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CHAPTER 3

International Criminal Law

A. EXTRADITION AND MUTUAL LEGAL ASSISTANCE

1. Extradition Treaty with the Dominican Republic

On January 12, 2015, U. S. Ambassador to the Dominican Republic James Brewster and Minister of Foreign Affairs of the Dominican Republic Andres Navarro signed a new extradition treaty between the two countries. See press release, available at <http://santodomingo.usembassy.gov/pr-150112.html>. The new treaty replaces one dating back to 1909, expanding the scope of extraditable offenses and establishing more up-to-date extradition procedures.* As described in the press release:

The language of the new treaty was agreed upon in October of 2014 after a three-day negotiation between delegations of technical experts from both governments. The United States delegation was comprised of attorneys from the U.S. Department of State and the U.S. Department of Justice. The Dominican delegation included experts from the Office of the Attorney General, the Ministry of Foreign Affairs, and the Office of the Presidency.

2. Mutual Legal Assistance Treaties

a. *Kazakhstan*

On February 20, 2015, the United States and Kazakhstan signed a Treaty on Mutual Legal Assistance in Criminal Matters. See February 20, 2015 State Department media

* Editor's note: In February 2016, the President transmitted the treaty to the Senate for its advice and consent.

note, available at <http://www.state.gov/r/pa/prs/ps/2015/02/237732.htm>. As described in the media note:

The Treaty provides a formal intergovernmental mechanism for the provision of evidence and other forms of law enforcement assistance in criminal investigations, prosecutions, and related proceedings. Under the Treaty, assistance can be provided in taking testimony of witnesses, releasing documents and records, locating and identifying persons or evidence, serving documents, executing requests for searches and seizures, transferring persons in custody for testimony or other purposes, tracing and forfeiting the proceeds of crime, and any other form of assistance not prohibited by the laws of the requested State.

b. *Algeria*

On October 5, 2015, President Obama transmitted, for the advice and consent of the Senate to ratification, the Treaty between the Government of the United States of America and the Government of the People's Democratic Republic of Algeria on Mutual Legal Assistance in Criminal Matters, signed at Algiers on April 7, 2010. Daily Comp. Pres. Docs. 2015 DCPD No. 00701 (Oct. 5, 2015). The transmittal includes the report of the Department of State with respect to the treaty. The President's message to the Senate transmitting the treaty summarizes some of its provisions:

The Treaty provides for a broad range of cooperation in criminal matters. Under the Treaty, the Parties agree to assist each other by, among other things: producing evidence (such as testimony, documents, or items) obtained voluntarily or, where necessary, by compulsion; arranging for persons, including persons in custody, to travel to provide evidence; serving documents; executing searches and seizures; locating and identifying persons or items; and freezing and forfeiting assets or property that may be the proceeds or instrumentalities of crime.

The text of the treaty and the overview with an article-by-article analysis prepared by the State Department are available at <https://www.congress.gov/114/cdoc/tdoc3/CDOC-114tdoc3.pdf>.

c. *Jordan*

On December 8, 2015, President Obama transmitted, for the advice and consent of the Senate to ratification, the Treaty between the Government of the United States of America and the Government of the Hashemite Kingdom of Jordan on Mutual Legal Assistance in Criminal Matters, signed at Washington on October 1, 2013. Daily Comp.

Pres. Docs. 2015 DCPD No. 00875 (Dec. 8, 2015). The text of the treaty as transmitted, with an overview prepared by the State Department, is available at <https://www.congress.gov/114/cdoc/tdoc4/CDOC-114tdoc4.pdf>.

3. Extradition Cases

a. Patterson

As discussed in *Digest 2014* at 74-78, the United States responded to an appeal to the U.S. Court of Appeals for the Ninth Circuit from a district court decision denying a habeas petition by a U.S. citizen certified for extradition to the Republic of Korea to face a murder charge. *Patterson v. Wagner*, No. 13-56080. Patterson contended that the statute of limitations provision in the U.S.-Republic of Korea extradition treaty (“Treaty”) and the Status of Forces Agreement (“SOFA”) between the two countries both presented bars to his extradition. The Court of Appeals agreed with the United States that neither the extradition treaty nor the SOFA prevents Patterson’s extradition. 785 F.3d 1277 (9th Cir. 2015). Excerpts follow from the Court’s opinion.

* * * *

Patterson first argues that the 1998 extradition treaty between the United States and South Korea prohibits his extradition because his prosecution would be untimely. The question is whether the treaty’s lapse-of-time provision, which states that extradition “may be denied” when the prosecution would have been barred by the relevant statute of limitations in the United States, imposes a mandatory bar to extradition. We conclude that it does not impose a mandatory bar.

Article 6 of the extradition treaty between the United States and South Korea provides, in part:

Lapse of Time

Extradition *may be denied* under this Treaty when the prosecution or the execution of punishment of the offense for which extradition is requested would have been barred because of the statute of limitations of the Requested State had the same offense been committed in the Requested State.

Extradition Treaty, U.S.-S. Kor., art. VI, June 9, 1998, T.I.A.S. No. 12,962 (“Treaty”) (emphasis added). That is, if a person cannot be prosecuted for a crime in the United States because the relevant statute of limitations has expired, extradition to South Korea for that crime “may be denied.” *Id.*

The parties agree that Patterson has been certified for extradition for a crime for which he cannot now be prosecuted in the United States. The magistrate judge certified Patterson for extradition only for second-degree murder, concluding that the evidence did not support a finding of probable cause for premeditated murder. The magistrate judge then applied the five-

year federal statute of limitations for second-degree murder, *see* 18 U.S.C. § 3282(a), for the purpose of addressing the lapse-of-time provision of Article 6. The government challenges neither the finding of probable cause nor the application of the federal statute of limitations. However, the government contends that the lapse-of-time provision of Article 6 is not judicially enforceable.

We begin with the text of the treaty. *Medellin v. Texas*, 552 U.S. 491, 506, 128 S.Ct. 1346, 170 L.Ed.2d 190 (2008) (“The interpretation of a treaty, like the interpretation of a statute, begins with its text.”). Article 6 provides, “Extradition *may be denied*.” Treaty, art. VI (emphasis added). The normal reading of “may” is permissive, not mandatory. The most natural reading of Article 6, therefore, is that untimeliness is a discretionary factor for the Secretary of State to consider in deciding whether to grant extradition. That is, the Secretary “may” decline to extradite someone whose prosecution would be time-barred in the United States, but he or she is not required to do so. Under this reading, there is no mandatory duty that a court may enforce. *Cf. Trinidad y Garcia v. Thomas*, 683 F.3d 952, 960 (9th Cir.2012) (en banc) (Thomas, J., concurring) (“[I]t is the Secretary’s role, not the courts’, to determine whether extradition should be denied on humanitarian grounds....” (internal quotation marks omitted)).

This reading of Article 6 is consistent with our decision in *Vo*. In that case, *Vo* was arrested in the United States for bombing the Vietnamese embassy in Thailand. 447 F.3d at 1238–39. When Thailand sought to extradite him, *Vo* argued that the relevant treaty barred his extradition. The treaty stated that extradition “*may be denied* when the person sought is being or has been proceeded against” (*i.e.*, prosecuted) in the extraditing country for a related crime. *Id.* at 1238 (emphasis added). We rejected *Vo*’s argument that the “may-be-denied” language barred the judge from certifying his extradition, holding that the language meant that a proceeding for a related crime was a discretionary factor to be considered by the Secretary of State in deciding whether to extradite. *Id.* at 1246. ...

Patterson contends that our reading of “may be denied” in *Vo* does not apply to that same language in Article 6. Patterson argues that evidence from the treaty’s drafting and negotiating history demonstrate that, despite the use of the “may-be-denied” language, Article 6 was intended to be a mandatory bar to untimely extradition requests. Patterson further argues that the magistrate judge erred by ignoring this evidence. We agree with Patterson that extra-textual evidence is relevant to treaty interpretation, but we disagree with him on the significance of that evidence in this case.

While “[t]he interpretation of a treaty ... begins with its text,” *Medellin*, 552 U.S. at 506, 128 S.Ct. 1346, it does not end there. Because the purpose of treaty interpretation is to “give the specific words of the treaty a meaning consistent with the shared expectations of the contracting parties,” *Air France v. Saks*, 470 U.S. 392, 399, 105 S.Ct. 1338, 84 L.Ed.2d 289 (1985), courts—including our Supreme Court—look to the executive branch’s interpretation of the issue, the views of other contracting states, and the treaty’s negotiation and drafting history in order to ensure that their interpretation of the text is not contradicted by other evidence of intent. *See Abbott v. Abbott*, 560 U.S. 1, 15–20, 130 S.Ct. 1983, 176 L.Ed.2d 789 (2010) (examining these factors following its textual analysis); *Medellin*, 552 U.S. at 508–13, 128 S.Ct. 1346 (same); *see also Vo*, 447 F.3d at 1246 n. 13 (consulting a letter of submittal from the Secretary of State).

In this case, the extra-textual evidence, considered as a whole, reinforces the interpretation of Article 6 for which the government argues. Patterson points to evidence that he contends shows that both the Senate and the executive branch understood Article 6 to impose a

mandatory bar. But this evidence falls short of establishing that either the Senate or the executive branch understood the treaty in this way.

First, Patterson argues that the Senate Report accompanying the treaty shows that the Senate understood Article 6 to be mandatory. He points to the Report's summary, which states, "The Treaty with the Republic of Korea precludes extradition of offenses barred by an applicable statute of limitations." S. Exec. Rep. No. 106-13, at 5 (1999) ("Report"). Patterson argues that this language shows that the lapse-of-time provision of Article 6 is mandatory, not permissive. But the body of the Report calls that reading into question. The more detailed technical analysis of the treaty, contained in the body of the Report, describes Article 6 in permissive terms, stating that extradition "may be denied" and explaining that the Korean and U.S. statutes of limitations operate so differently that "this provision could be very difficult to implement." *Id.* at 14. The technical analysis points to three extradition treaties that have what it characterizes as "similar provisions." *Id.* Tellingly, two of those treaties use the word "shall," and one uses the word "may." *Compare* Extradition Treaty, U.S.-Fr., art. 9(1), Apr. 23, 1996, S. Treaty Doc. No. 105-13 ("shall"), *and* Extradition Treaty, U.S.-Japan, art. IV(3), Mar. 3, 1978, 31 U.S.T. 892 ("shall"), *with* Extradition Treaty, U.S.-Lux., art. 2(6), Oct. 1, 1996, S. Treaty Doc. No. 105-10 ("may"). When parties to a treaty intend to make an exception to extradition mandatory, in other words, they know how to state that it "shall" apply.

Second, Patterson argues that the hearings on the treaty show that the Senate understood Article 6 to be mandatory. He points to an exchange between Senator Rod Grams and John Harris, the Acting Director of the Office of International Affairs at the Department of Justice, during the Senate hearing. But to the extent the exchange supports either reading of Article 6, it only weakly supports Patterson's contention that the Senate understood the provision to be mandatory, and it shows fairly clearly that the executive branch understood it to be permissive. The exchange is as follows:

SENATOR GRAMS:

Article 6 of the proposed treaty bars extradition in cases where the law of the requested State would have barred the crime due to a statute of limitations having run out.

...

So the question is are you confident that this article of the treaty adequately insures that fugitives cannot simply run out the clock by fleeing to Korea?

MR. HARRIS:

Senator, this article of the treaty was the subject of considerable negotiation. As you may recall, of the treaties that were before the Senate last fall, most of them had slightly different language. Many of our most modern extradition treaties flatly state that the statute of limitations of the requesting State will apply.

We have a few in which it was not possible to reach that resolution. In this case, because of the specific provisions of Korean law, we did agree that the statute of limitations of the requested State would apply. But, as you have indicated, the specific language in the article is crafted so that those factors which toll the statute of limitations under the law of the requesting State would be given weight.

Report at 37 (emphasis added).

The import of the italicized portion of Senator Grams's question is not clear. Senator

Grams may have thought that Article 6 was a mandatory bar, as indicated in the italicized words, but he may have been speaking imprecisely. But even if Senator Grams was speaking precisely, he may have considered himself to have been informed to the contrary, and persuaded and corrected, by Mr. Harris's answer. And even if he was speaking precisely, and even if he did not change his view after hearing Mr. Harris's answer, Senator Grams was not speaking for the full Senate. By contrast, the import of Mr. Harris's words, given on behalf of the executive branch, is fairly clear. He stated that Article 6 was the subject of "considerable negotiation," and that the "specific language in the article is crafted" to give "weight" to a statute of limitations determination. *Id.*

Additional evidence of the executive branch's interpretation of Article 6 shows that the executive branch has interpreted Article 6 to grant discretion to the government to which the extradition request is made. The State Department's official submittal letter, which accompanied the treaty when President Clinton submitted it to the Senate, described the treaty provisions. *See* S. Treaty Doc. No. 1062, at v (1999). In that letter, Deputy Secretary of State Strobe Talbott explained that "Article 6 *permits* extradition to be denied" when the prosecution would be untimely. *Id.* at vii (emphasis added). The submittal letter's use of the word "permits" rather than "requires" indicates that the executive branch believed that Article 6 was permissive rather than mandatory.

Taken as a whole, the extra-textual evidence reinforces the natural reading of Article 6. Under that reading, the Secretary of State may choose, in his or her discretion, whether to grant or deny extradition in a case where the statute of limitations in the United States has expired. Federal courts thus have no authority under Article 6 to dictate to the Secretary of State what he or she must do in such a case.

2. Status of Forces Agreement

Patterson next argues that the Status of Forces Agreement ("SOFA") governing American military personnel and their dependents in South Korea prohibits his extradition. Specifically, he argues that his extradition to Korea would expose him to double jeopardy in contravention of the SOFA, and that the SOFA confers a judicially enforceable right not to be extradited. The premise of Patterson's argument is that rights conferred by the SOFA may be enforced by the judiciary to block extradition. We disagree with this premise.

The United States and South Korea entered into the SOFA in 1966 pursuant to the mutual defense treaty between the two countries. Under the agreement, U.S. military personnel and their dependents in Korea are entitled to enumerated rights, including, as relevant here, the right "not [to] be prosecuted or punished more than once for the same offense." *Facilities and Areas and the Status of United States Armed Forces in Korea, U.S.-S. Kor.*, July 9, 1966, 17 U.S.T. 1677, 1780 ("SOFA"). The parties agree that the SOFA applies to Patterson, as he was the dependent of an American serviceman stationed in South Korea at the time of the murder.

Patterson argues that his prosecution in South Korea for murder would violate the SOFA provision protecting against double jeopardy. He argues that his conviction for destruction of evidence required a finding by the South Korean court in that proceeding that he did not commit the murder for which extradition is now sought. This is so, he argues, because the statute under which he was convicted prohibits the destruction of evidence in connection with "a criminal ... case *against another*." Criminal Act, Act No. 293, Sept. 18, 1953, art. 155(1), *amended by* Act No. 5057, Dec. 29, 1995 (S. Kor.) (emphasis added). Thus, Patterson argues, the South Korean court was required to find in his earlier criminal trial that he was not the person who murdered

Cho.

We need not reach the question whether the SOFA forbids Patterson’s prosecution for murder in South Korea. A threshold question is whether, even if the double jeopardy provision of SOFA forbids the prosecution, we can enforce that provision by blocking his extradition. We conclude that the answer to this question is “no.”

For purposes of our decision, we assume that there is no categorical prohibition against a federal statute, or a treaty or other international agreement to which the United States is a party, providing a basis for a judicial order blocking extradition. *Cf. Trinidad y Garcia*, 683 F.3d at 956–57. But it is clear that the SOFA is not such an international agreement. We agree with the Seventh and D.C. Circuits that a relator seeking to block extradition by relying on an international agreement must show, at a minimum, that the agreement upon which he relies establishes a judicially enforceable right. *See In re Burt*, 737 F.2d 1477, 1487–88 (7th Cir.1984); *Holmes v. Laird*, 459 F.2d 1211, 1222 (D.C.Cir.1972); *cf. Edye v. Robertson (Head Money Cases)*, 112 U.S. 580, 598, 5 S.Ct. 247, 28 L.Ed. 798 (1884) (a treaty, though primarily “a compact between independent nations,” may contain “provisions which confer certain rights upon the citizens or subjects of one of the nations ... which are capable of enforcement as between private parties in the courts of the country”).

Though the SOFA appears to establish individual rights, we conclude that they are not judicially enforceable. Confronted with a similar question regarding the NATO status of forces agreement, the Seventh and D.C. Circuits looked to whether the agreement established judicial or diplomatic mechanisms for adjudicating disputes. *Burt*, 737 F.2d at 1487–88; *Holmes*, 459 F.2d at 1222. In *Burt*, the Seventh Circuit held that recourse for a violation was “diplomatic, not judicial,” and on that basis rejected the relator’s petition for a writ of habeas corpus. 737 F.2d at 1488. Similarly, in *Holmes*, the D.C. Circuit held that because the agreement required the parties to negotiate disputes “relating to the interpretation or application of this Agreement,” the “enforcement mechanism” for the assertion of individual rights under the agreement was “diplomatic recourse only.” 459 F.2d at 1222.

Here, as in *Burt* and *Holmes*, the U.S.-Korea SOFA establishes diplomatic procedures for resolution of matters arising under its provisions. It provides that “[a] Joint Committee shall be established as the means for consultation between [the United States and South Korea] on all matters requiring mutual consultation regarding the implementation of this Agreement except where otherwise provided.” SOFA at 1704. Amendments adopted in 2001 specify a procedure by which the Joint Committee’s jurisdiction is invoked: the state parties have ten days to resolve any complaint at the local level; the matter is then referred the Joint Committee, which has 21 days to resolve it; if the Committee cannot do so, the matter is referred to the two governments. *Facilities and Areas and the Status of United States Armed Forces, U.S.-S. Kor.*, art. XXII, ¶¶ 5(c), 9, Jan. 18, 2001, T.I.A.S. No. 13,138. Like the NATO agreement, the SOFA establishes an enforcement mechanism that is “diplomatic, not judicial.” *Burt*, 737 F.2d at 1488.

The SOFA’s provisions thus establish a diplomatic conflict resolution scheme with no role for the judiciary. Even if prosecution of Patterson for murder violates the SOFA’s provision protecting against double jeopardy (a question we do not decide), that provision does not provide a basis for a court to bar his extradition.

* * * *

b. Trabelsi

As discussed in *Digest 2014* at 78-84, the United States opposed defendant Nizar Trabelsi's motion to dismiss the indictment against him based on his claim that his extradition to the United States violated the extradition treaty between the United States and the Kingdom of Belgium. For additional background on Trabelsi's 2013 extradition to the United States, see *Digest 2013* at 33. In 2015, the United States opposed Trabelsi's attempt to obtain correspondence and documents related to his extradition exchanged by the United States and Belgium. On May 8, 2015, the U.S. District Court for the District of Columbia ordered the production of certain correspondence. The United States sought and obtained partial reconsideration of the district court's order compelling production, such that the requested correspondence would be produced *ex parte* and *in camera* and any documents ultimately produced to Trabelsi would be under seal. The court's opinion notes:

The government asserts that substantial damage to the United States' relationship with Belgium, as well as to the United States' foreign relations with other extradition partners, might flow from traditional production of the requested correspondence. The government also notes Belgium's explicit objection to production of the requested correspondence and concerns regarding access to correspondence sent with an expectation of confidentiality. ... In light of the potential harm to the United States' foreign relations with Belgium and other nations posed by unfettered disclosure, as well as the need to balance the government's expressed interests with Trabelsi's interest in obtaining the requested correspondence, *in camera ex parte* review is appropriate...

On November 4, 2015, the U.S. District Court for the District of Columbia denied Trabelsi's motion to dismiss the superseding indictment, finding that Trabelsi had not shown that the offenses charged in the superseding indictment were the same as those for which he was prosecuted in Belgium and that he could not show that his extradition violated the extradition treaty. Trabelsi filed a notice of appeal on November 6, 2015.

c. Munoz Santos

On July 27, 2015, the United States filed its response to a petition for rehearing *en banc* filed by a fugitive who had been found extraditable by a magistrate judge. *Munoz Santos v. Thomas*, No. 12-56506 (9th Cir.). Mexico sought the extradition of Jose Luis Munoz Santos on kidnapping for ransom charges relating to the kidnapping of a woman and her two daughters in Mexico, which resulted in the death of one of the daughters. In concluding that there was probable cause to believe that Munoz Santos had committed the criminal offenses for which Mexico sought his extradition, the magistrate judge

relied in part on witness statements from the fugitive’s alleged co-conspirators, the adult kidnapping victim and her husband, and another person who was allegedly invited to join the kidnapping conspiracy but declined. In attempting to challenge the evidence proffered in support of probable cause, Munoz Santos sought to introduce evidence that the testimony against him from his alleged co-conspirators (Rosas and Hurtado) had been obtained through torture and had subsequently been recanted. The extradition judge excluded the torture allegations and recantations and issued a certification of extraditability. Munoz Santos filed a *habeas* petition challenging the certification in part on the ground that the torture allegation and recantations should not have been excluded. The district court denied the *habeas* petition; the U.S. Court of Appeals for the Ninth Circuit affirmed that denial; and Munoz Santos filed a petition for a rehearing *en banc*. Excerpts follow (with footnotes omitted) from the U.S. brief, which is available in full at www.state.gov/s/l/c8183.htm.

* * * *

A. The Panel Properly Affirmed the Extradition Judge’s Exclusion of the Fugitive’s Recantation Evidence

1. *The Extradition Habeas Process Is Sharply Limited By Precedent, Statute, Treaty, and Separation of Powers and Comity Principles*

The extradition process begins with the political branches’ decision to enter into an extradition treaty, a decision that rests on those branches’ determination that the foreign country’s legal and penal system is one into which the United States is willing to extradite fugitives. “[I]t is for the[se] political branches, not the judiciary, to assess practices in foreign countries and to determine national policy in light of those assessments.” *Munaf v. Geren*, 553 U.S. 674, 700-01 (2008). As the Supreme Court recently explained:

The Judiciary is not suited to second-guess such determinations—determinations that would require federal courts to pass judgment on foreign justice systems and undermine the Government’s ability to speak with one voice in this area. . . . In contrast, the political branches are well situated to consider sensitive foreign policy issues, such as whether there is a serious prospect of torture

Id. at 702. The political branches do not lightly enter into extradition treaties, and once they do, reciprocal obligations and principles of comity follow.

One of those obligations—reflecting an important comity principle and codified in 18 U.S.C. §§ 3181-3195—is that “judicial officers conduct a circumscribed inquiry in extradition cases.” *Blaxland v. Commonwealth Dir. of Pub. Prosecutions*, 323 F.3d 1198, 1208 (9th Cir. 2003). Extradition judges do not hold trials on the fugitive’s guilt, or resolve evidentiary challenges, or look past the evidence to whether the legal procedures in the requesting country are akin to those of the United States. “It is not the business of [United States] courts to assume the responsibility for supervising the integrity of the judicial system of another sovereign nation.” *Jhirad v. Ferrandina*, 536 F.2d 478, 484-85 (2d Cir. 1976). As the Second Circuit

explained with some force in the context of a fugitive's claims that he would be tortured if extradited to the requesting country, "consideration of the procedures that will or may occur in the requesting country is not within the purview of a [U.S. court]." *Ahmad v. Wigen*, 910 F.2d 1063, 1066 (2d Cir. 1990). In fact, it is "improper" for the court to make that sort of examination: "[t]he interests of international comity are ill-served by requiring a foreign nation such as [Mexico] to satisfy a United States [court] concerning the fairness of its laws and the manner in which they are enforced." *Id.* at 1067. The same concerns counsel against U.S. judges conducting inquiries into the manner in which evidence has been obtained in a foreign country. *See Koskotas v. Roche*, 931 F.2d 169, 174 (1st Cir. 1991) ("Extradition proceedings are grounded in principles of international comity, which would be ill-served by requiring foreign governments to submit their purposes and procedures to the scrutiny of United States courts."). It is for the courts in the requesting country to determine whether law enforcement agents in that country have procured evidence improperly and, if so, whether any impropriety so taints the evidence that it should not be considered in the underlying judicial proceedings.

Thus, an extradition judge may not deny extradition on the ground that the requesting country will not provide a fugitive the procedures and rights available in a U.S. criminal case, even if those rights are guaranteed under the U.S. Constitution. *Neely v. Henkel*, 180 U.S. 109, 123 (1901). Nor may a judge entertain challenges that a requesting country has not followed its own laws in bringing a criminal case or extradition request. *Skaftouros v. United States*, 667 F.3d 144, 155-56 (2d Cir. 2011). As the Supreme Court explained over a century ago—in a far more difficult case than this one—U.S. courts "are bound by the existence of an extradition treaty to assume that the [foreign] trial will be fair." *Glucksman v. Henkel*, 221 U.S. 508, 512 (1911) (extradition of Jewish fugitive to tsarist Russia); *cf. Munaf*, 553 U.S. at 700-02; *Trinidad y Garcia v. Thomas*, 683 F.3d 952, 978 (9th Cir. 2012).

2. U.S. Courts Must Exclude Evidence That Contradicts the Extraditing Country's Proffered Evidence

Under the Extradition Treaty Between the United States and Mexico, signed May 4, 1978, 31 U.S.T. 5059, to meet the standard for certification, the evidence must only establish probable cause that the fugitive committed the charged offense. *See, e.g., Emami v. U.S. Dist. Court for N. Dist.*, 834 F.2d 1444, 1447 (9th Cir. 1987). Moreover, "[t]his circuit has held that the self-incriminating statements of accomplices are sufficient to establish probable cause in an extradition hearing." *Zanazanian v. United States*, 729 F.2d 624, 627 (9th Cir. 1984).

An extradition hearing resembles a preliminary hearing or grand jury investigation into the existence of probable cause, *see, e.g., Benson v. McMahon*, 127 U.S. 457, 463 (1888) (an extradition hearing is "of the character of [a] preliminary examination" to determine whether to hold an accused to be tried on criminal charges), except that a fugitive's procedural rights are more limited, *see, e.g., Bingham v. Bradley*, 241 U.S. 511, 517 (1916) (no right to cross-examination if witnesses testify at the hearing); *Eain v. Wilkes*, 641 F.2d 504, 511 (7th Cir. 1981) (no right to introduce contradictory or impeaching evidence). Because of the limited purpose of an extradition hearing and the comity owed other nations under an extradition treaty, a fugitive's ability to present evidence is very limited. In *Collins v. Loisel*, the Supreme Court held that a fugitive's right to present evidence must be sharply limited lest an extradition hearing become a contested trial:

If this were recognized as the legal right of the accused in extradition proceedings, it would give him the option of insisting upon a full hearing and trial of his case here; and that might compel the demanding government to produce all its evidence here, both direct and rebutting, in order to meet the defense thus gathered from every quarter. The result would be that the foreign government though entitled by the terms of the treaty to the extradition of the accused for the purpose of a trial where the crime was committed, would be compelled to go into a full trial on the merits in a foreign country, under all the disadvantages of such a situation, and could not obtain extradition until after it had procured a conviction of the accused upon a full and substantial trial here. This would be in plain contravention of the intent and meaning of the extradition treaties.

259 U.S. 309, 316 (1922). The Court further explained that evidence offered to “contradict” the government’s evidence was not properly admitted under this standard. *Id.*

For that reason—and “[b]ecause extradition courts do not weigh conflicting evidence in making their probable cause determinations,” *Barapind*, 400 F.3d at 749 (internal quotation marks and citation omitted)—a fugitive may not introduce evidence that contradicts the evidence submitted on behalf of the requesting country. In other words, the fugitive cannot offer evidence that would lead to an evidentiary dispute. *See Hooker v. Klein*, 573 F.2d 1360, 1368 (9th Cir. 1978). As the fugitive concedes (PFR 7), this includes evidence of recantations of inculpatory statements. *See Barapind*, 400 F.3d at 750; *Eain*, 641 F.2d at 511-12 (“The alleged recantations are matters to be considered at the trial, not the extradition hearing.”).

Only precluding evidentiary disputes can maintain the essential nature of extradition hearings, defined by the preliminary nature of the proceeding, the practical fact that the relevant evidence and witnesses are located abroad, and the need for comity between the Treaty parties. To resolve disputed issues would compel the requesting country to send its evidence and witnesses to the United States, and requiring “the demanding government to send its citizens to another country to institute legal proceedings would defeat the whole object of the treaty.” *Charlton v. Kelly*, 229 U.S. 447, 461 (1913); *Bingham*, 241 U.S. at 517; *Mainero v. Gregg*, 164 F.3d 1199, 1206 (9th Cir. 1999) (“[T]he very purpose of extradition treaties is to obviate the necessity of confronting the accused with the witnesses against him.”) (internal quotation marks omitted).

3. *The Torture Allegations Are Inextricably Intertwined With Recantation Evidence and Were Properly Excluded*

While the fugitive now asserts that the torture allegations may be considered separately from the recantations (PFR 7, 12), he conceded below “that the district court correctly characterized the evidence as ‘inextricably intertwined,’ and that Rosas and Hurtado are essentially saying, ‘I was tortured so the things I said the first time are not credible.’” *Santos*, 779 F.3d at 1027; (ER 15). The panel thus correctly held that the extradition judge properly excluded all such evidence:

[I]n order to evaluate Rosas’ and Hurtado’s torture allegations, the extradition court would necessarily have had to evaluate the veracity of the recantations and weigh them against the conflicting inculpatory statements. Doing so would have exceeded the limited authority of the extradition court.

Santos, 779 F.3d at 1027 (citing *Barapind*, 400 F.3d at 749-50; *Quinn v. Robinson*, 783 F.2d 776, 815 (9th Cir. 1986)).

The fugitive contends that *Barapind* supports his position that the recantations and torture allegations can be detached from each other. (PFR 10-12.) He relies on a sentence in which the Court *rejected* the fugitive's argument that some evidence was unreliable "because it was fabricated or obtained by torture," but also (1) commented that the extradition judge had "conducted a careful, incident-by-incident analysis as to whether there was impropriety" on the part of the requesting government, and (2) held that the judge's findings that evidence supporting certain charges "was not the product of fabrication or torture were not clearly erroneous." (PFR 10 (quoting *Barapind*, 400 F.3d at 748).) Read in context, that sentence cannot carry the tremendous weight the fugitive asks it to bear.

To begin with, the *Barapind* Court was never asked whether evidence allegedly obtained under duress could be excluded. The extradition judge in *Barapind* admitted and considered such evidence, but nonetheless found probable cause on both charges without regard to *Barapind*'s evidence because resolution of that disputed evidence would require an improper trial. 400 F.3d at 749, 752. *Barapind* appealed that probable cause finding, and the government never challenged the admission of the torture evidence. The question of whether the extradition judge was required to admit and consider such evidence simply was not before the Court. *See Webster v. Fall*, 266 U.S. 507, 511 (1925) ("Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents.").

More importantly, *Barapind* did not—and could not—upend the decades of precedent, including Supreme Court precedent, holding that a fugitive cannot submit contradictory evidence and an extradition judge cannot hold mini-trials to resolve evidentiary disputes. Thus, the panel in this case—after carefully analyzing *Barapind*—properly held that the decision required affirmance here. *Santos*, 779 F.3d at 1025-28. The fugitive's "evidence was properly excluded because its consideration would require a mini-trial on whether the initial statements of Rosas and Hurtado were procured by torture." *Id.* at 1027-28 (citing *Barapind*, 400 F.3d at 749-50).

4. Mexico Disputes the Fugitive's Torture Allegations

The Mexican government maintains that Hurtado and Rosas were not tortured (ER 16 (habeas judge noting proffer by government counsel that the claims of torture were unfounded)) and, notwithstanding the conclusory assertions of the fugitive (PFR 1) and *amici curiae* (AB 2, 3 n.4), there has never been a judicial finding to the contrary. Rather, the only evidence of torture in the record are Rosas's and Hurtado's self-serving allegations that their inculpatory statements were coerced. *See Santos*, 779 F.3d at 1026 n.4 (noting that Rosas and Hurtado had incentives to falsely recant).

The allegations of torture were properly excluded because they contradicted evidence proffered by the government and would have created an evidentiary dispute, independent of the torture allegations being inextricably intertwined with the recantations. (*See GAB 31-36* (citing *Hooker*, 573 F.2d at 1368; *Barapind*, 400 F.3d at 749-50).) The panel, however, did not reach this broader question and instead expressly limited its holding to requiring the exclusion of evidence of duress when such evidence is inextricably intertwined with recantations. *Santos*, 779 F.3d at 1028 n.5.

5. The Fugitive's Torture Allegations Are Properly Considered by Mexican Courts

The responsibility for addressing the fugitive's torture allegations properly rests with Mexican, not U.S., courts. In addition to the well-established case law recognizing that the courts of the requesting country, with full access to the necessary evidence and witnesses, are better qualified to consider the fugitive's allegations, comity between Treaty partners counsels deference. Consistent with the determination previously made by the Executive and Legislative branches, the Mexican legal system can be relied on to adjudicate the fugitive's claims fairly. Indeed, Mexican courts already granted the fugitive relief on the homicide charge that was originally brought against him. (*See* ER 28.) There is no reason to believe that the Mexican courts cannot fairly examine the allegations concerning the co-conspirators' statements.

B. The Panel Decision Does Not Conflict With Precedent

The fugitive contends that the panel's decision conflicts with the Supreme Court's decision in *Collins* and this Court's *en banc* decision in *Barapind*. (PFR 1.) As explained above, however, those decisions unambiguously support the government's position as they hold that an extradition judgment must exclude evidence that contradicts evidence proffered by a foreign country seeking extradition. *Collins*, 259 U.S. at 316; *Barapind*, 400 F.3d at 749. Moreover, the panel noted that *Barapind* is consistent with other circuits. *Santos*, 779 F.3d at 1026 n.2. In addition, because there has not been a finding that any statements were procured through torture, this case does not present a matter of exceptional importance and *en banc* review is unwarranted. Fed. R. App. P. 35(a).

* * * *

d. Cruz Martinez

On September 4, 2015, the United States filed a petition for rehearing *en banc* of a panel decision reversing a district court's denial of a *habeas* petition brought by a fugitive sought by Mexico. *Avelino Cruz Martinez v. United States*, No. 14-5860 (6th Cir.). The majority of the divided panel of the appeals court agreed with the fugitive that the lapse-of-time provision in the extradition treaty with Mexico incorporates the speedy trial clause of the Sixth Amendment of the U.S. Constitution. One member of the three-judge panel, Judge Sutton, dissented from the majority's opinion, reasoning that the lapse-of-time provision in extradition treaties was intended to refer to traditional statutes of limitations and not to speedy trial rights. Mexico sought the extradition of Cruz Martinez to face charges that he murdered two men in Oaxaca, Mexico in December 2005. Cruz Martinez was a U.S. resident at the time of the murders and later became a U.S. citizen, but frequently traveled to Oaxaca. A prosecutor in Oaxaca secured an arrest warrant for Cruz Martinez in February 2006. In May 2012, Mexico sent a diplomatic note to the United States requesting provisional arrest, and, two months later, formally requested extradition of Cruz Martinez. After Cruz Martinez was certified for extradition by a magistrate judge, he filed a petition for *habeas corpus* relief, arguing that the certification was unlawful under the extradition treaty's lapse of time provision. The district court denied his *habeas* petition. A divided panel of the court of appeals reversed. Excerpts follow (with footnotes omitted) from the U.S. petition, which is available in full at www.state.gov/s/l/c8183.htm.

* * * *

The Sixth Amendment’s speedy-trial guarantee is limited, by its terms, to “criminal prosecutions.” It does not apply to other settings, including the extradition proceedings here. The panel majority reached a contrary conclusion by imbuing a common treaty phrase—“barred by lapse of time”—with constitutional significance. But historical practice undercuts any suggestion that the drafters of this language, U.S. diplomats and their foreign counterparts, intended to import U.S. constitutional protections into this arena. The majority’s leap, if left unchecked, will alter the course of this country’s extradition proceedings and the diplomatic relationships that undergird them.

A. The lapse-of-time provision does not import the Speedy Trial Clause.

Judge Sutton’s dissent persuasively explains that the “lapse of time” text alone demonstrates that Article 7 of the U.S.-Mexico Treaty is a standard statute-of-limitations provision. *Id.* at 29-30. That analysis squares with historical practice, which has long equated the “lapse of time” phrase—when employed in the extradition setting—with limitations defenses. *See* Restatement (Third) of the Foreign Relations Law § 476 cmt. e (1987); *see also* 1 J. Moore, *A Treatise of Extradition* § 373, at 569-570 (1891) (treaty provisions that prohibit extradition when prosecution is “barred by lapse of time” or “barred by limitation” incorporate the statutes of limitations of the requesting (or requested) signatory nation). These guideposts prompted the Eleventh Circuit to conclude that “for over a century, the term ‘lapse of time’ has been commonly associated with a statute of limitations violation.” *Yapp*, 26 F.3d at 1567; *id.* at 1569 (Carnes, J., dissenting) (agreeing on this point).

Any inference that lapse-of-time provisions incorporate constitutional speedy-trial protections is dispelled by the fact that the modern-day speedy-trial right had not been announced when such provisions first appeared. Two U.S. treaties in the late 1800s employed the “lapse of time” phrase when identifying exceptions to extradition—a practice that grew common in the 1900s. The ratifying histories of these treaties contain no mention of the Speedy Trial Clause. It is also unlikely that the State Department officials who negotiated these early treaties would have grasped any connection to the Sixth Amendment. The Supreme Court did not announce the modern-day speedy-trial right until 1905, *see Beavers v. Haubert*, 198 U.S. 77 (1905), and a full exposition emerged only in 1972, *see Barker*, 407 U.S. at 515, long after the United States had adopted the lapse-of-time phrase as standard treaty language.

Furthermore, when many of these treaties were renegotiated decades later, the Senate Reports accompanying their ratification announced that the lapse-of-time clause innocuously referred to “statute of limitation” bars. *See* S. Exec. Rep. No. 93-19, at 3 (1973) (Paraguay); S. Exec. Rep. No. 96-20, at 24 (1979) (Germany); S. Exec. Rep. No. 98-29, at 5 (1984) (Thailand); S. Exec. Rep. No. 98-30, at 6 (1984) (Costa Rica); S. Exec. Rep. No. 98-31, at 6 (1984) (Jamaica). In one notable instance, the Senate Report stated that “[f]ugitives often attempt to avoid extradition to a requesting state by asserting that the statute of limitations has expired (also known as ‘lapse of time’ or ‘prescription’).” S. Exec. Rep. No. 106-26, at 6 (2000). At no point did the Senate mention constitutional speedy-trial considerations.

The ratification history of the renegotiated U.S.-Germany extradition treaty bears special mention. *See* Ext. Treaty, U.S.-Ger., June 20, 1978, T.I.A.S. 9785. The State Department prepared comments about Article 9, the Treaty's lapse-of-time provision: "Article 9, which discusses statute of limitations, is a standard provision in U.S. extradition treaties." *Hearing on Nine United States Treaties on Law Enforcement and Related Matters Before the S. Comm. on Foreign Relations*, 96th Cong. 24 (Nov. 13, 1979) (prepared statement of Deputy Legal Adviser James H. Michel). When the Senate Committee on Foreign Relations recommended ratification, it too observed that the treaty's lapse-of-time clause "discusses statutes of limitations" and "is a standard provision in U.S. extradition treaties." S. Exec. Rep. No. 96-20, at 24 (1979).

Although the ratification history for the U.S.-Mexico Treaty omits a similar discussion about its lapse-of-time provision, the same U.S. officials and legislators drafted and ratified both treaties. In fact, the Senate Committee on Foreign Relations discussed and approved the treaties on the same days (November 13 and 15, 1979), and the Senate ratified them on back-to-back days (November 29 and 30, 1979). Against this backdrop, it is unthinkable that either the Executive Branch or the Senate endorsed a radical expansion of the lapse-of-time provisions in the U.S.-Mexico Treaty, the U.S.-Germany Treaty, and other contemporaneous extradition instruments without a peep of debate.

The panel majority's reasoning on these points is not persuasive. After acknowledging that the words "lapse of time" do not unambiguously incorporate speedy-trial rights, the panel resorted to a principle of treaty construction—derived from *Factor v. Laubenheimer*, 290 U.S. 276 (1933)—that it understood as requiring courts to resolve ambiguities "in favor of a broader reading of the rights [the Treaty] grants to persons facing extradition." Op. 13. As Judge Sutton's dissent explained, *Factor* requires that an extradition treaty be construed liberally in favor of the rights of state parties—not the individuals subject to it. *Id.* at 35, 43. That means favoring treaty constructions that facilitate, rather than frustrate, the extradition of fugitives. The panel's contrary approach establishes the Sixth Circuit as an outlier on this issue. *See Nezirovic v. Holt*, 779 F.3d 233, 239 (4th Cir. 2015); *United States v. Kin-Hong*, 110 F.3d 103, 110 (1st Cir. 1997); *United States v. Wiebe*, 733 F.2d 549, 554 (8th Cir. 1984).

The panel majority also highlighted differences in language between the 12 current and former versions of the U.S.-Mexico Treaty. Op. 14. But the current formulation ("barred by lapse of time") is no broader than the prior one ("barred by limitation"), which, as a textual matter, conceivably encompassed any criminal procedure device that might "limit" a criminal prosecution, but, as a historical matter, operated as a narrow statute-of-limitations provision. *Id.* at 37 (Sutton, J., dissenting). Nor is there historical evidence backing the majority's suggestion that the revision meant to capture the 1960 district court decision in *Mylonas*, which read Speedy Trial Clause protections into the U.S.-Greece extradition treaty. As recounted above, the lapse-of-time phrasing predates that case by decades. The Executive Branch's decision in 1978 to insert this language into the U.S.-Mexico Treaty should be interpreted as a desire to standardize the Treaty's provisions with other agreements then in force, not a far-reaching effort to introduce speedy-trial rights into extradition proceedings.

B. The panel's contrary conclusion warrants en banc review.

The panel's decision creates a circuit conflict. The majority rejected the *Yapp* decision, where the Eleventh Circuit declined to read a lapse-of-time provision in the U.S.-Bahamas extradition treaty to incorporate the Speedy Trial Clause. This divergence is untenable; foreign partners now face uncertain expectations when seeking to exercise treaty rights in this country.

The decision also presents an issue of exceptional importance. Mexico is a key law enforcement partner; up to 25 percent of incoming extradition requests recently litigated in U.S. courts have come from that country. Those fugitives will raise speedy-trial defenses. In addition, the United States and several dozen other countries have entered extradition agreements with lapse-of-time provisions. The majority's analysis invites speedy-trial claims for each of them.

Finally, the majority overlooked the perils of injecting the Speedy Trial Clause inquiry into these proceedings. That inquiry classifies delays exceeding one year as "presumptively prejudicial" to defendants. *Doggett v. United States*, 505 U.S. 647, 652 n.1 (1992). Extraditions, however, are lengthy processes. The time between the issuance of the foreign charges and the filing of an extradition request in the United States generally exceeds one year. Every fugitive with a speedy-trial claim will accordingly receive the presumption.

In addition, because the Speedy Trial Clause inquiry requires the assignment of blame for any delay, magistrate judges and district courts must decide whether a foreign government pursued the fugitive with "reasonable diligence." *Id.* at 656. Two problems will infect this process. First, the panel elected to measure a foreign country's diligence in pursuing its investigation and seeking extradition assistance by reference to Sixth Amendment benchmarks. But those benchmarks were developed for, and are tailored to, American criminal investigations and trials, not to dissimilar judicial systems or the sensitive consular negotiations attendant to extradition requests. *See Yapp*, 26 F.3d at 1568. Second, this inquiry would scrutinize a foreign government's extradition procedures, pace of execution, and justifications for delay, including the credibility of declarations submitted by foreign officials. Federal courts traditionally shy away from such tasks for fear of entangling themselves "in the conduct of [this country's] international relations." *Romero v. Int'l Terminal Operating Co.*, 358 U.S. 357, 383 (1959); *see Koskotas v. Roche*, 931 F.2d 169, 174 (1st Cir. 1991) ("[P]rinciples of international comity . . . would be ill-served by requiring foreign governments to submit their . . . procedures to the scrutiny of United States courts."). These concerns, and the diplomatic repercussions that follow them, are sufficiently weighty to warrant the full Court's attention.

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B. INTERNATIONAL CRIMES

1. Terrorism

a. Determination of Countries Not Fully Cooperating with U.S. Antiterrorism Efforts

On May 11, 2015, Secretary Kerry issued his determination and certification pursuant to section 40A of the Arms Export Control Act (22 U.S.C. § 2781), and Executive Order 13637, as amended, that certain countries "are not cooperating fully with United States antiterrorism efforts." 80 Fed. Reg. 30,319 (May 27, 2015). The countries are: Eritrea, Iran, Democratic People's Republic of Korea, Syria, and Venezuela.

b. Country reports on terrorism

On June 19, 2015, the Department of State released the 2014 Country Reports on Terrorism. The annual report is submitted to Congress pursuant to 22 U.S.C. § 2656f, which requires the Department to provide Congress a full and complete annual report on terrorism for those countries and groups meeting the criteria set forth in the legislation. The report is available at <http://www.state.gov/j/ct/rls/crt/index.htm>. Tina S. Kaidanow, Ambassador-at-Large and Coordinator for Counterterrorism, provided a special briefing at the release of the 2014 report, which is excerpted below and available in full at <http://www.state.gov/r/pa/prs/ps/2015/06/244030.htm>.

* * * *

...I'd like to talk about the content of the report itself and some of the trends we noted in 2014.

Despite significant blows to al-Qa'ida's (AQ) leadership, weak or failed governance continued to provide an enabling environment for the emergence of extremist radicalism and violence, notably in Yemen, Syria, Libya, Nigeria, and Iraq. We are deeply concerned about the continued evolution of the Islamic State of Iraq and the Levant (ISIL), the emergence of self-proclaimed ISIL affiliates in Libya, Egypt, Nigeria and elsewhere, and tens of thousands of foreign terrorist fighters who are exacerbating the violence in the Middle East and posing a continued threat to their home countries.

The ongoing civil war in Syria has been a spur to many of the worldwide terrorism events we have witnessed. Since the report covers calendar year 2014, it notes that the overall flow of foreign terrorist fighter travel to Syria was estimated at more than 16,000 foreign terrorist fighters from over 90 countries as of late December—a number that exceeds any similar flow of foreign terrorist fighters traveling to other countries in the last 20 years. Many of the foreign terrorist fighters joined ISIL, which has seized contiguous territory in western Iraq and eastern Syria. Iraqi forces and the Counter-ISIL Coalition have dealt significant blows to ISIL, but it continues to control substantial territory.

As with many other terrorist groups worldwide, ISIL has brutally repressed the communities under its control and used ruthless methods of violence such as beheadings and crucifixions. Uniquely, however, it demonstrates a particular skill in employing new media tools to display its brutality, both as a means to shock and terrorize, but equally to propagandize and attract new recruits. Boko Haram shares with ISIL a penchant for the use of brutal tactics, which include stonings, indiscriminate mass casualty attacks, and systematic oppression of women and girls, including enslavement, torture, and rape.

Though AQ central leadership has indeed been weakened, the organization continues to serve as a focal point of inspiration for a worldwide network of affiliated groups, including al-Qa'ida in the Arabian Peninsula—a long-standing threat to Yemen, the region, and the United States; al-Qa'ida in the Islamic Maghreb; al-Nusrah Front; and al-Shabaab in East Africa.

We saw a rise in “lone offender attacks,” including in Ottawa and Quebec in October and Sydney in December of 2014. In many cases it was difficult to assess whether attacks were

directed or inspired by ISIL or AQ and its affiliates. These attacks may presage a new era in which centralized leadership of a terrorist organization matters less, group identity is more fluid, and violent extremist narratives focus on a wider range of alleged grievances and enemies. Enhanced border security measures among Western states since 9/11 have increased the difficulty for known or suspected terrorists to travel internationally; therefore, groups like AQ and ISIL encourage lone actors residing in the West to carry out attacks on their behalf.

ISIL and AQ affiliates, including al-Nusrah Front, continued to use kidnapping for ransom operations, profits from the sales of looted antiquities, and other criminal activities to raise funds for operational purposes. Much of ISIL's funding, unlike the resources utilized by AQ and AQ-type organizations, did not come from external donations but was internally gathered in Iraq and Syria. ISIL earned up to several million dollars per month through its various extortion networks and criminal activity in the territory where it operated, including through oil smuggling. Some progress was made in 2014 in constraining ISIL's ability to earn money from the sale of smuggled oil as a result of anti-ISIL Coalition airstrikes that were conducted on ISIL-operated oil refineries, but the oil trade was not fully eradicated.

ISIL and AQ were not the only serious threats that confronted the United States and its allies. Iran continued to sponsor terrorist groups around the world, principally through its Islamic Revolutionary Guard Corps-Qods Force (IRGC-QF). These groups included Lebanese Hizballah, several Iraqi Shia militant groups, Hamas, and Palestine Islamic Jihad.

Addressing this evolving set of terrorist threats, and the need to undertake efforts that span the range from security to rule of law to efficacy of governance and pushing back on terrorist messaging in order to effectively combat the growth of these emerging violent extremist groups, requires an expanded approach to our counterterrorism engagement. President Obama has emphasized repeatedly that we need to bring strong, capable, and diverse partners to the forefront and enlist their help in the mutually important endeavor of global counterterrorism.

A successful approach to counterterrorism must therefore revolve around partnerships. The vital role that our partners play has become even clearer in the last year with the emergence of ISIL as the hugely destructive force in Iraq and Syria that I have described. We have worked to build an effective counter-ISIL coalition, a coalition that is clearly crucial because the fight against ISIL is not one the United States can or should pursue alone. More than 60 partners are contributing to this effort, which is multi-faceted in its goals—not only to stop ISIL's advances on the ground, but to combat the flow of foreign fighters, disrupt ISIL's financial resources, and counteract ISIL's messaging and undermine its appeal, among other objectives. I would also highlight the adoption of UN Security Council Resolution 2178 in September as a particularly significant step forward in international efforts to cooperate in preventing the flow of foreign terrorist fighters to and from conflict zones.

The notion of finding and enabling partners, of course, is not new or limited to the counter-ISIL effort, and indeed many of our most significant counterterrorism successes in the past have come as a result of working together with partners on elements ranging from intelligence to aviation security.

The United States needs partners who can not only contribute to military operations, but also conduct arrests, prosecutions, and incarceration of terrorists and their facilitation networks. Addressing terrorism in a rule of law framework, with respect for human rights, is critical both for ensuring the sustainability of our efforts and for preventing the rise of new forms of violent extremism. Multilateral entities such as the United Nations and the Global Counterterrorism

Forum can also play a critical role in promoting good practices and mobilizing technical assistance in this regard.

As we develop partnerships to disrupt terrorist plots and degrade terrorist capabilities, we also need partners—both governmental and non-governmental—who can help counter the spread of violent extremist recruitment and address the conditions that make communities susceptible to violent extremism. We must do more to address the cycle of violent extremism and transform the very environment from which these terrorist movements emerge. That is why we are committed to enlarging our strategy in ways that address the underlying conditions conducive to the spread, and not just the visible symptoms of, violent extremism. This was a major theme of the White House Summit on Countering Violent Extremism (CVE) earlier this year, which brought together 300 participants from over 65 countries representing national and local governments, civil society, the private sector, and multilateral organizations. The Summit highlighted the especially vital role that partnering with civil society plays in our counterterrorism efforts.

In addition to counterterrorism assistance rendered in the fields of rule of law and countering recruitment, we provide a wide array of expertise and programmatic support for our partners to help them identify and disrupt the financing of terrorism, strengthen aviation and border security, and sharpen their law enforcement and crisis response tools to respond to the terrorist threat.

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c. Global Counterterrorism Forum

The Global Counterterrorism Forum (“GCTF”) held its sixth ministerial-level plenary in September 2015. The co-chairs of the Coordinating Council of the GCTF, the United States and Turkey, issued a fact sheet on September 27, 2015, detailing deliverables of the plenary. The fact sheet is available at <http://www.state.gov/r/pa/prs/ps/2015/09/247368.htm>. For background on the GCTF, see *Digest 2012* at 35-37 and *Digest 2011* at 55.

d. UN Security Council

As discussed in *Digest 2014* at 87-91, the UN Security Council adopted resolution 2178 on foreign terrorist fighters (“FTFs”) in 2014. The United States took several steps in 2015 to support multilateral implementation of resolution 2178. On February 18, 2015, the State Department issued a fact sheet on the ministerial the United States hosted on countering FTFs. The fact sheet is available at <http://www.state.gov/r/pa/prs/ps/2015/02/237575.htm>. Among other efforts led by the United States, the fact sheet identifies the White House Summit on Countering Violent Extremism (“CVE”) (held in conjunction with the State Department ministerial on countering FTFs); cooperation by the Departments of State, Justice, and Homeland Security with foreign counterparts; and the new working group on FTFs at the Global Counterterrorism Forum. Participants in the ministerial on countering FTFs included:

Albania, Algeria, Australia, Belgium, Bulgaria, Canada, Denmark, EU, France, Germany, Indonesia, INTERPOL, Italy, Jordan, Kosovo, Macedonia, Malaysia, Morocco, Netherlands, Norway, Qatar, Russia, Saudi Arabia, Singapore, Spain, Sweden, Tunisia, Turkey, UAE, UK, and the UN.

On November 20, 2015, Michele J. Sison, U.S. Deputy Permanent Representative to the UN, delivered the U.S. explanation of vote at the adoption of UN Security Council resolution 2249 on counterterrorism. Ambassador Sison's remarks are excerpted below and available at <http://usun.state.gov/remarks/6994>.

* * * *

Mr. President, in recent weeks barbaric terrorist attacks have startled the world's conscience. From Europe to Africa to the Middle East, innocent men and women have been slaughtered. Families destroyed in Beirut. Concertgoers slain in Paris. Air passengers bombed in the sky. Tourists killed on the beach in Tunisia.

* * * *

...[W]e welcome and applaud this resolution's resolute call on states to take all necessary measures in compliance with international law to counter ISIL and the al-Nusra Front. We must also choke off funding, arms, recruitment, and other kinds of support to ISIL and the al-Nusra Front.

As the resolution recognizes, Iraq has made it clear that it is facing a serious threat of continuing attacks from ISIL, in particular coming out of safe havens in Syria; and the Assad regime in Syria has shown that it cannot and will not suppress this threat, even as it undertakes actions that benefit the extremists' recruiting. In this regard, working with Iraq, the United States has been leading international efforts to provide assistance to combat the threat that ISIL poses to the security of its people and territory, and we are taking, in accordance with the UN Charter and its recognition of the inherent right of individual and collective self-defense, necessary and proportionate military action to deny ISIL safe haven.

The United States, along with 64 other nations and international organizations, has formed a Coalition whose central aim is to degrade ISIL's capabilities and achieve its lasting defeat. Militarily, the Coalition is working to deny ISIL safe-havens, disrupt its ability to project power, and build partner capacity. It is also actively working to disrupt ISIL's financing and economic sustainment and the flow of foreign terrorist fighters to and from territories it has seized, and to counter its message of hatred and violence. To stabilize areas liberated from ISIL's control, the Coalition further supports the efforts of the United Nations Development Program and Iraqi government.

Today's resolution recalls the Security Council's already well-established framework to respond to terrorist threats generally and to ISIL, al-Nusra Front, and others associated with al-Qaida in particular. Multiple past resolutions—1267, 1373, 2170, 2178, and 2199—lay out specific obligations and actions states must take to respond to these threats. In the Security Council, we look forward to continuing cooperation, including in the relevant sanctions

committees and counterterrorism entities, to enhance our will and capacities to implement these tools to counter ISIL and related groups.

To vanquish these groups, we must also tackle the violent extremism that drives them.

These violent ideologies capture and motivate individuals worldwide, including those likely responsible for today's tragic hotel attack in Bamako.

We therefore look forward to the Secretary-General's Plan for Preventing Violent Extremism.

Finally, we must urgently work together to support a political transition process in Syria, in accordance with the Geneva Communique, and the Statement of the International Syria Support Group, to reduce the operating space for these groups, and establish a political process leading to credible, inclusive, nonsectarian governance, followed by a new constitution and elections.

* * * *

e. *Countering violent extremism*

On September 29, 2015, leaders from more than 100 countries, 20 multilateral bodies, and 120 civil society and private sector organizations convened in New York for the UN Leaders' Summit on Countering ISIL and Violent Extremism. President Obama's remarks at the summit are excerpted below. Daily Comp. Pres. Docs. 2015 DCPD No. 00664 (Sep. 29, 2015). President Obama also delivered a statement as Chair of the UN Leaders' Summit on Countering ISIL and Violent Extremism. Daily Comp. Pres. Docs. 2015 DCPD No. 00665 (Sep. 29, 2015).

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Together, we're pursuing a comprehensive strategy that is informed by our success over many years in crippling the Al Qaida core in the tribal regions of Afghanistan and Pakistan. And we are harnessing all of our tools: military, intelligence, economic, development, and the strength of our communities.

Now, I have repeatedly said that our approach will take time. This is not an easy task. We have ISIL taking root in areas that already are suffering from failed governance, in some cases; in some cases, civil war or sectarian strife. And as a consequence of the vacuum that exists in many of these areas, ISIL has been able to dig in. They have shown themselves to be resilient, and they are very effective through social media and have been able to attract adherents not just from the areas in which they operate, but in many of our own countries.

There are going to be successes and there are going to be setbacks. This is not a conventional battle. This is a long-term campaign, not only against this particular network, but against its ideology. And so, with the few minutes I have, I want to provide a brief overview of where we stand currently.

Our coalition has grown to some 60 nations, including our Arab partners. Together, we welcome three new countries to our coalition: Nigeria, Tunisia, and Malaysia. Nearly two dozen nations are in some way contributing to the military campaign, and we salute and are grateful for all the servicemembers from our respective nations who are performing with skill and determination.

In Iraq, ISIL continues to hold Mosul, Fallujah, and Ramadi. But Iraqi forces, backed by coalition air power, have liberated towns across Kirkuk province and Tikrit. ISIL has now lost nearly a third of the populated areas in Iraq that it had controlled. Eighteen countries are now helping to train and support Iraqi forces, including Sunni volunteers who want to push ISIL out of their communities. And, Prime Minister Abadi, I want to note the enormous sacrifices being made by Iraqi forces and the Iraqi people in this fight every day.

In Syria, which has obviously been a topic of significant discussion during the course of this General Assembly, we have seen support from Turkey that has allowed us to intensify our air campaign there. ISIL has been pushed back from large sections of northeastern Syria, including the key city of Tal Abyad, putting new pressure on its stronghold of Raqqa. And ISIL has been cut off from almost the entire region bordering Turkey, which is a critical step toward stemming the flow of foreign terrorist fighters.

Following the special Security Council meeting I chaired last year, more than 20 additional countries have passed or strengthened laws to disrupt the flow of foreign terrorist fighters. We share more information, and we are strengthening border controls. We've prevented would-be fighters from reaching the battlefield and returning to threaten our countries. But this remains a very difficult challenge, and today we're going to focus on how we can do more together. In conjunction with this summit, the United States and our partners are also taking new steps to crack down on the illicit finance that ISIL uses to pay its fighters, fund its operations, and launch attacks.

Our military and intelligence efforts are not going to succeed alone; they have to be matched by political and economic progress to address the conditions that ISIL has exploited in order to take root. Prime Minister Abadi is taking important steps to build a more inclusive and accountable Government, while working to stabilize areas taken back from ISIL. And our nations need to help Prime Minister Abadi in these efforts.

In Syria, as I said yesterday, defeating ISIL requires, I believe, a new leader and an inclusive Government that unites the Syrian people in the fight against terrorist groups. This is going to be a complex process. And as I've said before, we are prepared to work with all countries, including Russia and Iran, to find a political mechanism in which it is possible to begin a transition process.

As ISIL's tentacles reach into other regions, United States is increasing our counterterrorism cooperation with partners like Tunisia. We're boosting our support to Nigeria and its neighbors as they push back against Boko Haram, which has pledged allegiance to ISIL. And we're creating a new clearinghouse to better coordinate the world's support for countries' counterterrorism programs so that our efforts are as effective as possible.

Ultimately, however, it is not going to be enough to defeat ISIL in the battlefield. We have to prevent it from radicalizing, recruiting, and inspiring others to violence in the first place. And this means defeating their ideology. Ideologies are not defeated with guns, they're defeated by better ideas, a more attractive and compelling vision. Building on our White House summit

earlier this year and summits around the world since then, we're moving ahead, together, in several areas.

We're stepping up our efforts to discredit ISIL's propaganda, especially online. The UAE's new messaging hub—the Sawab Center—is exposing ISIL for what it is, which is a band of terrorists that kills innocent Muslim men, women, and children. We're working to lift up the voices of Muslim scholars, clerics, and others—including ISIL defectors—who courageously stand up to ISIL and its warped interpretations of Islam.

We recognize that we have to confront the economic grievances that exist in some of the areas that ISIL seeks to exploit. Poverty does not cause terrorism. But as we've seen across the Middle East and North Africa, when people, especially young people, are impoverished and hopeless and feel humiliated by injustice and corruption, that can fuel resentments that terrorists exploit, which is why sustainable development—creating opportunity and dignity, particularly for youth—is part of countering violent extremism.

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Remember that violent extremism is not unique to any one faith, so no one should be profiled or targeted simply because of their faith. Yet we have to recognize that ISIL is targeting Muslim communities around the world, especially individuals who may be disillusioned or confused or wrestling with their identities.

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f. U.S. hostage recovery policy

On June 24, 2015, President Obama announced that the U.S. government had concluded a review of its hostage policy and that he was issuing a new presidential policy directive regarding the recovery of American hostages. Daily Comp. Pres. Docs. 2015 DCPD No. 00456, pp. 1-4 (June 24, 2015). The President's statement on the hostage recovery policy is excerpted below. The June 2015 Report on U.S. Hostage Policy is available

at https://www.whitehouse.gov/sites/default/files/docs/report_on_us_hostage_policy_final.pdf.

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Today, I'm formally issuing a new presidential policy directive to improve how we work to bring home American hostages and how we support their families. I've signed a new executive order to ensure our government is organized to do so. And we're releasing the final report of our review, which describes the two dozen specific steps that we're taking. Broadly speaking, they fall into three areas.

First, I'm updating our hostage policy. I'm making it clear that our top priority is the safe and rapid recovery of American hostages. And to do so, we will use all elements of our national

power. I am reaffirming that the United States government will not make concessions, such as paying ransom, to terrorist groups holding American hostages. And I know this can be a subject of significant public debate. It's a difficult and emotional issue, especially for the families. As I said to the families who are gathered here today, and as I've said to families in the past, I look at this not just as a President, but also as a husband and a father. And if my family were at risk, obviously I would move heaven and earth to get those loved ones back.

As President, I also have to consider our larger national security. I firmly believe that the United States government paying ransom to terrorists risks endangering more Americans and funding the very terrorism that we're trying to stop. And so I firmly believe that our policy ultimately puts fewer Americans at risk.

At the same time, we are clarifying that our policy does not prevent communication with hostage-takers—by our government, the families of hostages, or third parties who help these families. And, when appropriate, our government may assist these families and private efforts in those communications—in part, to ensure the safety of family members and to make sure that they're not defrauded. So my message to these families was simple: We're not going to abandon you. We will stand by you.

Second, we're making changes to ensure that our government is better organized around this mission. Every department that is involved in our national security apparatus cares deeply about these hostages, prioritizes them and works really hard. But they're not always as well coordinated as they need to be. Under the National Security Council here at the White House, we're setting up a new Hostage Response Group, comprised of senior officials from across our government who will be responsible for ensuring that our hostage policies are consistent and coordinated and implemented rapidly and effectively. And they will be accountable at the highest levels; they'll be accountable to me.

Soon I'll be designating, as well, a senior diplomat as my Special Presidential Envoy for Hostage Affairs, who will be focused solely on leading our diplomatic efforts with other countries to bring our people home.

At the operational level, we're creating for the first time one central hub where experts from across government will work together, side-by-side, as one coordinated team to find American hostages and bring them home safely. In fact, this fusion cell, located at the FBI, is already up and running. And we're designating a new official in the intelligence community to be responsible for coordinating the collection, analysis and rapid dissemination of intelligence related to American hostages so we can act on that intelligence quickly.

Third—and running through all these efforts—we are fundamentally changing how our government works with families of hostages. Many of the families told us that they at times felt like an afterthought or a distraction; that, too often, the law enforcement, or military and intelligence officials they were interacting with were begrudging in giving them information. And that ends today. I'm making it clear that these families are to be treated like what they are—our trusted partners and active partners in the recovery of their loved ones. We are all on the same team, and nobody cares more about bringing home these Americans than their own families, and we have to treat them as partners.

So, specifically, our new fusion cell will include a person dedicated to coordinating the support families get from the government. This coordinator will ensure that we communicate with families better, with one clear voice, and that families get information that is timely and

accurate. Working with the intelligence community, we will be sharing more intelligence with families.

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As mentioned in the President's remarks above, the Presidential Policy Directive describes the roles of the Hostage Response Group ("HRG"), the interagency Hostage Recovery Fusion Cell ("HRFC"), and the special envoy for hostage affairs within the Department of State. Excerpts follow from the Presidential Policy Directive ("PPD-30"). Daily Comp. Pres. Docs. 2015 DCPD No. 00458, pp. 1-8 (June 24, 2015). Executive Order 13698 of June 24, 2015 "Hostage Recovery Activities," establishes the HRFC, the HRG, and the Special Presidential Envoy for Hostage Affairs. 80 Fed. Reg 37,131 (June 29, 2015).

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The taking of a U.S. national hostage abroad requires a rapid, coordinated response from the United States Government. The Hostage Response Group (HRG), in support of the National Security Council (NSC) Deputies and Principals Committees, and accountable to the NSC chaired by the President, shall coordinate the development and implementation of United States Government policy and strategy with respect to U.S. nationals taken hostage abroad. The interagency Hostage Recovery Fusion Cell (HRFC), in support of the HRG, shall coordinate United States Government efforts to ensure that all relevant department and agency information, expertise, and resources are brought to bear to develop individualized strategies to secure the safe recovery of U.S. nationals held hostage abroad.

The Special Presidential Envoy for Hostage Affairs, who shall report to the Secretary of State, shall lead diplomatic engagement on U.S. hostage policy as well as coordinate all diplomatic engagements in support of hostage recovery efforts, in coordination with the HRFC and consistent with policy guidance communicated through the HRG. United States Embassies that have established Personnel Recovery Working Groups or other interagency bodies to coordinate overseas activities in response to a hostage-taking shall ensure that those bodies operate pursuant to policy guidance provided by the HRG and in coordination with the HRFC and with the Special Presidential Envoy for Hostage Affairs.

a. Hostage Response Group (HRG)

The HRG shall be chaired by the Special Assistant to the President and Senior Director for Counterterrorism and shall convene on a regular basis and as needed at the request of the National Security Council. Its regular members shall include the director of the HRFC, the HRFC's Family Engagement Coordinator, and senior representatives from the Department of State, Department of the Treasury, Department of Defense, Department of Justice, Federal Bureau of Investigation, Office of the Director of National Intelligence, and such other executive branch departments, agencies, or offices as the President, from time to time, may designate.

In support of the Deputies Committee chaired by the Assistant to the President for Homeland Security and Counterterrorism, the HRG shall: (1) identify and recommend hostage recovery options and strategies to the President through the National Security Council; (2)

coordinate the development and implementation of U.S. hostage and personnel recovery policies, strategies, and procedures, consistent with the policies set forth in this directive; (3) receive regular updates from the HRFC on the status of U.S. nationals being held hostage abroad and measures being taken to effect the hostages' safe recovery; (4) coordinate the provision of policy guidance to the HRFC, including reviewing recovery options proposed by the HRFC and resolving disputes within the HRFC; and (5) where higher-level guidance is required, make recommendations to the Deputies Committee.

b. Hostage Recovery Fusion Cell (HRFC)

The HRFC shall serve as the United States Government's dedicated interagency coordinating body at the operational level for the recovery of U.S. national hostages abroad. The HRFC shall: (1) identify and recommend hostage recovery options and strategies to the President through the NSC; (2) coordinate efforts by participating departments and agencies to ensure that information regarding hostage events, including potential recovery options and engagements with families and external actors (to include foreign governments), is appropriately shared within the United States Government to facilitate a coordinated response to a hostage-taking; (3) assess and track all hostage-takings of U.S. nationals abroad and provide regular reports to the President through the NSC on the status of such cases and any measures being taken toward the hostages' safe recovery; (4) provide a forum for intelligence sharing and, with the support of the Director of National Intelligence, coordinate the declassification of relevant information; (5) coordinate efforts by participating departments and agencies to provide appropriate support and assistance to hostages and their families in a coordinated and consistent manner and to provide families with timely information regarding significant events in their cases; (6) make recommendations to executive departments and agencies in order to reduce the likelihood of U.S. nationals being taken hostage abroad and enhance United States Government preparation to maximize the probability of a favorable outcome following a hostage-taking; and (7) coordinate with departments and agencies regarding congressional, media, and other public inquiries pertaining to hostage events.

Upon receipt of credible information that a U.S. national has been taken hostage or has been reported missing in a region where hostage-taking is a significant threat, any department or agency with such information shall report that information, along with any action already taken or anticipated in response, to the HRFC and the relevant Chiefs of Mission. If, at any point in a given hostage event, the HRFC has reason to believe that a U.S. national is being held hostage by an entity or individual designated as a Foreign Terrorist Organization or designated for sanctions by the President, Secretary of State, or Secretary of the Treasury, the HRFC Director shall promptly inform the HRG of the designated individual or entity involved and the circumstances of the hostage-taking.

c. Special Presidential Envoy for Hostage Affairs

The Special Presidential Envoy for Hostage Affairs (Special Envoy) shall report to the Secretary of State and shall: (1) lead diplomatic engagement on U.S. hostage policy; (2) coordinate all diplomatic engagements in support of hostage recovery efforts, in coordination with the HRFC and consistent with policy guidance communicated through the HRG; (3) coordinate with the HRFC proposals for diplomatic engagements and strategy in support of hostage recovery efforts; (4) provide senior representation from the Special Envoy's office to the HRFC and in the HRG; and (5) in coordination with the HRFC as appropriate, coordinate diplomatic engagements regarding cases in which a foreign government confirms that it has

detained a U.S. national but the United States Government regards such detention as unlawful or wrongful.

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6. Prosecution

The investigation and prosecution of hostage-takers is an important means of deterring future acts of hostage-taking and ensuring that hostage-takers are brought to justice. The United States shall diligently seek to ensure that hostage-takers of U.S. nationals are arrested, prosecuted, and punished through a due process criminal justice system in the United States or abroad for crimes related to the hostage-taking.

The United States has jurisdiction over the taking of a U.S. national hostage abroad, as well as over other criminal acts that may be committed against the hostage, and the Department of Justice will seek to prosecute hostage-taking of U.S. nationals and related violations of U.S. law in the U.S. court system whenever possible. The Federal Bureau of Investigation shall investigate violations of U.S. law and shall collect evidence and conduct forensics in furtherance of a potential prosecution, consistent with its statutory authorities and, where applicable, the permission of the foreign government in whose territory it is operating.

The HRFC shall coordinate efforts by relevant departments and agencies to ensure that all relevant material and information acquired by the United States Government in the course of a hostage-taking event is made available for use in the effort to recover the hostage and, where possible and consistent with that goal, is managed in such a way as to allow its use in an ongoing criminal investigation or prosecution.

The United States Government shall work with foreign governments to apprehend hostage-takers in their territory. In coordination with one another, the Department of State, Department of Justice, and Department of the Treasury shall engage with foreign governments to seek commitments to punish hostage-takers and their aiders and abettors. In coordinating with the Department of State, relevant departments and agencies should also work to develop the capacity of partner nations, through technical assistance and training in best practices, to collect intelligence for use in hostage recovery efforts while preserving, when possible, opportunities for a criminal prosecution by the United States or the relevant nation.

7. General Provisions

For the purposes of this directive, hostage-taking is defined as the unlawful abduction or holding of a person or persons against their will in order to compel a third person or governmental organization to do or abstain from doing any act as a condition for the release of the person detained. This directive applies to both suspected and confirmed hostage-takings in which a U.S. national, as defined in either 8 U.S.C. 1101(a)(22) or 8 U.S.C. 1408, or a lawful permanent resident alien with significant ties to the United States is abducted or held outside of the United States. This directive shall also apply to other hostage-takings occurring abroad in which the United States has a national interest, such as (but not limited to) hostage-takings of individuals who are not U.S. nationals but who have close links through family, employment, or other connections to the United States, as specifically referred to the HRFC by the Deputies Committee. This directive does not apply if a foreign government confirms that it has detained a U.S. national; such cases are handled by the Department of State in coordination with other relevant departments and agencies. In dealing with such cases, however, the Department of State

may draw on the full range of experience and expertise of the HRFC as appropriate, including the HRFC's Family Engagement Coordinator's proficiency in providing and ensuring professionalism, empathy, and sensitivity to the psychological and emotional distress experienced by families in such cases. Additionally, the U.S. response to the detention of U.S. military personnel by non-state forces in the context of armed conflict should, in appropriate circumstances, be informed by the law of war.

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g. U.S. actions against terrorist groups

(1) U.S. targeted sanctions implementing UN Security Council resolutions

See Chapter 16.A.4.b.

(2) Foreign terrorist organizations

(i) New designations

In 2015, the Department of State announced the Secretary of State's designation of one additional organization and associated aliases as a Foreign Terrorist Organization ("FTO") under § 219 of the Immigration and Nationality Act: Jaysh Rijal al-Tariq al-Naqshabandi (80 Fed. Reg. 58,804 (Sep. 30, 2015)). See Chapter 16 for a discussion of the simultaneous designation pursuant to Executive Order 13224.

U.S. financial institutions are required to block funds of designated FTOs or their agents within their possession or control; representatives and members of designated FTOs, if they are aliens, are inadmissible to, and in some cases removable from, the United States; and U.S. persons or persons subject to U.S. jurisdiction are subject to criminal prohibitions on knowingly providing "material support or resources" to a designated FTO. 18 U.S.C. § 2339B. See www.state.gov/j/ct/rls/other/des/123085.htm for background on the applicable sanctions and other legal consequences of designation as an FTO.

(ii) Reviews of FTO designations

During 2015, the Secretary of State continued to review designations of entities as FTOs consistent with the procedures for reviewing and revoking FTO designations in § 219(a) of the Immigration and Nationality Act, as amended by the Intelligence Reform and Terrorism Prevention Act of 2004 ("IRTPA"), Pub. L. No. 108-458, 118 Stat. 3638. See *Digest 2005* at 113–16 and *Digest 2008* at 101–3 for additional details on the IRTPA amendments and review procedures.

The Secretary reviewed each FTO individually and determined that the circumstances that were the basis for the designations of the following FTOs have not

changed in such a manner as to warrant revocation of the designations and the national security of the United States did not warrant revocation: FARC (80 Fed. Reg. 19,728 (Apr. 13, 2015)); Popular Front for the Liberation of Palestine (80 Fed. Reg. 25,766 (May 5, 2015)); al-Qa'ida (80 Fed. Reg. 27,432 (May 13, 2015)); Revolutionary Struggle (80 Fed. Reg. 53,382 (Sep. 3, 2015)).

In 2015, the Secretary also revoked the designations of two organizations: Revolutionary Organization 17 November (80 Fed. Reg. 53,382 (Sep. 3, 2015)) and the Libyan Islamic Fighting Group (80 Fed. Reg. 76,611 (Dec. 9, 2015)).

(3) *Rewards for Justice Program*

On September 29, 2015, the State Department announced a reward offer under the Rewards for Justice Program for information leading to the disruption of the financing of ISIL. See September 29, 2015 media note, available at <http://www.state.gov/r/pa/prs/ps/2015/09/247470.htm>. As stated in the media note, the Department authorized rewards of up to \$5 million for information “that will disrupt the trade of oil and trafficking of antiquities that benefit the terrorist group Islamic State of Iraq and the Levant (ISIL).” This reward offer is the first under the Rewards for Justice Program seeking information that could be used to disrupt sale or trade in oil or antiquities by, or on behalf of, a terrorist organization.

On November 10, 2015, the State Department announced reward offers under the Rewards for Justice Program for information on six key leaders of al-Shabaab: up to \$6 million for information on the whereabouts of Abu Ubaidah (Direye); up to \$5 million each for information on Mahad Karate, Ma'alim Daud, and Hassan Afgooye; and up to \$3 million each for information on Maalim Salman and Ahmed Iman Ali. See November 10, 2015 media note, available at <http://www.state.gov/r/pa/prs/ps/2015/11/249374.htm>. The media note provides background on al-Shabaab's terrorist activities and the roles of each of these six leaders.

On November 18, 2015, the State Department announced a reward offer of up to \$5 million for information leading to the location or identification of Tirad al-Jarba, better known as Abu-Muhammad al-Shimali, a key leader of the terrorist group ISIL. See November 18, 2015 media note, available at <http://www.state.gov/r/pa/prs/ps/2015/11/249666.htm>. As related in the media note, al-Shimali serves as a key leader in ISIL's Immigration and Logistics Committee, facilitating the travel of foreign terrorist fighters, coordinating smuggling activities, financial transfers, and the movement of supplies. Al-Shimali has been designated by the Treasury Department for acting for or on behalf of ISIL and is also sanctioned pursuant to UN Security Council resolutions 1267(1999)/1989(2011).

For background on the Rewards for Justice program, more information about those for whom reward offers have been made, and the program's enhancements

under the USA PATRIOT Act, see the Rewards for Justice website, www.rewardsforjustice.net, and Digest 2001 at 932-34.

(4) *State Sponsors of Terrorism*

See Chapter 16 for discussion of the rescission of Cuba's designation as a state sponsor of terrorism.

2. Narcotics

a. Majors list process

(1) *International Narcotics Control Strategy Report*

In March 2015, the Department of State submitted the 2015 International Narcotics Control Strategy Report ("INCSR"), an annual report to Congress required by § 489 of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. § 2291h(a). The report describes the efforts of key countries to address all aspects of the international drug trade in calendar year 2014. Volume 1 of the report covers drug and chemical control activities and Volume 2 covers money laundering and financial crimes. The report is available at <http://www.state.gov/j/inl/rls/nrcrpt/index.htm>.

(2) *Major drug transit or illicit drug producing countries*

On September 14, 2015, President Obama issued Presidential Determination 2015-12 "Memorandum for the Secretary of State: Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2015." Daily Comp. Pres. Docs. DCPD No. 00620, pp. 1-5 (Sep. 14, 2015). In this year's determination, the President named 22 countries: Afghanistan, the Bahamas, Belize, Bolivia, Burma, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, India, Jamaica, Laos, Mexico, Nicaragua, Pakistan, Panama, Peru, and Venezuela as countries meeting the definition of a major drug transit or major illicit drug producing country. See State Department Media Note, available at <http://www.state.gov/r/pa/prs/ps/2015/09/246884.htm>. A country's presence on the "Majors List" is not necessarily an adverse reflection of its government's counternarcotics efforts or level of cooperation with the United States. The President determined that Bolivia, Burma, and Venezuela "failed demonstrably" during the last twelve months to make sufficient or meaningful efforts to adhere to their obligations under international counternarcotics agreements. Simultaneously, the President determined that support for programs to aid the promotion of democracy in Burma and

Venezuela is vital to the national interests of the United States, thus ensuring that such U.S. assistance would not be restricted during fiscal year 2016 by virtue of § 706(3) of the Foreign Relations Authorization Act, Fiscal Year 2003, Pub. L. No. 107-228, 116 Stat. 1424.

b. *Interdiction assistance*

During 2015 President Obama again certified, with respect to Colombia (Daily Comp. Pres. Docs., 2015 DCPD No. 00550, p. 1, Aug. 5, 2015) that (1) interdiction of aircraft reasonably suspected to be primarily engaged in illicit drug trafficking in that country's airspace is necessary because of the extraordinary threat posed by illicit drug trafficking to the national security of that country; and (2) the country has appropriate procedures in place to protect against innocent loss of life in the air and on the ground in connection with such interdiction, which shall at a minimum include effective means to identify and warn an aircraft before the use of force is directed against the aircraft. President Obama did not make this determination with respect to Brazil in 2015. President Obama made his determinations pursuant to § 1012 of the National Defense Authorization Act for Fiscal Year 1995, as amended, 22 U.S.C. §§ 2291–4, following a thorough interagency review. For background on § 1012, see *Digest 2008* at 114.

c. *UN*

On October 8, 2015, Luis E. Arreaga, Principal Deputy Assistant Secretary, in the State Department's Bureau of International Narcotics and Law Enforcement Affairs, delivered a statement for the United States on crime prevention, criminal justice and International drug control at the Third Committee of the UN General Assembly. Mr. Arreaga's remarks are excerpted below and available in full at <http://www.state.gov/j/inl/rls/rm/2015/248064.htm>.

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When the [1961] Single Convention [on Drugs] was last revised, drug addiction was considered principally as a criminal matter; today science informs us that substance abuse is primarily a public health challenge. We have also learned that a comprehensive approach to drugs produces the best outcomes. Not just the best outcomes for addicts and traffickers, but for all touched by drugs. We have also learned that we cannot consider the challenge of drugs in a vacuum. Drug trafficking and use are not isolated from society, but interconnected with it. This comprehensive approach to drugs is integral to successful criminal justice reforms as a whole. Having strong enforcement without a capable, fair judiciary does not advance our cause—indeed, it is harmful to it. To have prisons filled with criminals or addicts without a path to reintegration results in a

continuing cycle of abuse and violence. Without a fair, effective, humane, and transparent criminal justice system, all our efforts, including comprehensive global drug reform, will be impaired.

We have a collective responsibility to act and to implement programs that work. One step we can take is the final adoption of the revised UN Standard Minimum Rules for the Treatment of Prisoners, the “Mandela Rules.” Now is the time to adopt them. Doing so will provide a rulebook that incorporates the extraordinary advancements in our knowledge, and this can lead to improved outcomes for both prisoners and society alike.

Another opportunity that cannot pass us by is a reaffirmation of the critical role of the drug conventions, and the implementation of their mandates, based on debates within many UN fora that we have all been party to over the last 18 months. This includes a stronger public health approach that responds to both long established threats, such as heroin, and emerging ones, such as new psychoactive substances. As we prepare for the UNGA Special Session in April we must also ensure that the UN Commission on Narcotic Drugs receives the support it needs from all member states so it can focus on developing concrete operational objectives.

Those here must seize this moment to advance the cause of reducing the impact of drugs, and advance the sustainable development goals that our leaders discussed last month. In all this the UN Office on Drugs and Crime continues to play a leadership role in program development.

Soon we must coalesce around a platform and a plan that reflects both ageless truths about addiction and the human condition, while acknowledging how much our understanding has changed.

This is our mandate, and our challenge, and in the United States you will find an ally, a leader, and a partner in the cause of criminal justice reform.

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3. Trafficking in Persons

a. Trafficking in Persons report

In July 2015, the Department of State released the 2015 Trafficking in Persons Report pursuant to § 110(b)(1) of the Trafficking Victims Protection Act of 2000 (“TVPA”), Div. A, Pub. L. No. 106-386, 114 Stat. 1464, as amended, 22 U.S.C. § 7107. The report covers the period April 2014 through March 2015 and evaluates the anti-trafficking efforts of countries around the world. Through the report, the Department determines the ranking of countries as Tier 1, Tier 2, Tier 2 Watch List, or Tier 3 based on an assessment of their efforts with regard to the minimum standards for the elimination of trafficking in persons as set out by the TVPA, as amended. The 2015 report lists 23 countries as Tier 3 countries, making them subject to certain restrictions on assistance in the absence of a Presidential national interest waiver. For details on the Department of State’s methodology for designating states in the report, see *Digest 2008* at 115–17. The report is available at <http://www.state.gov/j/tip/rls/tiprpt/2015/index.htm>. Chapter 6 in this *Digest* discusses the determinations relating to child soldiers.

On July 27, 2015, Sarah Sewall, Under Secretary of State for Civilian Security, Democracy, and Human Rights, delivered remarks and answered questions on the release of the 2015 report. A transcript of the remarks and question and answer period is available at <http://www.state.gov/r/pa/prs/ps/2015/07/245294.htm>. Secretary Kerry also delivered remarks on July 27, 2015 on the release of the report, which are excerpted below and available at <http://www.state.gov/secretary/remarks/2015/07/245298.htm>.

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This [report](#) is the product of really an entire year-long effort. These folks will leave here today and they begin on next year's report. And it is a constant process of following up with the employees at our diplomatic posts around the world, gathering facts, information, and helping to lay it out. And this report is important because it really is one of the best means that we have as individuals to speak up for adults and children who lack any effective platform whatsoever through which they are able to speak for themselves. Because of its credibility, this report is also a source of validation and inspiration to activists on every single continent who are striving to end this scourge of modern slavery.

I want to emphasize, as I did last month when we issued a report on our human rights observations around the world, the purpose of this document is not to scold and it's not to name and shame. It is to enlighten and to energize, and most importantly, to empower people. And by issuing it, we want to bring to the public's attention the full nature and scope of a \$150 billion illicit trafficking industry. And it is an industry. Pick up today's New York Times, front page story about a young Cambodian boy promised a construction job in Thailand, goes across the border, finds himself held by armed men, and ultimately is pressed into service on the seas—three years at sea, shackled by his neck to the boat so that he can't escape and take off when they're around other boats. If that isn't slavery and imprisonment, I don't know what is.

We want to provide evidence and facts that will help people who are already striving to achieve reforms to alleviate suffering and to hold people accountable.

We want to provide a strong incentive for governments at every level to do all that they can to prosecute trafficking and to shield at-risk populations.

And in conveying these messages, let me acknowledge that even here in the United States, we Americans need to listen and improve. Like every nation, we have a responsibility to do better—a better job of protecting those who live within our own borders, whose passports are taken away from them, who are imprisoned for labor purposes or for sex trafficking.

When criminals in one city are arrested for using children in the commercial sex trade, believe me, the pressure on authorities in nearby cities to make arrests builds.

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When country A becomes known for its success in putting human traffickers in jail, the leaders in country B are drawn into a virtuous competition.

And when the practice of using forced labor to catch fish, to process meat, to sew clothing, to assemble toys is exposed, then authorities will have a good reason to look at other

industries—and consumers will then have cause to question the origins of the global supply chains of what they have chosen to buy and what is placed before them in stores or online. I don't have to tell this audience that traffickers are both ruthless and relentless. They know how to exploit the hopes of those desperate to escape poverty or to find shelter from disaster or from strife. Traffickers prey upon the most vulnerable. They target the weak, the despairing, the isolated. And they make false promises and transport their victims across borders to labor without passports or phones in places where the language is unknown and where there are no means of escape. If the victims rebel or become ill, the traffickers often use violence to ensure that their profits continue and their crimes are concealed.

That is why this TIP Report needs to be read as a call to action.

Governments need to strengthen and enforce the laws that they have on the books, and prosecutors must take pride in turning today's traffickers into tomorrow's prisoners.

The private sector also needs to be a part of this effort by blowing the whistle on companies that use labor that is under age, under paid, and under coercion.

Investigative journalists can continue to assist by shining the spotlight—as *The New York Times*, Reuters, AP, and *The Guardian*, CNN and others recently have—on abuses in the seafood and other industries.

Advocacy groups, faith groups, faith leaders, educators, and researchers should continue to intensify the pressure for bold action so that together we will win more battles in a fight that will surely last for some time to come.

And throughout, we have to be true to the principle that although money may be used for many things, we must never, ever allow a price tag to be attached to the heart and soul and freedom of a fellow human being.

* * * *

b. Presidential determination

Consistent with § 110(c) of the Trafficking Victims Protection Act, as amended, 22 U.S.C. § 7107, the President annually submits to Congress notification of one of four specified determinations with respect to “each foreign country whose government, according to [the annual Trafficking in Persons report]—(A) does not comply with the minimum standards for the elimination of trafficking; and (B) is not making significant efforts to bring itself into compliance.” The four determination options are set forth in § 110(d)(1)–(4).

On October 5, 2015, President Obama issued a memorandum for the Secretary of State, “Presidential Determination With Respect to Foreign Governments’ Efforts Regarding Trafficking in Persons.” 80 Fed. Reg. 62,435 (Oct. 16, 2015). The President’s memorandum conveys determinations concerning the 23 countries that the 2015 Trafficking in Persons Report lists as Tier 3 countries. See Chapter 3.B.3.a. *supra* for discussion of the 2015 report.

The Trafficking Victims Protection Act further requires that the President’s

notification be accompanied by a certification by the Secretary of State regarding certain types of foreign assistance (“covered assistance”) that “no [such covered] assistance is intended to be received or used by any agency or official who has participated in, facilitated, or condoned a severe form of trafficking in persons.” Secretary Kerry signed the required certification as to all 23 countries placed on Tier 3 in the 2015 Report and it was included with the President’s determination. 80 Fed. Reg. 62,435 (Oct. 16, 2015). Prior to obligating or expending covered assistance, relevant bureaus in the State Department are required to take appropriate steps to ensure that all assistance is provided in accordance with the Secretary’s certification.

c. *United Nations*

On November 23, 2015, Ambassador Sarah Mendelson, U.S. Representative for Economic and Social Affairs, U.S. Mission to the United Nations, delivered remarks at the 70th UN General Assembly Third Committee on the topic of improving coordination of efforts against trafficking in persons. Ambassador Mendelson’s remarks are excerpted below and available at <http://usun.state.gov/remarks/7005>.

* * * *

The United States welcomes the coming adoption of this resolution after substantial negotiations. As President Obama has noted, “Our fight against human trafficking is one of the great human rights causes of our time.” Trafficking in persons is modern slavery. It is a criminal act, a threat to development, and a cause and a symptom of instability around the world.

The victims of human trafficking can be found in factories and fields, in brothels, in conflict zones, and even in private homes. Trafficking touches many of us in undetected ways through products tainted by supply chains riddled with forced labor. Every day the lives of men, women, and children are stolen, broken, bought, and sold in every country around the world.

In 2000, for the first time, through the Palermo Protocol, the United Nations adopted an internationally agreed upon definition of trafficking in persons and provided a legal framework to end human trafficking. Our global commitment to end trafficking was built around three pillars: prevention, prosecution, and protection. With the adoption of the Global Plan of Action on combating trafficking in persons in 2010, the General Assembly added a fourth pillar: partnership. The global community realized that ending this form of modern slavery is only possible through collaborative and collective action by member states, the private sector, and civil society.

With the adoption of the 2030 Agenda for Sustainable Development, member states have renewed the call to end trafficking. If we are to achieve the 2030 Agenda overall, and specifically Goal 5 on gender equality, Goal 8 on decent work, and Goal 16 on justice for all, we must continue this global partnership.

Reaffirming our commitment to the fourth pillar, we welcome this call for a high-level meeting on the appraisal of the Global Plan of Action in the 72nd Session of the General

Assembly and look forward to robust participation by all – Member States, the private sector, and civil society.

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On December 16, 2015, the United States released a statement in its capacity as President of the Security Council on trafficking in persons in situations of conflict. The presidential statement follows, and is also available at <http://usun.state.gov/remarks/7052>.

* * * *

The Security Council recalls its primary responsibility for the maintenance of international peace and security, in accordance with the Charter of the United Nations.

The Security Council recalls the United Nations Convention against Transnational Organized Crime, and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, which includes the first internationally agreed definition of the crime of trafficking in persons and provides a framework to effectively prevent and combat trafficking in persons.

The Security Council condemns in the strongest terms reported instances of trafficking in persons in areas affected by armed conflict. The Security Council further notes that trafficking in persons undermines the rule of law and contributes to other forms of transnational organized crime, which can exacerbate conflict and foster insecurity.

The Security Council deplores all acts of trafficking in persons undertaken by the “Islamic State of Iraq and the Levant” (ISIL, also known as Da’esh), including of Yazidis, as well as all ISIL’s violations of international humanitarian law and abuses of human rights, and deplores also any such trafficking in persons and violations and other abuses by the Lord’s Resistance Army, and other terrorist or armed groups, including Boko Haram, for the purpose of sexual slavery, sexual exploitation, and forced labor which may contribute to the funding and sustainment of such groups, and underscores that certain acts associated with trafficking in persons in the context of armed conflict may constitute war crimes.

The Security Council reiterates the critical importance of all Member States fully implementing relevant resolutions with respect to ISIL, including resolutions 2161 (2014), 2170 (2014), 2178 (2014), 2199 (2015) and 2249 (2015). The Security Council further reiterates the critical importance of all Member States fully implementing relevant resolutions, including resolution 2195 (2014), which expresses concern that terrorists benefit from transnational organized crime in some regions, including from the trafficking of persons, as well as resolution 2242 (2015) which expresses concern that acts of sexual and gender-based violence are known to be part of the strategic objectives and ideology of certain terrorist groups.

The Security Council calls upon Member States to reinforce their political commitment to and improve their implementation of applicable legal obligations to criminalize, prevent, and otherwise combat trafficking in persons, and to strengthen efforts to detect and disrupt trafficking in persons, including implementing robust victim identification mechanisms and providing

access to protection and assistance for identified victims, particularly in relation to conflict. The Security Council underscores in this regard the importance of international law enforcement cooperation, including with respect to investigation and prosecution of trafficking cases and in this regard calls for the continued support of the United Nations Office on Drugs and Crime (UNODC) in providing technical assistance upon request.

The Security Council calls upon Member States to consider ratifying or acceding to the United Nations Convention against Transnational Organized Crime and its Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children. The Security Council further calls upon States Parties to this Convention and to the Protocol to redouble their efforts to implement them effectively

The Security Council takes note of the recommendations made by the Working Group on Trafficking in Persons, established by the Conference of the Parties to the United Nations Convention against Transnational Organized Crime, since its inception, and calls upon States to strengthen their efforts in building the necessary political, economic and social conditions to tackle this crime.

The Security Council notes the particular impact that trafficking in persons in situations of armed conflict has on women and children, including increasing their vulnerability to sexual and gender based violence. The Security Council expresses its intention to continue to address this impact, including, as appropriate, in the context of its Working Group on Children and Armed Conflict, within its mandate, and in the framework of its agenda to prevent and address sexual violence in armed conflict.

The Security Council expresses solidarity with and compassion for victims of trafficking, including victims of trafficking related to armed conflicts worldwide and underscores the need for Member States and the UN System to proactively identify trafficking victims amongst vulnerable populations, including refugees and internally displaced persons (IDPs), and address comprehensively victims' needs, including proactive victim identification and, as appropriate, the provision of or access to medical and psycho-social assistance, in the context of the UN peacekeeping and peacebuilding efforts, as well as ensure that victims of trafficking in persons are treated as victims of crime and in line with domestic legislation not penalized or stigmatized for their involvement in any unlawful activities in which they have been compelled to engage.

The Security Council calls upon Member States to hold accountable those who engage in trafficking in persons in situations of armed conflict, especially their government employees and officials, as well as any contractors and subcontractors, and urges Member States to take all appropriate steps to mitigate the risk that their public procurement and supply chains may contribute to trafficking in persons in situations of armed conflict.

The Security Council welcomes existing efforts to address sexual exploitation and abuse in the context of UN peacekeeping missions, and requests the Secretary-General to identify and take additional steps to prevent and respond robustly to reports of trafficking in persons in UN peacekeeping operations, with the objective of ensuring accountability for exploitation.

The Security Council requests the Secretary-General to take all appropriate steps to reduce to the greatest extent possible the risk that the UN's procurement and supply chains may contribute to the trafficking in persons in situations of armed conflict.

The Security Council urges relevant UN agencies operating in armed conflict and post-conflict situations to build their technical capacity to assess conflict situations for instances of trafficking in persons, proactively screen for potential victims of trafficking, and facilitate access

to needed services for identified victims.

The Security Council expresses its intent to continue to address trafficking in persons with respect to the situations on its seizure list.

The Security Council requests that the Secretary-General report back to the Council on progress made in 12 months to implement better existing mechanisms countering trafficking in persons and to carry out steps requested in this Presidential Statement.

* * * *

4. Money Laundering

On July 29, 2015, the Department of the Treasury, Financial Crimes Enforcement Network (“FinCEN”) issued a Final Rule imposing the fifth special measure against FBME Bank Ltd. (“FBME”), formerly known as the Federal Bank of the Middle East, Ltd., with an effective date of August 28, 2015. On August 27, 2015, the United States District Court for the District of Columbia granted FBME’s motion for a preliminary injunction and enjoined the Final Rule from taking effect. On November 6, 2015, the Court granted the Government’s motion for voluntary remand to allow for further rulemaking proceedings. 80 Fed. Reg. 74,064 (Nov. 27, 2015).^{**}

5. Organized Crime

a. Transnational Organized Crime Rewards Program

As discussed in *Digest 2013* at 51, the U.S. government expanded its rewards program in 2013 to extend to information about individuals involved in transnational organized crime. The Transnational Organized Crime (“TOC”) Rewards Program is the result and is managed by the U.S. Department of State’s Bureau of International Narcotics and Law Enforcement Affairs in coordination with U.S. federal law enforcement agencies.

On February 24, 2015, the Department of State announced that the TOC Rewards Program was offering up to \$3 million for information leading to the arrest and/or conviction of Evgeniy Mikhailovich Bogachev, a Russian national allegedly involved in a major cyber racketeering enterprise. See February 24, 2015 media note, available at <http://www.state.gov/r/pa/prs/ps/2015/02/237849.htm>. The media note includes the following additional information about the reward offer relating to Bogachev:

Also known online as “lucky12345” and “slavik,” Bogachev allegedly acted as an administrator in a scheme that installed malicious software on more than one million computers without authorization. The software, known as “Zeus” and

^{**} Editor’s Note: FinCen issued a new Final Rule on March 31, 2016.

“GameOver Zeus,” enabled contributors to the scheme to steal banking information and empty the compromised accounts, resulting in the theft of more than \$100 million from U.S. businesses and consumers.

Bogachev currently appears on the FBI’s [Cyber’s Most Wanted](#) list. He is believed to be at large in Russia. This reward offer reaffirms the commitment of the U.S. government to bring those who participate in organized crime to justice, whether they hide online or overseas.

On March 26, 2015, the State Department announced the TOC Rewards Program offers of multi-million dollar rewards for information leading to the arrest or conviction of two other alleged cybercriminals, Russian nationals Roman Olegovich Zolotarev and Konstantin Lopatin. See State Department media note available at <http://www.state.gov/r/pa/prs/ps/2015/03/239799.htm>. The media note explains:

The two fugitives ... were indicted for their role in Carder.su, a global, Internet-based criminal enterprise whose members trafficked in and manufactured stolen and counterfeit identification documents and access devices, such as debit and credit cards, and engaged in identity theft and financial fraud crimes.

A reward of up to \$2 million is offered for information on Zolotarev, known online as “Admin,” who is believed to have served as the leader of Carder.su. Up to \$1 million is being offered for information on Lopatin, known as “Graf,” who allegedly participated in the organization as a key member. Both are believed to be at large in Russia.

Carder.su is responsible for at least \$50 million in losses. To date, 30 individuals have been convicted, and 25 others are pending trial or—like Zolotarev and Lopatin—are fugitives. The cases were investigated by U.S. Immigration and Customs Enforcement Homeland Security Investigations (HSI). They are being prosecuted by the U.S. Attorney's Office for the District of Nevada and the U.S. Department of Justice’s Organized Crime and Gang Section.

b. *Sanctions Program*

See Chapter 16 for a discussion of sanctions related to transnational organized crime.

6. *Corruption*

In conjunction with the 16th International Anticorruption Conference (“IACC”) in Putrajaya, Malaysia, the United States announced several initiatives aimed at combating corruption. See September 4, 2015 State Department fact sheet, available

at <http://www.state.gov/j/inl/rls/fs/2015/246651.htm>. The fact sheet identifies several multilateral fora through which it works to combat corruption, including the UN Convention Against Corruption, the U.S.-Africa Partnership on Illicit Finance, the Organization for Economic Cooperation and Development's Working Group on Bribery, the Open Government Partnership Initiative, the Asia-Pacific Economic Cooperation (APEC), and the G20. The fact sheet also lists the new anticorruption initiatives by the United States, including:

- Increased support for the IACC
- A wildlife trafficking anticorruption initiative
- FBI asset recovery teams to investigate international corruption
- Enhanced engagement with civil society organizations in Asia and the Pacific

In November 2015, the United States participated in the Conference of the States Parties ("COSP") to the United Nations Convention against Corruption in St. Petersburg, Russia., Principal Deputy Assistant Secretary Arreaga delivered opening remarks at the COSP on November 2, 2015. Mr. Arreaga's remarks are excerpted below and available at <http://www.state.gov/j/inl/rls/rm/2015/249117.htm>.

* * * *

Today, we have heard about the trillions of dollars corruption costs our countries as it reduces competitiveness and diminishes growth. Others have mentioned, and correctly so, the millions who are harmed by corruption, whether it's because they can't pay a bribe to get their child medical care; or when a criminal makes illegal payments to escape justice and goes on to harm others; or when natural resources are destroyed for personal gain.

The persistence of this scourge, even a dozen years after we agreed to binding global rules to combat it, could lead some to believe that we cannot end corruption.

To the skeptics we say, the fact that it is difficult to end corruption does not mean we shouldn't fight it. We certainly don't take that position when it comes to other complex global challenges, such as protecting the environment or eliminating poverty.

We have it within our power to enforce anti-corruption standards.

- We can use the Convention's tools and share best practices with one another;
- We can prevent corruption by increasing transparency, integrity rules, and strong systems, particularly in areas such as procurement and budget management; and
- We can commit to prosecute the corrupt, and to make every effort to recover the proceeds of their crimes.

The United States is proud to be among those at the forefront of this fight:

- We strongly defend the independence of investigators, prosecutors, and judges in our country;

- We promote anti-corruption standards globally through partnerships and practitioner-to-practitioner cooperation; and,
- We invest hundreds of millions of dollars in assistance each year for anticorruption and related good governance programs worldwide.

For example:

- Last month the United States increased our support for the International Commission Against Impunity in Guatemala, or CICIG, by \$5 million. Its fearless work deserves the global community's support so it can continue to root out corruption;
- The United States also developed a Kleptocracy Asset Recovery Initiative, which consists of specialized teams of prosecutors who ensure foreign corruption proceeds benefit those harmed by abuse of office. These teams are currently litigating cases involving more than a billion dollars of assets tied to foreign corruption, and have already returned over \$143 million to victims of corruption.
- We also provide training to governments, in countries like Ukraine, and to civil society organizations, in countries like Nigeria and Sierra Leone, to enhance their capacity to combat corruption.

We are also cognizant that good-faith efforts by the United States or of any single country will never be enough: we all must work together to adopt and enforce international standards of integrity, accountability, and transparency.

This is more important than ever because people, markets, and commerce are increasingly interconnected and this creates more opportunities for bad actors and corruption. Every treaty, transaction, and investment rests on a foundation of laws: the more they are compatible, consistent, and meet a higher standard, the better off we will all be.

All of us share a responsibility to implement the convention's anti-corruption standards, to foster international cooperation; and to promote development assistance that is coordinated, effective, and based on each country's needs.

It is essential that we use the Convention's tools set including those that advance more effective asset recovery.

We must draw on all sectors of our societies to fight corruption, including civil society organizations and the private sector. We have nothing to hide and much to gain from their constructive engagement with us in the Conference of States Parties and its subsidiary bodies.

This week, we have several opportunities to continue the progress we have made:

We must support the UNCAC review mechanism so it can smoothly transition to a second cycle. The United States will continue to support the compromises reached in 2009, including on the basic terms by which the mechanism operates.

However, the issues presented in the Asset Recovery and Prevention Chapters are remarkably broad. A review cycle that covers all provisions of both chapters, with the same checklist approach, potentially could overwhelm reviewers, countries under review, and the Secretariat.

One lesson learned in 2011 that we are facing once again is that we must make plans within the finite human and financial resources of our anti-corruption efforts – including at home and at the United Nations. We should make limited, careful adjustments so our peer reviews in the next cycle are effective and cost efficient.

In looking forward to an asset recovery resolution for the Sixth COSP, my delegation has proposed a draft text this week.

The most important goals of any text we adopt should:

- Maintain a balanced and technical outlook that avoids political statements that will not achieve consensus;
- Reinforce good practices identified over the last two years in the Asset Recovery Working Group;
- Recognize that asset recovery is a highly technical, difficult process that requires a significant amount of work by experts from all countries involved;
- Use the Asset Recovery Working Group to address sensitive issues that require meaningful and ongoing dialogue at the expert level; and
- Avoid language that departs from the purpose and the text of the Convention.

Looking to the next five year cycle, the United States remains committed to an approach that uses the limited resources we have wisely; can handle the enormous tasks that remain undone; and confronts new challenges that are as of yet unknown.

* * * *

Mr. Arreaga provided an interview on November 23, 2015, after the conclusion of the COSP, in which he summarized its significant outcomes. The interview is available at <http://www.state.gov/j/inl/rls/rm/2015/249916.htm>. Mr. Arreaga identified as the most important accomplishment:

the unanimous decision by all 177 States Parties to launch the second cycle of the UNCAC Review Mechanism in 2016. This is the only global mechanism that governments use to evaluate each other's compliance with their anti-corruption treaty obligations, and it is essential to keep this momentum going in the years ahead.

Mr. Arreaga also highlighted discussions at the COSP about the role of civil society in the UNCAC; debate on resolutions on asset recovery work; and U.S. support for the UNCAC Review Transparency Pledge proposed by the UNCAC Coalition.

C. INTERNATIONAL, HYBRID, AND OTHER TRIBUNALS

1. International Criminal Court

a. Overview

Ambassador David Pressman, U.S. Alternate Representative to the UN for Special Political Affairs, delivered remarks at the UN General Assembly on the report of the International Criminal Court on November 5, 2015. His remarks are excerpted below and available at <http://usun.state.gov/remarks/6960>.

* * * *

President Gurmendi, thank you for your presentation of the International Criminal Court's activities between August 1, 2014, and July 31, 2015, and for your service to the Court in this first year of your tenure as President.

Ending impunity for those responsible for war crimes, crimes against humanity, and genocide, is something that the United States views as both a moral imperative and a stabilizing force in international affairs. To this end, the United States continues to work—on a case-by-case basis and consistent with U.S. policy and laws—with the International Criminal Court to identify practical ways to advance accountability for the worst crimes known to humanity. Together, the international community must find ways to intensify our collaboration to bring to justice the perpetrators of atrocity crimes.

This past year has been marked by some progress. In January, the United States welcomed the transfer of Dominic Ongwen by Central African authorities to the ICC, which occurred thanks to close cooperation between the Court, the Central African Republic, Uganda, the African Union Regional Task Force, and the United States. Ongwen is allegedly responsible for committing and directing brutal crimes in Uganda and the region. The fact that he will now stand trial at the ICC is a welcome and it is a long overdue step toward justice for the victims of the Lord's Resistance Army. And the United States was pleased to work with our partners to help make that happen. We look forward to the day when Joseph Kony, too, will be held accountable.

The United States also recently welcomed the announcement by the ICC Prosecutor in September that Ahmad Al Faqi Al Mahdi, an alleged member of the Islamic extremist group Ansar al-Dine, was surrendered to the Court by Nigerien authorities, with the cooperation of Mali. This is an important step toward holding accountable those responsible for serious crimes in Mali and toward holding accountable alleged members of extremist groups for war crimes. The charges against Al Faqi signal progress in bringing to justice those accused of intentionally targeting attacks against religious and historic buildings and monuments. Now such assaults are not just on Mali and its people, but on the common cultural heritage of all humankind. These are attacks against civilization and a tragedy for all civilized people, and, as Secretary of State John Kerry has said, "the civilized world must take a stand." The United States commends Mali and Niger on their cooperation to transfer Al Faqi to the Court.

The United States also welcomes the Court's report of continued cooperation with peacekeeping missions that have been authorized by the Security Council to provide support to appropriate justice and accountability initiatives.

We recognize, with particular appreciation, the contributions of UN-Women toward the work of the Office of the Prosecutor through the secondment of gender experts. At a time when we continue to witness the commission of horrific sexual and gender-based violence crimes against women and girls, boys and men, in atrocity situations around the world, we must remain vigilant in our fight to prevent, end, and hold to account those responsible for these most heinous crimes. The United States remains committed to pursuing justice for victims of sexual and gender-based violence, including through strengthening the ability of national authorities to address these crimes, which we are doing in countries like the Democratic Republic of the Congo.

The ICC was established as a court of last resort, one that would focus on those deemed most responsible for the most serious crimes, and one that would step in to investigate and prosecute such persons only when states are not willing or genuinely able to do so themselves. Our support for domestic accountability efforts must be integral to our approach collectively to ending impunity for atrocity crimes. We welcome the progress made in the Central African Republic to establish a Special Criminal Court, within its domestic system but with international participation. This represents an important step toward providing accountability at the national level for the crimes committed amidst the ongoing brutal violence in the Central African Republic, while simultaneously bolstering national-level capacity. The Special Criminal Court could demonstrate the potential of “positive complementarity,” whereby international scrutiny and activity have stimulated and supported the capacity of the domestic judiciary to bring justice to victims.

In closing, it is important to note that there is still much to be done in our work together to prevent mass atrocities and bring to justice those who commit crimes against humanity, war crimes, and genocide. Facing limited resources and increasing demands, it will be important for the Court to make prudent decisions about the cases it pursues and declines to pursue and ensure that its choices are guided by justice, rigor, fairness, and care. And the international community should strive to ensure that the Court is able to remain focused on its core mandate to address war crimes, crimes against humanity, and genocide, and the Court should remain focused on achieving concrete and just results.

We note in this regard that the United States continues to have serious concerns about the crime of aggression amendments adopted at Kampala, which we believe would risk undermining not only the Court’s work to prevent and punish atrocity crimes, but other legitimate efforts to do so as well. If States do not have clarity on what conduct is covered, it is easy to imagine the complications and the chilling effect that would arise in any number of situations where the imperative for action, including by our partners and allies who are parties to the Rome Statute, is overwhelming, including action aimed at stopping the very atrocities that prompted the Court’s creation. Imagine—in such a situation after the Court’s aggression, jurisdiction has been activated—questions states would face about whether the Court would regard as aggression a decision to join or support a coalition to prevent a humanitarian catastrophe. It is in this context that we stress that we all have an interest in seeking greater clarity on key issues before any decision is taken to activate the Court’s jurisdiction over the crime of aggression, including with regard both to what conduct is covered, but also *which States* are covered. States should not have to decide whether to activate the amendments without clear and common understanding on these points.

* * * *

On November 19, 2015, Jane Stromseth, Acting Director of the State Department’s Office of Global Criminal Justice, addressed the Fourteenth Session of the International Criminal Court Assembly of States Parties on behalf of the observer delegation of the United States. Her remarks are excerpted below and available in full at http://www.state.gov/j/gcj/us_releases/remarks/2015/249814.htm.

* * * *

As always, this group of States gathers with a challenging agenda before it: to seek effective ways to end impunity for the most serious crimes of concern to the international community as a whole. Because success in that pursuit depends in part on seizing opportunities and taking encouragement from progress, I want to begin by noting a few of the year's positive developments on which the international community can build.

This year, for the first time, a top commander of the vicious Lord's Resistance Army was apprehended and transferred to the ICC. This transfer occurred in a model of cooperation among the African Union, the leadership of Uganda and the Central African Republic, and the organs of the Court. The United States is proud to have played a role in this process, and we look forward to the day when Joseph Kony is also brought to justice.

This year, also for the first time, a leader of an extremist group in Mali has come before the ICC to answer for alleged war crimes, in this case, crimes against the cultural heritage of the historic town of Timbuktu. We hope this will send a signal to other such groups within the Court's jurisdiction.

And this year, following the Cote d'Ivoire elections in 2010 that witnessed so many atrocities, Ivoirians were able to choose their president in a peaceful election, setting a more hopeful precedent for that country's future.

In these situations, the prospect of justice is helping deliver stability where it has been absent, and truth and dignity for victims who have been denied them. And in these and several other cases, the ICC is playing a unique and positive role. Although the United States, for reasons that have been much discussed, has not accepted the Court's jurisdiction, we continue to work with the ICC in areas of shared interest, on a case-by-case basis and consistent with U.S. laws and policy. The United States has expressed its support for each of the investigations and prosecutions currently under way before the Court.

But the ICC is only one part of a developing system of global criminal justice, one that depends first and foremost on the strengthening of national institutions and the presence of national political will. In that vein, too, this year, we have seen hopeful signs of willingness in a number of countries to address more fully the painful legacies of conflict. To name a few:

In Kosovo, the national Assembly courageously passed the legislation required to create a hybrid Special Court to hear cases emerging from reports of serious crimes committed in the wake of the 1999 conflict.

In Colombia, the government and the country's largest rebel group have made progress toward reaching an agreement on transitional justice in the context of their peace negotiations. We welcome Colombia's commitment to reaching a transitional justice agreement that is consistent with its national and international legal obligations. If achieved, such an outcome would represent an important step for Colombia toward a just and durable peace.

In the Central African Republic, the transitional government is working with the international community to establish a domestic Special Criminal Court, with international participation, to seek justice for atrocity crimes that have wracked that country.

And in South Sudan, the parties to that nation's conflict have signed a peace agreement in August that includes commitments to pursue a wide range of transitional justice measures, including the creation of a hybrid court by the African Union to try those most responsible for atrocities.

These situations span many continents, and as much distinguishes them as ties them together. But we see in these new developments the reflection of a universal yearning for dignity, and for the kind of lasting peace that is built upon justice. Many of these initiatives are in the very earliest stages, and some of them come while conflict is still a daily reality. But if they are pursued credibly, if witnesses and court personnel are protected, and if legal obligations are respected, these initiatives have the potential to contribute to a more sustainable peace in these countries, particularly as many of them will benefit from international participation. The United States will support these initiatives as best we can, and we urge others to do so as well.

But while we need to work together to support and help seize opportunities such as these, we also need to face the situations in which the possibility of progress seems more remote, and to ensure that we are working together to help lay the groundwork for justice.

No situation is more overdue for an effort to find common ground than the situation in Darfur, which the Security Council referred to the ICC ten years ago and where civilians continue to face the persistent threat of aerial bombardments, widespread rape, and the looting and burning of homes and villages. The United States strongly believes that the arrest warrants in the ICC's Darfur situation should be carried out, and that Sudan must comply with its obligations under the referral. But even while the victims of this brutal conflict are waiting for justice, we must continue to look for ways to support and give hope to them, and to insist with one voice that the ongoing atrocities stop.

This year has also presented us with horrific realities of sexual and gender-based violence, which remain rampant and continue to undermine peacebuilding and cause long-lasting pain in conflict zones and post-conflict societies around the world. That's why the United States is committed to helping bring to justice those responsible for these crimes, including through an Accountability Initiative that includes more than eight million dollars in support for specialized justice sector initiatives in conflict-affected countries. But every day, the egregious forms of sexual slavery and violence perpetrated by ISIL in Iraq and Syria make clear just how grave a challenge we face in ending the scourge of sexual violence, and the crucial work that lies ahead to prevent these atrocities and help survivors heal and secure justice.

We condemn, too, the other atrocities being committed in Syria and Iraq—from the Asad regime's torture in its prisons and other abuses against the Syrian people to ISIL's brutal campaign of targeting ethnic and religious groups, abducting women, and other heinous acts of terror—and, most recently, ISIL's vicious attacks in Paris.

The United States will continue to lead a coalition aimed at degrading and ultimately defeating ISIL and ending these atrocities. And we will continue to work with others to seek a negotiated political transition in Syria that ends that country's civil war and Asad's brutality. Justice and accountability undoubtedly have a role to play in dealing with atrocities of this kind. The veto last year of a proposed referral to the ICC did not take accountability off the table in Syria. Rather, it reinforced the need for all of us to lay the groundwork now for future justice efforts, by documenting such crimes and assembling the evidence that will undoubtedly be needed in the years to come.

Against this backdrop of significant challenges, we note, as others have done, that the Court—although no longer a new institution—must still do more to establish its record of success, its legitimacy, and its deterrent impact. Given the demands the Court faces and the sensitivity of the situations in which it may intervene, we continue to urge the organs of the

Court to ensure that their decisions, including prosecutorial choices, are guided by rigor, fairness, legality, and prudence.

I will also raise again our concerns about the potential activation of the crime of aggression amendments in the face of widespread uncertainty about even such basic issues as whether the Court’s jurisdiction would apply with respect to Rome Statute parties that do not ratify the amendments. We think all interested States—ratifiers and non-ratifiers alike—have a strong interest in finding a way to discuss these and other basic issues constructively prior to any decision to “activate.”

On these and other issues, the United States does not purport to have all the answers. But once again, we affirm our commitment to pursuing justice for the worst crimes known to humanity. The fact that atrocities are being perpetrated in so many places around the world fills us with a sense of urgency. But we take encouragement from the successes and the steps forward that show that the current of history, when we work together, does indeed flow toward justice.

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b. *Crime of Aggression*

On April 9, 2015, Under Secretary of State for Civilian Security, Democracy, and Human Rights Sarah Sewall delivered remarks at the annual meeting of the American Society of International Law on the crime of aggression amendments adopted at the ICC’s 2010 Review Conference (“Kampala amendments”). Her remarks are excerpted below and available at <http://www.state.gov/j/remarks/240579.htm>.

* * * *

...[G]overnments have spent considerable time hashing through the many legal questions raised by the amendments on the crime of aggression that were ultimately adopted at the ICC’s 2010 Review Conference in Kampala. My purpose today is less to further debate those questions, but rather to offer a perspective on the policy implications of these amendments. We in the U.S. Government are concerned about the potential of these amendments to have lasting negative effects, and we see it as vital that the states involved in this process work together to avoid harming our common ability to prevent atrocities, resolve conflicts, and pursue justice for the worst global crimes.

Let me start by underscoring that—notwithstanding the quite serious concerns I will express here today—I am not questioning the motives of our many friends and allies who have been supportive of the Kampala amendments. Like them, we fully agree that aggression is inimical to a rules-based international order, and to the cause of peace and security that we seek to advance through our efforts around the world every day. Russia’s attempt to annex Crimea, to choose just one recent example, serves as a reminder that the international community will continue to face an ongoing imperative to oppose aggression as a significant policy challenge.

The question, however, is whether the Rome Statute amendments can be an effective and appropriate addition to the international community's toolbox. And here, as I will explain in greater detail, I think the risks of the current amendments outweigh the benefits. We will continue to work to persuade our partners of this, but we also know that for some, opposing these amendments in total may not be an option. For this reason, we propose that other states think seriously about how can they mitigate some of the greatest risks that we see as inherent in the current amendments.

Taking a step back, we recognize that this is a challenging issue, that many years of preparatory work informed the decisions made in Kampala, and that the Review Conference took steps aimed at addressing at least some of the concerns that were raised there. We welcomed, for example, the decision of the parties to exclude from the Court's jurisdiction over aggression the nationals of countries that are not party to the Rome Statute. And we welcomed the decision to defer until 2017 at the earliest any decision to activate that jurisdiction, which have provided breathing space and time in which important and still outstanding issues presented by the amendments could be addressed. At this point, however, we are well into the fifth year of this seven-year period, and it is becoming ever more pressing that the international community make productive use of this reflection time.

Many of our concerns—and many of the means of mitigating them—are linked to the uncertainty that still surrounds crucial aspects of the amendments and how they may be interpreted and applied. The definition of the crime itself, as adopted in Kampala, was ostensibly based on an earlier UN resolution that gave guidance to the Security Council on identifying acts of aggression. But the definition that the parties adopted stripped away the critical requirement that the assessment of a use of force “must be considered in light of all the circumstances of each particular case,” and it shifted the role of applying this guidance and making these judgments—which inevitably involve political judgments—from the Security Council to a judicial body meant to remain above politics. This makes the need for clarity all the greater.

Some of the formal understandings that were adopted in Kampala helped at the margins to clarify which acts will and will not be covered—but there remains little clarity or consensus about the meaning of core elements of the definitions. Our concerns about uncertainty have been exacerbated by the efforts of some supporters of the amendments to promote an interpretation—which we believe flies clearly in the face of the plain language of the Rome Statute—contending that the Court's aggression jurisdiction would extend even to the nationals of states parties that do not ratify the amendments.

Now, why do these open questions matter so much for those who work on peace and security or to promote international justice? Some degree of uncertainty may be inevitable when a text of this complexity is negotiated. But the questions I have referenced are at the heart of the fundamental policy choices that the states supporting the amendments need to make. They therefore should address these uncertainties squarely now. The alternative—simply trusting or hoping that the Court itself will eventually “figure it out” when live cases involving actual defendants come before it, and only after a period of chilling uncertainty—this alternative seems risky and inappropriate given the magnitude of the associated issues. The activation of the Court's aggression jurisdiction would be a highly consequential, even unprecedented, intervention into the international security architecture, and if the ICC's states parties proceed, they have an obligation to resolve outstanding questions.

Let me detail three specific concerns about the activation of the Court's aggression jurisdiction.

First, we are concerned that activation could chill the willingness of states to cooperate in certain military action where the legal basis for that action might be contested, including action aimed at stopping the very kinds of outrages, including mass atrocities, that prompted the Court's creation. President Obama has emphasized the importance of collective action by a broad range of allies and partners when we deal with these threats to humanity. But many of our allies and partners are parties to the Rome Statute, and it is easy to imagine the complications and the chilling effect that could arise in any number of situations involving ethnic cleansing or other atrocities where the imperative for action is overwhelming. Imagine—in such a situation after the Court's aggression jurisdiction has been activated—the Prime Minister of a Rome Statute party being told by her Legal Advisors that they could not guarantee or reliably advise that the Court would not regard a decision to join or support a coalition as aggression. Given current uncertainties, the legal advisors might advise that the ICC Prosecutor could well undertake an investigation of the matter and even pursue criminal proceedings and an arrest warrant. The international community has grappled for decades with the challenges of mobilizing the will to prevent humanitarian catastrophes. We fear that one of the effects of activating the ICC's aggression jurisdiction will be to create new potential obstacles to military action when it is urgently needed to save innocent lives.

Second, we are concerned that activation of the amendments may reduce the ability of the international community to manage and resolve conflicts. While the international community has strived for consensus around the principle that atrocities cannot legitimately be the subject of an amnesty, it is not obvious that the same approach is appropriate for the crime of aggression, which is of a fundamentally different character. Imagine two states in conflict, each having accused the other of starting the war but both prepared to make peace. The United Nations has said that it will not endorse provisions in peace agreements that include amnesties for mass atrocities. But should the international community similarly insist that parties to a conflict not “take off the table” prosecution of the leaders of one side or another for resorting to force in a “manner inconsistent with the Charter of the United Nations”? Particularly with so little certainty about how the Court will interpret the substance of the amendments, is the international community ready to insist that these are crimes that must be prosecuted in every instance at any cost? That these are crimes that cannot go unpunished?

A third concern is that activation of the aggression jurisdiction will harm the Court's ability to carry out its core mission—deterring and punishing genocide, crimes against humanity, and war crimes. Let me be clear: while the U.S. Government has a complex relationship with the ICC, we have worked to promote the Court's success in a wide range of contexts and have expressed our support for each of the situations in which ICC investigations and prosecutions are underway. But the ICC is still working to establish and sustain a record of effectiveness in the basic functions by which its success will be measured, such as apprehending defendants, protecting its witnesses, and prosecuting cases already underway. How will a Court that is already struggling to fulfill its core mandate respond to the additional burden of the kind of decisions it would have to make under the Kampala amendments? The assessments involved in prosecuting aggression will inevitably be deeply political: which actor bears responsibility for a conflict; who has acted legitimately in self-defense? The Court would find itself in a role better

suited for political actors, particularly if it seeks to prosecute a crime that lacks both a clear definition and the extensive jurisprudence that has developed around many atrocity crimes.

While the United States is not a party to the Rome Statute and its nationals would be explicitly excluded from the ICC's aggression jurisdiction, we nonetheless have a deep interest in the outcome of the states parties' deliberations on this issue – as do all who share the responsibilities and bear the risks of combating atrocities and underwriting global security. This brings me back to what I proposed at the beginning, which is that, for states that entertain the possibility of supporting these amendments to the Statute, we think it is crucial to focus on whether the risks that have been identified here can be sufficiently managed before taking the very consequential decision of whether to activate this new basis of jurisdiction.

In this connection, let me offer at least some preliminary thoughts on some of the risk mitigation measures that could be considered:

- Governments and parliaments of states parties could formally state their views on the questions raised here. They can clarify the scope of which acts are covered and confirm that the amendments do not apply to states parties that do not ratify the amendments. They could do this, for example, in statements at upcoming sessions of the ICC's Assembly of States Parties, or in written instruments communicating their decision whether or not to ratify.

- Perhaps most critically, if there were eventually a decision by the Assembly of States Parties to activate the amendments, states could insist that that decision contain clear guidance on these issues.

- States parties could clarify how the “opt-out” provisions contained in the amendments might be used to help address the concerns raised here and serve as a guardrail or check on an overly broad application of the amendments.

- States parties could also consider other steps, including the possibility of adopting further understandings to ensure these amendments do not work at cross-purposes to the critical goal of preventing atrocity crimes.

To be sure, the activation of the Court's jurisdiction over aggression is not a step that the United States has sought. Still, I trust we can continue this international dialogue in a spirit of good faith and with the urgency it deserves. We look forward to working with other countries and members of civil society to help ensure full consideration of the risks I have described and mitigation measures such as those that have been sketched out.

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c. *ICC Case on Destruction of Cultural Sites in Mali*

In an October 1, 2015 press statement, the U.S. Department of State welcomed the announcement by the ICC Prosecutor that Ahmad Al Faqi Al Mahdi, an alleged member of the Islamic extremist group Ansar al-Dine (“AAD”), had been surrendered to the ICC for prosecution. The press statement, available at <http://www.state.gov/r/pa/prs/ps/2015/10/247741.htm>, is excerpted below.

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This is an important step toward holding accountable those responsible for serious crimes in Mali. The charges against Mr. Al Faqi are the first charges at the ICC relating to intentionally directing attacks against religious and historic buildings and monuments. They are also the first charges brought in the ICC's ongoing investigation of the situation in Mali.

The United States strongly condemns the destruction of Muslim shrines and other religious and historic sites in Timbuktu by extremist militants, including AAD. We are outraged by the destruction of these World Heritage Sites. These are assaults not just on Mali and its people, but on the common cultural heritage of all humankind, and those responsible for these acts—and all those responsible for atrocity crimes—should face justice.

Historic and religious sites are directly linked to culture and heritage and should be protected. The destruction of irreplaceable relics of ancient life and society represents both an attempt to eradicate culture and an assault on the beliefs of those who hold these sites sacred.

As Secretary Kerry has said about the destruction of cultural heritage sites, “These acts of vandalism are a tragedy for all civilized people, and the civilized world must take a stand.”

We commend Mali's commitment to ensuring accountability for serious crimes and its cooperation with the ICC in this matter.

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d. *Uganda/LRA*

On January 20, 2015, the United States issued a press statement welcoming the transfer to the ICC of Dominic Ongwen, a senior commander for the Lord's Resistance Army (“LRA”). The press statement is available at <http://www.state.gov/r/pa/prs/ps/2015/01/236142.htm>, and includes the following:

...This transfer took place as a result of close cooperation and consultation by the governments of the Central African Republic (C.A.R.) and Uganda, the African Union Regional Task Force (AU-RTF), and the ICC.

Ongwen's transfer to the ICC is a welcome step toward justice for the victims of the Lord's Resistance Army (LRA). After he was abducted by the LRA as a child, Ongwen allegedly went on to commit and direct brutal crimes over many years as one of the group's senior commanders, including attacks on displaced civilians in northern Uganda, for which he faces ICC charges, and the massacre of more than 300 civilians in Makombo, Democratic Republic of the Congo, by elements reportedly under his command.

On the same day, U.S. Permanent Representative to the UN Samantha Power issued a statement on Ongwen's arrival at the ICC. Her statement is excerpted below and available at <http://usun.state.gov/remarks/6344>.

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Dominic Ongwen's arrival at the International Criminal Court in the Hague is a welcome development in the international community's campaign to counter the LRA's dehumanizing violence, and to bring perpetrators to justice after more than two decades of the LRA's brutal campaign of torture, rape and murder.

I commend the governments of the Central African Republic and Uganda, as well as the leadership of the African Union, for their close coordination on this effort and for their commitment to ensuring that perpetrators of human rights violations face justice.

The fact that Ongwen will finally face trial is the latest sign of tangible progress in the African Union-led effort to end the threat posed by the LRA and its leader, Joseph Kony, to which the United States has dedicated considerable resources, including more than 100 U.S. military advisors. Today's outcome is a great example of what can result from regional coordination in combating the LRA, and it is imperative that the African Union Regional Task Force (AU-RTF) continue to coordinate with regional governments, the United Nations Organization Stabilization Mission in the Democratic Republic of the Congo (MONUSCO), the United Nations Multidimensional Integrated Stabilization Mission in the Central African Republic (MINUSCA), and the United Nations Regional Office for Central Africa (UNOCA) in its fight against the LRA, which still remains a serious threat to regional peace and security.

Those remaining LRA members should follow the lead of Dominic Ongwen and the more than 250 other individuals who have left the LRA since 2012. They should end their lives on the run and turn themselves in.

The United States continues to look forward to the end of the LRA and the day when its victims will finally be free from LRA terror, seeing justice that is long overdue.

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e. Sudan

On June 14, 2015, the United States issued a press statement expressing concern regarding the travel of Sudanese President Omar al-Bashir to South Africa. See <http://www.state.gov/r/pa/prs/ps/2015/06/243793.htm>. The statement notes that:

President Bashir has been indicted by the International Criminal Court (ICC) on charges of crimes against humanity and genocide, and warrants for his arrest remain outstanding. While the United States is not a party to the Rome Statute, which sets out the crimes falling within the jurisdiction of the ICC, we strongly support international efforts to hold accountable those responsible for genocide, crimes against humanity and war crimes.

On June 29, 2015, Ambassador Pressman delivered remarks at a UN Security Council briefing by the ICC Prosecutor on the situation in Darfur. His remarks are excerpted below and available at <http://usun.state.gov/remarks/6749>.

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The public discussion of Darfur in the last weeks and months has centered on three phrases: hibernation, exit strategy, and non-cooperation. But in each case, there is a deeper story to tell. And with respect to all three, the discussion would benefit from a renewed focus on those men, women, and children in Darfur who have suffered greatly from the fighting and the violence. It is especially noteworthy now since the violence and suffering are approaching levels that have not been seen since 2004.

In December, you announced, Madame Prosecutor, that you would hibernate investigative activities in Darfur. We welcome your clarification that this does not mean the end of your work on the situation in Darfur, but we were—and are—alarmed that Sudan’s non-cooperation has pushed you to this point.

And we must highlight, in response to those who see this somehow as a victory over the International Criminal Court, that as you also highlight in your report, arrest warrants remain outstanding, and prosecutors continue to work on the cases to the extent possible. We think it is a serious cause for concern—and an affront to victims of atrocities in Darfur—that the individuals subject to outstanding arrest warrants in the Darfur situation remain at large.

We have also heard considerable discussion of UNAMID’s exit strategy, at a time when we need more focus on conditions inside Darfur, where the situation is deadly and deteriorating. The reported events of the past year in Darfur have been alarming. Aerial bombardments—which you describe as showing a “significant increase” kill children, destroy hospitals and humanitarian facilities. Sexual violence is wielded against women and girls with impunity, including reportedly in Thabit, where an investigation into alleged mass rapes remains incomplete, stymied by Sudan’s systematic denial of independent access to UNAMID personnel. Villages have been burned and communities’ very means of survival are destroyed. Increased fighting between the armed groups and intercommunal violence has driven the displacement of over 573,000 people since the beginning of 2014.

The need for UNAMID, and the need for it to have full and unfettered access to conduct its work, is more acute than ever across all of Darfur, including in light of the Prosecutor’s decision to hibernate her new investigative work. It is important for UNAMID not just to protect civilians and facilitate humanitarian work, but also to continue to document the ongoing violations and abuses. This has been reiterated in the latest African Union Peace and Security Council communique of June 22nd, 2015.

Finally, with regard to the issue of non-cooperation, while members of the international community do not see eye-to-eye on many aspects of the Darfur crisis, we believe that there is abundant common ground among the members of the Council that Member States of the UN have obligations under the UN Charter to accept and carry out the decisions of the Security Council. The Government of Sudan continues to disregard the Council’s decision in Security Council resolution 1593 that it shall cooperate fully with, and provide any necessary assistance to, the Court and the Prosecutor. Surely, we can agree that the Council has an interest in ensuring compliance with its own decisions. We continue to urge the international community to ensure compliance by Sudan with its international obligations under Security Council resolution 1593.

The Council must also continue to focus on the need for accountability in Darfur because it was us—we have sent in UN peacekeepers into harm’s way—and we owe them our support. Attacks on peacekeepers in Darfur have killed citizens of Nigeria, Mali, Senegal, Tanzania, and Rwanda, amongst others. Often lost in the debates over President Bashir is the fact that one of the areas of focus of the International Criminal Court’s investigations has been the attack in 2007 on the brave soldiers who served in the African Union’s peacekeeping mission there. In the absence of any national proceedings in Darfur to investigate and provide accountability for these crimes, we must be able to come together and express support for efforts to prosecute deliberate attacks on peacekeepers, attacks which very much continue to this day, as described in your report. For example, on April 26th of this year, the Government of Sudan denied a flight request for the emergency medical evacuation of an Ethiopian peacekeeper injured while performing his duties in Mujkar in West Darfur. The evacuation flight clearance was denied and the peacekeeper died hours later.

Finally, in light of recent events, I would reiterate that the United States opposes invitations to and facilitation of travel by those subject to outstanding International Criminal Court arrest warrants related to the situation in Darfur.

And we are not alone in stressing the continued need for accountability. Voices from South Africa, Nigeria, and Kenya have been clear and unequivocal. It was a South African organization that approached its own courts to seek the enforcement of the ICC arrest warrant. It was Nigerian activists who discouraged a prolonged stay in that country, and it was a Kenyan court that ruled that the government there must arrest Bashir “should he ever set foot” there. All that said, the discussion of hibernation, exit strategy, and non-cooperation too often loses sight of the men, women, and children who have been suffering from the ongoing conflict and violence in Darfur. It is their plight that makes the need for accountability so acute, and we must not turn our back on them.

The United States will continue to work with this Security Council and other partners in the international community to promote an end to Sudan’s many conflicts and a just and sustainable peace.

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On December 15, 2015, Ambassador Pressman addressed a UN Security Council briefing on Sudan and the International Criminal Court. Ambassador Pressman’s remarks are excerpted below and available at <http://usun.state.gov/remarks/7047>.

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... In 2005 this Council referred the situation in Darfur to the International Criminal Court in the face of brutal attacks on civilians, widespread rape, and the destruction of entire villages.

Ten years later, the people of Darfur continue to suffer. As the Prosecutor has said, it should be—and is—a source of concern that the situation remains dire. But the intractability of the problem is not a reason to accept the situation as it is. We cannot become inured to impunity and to atrocity. And we cannot look away, simply because what has transpired—and is transpiring—is not news. Justice demands more and so too do the victims.

I thank the Prosecutor for her continued efforts on this front, in the face of Sudan's continued non-cooperation, which has systematically frustrated the Court's important work. We continue to call on all states to demand that Sudan fully cooperate with the International Criminal Court. It should not be that President Bashir repeatedly travels across international borders when the Court has issued two warrants for his arrest and the victims of his alleged crimes continue to wait for justice. We should not be complacent, and the United States will continue to urge governments, whether or not they are States Parties to the Rome Statute, not to invite, facilitate, or support travel by those who face arrest warrants for alleged crimes committed in Darfur. The fact that these individuals, including President Bashir, remain at large is an affront to the hundreds of thousands of men, women, and children in Darfur who have suffered immeasurable losses and pain. The United States strongly believes that the Court's arrest warrants in the Darfur situation should be carried out. And we welcome the Prosecutor's affirmation that her office has not abandoned the victims of alleged Rome Statute crimes committed in Darfur.

And it is not just the people of Darfur who deserve justice, but also the men and women who have committed themselves to protect these civilians. Let's remember that one of the cases before the Court involves attacks on African Union peacekeepers in Darfur. And it was this very case that was the one that was the subject of the most recent decision regarding Sudan's non-compliance transmitted to this Security Council. And since 2007, when the United Nations-African Union Mission in Darfur was established, 218 mission personnel have given their lives in fulfillment of its mandate. Too many months bring news of one or more such deaths—or other casualties. Just over the last eight months, UNAMID has seen one person killed in May, one killed and four injured in September, and one killed and one injured in October. This slow pattern is deadly and it is steady and this Council should, at the very least, be united in demanding accountability for violence against peacekeepers who have put themselves in harm's way in service to others.

Today in Darfur the nearly 21,000 person-strong UNAMID mission has, among other tasks, been working tirelessly to restore security conditions for the safe provision of humanitarian assistance, facilitate full humanitarian access throughout Darfur, protect civilians, and promote respect for human rights. The environment in which UNAMID operates is a difficult and a dangerous one. These difficulties are compounded by a lack of full cooperation on the part of the Government of Sudan on issues such as the timely processing of visas for UNAMID personnel, clearance of shipments, including food and specialized military equipment belonging to troop contributing countries destined for the mission, and freedom of movement for UNAMID personnel in fulfillment of UNAMID's mandate. We must demand that the Government of Sudan comply with its obligations under the Status of Forces Agreement with the United Nations and the African Union. And we have a long way to go when food—food for peacekeepers—is used as a tool for leverage.

These are not distinct phenomena. While the Government of Sudan tries to impede UNAMID's work through obstruction and delay it also tries to impede the Court's work by ignoring its obligations under Security Council resolution 1593. And this all in the name of avoiding the international scrutiny that is so needed such as, for instance, with regard to the reports of sexual violence in Thabit, where credible investigative work into alleged mass rapes remains incomplete, stymied by Sudan's systematic denial of access to UNAMID personnel. The stakes are simply too high for the status quo to be acceptable.

Sudan's compliance with this Security Council's resolutions and the work of the Court are not just Sudanese issues. We must not forget that it was this Council that referred the situation in Darfur to the Court more than ten years ago. The need for peace and justice in Darfur is important not just for the region, but well beyond. The Government of Sudan must not be allowed to conclude that it can continue to apply similar tactics to those that prompted this Council to act on Darfur to the Two Areas of Southern Kordofan and the Blue Nile. We must recall that when the Government of Sudan conducts offensives, it has often been civilians who bear the heavy cost.

In closing, to make clear, those who commit heinous acts of violence and brutality in Darfur must be held to account. Those who have flouted the law and this Council must know that justice is patient. We will not be lulled and we will not be distracted, and the United States will continue to work with the Security Council and the international community to seek accountability for the crimes committed in Darfur. We will not forget the victims and the survivors nor will we cease to pursue the justice they so deserve.

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f. Libya

On May 12, 2015, Mark Simonoff, Minister Counselor for Legal Affairs for the U.S. Mission to the UN, delivered remarks at a UN Security Council briefing on Libya. Mr. Simonoff's remarks are excerpted below and available at <http://usun.state.gov/remarks/6458>.

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As we have heard, since the Prosecutor last briefed the Security Council on Libya in November, the conflict has persisted, despite the ongoing UN-facilitated political dialogue, and has contributed to a disintegration of rule of law, paralyzing the current government's efforts to tackle human rights problems. As the United Nations Support Mission in Libya recently stated, "Armed groups across political, tribal, regional and ideological divides have shown disregard for civilian life." The Prosecutor confirmed that this absence of stability and rule of law have significant consequences for the work of the ICC.

Many of the individuals and institutions with the most critical roles to play in exposing and preventing violence against civilians—including journalists, human rights defenders, judges and prosecutors, female activists, and the country's human rights commission—have been singled out for intimidation and brutal violence for simply attempting to provide key services to the Libyan people. Other murders, such as the killing of prominent human rights leader Salwa Bugaighis last June on the day of national elections, have a clear political purpose, even as it has been impossible to identify those responsible.

The ongoing conflict has ravaged Libya's domestic justice institutions, which are essential to protecting civilians and playing a key role in advancing respect for human rights. Escalating violence between Libyan political rivals makes Libya, its citizens and its resources, vulnerable to exploitation by violent extremists. Sexual violence also remains an issue of serious

concern, as survivors struggle to access critical services and those who work to deliver them face intimidation.

All of these abuses highlight the stakes of this conflict, and the urgent need to develop the strong institutions that Libya needs to protect its people. The critical first step towards resolving the current crisis and restoring rule of law and the protection of human rights is the formation of a national unity government through the UN-facilitated political dialogue. There can be no military solution; all parties should cease hostilities and work to create an environment conducive to inclusive dialogue. We fully support the efforts of Special Representative of the Secretary-General Bernardino Leon who will convene the next round of talks shortly, and we urge the parties to seize this opportunity to finalize agreements on the formation of a national unity government and arrangements for a comprehensive ceasefire before the holy month of Ramadan begins.

We call on all Libyan actors to take steps to ensure due process for the detainees. This includes not only releasing any individuals held in unlawful detention, but also planning for the means to transfer detainees to State custody, and rebuilding the judiciary's capacity to bring cases to trial.

We welcome the decision by the UN Human Rights Council in its March session to request that the High Commission dispatch a fact-finding mission to investigate violations and abuses in Libya since the beginning of 2014. We welcome the Prosecutor's continuing calls on the parties to refrain from unlawfully targeting civilians or, more generally, committing atrocity crimes.

With respect to the finding of non-cooperation that the ICC transmitted to this Council, we welcome the continuing cooperation between Libyan authorities and the Prosecutor's office to further implement the Memorandum of Understanding concluded between Libya and the ICC in November 2013 on burden-sharing regarding the investigation and prosecution of former Gaddafi officials. At the same time, we reiterate our support of this Council's recent call for Libyan authorities to fulfill their obligation to cooperate with the ICC, and we encourage the Libyan authorities to engage with the Court and the Council as appropriate to work to overcome implementation obstacles.

We look forward to continuing to work with the other members of the Council, the organs of the ICC, and all others who have a contribution to make in bringing this conflict to an end and restoring the rights of the Libyan people.

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On November 5, 2015, Ambassador Michele J. Sison, U.S. Deputy Representative to the UN, delivered remarks at a Security Council briefing on Libya and the International Criminal Court. Ambassador Sison's remarks are available at <http://usun.state.gov/remarks/6958>. Ambassador Sison said the following about the ongoing proceedings regarding Libya at the ICC:

With respect to the situation before the International Criminal Court, we continue to support the Council's unified call for Libya to fulfill its obligation to cooperate with and provide assistance to the Court and the Prosecutor. In

particular, we note Libya's obligation to transfer Saif Qadhafi to the ICC, and we urge Libya to refrain from any further proceedings against Qadhafi that would pose an obstacle to his transfer to the Court. We also continue to stress more generally that national proceedings in Libya should be conducted in full compliance with Libya's international obligations. To achieve national reconciliation, it will be important to ensure the confidence of all Libyan citizens in their government's commitment to due process and the rule of law, and that those responsible for serious crimes are held accountable.

g. Preliminary Examination into the "Situation in Palestine"

See Chapter 7.B. for a discussion of the U.S. response to the ICC Prosecutor's announcement of a preliminary examination into the "situation in Palestine."

2. International Criminal Tribunals for the Former Yugoslavia and Rwanda and the Mechanism for International Criminal Tribunals

On October 13, 2015, Ms. Cassandra Q. Butts, Senior Adviser to the U.S. Mission to the UN, delivered remarks at the 70th UN General Assembly on the International Criminal Tribunal for Rwanda ("ICTR"), the International Criminal Tribunal for the Former Yugoslavia ("ICTY"), and the International Residual Mechanism for Criminal Tribunals ("MICT"). The remarks are excerpted below and available at <http://usun.state.gov/remarks/6886>.

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Without the diligence and the hard work of these Tribunals, and their determination to bring justice to the victims of atrocities committed in the former Yugoslavia and Rwanda, many of those responsible for these atrocities would not have been held accountable for their crimes. Because of these Tribunals, the victims of horrific atrocities have received a meaningful measure of justice, and the international community has greatly advanced international peace and security via justice and accountability for atrocities during the past twenty years.

As the ICTR prepares to close in a few short months, the United States would like to extend our deep appreciation to the Tribunal's many staff, including judges, prosecutors, support staff, investigators, and defense attorneys—who took care over the past decades to be compassionate with victims; uphold the principles of international law; and ensure the legacy of the tribunal. Because of their hard work, the ICTR concluded all trials in 2012 and is close to completing all of its appeals work, with just one appeals judgment in a complex, multi-defendant case to be delivered by the end of the year. Despite facing difficulties in replacing experienced staff, the Tribunal is set for a smooth and efficient transition to the Mechanism as well as to national courts, where proceedings against ICTR indictees who remain at large are set to take place.

We also commend the ICTY for a productive year. Judgments have been issued in two appeals, plus an additional 6 interlocutory appeals, and progress has been made on the four cases remaining at the trial level. We welcome the efforts by the Trial Chambers to expedite judgment in these cases and ensure that they are delivered on time. Our appreciation also goes to the Victim and Witness Section, which has provided services to 206 witnesses that have appeared before the Tribunal and has completed its goal of conducting 300 witness interviews, all while protecting the integrity of the process and human dignity of the witnesses. We also express our deep appreciation and admiration for Judge Theodor Meron, who will shortly complete his term as President of the ICTY, and whose wise leadership has guided the ICTY during the last few years.

International criminal law is one of the greatest vehicles we have for promoting peace and justice throughout the world. As the grim events across the world remind us, from Syria to the Central African Republic, South Sudan to North Korea, the challenge of ending mass atrocities is greater than ever, but bodies such as the ICTY and the ICTR are responsible for providing the necessary justice due to victims who have suffered the greatest harm that can be inflicted on humanity—genocide, war crimes, and crimes against humanity. By building an extraordinary legal edifice of international criminal accountability, the Tribunals have helped lay the groundwork for future generations to prosecute violations of international law more efficiently and with a better understanding of the law.

By this time next year, the ICTR will have successfully completed its mandate and will have transferred its remaining workload to the Mechanism. This marks the end of an era that, combined with the work in the ICTY, thoroughly advanced international law, showed how international ad hoc tribunals could be successful, and revealed what the international community could do on behalf of the victims of atrocities. And so, the United States would like to thank all those who worked with the ICTR to make it such a successful endeavor. May the victims in Rwanda and the former Yugoslavia never be forgotten, and may the lessons learned from the ICTR and the ICTY always be remembered.

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On December 9, 2015, Ambassador Pressman delivered remarks at a UN Security Council debate on the ICTR, the ICTY, and the MICT. Ambassador Pressman's remarks are excerpted below and available at <http://usun.state.gov/remarks/7031>.

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The ICTY, the International Criminal Tribunal for Rwanda, and the Mechanism for International Criminal Tribunals, have played a central role in both advancing justice and developing our understanding of international criminal law and international humanitarian law. They have served as a demonstration that indeed when this Council is united and when we are committed we can ensure that those who perpetrate the worst atrocities can be forced to account for their crimes. Justice is not an afterthought to our work advancing international peace and security, it is the essence of it.

Today, the extraordinary work of colleagues around this table and in capitals near and far has ensured that those accused by the ICTY—all 161 out of 161—were brought to justice. But just as we recognize the success in apprehending the ICTY's fugitives, we must redouble our efforts to ensure that the remaining fugitives of the ICTR, and now the Mechanism, face the same fate.

It is important to name these men—defendants like: Fulgence Kayishema, accused of orchestrating the massacre of thousands; Charles Sikubwabo, accused of instigating massacres at a church; Aloys Ndimbati, a former mayor, accused of being directly involved in the massacres; Augustin Bizimana, the former Defense Minister of the interim Rwandan government, who is alleged to have controlled the nation's armed forces in preparing and planning for the genocide campaign and preparing lists of people to be killed; Charles Ryandikayo, who reportedly participated in the massacre of thousands of men, women and children who congregated in a church, and directed militias and gendarmes to attack the church with guns, grenades, and other weapons; Pheneas Munyarugarama, a former lieutenant colonel in the Rwandan Army, who allegedly helped to direct and take part in the systematic killing of Tutsi refugees fleeing the fighting; Félicien Kabuga, the alleged main financier and backer of the political and militia groups that committed the genocide, he is also accused of transporting the death squads in his company's trucks; and Protais Mpiranya, commander of the Rwandan Presidential Guard, who allegedly directed his soldiers to kill the sitting Rwandan Prime Minister and 10 United Nations peacekeepers guarding her home.

While these men are at large, they should know that they are still at the forefront of our minds—and the Security Council's focus—and there they will remain until each and every one of them stands to answer for their actions. We will not forget them, and must never forget their victims.

It is that commitment that led, just today, to the arrest of Ladislav Ntaganzwa, who has been arrested by the Congolese national authorities, who have indicated they will take the proper steps to transfer him to Rwandan custody. Ntaganzwa, first indicted by the ICTR in 1996, is charged with five counts of genocide and crimes against humanity. He is alleged to have participated in the planning, preparation, and carrying out of the massacre of over 20,000 Tutsis at Cyahinda parish—many of whom had gathered to take refuge from massacres in the surrounding countryside—as well as the massacres of thousands of Tutsis at Gasasa Hill, and killings carried out elsewhere. He is also charged with directly ordering women to be brutally and repeatedly raped. And, today, he is for the first time in two decades, behind bars. And so he should be.

The ICTR has concluded all trials on its docket in 2012, and is expected to issue its last appellate judgment in a few days. As the Tribunal prepares to close at the end of this month, the United States wishes to recognize the monumental legacy of the Tribunal's many staff—including judges, prosecutors, support staff, investigators, and defense attorneys—who took care over the past decades to be compassionate with victims and witnesses; to uphold with integrity the principles of international law; and to ensure that the tribunal advanced justice for victims.

The Tribunal's hard work has also ensured that a smooth and efficient transition to the Mechanism and to national courts, where proceedings against ICTR indictees who remain at large will take place when—and I use that word intentionally—*when* they are captured. The United States is unwavering in its commitment to ensuring that the eight remaining fugitives from the ICTR are apprehended and brought to justice, as Ntaganzwa has been earlier today. To

this end, we continue to offer a reward of up to \$5 million for information leading to the arrest or transfer of these fugitives.

I would also like to commend the ICTY for a productive year. The Tribunal has completed almost all of its cases, with only four cases remaining at the trial level and three cases on appeal. An important appellate decision, as we've discussed, in *Stanišić and Simatović* case is expected to be issued before the end of this month, and progress has continued on all of the remaining cases. We welcome the important efforts by the Trial Chambers to expedite judgments and ensure that they are delivered in a timely manner.

We also again express our deep appreciation and admiration for Judge Meron, who recently completed his term as the President of the ICTY, and whose judicious leadership has guided the ICTY—as well as now the Mechanism—during the last few years. This has included helping to ensure a seamless, in our judgement, transfer of initial functions of both the ICTY and the ICTR to the Mechanism.

Part of justice is, of course, recognizing what has happened, and what has not. Recognizing who bears responsibility for it, and who does not. The work of the ICTR and ICTY has contributed enormously to our ability to grapple with uncomfortable and shocking truths about what humans have done to other humans. And in so doing they have made our world safer. The importance of this work is rendered all the more important when—as we have seen in this Chamber—some continue to resist facts or rewrite history. Twenty years after the genocide in Srebrenica, this Council was painfully unable to adopt one simple resolution recognizing one simple fact—a fact that has been established by the International Criminal Tribunal for the former Yugoslavia and a fact that has been established by the International Court of Justice—that genocide took place in Srebrenica. While that resolution may have been vetoed, the truth—and the judicial findings of the ICTY and ICJ—cannot be. It is a testament to the enduring power and the importance of your work.

In closing, there is perhaps no more fitting day than today—the date newly designated by the General Assembly of the United Nations as the International Day of Commemoration and Dignity of the Victims of the Crime of Genocide and of the Prevention of this Crime—to once again focus on the past, the unfinished work of advancing accountability for the mass atrocities and genocides committed in Rwanda and the former Yugoslavia. But so too must we focus on the future. Even as we recommit ourselves to advancing justice for crimes that have already been committed, so too should we use this moment to reaffirm our commitment to respond to indicators of realized or potential future atrocities on a massive scale, whether in Burundi or Syria or South Sudan or beyond. After all, the ultimate justice for victims is to ensure that they are never victimized, that crimes that we have pledged to allow *never again* do not indeed occur again and again. It is our job to find the tools, the unity, and ultimately the will to act.

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On December 31, 2015, Ambassador Power, acting on behalf of the United States in its capacity as President of the UN Security Council, issued a press statement on the closure of the ICTR. The press statement is excerpted below and available at <http://usun.state.gov/remarks/7084>.

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The members of the Security Council mark the closure on 31 December 2015 of the International Criminal Tribunal for Rwanda (ICTR) established by its resolution 955 (1994) of 8 November 1994.

The members of the Security Council acknowledge the substantial contribution of the ICTR to the process of national reconciliation and the restoration of peace and security, and to the fight against impunity and the development of international criminal justice, especially in relation to the crime of genocide.

The members of the Security Council emphasize that the establishment of the International Residual Mechanism for Criminal Tribunals pursuant to resolution 1966 (2010) was essential to ensure that the closure of the ICTR does not leave the door open to impunity for the remaining fugitives.

The members of the Security Council call upon all States to cooperate with the International Residual Mechanism for Criminal Tribunals and the Government of Rwanda in the arrest and prosecution of the eight remaining ICTR-indicted fugitives, and further call upon States to investigate, arrest, prosecute or extradite, in accordance with applicable international obligations, all other fugitives accused of genocide residing on their territories.

The members of the Security Council reaffirm their strong commitment to justice and the fight against impunity.

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3. Other Tribunals and Bodies

a. Extraordinary African Chambers

The United States expressed support for proceedings against former Chadian president Hissène Habré, brought before the Extraordinary African Chambers of Senegal by the Government of Senegal and the African Union. See July 20, 2015 State Department press statement, available at <http://www.state.gov/r/pa/prs/ps/2015/07/245062.htm>. Habré was charged with torture, war crimes, and crimes against humanity. U.S. Ambassador to Senegal James Zumwalt and Ambassador-at-Large for War Crimes Issues Steven Rapp attended the opening of the trial in Dakar in July. The July 20 press statement said: "This trial is an important step toward justice for the victims of atrocities committed under Habré's rule from 1982 to 1990, and should serve as yet another warning that, no matter their position, perpetrators of atrocities will be held accountable."

b. Special Investigative Task Force ("SITF")

On April 23, 2015, the State Department announced the appointment of David Schwendiman as Lead Prosecutor to the European Union's Special Investigative Task Force ("SITF"). See State Department media note, available at <http://www.state.gov/r/pa/prs/ps/2015/04/241042.htm>. The SITF was established in

2011 to investigate the allegations of serious crimes contained in a January 2011 Council of Europe report. The State Department announcement includes the following expression of U.S. support for Mr. Schwendiman's appointment and the SITF proceedings:

Mr. Schwendiman is a highly experienced former U.S. federal and state prosecutor, who previously served as an international prosecutor in Bosnia and Herzegovina, 2006-2009. U.S. support for the appointment of Mr. Schwendiman as successor to former SITF Lead Prosecutor Clint Williamson demonstrates the United States' continuing commitment to the SITF proceedings, to the rule of law in Kosovo, cooperation on this matter with our European partners and international justice.

On August 4, 2015, the State Department issued a press statement welcoming the establishment of a Special Court in Kosovo, authorized to issue indictments and try cases based on the evidentiary findings of the SITF. See August 4, 2015 State Department press statement, available at <http://www.state.gov/r/pa/prs/ps/2015/08/245650.htm>. As explained in the press statement, the Government of Kosovo and Kosovo's legislative assembly made the decisions and passed the constitutional amendment and legislation necessary to establish the Special Court.

c. *Hybrid Court for South Sudan*

After the African Union released the report of the commission of inquiry on South Sudan, the U.S. Department of State issued a press statement expressing support for the progress toward establishing the Hybrid Court for South Sudan and eventual peaceful justice and reconciliation. The September 30, 2015 press statement is available at <http://www.state.gov/r/pa/prs/ps/2015/09/247664.htm>. As explained in the press statement, the establishment of the Hybrid Court is provided for in the Agreement on the Resolution of the Conflict in the Republic of South Sudan signed in August 2015. Earlier in 2015, the State Department announced that the United States would provide \$5 million to promote justice and accountability in South Sudan, including the support of such a hybrid court, to hold perpetrators of violence in South Sudan accountable. See May 5, 2015 press statement, available at <http://www.state.gov/r/pa/prs/ps/2015/05/241927.htm>.

d. *Bangladesh International Crimes Tribunal*

On April 11, 2015, the State Department issued a press statement on the death sentence handed down by the Bangladesh International Crimes Tribunal ("ICT") in the

case of Mohammed Kamaruzzaman. The press statement is excerpted below, and available at <http://www.state.gov/r/pa/prs/ps/2015/04/240591.htm>.

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The United States supports bringing to justice those who committed atrocities in the 1971 Bangladesh war of independence. In doing so, the International Crimes Tribunal (ICT) trials must be fair and transparent, and in accordance with international obligations that Bangladesh has agreed to uphold through its ratification of international agreements, including the International Covenant on Civil and Political Rights.

Countries that impose a death penalty must do so with great care.... We greatly respect the decisions of the International Crimes Tribunal and the Appellate Division of the Supreme Court of Bangladesh in Chief Prosecutor vs. Mohammed Kamaruzzaman, and note in particular the judicial rigor applied to this ruling. We believe that broad and enduring support for this process both nationally and internationally can be best achieved by exercising great care and caution before imposing and implementing a sentence of death.

We have seen progress, but still believe that further improvements to the ICT process could ensure these proceedings meet domestic and international obligations. ...

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Cross References

Visa waiver program changes regarding terrorism, **Chapter 1.B.2.**
Agreements on Preventing and Combating Serious Crime, **Chapter 1.B.4.**
Treaty litigation: Abu Khatallah case, **Chapter 4.B.1.**
Child Soldiers in TIP report, **Chapter 6.C.2.b.**
Mandela Rules for treatment of prisoners, **Chapter 6.I.1.**
Protecting human rights while countering terrorism, **Chapter 6.N.1.**
Palestinian efforts to join Rome Statute for ICC, **Chapter 7.B.**
Maritime security and law enforcement, **Chapter 12.A.6.**
Wildlife trafficking, **Chapter 13.C.3.**
Antiquities trafficking, **Chapter 14.B.**
Use of discovery from U.S. in foreign courts, **Chapter 15.C.2.**
Rescission of SST designation of Cuba, **Chapter 16.A.3.b.**
Terrorism sanctions, **Chapter 16.A.6.**
Transnational Crime sanctions, **Chapter 16.A.9.**
Use of force issues related to counterterrorism, **Chapter 18.A.1.**
Nuclear security treaties, **Chapter 19.B.5**
Nuclear terrorism, **Chapter 19.B.5.b.**