

A Tribute to Courage in the Service of Justice

Remarks of Former Ambassador **Stephen J. Rapp** at the
Award Ceremony of the
Nuremberg International Human Rights Prize
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It is great honor to appear here today to salute the courage of a man whom I am proud to know as a friend, and to describe the immense value of what he has brought out from the torture chambers of Syria, and to recognize as well those who have aided him in delivering this evidence to the world.

I speak as someone who prosecuted the powerful men responsible for the genocide in Rwanda and for the mass atrocities in Sierra Leone, among the worst crimes of the last half of the 20th century, and as one who recognizes the profound challenges to achieving justice for Syria, for crimes that are without the doubt the worst of this young century.

We know that the way to the International Criminal Court is blocked by Russian and Chinese vetoes in the UN Security Council. We see today a Syrian regime that seems proud of its crimes, a regime now in control of most of that country's territory and unwilling to see its leaders held to account.

But Caesar has brought the world unanswerable evidence, and because of what we have built beginning here at Nuremberg 70 years ago, I believe that he has made justice for Syria inevitable.

In courtroom 600, not far from here, the principle was established that men, not states, not whole peoples, should be held responsible for

mass crimes. Before, if there had been trials for war crimes, it was low-level soldiers who had been in the dock. But here, as Justice Jackson said in his opening for the prosecution “the common sense of mankind required that the law...not stop with the punishment of petty crimes by little people, it must reach men who possess themselves of great power and make deliberate and concerted use of it to set in motion evils which leave no home in the world untouched.”

The crimes in Syria have deeply touched Germany, as millions of men, women and children, half of the population of Syria, have been forced from their communities, and hundreds of thousands have arrived here and found refuge and support. Why have they left their hearth and home, to cross guarded borders and hostile seas? Not because of a war between soldiers, but because it is the innocent civilians who are the prime targets. Syria is a place where one’s son or daughter, on the way to school or work, can be ‘disappeared’ into places of detention, torture, and murder, for who knows what reason—perhaps only because their IDs show that they were born in towns associated with the opposition. It is place where hospitals, ambulances, doctors and nurses are in the cross-hairs for death and destruction. It is a place, where poison gas, which the world banned after the horrors of the Western Front 100 years ago, has been unleashed against the innocent.

But how can the men who are the authors of these crimes be held to account? As one who successfully prosecuted those responsible for the commission of mass atrocities, I know how difficult it is to convict powerful men for the atrocities committed far from their offices and headquarters. To gather evidence for Nuremberg, the four powers had access to the places where the crimes were planned and committed, and as Jackson stated, there was “no count of the indictment that cannot be proved by the books and records” that had been uncovered.

Proving responsibility for the death suffering in the hospitals and homes that were subjected to fire and penetrated by poison, will be difficult without targeting maps, and physical evidence from the scene.

But with Caesar's material, we have what we need, photographic evidence that can be verified by digital metadata of mass crimes in detention facilities there were within the exclusive control of individuals answering to the highest levels of the Syrian regime.

Caesar was working as a police investigator in a military hospital where the bodies of those killed in government custody were taken. He and team of up to ten policemen were tasked with taking four or five photos of each body, and then he was usually the one who downloaded and sorted the photos on computers of the military police service. In mid-2011, the bodies began arriving by 10, 20, 50, even 100 per day. He saw among them people that he knew and who had not been dangerous or violent men. He was deeply disturbed, and wanted to leave, but decided to stay and with great risk, gather this unanswerable evidence.

Over two years, he smuggled the images out of the military hospital on memory sticks, and loaded them on to an external hard-drive, the contents of which he brought out of Syria in August 2013. The images show humans starved and eviscerated, their skin carved with knives and burned by chemical agents, their eyes gauged and bones broken—horrendous acts done to people with the horror of the last hours of their lives still on their faces. His photos show at least 6,700 individual human beings who were tortured to death in the prisons of the Syrian state security services, with the number of the murderous facility marked on each body and on an accompanying white card.

The commanding officers of these facilities, and their bosses at the highest level of the Syrian state now have abundant knowledge of

these crimes, and have done nothing to prevent or punish these horrible acts. Indeed, this intentional suffering and death continues as we speak. Given these leaders' effective control, notice of the crimes, and failure to act, thus under international criminal law, according to the principles of command responsibility that is almost universally accepted, they can be found guilty of murder and torture as war crimes and crimes against humanity--in the same way as if they had personally slashed the flesh, gauged the eyes, inflicted the unbearable pain, and crushed out the lives of these victims.

Yes, it would be best if they were judged in an independent Syrian or international court, and as we know that way is blocked, but other paths to justice are open.

Close to 800 of the victims in Caesar's photos have been identified by their families from headshots, some of which you see today in the Kreis Gallerie. More than 90 of these families have agreed to testify in third countries. Many of the members of these families are in Germany or elsewhere in Europe. If they were European citizens, this could be the basis for criminal jurisdiction, based on the passive personality principle. Some of the perpetrators have come to Europe, and they have been identified and this information shared with law enforcement. They can be tried based on "present in" jurisdiction that exists in most national laws.

Some countries such as Germany have criminal statutes that allow the exercise of universal jurisdiction, which is permitted under international law for crimes like torture that have been recognized to threaten all of humankind, and be prosecutable anywhere without regard to the nationality of the victim or perpetrator, if a State is willing and able. Whether such cases are filed in Germany is at the discretion of the Federal Prosecutor in Karlsruhe. Legal factors weighing in favor of such a prosecution include the absence of any credible prosecutions in other

national or international courts, the presence of witnesses in Germany, and the impact on this country of the hundreds of thousands of Syrian refugees who have been driven to flight by the torture and other atrocities perpetrated by the officers of the Syrian regime.

It is public knowledge that the Federal Prosecutor and police have begun such an investigation based in part on Caesar's evidence, as they have publicly welcomed the filings by victims and survivors in Germany of the Syrian torture—filings made by the European Center for Constitutional and Human Rights in Berlin. Numerous witnesses report that have now been officially interviewed, and a decision on formal indictment can be expected in the near future.

In the meantime, the UN General Assembly, by a vote of 105-15 on 21 December 2016, decided to establish an International, Impartial, and Independent Mechanism for Syria (IIIM). It will collect, consolidate, and preserve evidence and make it available to national, regional, or international courts that now or in the future have jurisdiction. It can be like an “office of the prosecutor” albeit without a specific single court to which it is attached. It can aid criminal cases, like that under active investigation in Germany as well as those elsewhere in Europe based on universal or passive personality jurisdiction. Arrangements have already been made for Caesar's evidence to be available from the IIIM. The Mechanism will also be able to gather and share information about the structure of authority in the prisons where the victims were tortured and killed in order to tie the crimes to specific responsible individuals.

In Syria, horrible crimes have been committed that have caused a humanitarian catastrophe. As fellow humans, we will do what we can to relieve the suffering and provide refuge for those in danger. But if we want to prevent these crimes, we must also invest in justice. With

Caesar's evidence, and other documentation, there can be successful trials in national courts that offer hope to victims and survivors that justice is possible, and that will encourage them to preserve the evidence, and come forward, as has Caesar, to cooperate with national investigators and prosecutors.

This will also send a message to perpetrators that can begin to deter these atrocities in Syria, and increase the chance that citizens who would otherwise take flight will be safe in their homes.

We all have a stake in the struggle. If crimes like those committed in Syria can be committed with impunity, if rules that have been part of international law for a century can be violated, if the principles of Nuremberg can be ignored without consequence, then what will see in the next internal conflict, the next counter-insurgency? Indeed, the crises we face now will be nothing compared to those that we will confront in the future.

So we must take inspiration from the courage of Caesar and his group and support the hard work of justice in holding the most responsible perpetrators to account. Only in that way will the promise of Nuremberg be fulfilled and the innocent everywhere protected from becoming victims of worst crimes known to humankind.