

UNITED STATES COMMISSION ON
INTERNATIONAL RELIGIOUS FREEDOM

HEARING ON ENDING GENOCIDE:
U.S. GOVERNMENT GENOCIDE DETERMINATIONS
AND NEXT STEPS

Wednesday, May 12, 2021

10:30 a.m.

Virtual Hearing

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

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P R O C E E D I N G S

CHAIR BHARGAVA: Good morning and thank you for attending the U.S. Commission on International Religious Freedom's hearing today on "Ending Genocide: U.S. Government Genocide Determinations and Next Steps." I would like to thank our distinguished experts for joining and sharing learnings with us.

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 policy recommendations to the United States government and Congress.

Today, USCIRF exercises its statutory authority under IRFA to convene this virtual hearing.

Religious communities in countries around

the world are targets of genocide and other mass atrocities and have long been vulnerable to discrimination and violence from both governments and non-state actors.

In 2014, in Iraq and Syria, ISIS waged a genocidal campaign of rape, torture and killings targeting Yazidis, Christians, and Shi'a Muslims.

The Chinese government is committing genocide and crimes against humanity by imprisoning the predominantly Muslim Uyghur people in concentration camps--considered the largest detention of an ethno-religious minority since the Holocaust--and enacting measures to decrease the Uyghur population and actively separating children from their parents.

In 2017, the Burmese military perpetrated what the U.N. described as genocidal intent, mass killings, torture and rape against the mostly Muslim Rohingya in Rakhine State, forcing over 700,000 to flee to Bangladesh within days.

Today, well over a million Rohingya remain

displaced from their homeland in Burma or imprisoned in camps within Burma.

The Burmese military seized power in a coup this February and continue the brutal and violent assault and targeting of the Rohingya.

The 1948 Genocide Convention states that genocide occurs when specific acts are committed with the intent to destroy, in whole or in part, a national, ethnic, racial or religious group. The Convention confers obligation on states to prevent and punish the crime of genocide. Recognizing genocide when it occurs can be a first step to triggering these responsibilities.

Since the United States ratified the Genocide Convention in 1988, it has determined that genocides occurred in contexts including Bosnia, Rwanda, Iraq, Darfur, areas under the control of the Islamic State of Iraq and Syria, ISIS, and China.

In April, President Biden took a long overdue step by also recognizing the Armenian

genocide during which countless Armenians, as well as Greeks, Assyrians, Chaldeans, Syriacs, Arameans, Maronites, and other religious and ethnic minorities, were killed in the final years of the Ottoman Empire, beginning in 1915.

The killings, torture, and rape have not stopped. Mass atrocities continue to be perpetrated against religious communities, including the Uyghurs and the Rohingya, worldwide.

The U.S. government must both recognize and act to prevent and stop these atrocities to save lives and protect the dignity of communities, families, and children, to rebuild societies, and to honor the faith and the history and future of religious communities.

I will now turn the floor over to Vice Chair Perkins to discuss previous determinations by the United States government to call or not call mass atrocities against religious communities genocide.

VICE CHAIR PERKINS: Thank you very much,

Chair Bhargava, and I would like to join in welcoming each of you to today's hearing.

Today, we will explore the U.S. government's process of making genocide determinations along with what happens afterwards.

Now since the U.S. government determined in 2017 that genocide occurred in areas under ISIS control, the U.S. government has spent over \$438 million to help with reconstruction efforts in Iraq.

Now, despite this support, a substantial portion of displaced religious and ethnic minorities who survived the genocide still do not feel safe returning to or living in their homes, particularly in Sinjar, Mosul and the Nineveh Plains.

In January of 2021, then Secretary of State Mike Pompeo designated China's treatment of Uyghurs and other Turkic Muslims in Xinjiang as genocide and crimes against humanity. The Biden Administration has affirmed the Uyghur genocide

determination. USCIRF has applauded the current and the previous administrations for shining an essential light on China's horrific actions against Uyghurs and other Turkic Muslims.

Now that the United States government has called these crimes what they are--genocide and crimes against humanity--the U.S. government and the international community must urgently do more in holding China accountable to end this genocide.

Now it is important to note that genocide designations are just a step. It's one of the initial steps. But more has to be done to effectively halt and prevent ongoing mass atrocities against religious groups, regardless of what those atrocities are called.

Now, we can't just focus on the label of "genocide," as the longer governments debate on the terminology, the more perpetrators are emboldened to continue their genocidal process. Alongside these deliberations, as we determine what is actually happening, governments must vigilantly

look for early warning signs and stand up to prevent mass atrocities wherever and whenever they occur.

For this reason, we will also consider today broader strategies for the U.S. government to effectively prevent and stop mass atrocities against religious groups even in the absence of a genocide determination.

Now this holds particularly true in the context of the Rohingya crisis where the U.S. government has yet to determine whether the crimes committed by the Burmese military against the Rohingya meet the legal definitions of genocide or crimes against humanity under international law, despite an intensive investigation into the crimes that occurred.

USCIRF has consistently recommended that the U.S. government refocus efforts to definitively and publicly conclude whether the ongoing and severe atrocities committed by the Burmese military meet the legal definition of crimes against

humanity and/or genocide.

The situation is dire. As United Nations special envoy for Myanmar recently warned that, quote, "a blood bath is imminent"--end quote.

Urgent action is needed to deter further atrocities, including a determination on whether the Burmese military's previous crimes meet the standard of genocide or crimes against humanity.

I will now give the floor back to Chair Bhargava to introduce today's witnesses.

Chair Bhargava.

CHAIR BHARGAVA: Thank you so much, Vice Chair Perkins.

We have a distinguished and wise group of experts and witnesses on our panel today. I want to turn the floor over to Todd Buchwald, who served as a career lawyer in the State Department's Office of Legal Adviser, and then as Ambassador for Global Criminal Justice.

He now teaches international law at George Washington University Law School and also at the

Hamilton-Lugar School at Indiana University.

Todd, let me turn the floor to you. Todd, I think you have to unmute.

MR. BUCHWALD: Thank you, Chair Bhargava, and Vice Chair Perkins, and to the members of the committee and the staff, for the opportunity to testify at this important and timely hearing.

I'll address in my remarks here the meaning of the word "genocide," the definition, and provide sort of an overview of how, in general, the U.S. government makes decisions to say or not say that genocide has occurred in a particular situation.

Much of what I will talk about is elaborated in greater detail in a report that I, together with my former State Department colleague Adam Keith, prepared for the U.S. Holocaust Memorial Museum in 2019. That report is based largely on my experiences in the State Department, including as Ambassador for Global Criminal Justice, as well as on documentary research and

extensive interviews we conducted with officials involved in these matters over the years.

As the chair and vice chair just said, at the time, well, at the time of the report, the U.S. government had made formal determinations that genocide had occurred in five situations, as we heard, Bosnia, Rwanda, Iraq, Darfur, and ISIS-controlled areas.

And that since then, the Department has said that genocide, as well as crimes against humanity, have occurred against Muslim Uyghurs and other ethnic and religious minority groups in China, and President Biden has said that Ottoman-era atrocities against the Armenians during World War I amounted to genocide.

Okay. How does the U.S. government decide that genocide has occurred and to say so publicly? And it may surprise people listening to these remarks this morning there is no formal policy governing how this is done, but a de facto process has sort of emerged over time.

In general, the decisions have been made at very senior levels, typically, the Secretary of State, based on information that is developed, marshalled and analyzed by State Department policy bureaus, which would include the relevant regional bureau, the Office of Global Criminal Justice, as well as the Department's intelligence bureau, INR, and the Office of the Legal Adviser.

In cases involving questions about genocide against religious groups, this would also include the Office of the Ambassador-at-Large for International Religious Freedom.

In at least some recent cases, as we've heard, the Department has supplemented the available information with reports from investigators, like PILPG, that it has commissioned to conduct interviews with displaced victims to better understand the situation.

What is genocide? Internationally accepted definition is set out in Article II of the 1948 Genocide Convention, but public perceptions of

what qualifies can turn on relatively subjective factors--the perceived heinousness or scale of the conduct in question. The public perceptions aren't wrong, but they can diverge from the definition on which governments, the U.S. government and other governments, rely in interpreting and applying the Convention.

But beyond any disconnects between public perceptions and sort of the technical definition under the Convention, there are also different views even among technical experts about the definition under the Convention itself.

For example, under the Convention, in order to qualify as genocide, the perpetrators must have acted, quote, "with intent to destroy in whole or in part a national, ethnical, racial or religious group as such."

What is the meaning of "destroy"? The predominant view has been that this requires the perpetrator to have intended to destroy the relevant group in a biological or physical sense.

In other words, with an intent to make it impossible for the members of the group to survive.

This differs from what is referred to as "cultural genocide," in which the aim of the perpetrators is to destroy the identity of the group, or to make it impossible for the members to continue to function as a group. Difficult questions.

There are other difficult questions, too. For example, in practice, given how hard it can be to prove someone's specific intent, how clear should it be that the perpetrator intended to cause this type of destruction in order for the word "genocide" to be used?

And what, if any, obligations, arise for the United States--legal obligations arise for the United States under the Convention if genocide is occurring or threatened?

There are further questions also explored in the report about whether the United States government should make such determinations in the

first place. Some have argued that the emphasis on genocide can contribute to an unfortunate sense that atrocities that fall outside the definition do not warrant a robust U.S. response.

For my part, I'm sympathetic to the concern but cannot see abandoning the practice of making such determinations in appropriate cases.

Among other things, I have seen first-hand the deep appreciation by victims' groups for what amounts to a demonstration of respect, a demonstration of empathy, a demonstration of solidarity, which this kind of bearing witness in making such determinations embodies.

I do think that that said, the United States government should work hard to dispel the notion that atrocities are less worthy of response simply because they might fall outside the technical contours of the definition in a particular case.

This seems particularly important where perpetrators of mass atrocities intend to destroy

the identity of a group even if the evidence may not be clear that they intended to physically or biologically annihilate its members in the manner that the Genocide Convention has been interpreted to require.

So I'll cut it off here. In conclusion, I thank the Commission for holding this hearing and drawing attention to these important issues, and would, of course, be pleased to answer any questions that you have and help in any way that I can.

CHAIR BHARGAVA: Thank you so much, Todd.

And let me now turn to Pari Ibrahim, who is the Founder and Executive Director of the Free Yezidi Foundation. Pari.

MS. IBRAHIM: Thank you very much, Chair Bhargava, USCIRF commissioners, distinguished guests.

I would like to thank you for holding this timely event on the critical value of the United States determination of genocide and its impact on

the world.

I'm grateful for the opportunity to share the Yezidi perspective at this forum. As genocide survivors, we Yezidis sympathize with the Uyghur and the Rohingya communities. I would also like to note at the outset our appreciation of the recent U.S. President's recognition of the 1915 Armenian genocide. Hundreds of thousands of Yezidis were killed in that genocide as well.

And I should point out that this week, the United Nations has confirmed that the ISIS attacks against Yezidis constitutes genocide.

Years after the 1948 Genocide Convention, the international community has proven unable or unwilling to prevent genocide and mass atrocities in many cases. Like other communities, Yezidis hope for a stable and just world that abides by the Genocide Convention and other international treaties and covenants intended to defend human rights.

We have seen in the Yezidi context that

the American decision to determine whether genocide had been committed is of the utmost importance. I simply cannot overstate the value of a U.S. public genocide determination.

In the Middle East, there is no equal or substitute measure that could replace American recognition and action.

In this regard, we point out the powerful and leading role of the U.S. Holocaust Memorial Museum, the first institution to make a public genocide determination in the Yezidi context, which prompted the United States, the United Nations and others to acknowledge what happened on the ground to the Yezidis.

In 2014, the genocide perpetrated by ISIS is the 74th of such persecution against the Yezidis. The Yezidis were rightly terrified of an extremist Islamic terror organization bordering a vulnerable non-Muslim minority. Nonetheless, the protections or preventative actions that could have possibly deterred the ISIS attacks on Sinjar and

the genocide against the Yezidis, they were absent, despite the warning signs.

ISIS was unusually explicit about its intent in regard to the Yezidis, as stated in ISIS' English language magazine, "Dabiq." ISIS' religious scholars believed that the Yezidis' continual existence to this day is a matter that Muslims should question as they will be asked about it on Judgment Day.

Abu Bakr al-Baghdadi incited followers to commit atrocities, saying it is obligatory for us, ISIS, to kill them, the unbelievers, to cleanse the land of their filth.

In their effort to eradicate the Yezidis, ISIS perpetrated atrocities in every category listed in the Genocide Convention, and on March 2016, the United States recognized the ISIS crimes against Yezidis as genocide.

The first step towards justice must be calling these crimes for what they are: genocide. And recognition acknowledges the gravity of the

harms caused by ISIS and endured by the Yezidis. It rallied attention to the Yezidi cause and underscored the urgency of providing resources and refuge so that it means that next time the Yezidi territory is surrounded by an armed group, the world can recognize the danger that this might pose rather than waiting until it is too late.

And the United States has demonstrated leadership in recognizing the crimes committed against the Yezidis, marshalling resources for support to the surviving community, and most importantly leading the coalition to destroy ISIS.

In this case, the geopolitical interests of much of the world was aligned against ISIS. However, it would be naive for us to suppose that the effort to destroy ISIS was mobilized specifically because of the atrocities committed against Yezidis.

One might believe that the genocide determination would lead countries to act upon obligations as listed in the Genocide Convention.

And while Yezidis are immensely grateful to the governments around the world for recognizing the Yezidi genocide, it is impossible to ignore the fact that many fundamental needs of the surviving community have been left unaddressed.

Parties to the Genocide Convention are obligated to both prevent and punish acts of genocide.

We hope lessons from the Yezidi context will help the U.S. government recognize and prevent future genocides and protect Yezidis and other religious groups who are facing destruction. Efforts to prevent atrocities before they occur may not be catchy or newsworthy, but they do save lives and prevent gross abuses--an ounce of prevention is a pound of cure.

Some precursors to genocide may be intangible, such as dehumanizing ethnic groups. In Iraq, the Yezidis have long suffered from discrimination and slurs based on broad misunderstanding of our faith. Discrimination

against the Yezidis in Iraq is commonplace. It is not just ISIS members or supporters who call the people "devil-worshippers." This language has been widespread across Iraq. Many Iraqis refuse to touch the food made by Yezidis. And one of the factors that enabled the Yezidi genocide was the large number of Iraqis who had already considered Yezidis as "others."

The Yezidi genocide is now internationally recognized. The Iraqi and Kurdish governments, who were never held accountable for negligence of Yezidi welfare, also bear some responsibility for these crimes.

The Iraqi government recently passed the Yezidi Survivors' Law although there is no clear indication of when this will be implemented or how the benefit will be funded.

The Yezidis remain on the edges of Iraqi society and struggle to escape the poverty and trauma from generations of abuse and genocide. In this way, while recognition of the genocide holds

symbolic meaning for the Yezidi people and has helped us connect with supporters from around the world, long-term and sustained recovery and restitution have not occurred.

It is very important that recognizing a genocide is acknowledging that an obligation has already failed. But it's never too late to bring perpetrators to justice. The U.S. government has provided invaluable support for justice efforts in Iraq, including support to my own organization, the Free Yezidi Foundation, for our justice efforts.

One key responsibility to the international community, that the international community must take seriously, is the thousands of foreign ISIS members who return to their countries of origin. They are not only terrorists. Supplying resources and aiding in the commission of genocide, the torture, the rape, the murder, the human slavery and other atrocities should be part of the charges laid upon ISIS members.

One example is an American woman purchased

two young Yezidis as slaves, who were raped by her husband. What she has done is different than material support for terrorism, but she was only charged with terror-related offenses.

We call on the United States and all countries who highlight the importance of justice and accountability to begin with the atrocities committed by their own citizens in Iraq and Syria against our people.

In some ways, we say that the genocide has not ended. Yezidis, we all, are still waiting for family members. Unknown what their fate might be. Children returned--they are brainwashed, adhering to the ideology of the Islamic State. Suicide is on the rise in the Yezidi community. And there is a lot of trauma.

With smart and targeted assistance, communities can rebuild, and the first step in this long process is genocide determination. In the Middle East and in many parts of the world, American leadership is identified and publicly

naming human rights violations has no substitute.

I am therefore very pleased that USCIRF has arranged this hearing on the value of genocide determination. If we cannot acknowledge and point honestly and plainly to what happened, we will never be able to prevent, punish or aid in recovery. It is the necessary first act in response to genocide, the crime of crimes.

Thank you.

CHAIR BHARGAVA: Thank you so much, Pari.

And let me now turn to Beth Van Schaack, who is the Leah Kaplan Visiting Professor in Human Rights at Stanford Law School and serves as the Acting Director of the Human Rights & Conflict Resolution Clinic.

She served as former Deputy to the Ambassador for Global Criminal Justice under Secretaries Clinton and Kerry.

Beth.

MS. VAN SCHAACK: Good morning, everyone. Chair Bhargava, Vice Chair Perkins, Commissioners,

esteemed guests, thank you so much for convening us today and for including me in this conversation.

As Ambassador Buchwald mentioned, there isn't a formal practice or mechanism by which the U.S. government undertakes genocide determinations, and I just wanted to bring to the attention of the commissioners and others present that the United Kingdom is thinking about legislating in this area.

They would ascribe this role to the courts, which may not be the ideal situation, just given the way in which judicial processes unfold, versus the political branches, but there is a lively debate happening now in the United Kingdom that might be worth following in order to determine whether or not this process should or could be further formalized within the United States government.

There have been particular pieces of legislation that have mandated the executive branch to undertake factual and legal analysis of a particular atrocity situation, and that could

include a request to undertake a more formal genocide determination or a determination under international criminal law as to what international crimes are potentially being committed.

In this regard, I want to associate myself with Ambassador Buchwald's remarks that while it is important to make a genocide determination when it is warranted, we should be ever vigilant about not implying that particular victim groups where there isn't sufficient proof, for example, of genocidal intent or where the victim groups don't constitute a so-called protected group by the Genocide Convention and are the subject of crimes against humanity, that's not somehow a lesser form of persecution.

And even war crimes can be committed on an extremely grave level. And so we should be responding robustly under all of these situations regardless of the particular legal determination.

But genocide is subject to a treaty, and it does create certain obligations of prevention,

which I'll get to later in my remarks. And so that's why understanding whether a situation rises to the level of genocide can be important because it can trigger those international obligations and a sense that we cannot continue to approach a particular country or regime or situation as business as usual.

Now in all of the situations in which the U.S. government has made a genocide determination, it has been absolutely warranted under the circumstances. I am somewhat concerned about the fact that this can become politicized. I was concerned that the way in which the Xinjiang determination was made at the end of the Trump Administration was somewhat haphazard, done on the waning days of that administration, rather than earlier when we know this was under consideration, and it felt a little bit more like a poison pill being handed to the Biden Administration vis-a-vis China, which obviously is an incredibly powerful actor within the international community. I would

like to see this more regularized and not politicized.

Also, of course, of concern are situations in which a genocide determination would be clearly warranted and yet is not forthcoming, and trying to understand why that happens and what are the barriers within the U.S. government to that happening. It's important to continue to explore, and hearings like this are doing this.

As Ambassador Buchwald outlined, it can be somewhat challenging to determine genocide, particularly if you don't have access to the particular country, as we don't with respect to Xinjiang, for example, and did not with respect to Darfur and other places.

Generally, the first two elements, the existence of a protected group and the acts, the enumerated acts of genocide, are relatively easy to establish using both open source and more classified sources. It's the intent to commit genocide that often can be difficult.

I do want to emphasize, though, just building on Ambassador Buchwald's comments, that genocide is not equated to mass killing. There are many other ways to commit genocide. This includes conditions of life that are calculated to eventually destroy the group, and what we call biological genocide, which is prevention of the ability of the group to reproduce itself or the removal of children of the group so that the group cannot continue to subsist as a coherent unit.

And so these do not involve mass killing, and we should remain vigilant to seeing those types of genocide happening, and I think Xinjiang is an excellent example of that where we don't necessarily have mass killings, but we do have severe restrictions on the ability of Uyghur and other Turkic minorities to enjoy their international human rights, including with respect to severe forced labor.

When it comes to genocide, genocidal intent, generally it's required to infer intent.

The situation of ISIL, as Ms. Ibrahim mentioned, is somewhat unique in that ISIL was quite clear in undertaking a theological exercise in determining that it was necessary to eliminate Yezidis from the mosaic of humankind.

Other perpetrator groups and genocidal regimes will not be so transparent in their, in their intentions, and so it's necessary to infer from a whole collection of individuals of facts and factors on the ground, statements made by individuals, looking at the scale, the scope of abuse, et cetera.

Ambassador Buchwald mentioned cultural genocide, and while cultural genocide in and of itself is not prohibited by the Genocide Convention, it can be indicative of genocidal intent, and so we should be on the lookout for efforts to destroy, for example, cultural property, places of worship, burial sites, et cetera, and other forms of forced assimilation of a group in order to help understand whether or not genocide is

occurring.

In my written remarks, I'll elaborate on this a bit more, but one of the things that needs to be considered is what is the operative standard of proof that the United States government employees.

You can imagine a whole kind of continuum of standards that we see in a judicial context, but those might not be appropriate for what is a more political determination in this case, and so in my own writing, I use the clear and convincing evidence standard, and that was the standard announced this week by the head of UNITAD as Ms. Ibrahim mentioned, who was testifying before the Security Council this week.

But I think a lower standard of proof might be appropriate. The balance of the probabilities is the standard that's being considered in the United Kingdom.

I'll close by just saying that if and when the U.S. government makes a genocide determination,

it's extremely important that we not proceed then with business as usual, vis-a-vis the particular regime. There has to be tangible consequences for making such a determination.

And there are a whole range of ways that the United States government can respond both alone and then also in partnership with allies, et cetera, and also working on the multilateral stage.

We should be thinking about humanitarian efforts, accountability efforts, trade measures, using the diplomatic fora in which to advance these issues.

So developing strategic messaging and diplomatic outreach, undertaking the kind of very focused documentation efforts that the Public International Law and Policy Group, PILPG, did with respect to the Rohingya, and I know we'll hear about that further from Mr. Fullerton; using and deploying targeted sanctions under the Global Magnitsky Act or the International Religious Freedom Act of 1998; imposing trade restrictions,

such as supply chain limitations and export controls, both to prevent goods that are entering into the United States that are infected with persecution that are being produced through the persecution of others, including forced labor and human trafficking, but also preventing the export of U.S. goods that might be used to perpetrate a genocidal campaign against a protected group.

Contributing to the whole range of humanitarian assistance, including psycho-social rehabilitation, but also immigration relief to survivors and their community.

Tasking the intelligence community and law enforcement to actively investigate the commission of international crimes, including genocide, and to build case files for domestic, international and foreign prosecution to the extent that there are courts that have jurisdiction over perpetrators.

Contributing to other accountability exercises that are happening, including litigation before international courts, where these issues are

being looked at, such as the International Criminal Court and the International Court of Justice, both of which are looking at the Rohingya matter, including a case brought by The Gambia against Myanmar before the International Court of Justice.

Could the United States, for example, intervene in that matter? Submit an amicus brief, provide evidence to the court to help support the questions that are under determination there?

United States should continue to expand its domestic legal authorities to enable it to prosecute the full spectrum of international crimes. We have a very robust genocide statute, but we do not have a crimes against humanity statute. And our war crimes statute only allows us to prosecute crimes committed by or against U.S. persons.

So the case that Ms. Ibrahim mentioned, we could have prosecuted her for war crimes because she is a U.S. citizen, but we could not prosecute her husband, for example, who I think was not a

U.S. citizen, or others that were working with them to purchase these Yezidi children and ultimately to mistreat them.

We could utilize the International Labor Organization more effectively because there are a whole suite of international treaties prohibiting forced labor and other forms of trafficking that fall under the aegis of the ILO.

And finally we should utilize all multilateral fora available for us, including the Human Rights Council if the United States is reelected thereto. But also some of the human rights treaty bodies, which do not necessarily focus on genocide per se, but, for example, the committee that enforces the convention on the elimination of all forms of racial discrimination could be invoked. It allows for state-to-state complaints to be brought.

We have generally seen, as has been mentioned, that the U.S. government's response and the response of other governments is more robust

when there has been a genocide determination along all of these various dimensions.

I'll just close by saying that labels do matter, and research has shown that international community is more willing to contemplate forceful action even though there is no hierarchy of crime when the term "genocide" is used.

But we should not linger on this. We should not be dependent on this, that if mass violence reaches a certain level, the international community, including the U.S. government, should be willing to respond robustly across the whole range of ways that I mentioned, including potentially utilizing military force, as was mentioned, with respect to the tragedy that happened within northern Iraq.

And genocide, I should mention, is a crime of intent and not of result, and so it's not necessary to wait for a group to be destroyed before the international community acts. The Genocide Convention creates preventative

obligations on states' parties.

Now the way in which it's been articulated is frustratingly anodyne, but it has to mean something. And so we should continue to develop these sort of preventative exercises when a genocide appears incipient or at risk.

So I really look forward to our conversation. Thanks so much for including me.

CHAIR BHARGAVA: Thank you, Professor Van Schaack.

And let me now turn to Daniel Fullerton, who currently serves as International Cooperation Specialist in the Office of East African Affairs at USAID, but as the professor just mentioned, he previously served as an attorney with the Public International Law & Policy Group, where he managed the 2018 investigation and State Department-commissioned report into atrocity crimes and genocide against the Rohingya.

So, Daniel, please take the floor.

MR. FULLERTON: Thank you, Chair Bhargava,

Vice Chair Perkins, commissioners. Thanks for the opportunity to speak with you on this topic today.

At the outset, I will note that my testimony is purely based on my past work with PILPG, where among other things, as you mentioned, I managed the investigation and co-authored PILPG's own factual findings and legal analysis reports. As such, I testify in my personal capacity, and my views are my own and should not be construed as representing USAID or the U.S. government.

I'll focus on the two issues I was asked to address: specifically, how the State Department sought to use a large-scale investigation effort to determine if atrocities against the Rohingya were genocide; and whether legally there was a reasonable basis to conclude that genocide was committed?

Looking first at how State approached this, it is important to remember the investigation was not designed or commissioned with genocide specifically in mind. Rather the purpose was to

accurately document patterns of any abuses and any atrocities committed against any residents in Myanmar's northern Rakhine State.

And so the State Department, together with PILPG, worked to design a very rigorous investigation methodology drawing from the lessons of South Sudan and Darfur investigations that would provide the most accurate and representative accounting of the violence as possible by systematically collecting credible only first-hand accounts from a random and a representative sample of Rohingya refugees, using a hybrid combination of criminal investigative standards and statistical survey techniques.

So while the methodology of an investigation is not always what catches public attention, it is key to understanding that that is the basis and the process for making, or not making, a genocide determination.

In early 2018, a team of 18 highly experienced international investigators collected

more than 1,024 interviews across all of the refugee camps and settlement areas in Eastern Bangladesh. We then analyzed more than 15,000 pages of documentation that we collected, and ultimately identified more than 13,000 instances of grave human rights violations.

Now, as one of the few people that has read all 15,000 pages of that, I can assure you the findings were staggering. The collected data revealed years-long patterns of violence and widespread abuses against the Rohingya, as well as the horrific details of the major attacks of 2017, including the large-scale ground assaults, mass killings, gang rapes, beatings, burnings, drownings of children, the destruction of homes and villages.

Of particular relevance for USCIRF were the brutal attacks against the Rohingya religious leaders and their symbols, including how religious leaders were typically the first to be attacked in a village, and how they're often publicly mutilated and murdered.

So, by July of 2018, PILPG had delivered all of the collected documentation, quantitative data, and qualitative analyses to the State Department, who at that point had an access to information detailing the horrific patterns of violence across northern Rakhine State.

A month later, in August 2018, Politico first reported on a leaked draft statement from Secretary of State Mike Pompeo containing the phrase to, quote, "hold for determination"--end quote--about how to refer to the violence against the Rohingya.

However, one month after that, when State finally did release its report, it did not contain a determination of genocide or other crimes. The report provided a thorough accounting of the violence. It provided detailed statistics, geospatial assessments, and analyses of all the collected data, but without legal conclusions.

That thus raises the question of whether, from a legal perspective, there are reasonable

grounds to conclude genocide was committed. The short answer, as PILPG's own analysis, as many other credible international analyses have found, is, yes, that reasonable ground standard is an important one here because it is an objective standard that a number of entities from the ICC, the U.N. fact-finding missions, commissions of inquiry, have used in determining as an early indicator of whether there are strong preliminary indications that crimes have been committed and that further investigation or other action would be able to--as a means of moving investigations forward.

So looking to the specific elements of genocide, in the case of the Rohingya, based on international law, as previous witnesses have laid out, the Rohingya easily fit within the established understanding of what constitutes a protected group in international practice. There were a wide range of underlying prohibited acts committed against the Rohingya, and although the genocidal intent is very

difficult and challenging to prove, the totality of the facts and circumstances in this case provides sufficient circumstantial evidence to establish genocidal intent, especially considering how the attacks systematically and exclusively targeted the Rohingya, the sheer scale of the mass atrocities, the particularly brutal attacks against religious leaders and symbols, and the fact that the deadliest attacks occurred as the Rohingya were fleeing or crossing the border into Bangladesh.

While technological, legal and political developments have made it harder for perpetrators to hide their atrocities, access to reliable information about such crimes often remains a challenge for international actors and/or it's used to provide an excuse for inaction.

But, ultimately, these improvements have not deterred perpetrators, as we see now, in the streets of Yangon and have seen across Myanmar.

It is thus important and impressive that within a few months of the major attacks in 2017,

the State Department had put itself in the best possible position to making a determination about the crimes of the Rohingya. The investigation and its methodology were skillfully designed, the investigation was expertly implemented, the data was systematically collected and thoroughly analyzed, and the patterns of abuse, violations, and crimes were plainly revealed.

Then when it was seemingly time for a policy decision or maybe even a determination, a report was published, the facts were recounted, multiple maps and charts were drawn, but the determination was not made.

And so while criminal accountability will require many more investigations and more judicial processes, and while access to Rakhine State remains nonexistent, and unfortunately while the stories of countless victims will still never be heard, we can safely say that on the whole we do know what happened to the Rohingya and the Rakhine State.

And so we are thus faced with the question if we can't or we won't make a determination when we have so much reliable information about what happened, when can we? And this goes to the issues of establishing clear standards and criteria and processes, as other witnesses have noted, as well as the transparency, the ability and decision-making of those processes so that they can provide some form of accountability and further deterrence.

Thank you.

CHAIR BHARGAVA: Thank you so much, Daniel.

And let me turn to Wai Wai Nu. Welcome back. Wai Wai is the Founder and Executive Director of the Women's Peace Network in Burma, and I want to give you, for this part of the panel, the last word.

MS. NU: Thank you. Thank you very much. And again thank you for organizing this important panel, and thank you for the opportunity to testify before your Commission today to discuss the topic

of genocide.

I remember and pay tribute to all victims and survivors of past and current genocides, including Yezidi, Uyghur, Armenian, and Rohingya.

My community, the Rohingya, has been one of the most persecuted communities on earth for so long. Our people have been facing unspeakable crimes of slow-burning genocide for generations to the point that our younger generation has never had a chance to experience what human dignity looks like or what it means to live with human rights.

I grew up witnessing how they have stripped off our human dignity by erasing our ethnic and religious identity, and denied our birth citizenship and subjected us to inhuman policies of deliberate deprivations of our basic human rights, along with subjecting us to arbitrary detentions, torture, killings, extrajudicial killings, rape as a culture, forced labor, extortions, restrictions of our movement, limiting our right to marry and give birth, restricted access to education, health

care, nutrition, and many other forms of inhumane treatment, including SWE TIN SIT, for decades.

They made it sure that all the policies and practices were put into place so that we no longer survive or exist in our land.

Due to this life-long dehumanization, discrimination, and disenfranchisement, it is heartbreaking for me to see how our people are forced to internalize persecutions and inferiority for survival.

The creations of "us and them" rhetoric, denial of our ethnic identity as Rohingya, belonging to the land as native people, propaganda against us that we are a threat to the national security has allowed military and the government to take advantage of their political interest. All of this reminds us of the experience of the Jews in Nazi Germany.

The worse came in 2017 when they targeted our people with a well-organized clearance operation. Since the violence began in 2012, and

before the 2017 clearance operations, the military trained paramilitary, deployed more troops and soldiers in Rakhine State, and limited access, humanitarian access, and expelled INGOs to prevent any third-party witnesses, and removed fences from the Rohingya houses, seized even kitchen knives from Rohingya families, in parallel with a massive social media propaganda hate campaign.

The systemic and deliberate killing of women, men, children and infants, mass rape, mutilations, torching of nearly 400 villages have led to the forcible deportation of two-thirds of our population from our land, including during the clearance operations. Within two months, more than 800,000 people had to flee barefoot, crossing the jungles and rivers for days to refuge in Bangladesh while military followed them shooting indiscriminately all the way long up to the border.

The genocide has left every one of us to suffer so deeply at many levels and carry deep trauma as a group.

From Rakhine to the Andaman Sea, and Burma's neighboring countries, the world has watched us live in apartheid-like conditions, or sub-human conditions, or die.

Our experience is another textbook example of genocide. The only difference is that our suffering is longer than any other genocide. Yet, the world has failed to fulfil its promise of "never again" to recognize their crimes as it is, genocide, to hold the perpetrators accountable for these heinous crimes.

The survivors and victims are utterly ignored. During the so-called "democratic" transition in Myanmar in 2011, '10, '11, the Rohingya lives--since 2011, the Rohingya lives were compromised for the so-called "greater good," democracy. But we all knew that that democracy was designed by the military under the 2008 constitution and was only meant to serve them.

The military's decades-long impunity for their past crimes against Rohingya and other ethnic

communities encouraged them to stage a coup on February 1st this year. We now continue to witness a similar attitude of military committing mass murder, systemic and widespread killing and detention of innocents, torture, inflicting suffering on millions of people.

Within the past 100 days of the military coup, the junta has killed at least 783 people, mostly youth and children, arrested over 4,000 people, and continues to hunt young people and political activists in Myanmar.

Before it was just Rohingya and other ethnic minorities. Now, no one is safe in Myanmar anymore. How many lives do we have to sacrifice before the United States takes actions against this military to hold them accountable? Or how much more evidence do you need to recognize the crimes against Rohingya as it is--genocide?

The genocide determination is the single-most crucial step to end the suffering of our people, to feel supported, to heal our pain, and

restore our human dignity. It will help us boost our accountability efforts and draw attention to the seriousness of the crimes.

It also fulfills a critical part of justice--to name what is happening. It is not enough to say "atrocities," "human rights violations," or even "crimes against humanity." What is happening and what has happened to the Rohingya must be named for what it is--genocide.

A genocide determination will also help governments to avoid hostile and negative rhetoric and policies for the countries which are hosting Rohingya. Most importantly, it will prevent further atrocities against Rohingya and all people in Myanmar.

If no action is taken against the military junta, which committed the genocide, the Rohingya are now at extreme risk of recurrence of the crimes. The country is now on the brink of a failed state with ongoing violence against civilians, and at risk of starvation of over 20

million people.

I therefore urge the U.S. government to take a further step, to recognize the human suffering, and call the crime as it is--genocide--to end the agony of Rohingya and many communities in Myanmar.

Thank you very much.

CHAIR BHARGAVA: Thank you so much, Wai Wai.

I will now open the floor to questions from commissioners. I have many, and I want to actually start the question and answer part of our conversation by going to a statement that was made by Ambassador Buchwald in his report, "By Any Other Name." And the statement is that:

"Naming genocide or any other mass atrocity should be secondary to stopping or preventing it. By the time a situation is sufficiently grave to warrant serious assessment of whether genocide has occurred, the imperative for action will already be clear."

I certainly agree with that. I wanted to ask each of you how you think about that in this moment where so much of what we're seeing around the world are continuing genocides, mass atrocities, and how do we think about the kind of time we're investing in the naming and recognition of genocide versus how much time we're investing in demanding action to stop or prevent the atrocities from continuing?

I think you're on mute again.

MR. BUCHWALD: I do think exactly that. I do think that the action can't be held hostage to the decision on whether and the announcement of a decision on whether the crimes constitute genocide.

And I think that's particularly true because the technical definition under the Convention that the courts have come up with, that the State Department and other governments use, is idiosyncratic. It doesn't really match the--it's not a sort of perfect fit with the level of horror that a particular situation evokes.

And I think that in any case where, you know, we're talking, we were talking before about the "standard of proof," right. Definitive proof or the courts, you know, I think criminal cases demand proof beyond a reasonable doubt. That's what you get in a criminal case.

We're not talking about a criminal case. We're talking about what it is that's going to cause the international community to marshal sort of its forces. So, you know, proof beyond any doubt, preponderance of the evidence, clear indication, possible, but in a way it's irrelevant given that the responsibility described by the Genocide Convention is the responsibility to prevent; right.

And in any situation in which there's enough there that there's a serious question that people are looking into it, it seems to me that it will almost certainly be that which triggers the obligation or the responsibility to prevent has been, that threshold has been met.

And I think what we have to keep in mind when looking at the Genocide Convention and technical questions about whether genocide is, is that in a way it's partly irrelevant--right. It's the lawyers and governments are going to be very technical about it, but the Genocide Convention is expressing something deeper than the particular rules that it announces. It's trying to create an environment in which people look at this thing in a certain way.

And if you sort of think of the definition as encompassing, you know, this Venn diagram, and it's sort of like jagged here, and if you're sort of right outside or right inside, it doesn't matter. The United States and the international community should be doing that which is necessary to prevent it without regard to--that's not to say that they shouldn't proceed to a determination, but they shouldn't hold the action hostage to the determination.

CHAIR BHARGAVA: Let me just ask for

others, specifically on the sense that you all conveyed of how important it is to have a genocide determination to feel seen and recognized, to have dignity restored, for there to be a sense of at least one step towards accountability. How do you think about that in the context of what the Ambassador just said, noted in terms of not stopping to take the action to prevent as you're waiting and trying to have the possibility of genocide determination being made?

Wai Wai, I'll turn that to you because I know that there's so much going on. I mean I just think about what's happening in Burma at this very moment and how do we actually think about this process and where do we invest our time?

MS. NU: I think, I mean in my opinion, that debate on name and there has been like backfire against those who ask for the recognitions or determinations of the genocide. I think that backfire or, you know, seeing this as simple cause as a debate, debate, or as a problematic issue

itself is wrong.

And, secondly, yes, taking action is important, and, you know, we need to mediate protections for the people, but if you don't recognize the crime as it is, and you're not curing the I mean the disease, you're curing the symptom or giving like wrong treatment, and that will never end the suffering of the people, and that is the living example of Rohingya suffering.

The world has failed to acknowledge the Rohingyas' suffering as it is and recognize the root causes of that, of the crime, which is targeting the entire group based on their ethnic and religious identity and denying their existence.

And the world has failed to recognize that. It has a name, you know, under international law, but they failed to recognize and close their eyes, and that's why we're not reaching to anywhere and we continue to prolong the suffering of the people, continue to create refugees, and that's why we're not able to stop this genocide and this

suffering.

CHAIR BHARGAVA: Pari, let me turn to you.

MS. IBRAHIM: Yes, thank you.

I have a good example. In August of 2014, in the beginning when we as Yezidis obviously knew that this was a genocide against our people, because of many, many years' persecution, so I was talking to politicians in Europe, and at one point, this is very good example of what you're talking about, one politician said, well, you know, we have to investigate, and then later on we'll find out if it's a genocide, and then we can act.

And I said, well, by that time, my people are all dead. So this is a perfect example, right? So we knew it was a genocide. It was something happening in Iraq, but there was no action up till the moment when President Obama said we are going to start attacks against the Islamic State.

It was then that the Yezidis were mentioned being on top of Mount Sinjar dying of thirst and hunger from the scorching heat in

August. It was at that moment that finally the international community understood that like there was possibly a genocide ongoing. It was the United States that had to say it was, that a genocide was, possibly a genocide was ongoing until the rest of the international community was finally going to act.

This is a very big concern. Obviously, we as Yezidis were immediately trying to connect to the United States because we knew. I don't know if it is from many, many years of being persecuted and many, many years of understanding how the world works, that we knew that if the United States would not take the first step, the Yezidis would all be killed.

And that is the very unfortunate thing, and it's a very clear example of what Mr. Buchwald is saying, like when do you actually act whether you know it's a genocide or not? People are dying. Lives of people are at stake in this situation.

And another example is the Kocho massacre.

The genocide started on the third of August. The United States started bombing the Islamic State around the 6th, 7th, and 8th of August. Kocho was a village in Iraq, in Sinjar, where the Yezidis were begging that the Coalition would come with air strikes so that they would be rescued.

All the men were massacred on the 15th of August. No one came to help. The world knew what was happening. The world already knew that there was a statement from the U.S. President Barack Obama that a possible genocide was ongoing against the Yezidis. Why did no one interfere up till the 15th of August, and then all the Yezidis were killed and the women were enslaved, put in buses, sold in Iraq and Syria as sex slaves to ISIS fighters, children brainwashed, becoming child soldiers or suicide bombers.

Where is the line? Where are we going to draw the line with like, okay, this is genocide or not, we need to act?

CHAIR BHARGAVA: Thank you, Pari.

As you were talking, I'm thinking so much about how rape and the mass rapes play into these kinds of conversations as well.

So let me turn to Vice Chair Perkins, and then I know there are a number of commissioners who have questions, and I'll turn to them next.

So, Vice Chair Perkins.

VICE CHAIR PERKINS: Thank you.

Certainly a lot to unpack here.

Disturbing to say the least what we see happening and certainly all that's been said, we underscore. That's why we're here. We want to make sure that we act earlier before it's too late.

But I want to go to Beth for a moment. Ms. Van Schaack, I want to ask you this question, if you would kind of unpack this for us, and it pertains to the Uyghurs and certain policy options that are before the U.S. at present, what would you recommend?

MS. VAN SCHAACK: Yes. Thanks so much, Vice Chair, for the question.

I will say that the U.S. has started to launch a very robust response, particularly in the sanctions context. That happened during the prior administration and it's continued under the current administration.

I do think there's more than can be done on a trade context in terms of really putting limitations on the ability of goods that are being produced in Xinjiang region, which we know that virtually any goods that are being produced out of that region, including the cotton that undergirds the entire fashion industry, fast fashion as well as some high fashion, is infected with forced labor of Uyghurs who are detained and forced to labor under extremely terrible conditions.

And so there's a lot more that can be done I think to, particularly with respect to U.S. corporations, but also to rally the international community to establish similar limitations on the ability of those goods to come in. That is what China will feel. China will feel when its bottom

line is being impacted upon, and so if its goods don't have a ready market, it's going to have to change the way it produces those goods in order to find a ready market. And so that's a lever I think that we can continue to use, and we can use more robustly.

I would like to see more work on the humanitarian front, particularly with respect to individuals who have fled the region, to help them with psycho-social rehabilitation and to think about immigration remedies that might be offered for Uyghurs who can make their way here in terms of refugee resettlement, et cetera.

We should be intervening on behalf of the family members of American citizens who have had people disappeared within Xinjiang and ask very tough questions to the regime in order to get responses.

I would like to see the State Department demand access for documentation organizations, including, for example, humanitarian organizations,

to get access to individuals who are in custodial situations in order to ensure that the conditions are appropriate, and I would hope that we are continuing to look for a multilateral forum in which we can raise and highlight these issues.

I know that Commissioner Turkel has worked extensively on this and has a number of very important op-eds and statements out in the press that have started to put a finer point on ways in which we can do more on this front.

And then I think we have to have the Olympics on the table. Obviously, after having the last summer's Olympics be postponed, and now there's even talk that it might potentially be canceled again, there are ways that we can put pressure on China so that the Olympics do not serve as a sort of valorization of the regime of the Chinese Communist Party, that we can have a diplomatic boycott, for example, so that the athletes compete, but nations don't send high-level delegations.

But I also think it's not too late to think about moving the Olympics. You know, many of the states that are going to be competing in the Olympics are in Europe, and they could potentially move the Olympics to a European venue. The athletes, as I think Commissioner Turkel has said, should not be asked to compete in the shadow of enormous concentration camps that rival what we saw during the Holocaust, as was mentioned in earlier remarks.

VICE CHAIR PERKINS: Thank you.

I've got more questions, but I'll yield to others, chair.

CHAIR BHARGAVA: Thank you.

Let me turn to Commissioner Maenza and then we will go from there.

COMMISSIONER MAENZA: Great. Thanks so much.

Pari Ibrahim, I wanted to ask this question of you, you know, when considering the responsibility to prevent that we've been talking

about. We're seeing further crimes against Yezidis again in northern Syria, especially in Afrin, that USCIRF has covered extensively, but also other areas in northern Syria.

How should the U.S. and the international community be responding considering that these are already genocide survivors?

MS. IBRAHIM: Well, one example is Afrin. It was an abomination that that was just continuing and no reaction whatsoever regarding that. The Yezidis were living there peacefully with other ethnic and religious minorities. Turkey was-- Turkey played a role in Syria in the attacks, in ethnic cleansing, as I would call it.

Shrines were destroyed by Turkish-backed militias, and the area is now not safe. It is a place for ISIS and Al-Qaeda members, and that is very unfortunate to see, especially because Afrin was a place where people were living peacefully among each other, something that in Iraq has always been very problematic.

We saw in Afrin something of coexistence, peaceful existence. Now that is not there anymore. And this is disconcerting. It is, inaction leads to more violence, and I think it was there that when Afrin was--no one did anything there, it started to grow.

CHAIR BHARGAVA: Commissioner Maenza, do you have anything else?

COMMISSIONER MAENZA: Yeah, no. Thank you, Pari.

It's knowing that there are genocide survivors, having that, you know, it's frustrating to watch the inaction of the international community. I guess that's why we're having this hearing. Whether it be not designating the Rohingyas and the--you know, the other part is how we do have so much proof with the ISIS crimes. We have the proof of, as you mentioned, Professor, the motive where they made it very clear, and yet there's been so much inaction in stopping future ones and also in recovery.

It's frustrating for us as we're looking ahead to these designations in China and now hopefully at some point with the Rohingyas. Will there actually be an action instead of just a designation that will prevent future atrocities and dying?

So thankful for all of you trying to figure that out, but it's hard to watch for all of us that have a heart for these communities.

CHAIR BHARGAVA: I'm going to turn to Commissioner Turkel, and, then, Commissioner Bauer, I will, as mentioned, turn to you to close us out.

So Commissioner Turkel, I know you have a number of questions and an announcement. So let's do both.

COMMISSIONER TURKEL: Thank you very much. I want to begin by thanking our witnesses today, particularly Pari Ibrahim and Wai Wai Nu.

I want to extend my personal solidarity to the cause of Yezidis and Rohingya Muslims. The international community has experienced three

genocidal campaigns. It's incredibly heartbreaking that the three of us representing those three communities attending this important hearing.

A ruthless and ongoing genocidal campaign against the Uyghurs continues in China. I'd like to take this opportunity to announce my adoption of Adil Tuniyaz through USCIRF's Religious Prisoners of Conscience Project.

I've known Adil during my college years. I had brief interactions with him through our mutual friends. He was then and still now a very well-known Uyghur poet, reporter, author, who was detained by the Chinese authorities in December 2017, reportedly for his translating of religious materials.

He also happened to be a son-in-law of a very respected, revered Uyghur religious scholar, who died in the concentration camp couple of years ago. His, Adil's father-in-law, at the request of the Chinese government initially, translated the Koran from Arabic to Uyghur.

In addition to Adil's disappearance, we're also very disturbed to hear Adil's wife and also his three sons have also been taken away to the concentration camps and state-run orphanages, the Chinese government calls "boarding schools."

Their whereabouts are still unknown. We are very concerned that they may have been also part of this Uyghur detainees from the concentration camps transferred into the actual prison camps in the last year or so, which has been a practice. The Chinese authorities telling the world that they are closing or letting the detainees graduate. "Graduate" means sending them to either forced labor camps or actual prison camps.

We call on the Chinese government to disclose Adil Tuniyaz' whereabouts and his--we demand his immediate unconditional release along with his family members.

On that note, I'd like to ask a couple of questions. First question to Todd. Todd, why is,

as reported in some media accounts, that there was some resistance in the Uyghur genocide determination? I know it's not unusual, but can you tell the participants, viewers of this hearing, that if State Department lawyers disagreeing or having a different opinion is something out of ordinary?

And also I have a question for Beth. Beth, thank you very much for your writing and speaking on these important issues. Genocide denial--why we should not let people engage in genocide denial?

To me, what the Chinese government is doing, in particular, is very disturbing. They're using even respected American scholars, experts such as Jeffrey Sachs of Columbia University, engaging in genocide denial.

To me that is very dangerous. It's not about free speech. That kind of, even if it's a healthy debate, that's what we do as free people, can be injected into perpetrators' official

narrative, propaganda campaign, and justification of their crimes.

MR. BUCHWALD: Shall I go first, the first question?

On "out of the ordinary," so I'm not there anymore so I don't know what--I read the same reports that you did. And I can construct reasons in my head that it might have come out of that way. I don't know what it actually means. It's not unusual in a bureaucratic process for different bureaus to be saying, you know, "think more about this," "think more about that." And I don't know if it was more like that or more sort of active disagreement, "no, Mr. Secretary, you shouldn't make this decision."

I sort of doubt that that's what happened. I don't know. But I sort of doubt that's what happened because in my experience, when I was in the Legal Office, it's not the way that lawyers postured themselves. They were more into, you know, "these are the pros," "these are the cons,"

"these are the difficult considerations," and I can imagine that getting reported as opposition, but it also got reported--it's a report of something that's really a little less than opposition work, a question sort of framing of the issue.

I could guess that there were issues about, you know, is there enough under sort of the standards that the International Court of Justice has announced? Is there enough to--evidence, clear evidence of intent?

And, you know, one of the problems in this area is that disagreements about whether genocide has occurred can as much be about what you think the definition is than about what you think occurred. And that's sort of unfortunate.

So the short answer to your question is I don't know, but it's possible that it was something that, you know, from the inside wouldn't look like active opposition, but more like, you know, here are the things that you need to consider.

MS. VAN SCHAACK: Yes. Thank you.

I'll follow on that. I think as we've seen in the last decade or so, China has proven itself to be increasingly adept at utilizing multilateral fora, for example, through the United Nations to advance its interests and also to block any scrutiny of its actions when it comes to human rights protections, and we've seen this not just in Xinjiang but also with respect to Hong Kong and other situations, and it's being doing it for years with respect to Falun Gong practitioners.

So China has really upped its game in this regard, and we're also seeing its ability to try and frame the debate and the rhetoric as well by sowing doubt in the Western press, for example, about whether situations, you know, what's actually happening on the ground, using terms like "boarding schools," for example, and "reeducation" when, in fact, what we're talking about is the kidnapping of children and taking them away from their families who are perfectly capable of raising them and raising them within their own particular

traditions.

And so, you know, I'm thinking about The Economist article and other articles that have been placed in very mainstream press by mainstream academics, and, of course, we have no idea as to whether or not China has somehow tried to seed these articles or if these are being created, you know, directly from the authors themselves.

But, you know, The Economist article, in particular, I thought revealed a real ignorance of even the technical definition of genocide. This is not just a question of sort of gray areas or on the margins. I mean it evinced a real misunderstanding of the terms of the treaty and the obligations that are placed on states and the way in which the crime has been defined because it equated it essentially with mass killing in a way that gets done on a colloquial level with ordinary people.

I think if you were to poll people, that's what they would say it is, but a magazine of the quality of The Economist should have consulted with

international lawyers to ensure that they didn't make the same mistakes when it came to the technical definition.

So, in Europe, for example, it is a crime in some states to engage in genocide denial. That doesn't work here in the United States because of our fealty to First Amendment free speech protections, and so I think what's important is to engage in a healthy dialogue.

And when individuals make certain claims to have individuals that disagree with those claims to highlight where those disagreements are, and to put forward an alternative view, and to have a true discussion, but one that's based upon the actual treaty text and the jurisprudence that's been created around that treaty text rather than sort of superficial understanding of what these terms mean under international law.

COMMISSIONER TURKEL: Thank you very much.
Thank you.

CHAIR BHARGAVA: Thank you.

I want to turn to Daniel to add to the responses to these three questions, and then I promise you, Commissioner Bauer, we'll get to you right after that.

COMMISSIONER BAUER: Okay.

MR. FULLERTON: Thanks.

I think I would just add that I too am not surprised that there would be disagreement or differing opinions of how to process within the Department. As we've noted, it's a very complicated process of making determinations as an administrative entity.

There's investigative processes, analytical processes, legal intelligence processes, that work their way up the chain into the broader policymaking apparatus with different voices coming from regional bureaus and functional bureaus in the State Department.

And because they're pursuing this process, which we've discussed, it doesn't exactly have hard and fast rules. It may have some broad guardrails,

but it's ad hoc in the determinations a lot of the time. And so it is--I wouldn't be surprised of instances of back-and-forth on that.

But then also on the genocide denial point, I would just say it's the ultimate compounding of the refusal to call something by its name, but also broadly to, even if you're not going to call it by its name, and you're taking an active approach against what you're seeing on the ground, it further complicates issues of definition, and it further complicates issues of what we're saying of once an act has occurred, you've already failed one obligation.

So repeatedly, the inability to then act is another obligation, and then as we have these long-term recurring or ongoing genocide situations that fall by the wayside over and over again. So I think genocide denial just really makes that even worse.

CHAIR BHARGAVA: Thank you.

Commissioner Bauer.

COMMISSIONER BAUER: Well, first, let me say what incredible powerful testimony. Those of you who are speaking for your people today, the emotion that came across to me as a commissioner is very convicting.

You know we have several hundred very important people, we think, listening to us today, policymakers and others. I wish we had a couple million of the American people hearing this today because in a constitutional republic like the United States, public opinion is everything, and we need to arouse public opinion to make sure that the United States, whoever the president is, has a foreign policy that reflects the values of the American people when it comes to this kind of basic violation of human rights and human liberty.

Beth, you touched on this, and I want to get back to it. Way back in 1999, the United States made a decision. It was very controversial at the time. I thought it was a terrible decision, but we made a decision that if we increased

economic involvement with countries, particularly Communist China, but this goes for a lot of places around the world where there's cheap labor but bad governments. We made a decision that more trade with Communist China would change Communist China.

And I think it's pretty obvious now that what it did was change us, and, particularly, the American business community.

Beth, you mentioned the Olympics. We know what's going happen during those Olympic Games. You think American corporations are going to run ads criticizing genocide in Communist China? They'll do the exact opposite. They will run ads putting the best face on Communist China that they possibly can put on Communist China.

So I have a bur under my saddle because I've always been a defender of American business and of capitalism, of looking for things that we can do to make American corporations reflect the values of the country that gave birth to them.

And I'm wondering if any of you have any

suggestions about how we can shame companies? Just throw one out--Nike reported just a week or so ago record profits. They've also grown completely silent in any way criticizing what's happening in China in the genocide of the Uyghur people.

So one of the things I'm going to spend my time on when I'm off the Commission is doing everything I can to make life uncomfortable for CEOs that are making it more difficult for American policymakers to do what they need to do when faced with the kind of evil we're seeing in China or Burma or Syria, whatever the case may be.

So anyone that would like to jump in, I would enjoy hearing your response.

MS. VAN SCHAACK: I'll just say quickly I really appreciate your recognition of the need not to allow this to become a propaganda windfall for China, and I think U.S. corporations, who are sponsors of the games and when the athletes will be wearing their logos splashed across their uniforms, have a role to play here, and there's big money at

stake.

And obviously that puts a high degree of tension. This is not a pariah small regime. This is an enormous player. But I do think there's more that the corporate sector can do in solidarity with the victims and not to have their logos attached to a genocidal regime.

And I don't, I'm not a business lawyer, so I don't have a sense of what more could be done with respect to U.S. legislation, but I think if you turn your attention to that, once you've stepped off the Commission, I think that would really benefit, really benefit everyone.

And the other thing to bear in mind is, and I think President Biden has said this, that foreign policy should be benefiting U.S. workers. And so to the extent to which the contributions of U.S. workers are being undermined by the ability of regimes like the Chinese regime to utilize forced labor and to undercut all of the markets that we're trying to compete in on an equal basis, I think

that gives us a high degree of, you know, strong incentives to utilize the trade mechanisms that we have and the anti-trafficking mechanisms that we have to ensure that our workers can compete on an equal level, putting aside the moral obligation to do so. There's also, it's good economics, and it's good for U.S. workers and the middle class and working class here in the United States.

CHAIR BHARGAVA: I want to, before we close, I just want to turn to Wai Wai for one moment and for any thoughts you have on what is happening in the wake of the military coup and what it is that we can, what's the situation from your perspective and how do we actually help to prevent additional violence against the Rohingya as the military has taken over?

MS. NU: So I've been repeating that this is the very same military that committed genocide against Rohingya, and we cannot allow the genocidal military to run the country again. And now it has been three months, and the military--the world has

given the military to normalize the coup and to legitimize the power with their inactions, and we cannot wait any longer.

We just need to take actions against this military, hold them accountable. They're not going to return their power to the elected government and parliamentarians. They did not stage a coup for that, and that's the reality of Myanmar, and we need to understand that.

And now I'm seeing the U.S., United States government, and the world, the Western countries, are expecting the ASEAN to solve the Myanmar crisis, the Myanmar political, the Myanmar coup. But, you know, it is not going to happen. The military will not listen to ASEAN, and it will just prolong the dictatorship, and therefore I insist to pursue the accountability part, to recognize the crimes as it is so that we can be on the right track, on the--in terms of not only bringing justice for the victims, but also preventing further crimes, and, potentially, eventually,

holding the military leaders accountable and the military dictatorships in Myanmar.

It will not only be helping Rohingya but also helping the entire country to overcome from this darkness and the military, military dictatorships and the manipulations of power by the military for decades and inflicting people's lives and groups, including like especially when it comes, it is always the most vulnerable communities who suffer the most.

And I can see when the military is able to normalize the coup, then, they will go after Rohingya and many other ethnic communities.

CHAIR BHARGAVA: Thank you, Wai Wai.

I want to thank all of you for your experiences, for sharing with such passion and conviction and wisdom so much of what is going on and we need to confront around the world.

I also want to extend my gratitude and to honor Commissioner Bauer's time on the Commission. This is his last hearing with us, and the hearings

came back during his tenure and the tenure of many of us.

And so I want to just take this opportunity a couple days before his term is coming to a close to thank him. And, lastly, I want to commend--we will have the recording of this hearing and the written testimony that is submitted by so many, and I think it was--you know, there are so many questions and ways in which we should want and should delve into what was shared here.

I commend you to look at the written testimonies and to see the recording of this hearing, which we will have posted on www.uscirf.gov.

And, lastly, as most of you know, our Annual Report was issued for 2021 on April 21, and if you haven't had a chance to look at the Annual Report, please do, and certainly so much of what we talked about here is prominently reflected in the report as well.

So, thank you everyone for joining us, and

we will see you next time.

[Whereupon, at 11:59 a.m., the hearing was
adjourned.]