of the genocide of the Yazidis, the crimes against Christians in Iraq and Syria.

These individuals need to be, have a focused prosecution for genocide, for crimes against humanity, for war crimes, not just for being ISIS members, and I think are much more effective in terms of countering violent extremism, of showing that they weren't heroic defenders of the faith, but, as I said, cruel and brutal perpetrators of crimes against innocent children and others, and I think that's more effective.

But getting to that stage will be challenging, but the possibility of states pooling their jurisdiction to do it, and then reaching an agreement on where the court would be headquartered, is one of the alternatives that I

think is very much in play in part because of the foreign terrorist fighter concern in Europe.

CHAIR MAENZA: Thank you so much.

Vice Chair Turkel, did you have a question you wanted to ask? And then I--

VICE CHAIR TURKEL: Yes, quickly, I have a question. This question is for all of our witnesses.

If anyone can comment on what Congress could do to protect or allow mechanisms or courts for American citizens who have been a victim of the ongoing genocide, either in the case of Yazidis or Rohingyas or the Uyghurs?

MR. RAPP: Let me just say, you know, the genocide statute when it passed in '88 was only for genocides abroad or genocides committed, you know, in the U.S. in which there was this U.S. nexus, and it didn't even provide for present in jurisdiction.

In 2007, Congress said, well, if a genocide there turns up here for a genocide committed after 2007, we can prosecute it. But if

you're a genocide survivor in the United States, that doesn't give, you know, that doesn't give us jurisdiction to prosecute.

So the law clearly needs to also provide, as other statutes do, that when a citizen of the United States is a victim of a crime, that there's jurisdiction in the United States, then to seek arrest warrants against individuals that aren't present in the U.S.

That's an immediate change that could be done, and all of our statutes should provide both present in and citizen victim jurisdiction.

VICE CHAIR TURKEL: Thank you very much.

MS. CHEUNG: And just to add to Ambassador Rapp's comments, in addition to ensuring that there is extraterritorial reach for the criminal statutes, we have had great success at CJA over the past 20 years in bringing civil cases where criminal litigation, where criminal prosecutions have not been possible, on behalf of survivors of genocide and other atrocity crimes.

And so I think Congress can take very specific action to make, as I said, the Alien Tort Statute explicitly extraterritorial in its reach and also to create civil causes of action that have extraterritorial scope for crimes against humanity and genocide.

CHAIR MAENZA: Thank you.

VICE CHAIR TURKEL: Thank you.

CHAIR MAENZA: Commissioner Bhargava I believe has a question.

COMMISSIONER BHARGAVA: Thank you, Chair Maenza. And thank you all for being here.

As a former Justice Department prosecutor, civil rights prosecutor, and someone who worked a lot on transitional justice and truth commissions, I feel like you've awakened my mind in all kinds of ways.

And so I have a couple of questions. I'll try to put them somewhat together, and they're for each of you.

Ambassador Rapp, I wanted to ask you about

there's this push from USCIRF and many others for genocide determinations in part because of what they signal and invoke in terms of the extent of harm. And part of what I'm hearing from you in thinking about the crime of persecution and also just generally crimes against humanity is that there may be a real need in terms of what the evidence that we have but also in terms of legal accountability to move away from that.

And I just wanted to make sure I was hearing you correctly, and if that's, if that's a way in which we should--at USCIRF, we've been pushing for genocide for a whole range of reasons in addition to crimes against humanity, but if we should think differently about the ways in which we can get some legal accountability?

And let me just put these other two on the table, realizing I'm asking multiple questions, but I wanted to also ask about the fact that in the context of legal accountability, I recognize that we, and thank you all for the ways in which you're

prosecuting cases around the world, if there was a space you thought still for things like truth commissions and for the ways in which we, if, as Ms. Cheung said, the goal is nonrecurrence, what are the ways in which we can think about some other methods to do that that obviously have been part of this world for such a long period of time?

And then the last thing I wanted to ask. Ms. Cheung, you spoke a bit about the Alien Torts Claims Act, and I was, I was sort of struck by Ambassador Rapp's laying out a different way in which the U.S., you know, we can have a U.S. legislation around crimes against humanity.

And I'm wondering, sort of this question about, you know, do we make changes to ATCA or do we really think about how we, how we push for some legislation that can really speak to crimes against humanity, and to all the problems, the exceptions that have been in the rule that Ambassador Rapp so clearly laid out?

So sorry for the multiple questions. I

was hoping that I could get some way to get all these in, but thank you all.

MR. RAPP: And when we have only three minutes, but I hope we have a couple minutes more, but in--

CHAIR MAENZA: We can go a little over.

MR. RAPP: --any case, wonderful questions.

First of all, I support the State Department and the President need to move forward and make a determination explicitly that the crimes against the Rohingya are genocide. I think that's a very strong thing, and we've had both under Secretary Pompeo and Secretary Blinken, they haven't yet moved to that step, where they have, at least on a political basis, without a formal legal analysis, on the Uyghur situation.

But, you know, the political issue, I mean the political issue is there, but there's also these very technical requirements under genocide, and I recall Darfur, which Congressman Smith spoke

of, where a lot of us saw a genocide, but then there was an international commission, chaired by chairman--a wonderful guy--Judge Cassese, first judge of the IC the Yugoslavia Tribunal. He came back and said not a genocide, a crime against humanity, and everybody said, oh, it was a victory for Bashir, and so there is this sense of you've got to find a genocide.

But the need to show, and particularly in the Uyghur case, a biological destruction, which we haven't gone for before, and it's statistical evidence that's required, and the level of proof. These cases can go to court, and you can lose, not because there aren't horrendous things happening, but because you don't fulfil these requirements.

And we have all sorts of legal experts who then go in and actually defend these nasty people on these technical grounds. So that's why I think it's really important to have Crimes Against Humanity statute and to have then explicit findings in these situations if there's a crime against

humanity persecution and a genocide or if there and certainly is cases that are committed by regimes on a class basis or on a political basis, those are under the Genocide Convention in any case.

And the crimes of Stalin except for--you know, I mean obviously the crimes against the Ukrainians and others that I think reach the genocide level, a lot of them wouldn't reach that, and Cambodia is only a genocide against the Cham and the Vietnamese. The major crime was on the political basis.

So you need to have that, that tool as well, and getting it into the statute, not just, you know, for civil liability, for criminal liability, for use so that the government of the United States is actually talking from its own statute when it makes a determination on crimes against humanity is something that would accomplish something in each of the three ways even while we hope in many of these situations we can cross the threshold and say that we had a genocide.

CHAIR MAENZA: Does anyone want to take a stab at the other questions?

MS. CHEUNG: I'll try to answer the question that was posed to me directly. Thank you for your question.

You know I think that an amendment to the Alien Tort Statute, which is, you know, could be very short, which then provides for explicit extraterritorial reach, is complementary to the Crimes Against Humanity bill that Ambassador Rapp is describing. I don't think that they work at cross-purposes. I don't think it's an either/or proposition.

What is important about the Alien Torts Statute is that just about a month ago the majority of the Supreme Court ruled that the ATS, there is no corporate exemption for the ATS. And so when it comes to the aiding and abetting liability that we're concerned about with respect to corporations that aid and abet the commission of genocide, which, you know, Mr. Seytoff also alluded to, the

ATS remains a powerful tool for that sort of thing.

It needs to have that extraterritorial reach made explicit by Congress.

With respect to the Crimes Against Humanity Act, I think, yes, a comprehensive legislation that addresses crimes against humanity and really sort of the other international crimes that are kind of addressed in a patchwork fashion in our legislation right now would be very, very important in making sure that the U.S. remains a jurisdiction where these claims can be brought and where individuals can be properly prosecuted.

CHAIR MAENZA: Okay. I understand, Mr. Agar, you have something to add?

MR. AGAR: Thanks so much.

I was actually--apologies--coming back to the ISIL accountability question and the issue of tribunal. Just a very quick comment.

You know I think that our former, now former Special Adviser--he's now moved to being head of the ICC--Mr. Khan, often said, you know

there's no silver bullet. And I think that's very true that, of course, the establishment of the tribunal potentially in some form may be, provide a further avenue for accountability.

But irrespective of that, it will require action within domestic authorities, you know, globally given the range of the crime base that we're talking about here, and that also still means looking at Iraq itself, given numbers involved, and how that can be supported.

One kind of point perhaps in this regard is there are two domestic legal processes ongoing at the moment in Iraq, both in the KRG and in Baghdad, seeking to establish a legal basis for the prosecution of ISIL members. Very interestingly, and I think importantly from our perspective, for war crimes, crimes against humanity and genocide, for ISIL members, prosecuting them for international crimes.

It would actually be, you know, a very significant step forward, you know, and would be,

for that region to establish a crime, a legal basis for those prosecutions, would be very significant. And, you know, both of those need to move forward. We provided some technical guidance on both pieces of legislation and certainly would support that as a further avenue for accountability.

Of course, work would have to be done in terms of ensuring international standards and due process. That's, of course, also why we're there to support that. So really just drawing the line, you know, I think any tribunal or anything additional doesn't get domestic authorities off the hook in terms of, you know, having to take action on that basis.

And our job is try to make it as easy as possible for them to do that, basically on collecting evidence on the ground and supporting that. So I just wanted to flag that.

CHAIR MAENZA: Thank you. That was very helpful.

I was curious as to why we keep talking

about this Crimes Against Humanity statute here in the United States. Why would there be opposition to that?

MR. RAPP: I think you'd have to ask people. There's, you know, there's reluctance--the main pusher for it has been Senator Durbin, who is responsible for the genocide including present in in 2007 and the Child Soldiers Act, and there have been some--he's had bipartisan support on that. People like your former leader on religious freedom in the last administration, Senator Brownback, and others, and Senator Coburn, and there was some prospect of getting bipartisan support of that idea.

Again, we don't--it would have to be written in a way that's a little different than it is at the International level. It would have to talk about crimes as defined in the U.S., and also tied to a widespread and systematic attack against the civilian population, et cetera.

But, you know, it's the kind of thing, a

freestanding bill. It has to go through both houses of Congress. It takes real pressure and real leadership. I'm hopeful that Senator Durbin, now chairman of Judiciary Committee, what the committee will find bipartisan support, and we might see action on this because without it, we really don't have the tools to prosecute many of-- if some of these bad guys come to the United States as refugees, and we discover later, as we did with Nazis and some people from the Latin American dirty war, that they're perpetrators, we may not have the tools to use to prosecute them, and we may not be able to send them back where they came from because of the human rights consideration.

CHAIR MAENZA: Thank you.

Any other comments from our panelists? I know that you had a lot of questions throw out. I don't want to cut anyone off, but I'm sure that my colleagues have additional questions.

I see Mr. Suleman.

MR. SULEMAN: Yeah, chairman, thanks.

I just wanted to add that, you know, in terms of dealing with some of these situations where it seems that the avenues for justice are cut off, I think it is important to continue to push on the mechanisms that are available, and also, you know, as I mentioned in my remarks about bodies like the Human Rights Council and other such existing mechanisms, where you can continue to work to build the political support and support documentation efforts that Ambassador Rapp and others have described as so important.

You know, in the Myanmar context, the creation of the Independent Investigative Mechanism for Myanmar was a very important step, and that again in the same way that the HRC's resolution to create the fact-finding mission was important for the fact-finding's mission's report itself, which helped to really push The Gambia forward in its ICJ case, but the work of the mechanism is also compiling evidence that can be used in future prosecutions, and the mandate for that is not just

genocide.

It is the broader writ of international crimes, which can include war crimes and crimes against humanity, so that when there are, when there is a possibility of bringing someone into a court, whether it's a national jurisdiction under universal jurisdiction or for potential crimes that the ICC prosecutor might find, the jurisdiction to try that evidence will hopefully be available.

So there are these mechanisms that we can still use in order to support the accountability process until we can again find that court that's able to actually do the accountability work itself.

CHAIR MAENZA: Thank you.

Vice Chair Turkel, it looks like you have a question.

VICE CHAIR TURKEL: Yes. I'd like to focus our attention to the role of social media, if I may.

There are some credible reports that some social media platforms were used for the genocide

in Rohingya community. I'd like to ask our panelists if we should hold the same standard when dealing with the social media as the way that we deal with the traditional media companies in efforts to prevent the incitement of genocide?

So if so, and how can we promote accountability for online incitement for genocide as an international crime? As we speak, the Chinese government, for example, using social media. Twitter is banned in China, but they're using it for justification.

MR. RAPP: I'll say boldly that Section 230 of communication decency needs to be rewritten, and there needs to be more responsibility on the company's part to these messages. That's challenging, and, of course, we have our own concern about free speech and the ways in which the Chinese and other governments use restrictions to cut off access to the communications through the social media that's so important to civil society.

So that has to be done very, very

carefully. Certainly, if a newspaper runs an ad and incites genocide, and we can show actual malice, we can sue that newspaper even in the United States where we have First Amendment privileges, but you can't sue the social media company because of Section 230. That's important, but controversial, I know.

Also, the social media companies need to cooperate. I know Arsalan can talk about efforts to get information from Facebook that was relevant in the incitement and these accounts. Some of it's available in open source. Sometimes those things have been deleted by the time you get to them, and then in court, you often need to at least find out that it was on the system.

And then there's the additional need for material that may be shared between networks of individuals, et cetera, that in a normal course of criminal prosecution, you could get a search warrant for and get that information, and that's been difficult.

I've often thought that a great deal of the evidence on all of this is in California, and you could potentially with the right tools get to it, and we need to facilitate that.

But that fundamentally would take a prosecution in the United States in order to have a prosecutor who can then go to a U.S. court and get the kind of search warrant that you need.

MR. SULEMAN: Just to add to that, Commissioner Turkel, it is extremely important to focus on that element because so much of evidence nowadays is posted on the social media networks and are available for collection.

But, again, it can be difficult because if a user's account has been disabled or some other, you know, way in which it's been taken down, that evidence then isn't necessarily publicly available anymore although it may be stored on a server or being held by the social media companies.

And so that element is really important to ensure that justice processes have the ability to

access that information, that evidence, for use in the processes.

Now, The Gambia is actually trying to seek evidence that was posted on Facebook, and there is an ongoing, a pending action which was filed in the U.S. courts in Washington, D.C., in the federal district court there, under 28 U.S.C. 1782, which is a provision of the law that allows civil discovery for the support of international tribunals and international justice processes.

And that litigation is pending so I can't comment in detail about it, but these mechanisms are important, and to the extent that there are legal restrictions that may prevent social media companies, or they may argue that prevent them from sharing it, I think that might be a space where if courts do hold that there are prohibitions on the sharing of that evidence, then that might be a space for Congress to really look at to ensure that the tribunals are able to access the necessary information.

VICE CHAIR TURKEL: Thank you.

MR. SEYTOFF: If I may add, add a point on this issue, since the U.S. government had determined that China was committing genocide against Uyghurs on January 19th, we saw on U.S. social media companies, Facebook, Twitter, YouTube, we see an increase of Chinese government disinformation and genocide denial on this U.S. social media platforms. Those are Chinese government accounts, whether that's Chinese Foreign Ministry, Chinese diplomatic missions, whether it's U.S. Embassy or consulates, or all diplomatic missions around the world, as well as Chinese media companies, for example, Global Times.

And they are very active in basically spinning China's version of the story, and you see whenever Uyghurs, and they're targeting also Uyghur activists, to inundate their social media webpages, they're hacking them.

So this has been very powerful actually. It is surprising for a lot of Uyghurs that we

interview at Radio Free Asia. They are very disappointed that these are American companies. At the same time, they're allowing the Chinese government--these are not just the 50 Cent accounts, you know. They're attacking right and left on social media spreading whatever.

But these are official Chinese government accounts, and the diplomatic missions, ambassadors, General Counsels. They are spreading this kind of disinformation and genocide denialism. These are allowed on these American company platforms.

And they are just inundated. They are just flouting all the social media with Chinese government's spinning of this.

So it's very hard also for the Uyghurs to counter this kind of propaganda and basically to tell their own stories on U.S. social medias. I'm not sure it's true, but recently some of the Uyghurs on social media complained, for example, that YouTube algorithm basically post, you know, the Chinese government videos about how great

Uyghur people live in Xinjiang, Chinese government propaganda videos, statements, whatnot on top.

So when you search about the Uyghur or Uyghur genocide, you first see the Chinese government videos about how happy Uyghurs are living, it's all lies, all fabrications by the West, instead of the real heartbreaking stories of the Uyghur witnesses who are posting these videos on YouTube or other social media.

So this has been ongoing. That's something I'd like to share with the panel.

VICE CHAIR TURKEL: Thank you. Thank you very much.

CHAIR MAENZA: Mr. Suleman.

MR. SULEMAN: Yes. I just want to build off an important point that Mr. Seytoff made, which is that in both the Uyghur context and the Rohingya context, the state itself has been manipulating and using these platforms. They've been not only creating the accounts but also creating shadow accounts.

There was a real detailed expose on how the Tatmadaw, the Myanmar military, was basically having a very complex information, disinformation operation, to spread anti-Rohingya hate speech, to foment anti-Rohingya hatred within the country, to spread the dehumanizing rhetoric, which was meant to facilitate and support its genocide of the Rohingya people.

And it's really important because these are state actors. They don't have the same privacy interests that a regular user, a U.S. user, might have, for example.

So when we're talking about the standards that social media companies invoke in trying to protect this information from disclosure, it's a completely different situation. It's a completely different standard. You're talking about a state actor. They don't have the same privacy interests.

And so that might be another area to explore in terms of the standards that social media companies have to enforce in terms of dealing with

state-sponsored manipulation and, you know, unauthorized use of these platforms.

There are some social media companies that affirmatively post online evidence of this kind of misinformation and unauthorized use of the platform, and others don't do that. And I think, you know, having some industry standards that would support the disclosure affirmatively of that kind of state manipulation of these platforms is important.

CHAIR MAENZA: And Ms. Cheung, I believe you have a question, or--

MS. CHEUNG: Just to add, just very briefly, I suspect that we could probably have a whole separate hearing on social media and human rights.

But just to build on the comments of Mr. Suleman and Mr. Seytoff, I think one of the important things to recall both in the context of both the Rohingya and the Uyghurs is that civil society has gone to the social media companies to

tell them about this misinformation that's being posted by the state, to ask for take downs, to ask for moderation.

And so I think that, you know, going back to Ambassador Rapp's idea of having to, you know, engage in some legislative reform about that, you know, the various ways in which liability cannot attach to platforms, we need to think about the situations where it isn't simply just hosting this information, but its hosts continuing to host this information after there have been credible reports from civil society that this information is false, this information is harmful, and this information may result in very serious and grave harms to our community.

VICE CHAIR TURKEL: Thank you.

CHAIR MAENZA: Thank you.

I believe Commissioner Bhargava has another question.

COMMISSIONER BHARGAVA: If we have time. I actually, there's multiple things that you have

all raised about recommendations that we can make to Congress and, particularly for USCIRF, that is one of the major places in which we do, you know, make recommendations.

I wanted to ask, I know, Ms. Cheung, you mentioned that there is two draft bills in Congress. I wanted to just ask all of you if there was something that we, you feel like is missing from that level of push in terms of both the Rohingya and other ways in which the mass persecution of communities is happening, if there's ways in which we can, recommendations we should be making that we have not yet made or need further highlight?

So I just wanted to, as an ending moment, or maybe close to ending moment, see if there is something that we should focus on from each of you? One thing or one or two things if you can do it briefly.

MR. SULEMAN: I can start off. I think, you know, the one thing that I would emphasize at

this point I think is prevention in terms of seeing what we've been able to see, and then just the social media focus here at the end, a lot of the signs of mass atrocities and potential atrocity crimes are often telegraphed. We can see dehumanizing rhetoric being spread. We can see steps being taken to shut out media and dehumanize defenders.

And I think the work of USCIRF is critically important to shining a spotlight, not only once those situations have happened, those crimes have happened, but, in particular, when we see warning signs of atrocities to come, and I really commend the work of USCIRF on that, and I think there are a number of situations, as USCIRF has documented and reported on, where we do see those warning signs, we do see the potential for atrocity crimes for, you know, other crimes that may even be perpetrated by civil society actors, but are fomented and given oxygen by legal frameworks or impunity within certain states.

So I just leave it at that where, you know, the really important work of advanced warning for atrocity prevention.

CHAIR MAENZA: Thank you.

I know, Mr. Agar, you had something. Go ahead.

MR. AGAR: I think from our perspective, you know, obviously we're mandated to it, to investigate these crimes as war crimes, crimes against humanity and genocide, and I think if anything from our side, in terms of messaging and further support, it's the importance of that framing and recognition through the prosecutions of crimes to reflect the true nature of the acts that were undertaken.

So, I know, of course, there's already significant support from the U.S. side for our efforts but also for the efforts for national authorities. You're in the region and elsewhere, but also perhaps even, as Ambassador Rapp touched upon, looking at these crimes within that frame and

promoting a comprehensive accountability approach to ISIL crimes, which, as I mentioned before, is really reflective of the experience of survivors and witnesses.

So looking at it with this dual frame of, yes, counterterrorism, but also crimes against humanity, war crimes, genocide, the real-lived experiences of survivors. And I think there is more, there is more that could be done as well globally to look through both of those prisms at the same time, which is also more effective, accountability approach.

MR. RAPP: And let me just say again that I hope that you will be pushing for legislative changes, crimes against humanity and for the kind of things that Carmen has discussed and Jonathan that would give us the broadest ability in the United States to pursue these cases.

The, on the social media thing, I hope you'll make that a further focus and to bring more information to bear on it because I think there is

room for, though it's, of course, very challenging area, and it's become political in the United States and, of course, it does run up against free speech aspects, but we really do need to look at ways where this sort of repetitive posting of these kinds of messages occurs and where there could be a liability.

I don't want to introduce an idea that's particularly bold that a federal prosecutor mentioned to me, of course, the fact that messages are being brought through the United States. We often prosecute the financial crimes abroad because the dollars digitally go through New York. Well, if the digits of incitement go through California, may look to prosecute those.

I think we have to maybe have more explicitly in statutes using a U.S. instrumentality to commit these crimes could actually create jurisdiction, and that would be certainly deterrent to them using those, those means, not that they couldn't find other ones that didn't involve us,

but obviously the popular and effective ways, particularly in Myanmar where Facebook is the Internet, the Internet is Facebook, you know, that we could have an impact if we focused that way.

Tools can be available if we use them. They can be useful and many times require legislation with focused study, which the Commission, the International Religious Freedom Commission, but also the Lantos Commission, I really think should look at and try to develop some consensus ideas that could really discourage the use of social media for spreading hate and incitement to genocide and persecution.

MR. SEYTOFF: Yeah, if I may add the last point, there are several bills actually sitting at the U.S. Congress directly related to the Uyghur people, and one was passed actually a week ago by the Senate. It's called the Uyghur Forced Labor Prevention bill.

This is about the forced labor of the Uyghurs by the Chinese companies and some American

companies also are implicated with this. For example, yesterday, there was a hearing about corporate sponsorship. Whether that's Procter Gamble, Visa or Apple, and Nike actually, those two companies were implicated with Uyghur forced labor, and so the Uyghur in exile community, they expect U.S. Congress to pass this bill as fast as possible whenever we interview the Uyghur activists, who are advocating for the passage of the bill.

In addition to that, the Uyghur refugee situation is dire right now because Uyghurs, unlike other people that cannot just flee the genocide to like Pakistan or Afghanistan. As you know, those countries will gladly send them back to China, as they have done for decades, and for the few Uyghurs who fled to, whether it's Central Asian countries or Turkey, and they don't feel safe, and they want to come to U.S. or European countries for security reasons, right now we have a Uyghur refugee who came, who fled Turkey planning to go to Holland.

He was stranded in Morocco at the

Casablanca airport. Then the Moroccan authorities arrested him at the request of the Chinese authorities. Now his case is very dire. He may be extradited to China without any kind of international or U.S. intervention of his case.

And there is another bill, of course, at the U.S. Congress that's about granting Uyghur refugees to seek refugee status directly at the U.S. diplomatic missions. That's still sitting in the U.S. Congress.

So these are some of the bills that the Uyghur exile community expect the U.S. Congress to pass as quickly as possible for the protection of Uyghurs, refugees, and also for the Uyghurs who are forced to do, forced in slave labor in China.

CHAIR MAENZA: Thank you so much.

I think we are at end of our time. I want to thank you, our witnesses, for your incredible testimony, the Co-Chairs McGovern and Smith for their leadership, and, of course, the Tom Lantos Human Rights Commission, their staff, as well as

the professional staff here at USCIRF, for organizing and working to prepare this important hearing.

And really thanks to all of you for attending and staying with us. I know we went a little long today on purpose because putting this group together is such an amazing opportunity. We wanted to take advantage of every moment we had together.

So thank you for staying with us. We hope this discussion really moves us closer to seeing real accountability for the perpetrators of genocide and mass atrocities and also justice for their victims.

So thanks so much.

VICE CHAIR TURKEL: Thank you.

[Whereupon, at 12:26 p.m., the hearing was adjourned.]