

Statement
United States Senate Committee on the Judiciary
Genocide and the Rule of Law
February 5, 2007

The Honorable Benjamin L. Cardin
United States Senator, Maryland

OPENING STATEMENT

HEARING: "GENOCIDE AND THE RULE OF LAW"
SUBCOMMITTEE ON HUMAN RIGHTS AND THE LAW
SENATE JUDICIARY COMMITTEE
SENATOR BENJAMIN L. CARDIN
FEBRUARY 5, 2007

Mr. Chairman, I want to thank you for calling this hearing today. Let me also thank you for your role in creating this new subcommittee of the Judiciary Committee. This subcommittee has jurisdiction over the enforcement and implementation of human rights laws, including judicial and executive branch interpretations of those laws.

Today we will focus on genocide and the rule of law. I am so pleased that we have a distinguished panel of witnesses who have significant expertise on this subject. On the subject of the Rwandan genocide, I welcome actor Don Cheadle from the gripping movie "Hotel Rwanda," and Canadian Senator Romeo Dallaire, who was the head the UN peacekeeping effort in Rwanda during the genocide. I also look forward to hearing the testimony of Diane Orentlicher, an American University law professor who has testified before Congress frequently on international law issues. I look forward to talking about how the lessons of Rwanda can help us address the ongoing genocide in Sudan, which I am also examining as a member of the Africa Subcommittee of the Foreign Relations Committee.

I am very pleased to be a new member of this Committee and to have been named to serve on this subcommittee. I also understand, Mr. Chairman, that this hearing will probe the legal options for preventing genocide, the criminal prosecution process for those who commit genocide, the effective implementation of relevant conventions against genocide, and the legal options for preventing genocide. I strongly support the Chairman's efforts to use tools to stop genocide such as divestment – as we did with South Africa and the apartheid system in the 1980's – and international and domestic prosecution of war criminals.

By way of introduction, Mr. Chairman, I have been very active in working to prevent genocide, war crimes, and crimes against humanity during most of my twenty years of service in the House of Representatives. Most recently I have worked in an organization that has worked for years in the former Yugoslavia to bring a lasting peace and bring war criminals to justice.

In the House, I was privileged to serve as the Ranking Member of the U.S. Commission on Security and Cooperation in Europe (CSCE), commonly known as the Helsinki Commission. The Helsinki Commission is a unique federal agency that was created by Congress in 1976, after the signing of the Helsinki Accords in 1975 by the United States and the Soviet Union. The Helsinki Accords were a political document that guaranteed certain universal human rights and freedoms to all citizens in North America, Europe, and Eurasia, including Russia and the former Soviet republics.

The Helsinki process is unique in several ways which distinguish the organization from other regional and multilateral groups, such as the EU and NATO. First, the process envisions three baskets of security: military-political, economic and environmental, and human rights. Second, the organization includes the United States, all of Europe, the central Asian republics, the former Soviet republics, and Russia. Finally, the Helsinki process gives all of the Participating States equal status, and decisions are taken by a consensus on a political basis. After the Cold War, the Helsinki process has focused on the difficult transition that many former Communist nations have faced as they transition to a democracy that respects the rule of law.

The United States is one of the 56 Participating States in the Organization for Security and Cooperation in Europe (OSCE), which is the largest security organization in the world. OSCE is best known for sending election monitors to analyze whether elections are “free and fair.” I was privileged to be elected recently by my European colleagues to a three-year term as Vice President of the Parliamentary Assembly (PA) of the OSCE. In the last Congress Senator Brownback ably served as our Chairman.

So today I look forward to hearing from our witnesses in particular on how to effectively implement treaties and laws that prohibit and punish acts of genocide. In the Helsinki process we spend much of our time working on the implementation of existing commitments and agreements. In the former Yugoslavia, for example, the OSCE Mission to Serbia provides the Government of Serbia with legal advice and recommendations on judiciary reform issues, including training of new judges and the adoption of new Criminal and Civil Procedure Codes. It also help to draft the Law on War Crimes and set up domestic war crimes tribunals, and encourages Serbia to cooperate with the concurrent activities of the International Criminal Tribunal for the former Yugoslavia (ICTY) at the Hague.

Let me express my gratitude and thanks to Carla Del Ponte of Switzerland, who unfortunately recently decided not to seek reappointment for another term as Chief Prosecutor. Her strong determination over the past eight years to prosecute war criminals have brought comfort and closure to countless victims of horrific crimes and their surviving loved ones. I believe that her work, as well as the work of the new International Criminal Court (ICC), is critical to deterring future war crimes and forms a key component of the international community’s response to conflict and post-conflict situations.

Unfortunately, many war criminals still remain at large and have not been brought to

justice. I am disappointed that the Serbian Government has failed to fully cooperate with the ICTY, and that Ratko Mladic and Radovan Karadzic are still free. I hope this committee will work with me in urging the United States to support a successor to Carla Del Ponte with an equal commitment to ensuring that full ICTY cooperation is achieved and that war criminals are brought to justice.

Let me close with another hope for this new subcommittee. We need to do a better job of overseeing our own compliance with the Helsinki Accords and applicable international treaties and domestic law. I am hopeful that both the Helsinki Commission and this subcommittee, for example, will hold hearings on American compliance with the Geneva Conventions as it relates to the process used for detaining and treating accused terrorists. The 9/11 Commission recommended that the United States work with its allies to come up with new rules for the detention and treatment of accused terrorists that are often not part of a regular military force of a recognized nation state. Congress and the Administration have failed to address this issue. The Supreme Court has repeatedly held that the trial procedures proposed by the Administration are invalid. Congress also failed to effectively address this issue when it adopted the Military Commissions Act, which in my view may be struck down by the Supreme Court because it does not meet the basic due process guarantees for accused terrorists under both the Geneva Convention and our Constitution. Mr. Chairman, the Administration policy ultimately puts our own troops in harm's way by legitimizing the use of coercive tactics and possibly torture by the U.S. Government. The United States loses much of its credibility to criticize human rights abuses around the world when it condones or fails to criticize our own shortcomings.

We should remember that our treaty obligations are explicitly stated in the Constitution, once a treaty has been ratified by two-thirds of the Senate as required under Article II, Section 2 of the Constitution. Article VI provides that “[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land...” (emphasis supplied). I look forward to working with you, Mr. Chairman, and the members of the subcommittee as we conduct our important constitutional oversight role of our international treaty obligations.