

United States Congress
House of Representatives
Committee on Foreign Relations
Briefing on Syria
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Mr. Chairman, Honorable Members of the Committee on Foreign Relations.

Thank you for the privilege of appearing before you in connection with the documented systematic torture and killing of eleven thousand persons, recorded on 55,000 photos taken in Syria by a reliable source. These acts of death by torture were perpetrated by Military Security of the Bashar al-Assad sectarian ruling regime in Syria in their repression of civilian opposition.

Mr. Chairman,

I respectfully submit my written statement and credentials and request that they be made part of the record.

Mr. Chairman,

What distinguishes this situation from other egregious human rights violations that rise to the level of international crimes is their widespread and systematic commission, and their meticulous documentation by the perpetrators. This documentation has been available to the Administration and to other governments. These and other crimes committed by the Syrian regime, some of which constitute crimes against humanity, war crimes and torture, require action to prevent their recurrence and ensure the criminal accountability of the perpetrators. The Administration's failure to act more decisively than it has raises questions about compliance with international and US law. It also raises questions about its moral stance and the message that it sends to the Syrian regime and others who commit international crimes with the expectation of impunity.

Mr. Chairman,

My testimony will address three points:

1. The first point is about the known facts and their implications;
2. The second point is about the legal aspects of the international crimes in question;
3. The third point concerns the legal and moral implications for the US.

A - The Facts and Their Implications

1. The photographic evidence of 11,000 dead persons killed by torture in what clearly appears to be a widespread and systematic criminal scheme by the Bashar al-Assad's Alawi (Shi'ā) minority sectarian regime¹ against the majority Sunni population opposing it, has been thoroughly documented by agents of the very perpetrators. The US Government has received the evidence, to the best of this witness' knowledge, in November 2013, though it is reported that the National Security Council debated this situation in 2012, as reported by Ambassador Frederic Hof.² This means that US intelligence sources already knew in 2012 of the Syrian regime's carrying out of these abhorrent practices. As reportedly stated by Ambassador Stephen Rapp,³ the so-called "Caesar pictures" have been authenticated by the Administration through the expertise of the appropriate US agencies. Thus, neither the evidence, nor its authenticity is at issue.

¹ The Alawi, Ismaili and Shi'ā population is estimated at 13%. CIA.gov, The World Factbook: Syria, 3, https://www.cia.gov/library/publications/the-world-factbook/geos/print/country/countrypdf_sy.pdf. Syria is strongly backed by Iran for sectarian religious reasons and for geopolitical reasons since Syria is a conduit for Iranian support of the Shi'ā Hezbollah in Lebanon. Syria is also another ground route for Iran into Iraq where it is supporting a Shi'ā led government. Russia is also a strong supporter of the Syrian regime for geopolitical reasons. It has obtained from Syria the privilege of using Tartus and Latakia as resupply stations for its Mediterranean Navy. These ports, along with Cyprus, are Russia's only ports on the Mediterranean and serve as the counterpoint to the US Navy's Sixth Fleet. Russia is also Syria's main weapons supplier. It has an estimated 30,000 citizens in Syria, most are connected to the Russian fleet's port facilities and serve as advisers and technicians to the Syrian military.

² "When the issue was debated in the White House in 2012 and 2013, many administration officials argued that a concerted push for an international war crimes prosecution would undermine any chance for pursuing a negotiated settlement to Syria's civil war, according to participants. Bringing an indictment would give Mr. Assad and his backers little incentive to back down, they said.

'For the administration, it is a double-edged sword,' said Frederic Hof, who served as a top Obama administration adviser Syria, of the photographic evidence. 'On the one hand, it's going to illustrate perhaps better than anything heretofore the absolute horror of what's going on. On the other side, it raises the inevitable question: What are we actually going to do about it?'" Adam Entous and Dion Nissenbaum, *10,000 Bodies: Bashar al-Assad's Grim Catalog of Death*, WALL ST. J., Jul. 26, 2014, at A1.

³ "Rapp said the U.S. government is nearly finished with its own forensic analysis of 28,000 of the photos and they not only appear to be genuine, but they also show a level of systematic atrocities that implicate Syrian officials including Syrian President Bashar al-Assad in crimes against humanity.

'Thus far the indication is that it would be impossible to have fabricated this kind of material, and having personally seen hundreds of the images of twisted bodies with real wounds and real human beings of every shape and size, this is not phony evidence,' he said. 'These bodies were brought to one location from 24 other facilities, in which they had been tortured to death in a variety of ways: ligature strangulation, burning, bruising, starvation, evisceration, the most horrendous things you can imagine.' Josh Rogin, *U.S.: Assad's 'Machinery of Death' Worst Since the Nazis*, DAILY BEAST, Jul. 7, 2014, <http://www.thedailybeast.com/articles/2014/07/07/u-s-assad-s-machinery-of-death-worst-since-the-nazis.html>.

2. Not since the Nazi regime in Germany, 1932-1945, and the Communist-Stalinist regime, 1924-1953, in Russia, then the USSR, has there been such a meticulous documentation of such widespread and systematic torture, and more particularly of torture leading to death.⁴ Historical records reveal that tyrannical regimes often resort to torture against whomever they deem to be their enemies. The practices of post-WWII tyrannical regimes reveal that in most situations involving widespread and systematic torture, the regimes in question have concealed the facts. This has been documented by a number of truth commissions such as those in South America and South Africa⁵ as well as in such recent conflicts as Rwanda and Liberia-Sierra Leone. One reason for this is that the regimes in question have sought to conceal these crimes for fear of political consequences and individual criminal accountability.

3. Those regimes that have documented torture and extra-judicial executions for their internal purposes have done so, *inter alia*, because of: their certainty to remain in power, and thus not to be exposed to criminal accountability; their total disregard for the values, principles and norms of the international community; and their belief in their own impunity. A more prosaic explanation is that regimes that engage in large scale human depredations tend to keep records of their conduct as evidence of the efficiency of such agencies that carry out these gruesome acts, which they rationalize as “legal” because their superiors have ordered them to carry out such tasks; and, because of the highly subjective assumption that it is “legal” to carry out such deeds against what is usually referred to as the “enemies of the state.” These regimes include the WWII Nazi regime of Germany and the Stalinist regime in Russia (then the USSR).⁶

4. The *modus operandi* of these two tyrannical regimes that have generated the largest number of human casualties in the modern history of repressive regimes was similar but different. The Nazis’ meticulous documentation allowed the Allies to set up the well-known Nuremberg prosecutions⁷, the Subsequent Proceedings⁸, and also allowed post-WWII Germany to prosecute perpetrators of “War Crimes” and “Crimes Against

⁴ See e.g. NEIL KRITZ, TRANSITIONAL JUSTICE: HOW EMERGING DEMOCRACIES RECKON WITH FORMER REGIMES (3 vols., 1995); ACCOUNTABILITY FOR ATROCITIES: NATIONAL AND INTERNATIONAL RESPONSES, (Jane E. Stromseth ed., 2003) ; POST-CONFLICT JUSTICE, (M. Cherif Bassiouni ed., 2002).

⁵ PRISCILLA B. HAYNER, UNSPEAKABLE TRUTHS: TRANSITIONAL JUSTICE AND THE CHALLENGE OF TRUTH COMMISSIONS (2002).

⁶ The same Stalinist system was followed with some bureaucratic changes and a lessening of the victimization until Mikhail Gorbachev came to power in 1985, at which point the use of these practices greatly diminished. The KGB system was also followed in many Eastern European states, and in Syria as described below.

⁷ TRIAL OF THE MAJOR WAR CRIMINALS BEFORE THE INTERNATIONAL MILITARY TRIBUNAL (42 vols., 1947-49)

⁸ TRIALS OF WAR CRIMINALS BEFORE THE NUERNBERG MILITARY TRIBUNALS UNDER CONTROL COUNCIL LAW NO. 10 (15 vols., 1949-53) See also TAYLOR, TELFORD. FINAL REPORT TO THE SECRETARY OF THE ARMY ON THE NUREMBERG WAR CRIMES TRIALS UNDER CONTROL COUNCIL LAW NO. 10 (1949)

Humanity.”⁹ Other national prosecutions also attest to this phenomenon of meticulous documentation of regime crimes as evidenced by the Eichmann case in Israel.¹⁰ In all of these proceedings and others it was clear that the Nazi authorities had a simple system, and that was to give each person arrested a serial number. That same number stayed with that person until death. It made counting easy. A single number system kept track of the total of those who were expected to be killed. The infamous tattoos of these numbers on the forearms of the victims at Auschwitz and other concentration camps remain forever indelible in the minds of those who condemn such atrocities. The Stalinist system was different in that the KGB oversaw the various death camps and “gulags,”¹¹ attributed two alpha-numeric identifiers to their victims, with the letter portion of the identifier indication the agency that had custody of the individual. The first identifier was assigned at arrest and the second was at death. The difference between the two systems mentioned above is that in the Nazi regime there was one overall agency, the SS, under which the extermination program fell. It was a linear hierarchical system. In the USSR, there were multiple agencies involved. Even though the KGB had overall policy and strategic control. But it did not have exclusive tactical and operational control. Thus necessitating the identification of both the arresting agency and the agency that had custody at the time of death. Such record-keeping differences reveal the distinctive nature of these bureaucracies in carrying out their authorities’ mandate, with one additional factor – the Nazi aim was extermination, the Communists’ was not. And that is why two sets of numbers per person were recorded in the USSR, in the event the person survived in a prison camp or “gulag” or was released. But in the end both regimes had a system in place and in both regimes it was meticulous.

5. The question of why this meticulous documentation was needed includes: the following of an overall bureaucratic system with established rules to maintain discipline, avoid personal abuses, and hold those in the command structure internally accountable for any bureaucratic transgressions or the use of their positions for personal reasons. Overall, this reflected a particular culture, which is different from the Arab culture.¹² When Syria, under the Hafez el-Assad dictatorship committed widespread and indiscriminate killing of civilians in the cities of Homs and Hama in 1982, it is reported that 20,000-30,000 were killed. No records were kept. But since the KGB in the 1990s trained Syria’s

⁹ See e.g. *Case against R. Melka et al.* (Auschwitz concentration camp), Bundesgerichtshof in Justiz und NS-Verbrechen, Vol. XX, pp. 838 *et seq.*; District Court Düsseldorf, *Urteil Hackmann u.a.*, XVII 1/75, v. 1, pp.65f.

¹⁰ CrimC(Jer) 40/61 Attorney General for the Government of Israel v. Eichmann, IsrDC 45, 3 (1961), *reprinted in* 36 I.L.R. 18, 39; CrimA 366/61 Eichmann v. Attorney General 17 IsrSC 2033 (1962), *reprinted in* 36 I.L.R. 277.

¹¹ See e.g. ALEKSANDR SOLZHENITSYN, *THE GULAG ARCHIPELAGO* (3 vols., 1977); YEVGENIA ALBATS AND CATHERINE A. FITZPATRICK, *THE STATE WITHIN A STATE: THE KGB AND ITS HOLD ON RUSSIA* (1994); LADISLAV BITTMANN, *THE KGB AND SOVIET DISINFORMATION* (1985); JOHN DZIAK, *CHEKISTY: A HISTORY OF THE KGB* (1988); *KGB LEXICON: THE SOVIET INTELLIGENCE OFFICER'S HANDBOOK* (Vasily Mitrokhin, ed., 2002); VICTOR SHEYMOV, *TOWER OF SECRETS* (1993).

¹² RAPHAEL PATAI, *THE ARAB MIND* (2007).

Military Security and other intelligence organizations, it did so in accordance with their own bureaucratic practices and procedures, which are being followed to date. The present practice described above is to have two sets of numbers. The first set always in an upper line is the serial number given upon arrest. The second, below the upper one, with a line drawn between them, is the number given at death. Near that death number is a letter in Arabic signaling the agency in whose custody the person was killed. These numbers were either written on the chest of the person, or on cards attached to the body, as per the picture which follows.



The only difference known to this writer is that the Syrians seemed to always end their serial numbers at the number 5000 and then start a new series. The reason for that is believed to be to keep the numbers low in case one of the series of documented killings was to be discovered. Thus, contrary to the Nazi and early KGB practices, which wanted to record the cumulative numbers, the Syrian Military Security was concerned about the internal backlash of publicly disclosed large numbers of opposition dead. This system enhanced the regime's claims of "plausible deniability," which they have consistently resorted to by admitting to the facts but blaming the opposition, or by questioning the credibility of the evidence presented, even when it is objectively undeniable.

6. Testimony of survivors and former public officials points to two locations of Military Security where the most severe torture took place, namely Branches 215 and 248. It is reported that there are 24 such centers throughout the regime-controlled areas of Syria. Other witnesses also point to two hospitals where the medical treatment was not primitive, but apparently purposefully below all medical standards in order to add to the

injured's suffering and eventually their death. These two hospitals are identified as 601 and 607. This situation is particularly significant because doctors and other medical personnel who participated in these situations have not violated medical codes of ethics, but have also been part of the torture and extra-judicial execution scheme planned and carried out by Military Security. The US and other countries should be mindful of these facts when granting entry or asylum visas to medical personnel from Syria, particularly those who have worked in these hospitals. Moreover, medical doctors have been routinely issuing false death certificates for persons killed under torture, showing the death as something other than the result of torture. This too makes these doctors responsible for aiding and abetting in the commission and concealment of the crime of torture and extra-judicial execution. The Syrian Military Security refers to its detention facilities by numbers and not names, and also the hospitals they use to conceal their identification.

B - The Legal Aspects of the Crimes Arising Out of the Facts Described

1. There are three international crimes arising out of the facts described above. They are: Torture, Crimes Against Humanity, and enforced disappearances. The US is a party to the 1984 *U.N. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*.¹³ The convention contains a number of provisions relevant to the obligations of the United States as does the US Torture-Victim Protection Act.¹⁴ These obligations are to prevent, suppress, punish, and cooperate with other states to that end.
2. "Crimes Against Humanity" (CAH) are a category of *jus cogens* international crimes.¹⁵ These obligations derived from this category of international crimes are to prevent, suppress, and punish, and cooperate with other states to that end. CAH is one of the crimes included in the statutes of the International Criminal Tribunal for the former Yugoslavia (ICTY) and the International Criminal Tribunal for Rwanda (ICTR) as well as other mixed model tribunals.¹⁶ While only a number of states have adopted national legislation making CAH national crimes¹⁷ the US has not adopted such national legislation but is never the less bound by international law on this category of international crimes.
3. "War Crimes" arise out of violations of conventional and customary international law. The Syrian conflict can be characterized as a "conflict of a non-international character" to

¹³ UN General Assembly, *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, 10 December 1984, 1465 U.N.T.S. 85 (Entry into force 26 June 1987)

¹⁴ Torture Victim Protection Act of 1991, 28 U.S.C. § 1350 (1994).

¹⁵ M. CHERIF BASSIOUNI, *INTRODUCTION TO INTERNATIONAL CRIMINAL LAW*, ch. III, § 8 (2013).

¹⁶ M. CHERIF BASSIOUNI, *CRIMES AGAINST HUMANITY*, pp. 218-262 (2011).

¹⁷ *Id.* at pp. 649-723.

which Common Article 3 of the Four Geneva Conventions of August 12, 1949, apply as does Protocol II of 1977 in addition customary international law also applies. Under all of these legal sources torture is a War Crime and state parties to the Geneva Conventions, which includes the US, are obligated to prevent, suppress, punish, and cooperate with other states to that end.

C - The Legal and Moral Implications for the US

1. It is incumbent on the Administration to carefully examine its legal obligations in connection with the commission of international crimes by the Syrian regime. In addition the Administration cannot act in a way that may appear to look the other way when such egregious crimes are committed in Syria including those involving the 11,000 persons killed under torture and for which there is documentation which authenticates this category with respect to these victims. It should also be taken into account that so far the Syrian conflict has produced an estimated 200,000 casualties and caused an estimated 3,000,000 persons to become refugees and internally displaced. Further, the regime continues to rain high explosive barrel bombs on civilians in open defiance not only of International Humanitarian Law and International Human Rights Law but also of a specific United Nations Security Council resolution 2139 adopted on 22 February 2014. As documented by Human Rights Watch, over 650 major new damage sites have been reported since February, 2014.¹⁸ Admittedly the Administration has supported a resolution submitted to the Security Council for the referral of the situation in Syria to the International Criminal Court (ICC)¹⁹ which was vetoed by Russia and China. But that is not enough. There are a range of legal measure that the Administration can undertake, more particularly the Administration has to raise the moral issue by significantly publicizing the crimes of the Syrian regime and by enlisting the support of like-minded states to deny any legitimacy or credibility to the Syrian regime which has engaged in the commission of so many international crimes and is probably expecting impunity in exchange for a political settlement to end the conflict. The Administration must remove any shadow of doubt that accountability can be bargained away or that the Assad regime can obtain favors including impunity for whatever political purposes.²⁰

This concludes my statement.

¹⁸ Human Rights Watch, *Syria: Barrage of Barrel Bombs*, July 30, 2014.

¹⁹ Draft resolution, U.N. Doc. S/20/348 (May 22, 2014), was vetoed by China and the Russian Federation, 13-2-0.

²⁰ It has been rumored that the US has been considering bartering impunity for the Assad regime's support in fighting ISIS. See e.g. Josh Rogin, *Obama Admin Debates Whether Assad Really Must Go*, DAILY BEAST, Jul. 3, 2014, <http://www.thedailybeast.com/articles/2014/07/03/iraq-crisis-pushes-u-s-closer-to-assad-the-dictator-it-said-must-go.html>; Michael B. Kelly, *The Argument for Obama Working With Assad Against ISIS Just Got a Lot Weaker*, BUSINESS INSIDER, Jul. 27, 2014, <http://www.businessinsider.com/argument-for-the-us-working-with-assad-2014-7>.

I extend my appreciation to the Chairman and to the Committee for allowing me to present my views on this matter.

M. Cherif Bassiouni

M. Cherif Bassiouni is *Emeritus* Professor Law at DePaul University, where he has taught since 1964, and President *Emeritus* of the International Human Rights Law Institute, which he helped found in 1990. He was one of the founders in 1972 of the International Institute of Higher Studies in Criminal Sciences, Siracusa, Italy, and served as its President since 1988. He is the Honorary President of the International Association of Penal Law after having served three terms as President from 1989-2004. He was a Guest Scholar at The Woodrow Wilson International Center for Scholars in Washington, D.C. in 1972, Visiting Professor of Law, New York University Law School in 1971, Fulbright-Hays Professor of International Criminal Law, The University of Freiburg, Germany in 1970, non-resident Professor of Criminal Law at the University of Cairo from 1996 to 2006, and is a frequent lecturer at universities in the U.S. and abroad.

His legal education was in Egypt, France, Switzerland and the United States where he received the following degrees: LL.B. University of Cairo; J.D. Indiana University; LL.M. John Marshall Law School; S.J.D. George Washington University. In addition, he received several honorary degrees from: Doctor of Law *honoris causa* University of Ghent, Ghent, Belgium (2011); Case Western Reserve University, USA (LL.D.) (2010); Catholic Theological Union, USA (Doctor of Humane Letters) (2009); National University of Ireland, Galway, Ireland (LL.D.) (2001); Niagara University, USA (LL.D.) (1997); Docteur d'Etat en Droit *honoris causa*, University of Pau, France (1986); Dottore in Giurisprudenza *honoris causa*, University of Torino, Italy (1981).

To date, he has authored 25 books and edited 45 books on International Criminal Law, Comparative Criminal Law, Human Rights, and U.S. Criminal Law, and is the author of 265 articles published in law journals and books in the U.S. and other countries. He has also authored 14 Monographs the such subjects as history, politics, and religion. These publications have been written in Arabic, English, French, Italian and Spanish. Some of them have been cited by international tribunals, including the International Court of Justice, the International Criminal Tribunal for the Former Yugoslavia (ICTY), and the International Criminal Tribunal for Rwanda (ICTR). His work has also been cited by the United States Supreme Court, several the United States Circuit and Federal District Courts, several State Supreme Courts, and a number of states' highest courts including the United Kingdom's House of Lords, and the Supreme Courts of Australia, Canada, Israel, and South Africa. Several of his works have been translated into: Arabic, Chinese, Farsi, French, German, Hungarian, Italian, Portuguese and Spanish.

He recently served as Chair of the Bahrain Independent Commission of Inquiry established pursuant to Royal Order of the King of Bahrain (2011), and since 1975, he served in the

following United Nations positions: Chair, then member of the United Nations Independent International Commission of Inquiry for Libya (2011); Independent Expert on Human Rights for Afghanistan, UN Commission on Human Rights (2004-06); Independent Expert on The Rights to Restitution, Compensation, and Rehabilitation for Victims of Grave Violations of Human Rights and Fundamental Freedoms for the UN Commission on Human Rights (1998-2000); Chairman, Drafting Committee, United Nations Diplomatic Conference on the Establishment of an International Criminal Court (1998); Vice-Chairman, General Assembly's Preparatory Committee on the Establishment of an International Criminal Court (1996-98); Vice-Chairman, General Assembly's Ad Hoc Committee on the Establishment of an International Criminal Court (1995); Chairman of the United Nations Commission of Experts Established Pursuant to Security Council 780 (1992) to Investigate Violations of International Humanitarian Law in the Former Yugoslavia (1993-94) and the Commission's Special Rapporteur on Gathering and Analysis of the Facts (1992-1993); Consultant to the Sixth and Seventh United Nations Congress on Crime Prevention (1980 and 1985); Consultant to the Committee on Southern African, Commission on Human Rights (1980-81); Co-chairman of the Independent Committee of Experts on the Convention on the Prevention and Suppression of Torture (1978); Honorary Vice-President, Fifth United Nations Congress on Crime Prevention (1975).

He also served, between 1973-1980, as a consultant to the U.S. Departments of State and Justice on projects relating to international traffic in drugs (1973) and international control of terrorism (1975 and 1978-79) and as a consultant to the Department of State on the defense of the U.S. hostages in Iran (1979-80).

Among some of the distinctions and awards he has received are: Nomination to the Nobel Peace Prize (1999); Special Award of the Council of Europe (1990); the Adlai Stevenson Award of the United Nations Association (1993); Defender of Democracy Award, Parliamentarians for Global Action (1998); the Saint Vincent DePaul Humanitarian Award (DePaul University 2000); the Hague Prize for International Law (2007); the *Via Sapientiae* Award (DePaul University 2009); the World Peace Through Law Award (Washington University School of Law 2009); George Washington University Distinguished Alumni Scholar Award (2010-2011); Bradford O'Neill Medallion for Social Justice, Dominican University (2011); Wolfgang Friedmann Award (Columbia School of Law 2012); and the West Suburban Bass Association Lincoln Award (2012).

He received the following medals from Austria, Egypt, France, Germany, Italy and the United States: Order of Merit of the Republic, Italy (Cavaliere di Gran Croce) (2006); Ordre des Palmes Académiques, Republic of France (Commander) (2006); Grand Cross of the Order of Merit, Federal Republic of Germany (2003); Legion d'Honneur (Officier), France (2003); Order of Lincoln, Illinois, USA (2001); Grand Cross of the Order of Merit of the Austrian Republic (1990); Order of Scientific Merit (First Class), Egypt (1984); Order of Merit of the Republic, Italy (Grand'Ufficiale) (1977); Order of Merit of the Republic, Italy, (Commendatore) (1976); Order of Military Valor, Egypt (1956).