UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMERICAN FRIENDS SERVICE COMMITTEE, CENTER FOR CONSTITUTIONAL RIGHTS, HUMAN RIGHTS WATCH, and OPEN SOCIETY INSTITUTE,

Plaintiffs,

v.

DONALD J. TRUMP, in his official capacity as President of the United States; UNITED STATES DEPARTMENT OF STATE; MARCO A. RUBIO, in his official capacity as Secretary of State; UNITED STATES DEPARTMENT OF THE TREASURY; SCOTT K. H. BESSENT, in his official capacity as Secretary of the Treasury;UNITED STATES DEPARTMENT OF JUSTICE; TODD BLANCHE, in his official capacity as Attorney General; OFFICE OF FOREIGN ASSETS CONTROL; and BRADLEY T. SMITH, in his official capacity as Director of the Office of Foreign Assets Control,

Defendants.

Civil Action No. 26-cv-06830-JMF

EXPERT DECLARATION OF HAROLD HONGJU KOH IN SUPPORT OF PLAINTIFFS

I, Harold Hongju Koh, declare as follows:

1. I am Sterling Professor of International Law (2013–present) and the former Dean (2004–09) of Yale Law School in New Haven, Connecticut, where I have taught since 1985. After clerking for a U.S. Supreme Court Justice and a judge on the U.S. Court of Appeals for the D.C. Circuit, I subsequently worked for nearly ten years across four presidential administrations of both political parties, in two as a presidential nominee appointed by the President and confirmed by the Senate. From 2009 to 2013, I served as the Legal Adviser to the U.S. State Department. As Legal Adviser, I also advised on the legality of U.S. sanctions. From 1998 to 2001, I served as U.S. Assistant Secretary of State for Democracy, Human Rights and Labor. In both State Department capacities, I helped oversee the United States' relationship with the institutions of international criminal justice, including the International Criminal Court (ICC). In 2021, I returned to the Office of the Legal Adviser as Senior Advisor, where as senior political appointee, I helped manage the relationship between the United States and the ICC and participated in the Biden Administration's decision to lift the first Trump Administration's Executive Order imposing sanctions on ICC officials described in para. 30, *infra*.

2. Executive Order 14,203, *Imposing Sanctions on the International Criminal Court*, 90 Fed. Reg. 9369 ("**E.O. 14,203**" or "**E.O.**") declares a national emergency and states, in relevant part, that any property or property interests of designated persons located in or coming into the United States, or within the control of any United States person, are "blocked and may not be transferred, paid, exported, withdrawn, or otherwise dealt in"; that the entry of designated individuals, their immediate family members, and any individual determined by the Secretary of State to be employed by or acting as an agent of the ICC is suspended; and that any transaction

that "evades or avoids, has the purpose of evading or avoiding, causes a violation of, or attempts to violate" any of the order's prohibitions is also prohibited.[1] Individuals and entities designated under E.O. 14,203 currently include nine ICC judges, the former ICC Prosecutor, the two Deputy Prosecutors, a senior trial lawyer in the Office of the Prosecutor, the UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967 (Francesca Albanese of Italy), and three NGOs who, as part of their independent advocacy, have occasionally made submissions to the ICC concerning its investigations: Al-Haq, Al Mezan Center for Human Rights, and the Palestinian Centre for Human Rights.

I. EXPERIENCE AND PROFESSIONAL QUALIFICATIONS

3. During the past 45 years, I have developed expertise as a government official, professor, scholar, and lawyer in the areas of public and private international law, and U.S. foreign and national security policy. Of most relevance to the present declaration, I am an expert in the fields of public international law, international human rights, and international criminal law. I am also an expert in foreign relations and national security law, private international law, constitutional law, and civil procedure. In both my private and governmental capacities, I have testified before Congress on numerous occasions on a broad array of issues, ranging from U.S. national security policy, to human rights policy, to the wisdom and lawfulness of proposed foreign policy actions, to refugee law and policy.

a. *Government Service*. From 2009–13, I served as Legal Adviser of the U.S. Department of State in the Obama Administration, and I returned to that office as the senior politically appointed lawyer from January to October 2021 at the start of the Biden Administration. In both of these capacities, I

[1] Exec. Order 14,203, 90 Fed. Reg. 9369-9371 (Feb. 12, 2025).

led an office of more than 200 lawyers who provided advice on all legal issues, domestic and international, arising in the course of the Department's work, including assisting Department principals and policy officers in formulating and implementing the foreign policies of the United States, and promoting adherence to, and development of, international law and its institutions as a fundamental element of those policies. From 1998–2001, I served as Assistant Secretary of State for Democracy, Human Rights, and Labor in the Clinton Administration. In all my State Department roles, I played a central role in managing the United States' relationship with the international system of global criminal justice. I also served from 1983–85 as an Attorney-Adviser at the Office of Legal Counsel at the U.S. Department of Justice during the Reagan Administration, from 1981–82 as a law clerk to Justice Harry A. Blackmun of the U.S. Supreme Court, and from 1980–81 as a law clerk to Judge Malcolm Richard Wilkey of the U.S. Court of Appeals for the D.C. Circuit.

b. *Teaching*. I teach courses in international law, transnational law, international human rights law, foreign affairs and the Constitution, national security law, and civil procedure at Yale Law School in New Haven, Connecticut. At Yale, where I have taught since 1985, I served as Dean from 2004-09, and have been since 2013, Sterling Professor of International Law, the highest professorial rank recognized by Yale University.[2] In the course

[2] At Yale Law School, I previously served as Associate Professor of Law from 1985–90, Professor of Law from 1990–93, Gerard C. and Bernice Latrobe Smith Professor of International Law from 1993–2009, and Martin R. Flug '55 Professor of International Law (on leave) from 2009–13.

of those duties, I regularly teach courses and clinics, give lectures, and supervise research papers and clinical projects on foreign relations and national security law. I have also delivered named lectures, taught courses and seminars, and conducted workshops on international law and related subjects at dozens of universities around the country and the world.[3] I have also served regularly as a faculty member on international and foreign affairs law at the Federal Judicial Center, the NYU-Columbia Law Judges Colloquium, and the Aspen Institute Judicial Seminar.

c. *Editorial Boards*. I served for more than two decades each on the Board of Editors of the American Journal of International Law (of which I continue to be an Honorary Editor) and the West Academic/Foundation Press Casebook Series, as well as on the Editorial Board of Human Rights Quarterly.

d. *Publications*. I am the author of more than 275 articles and book chapters on international law, human rights, constitutional law, civil procedure, and other legal topics. I am the author, editor, or co-editor of ten books on national security and foreign affairs law, international law, and international human rights.[4]

---

[3] In particular, I have served as a visiting professor and lecturer at Oxford University (where I am an Honorary Fellow of Magdalen College, Oxford) and Cambridge University (2018–20). I served as Herman Phleger Visiting Professor of Law at Stanford Law School in 2025, and I have been a visiting professor of law at a number of law schools, including Columbia University, Georgetown University, the Hague Academy of International Law, the University of Hawaii, New York University, the University of Toronto Faculty of Law, Fordham University (Bacon-Kilkenny Distinguished Professor), the George Washington University-Oxford Joint Program in International Human Rights Law, and the Center for Transnational Legal Studies in London.

[4] These include *The National Security Constitution in the 21st Century* (Yale 2024); *The Trump Administration and International Law* (Oxford 2019 and second ed. forthcoming 2027); *Transnational Business Problems* (Foundation 7th ed. 2024) (with Detlev Vagts, William Dodge, & Hannah Buxbaum); *Transnational Litigation in United States*

e. *Relevant Writings*. I have written numerous speeches and articles relating to the subject of this declaration. Those publications include the two National Security Constitution books cited in note 4 *supra*; *The Trump Administration and International Law* on international law issues; and on the subject of the United States' relationship to the global criminal justice system, "International Criminal Justice 5.0," 38 *Yale J. Int'l Law* 525 (2013), which "represent[ed] the cleared views of the United States Government as of January 22, 2013, the last day I served as Legal Adviser to the U.S. Department of State, a position I held since 2009." *Id*. at 525 n.*.

f. *Professional Activities*. I have served as counsel, co-counsel, or legal adviser for parties or amici in dozens of cases involving human rights and international law before federal district and circuit courts and the United States Supreme Court. In particular, I have served as arguing counsel of record to Haitian and Cuban refugees before the U.S. Supreme Court, see *Sale v. Haitian Ctrs. Council*, 509 U.S. 155 (1993); *Cuban American Bar Ass'n v. Christopher*, 43 F.3d 1412 (11th Cir. 1995), *cert. denied*, 515 U.S. 1142 (1995); and in my current capacity as co-director of the Peter Gruber Rule of Law Clinic at Yale Law School.[5] I have also regularly appeared

Courts (Foundation 2008); *Foundations of International Law and Politics* (Foundation 2004; Oxford 2006) (with Oona Hathaway); *Deliberative Democracy and Human Rights* (Yale 1999) (with Ronald C. Slye); *Transnational Legal Problems* (Foundation 4th ed. 1994) (with Henry J. Steiner & Detlev Vagts); *International Business Transactions in United States Courts* (Martinus Nijhoff 1998); and *The National Security Constitution: Sharing Power After the Iran-Contra Affair* (Yale 1990) (awarded the Richard E. Neustadt Prize for the best book on the American Presidency in that year by the American Political Science Association).

[5] These include amicus curiae briefs in: *Barbara v. Trump*, No. 25-1861 (2026); *Trump v. Slaughter*, No. 25-5261 (2026); *Learning Res. v. Trump*, 146 S. Ct. 628 (2026); *Trump v. Mazars* USA, LLP, 140 S. Ct. 2019 (2020); *Trump v. Deutsche Bank AG*, 140 S. Ct. 660 (2020) (mem.); *Dep't of Homeland Sec. v. Regents of the Univ. of Cal.*, 591 U.S. 1 (2020); *Trump v. Hawaii*, 585 U.S. 667 (2018); *Medellin v. Texas*, 552 U.S. 491 (2008); *Sanchez-Llamas v. Oregon*,

before international courts and tribunals as an international lawyer on behalf of the United States, other governments, and organizations.[6]

g. *Professional Recognition*. I have received eighteen honorary degrees, two law school medals, and dozens of awards and recognitions from various bar and nongovernmental organizations, including the 2024 Robert A. Katzmann Award for Academic Excellence from the Burton Awards; the 2023 Raphael Lemkin Rule of Law Guardian Medal from Duke Law School, the 2003 Wolfgang Friedmann Award from Columbia Law School; and the 2004 Louis B. Sohn Award from the American Bar Association Section on International Law for lifetime achievement in law. I am Counselor (previously Co-Chair) of the American Law Institute's ongoing work on the Restatement (Fourth) of the Foreign Relations Law of the United States, a Fellow of the American Academy of Arts and Sciences and the American Philosophical Society, a Member of the Council of the

548 U.S. 331 (2006); *Medellin v. Dretke*, 544 U.S. 660 (2005), cert. dismissed as improvidently granted; *Roper v. Simmons* 543 U.S. 551 (2005); *Atkins v. Virginia*, 536 U.S. 304 (2002); and *McCarver v. North Carolina*, 533 U.S. 941 (2001), *cert. dismissed,* 533 U.S. 975 (2001).

[6] *E.g*., Counsel for Canada, Sweden, United Kingdom, and Ukraine, in *Aerial Incident of 8 January 2020* (Can., Swed., Ukr. & U.K. v. Iran), I.C.J. (2026); Counsel for International Trade Union Confederation on *Right to Strike Under ILO Convention No. 87*, Request for Advisory Opinion, 2026 I.C.J. (May 21); Counsel for Ukraine in *Dispute Concerning Coastal State Rights in the Black Sea, Sea of Azov, and Kerch Strait* (Ukr. v. Russ.), No. 2017-06, Merits (P.C.A. April 2026); Counsel for Ukraine in *Allegations of Genocide Under the Convention on the Prevention and Punishment of the Crime of Genocide* (Ukr. v. Russ.), Provisional Measures, 2022 I.C.J. Rep. (Mar. 16); Counsel for Ukraine in *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination* (Ukr. v. Russ.), Preliminary Objections, 2019 I.C.J. Rep. (Nov. 8); Counsel for Republic of Chile in *Obligation to Negotiate Access to the Pacific Ocean* (Bol. v. Chile), Judgment, 2018 I.C.J. Rep. (Oct. 1); Counsel for United States in *Accordance with International Law of the Unilateral Declaration of Independence in Respect of Kosovo*, Advisory Opinion, 2010 I.C.J. 423 (July 22); Counsel for Uruguay in *Philip Morris Brands Sarl v. Oriental Republic of Uruguay*, ICSID Case No. ARB/10/7, Award (July 8, 2016); Counsel for the United States in *Grand River Enterprises Six Nations, Ltd. v. United States*, UNCITRAL, Award (Jan. 12, 2011).

American Law Institute (since 2007), and Honorary Counsellor of the American Society of International Law.

II. SCOPE OF WORK AND MATERIALS REVIEWED

4. *Expert Witness Fee*. I am receiving no financial compensation for preparing this expert declaration.

5. *Materials Reviewed*. In preparing this declaration, I have reviewed the following case-specific documents:

i. Plaintiffs' Complaint;

ii. Executive Order 14, 203, together with its Annex designating Karim Khan, then-Prosecutor of the ICC;

iii. International Criminal Court-Related Sanctions Regulations implementing E.O. 14,203 and published on July 1, 2025 by the Office of Foreign Assets Control (OFAC);[7]

iv. Press release issued by the U.S. State Department on June 5, 2025 designating four ICC judges, Solomy Balungi Bossa, Luz del Carmen Ibáñez Carranza, Reine Adelaide Sophie Alapini-Gansou, and Beti Hohler, under E.O. 14,203;[8]

v. Press release issued by the U.S. State Department on July 9, 2025 designating Francesca Paola Albanese, the UN Human Rights

---

[7] International Criminal Court-Related Sanctions Regulations, 31 C.F.R. pt. 528 (2025).

[8] Press Release, U.S. Dep't of State, Imposing Sanctions in Response to the ICC's Illegitimate Actions Targeting the United States and Israel (June 5, 2025), https://www.state.gov/releases/2025/06/imposing-sanctions-in-response-to-the-iccs-illegitimate-actions-targeting-the-united-states-and-israel.

Council Special Rapporteur for the Palestinian Territories, under E.O. 14,203;[9]

vi. Press release issued by the U.S. State Department on August 20, 2025 designating two ICC judges, Kimberly Prost, and Nicolas Guillou, and both ICC Deputy Prosecutors, Nazhat Shameem Khan, and Mame Mandiaye Niang, under E.O. 14,203;[10]

vii. Press release issued by the U.S. State Department on September 4, 2025 designating three foreign NGOs — Al-Haq, Al Mezan Center for Human Rights, and the Palestinian Centre for Human Rights under E.O. 14,203;[11]

viii. Press release issued by the U.S. State Department on December 18, 2025 designating two ICC judges, Gocha Lordkipanidze and Erdenebalsuren Damdin under E.O. 14,203.[12]

---

[9] Press Release, U.S. Dep't of State, Sanctioning Lawfare that Targets U.S. and Israeli Persons (July 9, 2025), https://www.state.gov/releases/office-of-the-spokesperson/2025/07/sanctioning-lawfare-that-targets-u-s-and-israeli-persons.

[10] Press Release, U.S. Dep't of State, Imposing Further Sanctions in Response to the ICC's Ongoing Threat to Americans and Israelis (Aug. 20, 2025), https://www.state.gov/releases/office-of-the-spokesperson/2025/08/imposing-further-sanctions-in-response-to-the-iccs-ongoing-threat-to-americans-and-israelis-2.

[11] Press Release, U.S. Dep't of State, Sanctioning Foreign NGOs Directly Engaged in ICC's Illegitimate Targeting of Israel (Sept. 4, 2025), https://www.state.gov/releases/2025/09/sanctioning-foreign-ngos-directly-engaged-in-iccs-illegitimate-targeting-of-israel.

[12] Press Release, U.S. Dep't of State, Sanctioning ICC Judges Directly Engaged in the Illegitimate Targeting of Israel (Dec. 18, 2025), https://www.state.gov/releases/2025/12/sanctioning-icc-judges-directly-engaged-in-the-illegitimate-targeting-of-israel.

ix. Press release issued by the U.S. State Department on August 18, 2026 designating the President of the ICC, Tomoko Akane, and ICC Senior Trial Lawyer, Abdoulaye Seye under E.O. 14,203.[13]

6. *Question Presented*. Counsel for Plaintiffs have asked me to opine as an expert witness on the following question: "**Does Executive Order 14,203, its implementing regulations, and the designations thereunder violate international law?**"

7. *Answer*. In my professional opinion, the answer to that question is **YES**.

8. The E.O. 14,203, its implementing regulations, and the designations thereunder violate international law. Since the end of the Second World War, the United States has been a driving force behind the creation of the norms and institutions that shape the international judicial system as we know it today. For nearly eight decades, U.S. foreign policy—promoted by both the executive and legislative branches—has advanced norms of international criminal justice that support human rights, the ICC and other institutions of international criminal justice, accountability for international crimes, and peaceful international dispute settlement. E.O. 14,203 runs contrary to that long history of past U.S. practice.

9. In particular, imposing sanctions targeting an international organization like the ICC, its judges, prosecutors, and lawyers and civil society contributing to its work, places the United States in direct violation of many of its international law obligations. Those violations are not incidental, but rather, predictable consequences of an executive action aimed at disrupting the international legal order that the United States helped to design, beginning with the Nuremberg and Tokyo tribunals and the founding of the United Nations.

---

[13] Press Release, U.S. Dep't of State, Advancing the United States' Campaign to Address the Threat Posed by the International Criminal Court (Aug. 18, 2026), https://www.state.gov/releases/office-of-the-spokesperson/2026/08/advancing-the-united-states-campaign-to-address-the-threat-posed-by-the-international-criminal-court.

10. Imposing sanctions upon international judges and lawyers for lawfully doing the jobs they were assigned by treaty squarely violates the object and purpose of the Rome Statute, which President Clinton signed in 2000, and upon which his signature remains. *See* para. 18 *infra*. Moreover, just as E.O. 14,203 runs contrary to past U.S. practice with regard to the international criminal justice system, it has also inevitably generated an unprecedented cascade of other legal violations which are enumerated below. These include violations of the United States' obligations under treaty and customary international law:

a. To cooperate with the United Nations and abide by Security Council decisions;

b. To respect the privileges and immunities of the UN and other international organizations like the ICC, as expressed in the UN Charter and the 1946 Convention on the Privileges and Immunities of the United Nations;

c. To prevent and punish international crimes, and refrain from interfering in other States' exercise of their right and duty to do the same; and

d. To respect the independence of the judiciary and ensure that judicial proceedings are free from political interference in order to preserve the international human right to a fair trial.

III. BACKGROUND OF THE U.S. PARTICIPATION IN THE INTERNATIONAL CRIMINAL JUSTICE SYSTEM, INCLUDING THE INTERNATIONAL CRIMINAL COURT

A. The Origins of the International Criminal Justice System

11. *The UN System*. For more than eight decades, the United States has maintained a longstanding commitment to international criminal justice as part of its broader commitment to the United Nations system. Following the atrocities committed during World War II, the United States, along with fifty other countries, signed and ratified the UN Charter, which now has 193 States

Parties. The stated goals of the UN Charter are "to save succeeding generations from the scourge of war," "to reaffirm faith in fundamental human rights," and "to establish conditions under which justice and respect for the obligations arising from treaties and other sources of international law can be maintained." UN Charter pmbl.

12. *International Criminal Justice*. Since the end of World War II, the United States has been a central architect and supporter of the international criminal justice system as part of its general commitment to international law and justice.[14] From the creation of the United Nations War Crimes Commission in 1943 through the Nuremberg and Tokyo tribunals, U.S. officials consistently pressed the view that atrocity crimes should be addressed through law rather than vengeance, and that individuals could be held criminally responsible under international law.[15] This U.S. policy inaugurated the era of modern international criminal law and created the template for later tribunals and the permanent standing International Criminal Court (ICC), discussed in paras. 15-18 *infra*. The United States has demonstrated an ongoing commitment to bringing international criminals to justice: from its decisions to supply prosecutors and an American judge at Nuremberg and Tokyo; to its strong advocacy for and participation in the successful ad hoc international criminal tribunals for the former Yugoslavia and Rwanda in the 1990s; to its crucial role in drafting the Rome Statute in the late 1990s; and through the support it has given to ICC prosecutions in the years since.

13. *Nuremberg*. The United States led the creation of the International Military Tribunal (IMT) at Nuremberg, the first truly international criminal court, established by the

[14] *See generally* Harold Hongju Koh, *International Criminal Justice 5.0*, 38 YALE J. INT'L L. 525 (2013).

[15] Benjamin B. Ferencz, *International Criminal Courts: The Legacy of Nuremberg*, 10 PACE INT'L L. Rev. 203 (1998).

London Charter of August 8, 1945.[16] After emerging from World War II as the preeminent world power, the United States became the decisive force persuading the Allied powers to pursue justice through an international tribunal. The U.S. supplied the tribunal's conceptual architecture and gave the IMT its key institutional resources, funding, procedures, and personnel.[17] Chief among the U.S. officials who made the Nuremberg IMT possible were the United States Judge and former U.S. Attorney General Francis Biddle and Justice Robert H. Jackson, who took leave from the United States Supreme Court to serve as U.S. Chief Counsel for the Prosecution of Axis war criminals. Justice Jackson famously articulated the foundational international law principle of reciprocity: "[w]e are not prepared to lay down a rule of criminal conduct against others *which we would not be willing to have invoked against us*."[18] Thus, the longstanding policy has been that the United States will support fair and even-handed international criminal adjudication, even in cases where doing so might complicate U.S. foreign policy. This principle has since become a touchstone for U.S. foreign policy toward international criminal justice institutions.

14. *Tokyo*. Similarly, the United States supported the International Military Tribunal for the Far East in Tokyo (IMTFE). From May 1946 to November 1948, the IMTFE prosecuted twenty-eight Japanese military and government leaders for war crimes, aggression, crimes against humanity, and crimes against peace. It found twenty-five defendants guilty and sentenced seven defendants to death, including former Prime Minister Hideki Tojo, for their international crimes

[16] *See* Agreement for the Prosecution and Punishment of the Major War Criminals of the European Axis, Aug. 8, 1945, 59 Stat. 1544, 82 U.N.T.S. 279.

[17] The Nuremberg Principles were later codified by the United Nations General Assembly in the 1950 "Principles of International Law Recognized in the Charter of the Nuremberg Tribunal and in the Judgment of the Tribunal." Int'l L. Comm'n, Rep. on the Work of Its Second Session, at 11-14, U.N. DOC. A/1316 (1950).

[18] U.S. Dep't of State, Dept. State Pub. No. 3880, 1945 (1949) (emphasis added).

during World War II.[19] Once again, the Chief Prosecutor was an American, Joseph B. Keenan. The tribunal consisted of judges from eleven nations, including two Americans: John P. Higgins, Chief Justice of the Massachusetts Superior Court, who resigned in June 1946, and his replacement, Major General Myron C. Cramer.

15. *International Courts*. The Nuremberg and Tokyo tribunals formed part of a broader post-war project, led by the United States, of constructing legal mechanisms to prevent and remedy grave international wrongs, and to reaffirm that international criminals should not be summarily executed. Instead, criminal courts could and should be the appropriate fora for holding those individuals responsible for international crimes. The two IMTs were established concurrently with the principal judicial organ of the United Nations, the International Court of Justice (ICJ), and a series of landmark human rights and humanitarian law instruments adopted during the late 1940s and 1950s.

16. *International Humanitarian and Human Rights Law*. Scholars and practitioners trace a direct line from the Nuremberg and Tokyo Tribunals to the Genocide Convention of 1948, the Universal Declaration of Human Rights of 1948, and the four Geneva Conventions of 1949, all of which were negotiated and adopted within a decade of the war's end and all of which enjoyed active U.S. participation and adoption.[20] The 1948 Genocide Convention defines genocide as a prohibited crime under international law, during both war and peace, and legally binds States Parties to prevent and punish acts committed with the intent to destroy national, ethnical, racial, or religious groups in whole and in part, including by killing, causing serious harm, and preventing

[19] *See generally* GARY J. BASS, JUDGMENT AT TOKYO: WORLD WAR II ON TRIAL AND THE MAKING OF MODERN ASIA (2023).

[20] *See* Theodor Meron, *The Geneva Conventions and Public International Law*, 91 INT'L R. RED CROSS 619 (2009).

births.[21] The Universal Declaration of Human Rights (UDHR), adopted by the UN in 1948, sets out fundamental rights and freedoms for all people regardless of race, gender, or religion and became the global blueprint for international treaties protecting human dignity, particularly the International Covenant on Civil and Political Rights (ICCPR)[22] and the International Covenant on Economic, Social and Cultural Rights (ICESCR), both adopted in 1966.[23] The four Geneva Conventions of 1949 laid the foundations for modern international humanitarian law and the law of armed conflict, protecting people who are not or are no longer taking part in hostilities during armed conflict.[24] They mandate humane treatment, forbid torture or murder, and ensure medical care for the wounded, sick, and shipwrecked. The United States is a party to the aforementioned treaties and conventions, which are also widely recognized as reflective of customary international law.

B. The Ad Hoc Tribunals

17. For roughly four decades after Nuremberg and Tokyo, the development of international criminal institutions largely stalled, due in significant part to Cold War politics. But in the 1990s, the United States became instrumental in the UN Security Council's creation and operation, under Chapter VII of the UN Charter, of the International Criminal Tribunal for the former Yugoslavia (ICTY) in 1993 and the International Criminal Tribunal for Rwanda (ICTR) in

[21] Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277.

[22] International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

[23] International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

[24] Geneva Convention for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field, Aug. 12, 1949, 75 U.N.T.S. 31; Geneva Convention for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea, Aug. 12, 1949, 75 U.N.T.S. 85; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 75 U.N.T.S. 135; Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287.

1994.[25] Those two tribunals received bipartisan support from both Democratic and Republican administrations, with the United States providing extensive diplomatic backing at the UN Security Council, financial contributions to the tribunals, and repeated cooperation in investigations and arrests.[26] Beyond the financial support offered as the largest contributing UN Member State, the United States provided additional direct support to the ICTY and ICTR, including in-kind contributions and many gratis personnel such as judges and prosecutors, that in total amounted to more than $1 billion over the 25-year life of the two tribunals.[27] The United States also played an outsized role in supporting the Special Court for Sierra Leone, which prosecuted former Liberian President Charles Taylor and others for war crimes committed during Sierra Leone's civil war of the 1990s.[28]

C. The ICC

18. Although the United States did not initially vote to adopt the Rome Statute, the treaty that established the ICC in 1998, the United States took an active role in the negotiations during the Preparatory Committee meetings and the Diplomatic Conference that led to the Rome

---

[25] Statute of the International Criminal Tribunal for the Former Yugoslavia, S.C. Res. 827, U.N. DOC. S/RES/827 (May 25, 1993); Statute of the International Criminal Tribunal for Rwanda, S.C. Res. 955, U.N. DOC. S/RES/955 (Nov. 8, 1994).

[26] John B. Bellinger, III, Legal Adviser to the Sec'y of State, Dep't of State, Remarks at the Fletcher School of Law and Diplomacy: U.S. Perspectives on International Criminal Justice (Nov. 14, 2008), https://2001-2009.state.gov/s/l/rls/111859.html; John B. Bellinger, III, Legal Adviser to the Sec'y of State, Dep't of State, Remarks on International Courts and Tribunals and the Rule of Law, (May 11, 2006). For example, the United States tied foreign assistance to Balkan states to their cooperation and their apprehension of suspected war criminals, entered into an arrest and surrender agreement with the ICTY, and helped procure evidence of Bosnian Serb massacres. Similarly, the U.S. Departments of State and Justice together assisted the ICTR in apprehending and transferring a suspect who was later found guilty of genocide. Rory Carroll, *Pastor Who Led Tutsis to Slaughter is Jailed*, THE GUARDIAN (Feb. 19, 2003), https://www.theguardian.com/world/2003/feb/20/rorycarroll1.

[27] *U.S. Policy Toward the International Criminal Court: Further Positive Engagement*, AM. SOC'Y OF INT'L L. TASK FORCE ON POLICY OPTIONS FOR U.S. ENGAGEMENT WITH THE INT'L CRIMINAL COURT (Apr. 2021), https://www.asil-us-icc-task-force.org/report/02-background/.

[28] The U.S. Provides $4.5 Million to Fund Special Court for Sierra Leone Trial of Charles Taylor, RELIEFWEB (Nov. 23, 2010), https://reliefweb.int/report/sierra-leone/us-provides-45-million-fund-special-court-sierra-leone-trial-charles-taylor.

Statute's adoption. President Clinton eventually signed the treaty at the end of his second term in office.[29] Crucially, once President Clinton signed the Rome Statute—where his signature remains today—the United States assumed an obligation under Article 18 of the 1969 Vienna Convention on the Law of Treaties (VCLT) (which the United States accepts as customary international law)[30] "not to defeat the object and purpose of a treaty . . . ."[31] In 2002, during the Bush administration, Under Secretary of State John Bolton announced that the United States did not intend to become a party to the treaty. But in 2010, on behalf of the Obama Administration, as Legal Adviser, I repudiated this claimed "unsigning." I stated on behalf of the United States that "what international lawyers might call a concerted effort to frustrate the object and purpose of the Rome Statute … *is explicitly not the policy of this administration.*"[32]

D. Congress' Role in Developing and Regulating the U.S. Relationship with the ICC

19. *American Servicemembers' Protection Act (ASPA).* The Executive Branch is not the sole federal government actor helping to shape the United States' relationship with the ICC. The United States has long been aware of the possibility of the ICC exercising jurisdiction over nationals of non-States Parties. In 2002, Congress enacted the ASPA to codify the United States'

---

[29] Presidential Statement on Signing of the Rome Statute of the International Criminal Court, 3 PUB. PAPERS 2816-17 Signing (Dec. 31, 2000).

[30] *De Los Santos Mora v. New York*, 524 F.3d 183, 196 n.19 (2d Cir. 2008) ("Although the United States has not ratified the Vienna Convention on the Law of Treaties, our Court relies upon it 'as an authoritative guide to the customary international law of treaties,' insofar as it reflects actual state practices.") (quoting *Avero Belg. Ins. v. Am. Airlines, Inc*., 423 F.3d 73, 80 n.8 (2d Cir. 2005)); *Fujitsu Ltd. v. Fed. Express Corp.*, 247 F.3d 423, 433 (2d Cir. 2001) ("[W]e rely upon the Vienna Convention here as an 'authoritative guide to the customary international law of treaties.'") (quoting *Chubb & Son, Inc. v. Asiana Airlines*, 214 F.3d 301, 309 (2d Cir. 2000)).

[31] Vienna Convention on the Law of Treaties, *opened for signature* May 23, 1969, 1155 U.N.T.S. 331, art 18.

[32] Koh, *supra* note 14, at 537 (citing Harold Hongju Koh, Legal Adviser, U.S. Dep't of State, *The Challenges and Future of International Justice, Remarks at the NYU Center for Global Affairs* (Oct. 27, 2010), https://2009-2017.state.gov/s/l/releases/remarks/150497.htm.) (emphasis added). I further stated that "although the United States is not a party to the Rome Statute, we share with the States parties a deep and abiding interest in seeing the Court successfully complete the important prosecutions it has already begun." *Id.*

relationship with the ICC.[33] The ASPA restricted certain forms of U.S. cooperation with the ICC, principally to protect U.S. and allied servicemembers from ICC jurisdiction. At the same time, however, the ASPA simultaneously preserved space for cooperation with the court, creating a congressional "dual track" approach to the ICC. On one track, the President has certain authorities to protect U.S. nationals from ICC prosecution; on a second track, the text of the ASPA explicitly creates a "permission structure," under which the President is authorized to waive those prohibitions on cooperation with the ICC when "it is in the national interest of the United States for the International Criminal Court's investigation or prosecution of the named individual to proceed," provided that no covered U.S. or allied persons are under investigation.[34]

20. *Dodd Amendment*. This "dual-track permission structure" is reinforced by the Dodd Amendment, which expressly permitted the United States to assist international efforts to bring to justice foreign nationals accused of genocide, war crimes, and crimes against humanity.[35] The Dodd Amendment was proposed in December 2001, during congressional proceedings on the ASPA, by Senator Chris Dodd (D-CT), the son of an American Nuremberg prosecutor. The Dodd Amendment was intended to ensure that war criminals such as Slobodan Milosevic and Saddam Hussein, along with others responsible for crimes against humanity, could be brought to justice. In such cases, the Dodd Amendment sought to ensure that the ASPA would not deny the President "sufficient flexibility" to assist foreign tribunals and other international legal bodies pursuing those cases.[36] As Senator Leahy put it, "the United States . . . should not be engaged in a fruitless effort

---

[33] American Servicemembers' Protection Act (ASPA) of 2002, 22 U.S.C. §§ 7421–7433 (2002).

[34] 22 U.S.C. § 7422(c). The prohibitions on cooperation with the ICC also expressly do not apply to actions "taken or directed by the President on a case-by-case basis in the exercise of the President's authority as Commander in Chief." *Id.* §7430(a).

[35] 22 U.S.C. § 7433 (2002).

[36] 147 Cong. Rec. S12,624 (daily ed. Dec. 7, 2001) (statement of Sen. Dodd).

to undermine a court that will bring to justice those responsible for committing war crimes, genocide, and crimes against humanity."[37] For that reason, the Dodd Amendment provided that the ASPA should not "prohibit the United States from aiding in the prosecution of war criminals before the International Criminal Court, even if the criminal may have perpetrated crimes against America."[38]

21. *Expansion of the Dodd Amendment:* Following Russia's February 2022 full-scale invasion of Ukraine, Congress expanded the statutory framework for U.S. cooperation with the ICC. Congress amended the ASPA to explicitly authorize U.S. assistance to the ICC for investigations and prosecutions related to the war in Ukraine. The Senate first unanimously adopted a resolution introduced by Senator Lindsey Graham (R-SC), which referred to the ICC as "an international tribunal that seeks to uphold the rule of law, especially in areas where no rule of law exists" and "encourage[d] member states to petition the ICC or other appropriate international tribunal to take any appropriate steps to investigate [Russian] war crimes and crimes against humanity."[39] The United States thus supported these investigations into Russian nationals despite the fact that Russia is not a Member of the ICC.

22. On December 29, 2022, Congress passed the 2023 Consolidated Appropriations Act, which amended the Dodd Amendment to explicitly permit the United States to render assistance to ICC prosecutors to assist with investigations and prosecutions of foreign nationals

---

[37] 147 Cong. Rec. S12,623 (daily ed. Dec. 7, 2001) (statement of Sen. Leahy).

[38] 147 Cong. Rec. S12,616 (daily ed. Dec. 7, 2001) (statement of Sen. Dodd).

[39] S. Res. 546, 117th Cong. (2022) (enacted). Senator Graham (R-SC), a longtime skeptic of the Court, declared that Putin had "rehabilitate[d] the ICC in the eyes of the Republican Party and the American people." Ryan Goodman, *Top Cover: Congressional Republicans Pave Way for US Policy Shift on Int'l Criminal Court*, JUST SEC. (Apr. 13, 2022), https://www.justsecurity.org/81093/top-cover-congressional-republicans-pave-wave-for-us-policy-shift-on-intl-criminal-court/#:~:text=%E2%80%9CI%20would%20say%20this%20is,Congress%20helps%20define%20U.S.%20policy.

related to the war in Ukraine, including to support victims and witnesses.[40] Significantly, that amendment was not limited to the situation in Ukraine, as it also removed a funding restriction that had previously blocked U.S. support to the court in other countries where the ICC was investigating foreign nationals accused of genocide, war crimes, or crimes against humanity.[41] Thereafter, during the Biden Administration, the United States supported the ICC's investigation into potential war crimes committed by senior Russian officials, including the investigation and indictment of President Vladimir Putin. This support included sharing of intelligence with the ICC by U.S. military and intelligence officials.[42]

23. *ASPA's Limited Authorizations.* From its inception, the ASPA has explicitly stated Congress' intent regarding particular actions the President is authorized to take when the ICC seeks to investigate or prosecute a covered U.S. or allied person. If such a person is "arrested, detained, investigated, prosecuted, or imprisoned by" the ICC, "the President is *authorized* to direct any agency of the United States Government to provide" three kinds of assistance: (1) "legal representation and other legal assistance"; (2) "exculpatory evidence on behalf of that person," and (3) "defense of the interests of the United States through appearance before the International Criminal Court . . . or before the courts or tribunals of any country."[43] In addition, where such a person is "being detained or imprisoned by" the ICC—which is not the case here—"[t]he President

[40] *Consolidated Appropriations Act, 2023*, PL 117-328 Div. K, Title VII, § 7073, 22 U.S.C. 7423(h)(2).

[41] *Id*.

[42] International Criminal Court, *Ukraine*, https://www.icc-cpi.int/situations/ukraine. By the first summer following Russia's invasion, the United States made clear it was collecting information on Russian crimes in Ukraine to ensure accountability in Ukrainian and international courts. Missy Ryan, *U.S. looks to assist war crimes prosecutions targeting Russian leaders*, WASH. POST. (Apr. 25, 2022), https://www.washingtonpost.com/national-security/2022/04/25/russia-ukraine-war-crimes-prosecutions/. By March 2023, President Biden formally directed U.S. military and intelligence officials to share information with the ICC to bolster potential war crimes prosecutions. Trevor Hunnicutt and Idrees Ali, *Biden orders US to share Russian war crimes evidence with ICC*, REUTERS (Jul. 26, 2023), https://www.reuters.com/world/biden-orders-us-share-russian-war-crimes-evidence-with-world-court-nyt-2023-07-26/.

[43] 22 U.S.C. § 7427(c) (emphasis added).

is *authorized* to use all means necessary and appropriate to bring about the release" of that person, other than through the payment of bribes or the provision of other such incentives.[44] Congress expressly prohibited the President from using bribes and other incentives to influence the court, and there is no reason to believe that it intended to exclude from this prohibition negative economic incentives designed to exert influence on the same institution. Nothing in the ASPA authorizes the President or any lower executive official to sanction ICC officials or judges, or otherwise to interfere in ongoing investigations or prosecutions.

24. *Shield not Sword.* By its terms, then, the ASPA is a congressionally conferred shield, not a sword. The statute expressly focuses on shielding U.S. and allied personnel from the "risk of prosecution" by the ICC.[45] The statute does not prevent the United States from supporting prosecutions by the ICC of foreign perpetrators of atrocity crimes, and does not authorize the President to sanction or punish ICC officials, judges, or others directly engaged in supporting the Court's functions.[46] Rather, the ASPA only permits the President to respond through particular tools of *legal process* to address any investigations or prosecutions by the ICC that would violate the ASPA's restrictions. The ASPA carefully enumerates those limited actions the President is authorized to take when the ICC is investigating or prosecuting covered U.S. or allied personnel:

---

[44] Compare *id*. § 7427(a) (emphasis added) with *id.* § 7427(c).

[45] Specifically, the ASPA's findings state that "[m]embers of the Armed Forces of the United States should be free from the risk of prosecution by the International Criminal Court" and that the U.S. government must protect them "to the maximum extent possible" against ICC prosecutions. 22 U.S.C. § 7421(8). The statute then extends the same concern to "the President and other senior elected and appointed officials," stating that they too "should be free from the risk of prosecution by the International Criminal Court." 22 U.S.C. § 7421(9). And Congress expressly grounded the statute in the principle that treaties bind only their parties and do not impose obligations on nonparties without consent: "The United States is not a party to the Rome Statute and will not be bound by any of its terms. The United States will not recognize the jurisdiction of the International Criminal Court over United States nationals." 22 U.S.C. § 7421(11).

[46] 22 U.S.C. § 7421 (2024).

the U.S. Government can only provide legal assistance, present exculpatory evidence, and appear before the ICC to defend U.S. interests.[47]

25. In my governmental experience, this statutory textual distinction as to authorized responses to ICC actions regarding covered personnel reflects the "dual track" approach that underlies the ASPA as a whole. Under this approach, Congress both permitted and encouraged cooperation with the ICC as a whole, when such cooperation advances U.S. interests– even where there may be tension or friction regarding some investigations or prosecutions that may implicate the ASPA's restrictions. The only case where Congress made a broader authorization to the President to "use all means necessary and appropriate" *is when a covered person is in custody*, which is not currently the case. Even then, Congress refused to authorize the payment of bribes or other such inducements, like punitive sanctions, to influence the decisions of the Court or its personnel. In all other circumstances, the ASPA only authorizes the President to *engage* via statutorily prescribed tools of legal process with regard to investigations or prosecutions involving covered persons. I personally observed this dual track at work during my government service, particularly during the Biden Administration in 2021. During that time, Congress moved forward on amending the Dodd Amendment to permit cooperation with the ICC regarding the Russia-Ukraine conflict, despite the possibility that the ICC was then investigating Israel and had authorized an investigation into actions by U.S. and allied forces in Afghanistan.

26. Congress has also signaled its support of the ICC through the U.S. *War Crimes Rewards Program*, which was expanded in 2013 to cover individuals sought by the ICC. While expanding the law, the Senate explicitly recognized that the new language would allow rewards in

[47] In contrast, ASPA grants the Executive broader power when a covered U.S. or allied person is taken into custody by or on behalf of the ICC: under such circumstances, the President is authorized to use "all means necessary and appropriate to bring about the *release* of any [covered] person … who is being detained or imprisoned by, on behalf of, or at the request of the International Criminal Court." 22 U.S.C. § 7427(a) (emphasis added).

support of ICC prosecution.[48] Congress then expanded the program again in 2018 to allow rewards for the apprehension of suspected perpetrators of crimes in Syria.[49] In January 2024, the Department of State designated Sudan's former Minister of State for the Interior under the Omar al-Bashir regime, Ahmad Mohammad Harun, as an individual of interest under the Program. The State Department recognized that "[t]he Program is one of the Department's foremost tools in fighting impunity for atrocity crimes worldwide and supporting justice institutions."[50] By so saying, the Department confirmed that "accountability is a key pillar of the United States Atrocity Prevention Initiative and our national security strategy, which states that the end of impunity and the promotion of justice are not just moral imperatives; they're stabilizing forces in international affairs."[51]

E. Historical Executive Branch Support for U.S. Cooperation with the ICC

27. Within this congressional framework—created by the ASPA, the Dodd Amendment thereto, and the War Crimes Rewards Program—the Executive Branch has supported and cooperated with the ICC in numerous ways, under both Republican and Democratic Administrations:[52]

---

[48] S. Rep. No. 112-232, at 4-5 (2012).

[49] John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115–232, 132 STAT. 1636, § 1232 (codified at 22 U.S.C. 2708).

[50] Press Statement, U.S. Dep't of State, *Designation of Ahmad Mohammad Harun Under the War Crimes Rewards Program* (Jan. 29, 2024), https://2021-2025.state.gov/designation-of-ahmad-mohammad-harun-under-the-war-crimes-rewards-program/.

[51] U.S. Dep't of State, Office of Global Criminal Justice, *Statement by the Ambassador-at-large for War Crimes Issues on the Expansion of the War Crimes Rewards Program*, https://2009-2017.state.gov/j/gcj/us_releases/remarks/2013/207031.htm. *See also* John S. McCain National Defense Authorization Act for Fiscal Year 2019, Pub. L. No. 115–232, 132 STAT. 1636, § 1232 (codified at 22 U.S.C. 2708). Press Statement, U.S. Dep't of State, Designation of Ahmad Mohammad Harun Under the War Crimes Rewards Program (Jan. 29, 2024) https://2021-2025.state.gov/designation-of-ahmad-mohammad-harun-under-the-war-crimes-rewards-program/.

[52] *See generally* Task Force on the United States & the Int'l Criminal Court, *The United States and the International Criminal Court: A Background Paper*, Am. Soc'y Int'l L. (2019), https://www.asil-us-icc-task-force.org/report/02-background/.

a. *Referral of Prosecutions.*

i. *Sudan*. After U.S. Secretary of State Colin Powell declared in September 2004 that genocide was occurring in Sudan, the United States decided to allow an ICC referral to proceed, concluding that the imperative of addressing atrocities outweighed institutional objections to the ICC.[53] The United States subsequently provided political support to facilitate the ICC investigation in Darfur and pressed the government of Sudan to cooperate with the ICC.[54]

ii. *Libya*. In 2011, the Obama administration co-sponsored the Security Council referral of Libya to the ICC to hold the responsible defendants personally accountable for the violence there.[55]

iii. *Syria*. In 2014, the United States voted for a Security Council referral of Syria to the ICC, although Russia and China vetoed that resolution.[56]

b. *Opposing Deferrals of Prosecution*. Likewise, the United States has repeatedly opposed, under both Republican and Democratic administrations alike, proposals under Article 16 of the Rome Statute whereby the Security Council can instruct the ICC to defer a case that has already been initiated.

---

[53] *Powell Declares Killing in Darfur Genocide*, PBS News (Sept. 9, 2004), https://www.pbs.org/newshour/politics/africa-july-dec04-sudan_09-09; Nicholas Burns, Remarks to the Press on Sudan, U.S. Dept. of State Archive (Apr. 1, 2005), https://2001-2009.state.gov/p/us/rm/2005/44138.htm.

[54] Nicholas Burns, Remarks to the Press on Sudan, U.S. Dept. Of State Archive (Apr. 1, 2005), https://2001-2009.state.gov/p/us/rm/2005/44138.htm.

[55] U.S. Permanent Representative to the United Nations Susan E. Rice, Remarks in an Explanation of Vote on Resolution 1970 on Libya Sanctions (Feb. 26, 2011).

[56] Albania et al.: Draft Resolution, U.N. Doc. S/2014/348 (May 22, 2014).

In 2008, the State Department abstained on a Darfur-related resolution that contained language hinting at possible future support for deferral and explained that even implicit gestures in that direction sent the wrong message to those facing prosecution.[57] The United States similarly abstained on a November 2013 Security Council resolution aiming to defer the ICC prosecution of Kenyan leaders Uhuru Kenyatta and William Ruto.[58]

c. *Cooperating with ICC Investigations*. Under the George W. Bush administration, the United States provided occasional assistance to the ICC when doing so aligned with American interests. The Obama administration formalized this into an explicit case-by-case policy of "positive engagement," providing support to the ICC whenever it would be consistent with U.S. law and foreign policy goals.[59] With respect to the ICC investigation in Darfur, for instance, both the Bush and Obama

[57] Security Council Resolution Seeking Security Council 5947th Mtg., U.N. Doc. S/PV.5947 (July 31, 2008); Deferral of Kenyan Leaders' Trial Fails to Win Adoption, with 7 Voting in Favour, 8 Abstaining, UN NEWS (Nov. 15, 2013).

[58] *Security Council: Bid to Defer International Criminal Court Cases of Kenyan Leaders Fails*, UN NEWS (Nov. 15, 2013), https://news.un.org/en/story/2013/11/455442. Explaining the U.S. abstention, the U.S. Permanent Representative to the U.N., Ambassador Samantha Power stated that "justice for the victims of that violence is critical to the country's long-term peace and security" and that "[i]t is incumbent on us all to support accountability for those responsible for crimes against humanity." Larry Freund, *UN Security Council Rejects Delay of Kenyatta*, *Ruto Trials*, VOA NEWS(Nov. 15, 2013), https://www.voanews.com/a/un-security-council-rejects-challenge-to-icc-kenya-trial/1790892.html.

[59] White House, *National Security Strategy* 48 (May 2010), https://obamawhitehouse.archives.gov/sites/default/files/rss_viewer/national_security_strategy.pdf ("[W]e are engaging with State Parties to the Rome Statute on issues of concern and are supporting the ICC's prosecution of those cases that advance U.S. interests and values, consistent with the requirements of U.S. law"); *accord* White House, *National Security Strategy* 22 (Feb. 2015) ("We will work with the international community to prevent and call to account those responsible for the worst human rights abuses, including through support to the International Criminal Court, consistent with U.S. law and our commitment to protecting our personnel.")

administrations furnished the ICC Prosecutor with information on request and pressed for the apprehension of ICC fugitives in Sudan.[60]

d. *Supporting Transfers to ICC Prosecution*. Beyond offering financial incentives, the United States played a direct role in two high-profile transfers to The Hague: of former Congolese militia leader Bosco Ntaganda in 2013 and of former Lord's Resistance Army (LRA) commander Dominic Ongwen in 2015.[61]

e. *Sharing Evidence with the ICC*. In addition to this operational involvement, the United States has publicly reaffirmed its willingness to share evidence with the ICC on a case-by-case basis for investigations or prosecutions involving foreign nationals.

28. By the end of President George W. Bush's second term in 2009, U.S. cooperation with the ICC had become so tangible that my predecessor as Legal Adviser, John Bellinger, said explicitly that the United States needed to acknowledge that the ICC is a "reality."[62] The reality of

---

[60] *See, e.g.*, Robert Zoellick, Remarks at the Brookings Institution Forum on the Situation in Darfur, (Apr. 13, 2006), https://2001-2009.state.gov/s/d/former/zoellick/rem/2006/64622.htm (if the ICC asks "for information and help, we try to provide that help . . . we will fully cooperate with [the ICC] and pursue those actions as related to the genocide in Darfur"); U.N. SCOR, 69th Sess., 7199th mtg., Statement by Mr. Lord (United States), at 15, U.N. Doc. S/PV.7199 (June 17, 2014) (the United States "will continue to support Prosecutor Bensouda and ICC efforts to bring to justice those most responsible for serious crimes in Darfur"; *see also* U.N. SCOR, 67th Sess., 6778th mtg., Statement by Mr. DeLaurentis (United States), at 8–10, U.N. Doc. S/PV.6778 (June 5, 2012); U.N. SCOR, 69th Sess., 7337th mtg., Statement by Mr. Pressman (United States), at 11–13, U.N. Doc. S/PV.7337 (Dec. 12, 2014).

[61] The United States facilitated the transfer of Ntaganda from Rwanda to The Hague where he was ultimately convicted of eighteen counts of war crimes and crimes against humanity and sentenced to thirty years. *Prosecutor v. Ntaganda*, ICC-01/04-02/06-2359, Judgment (July 8, 2019) (finding Bosco Ntaganda guilty of eighteen counts of war crimes and crimes against humanity); *Prosecutor v. Ntaganda*, ICC-01/04-02/06-2442, Sentencing Judgment (Nov. 7, 2019) (sentencing Bosco Ntaganda to a total of thirty years of imprisonment). Two years later, U.S. forces in the Central African Republic helped arrange the transfer of Ongwen to The Hague, where he was subsequently convicted on sixty-one counts of crimes against humanity and war crimes. *Prosecutor v. Ongwen*, ICC-02/04-01/15-1762-Red, Trial Judgment (Feb. 4, 2021).

[62] Koh, *supra* note 14, at 533.

the ICC as a pillar of the international legal order has only become more undeniable in the decades that followed.

F. The First Trump Administration's Sanctions on ICC Personnel and Their Aftermath

29. The long-established history of executive branch cooperation with the ICC—within the "dual-track" congressional framework established by ASPA, the Dodd Amendment, and the War Crimes Rewards Program—stalled during the first Trump Administration. In March 2020, in response to an ICC investigation regarding U.S. actions in Afghanistan and a possible ICC investigation of Israeli actions relating to Palestine, the Trump administration issued Executive Order 13,928, *Blocking Property of Certain Persons Associated With the International Criminal Court*, 85 Fed. Reg. 36139 ("**E.O. 13,928**"), which declared a "national emergency" with respect to the ICC and authorized sanctions and visa restrictions to be imposed on ICC personnel to be designated thereafter. Subsequently, such sanctions were imposed on ICC Prosecutor Fatou Bensouda and a senior member of her office, Phakiso Mochochoko. While Afghanistan and Palestine are Member States of the ICC, the sanctions were imposed on the basis that it allegedly constituted a national emergency that nationals of the U.S. or its allies who are not parties to the Rome Statute could be prosecuted by the ICC. As noted above, the United States had been aware of the possibility of the ICC exercising jurisdiction over nationals of non-States Parties since the adoption of the Rome Statute.

30. *The Biden Administration Lifts the ICC Sanctions.* On April 1, 2021, during my time as Senior Advisor at the State Department Legal Adviser's Office, President Biden issued Executive Order 14,022, *Termination of Emergency With Respect to the International Criminal Court*, 86 Fed. Reg. 17895. That Order revoked E.O. 13,928 and lifted these sanctions against ICC officials on the grounds that the sanctions were "not an effective or appropriate strategy for

addressing the United States' concerns with the ICC."[63] Thereafter the Administration reverted to the Obama policy of "positive engagement" with the ICC, on a case-by-case basis.[64]

31. *Effective End of the ICC's Investigation into U.S. Activities in Afghanistan.* In September 2021, the ICC's then-Prosecutor, Karim Khan, announced his intention to focus on war crimes committed by the Taliban and the Islamic State, and to "deprioritize" investigations of other war crimes committed in Afghanistan. This effectively ended the ICC's investigation into U.S. actions in Afghanistan.[65]

32. *U.S. Cooperation with the ICC Expands in Response to the Russia-Ukraine Conflict*. Subsequently, as noted in para. 21 *supra*, the Senate unanimously adopted a resolution that described the ICC as "an international tribunal that seeks to uphold the rule of law," and "encourage[d] member states to petition the ICC" to investigate Russian war crimes or crimes against humanity.[66] Thereafter, as noted above, Congress expanded the Dodd Amendment to explicitly permit assistance to the ICC in connection with the Russia-Ukraine conflict. President Biden made a major statement in support of the ICC's work regarding Russia when he acknowledged that the ICC's arrest warrant for President Vladimir Putin was "justified," given President Putin's role in authorizing war crimes during the war.[67] Both Attorney General Merrick

---

[63] Proclamation No. 14022, 86 Fed. Reg. 17895 (Apr. 7, 2021).

[64] At the start of the Biden Administration in 2021, a State Department spokesperson stated that the United States may cooperate with the ICC in "exceptional cases." Three months later, the Biden Administration lifted Trump's E.O. 13,928. Simon Lewis, *Biden Administration to Review Sanctions on International Criminal Court Officials*, REUTERS (Jan. 26, 2021), https://www.reuters.com/world/asia-pacific/biden-administration-review-sanctions-international-criminal-court-officials-2021-01-26/.

[65] ACLU Statement on International Criminal Court Prosecutor's Decision to "Deprioritize" Investigation of Alleged U.S. War Crimes in Afghanistan, ACLU (Sep. 27, 2021), https://www.aclu.org/press-releases/aclu-statement-international-criminal-court-prosecutors-decision-deprioritize.

[66] S. Res. 546, *supra* note 39.

[67] Jeff Mason & Simon Lewis, *Biden says Putin committed war crimes, calls charges justified*, REUTERS (Mar. 18, 2023, 5:12 AM), https://www.reuters.com/world/europe/us-says-no-doubt-russia-is-committing-war-crimes-ukraine-after-icc-issues-putin-2023-03-17/**;** Press Release, International Criminal Court, Situation in Ukraine: ICC Judges

Garland and a bipartisan congressional delegation made historic visits to The Hague to signal Congress' willingness to engage and cooperate with the ICC.[68] Such support came despite the fact that the ICC was exercising jurisdiction over nationals of a State, Russia, which is not a Member State of the ICC. Indeed, even before the Court's indictment of Russian nationals for crimes in Ukraine, the Court had issued arrest warrants for Russian nationals accused of crimes committed in Georgia, an ICC Member State.[69]

33. *U.S. Engagement with the ICC as Amicus*. In August 2024, following the issuance of arrest warrants for Israeli officials and members of Hamas, the United States submitted written observations as amicus before the Pre-Trial Chamber hearing Israel's objection to the issuance of arrest warrants against its nationals.[70] Among other things, Israel argued that the Prosecutor had not respected certain procedural and jurisdictional requirements set out in Article 18 of the Rome Statute. In its amicus brief, the United States underscored its relationship with the Court and vested interest in international criminal justice, stating: "Though not a Party to the Rome Statute, the United States has pursued where possible a constructive relationship with the Court, including cooperating in certain Situations. As a non-Party and drafter of article 18, the United States has an interest in proper management of the Statute's complementarity regime, which is fundamental to

---

Issue Arrest Warrants Against Vladimir Vladimirovich Putin and Maria Alekseyevna Lvova-Belova (Mar. 17, 2023), https://www.icc-cpi.int/news/situation-ukraine-icc-judges-issue-arrest-warrants-against-vladimir-vladimirovich-putin-and.

[68] Esti Tambay, *U.S. Delegation Makes Historic Visit to International Criminal Court*, HUMAN RIGHTS WATCH (Nov. 7, 2022), https://www.hrw.org/news/2022/11/07/us-delegation-makes-historic-visit-international-criminal-court; see also *U.S. Attorney General Garland Makes Surprise ICC Visit*, REUTERS (June 19, 2023, 3:49 PM), https://www.reuters.com/world/us-attorney-general-garland-makes-surprise-icc-visit-2023-06-19/.

[69] Int'l Criminal Court, Situation in Georgia: ICC Pre-Trial Chamber Delivers Three Arrest Warrants (June 25, 2024), https://www.icc-cpi.int/news/situation-georgia-icc-pre-trial-chamber-delivers-three-arrest-warrants.

[70] Written Observations by the United States of America Pursuant to Rule 103, *Situation in the State of Palestine*, No. ICC-01/18-300 (Int'l Crim. Ct. Pre-Trial Chamber I, Aug. 6, 2024), https://www.icc-cpi.int/sites/default/files/CourtRecords/0902ebd1809236df.pdf.

the Court's role, and of which article 18 is an essential part."[71] Acknowledging its own important role in the functioning of the Rome Statute system, the United States expressed its disagreement with the Court's exercise of jurisdiction in the Palestine situation, not through unilateral sanctions, but by legal submissions filed pursuant to the Court's procedural rules.[72]

G. The Current Trump Administration's Sanctions

34. *The Trump Administration Issues Executive Order 14,203.* Notwithstanding this historical background, on February 6, 2025, President Trump signed E.O. 14,203, "Imposing Sanctions on the International Criminal Court." That Order declares a national emergency, and asserts that there is an "unusual and extraordinary threat." On that basis, the Order directs that sanctions be issued to block property and assets as well as to ban travel to the United States for ICC officials, employees, and agents, along with their families, who investigate, arrest, or prosecute U.S. or allied personnel. Although there is no ongoing ICC investigation of U.S. personnel, E.O. 14,203 states that sanctions are being imposed to protect U.S. personnel subject to "preliminary investigations" by the ICC and to protect Israel following the issuance of ICC warrants against Israeli Prime Minister Benjamin Netanyahu and Defense Minister Yoav Gallant. E.O. 14,203 designated then-ICC Prosecutor Karim Khan (United Kingdom) in an Annex.

35. Significantly, E.O. 14,203 was issued by President Trump after the failure of congressional legislation that would have mandated essentially the same sanctions the Executive Order imposes. In January 2025, following the ICC's issuance of arrest warrants against Israeli Prime Minister Netanyahu and Israeli Defense Minister Gallant, legislation was introduced in Congress that would have directed the President to impose sanctions and visa restrictions under

[71] *Id*. at ¶ 2.

[72] Ironically, the U.S. amicus submission was made before Judge Reine Alapini-Gansou, who was designated for sanctions less than a year later.

the International Emergency Economic Powers Act of 1977 (IEEPA) upon anyone who aided the ICC with respect to investigations or prosecutions of U.S. or allied persons from States that have not consented to the Court's jurisdiction. That legislation, however, failed to pass.[73]

36. In my professional experience, there is nothing unusual about the ICC's exercise of its normal judicial and prosecutorial functions in the situations that are the subject of E.O. 14,203. As explained above, these are the very functions that Congress contemplated and authorized the United States to *support*, pursuant to a consistent executive practice of cooperation with the ICC to enable the court to bring international criminals to justice. As detailed above, the ICC and its predecessor institutions have been conducting investigations and trials and issuing arrest warrants for more than two decades, often with U.S. cooperation and support. Congress made the explicit choice to support, not sanction, the day-to-day work of international judges and prosecutors at an international tribunal fulfilling their mandates under the Rome Statute, a treaty that the United States has signed and whose "object and purpose" the United States is legally obligated not to defeat.[74]

37. Nor is a novel threat suddenly created by an investigation implicating nationals of the United States or its allies that are not States Parties to the Rome Statute. Administrations dating back to the Clinton Administration have expressed concern about the possible prosecution of nationals of states that are not party to the Rome Statute. But as noted above, these administrations have simultaneously supported other ICC cases contemplating prosecution of nationals of such

---

[73] *See* Illegitimate Court Counteraction Act, H.R. 23, 119th Cong. (2025*);* Ted Barrett, *Senate Democrats block International Criminal Court sanctions bill in response to Netanyahu warrant,* CNN (Jan. 28, 2025), https://www.cnn.com/2025/01/28/politics/senate-vote-icc-sanctions.

[74] As noted in para. 18 *supra*, President Clinton's signature on the Rome Statute obliges the United States under Article 18 of the 1969 Vienna Convention on the Law of Treaties (VCLT)—which the United States accepts as customary international law—"not to defeat the object and purpose of a treaty …." Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, art. 18.

non-States parties as Russia, Libya, or Sudan.[75] In fact, more than six years ago, the first Trump Administration likewise noted that Israel was under threat of ICC investigation, *see* para. 29 *supra*. But as described above, even after that, Congress amended the Dodd Amendment to *expand* U.S. cooperation with the ICC, despite its awareness of the past ICC investigation of the United States and the possible future ICC investigation of Israel.

38. The lack of any novel threat posed by the ICC is underscored by the piecemeal fashion in which sanctions have been issued under E.O. 14,203. The Treasury Department's Office of Foreign Assets Control (OFAC) has issued six different rounds of sanctions in the more than eighteen months since the order was issued.[76] At the time of writing, sanctions have been imposed against:

a. Nine ICC Judges: Kimberly Prost (Canada), Nicolas Guillou (France), Luz del Carmen Ibáñez Carranza (Peru), Beti Hohler (Slovenia), Gocha Lordkipanidze (Georgia), Reine Alapini-Gansou (Benin), Solomy Balungi Bossa (Uganda), Erdenebalsuren Damdin (Mongolia), and Tomoko Akane (Japan);

b. Deputy ICC Prosecutors Nazhat Shameem Khan (Fiji) and Mame Mandiaye Niang (Senegal);

c. ICC Senior Trial Lawyer, Abdoulaye Seye (Senegal);

d. The UN Special Rapporteur on the Situation of Human Rights in the Palestinian Territories Occupied since 1967, Francesca Albanese (Italy); and

---

[75] *See supra* para. 27(a).

[76] *See supra* para. 5(iv)-(ix).

e. Three human rights nongovernmental organizations (NGOs): Al-Haq, Al Mezan Center for Human Rights, and the Palestinian Centre for Human Rights.

39. On 13 July 2026, in advance of the most recent round of sanctions, Secretary of State Marco Rubio vowed to "dismantle the ICC–brick-by-brick, if necessary."[77] The administration's sanctions campaign is thus ramping up, with its objective of fully paralyzing the ICC now made explicit. The August 2026 sanctions confirm the expanded scope of the attack on the court by designating both the ICC's President, its highest-ranking official, and an unelected trial lawyer.

H. Internalization of International Criminal Accountability Norms

40. As the historical review above makes clear, nearly eight decades of U.S. foreign policy—promoted by both the executive and legislative branches—have established norms of international criminal justice that support human rights, the ICC, and other institutions of international criminal justice, accountability for international crimes, and peaceful international dispute settlement.

41. As I stated on behalf of the U.S. government as Legal Adviser in 2013:

> The United States has long recognized that international criminal justice—and accountability for those responsible for atrocities—is in our national security interests as well as in our humanitarian interests. Among other things, supporting global criminal justice serves U.S. national interests by promoting a culture of accountability that can help increase stability and thus decrease the need for far more costly military interventions in the future. We have much to gain from the effective functioning of the rule of law, and the architecture of international criminal justice can play an important part in that effort.[78]

[77] Marco Rubio, *Why We're Dismantling the ICC*, U.S. Dep't of State (Substack) (July 14, 2026), https://statedept.substack.com/p/why-were-dismantling-the-icc.
[78] See Koh, *supra* note 14, at 534.

42. In sum, the United States has internalized the promotion of international criminal accountability norms into the fabric of its foreign relations law and policy through repeated legislative action, executive engagement, and institutional practice. These actions are consistent with a promise that the United States made to the world when it signed the UN Charter, namely to promote and preserve human rights. This remains true with respect to the ICC. While the U.S. relationship with the ICC has not been without friction, Congress has authorized cooperation with the ICC under the circumstances originally permitted by the Dodd Amendment. Only four years ago, Congress expanded those permitted circumstances to include the Russia-Ukraine conflict, and included the ICC within the War Crimes Rewards Program. With the exception of the two Trump Administrations, both Republican and Democratic Administrations have cooperated with the ICC within the terms mandated by Congress, including by supporting Security Council referrals to the ICC, executive branch cooperation with ICC arrest warrant enforcement, and sharing of intelligence with the ICC. All of this reflects a "transnational legal process" that has embedded into U.S. institutional and legal practice the promotion of international criminal accountability through international criminal tribunals.[79]

43. Over three tours of duty at the State Department, I personally witnessed the sometimes considerable friction between the United States and the ICC regarding particular controversial cases. But except for the two Trump Administrations, I have never seen the U.S. government openly declare war on the ICC, its personnel, or the United Nations by using its coercive economic power to obstruct the work of the international criminal justice system, to punish individual judges, prosecutors, witnesses, and U.N experts for performing their assigned

[79] *See generally* Harold Hongju Koh, *The 1994 Roscoe Pound Lecture: Transnational Legal Process*, 75 NEB. L. REV. 181 (1996).

functions, or to threaten civil and criminal penalties against those—including U.S. citizens and respected U.S. non-profit organizations—supporting international justice. By suddenly using coercive economic power to prevent international judges, prosecutors, U.N experts, and civil society from investigating and pursuing accountability for the very crimes the United States helped to create and shape for over seventy years, E.O. 14,203 radically disrupts core norms of U.S. foreign relations and foreign policy and violates international law.[80]

IV. E.O. 14,203, ITS IMPLEMENTING REGULATIONS AND THE DESIGNATIONS THEREUNDER VIOLATE INTERNATIONAL LAW

44. Because E.O. 14,203 runs so contrary to past U.S. practice with regard to the international criminal justice system, it has inevitably generated an equally unprecedented cascade of international law violations. These violations break both the United States' obligations under ratified treaties, as well as its equally binding obligations under customary international law, defined in Article 38(1)(b) of the Statute of the International Court of Justice as "evidence of a general practice accepted as law"; *i.e.*, the consistent practice of states followed out of a sense of legal obligation (*opinio juris*).[81] E.O. 14,203, its implementing regulations and the designations thereunder violate the object and purpose of the Rome Statute, contrary to the U.S. obligations as a continuing signatory to the Rome Statute. As noted in para. 18 above, President Clinton's December 2000 signature remains on the Rome Statute. For a UN Member State to apply unilateral sanctions to punish the judges and prosecutors of the ICC, which is trying cases that Member State

[80] Koh, *supra* note 14, at 533-34 ("This chronology shows that our relationship with the ICC has had ebbs and flows. But please do not misread our skepticism of certain institutions as hostility to the bedrock norms and values of international criminal justice . . . . [I]f you ask Americans a concrete, practical question—should specific perpetrators of genocide, war crimes, or crimes against humanity be held accountable for their crimes in particular cases—the typical American answer to that question would be an unequivocal 'yes.'").

[81] Statute of the International Court of Justice, June 26, 1945, 59 Stat. 1055, T.S. No. 993, art. 38(1)(b).

has supported, entirely undermines the object and purpose of a treaty that the United States has signed.

A. E.O. 14,203, Its Implementing Regulations and the Designations Thereunder Violate the United States' Obligation to Cooperate with the UN and Abide by Security Council Decisions

45. Article 2(3) of the UN Charter, a binding treaty obligation of the United States, obligates Member States like the U.S. to settle disputes by peaceful means. Articles 55 and 56 of the UN Charter further commit Member States to promote human rights and the rule of law. Under the UN Charter, the United States, as a member of the United Nations, has an obligation to "fulfill in good faith the obligations assumed by [it] in accordance with the present Charter." UN Charter, art. 2, ¶ 2. The United States must also "give the United Nations every assistance in *any action* it takes in accordance with the present Charter." *Id.* art. 2, ¶ 5 (emphasis added). In particular, the United States has "agree[d] to accept and carry out the decisions of the Security Council in accordance with the present Charter." *Id.* art. 25. The Rome Statute expressly vests the Security Council with the power to refer situations to the Court under Article 13(b), a mechanism that the United States has itself invoked, voting in favor of the Security Council's referral to the ICC in the situation in Libya. The Executive Order, as well as the designations thereunder, do not assist, but rather impede, the ICC's investigation of situations that were specifically referred to the court by the UN Security Council, namely the situations in Sudan and Libya.[82] By so doing, they directly interfere with the implementation of the Security Council's binding resolutions to maintain international peace and security, which were expressly adopted pursuant to the Council's powers under Chapter VII of the UN Charter. E.O. 14,203 and the designations thereunder thus violate

[82] *See* S.C. Res. 1593, ¶ 1, U.N. Doc. S/RES/1593 (Mar. 31, 2005); S.C. Res. 1970, ¶ 4, U.N. Doc. S/RES/1970 (Feb. 26, 2011).

the United States' obligation, under the duly ratified UN Charter, to cooperate with the United Nations by abiding by binding Security Council resolutions.

B. E.O. 14,203, Its Implementing Regulations, and the Designations Thereunder Violate the Privileges and Immunities of the UN and the ICC, a Recognized International Organization, as Expressed in the UN Charter and Applicable Treaties

46. The ICC is not just a stand-alone international organization: its *raison d'être* is intrinsically related to the work and mission of the UN, with whom it has entered into a "relationship agreement," providing for close cooperation between the two organizations.[83] The ICC's status as a universal international organization in relationship with the UN contributes to the U.S. obligation, even as a non-party to the Rome Statute, to respect the privileges and immunities of the ICC and its officials, as provided under customary international law.[84] Although the United States is not party to the Rome Statute, international organizations of a universal character, like the ICC,[85] enjoy privileges and immunities under customary international law that must be respected by all States, even by those that are not members of such organizations.[86] Courts of foreign States have also taken that view.[87]

[83] Negotiated Relationship Agreement between the International Criminal Court and the United Nations, 2283 U.N.T.S. 195 (Sept. 13, 2004), art. 3.

[84] *See Abdullahi v. Pfizer, Inc.*, 562 F.3d 163, 180 (2d Cir. 2009) (customary international law is legally binding on States). *See also Mendaro v. World Bank*, 717 F.2d 610, 615 (D.C. Cir. 1983) ("It is well established under international law that 'an international organization is entitled to such privileges and such immunity from the jurisdiction of a member state as are necessary for the fulfillment of the purposes of the organization.'")

[85] The ICC is a universal international organization since its membership is open to all States, and it already counts 125 States Parties (*i.e.*, almost two thirds of U.N. Member States). *See* International Criminal Court, The State Parties to the Rome Statute, https://asp.icc-cpi.int/states-parties (last visited June 26, 2026).

[86] *See, e.g.*, James Crawford, *Brownlie's Principles of Public International Law* 163 (9th ed. 2019) ("[I]f the personality of international organizations stems from an objective assessment of their functions and non-parties are required to accept their separate identity, then this personality must be populated with the attributes necessary for the organization to carry out its mandate, including as necessary the immunity of the institution and its personnel."); Rosalyn Higgins, *Problems & Process: International Law and How We Use It* 91 (1995).

[87] *See, e.g.*, *Iran–United States Claims Tribunal v. AS*, 96 ILR 321, 329 (Neth. 1985) (Dutch Supreme Court holding that international organizations, such as the Iran-United States Claims Tribunal, to which the Netherlands is not party, enjoy immunity from jurisdiction in respect of disputes related to the fulfilment of their tasks); *ZM v. Permanent*

47. The Executive Order and the designations thereunder violate the United States' binding obligations to respect these customary privileges and immunities. By targeting and threatening ICC judges, officials, and other entities that may assist its work, the Executive Order and designations constitute an illegal interference with the ICC's functions. They directly obstruct the ICC's core functions by seeking to influence its judges through coercion, not reason, and by sanctioning members of the Office of the Prosecutor to keep them from assisting the ICC in conducting full and fair independent investigations and prosecutions as their professional judgment directs.

48. The Executive Order and the designations thereunder also violate the United States' binding obligations to respect the privileges and immunities of the U.N., its experts on mission, and those on official business at U.N. Headquarters in New York. Article 105 of the U.N. Charter, a binding treaty on the United States, provides that the United Nations "shall enjoy in the territory of each of its Members such privileges and immunities as are necessary for the fulfilment of its purposes."[88] The United States must also respect the United Nations' privileges and immunities as provided under the 1946 Convention on the Privileges and Immunities of the United Nations ("General Convention"), to which the United States is party.[89] Together, the General Convention and Article 105(1) of the U.N. Charter prohibit any kind of interference with the United Nations' functions, which these ICC officials are carrying out.[90]

Delegation of the League of Arab States to the UN, 116 ILR 643 (Switz. 1993) (Labour Court of Geneva recognizing that the Arab League, of which Switzerland is not a member, enjoyed privileges and immunities under customary international law).

[88] U.N. Charter, art. 105 ¶ 1.

[89] Convention on Privileges and Immunities of the United Nations, Feb. 13, 1946, 21 U.S.T. 1418 ("General Convention").

[90] *See, e.g.*, U.N. Secretariat, *The Practice of the United Nations, the Specialized Agencies and the International Atomic Energy Agency Concerning Their Status, Privileges and Immunities*, UN Doc. A/CN.4/L.118 & Add.1 & 2, at 228, ¶ 96 (1967) ("1967 U.N. Secretariat Study"); *Obligations of Israel in Relation to the Presence and Activities of the*

49. In addition, the General Convention specifically provides that U.N. experts on mission "shall be accorded such privileges and immunities as are necessary for the independent exercise of their functions during the period of their missions," including "[i]n respect of words spoken or written and acts done by them in the course of the performance of their mission, immunity from legal process of every kind."[91] "Legal process" is defined broadly as including "every form of legal process before national authorities, whether judicial, administrative or executive functions according to national law."[92] Special Rapporteurs, like Ms. Albanese, are experts on missions within the meaning of the General Convention who are subject to these legal protections.[93]

50. The United States is also bound by the 1947 Agreement Regarding the Headquarters of the United Nations between the United States and the United Nations, whose Section 11 provides that "[t]he federal, state or local authorities of the United States shall not impose any impediments to transit to or from the headquarters district of […] experts performing missions for the United Nations […] or other persons invited to the headquarters district by the United Nations."[94]

United Nations, Other International Organizations and Third States in and in Relation to the Occupied Palestinian Territory, 2025 I.C.J. __, ¶ 183 (Oct. 22, 2025), ("The purpose of Article 105 of the Charter […] is to safeguard the independent and effective performance of the mandate entrusted to the Organization and its personnel and to ensure that 'no member state may hinder in any way the working of the Organization or take any measures the effect of which might be to increase its burdens.'").

[91] General Convention, art. VI, § 22.

[92] 1967 U.N. Secretariat Study at 224, ¶ 76.

[93] *Applicability of Article VI, Section 22, of the Convention on the Privileges and Immunities of the United Nations, Advisory Opinion*, I.C.J. Reports 1989, ¶ 55 (Dec. 15, 1989).

[94] 1947 Agreement Regarding the Headquarters of the United Nations between the United States and the United Nations, § 11.

51. Through its sanctions on Ms. Albanese, the prosecutors and judges of the ICC, some of whom are called upon to conduct official business at U.N. Headquarters,[95] the United States is in breach of these obligations owed to the United Nations under multiple binding treaties. The Executive Order, designations, and statements by U.S. officials leave no doubt that these individuals are being sanctioned, and impediments are being imposed on their travel and daily activities, precisely because they are exercising their designated functions within an international criminal court whose object and purpose the United States is legally obligated to respect.[96]

C. E.O. 14,203 Its Implementing Regulations and the Designations Thereunder Violate the United States' Obligations to Prevent and Punish International Crimes

52. The Executive Order and the designations also impair the United States' obligations under international law to prevent and punish international crimes. As a party to the 1948 Genocide Convention, the United States assumed a binding treaty obligation under Article 1 "to prevent *and punish* the crime of genocide," including by supporting prosecutions for genocidal acts.[97]

---

[95] In particular, the U.S. Department of State has designated the President of the ICC, who is called upon to address the U.N. General Assembly in New York to present the ICC's annual report every year. *See e.g.*, (+ https://www.icc-cpi.int/news/icc-president-addresses-united-nations-general-assembly-present-courts-annual-report-1+).

[96] For example, Ms. Albanese was sanctioned for purportedly having "directly engaged with the [ICC] in efforts to investigate, arrest, detain, or prosecute nationals of the United States or Israel, without the consent of those two countries." Marco Rubio, Sec'y of State, U.S. Dep't of State, Press Statement, Sanctioning Lawfare that Targets U.S. and Israeli Persons (July 9, 2025), https://www.state.gov/releases/office-of-the-spokesperson/2025/07/sanctioning-lawfare-that-targets-u-s-and-israeli-persons#:~:text=Today%2C%20I%20am%20imposing%20sanctions%20on%20Francesca,without%20the%20consent%20of%20those%20two%20countries. The designation thus seeks to pressure her from fulfilling her U.N. mandate of reporting on human rights abuses in the Occupied Palestinian Territory.

[97] Convention on the Prevention and Punishment of the Crime of Genocide, Dec. 9, 1948, 78 U.N.T.S. 277.

53. As a party to the 1949 Geneva Conventions, the United States has "undertake[n] to respect and ensure respect for the [Conventions] in all circumstances."[98] To fulfill this obligation, contracting States must prevent violations and stop ongoing violations,[99] including by supporting international efforts to bring suspected war criminals and serious violators of the Conventions to justice, *e.g.*, through prosecutions by international criminal tribunals.[100]

54. Similarly, under the UN Charter, all States have "pledge[d] themselves to take joint and separate action in co-operation with the [United Nations] Organization for the achievement of [universal respect for, and observance of, human rights and fundamental freedoms],"[101] which encompasses a duty to prevent, punish, and ensure accountability for crimes against humanity and war crimes.[102]

55. Like all States, the United States thus has a legal duty to cooperate with other States to bring to an end serious violations of such peremptory norms of international law (or *jus cogens*

[98] *E.g.*, Geneva Convention (IV) relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 6 U.S.T. 3516 ("Fourth Geneva Convention"), art. 1; *see also Kadic v. Karadzic*, 70 F.3d 232, 243 (2d Cir. 1995) (holding that the Geneva Conventions codify customary international law).

[99] Int'l Comm. of the Red Cross (ICRC), Commentary on Geneva Convention IV art. 1 (2025), https://ihl-databases.icrc.org/en/ihl-treaties/gciv-1949/article-1/commentary/2025, ¶ 189.

[100] *Id.*, ¶ 251. *See also* Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Dec. 10, 1984, S. Treaty Doc. No. 100-20, 1465 U.N.T.S. 85, art. 7 (obligating States parties to prosecute or extradite those alleged to have committed acts of torture).

[101] *See* UN Charter, art. 1, ¶ 3 ("The Purposes of the United Nations are: […] to achieve international cooperation in solving international problems of [...] [a] humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all."), arts. 55-56 ("All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of [universal respect for, and observance of, human rights and fundamental freedoms]."); International Law Commission, Draft articles on Prevention and Punishment of Crimes Against Humanity, with Commentaries at 61, ¶ 13, U.N. Doc. A/74/10 (2019); Principles of International Cooperation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes against Humanity, G.A. Res. 3074 (XXVIII), annex, ¶ 3, U.N. Doc. A/RES/3074(XXVIII) (Dec. 3, 1973).

[102] *See* S.C. Res. 2419, ¶ 6, U.N. Doc. S/RES/2419 (June 6, 2018); G.A. Res. 67/1, ¶ 22, U.N. Doc. A/RES/67/1 (Nov. 30, 2012); S.C. Res. 1894, ¶ 10, U.N. Doc. S/RES/1894 (Nov. 11, 2009); Principles of International Cooperation in the Detection, Arrest, Extradition and Punishment of Persons Guilty of War Crimes and Crimes against Humanity, G.A. Res. 3074 (XXVIII), annex, U.N. Doc. A/RES/3074(XXVIII) (Dec. 3, 1973).

norms) such as the prohibitions against genocide, crimes against humanity, and serious violations of international humanitarian law.[103]

56. The Executive Order expressly and counterproductively seeks to prevent efforts by the ICC to "investigate, arrest, detain, or prosecute" persons suspected of such crimes, particularly in relation to the Palestine and Afghanistan situations. The designations of nine judges of the ICC as well as the Prosecutor and his staff members are designed to, and have had the effect of, hindering the ICC's ability to investigate the alleged crimes at issue. Similarly, the designation of the U.N. Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 is designed to, and has had the effect of, hindering Ms. Albanese's ability to investigate and report on such international crimes. A further chilling effect results from the secondary civil and criminal penalties targeting all those who provide services to designated individuals and entities. Under customary international law, treaty obligations must be interpreted and performed in good faith.[104] In the *Bosnian Genocide* case, the International Court of Justice derived a negative obligation *not to* commit acts of genocide from a state's express positive duty to prevent and punish genocide in the Genocide Convention.[105] Similarly, the United States'

---

[103] *See* International Law Commission, Responsibility of States for Internationally Wrongful Acts, art. 41(1); *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, Including East Jerusalem*, 2024 I.C.J. 753, ¶ 279 (July 19, 2024); *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion*, I.C.J. Reports 2004, ¶ 159 (July 9, 2004). *See Estate of Tov*, 807 F. Supp. 3d at 208 (listing the prohibition of genocide, torture, and gross violations of international human rights as *jus cogens* norms); *Presbyterian Church of Sudan v. Talisman Energy, Inc.*, 374 F. Supp. 2d 331, 333 n.2 (S.D.N.Y. 2005) ("*Jus cogens* norms include the prohibition on genocide, torture, slavery, crimes against humanity, and extrajudicial killing.").

[104] *See* Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 331, arts. 26, 31(1); *Chubb & Son, Inc. v. Asiana Airlines*, 214 F.3d 301, 309 & n.5 (2d Cir. 2000) (recognizing the Vienna Convention as an "authoritative guide" to the customary international law of treaties); *Fujitsu Ltd. v. Fed. Express Corp.*, 247 F.3d 423, 433 (2d Cir. 2001) ("[T]he doctrine of *pacta sunt servanda*, 'lies at the core of the law of international agreements and is perhaps the most important principle of international law.'") (quoting Restatement (Third) of the Foreign Relations Law of the United States § 321 & cmt. a (Am. L. Inst. 1987)).

[105] *See Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Serbia and Montenegro)*, Judgment, I.C.J. Reports 2007, ¶ 166 (Feb. 26, 2007) (finding that the

positive obligation to prevent and punish international crimes carries with it a negative obligation not to interfere with or hinder ongoing international efforts to investigate and punish those crimes.

57. That positive U.S. obligation also implies a corresponding negative duty not to impede the efforts of the 125 ICC Member States that have chosen to implement their duty to investigate and punish these and other crimes through the work of the ICC. It is a firmly established principle of customary international law that States must refrain from intervening in other States' lawful exercise of their sovereign prerogatives, including their external affairs.[106] Because 125 States have chosen to fulfill their right and duty to investigate and punish international crimes by supporting the work of the ICC, by its institutional actions, the court thus "exercises the jurisdiction of all the concerned sovereigns *inter se*, for their overall benefit."[107] The Executive Order and its underlying designations are expressly designed to constrain the ICC's ability to pursue certain investigations, and to prevent States from supporting it in doing so. By acting to undermine the ICC's work in this coercive manner, the Executive Order constitutes a prohibited intervention into the collective sovereignty of all of the ICC's Member States.

58. This Executive Order and the designations thereunder thus interfere with the United States' performance of its obligations under both treaty and customary international law to cooperate with other States to prosecute and punish these international crimes.

obligation to prevent in Article I of the Genocide Convention "necessarily implies" the corresponding negative obligation for a State *not to commit genocide* itself, notably in light of the purpose of the Convention, despite this obligation not being made express in the text of the convention).

[106] *See* Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, G.A. Res. 2625 (XXV), annex, U.N. Doc. A/RES/2625(XXV) (Oct. 24, 1970), principle 3(1) ("No State or group of States has the right to intervene, directly or indirectly, for any reason whatever, in the internal or external affairs of any other State.").

[107] *Prosecutor v. Omar Hassan Ahmad Al Bashir*, Joint Concurring Opinion of Judges Eboe-Osuji, Morrison, Hofmański & Bossa, ICC-02/05-01/09-397-Corr, ¶ 59 (May 6, 2019).

D. E.O. 14,203, Its Implementing Regulations, and the Designations Thereunder Violate the United States' Obligation to Respect the Independence of the Judiciary and to Preserve the International Human Right to a Fair Trial by Ensuring that Judicial Proceedings Are Free from Political Interference

59. Article 38(c) of the Statute of the International Court of Justice states that general principles of law—recognized by the principal legal systems of the world— are binding sources of international law that can be transposed to the international legal system.[108] The principle of the independence of the judiciary is enshrined in the vast majority of States' domestic legal systems and is at the heart of the general principle of the rule of law.[109] The principle is also reflected in many treaties and UN resolutions.[110] The principle requiring the independence of judges is also enshrined in a range of international legal instruments governing international courts.[111] The Rome Statute also specifically criminalizes "[i]mpeding, intimidating or corruptly influencing an official of the Court for the purpose of forcing or persuading the official not to perform, or to perform improperly, his or her duties."[112]

[108] Marcelo Vázquez-Bermúdez, Special Rapporteur, Second Report on General Principles of Law, U.N. Doc. A/CN.4/741, ¶¶ 17, 26 (2020); *see also id.* ¶ 97 (finding that the transposability of a principle to the international legal system can be evidenced through treaties).

[109] *See, e.g.*, *Evans v. Gore*, 253 U.S. 245, 259 (1920) (this U.S. "constitutional principle" is "widely esteemed and . . . vital to our system of government.")

[110] *See* International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171 ("ICCPR"), art. 14(1) ("[E]veryone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law."); American Convention on Human Rights, Nov. 22, 1969, 1144 U.N.T.S. 123, art. 8(1); Convention for the Protection of Human Rights and Fundamental Freedoms, Nov. 4, 1950, 213 U.N.T.S. 221 ("European Convention on Human Rights"), art. 6(1); Universal Declaration on Human Rights, G.A. Res. 217 A (III), U.N. Doc. A/810 (Dec. 10, 1948), art. 10; Basic Principles on the Independence of the Judiciary, G.A. Res. 40/32, annex, U.N. Doc. A/RES/40/32 (Nov. 29, 1985), ¶ 1 ("The independence of the judiciary shall be guaranteed by the State and enshrined in the Constitution or the law of the country.").

[111] *See, e.g.*, Statute of the International Court of Justice, art. 2 ("The Court shall be composed of a body of independent judges, elected regardless of their nationality."); European Convention on Human Rights, art. 21(4) ("During their term of office the judges shall not engage in any activity which is incompatible with their independence, impartiality or with the demands of a full-time office."); Rome Statute, art. 40 ("The judges shall be independent in the performance of their functions. Judges shall not engage in any activity which is likely to interfere with their judicial functions or to affect confidence in their independence.").

[112] Rome Statute, art. 70.

60. Unlike counterterrorism sanctions, which are directed against financiers for whom there is probable cause or other evidence to raise concerns that they are supporters of terrorism, many of the targets of the E.O. 14,203 sanctions are innocent judges and prosecutors being punished for the "offense" of acting as impartial court officials, without any proffered proof that they are in any way biased, not independent, corrupted, or otherwise unfit to serve. Imposing punishment on distinguished diplomats, jurists, and former government officials—some of whom worked for decades for loyal U.S. allies alongside U.S. officials—without impartial procedures or evidence of bias may invite reciprocal punishment abroad of U.S. judges who are simply doing their jobs.[113]

61. Similarly, E.O. 14,203 does not merely interfere with particular ongoing prosecutorial and judicial decisions. It deploys the coercive economic power of the United States against some, but not all, judges and prosecutors of a standing international court in order to undermine the independence of individual judges, prosecutors, and the court as a whole. These are not minor inconveniences. The sweeping economic measures applied against named individuals here have been described as "civil death." Moreover, the E.O. and designations thereunder similarly target or threaten to target lawyers and civil society organizations supporting the Court's work, and threaten severe criminal and civil penalties on those providing services to designated

[113] For just one case in point, Judge Kimberly Prost of Canada, one of the targets of E.O. 14,203's designations, is an exemplary public official with whom I worked closely in my role as State Department Legal Adviser. Before joining the ICC, she served as judge at the International Criminal Tribunal for the former Yugoslavia (ICTY) on a complex case related to events in Srebrenica in 1995. She previously worked for the Canadian Department of Justice for 18 years, for the United Nations Office on Drugs and Crime (UNODC), and the Canadian Department of Justice as a leading authority on international cooperation on criminal matters. At the Commonwealth Secretariat, she specialized in counter-terrorism investigation and the prosecution of terrorism and terrorist financing. In each of these capacities, she collaborated closely with counterpart officials from the U.S. Departments of Justice, State, and Treasury. She then served with distinction as the first Ombudsperson for the United Nations Security Council Al-Qaida Sanctions Committee, to ensure that UN and IEEPA sanctions were based on evidence and fair procedures. Yet ironically, the U.S. sanctions being imposed on Judge Prost now deny her, as a sitting international judge, the very due process assurances that she worked tirelessly to ensure for others.

individuals and entities. In my experience, such broad sanctions have a predictable, damaging chilling effect on the work of nongovernmental organizations and individuals who might be charged with violations, discouraging them from engaging in constitutionally protected speech and activity.

62. The stated purpose of E.O. 14,203 and of the designations of senior ICC officials made thereunder is to sanction the designated individuals solely for doing their lawful jobs, as prescribed by a treaty the United States has signed. Their apparent goal is to influence these individuals to make their decisions based on their personal interests, rather than on the objective facts and law of the cases before them.[114] Such coercive interference with judicial proceedings is incompatible with the fundamental human right to a fair trial. Article 14(1) of the ICCPR, to which the United States is a State party, guarantees "a fair and public hearing by a competent, *independent and impartial* tribunal established by law" (emphasis added). As the UN Human Rights Committee has observed, States must ensure "the actual independence of the judiciary from political interference."[115] This ICCPR principle does not just apply to domestic courts; it reflects a general principle of law that has become recognized as customary international law, as reflected in Article 10 of the UDHR: "[e]veryone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him."[116] The E.O. and the designations thereunder violate the U.S. standing

[114] *See* Humeyra Pamuk, *Exclusive: US threatens new ICC sanctions unless court pledges not to prosecute Trump*, REUTERS (Dec. 10, 2025), https://www.reuters.com/world/us/us-threatens-new-icc-sanctions-unless-court-pledges-not-prosecute-trump-2025-12-10/ (describing the Trump Administration's threats to penalize ICC officials if the ICC does not "amend its founding document to ensure it does not investigate [President Trump] and his top officials," "drop[] investigations of Israeli leaders over the Gaza war," and "formally end[] an earlier probe of U.S. troops over their actions in Afghanistan.")

[115] Human Rights Committee, General Comment No. 32, UN Doc. CCPR/C/GC/32 (23 Aug. 2007), para. 19.

[116] *See* International Law Commission, First report on general principles of law (5 Apr. 2019), UN Doc. A.CN.4.732, para. 55; Nuremberg Principles, Principle V.

obligation to ensure the right to a fair international trial by interfering with the ICC's judicial independence and capacity to provide a fair process in the situations referred to it, and to the individuals accused and prosecuted by it.

63. The E.O. and designations similarly undermine the rights of other stakeholders in the judicial process. The judges and prosecutors sanctioned under the order are responsible for adjudicating cases on behalf of victims of war crimes, crimes against humanity, and genocide. By subjecting ICC officials to measures that impair their ability to carry out their judicial and prosecutorial functions, the sanctions deprive victims of the legal advocates and adjudicators who give their claims voice. By undercutting the work of the ICC as a whole, the E.O. and its related designations extend beyond their immediate targets to punish victims' advocates and survivors whose cases these sanctions make more difficult to conclude.[117] Because these sanctions are designed to impede or unduly influence the judicial functions of the ICC and its judges in the administration of those cases, they offend the general principle of law guaranteeing the independence of the judiciary.

V. CONCLUSION

64. The ICC's object and purpose is to bring international criminal suspects to justice. As a signatory to the Rome Statute under international law, the United States may not seek to defeat that object and purpose, without regard to which cases they are deciding. Nor may it violate its other obligations under treaty and customary international law by targeting the ICC, its judges and prosecutors, a U.N expert on mission, or lawyers and civil society members supporting its work. For more than two centuries, the Supreme Court has presumed that Congress "ordinarily

[117] *See* Ashifa Kassam, *Credit Cards Cancelled, Google Accounts Closed: ICC Judges on Life Under Trump Sanctions*, THE GUARDIAN (Feb. 18, 2026), https://www.theguardian.com/law/2026/feb/18/international-criminal-court-icc-judges-trump-sanctions ("We serve humanity. We are delivering justice for the most vulnerable victims around the world, for millions and millions of women and children who have no voice.") (quoting Judge Ibáñez Carranza).

seeks to follow" principles of customary international law.[118] Accordingly, the Court has directed that an act of Congress ought never be construed to violate the law of nations if any other possible construction remains.[119] This canon of construction directs courts "where fairly possible" to construe federal statutes "so as not to conflict with international law or with an international agreement of the United States."[120] As noted above, the ASPA authorizes the Executive Branch only to take three specific designated actions with respect to the ICC: to provide legal assistance, present exculpatory evidence, and appear before the ICC to defend U.S. interests. It does not authorize any branch of the U.S. government to impose sweeping and punitive sanctions on international judges and prosecutors in violation of international law.

65. For all of the reasons stated above, it is my considered expert opinion that Executive Order 14, 203, and the regulations and executive designations made thereunder, both run counter to the long U.S. history of promoting institutions of international criminal justice and international dispute-settlement and violate numerous provisions of international law.

66. *Right of Modification.* I reserve the right to modify, amend, or expand this declaration as new information may come to light.

Respectfully submitted,

HAROLD HONGJU KOH Date: August 26, 2026

[118] *F. Hoffmann-La Roche Ltd. v. Empagran S.A.*, 542 U.S. 155, 164 (2004).

[119] *Murray v. Schooner Charming Betsy*, 6 U.S. (2 Cranch) 64, 118 (1804).

[120] *Restatement (Third) of Foreign Relations Law* § 114 (1987).