

**STATEMENT OF
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Before the

**SENATE SUBCOMMITTEE ON INTERNATIONAL
ORGANIZATIONS, DEMOCRACY AND HUMAN RIGHTS**

**“Closing Legal Loopholes: Justice for Americans Sexually Assaulted in
Iraq and Afghanistan”**

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Good Morning Chairman Nelson and Members of the Subcommittee.

I am pleased to be here today to discuss the legal framework under which the Department of State supports U.S. criminal investigations of violent crimes overseas.

The President has long delegated to Chiefs of Mission his responsibility for the security of our Missions abroad and of all U.S. Government personnel on official duty abroad, other than those under the protection of a U.S. area military commander. Likewise the Congress has by law vested in the Secretary of State the responsibility to develop and implement policies and programs to provide for the security of U.S. Government operations of a diplomatic nature, including protection of U.S. Government personnel on official duty abroad and establishment and operation of security functions at all U.S. Government missions abroad. Among the Secretary's specific security responsibilities in this regard is the conduct of investigations relating to employee security and the performance of other security and investigative matters as authorized by law. Finally, the Secretary may direct members of the Foreign Service to perform functions, including investigative functions, on behalf of other federal law enforcement agencies requiring their services.

Collectively, these authorities have been viewed as supporting the Department's role in investigating violent crimes committed by or against U.S. Government personnel operating overseas at U.S. diplomatic missions or otherwise related to the security of the Mission. Such investigations are inherent in the responsibilities vested in the Secretary of State and in all Chiefs of Mission overseas to provide for the security of our missions and personnel abroad. Within the Department of State, the responsibility for conducting such investigations has been delegated to the Bureau of Diplomatic Security (DS), which in turn assigns that responsibility to Regional Security Offices that are staffed by DS Special Agents at posts all over the world. Of course, such investigations are only one of many tasks these agents perform for the Department overseas, including post security and protective functions, communications and information security, emergency planning, and conducting visa and passport fraud investigations.

The Department of State's investigative functions in this regard are of course shared with the Department of Justice, and DS agents work closely

with their counterparts at the FBI and other federal law enforcement agencies on many of the investigative matters they undertake overseas related to the U.S. Mission. As authorized by law and with respect for the sovereignty of the host country, DS agents overseas may also support and assist criminal investigations abroad undertaken by the Department of Justice or other law enforcement agencies, even where such investigations do not relate directly to the U.S. Mission or U.S. Government personnel abroad. DS agents also serve as a liaison with foreign government law enforcement authorities on many different matters. In places like Iraq and Afghanistan, with significant ongoing military operations, DS agents serve as the embassy's principal law enforcement liaison with military investigative authorities in the country. Thus an Embassy Regional Security Office is one of several different entities that may potentially investigate a particular criminal incident abroad.

In many cases, because Embassy officials are the primary representatives of the U.S. Government in the country, they may be the first to learn of and respond to criminal activity by or against a U.S. national overseas. Where appropriate, DS agents may take the lead on any subsequent U.S. investigation, particularly where the criminal activity involves the U.S. Mission and its security. Alternatively, after an initial assessment of the facts, they may refer the matter to local authorities, the Department of Justice, or other federal law enforcement agencies to investigate, particularly where a nexus to the U.S. Mission is lacking. Of course, as I have said, DS can and does continue to provide support to such investigations where requested to do so.

An important consideration in any U.S. investigation of criminal activities overseas is U.S. criminal jurisdiction. U.S. criminal laws generally apply only in the United States, unless Congress expressly provides otherwise or the courts infer extraterritorial application from the nature of the statute or its structure. Many crimes that are committed against U.S. citizens overseas are beyond U.S. criminal jurisdiction. There is no federal statute, for example, that makes rape or sexual assault of a U.S. national a federal offense worldwide. In most cases, only the local authorities have jurisdiction to prosecute the offense. Therefore, most crime against U.S. nationals overseas is investigated by local authorities and, if a perpetrator is identified, prosecuted within the local court system.

However, there are of course circumstances where U.S. criminal jurisdiction does extend overseas: under the U.S. Special Maritime and Territorial Jurisdiction, the U.S. Government can prosecute individuals for a broad range of felonies if they are committed by or against a U.S. national on the premises of U.S. diplomatic, consular, or military facilities overseas, or residences used by U.S. personnel assigned to those facilities. There is a number of specific criminal offenses under U.S. law that apply extraterritorially, such as certain offenses involving torture, war crimes, material support for terrorism, or drug offenses that impact the United States. Notably, there is a federal statute that makes it a federal offense for one U.S. national to murder another, anywhere in the world. Finally, under the Military Extraterritorial Jurisdiction Act (MEJA), the U.S. Government may prosecute, inter alia, DoD contractors for a broad range of felonies committed abroad, as well as non-DoD contractors to the extent that their employment relates to supporting the mission of the Department of Defense overseas.

The Administration is currently working with the Senate on legislation to expand the coverage of U.S. criminal laws in places like Iraq where we have ongoing military operations, to ensure that we have the tools we need to hold U.S. Government employees and contractors overseas accountable where appropriate.

Thank you for the opportunity to address these issues today and I look forward to answering any questions the Subcommittee may have.