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Mark-Up Statement for H. Con. Res. 51

*U.S. Rep. Chris Smith
House Foreign Affairs Committee Mark-Up
2172 Rayburn House Office Building
April 30, 2014*

I, as no doubt all of you, have been shocked by images of horrific human rights violations, including summary executions, torture, rape, and chemical weapon attacks in Syria. Since the Syrian Civil War began, perhaps as many as 150,000 people may have been killed and more than 9 million people have been forced to leave their homes, 6.5 million of them internally displaced. By the end of last year, it is estimated that neighboring countries such as Turkey, Jordan, Lebanon, and Iraq were holding nearly 3 million Syrian refugees.

Who is culpable for such heinous acts, and how can they be held accountable, be they members of the Assad regime or Islamist radicals from neighboring countries? Those who have perpetrated human rights violations among the Syrian Government, the rebels, and the foreign fighters on both sides of this conflict, must be shown that their actions will have serious, predictable, and certain consequences. They need to learn the lesson that Charles Taylor learned when he got a 50-year sentence when he was brought to trial and convicted by the Special Court for Sierra Leone.

H. Con. Res. 51, introduced on September 9th, calls for the creation of an international tribunal that would be more flexible and more efficient than the International Criminal Court to ensure accountability for human rights violations committed by all sides.

Such a tribunal would draw upon past experience, creating a justice mechanism robust enough to hold perpetrators accountable for the most egregious wrongs, yet nimble enough not to derail chances for peace due to rigidity.

Beginning with the Nuremburg and Tokyo tribunals, a body of law has developed concerning war crimes, crimes against humanity, and genocide. Since the end of the Cold War, we have seen examples of ad hoc tribunals in the former Yugoslavia, Rwanda, and hybrid mechanisms such as the Special Court for Sierra Leone. As chair of the subcommittee on human rights, especially during the 1990s, as well as the Helsinki Commission Chairman, I held a series of hearings on the Yugoslav courts, and those that were in Sierra Leone and Rwanda, and often

had the chief prosecutors testify at those hearings, including Carla Del Ponte from the Yugoslav court and others from the Special Court for Sierra Leone, including David Crane. We brought David Crane back this past October 30th to ask him what his view would be on such a court, and he gave riveting testimony, as did other experts, as to the absolute need for the immediate establishment for this kind of flexible court.

Each of these tribunals has achieved a level of success that has escaped the International Criminal Court. The Yugoslavia tribunal has won 67 convictions, the Rwanda tribunal has won 47, and the Sierra Leone tribunal has won 16 convictions. Meanwhile, the ICC – costing about \$140 million annually – has thus far seen only one conviction.

One thing we do not want to do is go down the ICC route. The ICC process is distant and has no local ownership of its justice process. It is far less flexible than an ad hoc tribunal, which can be designed to fit the situation. The ICC requires a referral. In the case of the President and Deputy President of Kenya, it was Kenya itself that facilitated the referral. That is highly unlikely in the case of Syria. Since Syria is a Russian client state, this UN Security Council member would oppose any referral of the Syria matter to the ICC, but might be convinced to support an ad hoc proceeding that focuses on war crimes by the government, as well as the rebels – one that allows for plea bargaining for witnesses and other legal negotiations to enable such a court to successfully punish at least some of the direct perpetrators of increasingly horrific crimes. And Syria, like the United States, never ratified the Rome Statute that created the ICC, which raises legitimate concerns about sovereignty with implications for our country, which this panel also addresses.

There are issues that must be addressed for any Syria war crimes tribunal to be created and to operate successfully. There must be sustained international will for it to happen in a meaningful way. An agreed-upon system of law must be the basis for proceedings. An agreed-upon structure, a funding mechanism and a location for the proceedings must be found. There must be a determination on which and how many targets of justice will be pursued. A timetable and time span of such a tribunal must be devised. And there are even more issues that must be settled before such an ad hoc tribunal can exist.

Those who are even now perpetrating crimes against humanity must be shown that their crimes will not continue with impunity. Syria has been called the world's worst humanitarian crisis. One might reasonably also consider it the worst human rights crisis in the world today. Therefore, the international community owes it to the people of Syria, and their neighbors, to do all we can to bring to a halt the actions creating these crises for Syria and the region.

We have the opportunity to give hope to the terrorized people of Syria. The subcommittee I chair held a hearing last October 30th where we heard from some of the most experienced voices concerning international justice mechanisms. We have met several times with the State Department, and we have worked diligently with the Committee—especially Ranking Member Eliot Engel and Chairman Ed Royce—in shaping a lean, muscular resolution that can be adapted to address the situation in Syria as it currently exists, providing broad latitude for the administration to conduct foreign policy.

The suffering of the Syrian people must end, and today we have the opportunity to help achieve that. This is a means to that end, and again, those who are committing these horrific crimes need to know that they face the certitude of punishment.