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Thank you for inviting me to talk about the implications for U.S. foreign policy of the human rights commitments our country made after World War II, particularly through our robust support for the Universal Declaration of Human Rights (UDHR). I will talk about this principally through the lens of my recent work on transitional and international justice. But first I would like to offer a few more general reflections that draw on my earlier work some decades ago.

My engagement in human rights began in the 1980s, when I served as Deputy Director of the Lawyers Committee for Human Rights, now called Human Rights First, and as Director of the organization's International Human Rights Program. As Secretary of State Pompeo intimated when he launched this Commission, the 1980s were a seminal time for defining U.S. human rights policy. I believe that period holds important lessons for the issues that are the focus of this session.

The decade's early years saw a robust, at times acrimonious, debate about the place of human rights in U.S. foreign policy. Remarkably in light of its intensity, that debate soon resolved into a productive, bipartisan consensus in support of advancing human rights.

The new consensus proved consequential in ways that help clarify what is at stake today. President Reagan, who began his first term signaling that he would roll back the human rights policy instituted by his predecessor, would soon help advance democratic transitions in the Philippines, Chile, Haiti, the former Soviet Union, and elsewhere. Through my work at the Lawyers Committee, I saw up close how the U.S. government's support for human rights could transform the daily lives of women, children, marginalized communities, and others for whom each day had brought grave threats and who now enjoyed a greater measure of freedom and security.

Several factors account for the consensus that emerged in the mid-1980s, including the bipartisan efforts of an engaged Congress. But it is fair to say that the Reagan administration discovered a fundamental alignment between U.S. security interests and the pursuit of human rights, even in countries that

are strategic allies and where national security interests are on the line.

That commitment, and the underlying consensus forged in the 1980s, are now under enormous stress. And that is cause for deep concern in light of the singular importance of U.S. leadership in sustaining global respect for human rights and, conversely, the grave harms that multiply when the United States signals indifference, ambivalence, or worse.

Under the best of circumstances, transforming a general human rights commitment into effective policy is really, really hard. But we know this much: What the U.S. government *says* about human rights matters. In an article I shared with members of this Commission in advance of my testimony, I described several instances in which even carefully measured words of support for human rights by past U.S. presidents inspired dissidents and democracy activists abroad, bolstering their resolve to demand respect for basic rights in repressive countries. And of course it is those citizens who will play the central role in ensuring their governments respect human rights over the longer term, provided they enjoy enough freedom and security to do so.

And here, it is necessary to speak candidly about the challenges we face today. Too often, what our government *says* about human rights sends a perilous message. When senior U.S. officials denigrate independent media as purveyors of fake news, they embolden dictators who have no compunction about placing a target on the backs of journalists. When the president tells leaders of murderous regimes they're doing a great job, he tears the fragile fabric of a global commitment to human rights, so painstakingly woven in the wake of the Holocaust. And when he threatens to bomb antiquities, the uniquely influential pulpit of our government is used to broadcast, in effect, that sacred norms that keep barbarism at bay are now up for grabs. Thankfully, in the face of comments to this effect earlier this week, senior military officials immediately made clear that such actions would be a war crime and would not be taken.

In this setting, I welcomed Secretary of State Pompeo's call, when he launched this Commission, to once again prioritize human rights in our foreign policy. And I appreciated his recognition that the UDHR "ended forever the notion that nations could abuse their citizens without attracting notice or repercussions."

But I must tell you I was concerned when he said he established this Commission to "review," "revisit," and "reexamine[e]" the

basic precepts underlying universal human rights. Universal assent to those principles through adoption of the UDHR in 1948 was gained at an unbearable cost, measured in the lives of millions whom the Nazis exterminated solely *because of who they were*—above all Jews, but also gay people, Roma and Sinti, and persons with disabilities—and because of what they believed. Even as the world was shaken to its core by Nazi atrocities, and therefore willing to rewrite core precepts of international law, consensus about human rights was hardly assured.

This Commission can make an invaluable contribution if it issues a clarion call to renew and reinvigorate our historic commitment to the principles inscribed in the UDHR—in the words of its preamble, to “the inherent dignity and ... equal and inalienable rights of all members of the human family,” *without discrimination of any kind*. Particularly now, as myriad studies chart an alarming surge in hate crimes in *this* country as well as others, it is urgently important to affirm unequivocally that all members of the human family, especially vulnerable persons now targeted by vicious acts of violence, such as LGBTQI individuals and migrants, are entitled to equal rights and protection of law, as well as an opportunity to fully realize their human potential.

It is, moreover, no less important today than it was in 1948 to affirm our commitment to *all* the rights enshrined in the UDHR, including economic and social rights. The United States rightly favored including these rights in the Declaration, as Eleanor Roosevelt noted, because “no personal liberty could exist without economic security and independence. Men in need were not free men.”

I want to speak to another point made by Secretary Pompeo when he announced this Commission’s creation—that “many human rights advocates” have appealed to “contrived rights for political advantage” and “have embraced and even accelerated the proliferation of rights claims,” as if to suggest that human rights *advocacy* is one of the serious threats to human rights today.

Let us be clear: The assertion of “new” claims is *essential* to realizing rights inherent in our humanity. The suffragettes assuredly contributed to a “proliferation of rights claims” when they demanded the right to vote. The architects of the UDHR wisely saw that our understanding of the rights set forth in the Declaration would evolve, just as our understanding of inherent rights evolved in this country when we belatedly recognized the grotesque inhumanity of slavery.

Inevitably, too, we have gained a deeper understanding of structural gaps in human rights protection, particularly in today's globalized economy, than the architects of the UDHR could have possessed. To cite one example, the Guiding Principles on Business and Human Rights, which were endorsed by the UN Human Rights Council in 2011, recognize the profound impact business enterprises often have on human rights and offer a well-reasoned framework for addressing the regulatory gap that facilitates harmful impacts by business operations.

Finally on this point, there is a real risk that expressing concern about “proliferating claims of rights” by human rights advocates can send a signal, however unintended, that compounds a rising threat. When governments in every region of the world are clamping down on civic space, it is more important than ever for the U.S. government to stand squarely *with* these advocates, to prioritize their protection, and to work creatively to counter the threats they face.

Let me turn now to an area I was urged to address—U.S. policy with respect to countries that have seen the wholesale collapse of safeguards against atrocious behavior, and now seek to create or restore robust measures of protection and repair. I will use the phrase “transitional justice” as shorthand for the measures many

countries have taken to try to achieve these goals, often with U.S. support.

It is difficult to offer highly specific recommendations, as one of the lessons learned from extensive experience is that it is misguided even to suggest there are one-size-fits-all policy prescriptions for countries facing this set of challenges. But we have learned useful lessons, often the hard way. Let me briefly note seven takeaways in this area, and then conclude with a more general point about how the United States can enhance its tools for addressing gross violations of human rights.

First, when a society experiences the wholesale collapse of human rights protection—think of Bosnia-Herzegovina in the 1990s—reconstruction and repair requires a wide range of interventions. This may seem obvious, but when the field of transitional justice emerged, many of us placed too much emphasis on the salutary effects of one or another mechanism, such as truth commissions or criminal trials. Too often, a narrow emphasis on one measure diverted attention from others that were desperately necessary. Although we now understand the need for comprehensive measures of redress and repair, donor states still tend to focus on a narrow band of programmatic assistance.

Second—and here I will speak to criminal prosecutions in particular—while human rights trials cannot do the hard work of social reconstruction, they *can* meet goals deeply important in their own right. These should be clearly defined at the outset for a number of reasons, including managing expectations about what trials can achieve and, just as important, what they cannot.

The words of a Serbian civil society activist whom I interviewed for my book *Some Kind of Justice* vividly convey why this is so important. Describing misplaced expectations of the International Criminal Tribunal for the former Yugoslavia, or ICTY, she told me: “We attributed all these *amazing* powers to the court, like it will ... establish the whole truth about [the] conflict ... It will punish everyone. It will contribute to reconciliation. It will *be* reconciliation.” In a similar vein, a transitional justice professional in Bosnia told me he and others once thought “that the judicial paradigm would do everything, would do the job of dealing with the past—that ... trials will have a positive impact on other activities.” Years later, civil society advocates who had supported the ICTY (and still do) realized they needed to broaden their focus and make up for lost time, as so much else remained to be done to ensure their country’s moral, legal, and social repair.

What, then, can we reasonably expect such trials to accomplish? First, the fact that newly-restored democracies in Argentina and elsewhere undertook prosecutions of past atrocities signaled the new government's normative commitment to basic human values that had been trampled wholesale by a prior regime. More tangibly, recent social science research has identified a positive correlation between human rights prosecutions and a reduction in gross violations of human rights over time—no small achievement in countries that recently endured systematic torture, forced disappearances, and extra-judicial executions.

Less tangibly but of crucial importance, human rights trials have often brought a precious measure of moral satisfaction to those who survived unspeakable crimes. Bosnian survivors whom I have interviewed about the ICTY typically speak at length about their disappointments in its work, but when I ask whether, in light of what they have described, they believe it was a mistake to create the court, they almost invariably respond, “Absolutely not! Without the Tribunal we would not have gotten justice!” Survivors of Khmer Rouge atrocities have similarly expressed profound satisfaction in the justice they belatedly (and imperfectly) received from the Extraordinary Chambers in the Courts of Cambodia, which would not have been created or sustained without strong U.S. leadership.

Third, it is abundantly clear that, in the aftermath of atrocious crimes, the work needed to prevent a recurrence may take a very long time. Correspondingly, the need for robust external engagement may be substantially longer than we are inclined to recognize.

We have often invested in post-conflict initiatives that come with an unrealistic expiration date. Initially, for example, we and other donor states planned to support the inclusion of foreign judges in specialized chambers of a new Bosnian state court for only a five-year period. Yet it became abundantly clear a longer commitment was needed.

Much as we may wish to avoid the proverbial dependency syndrome, premature withdrawal of support can have serious consequences. In a recent study, I described the crucial role of U.S. and European Union policy interventions in postwar Bosnia and Serbia. Although I was not expecting to see this pattern, I found distinctly positive trends in both countries during periods of concerted external engagement, and a reversion to deeply worrying patterns—such as a sharp rise in interethnic tensions—during periods of diminished EU and U.S. engagement.

The United States apparently acted on this general point when it appointed a special representative for the Western Balkans last year. While I am not familiar with the details of his work, his appointment seems to signify U.S. recognition that our work in this volatile region is hardly finished.

Fourth, the ICTY provides a model of how international and hybrid tribunals supported by the United States can be designed with a view to strengthening domestic capacity. Although the ICTY was not designed to do this initially, it eventually catalyzed domestic war crimes prosecutions that almost certainly would not have happened without it. How that happened would take too long to describe here, but let me briefly mention two discrete initiatives the ICTY Prosecutor launched.

With EU funding, the Office of the Prosecutor, or OTP, brought local professionals from countries in the former Yugoslavia to The Hague, where they were integrated into the work of the OTP. When these individuals return to their countries, they bring a wealth of sophisticated expertise to their rule-of-law work at home. The OTP also developed a robust program for sharing evidence with local prosecutors. These and other efforts help answer a question raised by the work of international criminal courts: How can a finite number of trials, conducted outside a

national legal system, have an enduring impact in countries recently visited by mass atrocities?

Fifth, there is ample room for improvement in the performance of all of these tribunals that are still operating. In particular, needlessly long proceedings are not just costly and inefficient; they diminish the reparative potential of justice for those who survived crimes of surpassing cruelty.

Sixth, despite progress in ensuring that international tribunals, domestic courts, and other post-conflict processes address sexual violence, we must step up our efforts to ensure these violations receive the attention they warrant. Even tribunals whose prosecutors have prioritized crimes of sexual violence have, after mounting prosecutions that showcase such crimes, reverted to under-investigating and under-charging these offenses. Further to my earlier point about the need for a comprehensive approach to social repair in the wake of mass atrocities, moreover, it is vitally important to ensure psycho-social support for survivors of sexual violence and other traumatizing crimes.

Seventh, we must continue to build on previous efforts to ensure the U.S. government responds nimbly to early warning signs of potential atrocities. We now know a lot about precursors to mass

atrocities, and we also know it is easier to address their root causes before violence erupts than to interrupt violence we failed to prevent. Sometimes, interventions as simple as a timely effort to mediate local tensions can interrupt the trajectory of a potentially lethal conflict.

To ensure a timely response to early warning signs, we would do well to continue longstanding efforts to integrate a human rights perspective throughout the foreign policy bureaucracy, and to tap the deep expertise of the Bureau of Democracy, Human Rights and Labor (DRL) and other specialized offices in those efforts. To the first point, the entire foreign policy bureaucracy needs to be literate in human rights—so that, for example, foreign service officers posted abroad can recognize early warning signs and regional bureaus know when they need to bring DRL and other thematic offices into the policy mix.

Finally, we might do well to review the tools available to incentivize other governments to respect human rights when saying the right words is not enough to inspire change—and all too often, words are not enough. Some U.S. laws, like those linking trade benefits to respect for labor rights, have incentivized improved respect for certain rights. But we can do better, perhaps by comparing our approach to that of the EU, which links certain

trade benefits to compliance with a more comprehensive set of internationally-recognized human rights.

In closing, the United States' historic commitment to the ideal of equality and inalienable rights has inspired countless people, many of whom willingly take grave risks to secure these rights. In this, our strength has derived from honoring our human rights commitments at home and, looking beyond our shores, insisting on *every* person's equal dignity, inherent worth, and right to determine their own destinies.