

House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing
on
Pursuing Accountability for Atrocities

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STATEMENT SUBMITTED FOR THE RECORD

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*The Third Wave-Accountability for International
Crimes in an Age of Extremes*

Mr. Chairman, members of this important and esteemed bi-partisan commission that honors the legacy of a true hero to human rights, Congressman Tom Lantos, it is my honor and pleasure to submit this written testimony for your consideration as you confront important issues facing us today regarding human rights, the rule of law, and accountability for those who commit international crimes.

As one of the founders of modern international criminal law, I have been seeking justice for victims of atrocity for over two decades. I have worked with many of this body in that noble effort. I count members of this commission partners in our continued quest to hold accountable those who feed upon their own citizens.

We live in an age of extremes, where kaleidoscopic dirty little wars break out across the globe and xenophobic heads of state, clutching to nationalism and populism as a base of political support, step away from an age of accountability to a threatening age of the strongman. This geo-political phenomenon, the likes of which we have

not seen since the early 1930's, threatens over seven decades of a world order cobbled together from the ashes of a great world war.

This unforeseen step away from a world order based on the rule of law and international peace and security by settling our disputes peacefully and using force only as a last resort threatens this new century and weakens our ability to hold tyrants, dictators, and thugs accountable. Many on this commission have worked hard to maintain a sense of stability through the rule of law, but our work is threatened. In some ways, we are going backwards. *Let us consider recent history.*

Historical Backdrop-The Bloody 20th Century

Almost a quarter of a billion people died of unnatural causes in the 20th century, read that **225 million** dying from war, disease, famine, and atrocity. Of that number, over a 100 million died at the hands of their own government. The beast of impunity fed on the edges of civilization for decades. Atrocity in Turkey, Germany, the Belgian Congo, behind the iron curtain, in Central and South America, China, the Soviet Union to name a few went unaccounted for. Humankind chose not to use the rule of law to settle the problem, but resorted to looking the other way for political expediency. Just in the Cold War alone almost 90 million people perished, more than the two world wars combined.

Ironically, in the middle of this very dark century, humankind created unwittingly a future for accountability today. In four amazing years, between 1945-1949, the international community created/drafted the United Nations, the International Military Tribunal at Nuremberg, the Universal Declaration of Human Rights, the Genocide Convention, and the revamped Geneva Conventions of 1949. These efforts would go dormant for 40 years during the Cold War, yet would be the glowing embers from which sprang the fire of justice in the 1990's, called the Age of Accountability.

From this Bloody Century an Age of Accountability

With the end of the Cold War and the shifting of political dynamics worldwide, the stresses caused great strife and a rise of international crimes. The world for the first time resorted to courts and tribunals to account for those crimes. Five courts

were created that will forever show that the rule of law is a powerful and stabilizing force. They were the International Criminal Tribunal for the Former Yugoslavia, the International Criminal Tribunal for Rwanda, the Special Court for Sierra Leone, the Extraordinary Chambers in the Courts for Cambodia, and the International Criminal Court.

Important jurisprudence was established, showing the world that it had the capacity to resort to the power of the law to create international peace and security. Due to the efforts of these justice mechanisms, the jurisprudence established allows for holding accountable heads of state who commit international crimes; goes after those who harm women and children; destroy cultural property; and use rape as a tool of genocide; among many other jurisprudential points. It was a golden age, lit by the flame that burst forward in the early 1990's from the embers of Nuremberg and Tokyo.

The Light of the Rule of Law Dims in an Age of Extremes

The balance of the paradigm of international peace and security that is the hallmark of the United Nations is threatened in this surprising age of extremes or what I refer to as the age of the strongman. The entire 74-year structure of a global order that arose from the horrors of the Second World War is cracking, wobbling, and shifting in its foundation.

Nationalism not seen since the early 1930's is on the rise. In many regions of the world, leaders are turning inward, looking to their own resources to create political dynamics that will have long-term geo-political consequences. It is an unanticipated dynamic in a world that once embraced the concept of a global village.

In this climate, the rule of law is questioned, particularly at the international level. The wind in the sails of accountability that blew strongly across the globe in the age of accountability have diminished or are dead calm. The bright red thread of accountability is politics and the political will today is not one supporting international justice mechanisms.

Strongmen across the globe are belittling the rule of law and questioning our international paradigm that is the United Nations. We are in an unsettled time the future of which is cloudy and dark.

The Impact? *The Third Wave* in Accountability and Movement Forward

Accountability for international crimes is not perfect and was never to be touted as such. In many respects, it is two steps forward and one-step back, but it does move forward. Despite the challenges presented, they are just new challenges, ones that have been faced before and will continue to nip at the heels of modern international criminal law and accountability.

It is best to look at this evolution of accountability as waves hitting the rocky coast of lawlessness. The **First Wave** was the efforts by the four victorious powers after World War II deciding to hold accountable the leaders of Nazi Germany (and concurrently in Tokyo the Japanese leaders) for their international crimes against the world. This was an important step forward and set up the ground floor for future efforts.

The International Military Tribunal at Nuremberg and the subsequent Council 10 trials there established procedures, jurisprudence, and frankly a new idea that nations can resort to the law and not the gun to account for atrocity crimes. Yet all this went very dark during the bi-polar tragedy of the Cold War that almost washed away any gains made at Nuremberg.

The **Second Wave** in accountability was after the Cold War and the fall of the iron curtain across central Europe. As the world began to adjust to these new realities, political and ethnic strife erupted in several parts of the world such as in Yugoslavia and Rwanda. For the first time in history, the international community reached for the law and created the first modern tribunals, the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda. Both ad hoc tribunals established under Chapter 7 of the UN Charter were mandated to prosecute those responsible for the war crimes, crimes against humanity, and genocide. The perpetrators faced the power of the law.

During the last decade of the 20th century, a horror story was percolating in West Africa that saw the destruction of tens of thousands of human beings in Sierra Leone, Liberia, and Guinea. The world drawing upon this new concept of accountability, created the world's first hybrid international tribunal, a tribunal I helped found, the Special Court for Sierra Leone.

During this period, the international community came together in Rome to create a permanent criminal tribunal to prosecute the gravest of crimes. Additionally, the world looked back and created a unique internationalized domestic court in Cambodia to account for what is now called "the killing fields".

This was the age of accountability, referred to above, where the international community attempted using various justice mechanisms to account for the tragedies of Yugoslavia, Rwanda, Sierra Leone, and Cambodia with a permanent court in The Hague to carry forward the giant steps of these other courts and tribunals. We now have the jurisprudence, the rules of evidence and procedure, and the experience to face the many new accountability challenges we now face in this age of extremes and the strongman.

As the world steps away from international accountability as the standard for atrocity accountability, the Third Wave shows the resilience of humankind's focus on accountability. However, as the world has stepped away from tribunals and courts, new methodologies and ideas are working across the globe maintaining the standard that those who commit war crimes, crimes against humanity and genocide will be held accountable.

In the *Third Wave*, we see the creating of international mechanisms for Syria and Myanmar that are collecting data and information on those conflicts and turning it into usable criminal information and evidence for future local, regional, or international justice mechanisms. This is an important step in maintaining the ability of the international community to investigate, indict, and try aberrant heads of state and their henchman who ignore the law and kill their own citizens.

Another step forward to fill the vacuum created by a lack of political will regarding courts and tribunals, is domestic courts in various jurisdictions, mainly in Europe;

trying individuals for harms done to their citizens by those who violated domestic war crimes statutes in places such as Syria. This is a positive step in getting states parties to the Rome Statute and other nations developing their domestic capacity in trying war crimes cases. Nations such as Germany, Sweden, Denmark, and Spain are to be commended for their efforts.

The final accountability efforts in the Third Wave is the rise of grassroots efforts by nongovernmental organizations, taking the experience garnered from the Second War and the age of accountability, and professionally building criminal files on those who are committing international crimes in places such as Syria, Myanmar, South Sudan, and Yemen among other places. Organizations such as the Syrian Accountability Project, the Yemeni Accountability Project, the Syrian Justice Accountability Center, and the Commission for International Justice and Accountability are excellent examples of like-minded experts in the field of atrocity accountability coming together and building professional files on perpetrators of international crimes.

Concluding Thoughts

We have come too far and have accomplished too much together to step away from accountability. The rule of law in a robust human rights paradigm keeps the world stable. In some ways, it is the great gyroscope that balances a world in an age of extremes. This commission and the efforts of the larger committee structure within this House of Representatives must never take its eye off the horizon of hope, peace, and the law. The commission should support and encourage the efforts by many in this **Third Wave** of accountability.

In many outreach visits to my client the people of Sierra Leone, as Chief Prosecutor of the Special Court for Sierra Leone, I told them three things: that no one is above the law, the law is fair, and the rule of law is more powerful than the rule of the gun. It truly is more powerful than the rule of the gun let us keep it so.

Thank you for the opportunity to submit testimony regarding my considered judgement based on decades of experience “in the trenches” on the matter of accountability in this age of extremes.