

Stephen J. Rapp
Ambassador-Designate
War Crimes Issues

Statement Prepared
For the Senate Foreign Relations Committee
July 22, 2009

Mr. Chairman and distinguished Members of the Committee,

It is a great honor to appear today before this Committee and to be considered for confirmation to the post of Ambassador-at-Large for War Crimes Issues. I am grateful to President Obama and Secretary Clinton for the trust and confidence they have demonstrated in nominating me for this position. I appreciate the commitment to international justice that is reflected by the very existence of this post. I am keenly aware of the historic role of the United States as a leader in achieving protection for non-combatants and accountability for atrocities, from the first codification of the rules of armed conflict by Francis Lieber during the American Civil War, through the trials of the Nazi leaders at Nuremberg following World War II, to the establishment of the international tribunals for the former Yugoslavia and Rwanda, and now to the strong support by two U.S Administrations for justice in Darfur. If confirmed, I will do everything I can to ensure that our great nation continues its leadership in international justice.

My own experience has taught me the value of a fair and effective system of justice. As a young state legislator, I saw how the enactment and enforcement of tough drunk driving laws could reduce injuries and death on the highways. As a defense attorney I saw how the elimination of discriminatory practices in jury selection could build confidence in criminal justice and reduce community tensions. As a United States Attorney, I saw how the prosecution of violent drug gangs could bring new life back to neighborhoods and how convictions under the Violence Against Women Act could prevent others from becoming victims. In the last eight years, as a prosecution attorney at the International Criminal Tribunal for Rwanda, and more recently as chief prosecutor at the Special Court for Sierra Leone, I have seen how the law can be applied to the most horrific of crimes in a way that I believe can begin to deter the commission of genocide, crimes against humanity and other atrocities.

This is why I am excited to be nominated to lead the Office of War Crimes Issues. Since its inception in the second term of the Clinton Administration, this office has been responsible for coordinating and recommending policies on justice and accountability in regions where there have been large-scale past or present violations of international humanitarian law. This has translated primarily into support for the investigation and prosecution of war crimes, genocide, and crimes against humanity in international, hybrid, and domestic courts around the world, but has also included responding to ongoing crises when such crimes are being committed.

I spoke earlier of the creation of the international tribunals for the former Yugoslavia and Rwanda. It is fair to say that when these institutions were established, the international community was not sure what to expect. But in the last decade and a half, history has been made for international criminal justice. The Yugoslav and Rwandan Tribunals alone have indicted and tried almost 200 alleged perpetrators of genocide, crimes against humanity and war crimes. Their success has led to the creation of hybrid courts, such as the Special Court for Sierra Leone, which apply international law and sometimes also domestic law, and whose judges and prosecutors are appointed by both international and national authorities. The international and hybrid courts have brought to trial heads of government and heads of state, including former Rwandan Prime Minister Jean Kambanda, former Yugoslav President Slobodan Milosevic, and former Liberian President Charles Taylor. These institutions have defined and applied international humanitarian law on a daily basis, and provided important legal guidance that will benefit new international institutions and national systems. They have created the reality and expectation of justice after the widespread commission of atrocities. And they have done it all for a small fraction of one percent of what the world spends annually on armed conflict.

As the work of the first tribunals comes to an end, there is a growing appreciation for their accomplishments in the field of international humanitarian law. In order to preserve this legacy, we need to ensure that the Yugoslav and Rwandan Tribunals successfully complete their work in a timely and expeditious manner, and that the remaining fugitives from those tribunals are brought to justice. For those cases that the international tribunals will not be able to prosecute, we need to help build the capacity for fair and credible adjudication in national systems.

As in the case of the Special Court for Sierra Leone, we have seen how justice can be achieved through partnerships between international institutions and national authorities. The Special Court for Sierra Leone has had a majority of international judges and an international chief prosecutor. The Special Tribunal for Lebanon

will follow the same pattern, but will apply not international humanitarian law but domestic law applicable to acts of assassination and terrorism. The War Crimes Chamber of the State Court of Bosnia has transitioned from a majority of international judges, to the present when a majority are nationals. In the future, all the judges on the Bosnia War Crimes Chamber will be Bosnian. The Extraordinary Chambers of the Courts of Cambodia have a majority of national judges but require a super majority for convictions. The judges and prosecutors at the Iraqi High Tribunal are all nationals, but they have benefited from international investigative and legal assistance.

Our first preference should be for a process of accountability at the level that is closest to the affected communities. However, after armed conflict the national system may be destroyed, or there may be justifiable fears that the successful party to the conflict may deliver only victor's justice. Peace and reconciliation can best be assured by a justice system that is independent and has sufficient capacity to hold to account those bearing the greatest responsibility for atrocities. Achieving accountability in different situations will require varying levels of assistance and international participation.

The advancement of justice does not just focus on the accused. I have seen brave men, women, and children take the stand against their persecutors and recount their suffering. As a prosecutor, I am in awe of their courage; to tell their stories as victims is nothing short of heroic. These witnesses have taken great personal risks so that the world would know the horrors that they and others suffered. But they were able to send a resounding message: If you brutalize the innocent to gain or hold power, you too will face justice.

Still, prosecution and punishment is not the only answer, particularly in the cases of low and mid-level offenders. We should develop our response capabilities for conflicts where violations are committed, and the new Civilian Reserve Corps can play an important role. We also need to develop strategies for the prevention of future large-scale atrocities. Under the ADVANCE Democracy Act of 2007, the Ambassador-at-Large for War Crimes Issues, among others, now assists the President in collecting information regarding incidents that may constitute violations of international humanitarian law. If confirmed, I will be active in assisting the President with his responsibility under the Act to consider what actions can be taken to ensure that those responsible for such crimes are brought to account in an appropriately constituted tribunal. If confirmed, I will not only cooperate with elements of our own government, but also reach out to our friends and allies for support in this initiative to protect civilian populations in the world's worst conflicts.

I am under no illusions that, if confirmed as Ambassador-at-Large, any single action that I could take would end these atrocities. However, the United States must build on the momentum achieved by justice institutions in these recent years. If confirmed, I will readily accept the challenge of leading this effort. I look forward to working with our friends and allies around the world with whom we share a common interest in seeing that rule of law prevails and that accountability for atrocities becomes the norm rather than the exception.

Mr. Chairman and Members of the Committee, I am grateful for this opportunity to appear before you today. I would be pleased to answer any questions you may have.