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CHAPTER 3

International Criminal Law

A. EXTRADITION AND MUTUAL LEGAL ASSISTANCE

1. Extradition Treaties

a. *Dominican Republic*

On February 10, 2016, President Obama transmitted the Extradition Treaty between the Government of the United States of America and the Government of the Dominican Republic to the U.S. Senate for its advice and consent to ratification. The treaty was signed on January 12, 2015. See *Digest 2015* at 55. The President's transmittal letter explains:

The Treaty would replace the extradition treaty between the United States and the Dominican Republic, signed at Santo Domingo on June 19, 1909. The Treaty follows generally the form and content of other extradition treaties recently concluded by the United States. It would replace an outmoded list of extraditable offenses with a modern "dual criminality" approach, which would enable extradition for such offenses as money laundering and other newer offenses not appearing on the list. The Treaty also contains a modernized "political offense" clause and provides that extradition shall not be refused based on the nationality of the person sought. Finally, the Treaty incorporates a series of procedural improvements to streamline and speed the extradition process.

On July 14, 2016, the Senate gave its advice and consent to ratification with one declaration (that the Treaty is self-executing). 162 Cong. Rec. S5182 (July 14, 2016). The instruments of ratification were exchanged on December 15, 2016, and the Treaty entered into force on that date.

b. Kosovo

On March 29, 2016, U. S. Ambassador to the Republic of Kosovo Greg Delawie and President of the Republic of Kosovo Atifete Jahjaga signed a new extradition treaty between the two countries. See press release, available at <https://xk.usembassy.gov/ambassador-delawies-remarks-signing-extradition-treaty-march-29-2016/>. The new treaty replaces one dating back to 1901 between the United States and the Kingdom of Serbia, which applied to Kosovo as a successor state to the former Socialist Federal Republic of Yugoslavia. It expands the scope of extraditable offenses and establishes more up-to-date extradition procedures. The language of the new treaty was principally negotiated in November of 2014 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 Kosovar delegation included experts from the Ministry of Justice and the Ministry of Foreign Affairs.*

c. Chile

On July 14, 2016, the Senate approved the resolution providing advice and consent to ratification of the Extradition Treaty Between the United States of America and the Republic of Chile, signed at Washington on June 5, 2013, with the declaration that the Treaty is self-executing. 162 Cong. Rec. S5182 (July 14, 2016). The instruments of ratification were exchanged on December 14, 2016, and the Treaty entered into force on that date.

d. Serbia

On August 15, 2016, U. S. Ambassador to the Republic of Kosovo Kyle Scott and Minister of Justice of the Republic of Serbia Nela Kuburović signed a new extradition treaty between the two countries. The new treaty replaces one dating back to 1901 between the United States and the Kingdom of Serbia, which applied to Serbia as a successor state to the former Socialist Federal Republic of Yugoslavia. It expands the scope of extraditable offenses and establishes more up-to-date extradition procedures. The language of the new treaty was negotiated by technical experts from both governments, with negotiations continuing through September 2015. The United States negotiators were attorneys from the U.S. Department of State and the U.S. Department of Justice. The Serbian negotiators included experts from the Ministry of Justice and the Ministry of Foreign Affairs.**

* Editor's note: Both the extradition treaty with Kosovo and the extradition treaty with Serbia were transmitted to the Senate in January 2017 for advice and consent.

** Editor's note: Both the extradition treaty with Kosovo and the extradition treaty with Serbia were transmitted to the Senate in January 2017 for advice and consent.

2. Mutual Legal Assistance Treaties

a. *Kazakhstan*

On September 15, 2016, the Senate approved the resolution providing advice and consent to ratification of the Treaty Between the United States of America and the Republic of Kazakhstan on Mutual Legal Assistance in Criminal Matters, signed at Washington on February 20, 2015 (S. Treaty Doc. 114–11), subject to the declaration that the Treaty is self-executing. 162 Cong. Rec. S5865 (Sep. 15, 2016). The instruments of ratification were exchanged on December 6, 2016, and the Treaty entered into force on that date.

b. *Algeria*

Also on September 15, 2016, the Senate approved the resolution providing advice and consent to ratification of the Treaty Between the Government of the United States of America and the Government of the People’s Republic of Algeria on Mutual Legal Assistance in Criminal Matters, signed at Washington on April 7, 2010 (S. Treaty Doc. 114–3), subject to the declaration that the Treaty is self-executing. 162 Cong. Rec. S5865 (Sep. 15, 2016).^{***}

c. *Jordan*

On September 15, 2016, the Senate also approved the resolution of advice and consent to ratification of 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 (S. Treaty Doc. 114–4), subject to the declaration that the Treaty is self-executing. 162 Cong. Rec. S5865 (Sep. 15, 2016).

3. Extradition Cases

a. *Munoz Santos*

As discussed in *Digest 2015* at 62–67, 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

^{***} Editor’s note: The instruments of ratification were exchanged on April 20, 2017, and the Treaty entered into force on that date.

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 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*. On rehearing, the Court of Appeals determined that the torture allegations should have been considered by the district court in establishing whether there was probable cause. *Munoz Santos v. Thomas*, 830 F.3d 987 (9th Cir. 2016). Excerpts follow from the opinion of the *en banc* court.

* * * *

Our task is to determine whether there is any competent evidence supporting the extradition court's finding of probable cause. The extradition court found probable cause based largely on inculpatory statements made by Rosas and Hurtado, Munoz's alleged co-conspirators. We took this case *en banc* to clarify whether evidence that these statements were obtained by torture or other coercion constitute "contradictory" evidence inadmissible in an extradition proceeding, or admissible "explanatory" evidence.

There can be little question that, standing by themselves, Rosas's March 27, 2006 statement and Hurtado's March 14, 2006 statement, whether considered separately, together, or together with statements from Hermosillo (the victim), Castellanos (her husband), and Andrade (who may have heard early plans for the kidnapping) constitute probable cause to believe that Munoz participated in the kidnapping of Hermosillo and her daughters. The statements were detailed and authenticated. Hurtado gave his statement in the presence of his public defender and under oath to a deputy district attorney in Mexico. Rosas submitted his statement in writing to the judge presiding over his case and asked that it be included in the court's record.

The extradition court, however, refused to consider subsequent statements by Rosas and Hurtado in which they recanted their initial statements, claiming that the Mexican police had coerced them into making those statements. The extradition court, and the district court on *habeas*, concluded that the allegations of torture were inadmissible because, as the district court described it, the claims were "inextricably intertwined" with the recantation statements. App. at 19–20; *Extradition of Munoz Santos*, 795 F.Supp.2d at 988–90. In other words, both courts reasoned that it was impossible to determine the credibility of the allegations of torture without determining the credibility of Rosas's and Hurtado's recantation statements. Because the credibility of the recantation statements could not be determined without a trial, those statements were inadmissible as "contradictory" evidence. App. at 19–20; *Id.* at 990.

As we review Rosas's and Hurtado's various subsequent statements, which are quite detailed, their claims are of two types (and here we are simplifying): (1) I wasn't involved, and (2) the reason I previously said I was involved is that I was tortured or otherwise coerced. The first type of statement is a recantation of the kind that courts have properly refused to consider.

For example, in *Barapind* we considered whether there was evidence to support Barapind's extradition to India for crimes in connection with his activities as a leader in the All India Sikh Student Federation. In support of the charges, India produced an affidavit from a police inspector, who claimed that Nirmal Singh, an eyewitness, had identified Barapind as one of the principals in a shootout with government officials. *Barapind*, 400 F.3d at 752. Barapind produced a second affidavit from Nirmal in which he denied having identified Barapind at all. "The extradition court determined that Barapind's evidence was insufficient to destroy probable cause, concluding that a trial would be required to determine who was telling the truth." *Id.* We concluded that the court made the proper decision. *Id.*

Similarly, in *Bovio v. United States*, the petitioner argued that probable cause was lacking, in part, because the major witness on which the government relied had admitted to lying during the investigation. 989 F.2d 255, 259 (7th Cir.1993). The Seventh Circuit rejected this argument, noting that "Bovio [had] no right to attack the credibility of witnesses," because "issues of credibility are to be determined at trial." *Id.* Consistent with both *Barapind* and *Bovio*, in *Shapiro v. Ferrandina*, the Second Circuit upheld the extradition court's refusal to admit evidence "that one declarant of an inculpatory statement had once blackmailed Shapiro's father and that certain fraudulent statements alleged to have been made by Shapiro had not in fact been made." 478 F.2d at 905. The court noted that "such statements would in no way 'explain' ... the government's evidence, but would only pose a conflict of credibility." *Id.*

Rosas's and Hurtado's recantations of their prior confessions are, indeed, contradictory. But their claims that their prior statements implicating themselves and Munoz were obtained under duress are not contradictory, but explanatory. Recanting statements contest the *credibility* of the original statements, presenting a different version of the facts or offering reasons why the government's evidence should not be believed. Reliable evidence that the government's evidence was obtained by torture or coercion, however, goes to the *competence* of the government's evidence.

The Supreme Court has long held that the Due Process Clause of the Fifth and Fourteenth Amendments bars the admission of coerced confessions. ...

We and other courts have sometimes explained the inadmissibility of coerced confessions in terms of their unreliability. ... But the Supreme Court has made clear that "[t]he aim of the requirement of due process is not to exclude presumptively false evidence but to prevent fundamental unfairness in the use of evidence *whether true or false*." *Lisenba v. California*, 314 U.S. 219, 236, 62 S.Ct. 280, 86 L.Ed. 166 (1941) (emphasis added). ...

The Court's clarity on this point gives us a different perspective on Munoz's claim that the principal evidence against him was obtained through coercion that may have amounted to torture. His claims of coerced testimony are independent of the truthfulness of the testimony. It is irrelevant whether Rosas's and Hurtado's statements about their involvement in the kidnapping are true; we do not care if they have indicia of reliability or whether they are corroborated by other evidence. If they were obtained by coercion in violation of the principles in the Due Process Clause of the Fifth Amendment, the statements are not competent and cannot support probable cause. In the language of the extradition cases, such statements are not "contradictory" because the truthfulness of the statements is not the issue. The fact of coercion is "explanatory" because, as the district court stated, it "addresses the circumstances under which the government's witnesses made inculpatory statements." App. at 12.

An allegation of coercion is essentially a second-order question—a question about questions; the allegation undermines the process by which the evidence was obtained, not the credibility of the evidence itself. There are a number of examples in which we and other courts have distinguished between the evidence and the process. This is true even where the allegations of torture or coercion appear alongside claims that a previously made incriminating statement is not true—*i.e.*, where the allegations of coercion include recantation statements. In these cases, once the evidence of coercion is admitted, courts weigh whether the allegations of coercion are credible, and if so, whether probable cause still exists once the tainted evidence is excluded from the analysis. ...

In sum, we have treated allegations of torture or coercion differently from a recantation statement, even where the allegations of coercion are made in conjunction with a claim that a previous incriminating statement was false. Contrary to what the district court and the extradition court concluded here, it is possible to separate the two inquiries. Indeed, to hold otherwise would create an odd rule in which allegations of coercion would only be admissible when the witness admits that the incriminating statements were true. This makes little sense, because the question of whether a recantation statement is *credible* or not is irrelevant to the question of whether the incriminating statement—recanted or not—was obtained under coercion, *i.e.*, is *competent* evidence. We conclude that evidence that a statement was obtained under torture or other coercion constitutes “explanatory” evidence generally admissible in an extradition proceeding. An extradition court may properly consider evidence of torture or coercion in considering the competency of the government’s evidence, even when the claim of coercion is intertwined with a recantation.

Our decision in *Barapind* supports our conclusion. We observed in that case that the extradition court had conducted “a careful, incident-by-incident analysis as to whether there was impropriety on the part of the Indian government” in obtaining the statements on which probable cause rested. *Barapind*, 400 F.3d at 748. On two of the eleven charges brought against the petitioner, the extradition court found that allegations of torture undermined probable cause. With respect to one of the charges, the single witness alleged that his previous incriminating statement was involuntarily obtained and that he had never identified Barapind or the other alleged assailants in the case. *Extradition of Singh*, 170 F.Supp.2d at 1021–22. India declined to challenge the witness’s explanation. The extradition court weighed the credibility of this statement and concluded that, under the totality of the circumstances, the later affidavit “destroy[ed] the competence of the evidence and obliterate[d] probable cause” for the charge. *Id.* at 1023. On the second charge, India had submitted the confession of a co-conspirator, who was later killed. Barapind submitted affidavits from three witnesses who stated that the confession had been obtained by torture while the co-conspirator was in police custody. India apparently did not dispute this evidence, and the court again concluded that the three witness statements alleging torture were reliable and the confession should be excluded. *Id.* at 1028–29.

The portion of our decision in *Barapind* that appears to have presented a stumbling block for both the extradition court and the district court here involved a different charge based on the inculpatory affidavit of Makhan Ram. Barapind offered a second affidavit from Ram in which Ram claimed that police had forced him to sign blank pieces of paper, on which statements incriminating Barapind were later written. Ram said his statement implicating Barapind was a “falsification.” *Id.* at 1024; *see also Barapind*, 400 F.3d at 749–50. The extradition court analyzed this statement and factors going to its reliability, and ultimately concluded that, under the circumstances, the court could not determine Ram’s credibility. Accordingly, the extradition

court concluded that Ram's statement did not undermine probable cause. *Extradition of Singh*, 170 F.Supp.2d at 1024–25. We affirmed, finding that Ram's statement constituted “conflicting evidence,” because its credibility could not be determined without a trial, and that it would have been improper for the extradition court to engage in the kind of review that would have been necessary to determine the statement's credibility. *Barapind*, 400 F.3d at 749–50.

The extradition court and the district court here relied on this section of *Barapind* in concluding that Rosas's and Hurtado's statements alleging coercion were *inadmissible* evidence. But what the extradition court did here is different from what the extradition court did in *Barapind*. In *Barapind*, the extradition court first *considered* the allegations of coercion, before concluding that it could not determine their reliability without exceeding the scope of its review. Here, however, the extradition court refused to consider Rosas's and Hurtado's statements *in the first instance*. This was error. A petitioner in an extradition proceeding has the right to introduce evidence that “explains away” or “obliterates” probable cause, and credible evidence that a statement was obtained under coercion does just that by undermining the competence of the government's evidence.

* * * *

We wish to be clear, however, that the scope of our holding here is limited, and that our decision should not be taken as a license to engage in mini-trials on the question of coercion or torture. The extradition court does not have to determine which party's evidence represents the truth where the facts are contested. Where an extradition court first considers evidence that a statement was improperly obtained, but concludes that it is impossible to determine the credibility of the allegations without exceeding the scope of an extradition court's limited review, the court has fulfilled its obligation—as the extradition court did in *Barapind*. If the court cannot determine the credibility of the allegations (or other evidence) once it has examined them, the inquiry ends. Probable cause is not undermined, and the court must certify the extradition. *See* 18 U.S.C. § 3184.

The extradition court, of course, may consider other evidence, separate from potentially tainted evidence, that will satisfy the probable cause requirement. *See, e.g., Barapind*, 400 F.3d at 749–50; *Mainero*, 164 F.3d at 1206; *cf. Hoxha*, 465 F.3d at 561–62 (holding that exclusion of evidence of coercion was proper where other competent evidence supported probable cause). Furthermore, we note that the fact that evidence of torture can properly be considered by the extradition court as “explanatory” evidence does not mean that *all* evidence of torture must be admitted. The extradition court still has broad discretion to determine the admissibility of the evidence before it. *See Mainero*, 164 F.3d at 1206; *Hooker*, 573 F.2d at 1369; *see also In re Extradition of Sindona*, 450 F.Supp. 672, 685 (S.D.N.Y.1978) (“The extent of such explanatory evidence to be received is largely in the discretion of the judge ruling on the extradition request.”).

Our holding today is narrow: Evidence that a statement was obtained by coercion may be treated as “explanatory” evidence that is admissible in an extradition hearing.

B. Probable Cause

Although we have concluded that the extradition court improperly excluded Rosas's and Hurtado's subsequent statements alleging that their initial inculpatory statements had been obtained by coercion, our inquiry is not at an end. Our inquiry on habeas review is whether *any* competent evidence supports the extradition court's probable cause finding. *Vo*, 447 F.3d at

1240; *see Fernandez*, 268 U.S. at 312, 45 S.Ct. 541. Evidentiary error alone is not a sufficient basis on which to grant a writ of habeas in the extradition context. *See Collins*, 259 U.S. at 316, 42 S.Ct. 469 (“It is clear that the mere wrongful exclusion of specific pieces of evidence, however important, does not render the detention illegal.”).

The district court carefully considered whether, if the court excluded Rosas’s and Hurtado’s statements, there remained sufficient evidence to support a probable cause finding against Munoz. It concluded that the matter was “close,” but that there was not. App. at 17–18 n.41. We share the district court’s doubts. Neither Castellanos’s nor Hermosillo’s statements mention Munoz; at best they connect Rosas to the kidnapping, but only Rosas’s and Hurtado’s statements implicate Munoz. Without Rosas’s and Hurtado’s statements, only Andrade’s statement that Rosas and Munoz approached him about a “job” to extort “Beto” for two million pesos potentially connects Munoz to the kidnapping. This statement, however, lacks any other specifics that would suggest the “job” was a kidnapping involving Roberto Castellanos’s family. Standing alone, Andrade’s statement is insufficient to support probable cause. This is not a case in which there is overwhelming evidence available from other sources. Nevertheless, because the question is a close one, we think the extradition court should decide this question in the first instance, when it will have the opportunity to redetermine the admissibility of Munoz’s evidence and then consider all of the evidence together.

* * * *

b. Cruz Martinez

The United States filed a supplemental brief on January 8, 2016 in *Avelino Cruz Martinez v. United States*, No. 14-5860 (6th Cir.), discussed in *Digest 2015* at 67-70. The supplemental brief further supports the U.S. petition for rehearing of the appellate court’s decision to reverse the district court’s denial of *habeas* relief to a fugitive who claimed his extradition violated the lapse of time provision in the extradition treaty. Excerpts follow (with footnotes omitted) from the supplemental U.S. brief, which is available in full at <https://www.state.gov/s/l/c8183.htm>.

* * * *

The Sixth Amendment’s speedy trial clause, by its terms, applies only to “criminal prosecutions.” Cruz contends, however, that dozens of extradition treaties (including the U.S.-Mexico Treaty here) incorporate the speedy trial right into extradition proceedings. He is wrong. All the traditional interpretive devices employed by this Court—including text, drafting history, post-ratification practice, official State Department views, and canons of construction—negate the suggestion that U.S. negotiators and their foreign counterparts imported Sixth Amendment protections into these treaties. The lapse-of-time phrase that Cruz clings to addresses limitations defenses, no more.

I. The lapse-of-time phrase relates only to statute-of-limitations defenses.

Article 7 of the U.S.-Mexico Treaty proscribes extradition where the fugitive’s prosecution or punishment “has become barred by lapse of time according to the laws of” either country. The language implies that “time” alone guides the inquiry. Or more simply, “time must

do the barring.” *Martinez*, 793 F.3d at 558 (Sutton, J., dissenting). Contrast that description with the Sixth Amendment, which identifies “no fixed point in the criminal process” at which a trial must commence. *Barker v. Wingo*, 407 U.S. 514, 521 (1972). The “amorphous quality of the right” instead turns on “a functional analysis” of, not just time, but the promptness of the defendant’s objections, the reason for the delay, and the prejudice to the defendant’s trial strategy, *id.* at 522, 530; *see also United States v. Loud Hawk*, 474 U.S. 302, 315 (1986) (treating “the reason for delay” as the critical factor in the Sixth Amendment inquiry). This mismatch between the Treaty’s hard-and-fast focus on “time” and the Sixth Amendment’s “ad hoc” “balancing” of other non-time factors dispels the notion that the former incorporates the latter. *Barker*, 407 U.S. at 530.

The “history of the treaty” provides the other crucial clue as to meaning. *Air France v. Saks*, 470 U.S. 392, 396 (1985) (citation omitted). The previous U.S.-Mexico treaty prohibited extradition where the prosecution or penalty “had become barred by limitation,” whereas the current treaty proscribes extradition where the prosecution or penalty “has become barred by lapse of time.” Cruz believes the old language captured only statute of limitations defenses, whereas the new language authorizes Speedy Trial Clause (and other) claims. Supp. Br. 7.

Cruz’s linguistic distinction is illusory. These two phrases—“barred by limitation” and “barred by lapse of time”—carried the same historical meaning.

For example, the 1882 U.S.-Belgium extradition treaty foreclosed extradition where the prosecution had become “barred by limitation.” The United States captioned this provision, “Exemption by reason of lapse of time,” when formally publishing the treaty in statute. *U.S.-Belg.*, art. IX, June 13, 1882, 22 Stat. 972.

And when the United States switched course and adopted the lapse-of-time phrase as its preferred language around 1908, it referred to the phrase as a “limitation of time” provision in statutory publication. *U.S.-Hond.*, art. v, Jan. 15, 1909, 37 Stat. 1616.

This practice of freely interchanging the “limitation” and “lapse of time” phrases was hardly novel. A leading nineteenth century extradition treatise viewed the two variants as synonyms. *See* 1 J. Moore, A Treatise of Extradition § 373, at 569-570 (1891) (treaty provisions that prohibit extradition where prosecution is “barred by lapse of time” or “barred by limitation” incorporate the statutes of limitations of the requesting (or requested) country). The Government of Mexico interchanged these terms as well. In 1934, Mexico refused to extradite a fugitive, Alfonso Davila, to the United States to face embezzlement charges. The treaty then in force between the countries forbade extradition requests “barred by limitation,” but the Mexican government’s communication to the United States refusing extradition explained that Davila’s “punishment or the penal action is fulfilled by the simple lapse of time.” Ltr. from Mexican Minister of Foreign Affairs, Nov. 13, 1934, reprinted in G.H. Hackworth, 4 Digest of Int’l L. § 339, at 194 (1942).

These historical practices confirm the government’s textual reading. If the “barred by limitation” phrase refers only to limitations defenses (as Cruz readily admits, *see* Supp. Br. 6-7), then the “barred by lapse of time” phrase is similarly constrained to limitations defenses. Relying on these same guideposts, the Eleventh Circuit rejected the claim that Cruz now raises. “[F]or over a century,” the court observed, “the term ‘lapse of time’ has been commonly associated with a statute of limitations violation.” *Yapp v. Reno*, 26 F.3d 1562, 1567; *id.* at 1569 (Carnes, J., dissenting) (agreeing on this point).

Cruz does not address this historical record. He instead retorts (Supp. Br. 5, 6 n.3, 18) that the lapse-of-time phrase linguistically embraces any delay-based claim, be it the Speedy Trial Clause, the Speedy Trial Act, or common-law laches. But his effort takes “[t]he definition of words in isolation,” *Dolan v. U.S. Postal Service*, 546 U.S. 481, 486 (2006), which is itself a perilous venture, but even more so in the field of treaty construction, where “the context in which the written words are used” carries particular force, *Air France*, 470 U.S. at 397. The fact that litigants and courts might employ similar phrasing when discussing other legal doctrines does not establish that the drafters of this country’s extradition treaties engraved those doctrines into the treaties.

II. The lapse-of-time phrase does not incorporate speedy trial rights.

Cruz’s effort to incorporate speedy trial protections into the U.S.-Mexico Treaty’s lapse-of-time phrase also ignores constitutional history. As recounted above, the lapse-of-time phrase first appeared when the United States negotiated extradition treaties with Spain and the Netherlands in 1877 and 1880. The ratifying histories of these treaties contain no mention of the Speedy Trial Clause. Moreover, the drafters of these agreements—State Department officials and their foreign counterparts—would not have understood any connection between the lapse-of-time language and the Sixth Amendment. The Supreme Court did not announce the constitutional 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.

To view the lapse-of-time language as incorporating the Speedy Trial Clause, as Cruz urges, would mean that State Department officials in the 1870s deliberately seeded a dormant, yet-to-be-recognized federal right into this country’s extradition treaties, which sprouted only when the Supreme Court engaged the issue decades later. That fantastic proposition, where the State Department covertly bound our foreign treaty partners to an inchoate U.S. constitutional principle, lacks support.

The renegotiation of U.S. extradition agreements in the 1970s and 1980s (including the 1978 U.S.-Mexico Treaty here) further undermines Cruz’s position. While the Senate Report accompanying the U.S.-Mexico Treaty does not address the issue, the Senate Reports accompanying other contemporaneous treaties—which also contain the lapse-of-time phrase—announced that the language 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). And at no point did the Reports mention constitutional speedy trial considerations when listing the substantive changes envisioned by the renegotiation process. *See* S. Exec. Rep. No. 96-21, at 19 (1979) (Mexico) (highlighting the various “changes in the new treaty,” but omitting any mention of speedy trial rights).

Cruz dismisses the significance of Senate Reports in treaty disputes. Supp. Br. 21. The Supreme Court has, however, consulted them when construing the intent of a treaty’s signatories. *See United States v. Stuart*, 489 U.S. 353, 366-368 (1989). The renegotiated U.S.-Germany extradition treaty, which the Senate considered at the same time as the U.S.-Mexico Treaty under review here, bears special mention. Congressional documents associated with the U.S.-Germany treaty (*see* T.I.A.S. 9785) show that the relevant Senate Report reflected official State Department testimony. The State Department had testified before the Senate that the lapse-of-time phrase in the U.S.-Germany treaty “discusses statute of limitations” and “is a standard provision in U.S. extradition treaties.” *Hearing on Nine U.S. Treaties on Law Enforcement and*

Related Matters Before the S. Comm. on Foreign Relations, 96th Cong. 24 (1979) (statement of Deputy Legal Adviser James Michel). The State Department's interpretation of the lapse-of-time treaty language—which the Senate Report embraced—“is entitled to great weight.” *Abbott v. Abbott*, 560 U.S. 1, 15 (2010) (citation omitted).

Cruz's other objections lack merit. He observes that the cited Senate Reports address “treat[ies] other than the one at issue.” Supp. Br. 21. But these other treaties, which were negotiated and ratified during the same time period, contain the same phrase as the U.S.-Mexico Treaty. It defies logic to suggest that three simple words—“lapse of time”—refer only to limitations defenses in some agreements, but to the Speedy Trial Clause in the U.S.-Mexico Treaty. Cruz alternatively casts the Senate Reports' commentary as illustrative, “naming the prototypical example of a lapse-of-time law, *i.e.*, a statute of limitations,” but still contemplating an expansion of the treaties to authorize Speedy Trial Clause claims. Supp. Br. 21. To accept Cruz's view would mean that the State Department and the Senate weaved Sixth Amendment protections into this country's extradition proceedings quietly and under everybody's nose, including those of our foreign partners. Because this novel theory is unsupported in fact, law, or practice, the Court should reject it.

III. The *Mylonas* decision is neither binding, nor relevant to this dispute.

As a final matter, Cruz promotes (Supp. Br. 8-10) his capacious interpretation of the U.S.-Mexico Treaty by referencing the decision in *In re Extradition of Mylonas*, 187 F. Supp. 716 (N.D. Ala. 1960), where a district court concluded that the lapse-of-time provision in the U.S.-Greece extradition treaty incorporated Speedy Trial Clause protections and, on that basis, refused to certify the fugitive's extradition. The government could not appeal *Mylonas*, but in later cases, the Eleventh Circuit “expressly disapprove[d]” the decision. *Martin v. Warden*, 993 F.2d 824, 829 n.8 (11th Cir. 1993); *see also Yapp*, 26 F.3d at 1567 (“[W]e do not find [*Mylonas*] persuasive.”). Cruz nevertheless asserts that the *Mylonas* decision was the “final say” on lapse-of-time clauses between 1960 and 1993. Supp. Br. 8. Because the U.S.-Mexico Treaty employs a lapse-of-time phrase, and because the Senate advised and consented to its ratification during this period, the Treaty (in his view) necessarily imports the *Mylonas* interpretation.

Not so. *Mylonas* “[wa]s a district court opinion and as such ha[d] no binding precedential value.” *Bridgeport Music, Inc. v. Dimension Films*, 401 F.3d 647, 649 (6th Cir. 2004). As a result, the decision's mere existence at the time of the U.S.-Mexico Treaty's ratification does not control or inform the proper construction of the Treaty's lapse-of-time provision. Of course, this Court may examine *Mylonas*'s analysis of the issue and, if persuaded, adopt it. Unfortunately, *Mylonas* contains no legal reasoning, just a cursory statement asserting that the fugitive's speedy trial rights had been violated by the extradition process. *See* 187 F. Supp. at 721 (“I am of the opinion that the accused has not been afforded a speedy trial, and that extradition should be denied on that ground.”). The dearth of analysis reveals the flaws in the *Mylonas* decision and, by extension, Cruz's position here.

One last point: The government disputes Cruz's assertion that the State Department renegotiated the U.S.-Mexico Treaty in 1978 “to echo the clause interpreted in *Mylonas*.” Supp. Br. 9. The State Department has long advanced the view that lapse-of-time provisions in extradition instruments refer only to limitations defenses. In 1968, the State Department published an official digest of U.S. extradition procedures. Under the heading “Statute of Limitation,” the digest remarked, “One of the most common exemptions from extradition relates to offenses for which prosecution or punishment is *barred by lapse of time*.” M. Whiteman, 6 Digest of Int'l L. § 17, at 859 (1968) (emphasis added). It then supplied examples of courts

adjudicating limitations defenses in extradition proceedings, with no mention of the Speedy Trial Clause. *Id.* at 860-865. As to *Mylonas*, the digest repeated guidance from the Justice Department: “[T]he provisions of the Sixth Amendment . . . obviously apply to criminal prosecutions tried in the United States and not to fugitives whose extradition is sought for trial under treaties with foreign countries whose laws may be entirely different.” *Id.* § 40, at 1059-1060 (quoting Ltr. from Assistant Attorney General Wilkey, July 15, 1960).

When the State Department renegotiated the U.S.-Mexico Treaty in 1978 to include the lapse-of-time language, it hewed to this position. The non-precedential, twice-discredited *Mylonas* decision did not guide the State Department’s efforts then. It should not sway this Court now.

IV. Various interpretative canons support the government’s position.

The government agrees (*see* Cruz Supp. Br. 10) that this Court need not resort to interpretive canons. The text, drafting history, post-ratification practice, and official State Department views all confirm that lapse-of-time provisions address limitations defenses, and not the Speedy Trial Clause. To the extent interpretive canons carry any relevance, they further buttress the government’s reading of the U.S.-Mexico Treaty.

First up is *Factor v. Laubenheimer*, 290 U.S. 276, 293 (1933), where in the context of an extradition dispute, the Supreme Court stated that treaty “obligations should be liberally construed so as to effect the apparent intention of the parties to secure equality and reciprocity between them.” Thus, where a “treaty fairly admits of two constructions,” courts should adopt the interpretation that “enlarg[es]” “the rights which may be claimed under it.” *Id.* at 293-294. As four neighboring circuits have observed, *Factor* demands that ambiguities in an extradition treaty be construed in favor of the state signatories—that is, “in favor of surrendering a fugitive to the requesting country.” *Nezirovic v. Holt*, 779 F.3d 233, 239 (4th Cir. 2015); *accord King-Hong*, 110 F.3d at 110; *Ludecke v. U.S. Marshal*, 15 F.3d 496, 498 (5th Cir. 1994); *United States v. Wiebe*, 733 F.2d 549, 554 (8th Cir. 1984). That means in this case, as in *Factor*, construing a treaty’s enumerated defenses to extradition narrowly.

Second, courts shun treaty interpretations that require “[f]oreign powers . . . to be versed in the niceties of our criminal laws.” *Grin v. Shine*, 184 U.S. 181, 184 (1902); *see also Skaftourous v. United States*, 667 F.3d 144, 156 (2d Cir. 2011) (noting “the reluctance of our courts to fastidiously examine foreign law in extradition proceedings”); *Matter of Assarsson*, 635 F.2d 1237, 1244 (7th Cir. 1980). The interpretation urged by Cruz runs headlong into that principle. Under the U.S.-Mexico Treaty, extradition is prohibited where the prosecution or punishment is “barred by lapse of time according to the laws of *the requesting or requested Party*” (emphasis added). Under Cruz’s preferred construction then, a fugitive in Mexico could fight extradition to the United States by invoking the Speedy Trial Clause, the Speedy Trial Act, common-law laches, or some other delay-based claim. Mexican judges would have to resolve these often complex U.S. legal claims. Likewise, Cruz and other fugitives in this country could invoke any analogous Mexican doctrines to U.S. judges in an effort to halt their extradition to Mexico. Courts rightly bristle at such invitations to adjudicate foreign law, fearing “the chance of error . . . when we try to construe the law of a country whose legal system is much different from our own.” *Assarsson*, 635 F.2d at 1244.

Finally, courts have acknowledged that the comity principles undergirding the extradition system “would be ill-served by requiring foreign governments to submit their purposes and procedures to the scrutiny of United States courts.” *Koskotas v. Roche*, 931 F.2d 169, 174 (1st Cir. 1991); *see also Ahmad v. Wigen*, 910 F.2d 1063, 1067 (2d Cir. 1990); *Assarsson*, 635 F.2d

at 1224. Importing the Speedy Trial Clause inquiry into extradition proceedings would throw that caution to the wind, requiring courts to issue “determinations of negligence” as to the foreign prosecutors, judges, and ministry officials who investigated the crime, issued the arrest warrant, and sought U.S. extradition assistance. *Doggett v. United States*, 505 U.S. 647, 652 (1992). For example, Cruz seeks an inquiry into whether his Mexican prosecutors spuriously pursued his extradition in response to a “statistics-orientated initiative” or “individual malice.” Supp. Br. 11. Even worse, our foreign counterparts would apparently be held to Sixth Amendment benchmarks developed for American criminal investigations and proceedings. *See Cruz* Principal Br. 41-46. The obvious perils of this inquiry should lead the Court to question its application here. *See Yapp*, 26 F.3d at 1562 (“A speedy trial inquiry would require a district judge or magistrate judge, generally unfamiliar with foreign judicial systems and the problems and circumstances facing them, to assess the reasonableness of a foreign government’s actions in an informational vacuum.”).

In response, Cruz asks this Court to read the Speedy Trial Clause into the U.S.-Mexico Treaty to “secure equality and reciprocity” between the countries. Supp. Br. 10. The government is unclear what Cruz means here. The Treaty already authorizes fugitives to raise limitations defenses grounded in either U.S. or Mexican law; it accordingly treats both countries equally. To be sure, the U.S. and Mexican limitations periods carry different triggering rules, end points, and tolling considerations, but that reflects the particularities of each country’s legal system, and not any Treaty-generated inequity.

* * * *

The Court of Appeals for the Sixth Circuit granted rehearing and on July 7, 2016, issued its decision affirming the denial of habeas and holding that the lapse of time provision in the extradition treaty with Mexico did not incorporate speedy trial rights under the U.S. Constitution. *Cruz Martinez v. United States*, 828 F.3d 451 (6th Cir. 2016). Excerpts follow from the majority opinion of the court of appeals.

* * * *

...Cruz Martinez argues that his prosecution has become barred by (1) the relevant American statute of limitations and (2) the Speedy Trial Clause of the Sixth Amendment to the United States Constitution. We consider each argument in turn.

A.

...[F]or the reasons forcefully expressed in the panel majority’s opinion, the statute of limitations did not expire *Cruz Martinez v. United States*, 793 F.3d 533, 542– 44 (6th Cir. 2015).

... Because statutes of limitations protect defendants from excessive delay between the time of the offense and the time of prosecution, they stop running when the prosecution begins—which means, in American federal courts, when an indictment or information is returned. ...

The only other circuit to consider this question agrees. It held that “a Mexican arrest warrant is the equivalent of a United States indictment and may toll the United States statute of

limitations” for purposes of an extradition treaty. *Sainez v. Venables*, 588 F.3d 713, 717 (9th Cir. 2009). The *Third Restatement of Foreign Relations Law* echoes the point. “For purposes of applying statutes of limitation to requests for extradition,” it notes, courts generally calculate the limitations period “from the time of the alleged commission of the offense to the time of the warrant, arrest, indictment, or similar step in the requesting state, or of the filing of the request for extradition, whichever occurs first.” *Restatement (Third) of the Foreign Relations Law of the United States* § 476 cmt. e (1987).

* * * *

Cruz Martinez separately argues that the treaty’s “barred by lapse of time” provision picks up the Speedy Trial Clause of the Sixth Amendment to the United States Constitution, which says that, “[i]n all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial.” At the outset, it is worth clarifying what he does, and does not, argue in this respect. He does not argue that the speedy-trial guarantee applies to an American (like Cruz Martinez) who is tried in a Mexican court for violating Mexican law. When the Sixth Amendment says “all criminal prosecutions,” it refers to all prosecutions in this country, not anywhere in the world. See *United States v. Balsys*, 524 U.S. 666, 672–75, 118 S.Ct. 2218, 141 L.Ed.2d 575 (1998). And he does not argue that the guarantee applies to extradition proceedings, which are not “criminal prosecutions.” See *Martin v. Warden*, 993 F.2d 824, 829 (11th Cir. 1993). He instead argues that the treaty’s “barred by lapse of time” language incorporates the speedy-trial guarantee and prohibits extradition when a Mexican prosecution would violate that right. As he sees it, a non-speedy trial is one that takes too long to start and to finish, which creates a lapse-of-time defect in the prosecution. It is not that easy. The text and context of the treaty provision, the illuminating history behind it, and all precedential authority and scholarly commentary establish that the phrase “barred by lapse of time” does not incorporate the American Constitution’s speedy-trial guarantee.

Text. Article 7, recall, prohibits extradition “when the prosecution or the enforcement of the penalty for the offense for which extradition has been sought has become barred by lapse of time according to the laws of the requesting or requested Party.” Extradition Treaty, U.S.- Mex., *supra*, art. 7, 31 U.S.T. at 5064–65. Put less passively, *time* must do the barring. Yet the Sixth Amendment does not create a fixed time bar on trial initiation—a time limit after which the trial must be called off. As the Supreme Court has explained, the speedy-trial right is “consistent with delays” (and thus consistent with lapses of time) and “depends upon circumstances,” as it is “impossible to determine with precision when the right has been denied” in our system of “swift but deliberate” justice. *Barker v. Wingo*, 407 U.S. 514, 521–22, 92 S.Ct. 2182, 33 L.Ed.2d 101 (1972) (emphasis added) (quotation omitted). The right is a “relative,” “amorphous,” and “slippery” one. *Id.* at 522, 92 S.Ct. 2182 (quotation omitted). Because the Sixth Amendment does not establish a time limit, fixed or otherwise, before a trial must start, it does not create a rule that “bar[s]” criminal prosecutions due to “lapse of time.”

Not only does Cruz Martinez’s argument require us to add something to the Sixth Amendment that does not exist (a time bar), it requires us to subtract requirements of the Sixth Amendment that do exist. A criminal defendant cannot win a Sixth Amendment challenge by pointing to a calendar and counting off the days. He instead must show that, by balancing the four factors the Supreme Court has instructed us to consider in speedy-trial cases, he should receive relief. *Id.* at 530–33, 92 S.Ct. 2182. The “[l]ength of delay,” it is true, is *one* of those

factors—but only one. *Id.* at 530, 92 S.Ct. 2182. Courts also must weigh “the reason for the delay, the defendant’s assertion of his right, and prejudice to the defendant” in determining whether a speedy-trial violation occurred. *Id.* Even if there has been considerable delay, for example, “a valid reason” for that delay, “such as a missing witness, should serve to justify” it. *Id.* at 531, 92 S.Ct. 2182. If a defendant fails to object contemporaneously to the lapse of time, the Supreme Court has told us, that will also “make it difficult for [him] to prove that he was denied a speedy trial.” *Id.* at 532, 92 S.Ct. 2182. “[N]one of the four factors”—not even delay of a specified length—is “a necessary or sufficient condition to the finding of a deprivation of the right of speedy trial.” *Id.* at 533, 92 S.Ct. 2182. The Court could not be clearer: Lapse of time, standing alone, does not —*cannot*—violate the Speedy Trial Clause in the absence of at least some of the other factors. We know of no case in which a lapse of time by itself created a speedy-trial violation—or, to put it in the words of the treaty, in which the prosecution was “barred by lapse of time.”

Another textual clue points in the same direction. The treaty does not cover any and all “lapse[s] of time” that may occur in a criminal case. It applies only to time lapses with respect to “the prosecution or the enforcement of the penalty” for the charged offense. Extradition Treaty, U.S.-Mex., *supra*, art. 7, 31 U.S.T. at 5064–65. That language naturally applies to statutes-of-limitations periods that “bar[]” the commencement of a “prosecution” or “enforcement” proceeding. It also naturally applies to limitations periods that “bar[]” “penalt[ies]” already handed down from being “enforce[d]” to the extent any exist—limitations periods that, while generally unknown in the United States, are common in civil law countries like Mexico. *See Yapp v. Reno*, 26 F.3d 1562, 1568 (11th Cir. 1994). The same is not true for guarantees that apply *after* an indictment (or its equivalent) through the end of trial. Just as this treaty provision would not cover criminal procedure guarantees that apply to a trial already begun, it does not naturally apply to speedy-trial requirements that prohibit the criminal process, once started, from continuing. The speedy-trial right after all operates not by barring the initiation of a prosecution but by preventing it from continuing, *see Marion*, 404 U.S. at 320–23, 92 S.Ct. 455, and may not apply to the execution of sentences already pronounced, *cf. United States v. Melody*, 863 F.2d 499, 504–05 (7th Cir. 1988). These rights, like trial guarantees, usually kick in outside the two periods in which extradition limits apply: (1) the initiation of a prosecution and (2) the enforcement of a “judicially pronounced penalty of deprivation of liberty.” Extradition Treaty, U.S.-Mex., *supra*, art. 1(1), 31 U.S.T. at 5061.

Another linguistic clue supports this interpretation. In this case, as in many cases involving treaty interpretation, we have not one official text but two —the English and Spanish versions of the treaty, each of which is “equally authentic.” *Id.*, 31 U.S.T. at 5075. The English version of Article 7 bears the title “Lapse of Time,” while the Spanish version says “Prescripción.” *Compare id.*, art. 7, 31 U.S.T. at 5064, *with id.*, art. 7, 31 U.S.T. at 5083. And the phrase “barred by lapse of time” reads, in the Spanish version of the text, “haya prescrito,” using a verb form related to the noun “prescripción.” *Compare id.*, art. 7, 31 U.S.T. at 5065, *with id.*, art. 7, 31 U.S.T. at 5083. We must interpret the translated documents in tandem, because, “[i]f the English and the Spanish parts can, without violence, be made to agree, that construction which establishes this conformity ought to prevail.” *United States v. Percheman*, 32 U.S. (7 Pet.) 51, 88, 8 L.Ed. 604 (1833). In unearthing the best translation of non-English terms, we may refer to foreign “cases,” “dictionaries,” “legislative provisions,” “treatises and scholarly writing,” and other “legal materials,” as the Supreme Court has done when assessing the “legal meaning” of

foreign words. *E. Airlines, Inc. v. Floyd*, 499 U.S. 530, 536–40, 111 S.Ct. 1489, 113 L.Ed.2d 569 (1991); *Air France v. Saks*, 470 U.S. 392, 399, 105 S.Ct. 1338, 84 L.Ed.2d 289 (1985).

The English and Spanish texts of the 1978 extradition treaty “conform []” quite easily, it turns out, because “prescripción” means “statute of limitations.” Bilingual legal dictionaries tell us as much, with one Spanish–English dictionary providing “[s]tatute of limitations” as the first definition of “prescripción.” Henry Saint Dahl, *Dahl’s Law Dictionary* 385 (6th ed. 2015). Mexican legal provisions tell us as much, because Article 88 of the Code of Criminal Procedure of Oaxaca—the state where Cruz Martinez’s alleged crimes occurred—uses the phrase “[c]ómputo de la prescripción” to describe the “[c]alculation of the [s]tatute of [l]imitations.” R. 2-19 at 2, 7. Previous treaties tell us as much, because the 1899 United States–Mexico extradition treaty translates the phrase “has become barred by limitation” (a phrase that, as Cruz Martinez concedes, refers only to statutes of limitations) as “la prescripción impida.” Treaty of Extradition, U.S.–Mex., art. III(3), Feb. 22, 1899, 31 Stat. 1818, 1821. The Department of State tells us as much, because, in a 1959 letter to the Department of Justice, it used the phrases “prescription” and “statute of limitations” interchangeably. 6 Marjorie M. Whiteman, *Digest of International Law* § 17, at 864 (1968). And English legal dictionaries tell us as much, indicating that the word “prescription” means “[t]he effect of the *lapse of time* in creating and destroying rights” and that the phrase “liberative prescription” refers to “the civil-law equivalent of a statute of limitations.” *Black’s Law Dictionary* 1373 (10th ed. 2014) (emphasis added). When writing the words “lapse of time” in Spanish, the treaty’s drafters thus chose language that reflected the phrase’s status as a term of art within the law of extradition—a term of art interchangeable with the phrase “statute of limitations.”

Context. Article 7’s neighbors reinforce this conclusion. Article 10(2) of the treaty sets forth the extradition procedures that a requesting State must follow and requires every request to include “[t]he text of the legal provisions relating to the *time limit* on the prosecution or the execution of the punishment of the offense.” Extradition Treaty, U.S.–Mex., *supra*, art. 10(2)(d), 31 U.S.T. at 5066 (emphasis added). This disclosure requirement provides an enforcement mechanism for Article 7, allowing the requested State to verify whether extradition is “barred by lapse of time” without embarking on a self-guided tour of another country’s laws. Article 10(2) in other words interprets “lapse of time” to mean “time limit,” confirming that the language covers only statutes of limitations. *See Cruz Martinez Principal Br. 11* (equating “time limit” and “statute of limitations”).

History. A few pages of history confirm the logic of this interpretation. Extradition treaties have been a part of American international relations since 1794, when Jay’s Treaty provided that “his Majesty and the United States, on mutual requisitions, ... will deliver up to justice all persons, who, being charged with murder or forgery, committed within the jurisdiction of either, shall seek an asylum within any of the countries of the other.” Treaty of Amity, Commerce and Navigation, U.S.–Gr. Brit., art. XXVII, Nov. 19, 1794, 8 Stat. 116, 129. Mexico entered the picture in 1861, when the United States signed an extradition treaty with its southern neighbor at the start of the Civil War. Treaty for the Extradition of Criminals, U.S.–Mex., Dec. 11, 1861, 12 Stat. 1199. The parties agreed to a new treaty in 1899, adding a provision that forbade extradition “[w]hen the legal proceedings or the enforcement of the penalty for the act committed by the person demanded has become *barred by limitation* according to the laws of the country to which the requisition is addressed.” Treaty of Extradition, U.S.–Mex., *supra*, art. III(3), 31 Stat. at 1821 (emphasis added). The parties renegotiated yet again in the late 1970s, producing the treaty that still governs extraditions between the United States and Mexico.

Extradition Treaty, U.S.-Mex., *supra*, 31 U.S.T. 5059. That treaty revised the “barred by limitation” provision into its current form, prohibiting extradition “when the prosecution or the enforcement of the penalty” for the charged offense “has become barred by lapse of time according to the laws of the requesting or requested Party.” *Id.*, art. 7, 31 U.S.T. at 5064–65.

When the treaty drafters incorporated the phrase “lapse of time” into the United States-Mexico extradition agreement, they were not working on a blank slate. A “lapse of time” provision appeared as early as the United States’ 1877 extradition treaty with Spain, which prohibited extradition when “prosecution or punishment” for the charged offense was barred by “lapse of time or other lawful cause.” Convention on Extradition, U.S.-Spain, art. V, Jan. 5, 1877, 19 Stat. 650, 653; *see also* Convention for the Extradition of Criminals, U.S.-Neth., art. V, May 22, 1880, 21 Stat. 769, 772. From the start, that language bore a close relationship to statutes of limitations. An 1891 treatise, for example, described the Spanish treaty’s “lapse of time” provision as a rule of “prescription,” employing a synonym for “statute of limitations” in English and Spanish, and went on to use the phrases “lapse of time,” “barred by limitation,” and “statutes of limitation” interchangeably in the course of a single paragraph. I John Bassett Moore, *A Treatise on Extradition and Interstate Rendition* § 373, at 569–70 (1891); *see Black’s Law Dictionary, supra*, at 1321, 1373 (defining “period of prescription,” “prescription,” and “liberative prescription”); Henry Saint Dahl, *Dahl’s Law Dictionary, supra*, at 385.

The practice of using these terms as synonyms within the law of extradition continues today. Take our treaty with South Korea, which, in a section titled “Lapse of Time,” permits the parties to deny extradition “when the prosecution or the execution of punishment” for the charged offense “would have been barred because of the statute of limitations of the Requested State.” Extradition Treaty, U.S.-S. Kor., art. 6, June 9, 1998, T.I.A.S. No. 12,962, at 4; *see* Extradition Treaty, U.S.-Arg., art. 7, June 10, 1997, T.I.A.S. No. 12,866, at 5 (stating, in an article titled “Lapse of Time,” that “[e]xtradition shall not be denied on the ground that the prosecution or the penalty would be barred under the statute of limitations in the Requested State”); *see also* Extradition Treaty, U.S.-Costa Rica, art. 7, Dec. 16, 1982, S. Treaty Doc. No. 98-17, at 3 (1984) (stating, in an article titled “Statute of Limitations,” that “[e]xtradition shall not be granted when the prosecution or the enforcement of the penalty ... has become barred by lapse of time”); Extradition Treaty, U.S.-Colom., art. 6, Sept. 14, 1979, S. Treaty Doc. No. 97-8, at 3 (1981) (same). Or take our treaty with France, which forbids extradition if prosecution is “barred by *lapse of time*” in the requested State but qualifies that prohibition by requiring the requested State to account for certain “[a]cts in the Requesting State that would interrupt or suspend the *prescriptive period*.” Extradition Treaty, U.S.-Fr., art. 9, Apr. 23, 1996, T.I.A.S. No. 02-201, at 8 (emphasis added); *see* Extradition Treaty, U.S.-Bulg., art. 6, Sept. 19, 2007, S. Treaty Doc. No. 110-12, at 9 (2008) (using similar language); Extradition Treaty, U.S.-Rom., art. 6, Sept. 10, 2007, S. Treaty Doc. No. 110-11, at 7 (2008) (similar); Extradition Treaty, U.S.-Lux., *supra*, art. 2(6), T.I.A.S. No. 12,804, at 4 (similar); *see also Black’s Law Dictionary, supra*, at 1321 (defining “period of prescription”).

... Cruz Martinez offers no contrary drafting or signatory history with respect to these ... treaties ... in which anyone thought that the phrase “lapse of time” incorporated the Sixth Amendment’s speedy-trial guarantee.

* * * *

Viewed against this backdrop—against over a century of law equating “lapse of time” with statutes of limitations— Article 7 of the United States-Mexico Extradition Treaty comes into focus. The article’s “lapse of time” language does not incorporate the Sixth Amendment’s speedy-trial protections.

Precedent. Every case on the books has concluded that this phrase encompasses only statutes of limitations. The Eleventh Circuit faced Cruz Martinez’s precise argument and rejected it. Here is what the court said: “Weighing heavily against [the accused’s] position is the fact that for over a century, the term ‘lapse of time’ has been commonly associated with a statute of limitations violation. ... Thus, we hold that the ‘lapse of time’ provision in Article 5 of the [United States-Bahamas] Extradition Treaty refers to the running of a statute of limitations and not to a defendant’s Sixth Amendment right to a speedy trial.” *Yapp*, 26 F.3d at 1567–68. ...

* * * *

Commentary. So far as our research and the research of the parties have revealed, all scholars see it the same way. The *Third Restatement of Foreign Relations Law* notes that, “[u]nder most international agreements, state laws, and state practice,” an individual “will not be extradited ... if the applicable period of limitation has expired.” *Restatement, supra*, § 476. The commentary to that provision notes that some treaties prohibit extradition if prosecution “has become barred by lapse of time,” “if either state’s statute of limitations has run,” or if there is a “time-bar.” *Id.* § 476 cmt. e. Eliminating any doubt, the section concludes by noting that, “[i]f the treaty contains no reference to the effect of a lapse of time, neither state’s statute of limitations will be applied.” *Id.* The only way to make sense of the *Restatement*’s discussion is to recognize that each of these terms—“period of limitation,” “lapse of time,” “time-bar,” “statute of limitations”—means the same thing.

* * * *

Default rule. All of these interpretive indicators reveal that the phrase “lapse of time” excludes speedy-trial protections. But even if there were ambiguity about the point, that would not change things. For ambiguity in an extradition treaty must be construed in favor of the “rights” the “parties” may claim under it. *Factor v. Laubenheimer*, 290 U.S. 276, 293–94, 54 S.Ct. 191, 78 L.Ed. 315 (1933). The parties to the treaty are countries, and the right the treaty creates is the right of one country to demand the extradition of fugitives in the other country—“to facilitate extradition between the parties to the treaty.” M. Cherif Bassiouni, *International Extradition: United States Law and Practice* 142 (6th ed. 2014). As the First Circuit explained, *Factor* requires courts to “interpret extradition treaties to produce reciprocity between, and expanded rights on behalf of, the signatories.” *In re Extradition of Howard*, 996 F.2d 1320, 1330–31 (1st Cir. 1993); see also *Nezirovic*, 779 F.3d at 239; *Ludecke v. U.S. Marshal*, 15 F.3d 496, 498 (5th Cir. 1994); *United States v. Wiebe*, 733 F.2d 549, 554 (8th Cir. 1984). The point of an extradition treaty after all is to facilitate extradition, as any country surely would agree at the time of signing. See, e.g., *Ludecke*, 15 F.3d at 498. In the face of one reading of “lapse of time” that excludes the speedy-trial right and another reading that embraces it, *Factor* says we must prefer the former.

This default rule accords with comity considerations that lurk beneath the surface of all extradition cases. Courts must take care to avoid “supervising the integrity of the judicial system of another sovereign nation” because doing so “would directly conflict with the principle of comity upon which extradition is based.” *Jhirad v. Ferrandina*, 536 F.2d 478, 484–85 (2d Cir. 1976). Respect for the sovereignty of other countries explains why an American citizen who “commits a crime in a foreign country ... cannot complain if required to submit to such modes of trial ... as the laws of that country may prescribe for its own people.” *Neely v. Henkel*, 180 U.S. 109, 123, 21 S.Ct. 302, 45 L.Ed. 448 (1901). And it explains why “[w]e are bound by the existence of an extradition treaty to assume that the trial [that occurs after extradition is granted] will be fair.” *Glucksman v. Henkel*, 221 U.S. 508, 512, 31 S.Ct. 704, 55 L.Ed. 830 (1911). These constraints reflect the reality that “political actors,” not judicial ones, are best equipped to make the “sensitive foreign policy judgments” an extradition request demands. *Hoxha v. Levi*, 465 F.3d 554, 563 (3d Cir. 2006). The habeas power does not come with the authority to interfere with proceedings “inevitably entangled in the conduct of our international relations” unless the treaty demands it. *Romero v. Int’l Terminal Operating Co.*, 358 U.S. 354, 383, 79 S.Ct. 468, 3 L.Ed.2d 368 (1959). Just last year, the Supreme Court reminded Congress to tread carefully before entangling itself in American foreign policies customarily overseen by the Executive Branch. *Zivotofsky ex rel. Zivotofsky v. Kerry*, — U.S. —, 135 S.Ct. 2076, 2094–96, 192 L.Ed.2d 83 (2015).

Interpreting this treaty in a way that suddenly sweeps speedy-trial rights into its coverage does not honor these objectives and would affirmatively disserve them. Because the constitutional speedy-trial right has no fixed time limit, in contrast to statutes of limitations, what extraditee will not raise the claim in all of its indeterminate glory? The mutability of the right makes it impossible to know how much delay is too much delay. Take the alleged delay in Cruz Martinez’s case: around six years. Although a delay of one year or more is presumptively prejudicial, six years may not be enough to state a speedy-trial claim in view of other considerations, our court has said, when the government is not to blame for the delay and the defendant does not identify any evidence of prejudice. See *United States v. Bass*, 460 F.3d 830, 838 (6th Cir. 2006). But it very well could be enough to state a claim, another court has said, when the government is to blame and does not “overcome the presumption of general prejudice that applies with considerable force in a case of such extraordinary delay.” See *United States v. Velazquez*, 749 F.3d 161, 174, 186 (3d Cir. 2014). What of the question of fault? Whether the State or a defendant is more to blame for untoward delays is “[t]he flag all litigants seek to capture” in a speedy-trial case. *United States v. Loud Hawk*, 474 U.S. 302, 315, 106 S.Ct. 648, 88 L.Ed.2d 640 (1986). Before we task the courts of both countries with refereeing these elusive and deeply sensitive inquiries, we should be sure the negotiating countries wanted them as umpires.

In the final analysis, Cruz Martinez’s argument comes up short. No matter where we look—to the text of this treaty (in English and Spanish), to the text of other treaties, to historical principles underlying those treaties, to judicial decisions interpreting those treaties, to commentaries explaining those treaties, to guidance explaining how to draft those treaties, to the *Factor* default rule—all roads lead to the same conclusion. The United States and Mexico did not impose a speedy-trial limit when they forbade the extradition of fugitives whose “prosecution” was “barred by lapse of time.”

4. Data Protection Agreement with the EU

On June 2, 2016 in Amsterdam, the United States and the European Union signed an agreement “On the Protection of Personal Information Relating to the Prevention, Investigation, Detention, and Prosecution of Criminal Offenses” (“Agreement” or “DPPA”). The text of the Agreement is available at <https://www.justice.gov/opcl/DPPA/download>. The United States has entered into bilateral agreements on preventing and combating serious crime (“PCSC”) that include provisions for exchange of personal data for use in criminal investigations, including agreements with the European Union and EU. See, e.g., *Digest 2012* at 30; *Digest 2011* at 52; *Digest 2010* at 57-58; *Digest 2009* at 66; and *Digest 2008* at 80–83 for discussion of PCSC agreements. The DPPA establishes general protections for personal information exchanged for the purpose of preventing, detecting, investigating, and prosecuting criminal offenses. The Agreement supplements, as appropriate, but does not replace, provisions concerning the protection of personal information in other international agreements between the United States and the European Union, or the United States and EU Member States, that address matters that fall within its scope. Moreover, it does not authorize the transfer of personal information, but rather requires that authorization be derived from domestic law or international agreements that authorize the transfer of information. On December 2, 2016, the EU General Secretariat informed the United States that the EU had completed its internal procedures necessary for entry into force of the Agreement. ****

5. Universal Jurisdiction

On October 11, 2016, Emily Pierce, Counselor to the U.S. Mission to the UN, delivered remarks at the 71st Session of the General Assembly Sixth Committee on the principle of universal jurisdiction. Her remarks are excerpted below and available at <https://2009-2017-usun.state.gov/remarks/7492>.

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Despite the importance of this issue and its long history as part of international law relating to piracy, basic questions remain about how jurisdiction should be exercised in relation to universal crimes and States’ views and practices related to the topic. The submissions made by States to date, the work of the Working Group in this Committee, and the Secretary-General’s reports are

**** Editor’s note: The process of exchanging notes between the parties informing each other of the completion of internal procedures necessary for entry into force of the Agreement, which began in December 2016, was completed in January 2017, causing the Agreement to enter into force on February 1, 2017, in accordance with Article 29, Paragraph 1 of the Agreement.

extremely useful in helping us to identify differences of opinion among States as well as points of consensus on this issue.

Each year since the Committee took up this issue, we have had thoughtful discussions on a variety of important topics regarding universal jurisdiction, including its definition and the scope of the principle. We have found these conversations to be useful and look forward to continuing and deepening our discussion this year.

We remain interested in further exploring issues related to the practical application of universal jurisdiction. For instance, we are interested in discussing further what criteria states use in determining whether to exercise universal jurisdiction, how they address competing jurisdictional claims by other states, and issues related to due process. We are also interested more broadly in what conditions or safeguards states have placed on the exercise of universal jurisdiction. The United States believes that appropriate safeguards should be in place to ensure responsible use of universal jurisdiction, where it exists.

The United States continues to analyze the contributions of other states and organizations. We welcome this group's continued consideration of this issue and the input of more states about their own practice. We look forward to exploring these issues in as practical a manner as possible.

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B. INTERNATIONAL CRIMES

1. Terrorism

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

On May 10, 2016, Secretary Kerry issued his determination and certification, pursuant to, *inter alia*, section 40A of the Arms Export Control Act (22 U.S.C. § 2781), that certain countries “are not cooperating fully with United States antiterrorism efforts.” 81 Fed. Reg. 35,436 (June 2, 2016). The countries are: Eritrea, Iran, Democratic People's Republic of Korea, Syria, and Venezuela.

b. Country reports on terrorism

On June 2, 2016, the Department of State released the 2015 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://2009-2017.state.gov/j/ct/rls/crt/index.htm>. On the day the report was released, Acting Coordinator for Counterterrorism Justin Siberell delivered remarks on key aspects of the reports, which are available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/06/258013.htm>, and excerpted below.

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In 2015, the United States faced a dynamic and evolving terrorist threat environment. The international community made important progress in degrading terrorist safe havens—in particular, a sizeable reduction in the amount of territory held by the Islamic State in Iraq and the Levant, or ISIL, in Iraq and Syria, as well as the finances and foreign terrorist fighters available to it. At the same time, however, instability in key regions of the world, along with weak or nonexistent governance, sectarian conflict, and porous borders continue to provide terrorist groups like ISIL the opportunity to extend their reach, terrorize civilians, and attract and mobilize new recruits.

According to the statistical annex prepared by the University of Maryland and appended to the report, the total number of terrorist attacks in 2015 decreased by 13 percent when compared to 2014. Total fatalities due to terrorist attacks decreased by 14 percent, principally as a result of fewer attacks and deaths in Iraq, Pakistan, and Nigeria. This represents the first decline in total terrorist attacks and resulting fatalities worldwide since 2012. At the same time, there were several countries, including Afghanistan, Bangladesh, Egypt, Syria, and Turkey, where terrorist attacks and total deaths increased in 2015.

Although terrorist attacks took place in 92 countries in 2015, they were heavily concentrated geographically, as they have been for the... past several years. More than 55 percent of all attacks took place in five countries: Iraq, Afghanistan, Pakistan, India, and Nigeria. And 74 percent of all deaths due to terrorist attacks took place in five countries: Iraq, Afghanistan, Nigeria, Syria, and Pakistan.

While I cite these statistics, which are compiled by the University of Maryland and are not a U.S. Government product, I must emphasize that the numbers alone do not provide the full context. This is a point we consistently make whether the numbers rise or fall on a year-to-year basis. The United States and our partners around the world face a significant challenge as we seek to contend with the return of foreign terrorist fighters from Iraq and Syria, the risk of terrorist groups exploiting migratory movements, and new technology and communications platforms that enable terrorist groups to more easily recruit adherents and inspire attacks. ISIL remain the greatest terrorism threat globally. Despite the losses it sustained last year, ISIL continued to occupy large areas of Iraq and Syria. ISIL's territorial control in Iraq and Syria reached a high point in spring 2015 and began to diminish thereafter. It is worth noting that ISIL did not have a significant battlefield victory in Iraq after May of last year, and by the end of 2015, 40 percent of the territory ISIL once controlled in Iraq had been liberated. This number has continued to increase in 2016.

ISIL-aligned groups have established branches in parts of the Middle East, North Africa, West Africa, the Russian North Caucuses, and South Asia. Most of these branches are made up of pre-existing terrorist networks, many of which have their own local goals. The al-Qaida core, which has been degraded severely since 2001 but still poses a threat, and al-Qaida affiliates—notably al-Shabaab, al-Nusrah Front, and al-Qaida in the Indian Subcontinent, al-Qaida in the Islamic Maghreb—as well as ISIL and its branches were responsible for a number of high-profile, mass-casualty attacks in 2015. These included attacks in Paris, the January attack on the offices of Charlie Hebdo, and the multiple attacks in November at a music concert, on restaurant terraces, and outside a sporting event.

Other such attacks occurred in Beirut, Burkina Faso, Mali, and Tunisia, and the bombing of a Russian passenger plane in Egypt. There were also a number of attacks here in the United States carried out by lone offenders and, in some cases, inspired by ISIL, including in San Bernardino, California; Chattanooga, Tennessee; and Garland, Texas. Although ISIL did not claim responsibility, we believe that it is responsible for several sulfur mustard attacks in Iraq and Syria, including a sulfur mustard attack in Marea, Syria on August 21st of last year. ISIL's loss of territory in Iraq and Syria also had the effect of diminishing the funds available to it. ISIL relies heavily on extortion in the levying of taxes on local populations under its control, as well as oil smuggling, kidnapping for ransom, looting, antiquities theft and smuggling, foreign donations, and human trafficking. Coalition airstrikes targeted ISIL's energy infrastructure, modular refineries, petroleum storage tanks, and crude oil collection points, as well as bulk cache storage sites. These airstrikes degraded ISIL's ability to generate revenue.

The United States continues to work to disrupt Iran's support for terrorism. Iran remains the leading state sponsor of terrorism globally. As explained in the report, Iran continues to provide support to Hizballah, Palestinian terrorist groups in Gaza, and various groups in Iraq and throughout the Middle East. Confronting Iran's destabilizing activities and its support for terrorism was a key element of our expanded dialogue with the countries of the Gulf Cooperation Council, following the leaders summit at Camp David in May of last year. We've also expanded our cooperation with partners in Europe, South America, and West Africa to develop and implement strategies to counter the activities of Iranian-allied and sponsored groups, such as Hizballah.

A key trend through 2015 was the increased level of international cooperation and coordination to address terrorist threats. The United States led a global coalition to counter ISIL, the Multinational Joint Task Force established by the Lake Chad Basin countries to confront Boko Haram, and the efforts of the Horn of Africa nations to coordinate efforts against al-Shabaab in Somalia are examples of this ongoing cooperation and evidence both of an increased appreciation for the importance of a coordinated effort and of the political will to bring it about.

We've seen countries across the international community mobilize to put in place fundamental reforms to address the supply and transit of foreign terrorist fighters attempting to reach the conflict in Syria and Iraq. United Nations Security Council Resolution 2178, adopted at a UN Security Council session in September 2014 chaired by President Obama, provided the framework for this effort. In line with that resolution, 45 countries have passed or updated existing laws to more effectively identify and prosecute foreign terrorist fighters. The United States has concluded information-sharing arrangements with 55 international partners to identify and track the travel of suspected terrorists. And the number of countries contributing foreign terrorist fighter profiles to INTERPOL has increased 400 percent over a two-year period.

As countries have taken these steps, it has become more challenging for foreign terrorist fighters to travel unimpeded to Iraq and Syria. We are beginning to see the flow of foreign terrorist fighters to this conflict zone decrease. This decrease, we assess, reflects the combined effects of sustained battlefield losses, recruiting shortfalls, and increased border security efforts by source and transit countries. These challenges were acknowledged in reported remarks by ISIL spokesperson Abu Mohammad al-Adnani just last month.

Another trend to note in 2015 was the increased global realization of the need for an expanded response to the challenge of international terrorism. In February 2015, President Obama convened the White House Summit on Countering Violent Extremism, which brought together government, private sector, and civil society leaders from around the world to raise

awareness of the importance of an expanded effort to counter violent extremism and radicalization to violence. Leaders and community-based representatives from the United States and countries around the world came together at the summit and in a series of follow-on meetings in Algiers, Astana, Nairobi, Nouakchott, Oslo, Singapore, Sydney, and Tirana in acknowledgement that our combined efforts, however successful in many respects, are not sufficient and must also include a more deliberate focus on the drivers of radicalization and recruitment to terrorist groups.

Building on this work, last week we released the first-ever Joint State Department-USAID Strategy to Counter Violent Extremism. And I invite you to take a look at it, if you haven't already. It's available on the State Department website. A key element of that strategy is to empower and amplify locally credible voices that can challenge the terrorist narrative and thereby weaken terrorists' ability to radicalize and recruit new members. This will be the focus of a newly established – of the newly established Global Engagement Center under the leadership of Michael Lumpkin.

Looking forward, our policies and programs will continue to be aligned to counter the evolving threats described in the report. We will continue to devote resources toward improving counterterrorism capabilities of key partners—countries, including by leveraging funding provided by the Congress through the Counterterrorism Partnerships Fund as well as focusing long-term efforts in addressing the underlying causes that contribute to violent extremism.

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c. UN

On October 3, 2016, Stephen Townley, Deputy Legal Adviser to the U.S. Mission to the United Nations, delivered remarks at the 71st session of the Sixth Committee on measures to eliminate international terrorism. Mr. Townley's remarks are excerpted below and available at <http://2009-2017-usun.state.gov/remarks/7469>.

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The United States reiterates both its firm condemnation of terrorism in all its forms and manifestations as well as our commitment to the common fight to end terrorism. All acts of terrorism—by whomever committed—are criminal, inhumane and unjustifiable, regardless of motivation. An unwavering and united effort by the international community is required if we are to succeed in preventing these heinous acts. In this respect, we recognize the United Nations' critical role in mobilizing the international community, building capacity, and facilitating technical assistance to Member States in implementation of the United Nations Global Counter-Terrorism Strategy and relevant resolutions.

We note in particular the Security Council's adoption of a number of resolutions over the past two years including, most recently, Resolution 2309 on terrorist threats to civil aviation, Resolution 2253, which renamed the 1267/1989 Al-Qaida Sanctions Regime and List to the 1267/1989 ISIL—Da'esh—and Al Qaida Sanctions Regime and List and established 'association

with ISIL' as a new stand-alone criterion for imposing new sanctions designations, Resolution 2242 on women, peace and security, Resolution 2250 on youth, peace and security, and Resolution 2178 on Foreign Terrorist Fighters, FTFs, which created an important new policy and legal framework for international action in response to the FTF threat. One striking aspect of the Security Council's work is that the 'whole of government' has been mobilized. Thus, for instance, our Resolution 2253 was adopted at a meeting of the Council attended by Ministers of Finance, and in 2015, the Council reviewed progress in the implementation of Resolution 2178 at a meeting of Ministers of Interior. UNESCO has also engaged ministers of education on its education and preventing violent extremism projects.

We are seeing results. Over the last year, the flow of FTFs has declined substantially and that is in large part due to the global community's efforts to stem the flow of FTFs as required by UNSCR 2178. The United States now has information sharing arrangements with 56 international partners to help identify, track, and deter known and suspected terrorists, and at least 26 partners share financial information that could provide actionable leads to interdict or prosecute FTFs. At least 31 countries use enhanced traveler screening measures. Furthermore, approximately 60 countries have laws in place to provide the ability to prosecute and penalize FTF activities and at least 50 countries have prosecuted or arrested FTFs or FTF facilitators. We can all stand to learn from each other on this and we would welcome continued exchanges on the subject.

From aviation security to countering terrorist financing to addressing the phenomenon of FTFs, these resolutions are strong examples of the meaningful role the UN can play to address new challenges that arise in the fight against terrorism. We express our firm support for these UN efforts, as well as those of the Global Counterterrorism Forum, GCTF, and other multilateral bodies, civil society and non-governmental organizations, and regional and subregional organizations, aimed at developing practical tools to further the implementation of the UN counterterrorism framework. We call for continued coordination among UN entities and with external partners, including the GCTF and its related initiatives and platforms such as the International Institute for Justice and the Rule of Law in Malta, IIJ, Hedayah, and the Global Community Engagement and Resilience Fund, GCERF, which advance practical implementation of the UN Global Counter-Terrorism Strategy through training, capacity building and grant-making efforts for community-based preventing and countering violent extremism projects.

Despite some challenges during the negotiations, we were pleased to participate in the fifth review of the UN Global CT Strategy, which marked an important 10th anniversary this year. The strategy that we adopted by consensus 10 years ago remains just as valid and relevant today as it was then. The nature and the extent of terrorism may have changed over the past decade, but the strategy's four pillars, and its approach of supporting and promoting rule of law and respect for human rights, still serve as the best way to ensure, as the Secretary-General has cautioned, that "counterterrorism is not counterproductive." Of particular note was the General Assembly's recognition of the recommendations of the Secretary-General's Plan of Action to Prevent Violent Extremism and setting a concrete timeline for the General Assembly to review and decide on how to best shape the UN's architecture to more effectively implement the Global CT Strategy, including as related to preventing violent extremism. We look forward to reengaging on the UN's architecture and, in that regard, would note that we do not believe this year's Sixth Committee resolution should revisit discussions that were had during the CT strategy review. The Secretary General's PVE Plan is an important opportunity for the UN system to implement a comprehensive, global approach to countering violent extremism based

on the Global CT Strategy with all key actors, and we look forward to supporting efforts to encourage all Member States to develop national and regional strategies for countering violent extremism. We strongly welcome the efforts of the United Nations to facilitate the promotion and protection of human rights and the rule of law as central to effectively countering terrorism in a sustainable manner. We also welcome the UK's Joint Statement on "Principles for UN Global Leadership on Preventing Violent Extremism," including its emphasis on the need to revitalize the UN architecture to meet today's threats by enhancing coherence, coordination, and leadership in the UN on these issues, and we encourage other Member States to support it as well.

Domestically, we are also taking a "whole of government" to countering violent extremism, and the White House has set up a new Interagency Task Force on Countering Violent Extremism. The Task Force began operating in the early spring and has focused on four main lines of effort: 1, Engagement; 2, Research and Analysis; 3, Interventions; and 4, Communications. In the Interventions line of effort, for example, the Task Force is exploring new multidisciplinary intervention strategies for individuals headed down a path toward violent extremism. As we explore these options, including possible alternative dispositions for juveniles and those with mental health problems, one challenge that we face is the lack of existing deradicalization and violent extremism rehabilitation programming available in the United States. We are also looking at what happens when those convicted of terrorism-related offenses are held in prisons spread across our country. These offenders currently receive the same types of rehabilitation and reentry programming as other violent criminals. We look forward to continued exchanges on these issues as we seek to improve global CVE efforts.

As we work together to counter violent extremism, it is also critical that we recognize that the common goal of countering terrorism should never be used as an excuse to suppress political dissent and that the free flow of information can be part of an effective strategy.

To help achieve this comprehensive vision, we need all member states to better assist and sufficiently resource UN system actors and other relevant implementers in order to deliver needed technical assistance and generate more effective solutions. To do our part, we are pleased to note that we continue to make voluntary contributions to the UN Counter-Terrorism Centre, UNCCT, the UNODC Terrorism Prevention Branch, INTERPOL, and UNICRI for development of research, assistance and training. We encourage other interested member states in joining us to help further build the capacity of the UNCCT to allow it to provide assistance to member states across a range of issues addressed in the UN Strategy, including preventing and countering violent extremism, and relevant UNSCRs, including 2178, especially by funding programs included in the UN's Capacity Building Implementation Plan to Counter FTFs. We think that a growing pool of UNCCT donors can also have helpful benefits in coordinating our civilian counterterrorism assistance on shared priorities.

Beyond the UN, we should also partner with local communities and key civil society organizations. They will often be among the most effective in countering terrorist lies.

Focusing now on treaty developments, we recognize the great success of the United Nations, thanks in large part to the work of this Committee, in developing 18 universal instruments that establish a thorough legal framework for countering terrorism. The achievements on this front are noteworthy. We have witnessed a dramatic increase in the number of states that have become party to these important counterterrorism conventions. For example, 170 states have become party to the Terrorist Financing Convention.

The United States recognizes that while the accomplishments of the international community in developing a robust legal counterterrorism regime are significant, there remains much work to be done. The 18 universal counterterrorism instruments are only effective if they are widely ratified and implemented. In this regard, we fully support efforts to promote ratification and implementation of these instruments. We draw particular attention to the six instruments concluded since 2005—the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism, Nuclear Terrorism Convention, the 2005 Amendment to the Convention on the Physical Protection of Nuclear Material, CPPNM Amendment, the 2005 Protocols to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation, SUA Protocols, and the 2010 Convention on the Suppression of Unlawful Acts Relating to International Civil Aviation and the 2010 Protocol Supplementary to the Convention for the Suppression of Unlawful Seizure of Aircraft. While the work of the international community began with the negotiation and conclusion of those instruments, that work will only be completed when those instruments are widely ratified and fully implemented.

The United States is advancing in its own efforts to ratify these instruments, and recently, we have made significant progress. Last year we deposited our instruments of ratification and accession, as appropriate, for the Nuclear Terrorism Convention, the CPPNM Amendment, and the SUA Protocols. As we continue our own efforts to ratify these recent instruments, we urge other states not yet party to do likewise.

And as we move forward with our collective efforts to ratify and implement these instruments, the United States remains willing to work with other states to build upon and enhance the counterterrorism framework. Concerning the Comprehensive Convention on International Terrorism, we will listen carefully to the statements of other delegates at this session. We would highlight in this regard that it is critical that the United Nations send united, unambiguous signals when it comes to terrorism, otherwise we risk some of the progress that we have made. And as the world grapples with the atrocities Da'esh has committed, it must be unequivocally clear that actors such as Da'esh, even if they are engaged in armed conflicts, should be prosecuted as terrorists.

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On December 12, 2016, the UN Security Council adopted Resolution 2322 at a session on threats to international peace and security caused by terrorist acts. U.N. Doc. S/RES/2322. Ambassador Michele J. Sison, U.S. Deputy Representative to the UN, delivered remarks at the Security Council meeting, expressing U.S. support for the resolution and, in particular, its emphasis on information sharing and cooperation among Member States in countering terrorism. Ambassador Sison's remarks are excerpted below and available at <https://2009-2017-usun.state.gov/remarks/7604>.

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Let's all think about the terrorist threat we face today. Terrorist organizations span borders. Terrorists hide in one country, before attacking in another. Terrorists may obtain funds from criminal enterprises that traffic people, illicit goods, narcotics, or cultural property across different continents.

When terrorists talk to each other, their emails may be transmitted from one city to another, but the records of these emails sit on servers scattered around the world. So how do you prosecute a terrorist captured in one state, but who is resident of another state—a terrorist who may be a citizen of yet a third country, and whose emails are scattered on servers in a fourth, fifth, or even sixth country?

The obvious answer is that prosecutors and judges need to cooperate with each other, and cooperate closely. The challenge that we must discuss today is how to make that cooperation effective. Let me address three ways we can do that.

First, each UN Member State needs to have the right laws and agreements on the books—right on both on substance and procedure. This Council has played an important role in enshrining the legal framework for countering terrorist activities through resolutions 1373 and 2178. These resolutions focused on ensuring that all Member States make terrorism a criminal offense; take action to cut off terrorist financing; and prosecute and penalize foreign terrorist fighters. The resolution we just adopted this afternoon builds on this progress. It reaffirms that all states should establish, as a serious criminal offense under each state's domestic law, willfully financing terrorist organizations or individual terrorists for any purpose.

But it is not enough that states have laws that permit them to prosecute terrorists. States may need to gather evidence held in other jurisdictions or even request the extradition of a terrorist. That's why this resolution's focus on mutual legal assistance—obtaining evidence from another country—and extradition—a form of transferring a defendant from one country to another—is so critical. You might assume that these are more or less straightforward processes. But the United States has invested considerable effort to streamline and update both tools to help fight terrorism.

In the past, mutual legal assistance was a slow and often cumbersome process. It was hard for states to talk to each other, and judges often had to authorize requests for evidence. In our modern mutual legal assistance treaties, prosecutors—through coordinating central authorities—can work with each other to make requests for evidence. Modern extradition treaties pave the way for the extradition of terrorists. The United States is working to make it easier for countries to share evidence and extradite terrorists, with robust legal safeguards.

That brings me to my second point—implementation.

We can strengthen our laws and our agreements, but actually disrupting terrorist networks requires that our law enforcement agencies talk to each other. Now, proximity helps here. The United States sends 60 resident legal advisers from the U.S. Department of Justice to our embassies around the world to offer training and technical assistance to prosecutors, along with nine Justice Attachés who focus on extradition and coordinating international cooperation on legal cases. The United States also supports assembling Joint Investigative Teams, in which investigators from different states come together to look at a specific incident.

We can talk a lot here in the Security Council about building cooperation on counterterrorism. And, of course, we as diplomats are used to speaking with representatives of other countries. But all of us need to do more to make sure our prosecutors and our law enforcement officials also have the chance to work directly with each other. That would go a long way toward speeding up the sharing of information, and resolving the highly technical issues that come with international requests for legal assistance.

It also goes without saying that our national law enforcement agencies should improve cooperation with existing multilateral entities and help share information, such as through INTERPOL. This is especially true when we talk about how to counter foreign terrorist

fighters—regularly uploading information on foreign terrorist fighters to INTERPOL’s “I - 24/7” secure global police communications system. Systematically checking against “I - 24/7” at points of entry can make a substantial difference in preventing foreign terrorist fighter travel.

The third thing we need to do is help each other build the requisite capacities. Judicial cooperation is no easy task. Our laws differ from country to country. Our courts, prosecutors, and law enforcement agencies also differ. The paperwork related to judicial cooperation can be complicated and time-consuming—and rightly so, since we are talking about arresting people and putting them on trial, so we do not want to make mistakes. But we do have a lot to learn from each other. We can help each other understand our requirements for sharing information. We can talk to each other about the ways we have disrupted terrorist organizations. We can share strategies for how to gather evidence and build a case against terrorist networks—networks that do their best to keep their activities hidden.

That’s why the United States strongly supported the calls in this resolution to make sure UN entities are helping to provide this expertise. There are many opportunities for Member States to work closely in fighting terrorism. But this cooperation does not come at the expense of human rights or civil liberties. We can find ways to share digital data, and we should—but we need to minimize the sharing of extraneous, private information, and ensure that these protocols do not suppress freedom of expression. Likewise, timely extraditions are important. But we need to ensure that Member States follow all the applicable legal requirements. Expediency cannot be an excuse for denying rights to the accused.

Now, there’s no question that this issue is technical. But let’s zoom out, and look at the big picture. Terrorism is a threat to our collective security. If a terrorist strikes any of us, we would want the tools that today’s resolution outlined to make sure that all of our investigators and prosecutors can work together. This debate should encourage each of us to re-examine what we are doing to bolster these ties.

* * * *

d. 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 2016, the Department of State announced the Secretary of State’s designation of three additional organizations and associated aliases as Foreign Terrorist Organizations (“FTOs”) under § 219 of the Immigration and Nationality Act. On January 14, 2016 the State Department announced the designation of ISIL-Khorasan (“ISIL-K”) as an FTO. See January 14, 2016 State Department media note, available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/01/251237.htm>; see also 81 Fed. Reg. 1983 (Jan. 14, 2016). The media note describes ISIL-K as follows:

ISIL-K announced its formation on January 10, 2015. The group is based in the Afghanistan/Pakistan region and is composed primarily of former members of Tehrik-e Taliban Pakistan and the Afghan Taliban. The senior leadership of ISIL-K has pledged allegiance to Abu Bakr al-Baghdadi, the leader of ISIL. This pledge was accepted in late January 2015 and since then ISIL-K has carried out suicide bombings, small arms attacks and kidnappings in eastern Afghanistan against civilians and Afghan National Security and Defense Forces, and claimed responsibility for May 2015 attacks on civilians in Karachi, Pakistan.

On May 20, 2016, the State Department designated ISIL-Libya as an FTO. 81 Fed. Reg. 32,004 (May 20, 2016). On June 30, 2016, the State Department announced the designation of al-Qa'ida in the Indian Subcontinent ("AQIS") as an FTO. See June 30, 2016 State Department media note, available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/06/259219.htm>; see also 81 Fed. Reg. 43,334 (July 1, 2016). As explained in the media note:

Al-Qa'ida leader Ayman al-Zawahiri announced the formation of AQIS in a video address in September 2014. The group is led by Asim Umar, a former member of U.S. designated Foreign Terrorist Organization Harakat ul-Mujahidin. AQIS claimed responsibility for the September 6, 2014 attack on a naval dockyard in Karachi, in which militants attempted to hijack a Pakistani Navy frigate. AQIS has also claimed responsibility for the murders of activists and writers in Bangladesh, including that of U.S. citizen Avijit Roy, U.S. Embassy local employee Xulhaz Mannan, and of Bangladeshi nationals Oyasiquir Rahman Babu, Ahmed Rajib Haideer, and A.K.M. Shafiul Islam.

See Chapter 16 for a discussion of simultaneous designations 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.

The State Department also amended the designations of FTOs. The designation of al-Nusrah Front was amended to add new aliases, most notably, Jabhat Fath al Sham. 81 Fed. Reg. 79,554 (Nov. 14, 2016); see also State Department November 10, 2016 media note, available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/11/264230.htm>. As explained in the media note:

In July 2016, al-Nusrah Front leader Abu Muhammed al-Jawlani announced his group would henceforth be known as Jabhat Fath al Sham. Despite attempts to distinguish itself from al-Nusrah Front by developing a new logo and flag, Jabhat Fath al Sham's principles continue to be the same as those of al-Qa'ida and the group remains committed to carrying out terrorist activity under this new name

On December 28, 2016, the State Department announced the amendment of the designation of Lashkar e-Tayyiba ("LeT") to include the alias Al-Muhammadia Students ("AMS"). 81 Fed. Reg. 96,565 (Dec. 30, 2016). See also State Department media note, available at <https://2009-2017.state.gov/r/pa/prs/ps/2016/12/266105.htm>. The media note identifies AMS as "the student wing of LeT," adding that it was "founded in 2009, ...and has worked with LeT senior leaders to organize recruiting courses and other activities for youth."

(ii) *Reviews of FTO designations*

During 2016, 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: Al-Qa'ida in the Arabian Peninsula (81 Fed. Reg. 10,951 (Mar. 2, 2016)); Palestine Liberation Front (81 Fed. Reg. 12,776 (Mar. 10, 2016)); Ansar al Islam (81 Fed. Reg. 18,932 (Apr. 1, 2016)); Islamic Movement of Uzbekistan (81 Fed. Reg. 35,435 (June 2, 2016)); Harakat ul-Jihad-i-islami (81 Fed. Reg. 51,958 (Aug. 5, 2016)); Liberation Tigers of Tamil Elam ("LTTE") (81 Fed. Reg. 52,945 (Aug. 10, 2016)); Jemaah Islamiya (81 Fed. Reg. 59,029 (Aug. 26, 2016)); Kata'ib Hizballah (81 Fed. Reg. 61,290 (Sep. 6, 2016)); al-Aqsa Martyrs' Brigade (81 Fed. Reg. 66,118 (Sep. 26, 2016)); Tehrik-e Taliban Pakistan (TTP), Army of Islam, the Communist Party of the Philippines/ New People's Army, and Indian Mujahedeen (81 Fed. Reg. 72,639 (Oct. 20, 2016)).

(3) *Rewards for Justice Program*

On August 30, 2016, the State Department announced a reward offer of up to \$3 million for information leading to the location, arrest, and/or conviction of ISIL terrorist Gulmurod Khalimov. See August 30, 2016 media note, available at <http://2009->

2017.state.gov/r/pa/prs/ps/2016/08/261373.htm. The media note describes Khalimov as follows:

Khalimov is a former Tajik special operations colonel, police commander, and military sniper. He was the commander of a police special operations unit in the Ministry of Interior of Tajikistan.

He is now an ISIL member and recruiter. In May 2015, he announced in a 10-minute propaganda video that he fights for ISIL and has called publicly for violent acts against the United States, Russia, and Tajikistan.

On September 29, 2015, the U.S. Department of State designated Khalimov as a Specially Designated Global Terrorist under Executive Order 13224. The United Nations Security Council ISIL (Da'esh) and al-Qaida Sanctions Committee added him to its sanctions list in February 2016. Khalimov is wanted by the Government of Tajikistan. On June 1, 2015, INTERPOL issued a Red Notice for Khalimov, alerting member nations that he is a wanted person and should be apprehended for extradition back to Tajikistan.

On December 16, 2016, the State Department announced an increased reward offer for information on ISIL leader Abu Bakr al-Baghdadi. See December 16, 2016 media note, available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/12/265708.htm>. The reward offer was increased to \$25 million from the previous reward offer of \$10 million announced in October 2011. The media note provides background on al-Baghdadi:

In June 2014, ISIL, also known as Da'esh, seized control of portions of Syria and Iraq, self-declared a so-called Islamic caliphate, and named al-Baghdadi as caliph. In recent years, ISIL has gained the allegiance of jihadist groups and radicalized individuals around the world, and has inspired attacks in the United States.

Under al-Baghdadi, ISIL has been responsible for the deaths of thousands of civilians in the Middle East, including the brutal murder of numerous civilian hostages from Japan, the United Kingdom, and the United States. The group also has conducted chemical weapons attacks in Iraq and Syria in defiance of the longstanding global norm against the use of these appalling weapons, and has enabled or directed terrorist attacks beyond the borders of its self-declared caliphate.

In 2011, the Department of State designated Abu Bakr al-Baghdadi as a Specially Designated Global Terrorist under Executive Order 13224. Al-Baghdadi was also added to the United Nations Security Council ISIL (Da'esh) and al-Qaida Sanctions Committee in 2011. Al-Baghdadi was the leader of al-Qa'ida in Iraq (AQI), which subsequently morphed into ISIL.

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.

2. Narcotics

a. *Majors list process*

(1) *International Narcotics Control Strategy Report*

On March 2, 2016, the Department of State submitted the 2016 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). See March 2, 2016 State Department media note, available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/03/253905.htm>. The report describes the efforts of foreign governments to address all aspects of the international drug trade in calendar year 2015. Volume 1 of the report covers drug and chemical control activities and Volume 2 covers money laundering and financial crimes. The full text of the INCSR is available at <http://2009-2017.state.gov/j/inl/rls/nrcrpt/2016/index.htm>.

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

On September 12, 2016, President Obama issued Presidential Determination 2016-10 “Memorandum for the Secretary of State: Presidential Determination on Major Drug Transit or Major Illicit Drug Producing Countries for Fiscal Year 2017.” 81 Fed. Reg. 64,749 (Sep. 20, 2016). 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. 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 2017 by virtue of § 706(3) of the Foreign Relations Authorization Act, Fiscal Year 2003, Pub. L. No. 107-228, 116 Stat. 1424.

b. *Bilateral arrangements*

At the third United States-Cuba counternarcotics technical exchange, held on July 21, 2016 in Havana, the two countries signed a counternarcotics arrangement to facilitate cooperation and information sharing in efforts against illegal narcotics trafficking. See July 22, 2016 State Department media note, available at <http://2009->

2017.state.gov/r/pa/prs/ps/2016/07/260396.htm. The counternarcotics technical exchanges are part of broader dialogues between the United States and Cuba that began after the restoration of U.S. relations with Cuba in 2015.

c. *Interdiction assistance*

During 2016 President Obama again certified, with respect to Colombia (Daily Comp. Pres. Docs., 2016 DCPD No. 00512, p. 1, Aug. 4, 2016) 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 other countries in 2016. President Obama made his determination 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.

d. *UN*

On April 19, 2016, Secretary Kerry issued a press statement in the context of the UN General Assembly's special session on the world drug problem, on pragmatic reform of global drug policy. Secretary Kerry's remarks are excerpted below and available in full at <http://2009-2017.state.gov/secretary/remarks/2016/04/255954.htm>.

* * * *

This meeting takes place as heroin and new psychoactive substances are ravaging communities across the United States. At the same time, we are seeing tremendous advances in our understanding of drug dependency and our ability to address substance use disorders as a public health—rather than a strictly criminal justice—challenge.

Relying on decades of scientific research and lessons learned in our country's own struggle with drugs, the United States proposes a pragmatic approach that better balances public health and law enforcement.

* * * *

Now as Secretary of State, I am proud that the renewed U.S. focus on a public health approach to drugs is gaining traction in other parts of the globe.

In New York this week, the United States will seek international consensus on an

approach that upholds the three UN drug conventions—which continue to provide a solid foundation for international cooperation on drugs—and that fully integrates public health priorities, recognizing drug abuse as a chronic disease. This means implementing alternatives to incarceration where appropriate, the use of drug courts, and sentencing reform to channel those who suffer from substance use disorder into recovery and treatment, not just prisons. Finally, it means strengthening international law enforcement cooperation to combat violent drug trafficking organizations who threaten all nations and all peoples.

President Obama said that successfully addressing the drug problem is a national priority critical to promoting the safety, health, and prosperity of the American people. These same aspirations are shared by people of all the nations that will take part in the UN session. We have an opportunity to take an important step towards meeting the challenge posed by drugs around the world, and with the resolute commitment of our nation and other nations working together in common cause, we will.

* * * *

3. Trafficking in Persons

a. Trafficking in Persons report

In June 2016, the Department of State released the 2016 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 2015 through March 2016 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 2016 report lists 27 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 <https://www.state.gov/documents/organization/258876.pdf> Chapter 6 in this *Digest* discusses the determinations relating to child soldiers.

Secretary Kerry delivered remarks on June 30, 2016 on the release of the report, which are excerpted below and available at <http://2009-2017.state.gov/secretary/remarks/2016/06/259227.htm>. Secretary Kerry also delivered remarks (not excerpted herein) at the annual meeting of the President's Interagency Task Force to Monitor and Combat Trafficking in Persons (“PITF”) on October 24, 2016, which are available at <http://2009-2017.state.gov/secretary/remarks/2016/10/263476.htm>.

* * * *

... There's a lot of information in here; a lot of studious work goes into thinking it through. There are some tough calls—in the end, they come down to element of discretion—but not much, because we have a fixed set of rules that Congress has created, and we follow those rules. And therefore there are some folks in here who will obviously be concerned about the conclusions, but the conclusions are based on facts and based on a lot of analysis over a year.

So I'm very grateful to our team that doesn't just put this together in the last weeks. The work on next year's report has already begun, because it's a period that goes from April 1st to March 31st, and so we're already ... beginning to collect and build on the information we gained in the prior year, and work with countries—I want to say that to any country that evaluates this and says, "Well, why am I here?" Well, we work with these countries. I've made personally plenty of phone calls to my counterpart foreign ministers, to prime ministers, to presidents, and said, "Look, you're not cruising in the right direction here, and we need to start to move." And we send people to work with those countries, and our embassies are deeply engaged in helping to promote transformation.

So it is thanks to everybody, an all-hands-on-deck full team effort, that this document comes out. And it's not an insignificant document.

The tier rankings that I have designated reflect our department's best assessment of a government's efforts to eliminate human trafficking. They don't take into account political and other factors. As I say, they're based on a [set of] criteria. And in addition to the rankings, the report outlines our specific concerns as well as the ways we can improve our efforts. This is not meant to be a dunning report; it is meant to be a demarcation, an encouragement process, a process of evaluation and work towards changing rankings.

And as this is now the 16th report of the State Department, and one of the things that I have found is that we can always become more effective in fighting trafficking by working with the true experts, and those experts are sitting here. Those experts are also all of the survivors.

Last December, President Obama appointed an Advisory Council on Human Trafficking, giving survivors a direct line to offer recommendations and guidance on our strategy. And I've had the chance to meet with members of this council—some of whom are here today—and I know that every aspect of what we do—including in this report—is stronger because of the engagement of these folks.

Now, make no mistake...: When we talk about "human trafficking," we're talking about slavery—modern-day slavery that still today claims more than 20 million victims on any given time.

* * * *

...[T]he State Department and the global law firm DLA Piper have gotten together to increase the availability of pro-bono legal services and other tools to combat trafficking. And today, we are pleased to announce the release of two documents which our teams have developed: The first is a model contract for domestic workers to use with their employers, and the second is a memorandum of understanding between countries sending and welcoming migrant domestic workers, setting forth clear standards for those workers' protection. Both documents are based on international law and both are designed to prevent the abuses in domestic work.

My friends, this is the 21st century. We know that human civilization has had thousands of years to develop and make progress and establish rules, and discern the difference between right and wrong. And we are part of a community of nations proudly, particularly, that lives by

and advocates for and believes in the Universal Declaration of Human Rights. Frankly, it's stunning, it's outrageous that even today, the magnitude of the human trafficking challenge cannot be overstated. We all know the sad litany. Girls compelled into sex slavery. Women, sleeping in closets, let out only to cook, wash clothes, and scrub floors. Men and boys, forced to forgo sleep ...and sustenance so that they can work around the clock, often in blistering heat or otherwise appalling conditions.

And the good news is we have the ability to fight back and, believe me, we are determined to do so. This is reflected in the 2030 Sustainable Development Goals, which include an unprecedented commitment to halt human trafficking. It is reflecting in the Palermo Protocol, ratified by nearly 170 nations, and aimed at preventing, suppressing, and punishing these despicable crimes. And it is reflected in the steadily increasing efforts to cooperate and share information among law enforcement authorities on every continent. It is reflected in efforts by the media to cast a spotlight on the shadowy areas where traffickers exist and thrive. And it is reflected in a growing network of NGOs and advocacy groups who work hard every single day to bring modern-day slavery to a permanent end.

Assisting all of these efforts is what our annual report is all about. It is not, as I said earlier, just a catalogue of abuses. It is a detailed analysis of the challenges that we face. It's a targeted roadmap to measure how we can better overcome the challenges. ...

* * * *

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 September 27, 2016, President Obama issued a memorandum for the Secretary of State, “Presidential Determination With Respect to Foreign Governments’ Efforts Regarding Trafficking in Persons.” 81 Fed. Reg. 70,311 (Oct. 11, 2016). The President’s memorandum conveys determinations concerning the countries that the 2016 Trafficking in Persons Report lists as Tier 3 countries. See Chapter 3.B.3.a. *supra* for discussion of the 2016 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 in the 2016 Report and it was included with the President’s determination. 81 Fed. Reg. 70,311 (Oct. 11, 2016). 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. *U.S. Leadership in Combating Trafficking in Persons*

On October 24, 2016, the State Department issued a fact sheet on U.S. leadership in combating trafficking in persons during the Obama Administration. The fact sheet is excerpted below and available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/10/263463.htm>.

* * * *

Department officials have urged foreign governments to improve their anti-trafficking efforts through the annual Trafficking in Persons (TIP) Report and sustained diplomatic engagement in Washington, DC and overseas. The TIP Report has grown from covering 154 countries in 2008 to 188 today, and since 2010 has included an assessment of the United States anti-trafficking efforts to further advance U.S. diplomatic efforts worldwide. The Department has worked closely with governments to support the passage, amendment, and implementation of anti-trafficking laws. Since 2009, 194 pieces of anti-trafficking legislation have been passed in countries around the world. The most recent reporting period saw 238 percent more prosecutions and 58 percent more convictions and victims identified when compared to government-reported data from 2009.

The Department's TIP Office has awarded approximately \$200 million to fund more than 265 projects worldwide to address both sex and labor trafficking. Currently, the TIP Office has approximately 100 ongoing projects in 70 countries, totaling more than \$60 million. The TIP Office's largest bilateral grants are through the Child Protection Compact (CPC) Partnership program, which works to enhance capacity and improve coordination of government and civil society efforts to combat child trafficking. The first CPC Partnership was signed, with the Government of Ghana, in June 2015.

In December 2015, as President of the United Nations Security Council, the United States was instrumental in holding the first Security Council meeting dedicated to the issue of human trafficking in situations of conflict and called on Member States to improve implementation of obligations to criminalize, prevent, and otherwise detect and disrupt human trafficking in such times.

The Department supports training of both U.S. and foreign law enforcement officials to better understand and actively combat human trafficking. During the Obama Administration, the International Law Enforcement Academy Program has trained more than 30,000 foreign counterparts in methods to fight transnational crime, including 4,500 officers on issues related to trafficking in persons. The Department also led an interagency initiative in 2014 to train approximately 2,000 U.S. government employees at 10 overseas posts to increase information-sharing related to trafficking between the United States and host countries.

The Bureau of Diplomatic Security (DS) established an anti-trafficking unit in 2011 to investigate trafficking cases involving visa or passport fraud, and since has expanded its mission by participating in trafficking task forces, conducting specialized anti-trafficking training, coordinating centralized case referrals, and working jointly with other law enforcement agencies,

both overseas and across the United States, to combat this crime. These efforts and others, reflect our dedication to addressing a worldwide challenge and to increasing the prosecution of human traffickers, including those who exploit individuals in brothels, domestic work environments, and agricultural settings.

During the Obama Administration, the Bureau of Population, Refugees, and Migration's Return, Reintegration, and Family Reunification Program for Victims of Trafficking has helped 1,545 eligible family members join nearly 700 trafficking victims with T visa status in the United States and assisted 17 survivors to voluntarily return home.

The TIP Office worked with the Department of Labor and Office of Management and Budget to develop tools and guidance to help the federal procurement workforce implement the anti-trafficking protections set forth by Executive Order 13627 and the Federal Acquisition Regulation. In 2014, the TIP Office also funded research by the International Labor Organization and the United Nations Office on Drugs and Crime to expose abusive recruitment practices known to facilitate human trafficking, such as charging workers recruitment fees. This coordinated research included three stakeholder meetings and field surveys conducted in different countries and regions of the world.

The Office of Protocol has augmented its work to help protect domestic workers of foreign mission personnel in the United States by implementing a system to track allegations of abuse, encouraging NGOs and attorneys to report cases, establishing additional requirements pertaining to the treatment of domestic workers, and briefing both accredited diplomats and domestic workers employed by foreign diplomatic personnel in the Washington, D.C. area to apprise them of their rights and responsibilities. In 2015, the Office of Protocol launched the In-Person Registration Program, which enhances protections for domestic workers. Registrations are currently taking place in the Washington, D.C. area and will soon be expanded throughout the United States.

The Department led an interagency process to create a "Know Your Rights" pamphlet to inform applicants for certain nonimmigrant work visas about their rights in the United States and provide them the National Human Trafficking Hotline number ...

* * * *

The TIP Office and New Perimeter, DLA Piper's nonprofit affiliate that provides pro bono legal assistance in under-served regions globally, launched a public-private partnership in 2013 to increase the availability of pro bono legal resources to combat human trafficking. In 2016, the partners announced a package of model documents aimed at preventing the abuse of domestic workers, whose employment in private homes increases their vulnerability and isolation. The first two documents are a model contract and an addendum for domestic workers to use with their employers; the third is a memorandum of understanding between countries sending and receiving migrant domestic workers.

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4. Piracy

On April 25, 2016, Ambassador Michele J. Sison, U.S. Deputy Representative to the United Nations, delivered remarks at a UN Security Council meeting on peace in West Africa, discussing efforts to combat piracy and armed robbery in the Gulf of Guinea. Her remarks are excerpted below and available at <http://2009-2017-usun.state.gov/remarks/7243>.

* * * *

Earlier this month, on April 11 at 7:56 p.m., pirates attacked a cargo vessel off the coast of Nigeria. They had waited for darkness before ambushing the vessel and boarded with force. The captain and crew sounded the alarm and hid in a protected space on the ship—only to discover when they emerged the following day that two of their crew were missing: a second officer from the Philippines and an electrician from Egypt. Both are still missing.

This was not the first pirate attack of the year, nor even the first attack that day. Earlier on April 11—the very same day—pirates had attacked a Turkish cargo ship off the coast of Nigeria, kidnapping six of the crew, including the vessel’s captain. Those men are also still missing.

Mr. President, piracy and armed robbery in the Gulf of Guinea are increasing at an alarming rate, with some industry experts recording at least 32 attacks off the coast of Nigeria alone in 2016, affecting many Member States, including the United States.

The economic consequences for the people of the region are devastating. According to a Chatham House report, as much as 400,000 barrels of crude oil are stolen each day in the Gulf of Guinea. By some estimates, Nigeria is losing about \$1.5 billion a month due to piracy, armed robbery at sea, smuggling, and fuel supply fraud. Illegal, unreported, and unregulated fishing also generates a sizeable income loss—in the hundreds of millions of dollars a year—for many countries and communities that depend on this sector to survive.

We have spoken many times in this chamber about the root causes of piracy—ineffective governance structures, weak rule of law, precarious legal frameworks and inadequate naval, coast guard, and maritime law enforcement. The absence of an effective maritime governance system, in particular, hampers freedom of movement in the region, disrupts trade and economic growth, and facilitates environmental crimes.

We have also acknowledged in our resolutions and in the presidential statement adopted this morning that the solution to these root causes lies in greater African stewardship of maritime safety and security at the continental, regional, and Member State level. Strong political will from African governments and leaders is needed to pursue and prosecute crimes at all levels within criminal enterprises.

Maritime crime flourishes under ineffective or complicit governance structures, but is diminished when rule of law is effective. Absent African ownership and action from national and local governments to tackle maritime security challenges, there is little reason to believe that attacks in the Gulf of Guinea will decline. International cooperation and integration among regional countries, international organizations, industry, and other entities that have a stake in maritime security are also critical to ensure the full range of lawful and timely actions to combat piracy and other maritime crime in the Gulf of Guinea.

In this regard, we welcome the Yaoundé Summit documents, which articulated a comprehensive view of maritime safety and security, including combating illegal fishing; trafficking of arms, people, and drugs, and maritime pollution.

We commend the UN offices of West and Central Africa for providing capacity building and technical assistance to governments in the region, as well as sub-regional organizations, including the Gulf of Guinea Commission, GGC, the Economic Community of Central African States, ECCAS, and the Economic Community of West African States, ECOWAS. We urge the Member States of the regional and sub-regional organizations to make the Interregional Coordination Center fully operational.

In this context, the United States is doing its part to support the efforts of our African partners in the Gulf of Guinea. Our approach is based on three guiding principles: the prevention of attacks, the response to acts of maritime crime, and enhancing maritime security and governance.

On prevention, we are supporting ECOWAS and ECCAS efforts to strengthen regional maritime strategies, including the completion of their Memorandum of Understanding and Code of Conduct for Central and West Africa. We are also encouraging nations to fully implement the Yaoundé Code of Conduct and the 2050 AU African Integrated Maritime Strategy.

We encourage states in the region to further enhance security by establishing pilot maritime Zone E, covering the coasts of Nigeria, Niger, Benin, and Togo, an area where the majority of attacks occur. Establishing Zone E would provide the means for an integrated approach to coordinating joint patrols, naval drills, training programs, and intelligence sharing among the naval forces of countries in the zone.

On responding to acts of maritime crime, the U.S. trains, equips, and conducts exercises and operations with African maritime forces through our African Partnership Station, APS. One month ago, APS held a multinational maritime exercise where the Gulf of Guinea, European, and South American nations worked together, shared information, and refined their tactics, techniques, and procedures to monitor and enforce their territorial waters and exclusive economic zones in the Gulf of Guinea.

Through our African Maritime Law Enforcement Partnership, we are also improving partner capacity to conduct maritime security operations off the coasts of Senegal, Cape Verde, Ghana, and Cameroon.

To enhance maritime security and governance, the U.S. is assisting with strengthening the judicial sectors of Gulf of Guinea nations and regional capacity to address impunity for piracy and related maritime crime, such as our support for the UN Office on Drugs and Crime. Technical assistance helps these countries put in place the necessary criminal laws to effectively prosecute armed robbery at sea and piracy cases.

In closing, I would like to underscore the importance of a comprehensive regional approach to addressing maritime insecurity. A comprehensive approach will help reduce the loss of national revenue, support socioeconomic development, and expand environmental protection in the region. We look forward to supporting the June G7 Friends of the Gulf of Guinea Plenary in Lisbon, as well as Togo's hosting the 2016 AU Maritime Security Summit this October. The U.S. sees these engagements as an opportunity to produce concrete timelines and actions to help form a robust national, regional, and global response to maritime security threats across Africa.

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5. Money Laundering and Asset Sharing Agreements

a. *FBME as a financial institution of primary money laundering concern*

As discussed in *Digest 2015* at 92, the imposition of a special measure against FBME Bank Ltd. (“FBME”), on the basis of the finding by the Department of the Treasury’s Financial Crimes Enforcement Network (“FinCEN”) that FBME is a financial institution of primary money laundering concern pursuant to Section 311 of the USA PATRIOT Act (“Section 311”), was enjoined by a U.S. district court before the rule’s effective date. Following a voluntary remand of the earlier proposed rule to FinCEN for further consideration, FinCEN imposed a substantively equivalent prohibition on U.S. financial institutions opening or maintaining a correspondent account for, or on behalf of, FBME, which became effective July 29, 2016. 81 Fed. Reg. 18,480 (Mar. 31, 2016). As explained in the Federal Register notice:

...FinCEN continues to find that reasonable grounds exist for concluding that FBME is a financial institution of primary money laundering concern. Based upon that finding, FinCEN is authorized to impose one or more special measures. Following the required consultations and the consideration of all relevant factors..., FinCEN proposed the imposition of a prohibition under the fifth special measure in an NPRM published on July 22, 2014. The fifth special measure authorizes a prohibition against the opening or maintaining of correspondent accounts by any domestic financial institution or agency for, or on behalf of, a financial institution found to be of primary money laundering concern.

After re-opening the comment period, FinCEN considered all of the special measures, as well as measures short of a prohibition, and concluded that a prohibition under the fifth special measure is still the appropriate choice. Consistent with the finding that FBME is a financial institution of primary money laundering concern and in consideration of additional relevant factors, this final rule imposes a prohibition on the opening or maintaining of correspondent accounts by covered financial institutions for, or on behalf of, FBME under the fifth special measure. The prohibition on the opening or maintenance of correspondent accounts imposed by the fifth special measure will help guard against the money laundering and terrorist financing risks that FBME presents to the U.S. financial system...

On September 20, 2106, the U.S. District Court for the District of Columbia remanded the above-described final rule to FinCEN, stating that the agency had not responded meaningfully to FBME’s comments regarding the agency’s treatment of aggregate Suspicious Activity Report (“SAR”) data. On December 1, 2016, FinCEN supplemented its final rule to explain “that FBME’s comments regarding FinCEN’s use of SARs in the rulemaking process reflect a misunderstanding of SARs generally and how FinCEN analyzed and used SARs in this rulemaking.” 81 Fed. Reg. 86,577 (Dec. 1, 2016).

b. *North Korea as a jurisdiction of primary money laundering concern*

On May 27, 2016, the Director of FinCEN found that North Korea is a jurisdiction of primary money laundering concern pursuant to Section 311. 81 Fed. Reg. 35,441 (June 2, 2016). Excerpts follow from the finding.

While none of North Korea's financial institutions maintain correspondent accounts with U.S. financial institutions, North Korea does have access to the U.S. financial system through a system of front companies, business arrangements, and representatives that obfuscate the true originator, beneficiary, and purpose of transactions. We assess that these deceptive practices have allowed millions of U.S. dollars of DPRK illicit activity to flow through U.S. correspondent accounts.

Moreover, although U.S. and international sanctions have served to significantly isolate North Korean banks from the international financial system, the North Korean government continues to access the international financial system to support its WMD and conventional weapons programs. This is made possible through its use of aliases, agents, foreign individuals in multiple jurisdictions, and a long-standing network of front companies and North Korean embassy personnel which support illicit activities through banking, bulk cash, and trade. Front company transactions originating in foreign-based banks have been processed through correspondent bank accounts in the United States and Europe. Further, the enhanced due diligence required by United Nations Security Council Resolutions (UNSCRs) related to North Korea is undermined by North Korean-linked front companies, which are often registered by non-North Korean citizens, and which conceal their activity through the use of indirect payment methods and circuitous transactions disassociated from the movement of goods or services.

On the basis of that finding, FinCEN proposed a rule imposing the fifth special measure against North Korea, prohibiting covered financial institutions from opening or maintaining a correspondent account in the United States for or on behalf of a North Korean banking institution. 81 Fed. Reg. 35,665 (June 2, 2016). On November 9, 2016, a very similar rule became final with only minor definitional changes vis-à-vis the proposed rule. 81 Fed. Reg. 78,715 (Nov. 9, 2016).

c. *Withdrawal of finding regarding JSC Credex Bank*

As of March 17, 2016, FinCEN withdrew its finding that JSC CredexBank ("Credex"), renamed JSC InterPayBank ("InterPay"), is a financial institution of primary money laundering concern pursuant to Section 311, on the grounds that "material subsequent developments...ha[d] mitigated the money laundering risks associated with" the bank.

81 Fed. Reg. 14,389 (Mar. 17, 2016). At the same time, FinCEN withdrew the special measure that had been imposed on the basis of the finding. 81 Fed. Reg. 14,408 (Mar. 17, 2016).

d. *Asset sharing agreement with Colombia*

On November 21, 2016 the governments of the United States of America and the Republic of Colombia signed an agreement “concerning the Sharing of Forfeited Proceeds and Instrumentalities of Crime.” The purpose of the Agreement, as stated in Article 2, is “to enable the Parties to share Assets that have been forfeited in relation to criminal offenses.” Article 3 of the Agreement identifies the circumstances in which assets may be shared: when a) assets are confiscated through “Cooperation provided by the other Party;” b) assets are held due to an order received from or issued by the other Party. Article 4 relates to requests for sharing of assets. Articles 5 and 6 relate to the method of sharing and the terms of payment.

6. *Organized Crime*

a. *General*

On June 16, 2016, Assistant Secretary of State William R. Brownfield of the Bureau of International Narcotics and Law Enforcement Affairs (“INL”) testified before the Senate Committee on Foreign Relations regarding responding to transnational criminal threats. Assistant Secretary Brownfield’s prepared testimony is excerpted below and available at <https://2009-2017.state.gov/j/inl/rls/rm/2016/258582.htm>.

* * * *

Chairman Corker, Senator Cardin, distinguished Members of the Committee; thank you for the opportunity to appear before you to discuss the Department of State’s work to prevent transnational organized crime from harming U.S. citizens and threatening our national interests.

* * * *

Transnational organized crime encompasses a wide variety of criminal threats, ranging from illegal trafficking in drugs, people and wildlife to cybercrime and money laundering. Any serious ongoing criminal activity that crosses international borders and involves three or more people meets the legal definition of transnational organized crime, and these activities threaten the interests of the United States on three broad, interrelated fronts.

First, transnational organized crime’s impact is felt directly on the streets of virtually every community in America. Drugs, counterfeit merchandise, and other contraband are illegally smuggled into the United States every year, undermining our border security and inflicting harm

on society and individuals. Heroin, fentanyl, and illicit opioids originating from abroad are perpetuating the national opioid epidemic. Cyber-enabled fraud and other forms of crime victimize American citizens of billions of dollars annually, and transnational criminal gangs commit crimes in collaboration with their peers located beyond our borders.

Second, American businesses and financial institutions are more affected than ever before by the impact of transnational organized crime. When international crime infiltrates legitimate commercial sectors, our companies and workers are deprived of a level playing field to compete globally. Markets for U.S. products are diminished, prices are distorted, and consumers are exposed to additional risks from unregulated (and in many cases unsafe) products. Counterfeiting and piracy cost the U.S. economy billions of dollars annually and expose consumers to dangerous and defective products. Transnational crime also corrupts international financial institutions that supply the credit and banking services that our global economy depends on.

Third, international criminals engage in a variety of activities that pose a grave threat to our national security and the stability of the global community. Corruption and the enormous flow of illicit profits generated by criminal activity are serious threats to the stability of democratic institutions, the rule of law, and sustainable economies around the world. Once imbedded within the political institutions of a society, transnational criminal networks weaken the bonds of trust between citizens and their state. Governments corrupted at senior levels by organized crime cannot be trusted to act as reliable partners of the United States, or as responsible stakeholders in the international community. The convergence of crime, corruption, and weak governments can also devolve into failed states and ungoverned spaces that provide a foothold for terrorism, insurgencies and unchecked human rights abuses.

* * * *

... Over the past two decades, with support from successive administrations and bipartisan backing from Congress, INL has recalibrated its work to focus on two mutually supportive strategic objectives; helping partner governments build, reform, and sustain judicial institutions that enhance the capacity of their criminal justice systems; and developing the global architecture necessary for cross-border law enforcement cooperation and preventing corruption.

* * * *

In addition to capacity building, INL has achieved substantial progress in developing frameworks for cross-border cooperation. Beginning in the late 1990s, thanks in large part to U.S. leadership, and working largely from U.S. models, the global community has developed a series of groundbreaking treaties that promote international law enforcement cooperation and reduce the advantage that criminals gain from crossing borders. The UN Convention against Transnational Organized Crime (UNTOC), which entered into force in 2003, is the first legally binding instrument that commits countries to common criminalization of a wide range of serious organized crimes and to cooperating with one another on criminal justice enforcement. It is supplemented by three Protocols to combat trafficking in persons, migrant smuggling and illicit trafficking in and manufacturing of firearms. The United States has used the UNTOC as the basis for mutual legal assistance and extradition cooperation with other countries on over 470 occasions, making the treaty a valuable tool for our criminal justice practitioners.

We've achieved similar progress in creating global standards against corruption, the great enabler and worst consequence of organized crime. The UN Convention against Corruption (UNCAC) entered into force in 2005 and provides a complementary framework to address both the supply and demand for corrupt international practices. The UNCAC lays out requirements for preventive anticorruption measures, criminalization of bribery and other corrupt practices. These requirements are only as good as governments' ability to enforce them, so INL also works with international law enforcement networks such as INTERPOL to target perpetrators of corruption and their ill-gotten gains. INL also leads efforts within the G-20 to prevent corrupt officials from traveling internationally and enjoying the benefits of their crimes.

These UN benchmarks have been complemented by treaties developed in other multilateral organizations that support global efforts to prevent transnational crime. The Council of Europe's Convention on Cybercrime, for example, provides a model for countries to develop domestic legislation and provides a platform for increased cooperation in cybercrime investigations. The Financial Action Task Force (FATF) serves as the global focal point for concrete cooperation to counter money laundering, which greases the wheels of international criminal activity. Taken collectively, this legal framework provides the foundation necessary for systemic, standardized law enforcement and judicial cooperation between governments. INL is committed to using all levers of diplomacy to encourage our international partners to take advantage of this framework, for the protection of their own citizens and interests as well as ours.

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b. *Conference of the Parties to the UN Convention against Transnational Organized Crime*

On October 17, 2016, the State Department issued a media note summarizing U.S. participation at the Conference of the Parties to the UN Convention against Transnational Organized Crime ("UNTOC"), which commenced in Vienna on that day. The U.S. delegation to the Conference was led by INL Principal Deputy Luis Arreaga and joined by Ambassador Susan Coppedge, the lead for U.S. global engagement against human trafficking. Also included in the delegation were officials from the Department of Homeland Security, Department of Justice, and Department of State. The media note, available in full at <http://2009-2017.state.gov/r/pa/prs/ps/2016/10/263205.htm>, identifies U.S. goals for the meeting:

The UNTOC meeting will gather counterparts from around the world to advance international cooperation and share best practices in the fight against transnational crime.

U.S. goals for the meeting include enhancing the ability of investigators, prosecutors, and others on the front lines to work across borders and cooperate more closely in fighting transnational crime. The United States will take part in side events on the priority areas of combating trafficking in persons and promoting the sharing of electronic evidence.

c. *Sanctions Program*

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

7. *Corruption*

On May 12, 2016, Secretary Kerry delivered remarks at the Anti-Corruption Summit plenary in London. Secretary Kerry joined with heads of state from over forty countries, representatives of multinational organizations, and civil society leaders at the Summit to discuss anti-corruption efforts. Secretary Kerry's remarks are excerpted below and available at <http://2009-2017.state.gov/secretary/remarks/2016/05/257130.htm>.

* * * *

Criminal activity literally is a destroyer of nation-states because it contributes to drug trafficking, arms smuggling; it contributes to human trafficking; it becomes the facilitator of activities that create sub-states ... within states, and we're left struggling, fighting. It is a contributor to terrorism, my friends, in many different ways. And the extremism that we see in the world today comes in no small degree from the utter exasperation that people have with the sense that the system is rigged. And we see this anger manifesting itself in different forms in elections around the world, including ours. People are angry and the anger is going to grow unless we shut the doors and try to prove to people there's a fairness that can be established in the system.

Now, I know some people will say, "Oh, it's culture—the culture has grown that way and that's the way it's going to be." Well, culture can change. Culture can learn. Culture can adapt to modernity and to a global standard that requires something more. So we're pleased to be joining with the prime minister in this international center that will work in anti-corruption to share information, to facilitate law enforcement, to be able to provide a barrier to this rampant scourge that is really pandemic on a global basis.

And we are going to ourselves—President Obama just announced—all 50 states, legislation will be put in place to require transparency with respect to businesses that are registered there. We will in addition engage in additional efforts which were already—we're going to put \$70 million into additional integrity initiative to help with local police training in order to help provide additional ability for digital—for internet transmission of payments, which reduces the opportunity for bribery and graft. And there are many different things that we can do technologically to improve this.

... We have to get the global community to come together and have no impunity to corruption. ...

So that's why I view today as genuinely a very important moment. ... That's why accountability under the law is so critical and that's why I view this discussion as the beginning of something that can help us in the battle against extremism, help us in the battle for strengthening the commitment to rule of law, and giving people across the planet a sense that leaders at the highest level are not, in fact, part of the problem; they're part of the solution.

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Also on May 12, 2016, the State Department released a fact sheet summarizing U.S. commitments made at the Global Anti-Corruption Summit. The fact sheet is excerpted below and available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/05/257124.htm>.

* * * *

The major initiatives include:

(1) Strengthening Law Enforcement Efforts and Working Across Borders to Hold Corrupt Actors Accountable:

- **Global Asset Recovery Forum (GFAR)** – The United States will co-host with the United Kingdom the first meeting of the GFAR in 2017 in Washington, DC. This forum will create a robust mechanism to work collaboratively on major asset recovery cases where there is emergent need to return assets for the benefit of the people harmed by corruption.
- **International Anti-Corruption Coordination Center (IACCC)** – The IACCC will coordinate cross-border investigative communication, increase data sharing between key financial hubs, and assist developing countries with corruption cases. The United States is also joined by several countries representing key financial centers in supporting the IACCC.

(2) Strengthening Capacity to Prevent and Fight Corruption in Countries Across the Globe:

- **An “Integrity Initiative” to Boost Capacity** – After doubling anti-corruption assistance in the past four years, the Department of State is committing an additional \$70 million, pending congressional approval, for capacity-building efforts globally, including training for thousands of law enforcement and justice-sector officials all over the world; platforms that mitigate opportunities for graft; efforts to tackle the security and corruption nexus; and a consortium to support civil society and media organizations.
- **A Global Consortium of Civil Society and Investigative Journalists against Corruption** – Building on our continued efforts to partner with and support non-governmental networks that work across borders to expose corruption globally, this new consortium will support the critical work of investigative journalists and civil society networks in driving public demand for political will and action by law enforcement.
- **Maximizing Impact of the Open Government Partnership (OGP)** – The United States will continue its active engagement in and support for OGP, a partnership between government and civil society across 70 countries to advance transparency and accountability through national commitments for reform.

(3) Greater Financial Transparency at Home to Prevent Perpetrators of Fraud, Tax Evasion, Illicit Funding from Hiding in the Shadows:

- **New Beneficial Ownership Legislation** – The Administration’s new legislative proposal would require all companies formed in the United States to report information about their beneficial owners to the Department of Treasury, for the first time making such information readily available to law enforcement.

- **Combating Transnational Corruption** – Draft legislation would enhance and strengthen our efforts to combat transnational corruption through enhancing law enforcement’s ability to prevent bad actors from concealing and laundering illegal proceeds of transnational corruption, and would allow U.S. prosecutors to more effectively pursue such cases.
 - **Reciprocal Foreign Account Tax Compliance Act (FATCA) Legislation** – The President has proposed providing full “reciprocity” under FATCA in the last three budgets he submitted Congress, which would strengthen the United States’ hand in pressing other countries to improve transparency and ensure we live up to our end of the bargain.
 - **Customer Due Diligence (CDD) Rules** – Treasury regulations will enhance transparency and protect the integrity of the financial system by requiring financial institutions to know and keep records on who actually owns the companies that use their services.
 - **IRS Rule on Single-Owner LLCs** – New proposed Treasury/IRS tax rules will close a loophole allowing foreigners to hide assets or financial activity behind anonymous entities established in the United States.
 - **Geographic Targeting Order (GTO) Rules for High-End Real Estate** – In January, Treasury issued GTOs that will temporarily require certain U.S. title insurance companies to identify the natural persons who are the true owners behind the companies used to pay “all cash” for high-end real estate in certain geographic areas. The proposed beneficial ownership legislation would also expand the scope of future GTOs to include bank wires in addition to those paid by cash or other monetary instruments, such as cashier’s checks.
 - **International Tax Treaties** – The Administration is also calling upon the Senate to finally approve tax treaties that have been pending for several years and that would help crack down on offshore tax evasion.
- (4) Tackling the Corruption-(In)Security Nexus:**
- **Stronger Security Assistance Oversight** – Corruption threatens national security. When security institutions are undermined through corruption, they are unable to protect citizens, defeat terrorists, or defend national sovereignty. The United States is working to address the security costs of corruption through integrating anti-corruption components into training for security forces; better assessing corruption risk throughout security cooperation with foreign security forces; and ensuring that our security assistance also addresses governance goals.

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On September 14, 2016, the State Department submitted its ninth report to Congress pursuant to the International Anticorruption and Good Governance Act (“IAGGA,” Pub. L. 106-309). The report summarizes U.S. anticorruption efforts and key counterpart efforts in priority countries from 2014-15. The 2016 report is available at <http://2009-2017.state.gov/j/inl/rls/rpt/264335.htm>, and excerpted below.

* * * *

I. U.S. INTERNATIONAL ANTICORRUPTION INITIATIVES

Work in 2014 laid the foundations for increased efforts and high-level political attention in 2015. Secretary Kerry gave significant prominence to anticorruption efforts in the State Department's 2015 Quadrennial Diplomacy and Development Review. To promote reform and implementation, the United States continues to fund bilateral and regional capacity building programs to strengthen law enforcement institutions, enhance civil society participation, and streamline bureaucratic systems. Policy initiatives complement capacity building programs to build political will, set standards, and enhance cooperation. Key emphases include:

The UN Convention against Corruption (UNCAC): The UNCAC, with 178 Parties by the end of 2015, has globalized the fight against corruption. Almost all Parties are in the process of completing a first round of peer reviews, which examined compliance with commitments on the criminalization of corruption and international cooperation, as defined by the Convention. The Conference of States Parties met in St. Petersburg in November 2015 and agreed to launch the second round of peer reviews in 2016.

Regional, Special Initiatives and High-Level Commitments: The United States co-chaired the G20 Anticorruption Working Group in 2015, shepherding important commitments on procurement transparency and open data, and launching the Denial of Entry Experts network. The United States continued to support the Arab Forum on Asset Recovery to coordinate cooperation in pursuit of stolen assets from the Middle East and North Africa stowed abroad; based on that model, the United States and United Kingdom co-organized the 2014 Ukraine Forum on Asset Recovery. The United States remains a leader of the Open Government Partnership (OGP), a multi-stakeholder effort to enhance transparency, citizen engagement, and accountability, and of the Extractive Industries Transparency Initiative, which the United States itself has committed to implement.

Other U.S. Reports: The Annual Country Reports on Human Rights Practices and the International Narcotics Control Strategy Reports contain additional anticorruption information that Department of State missions collect, including the work of host country partners. The Department's Investment Climate Statements provide country-specific assessments on investment laws and practices, including corruption. Information about U.S. foreign assistance levels can be found at the Foreign Assistance Dashboard. Information about trade volume can be found in Department of Commerce reports.

The U.S. Department of State and the U.S. Department of Commerce's Commercial Service join forces to include an anticorruption section in the Country Commercial Guides. Prepared by market experts located at U.S. embassies worldwide, it includes information for exporters on the Foreign Corrupt Practices Act (FCPA) and other international anticorruption instruments and initiatives.

No Safe Haven: The authorities of Presidential Proclamation 7750 and Section 7031(c) of the Department of State, Foreign Operations, and Related Programs Appropriations Act, 2015 (Div. J, P.L. 113-235) serve as tools to deny entry into the United States of qualifying corrupt officials, bribe payers, and benefitting family members.

II. SELECT U.S. GOVERNMENT ASSISTANCE PROGRAMS

Afghanistan – ... In 2015, [USAID] launched the \$12.7 million Advancing Effective Reforms for Civic Accountability program to help government officials implement reforms to combat corruption and strengthen the ability of Afghan civil society organizations to perform watchdog functions. The Department of State's Bureau of International Narcotics and Law Enforcement Affairs (INL) funded anti-corruption training for justice sector actors throughout

Afghanistan; provided training and mentoring for anti-corruption units at the Ministry of Interior and Attorney General's Office; supported a method to centralize and track legal cases, reducing opportunities for corruption; and created a citizen participation program fostering transparency within justice institutions.

Guatemala – The U.S. government has provided critical support, totaling \$36 million since 2008, to the UN's International Commission Against Impunity in Guatemala (CICIG) to help combat corruption by building the capacity of prosecutors, judges, and investigators working on high-profile, corruption-related cases. ...

Haiti – USAID assistance built an integrated financial management system which bolstered control of revenues and expenditures, facilitated audits and increased revenue collection by as much as 400 percent in key municipalities. With assistance from INL, the Haitian National Police Office of the Inspector General vetted officer files, recommending dismissal of more than 740 personnel for infractions and the removal of "phantom" officers from the payroll. The U.S. government supplied technical assistance to the Supreme Judicial Council that vetted and certified 1,000 judges. Through an INL grant, the American Bar Association (ABA) bolstered the capacity of Haitian judges and prosecutors, resulting in the first successful prosecution of a corrupt public official in December 2015, the first case since Haiti passed its anti-corruption law in 2014.

Honduras – In 2015, the U.S. Department of Commerce worked with the Honduran Ministry of Economy and international partners to sponsor regional government procurement workshops addressing transparency. USAID strengthened the Superior Accounts Tribunal and municipal auditors to carry out audits while addressing civil society-led initiatives to increase transparency and accountability in the use of public resources, resulting in a significant rise in the number of both internal audits and "social audits" over the last few years. INL support to the Public Ministry through embedded U.S. Department of Justice (DOJ) legal advisors and INL police advisors has helped advance corruption and money laundering cases, which resulted in the convictions of high level Honduran government officials and millions of dollars of assets and seized. In 2015, the United States supported the Organization of American States (OAS) Mission to Support the Fight against Corruption and Impunity in Honduras, which aims to combat corruption networks in Honduras.

Iraq – ... Through June 2015, a USAID program called Tarabot (linkages) provided the Government of Iraq with broad support for strengthening public management and service delivery through improved management of human and fiscal resources. This program included civil service reform, national policy management, and administrative decentralization among a wide range of government agencies across 15 provinces, excluding the Kurdish Regional Government.

Jamaica – ... USAID provided anticorruption training to justice sector actors and supported public awareness through the National Integrity Action (NIA). In 2015, NIA's first documentary on corruption won the Audience Award at the 1st Annual Caribe Film Fest in Miami. Training sponsored by NIA included a series for journalists, investigators, and prosecutors on investigating and prosecuting financial crime taught by an assistant U.S. attorney.

...

Morocco – ... The State Department's Middle East Partnership Initiative (MEPI) funds an ABA project to create opportunities for citizens to play an active role in local governments and for communities to better respond to citizen demands. INL also funded an ABA project to increase citizen access to justice and reduce corruption, which provided information on the

criminal justice system to more than 140,000 citizens and an estimated five million individuals through national and regional radio shows.

Mozambique – As part of a wider package of assistance, INL funded a DOJ legal advisor, who worked with the Mozambican Attorney General’s Office to combat corruption by developing the capacity of its financial management, procurement, planning and human resources departments. ...

Nigeria – U.S. assistance to Nigerian election authorities helped lead to more transparent, credible election processes, culminating in the relatively violence-free 2015 national elections, which brought about the first peaceful democratic transition of power from one political party to another in Nigerian history. INL worked with the Ministry of Justice and the Economic and Financial Crimes Commission to strengthen Nigeria’s anticorruption and financial crimes framework to track, investigate, and prosecute money laundering cases and seize assets, and to develop internal affairs, polygraph, and anti-terrorism financing units. ...

Tunisia – ...U.S. programs under MEPI seek to combat corruption through government-to-citizen engagement. With U.S. support, the OECD promotes governance reforms to implement Tunisia’s OGP transparency and accountability commitments while the Financial Service Volunteer Corps implemented a training program for civil society and government officials on public finance and transparent budgeting. INL assistance, through the United Nations Development Program, is helping the Tunisian Anti-Corruption Agency build its capacity to deter, detect, and punish acts of corruption.

Ukraine – The U.S. Department of Commerce’s Commercial Law Development Program helped Ukraine improve transparency in trade and facilitated its accession to the World Trade Organization (WTO) Government Procurement Agreement. In 2015, with INL funding, DOJ legal advisors provided input into a comprehensive anti-corruption legislative package which established a National Anti-Corruption Bureau charged with investigating high level corruption, created a national agency to prevent corruption, and created a specialized anti-corruption unit within the Prosecutor General’s Office. An INL-funded DOJ law enforcement advisor introduced ethical standards and internal investigation units within law enforcement. ...

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C. INTERNATIONAL, HYBRID, AND OTHER TRIBUNALS

1. International Criminal Court

a. *Overview*

On October 31, 2016, Valerie Biden Owens, Senior Advisor for the U.S. Mission to the United Nations, delivered remarks at the UN General Assembly on the report of the International Criminal Court (“ICC”). Her remarks are excerpted below and available at <https://2009-2017-usun.state.gov/remarks/7530>.

* * * *

The United States continues to view the end of impunity for mass atrocities as both a moral imperative and a stabilizing force in international affairs. To this end, we continue to work with bilateral partners, regional organizations, bodies of the United Nations, and—on a case-by-case basis and in a manner consistent with U.S. law and policy—with the International Criminal Court to identify practical ways to advance accountability for the worst crimes known to humanity. As is so often the case, the past year has seen both remarkable progress and deeply frustrating setbacks in that regard, reinforcing how important it is that the international community strive to find ways to intensify our collaboration in support of justice and to reflect and take stock of our common efforts.

As reflected in the President's report, there have been a number of successes for accountability at the International Criminal Court, reflecting the many ways in which it and other courts like it can act. The United States has welcomed the conviction in September of Ahmed al-Mahdi for destroying mausoleums and shrines in Timbuktu—a verdict that emphasized the seriousness with which the international community views the purposeful destruction of cultural property. We have welcomed the upcoming opening of the trial of Dominic Ongwen, who will be the first commander of the Lord's Resistance Army to answer charges for his role in that vicious armed group's crimes against civilians. And most recently, Jean-Pierre Bemba's conviction in March for war crimes was followed just two weeks ago by a verdict finding him and four associates guilty of offenses against the administration of justice, showing that the ICC can also act to protect the integrity of its own proceedings.

Given recent developments, it seems appropriate to note that all of these landmarks occurred in situations where the ICC acted at the invitation of a national government that was unable to investigate, bring charges, and help vindicate the rights of victims itself.

We welcome the report of continued collaboration between the Court and peacekeeping missions authorized by the Council to support appropriate national efforts to pursue justice and accountability, as well as the continued work by UN-Women, the Special Representative of the UN Secretary General on Sexual Violence in Conflict, and the Office of the Prosecutor to ensure that sexual and gender-based violence receives the attention and the focused effort toward accountability that it too rarely receives.

* * * *

Clearly, there remains 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 ICC 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.

We note in this regard that the United States continues to have serious concerns about the Rome Statute amendments on the crime of aggression adopted in 2010 at Kampala. We believe it is in the interest of both peace and justice to ensure that any decision to activate the Court's jurisdiction over that crime be preceded by concrete steps to provide greater clarity regarding certain critical issues, including regarding what conduct and which states would be covered by the amendments. We continue to believe that a decision to activate the amendments without clarification of these issues will further chill the willingness of states to take action aimed at stopping the very atrocities that prompted the Court's creation, and will compound the

challenges already facing the Court by enmeshing it in disputes of a far more political character than it currently faces.

* * * *

b. *Assembly of States Parties*

On November 17, 2016, Todd Buchwald, Ambassador-at-Large for Global Criminal Justice issues, delivered remarks at the annual ICC Assembly of States Parties meeting. His remarks are excerpted below and available at https://2009-2017.state.gov/j/gcj/us_releases/remarks/2016/264404.htm.

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We meet here, and we work together in New York and in Geneva and in capitals around the world, because the fight to end impunity for the world's worst crimes must be won, even if doing so takes decades. The United States has shown a deep commitment to that fight ever since Robert Jackson observed at the outset of the International Military Tribunal at Nuremberg that some crimes were "so calculated, so malignant, and so devastating, that civilization cannot tolerate their being ignored, because it cannot survive their being repeated."

The United States welcomes this annual opportunity to engage as an Observer State with the International Criminal Court and its states parties in pursuing our shared objective of ensuring accountability for crimes that shock the conscience of humanity. While recognizing that we continue to face challenges in this endeavor, I would like to reflect today on some of the remarkable achievements we have seen in the past year.

First, in March we welcomed the Court's first conviction for crimes of sexual violence, a verdict that makes more vivid and concrete the principle that so many of us have repeated over and over—that the use of sexual violence as a tactic of war must not be tolerated. This is a scourge that must be condemned to the past. We appreciate the Prosecutor's continued efforts to bring attention to these crimes, including by ensuring that the trial of Dominic Ongwen will address allegations of sexual violence. For our part, the United States remains committed to efforts to hold accountable those responsible for sexual violence. In that vein, we were pleased to announce in September additional funding to support Guinea's efforts to bring to trial those responsible for the brutal rape and killing of hundreds of civilians during the 2009 stadium massacre.

Also in September, we saw the Court's first conviction for crimes related to the destruction of cultural heritage. The statement made by the Prosecutor underscored the importance of these crimes, vividly describing them as an effort to eliminate "the physical manifestations that are at the heart of communities" and "a profound attack on the identity, the memory, and therefore the future of entire populations." It is with this same recognition in mind that the United States has been dedicated to the protection of cultural heritage across the world and particularly in conflict zones, including through combatting the trafficking of antiquities looted by Da'esh and supporting conservation efforts in Syria and Iraq.

Finally, we welcomed just last month the Court's first conviction for witness tampering. The corrupt influencing of witnesses, and the use of intimidation and violence against them, poses a grave threat to efforts to expose the truth about atrocity crimes and provide justice to victims.

More broadly, the United States is pleased to have played a supporting role in a number of positive developments we have seen this year in the pursuit of justice for atrocities and other serious crimes. We have provided or committed financial or in-kind support to a number of justice initiatives, including the Extraordinary African Chambers' proceedings that led to the conviction of former Chadian President Habré, the newly created Specialist Chambers in Kosovo, and the Special Criminal Court being developed by authorities in the Central African Republic.

Our work with Ugandan and Central African authorities set Dominic Ongwen on the path to a courtroom in The Hague—and the State Department continues to offer rewards for information leading to the apprehension of a number of other individuals charged by international tribunals, through a program launched and more recently expanded by bipartisan majorities of the U.S. Congress.

And the United States, including U.S. law enforcement agencies, is committed to working with our partners here and elsewhere to better ensure that witnesses who have the courage to speak the truth about such crimes are not made victims for doing so, and that witness intimidation does not become a pathway to impunity.

At the same time, in spite of all our common efforts, we must acknowledge important frustrations over the last year. In Darfur, for example, the lack of accountability for past crimes has sustained a climate in which abuses continue—and the recent debates over immunity and withdrawal should not diminish concern for the desperate plight of victims.

And, even as we gather here this week, horrific atrocities in Syria and Iraq continue to shock the conscience. In March, Secretary Kerry spoke boldly and decisively in concluding that Da'esh is responsible for genocide in Iraq against groups in areas under its control, including Yezidis, Christians, and Shia Muslims; and he has also spoken forthrightly about atrocities in Syria, including his recent condemnation of "what can only be described as crimes against humanity taking place on a daily basis," and his call for crimes in Syria to be investigated and for those who commit them to be held accountable. It is incumbent on the international community not to turn a blind eye to these atrocities; we must work tirelessly to identify ways to bring to justice those most responsible.

In other situations, we have seen tentative steps toward reckoning with similarly serious crimes. We continue to support the government of the Central African Republic's efforts to establish a Special Criminal Court, which will work alongside the ICC—which is already investigating at the government's request—as a strong ally to bring to justice those responsible, at all levels, for atrocity crimes. We urge the CAR authorities to complete this process. We also continue to call for the establishment under the auspices of the African Union of the Hybrid Court for South Sudan, which the parties to South Sudan's conflict have agreed must be created as part of a sustainable peace. The African Union has already taken some preliminary steps toward establishing the court, and if these are completed, the court has the potential to be a model of a joint effort between states and the African Union to end impunity and pursue justice for victims.

The ICC of course continues to play an important role in the broader array of efforts to promote justice, alongside regional, domestic, and hybrid institutions—and the recent decisions to withdraw from the Court will not diminish the underlying imperatives for accountability that have fueled these efforts. As we have said, though, the best prospects for ensuring justice lie in the first instance in the strengthening of national institutions and political will, and in the efforts of States to promote capacity and progress at that level, in particular in societies striving to rebuild after years of conflict. At the same time, the United States urges its fellow States and the Court itself to do all they can to support and respect genuine domestic efforts to ensure accountability and promote justice.

It is in the context of the Court's role in promoting justice for atrocity crimes that I would recall the concerns the United States has consistently raised with respect to the crime of aggression amendments. We continue to believe there remains a dangerous and substantial degree of uncertainty with respect to quite basic issues regarding the amendments, and we continue to believe that it is in the interest of both peace and justice to ensure that any decision to activate the Court's jurisdiction be preceded by concrete steps to provide greater clarity on these matters.

The United States has played an active and leading role in promoting justice for mass atrocities for more than seventy years. We look forward to our continued partnership in service of these goals.

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c. Central African Republic

On March 21, 2016, Ambassador Samantha Power, U.S. Permanent Representative to the United Nations, issued a statement on the conviction by the ICC of Jean-Pierre Bemba Gombo, which is available at <http://2009-2017-usun.state.gov/remarks/7199>. The State Department issued a press statement on March 22, 2016 on Gombo's conviction, which is excerpted below and available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/03/254958.htm>.

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The United States welcomes yesterday's verdict at the International Criminal Court (ICC) in the case against Jean-Pierre Bemba Gombo, a former vice president of the Democratic Republic of the Congo and previously a leader of a Congolese rebel group that committed widespread atrocities in the Central African Republic (CAR) from 2002 to 2003. His conviction for rape, murder, and pillaging as war crimes and crimes against humanity while a rebel leader brings an important measure of justice to the victims of these crimes and in particular advances the fight against impunity for sexual violence in conflict.

Those who are responsible for such heinous acts must be held accountable. Yesterday's verdict, which recognizes Bemba's command responsibility for atrocities committed by his forces, demonstrates that those responsible for such crimes—even those at the highest levels—cannot expect to escape justice. Secretary Kerry has reinforced this important principle, stating at

the Global Summit to End Sexual Violence in Conflict that “responsibility goes straight to the top, even to the military commanders who knew or should have known about sexual violence and failed to act.”

The United States supports the ICC’s investigations in the Central African Republic, and we commend CAR’s commitment to ensuring accountability for serious crimes, including through its cooperation with the ICC in this matter as well as through domestic efforts to pursue justice. Yesterday’s decision follows other important recent efforts through both national and international judicial processes to begin to change the culture of impunity in the region. Recognizing the importance of this decision to many in Central Africa, we urge all stakeholders to respond in a measured and non-violent manner to this landmark judgment.

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d. ICC Case on Destruction of Cultural Sites in Mali

In a September 27, 2016 press statement, the U.S. Department of State welcomed the ICC verdict in a case against Ahmad Al Faqi Al Mahdi of the Islamic extremist group Ansar al-Dine (“AAD”). As discussed in *Digest 2015* at 104-05, Al Faqi was surrendered to the ICC for prosecution in 2015 and faced charges of war crimes relating to intentional attacks against Muslim shrines and mausoleums in Timbuktu. The 2016 press statement welcoming Al Faqi’s sentence is available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/09/262507.htm>, and excerpted below.

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The United States welcomes today’s verdict at the International Criminal Court (ICC) in the case against Ahmad Al Faqi Al Mahdi, a member of the violent extremist group Ansar al-Dine. Al Faqi, who surrendered to the ICC in 2015 by Nigerien authorities and pled guilty to one charge of war crimes related to intentionally directing attacks against Muslim shrines and mausoleums in Timbuktu, was sentenced to 9 years of imprisonment.

As we have seen in Mali and other contexts, the destruction of cultural artifacts and monuments has been used as a tool to seek to terrorize, to erase history, and to eradicate the identities of communities. These are assaults not just on a country and its people, but on the common cultural heritage of all humankind, and those responsible for these acts should face justice. Secretary Kerry has underscored that such acts “are a tragedy for all civilized people, and the civilized world must take a stand.” Al Faqi’s conviction is part of broader national and international efforts to protect cultural property, and it sends an important message to those responsible for such crimes that impunity will not prevail.

The United States supports efforts by the ICC and Malian authorities to provide justice for these serious crimes committed in Mali. We commend Mali for its cooperation with the ICC in this matter, and we encourage continued national and international efforts to bring to justice senior extremist leaders who led the campaign to terrorize northern Mali and destroy symbols of its rich history of tolerance and cultural pluralism.

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e. Sudan

On June 9, 2016, Ambassador David Pressman, Alternate Representative to the UN for Special Political Affairs, 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://2009-2017-usun.state.gov/remarks/7323>.

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This Council referred the situation in Darfur to the International Criminal Court in 2005. Since then, the instability, insecurity, violence, and suffering in Darfur has continued unabated. ... The United Nations has verified that 68,000 people have been displaced since January of 2016 due to the fighting, raising the total number of internally displaced persons in Darfur to more than 2.7 million with 5.8 million people in need of humanitarian assistance.

Further compounding the problem has been the obstruction of humanitarian assistance, including food and critical medical care. ...

The Secretary-General has reported for months that the vacancy rates in UNAMID's human rights and protection of civilians sections are 50 and 40 percent, respectively. These vacancies in the human rights and protection staff of UNAMID are unacceptable and they are due to the systematic denial of visas by the Government of Sudan. Restrictions and impediments imposed by Khartoum have also precluded UN agencies from ascertaining the scale of civilian casualties and displacement from fighting, and from otherwise comprehensively reporting on the situation on the ground. These provocative acts—acts like kicking out the head of OCHA—have also done little to awaken the Security Council's readiness to respond. That's not how the system was supposed to work. Indeed, the Security Council's inability to agree even on the most basic responses to extraordinary provocations is a collective failure.

As we consider this vicious cycle, and our seeming inability to agree on how to stop it, we at least must remain committed to reaffirming our commitment to justice for the victims of genocide and atrocities in Darfur. Failure to provide accountability for the injustices the victims and survivors have incurred emboldens further abuses in Sudan and outside of Sudan. ...

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...[W]e thank the Prosecutor for her office's continued investigations into abuses in Darfur, and for her long-standing efforts to promote justice for attacks on civilians, including humanitarian workers, and peacekeepers, by government and armed opposition groups. We also continue to support UNAMID and its work, which is crucial to efforts to alleviate the suffering of civilians, and to ensure allegations of atrocities can be investigated, as in the numerous cases of conflict-related sexual violence documented by UNAMID in 2015 and to which the Prosecutor refers in this report. It is critical that the Security Council, for its part, do more to help ensure compliance with Resolution 1593, and press Sudanese authorities to fulfill Sudan's obligation to cooperate fully with the Court and with the Prosecutor. While, as the Security Council noted in a letter to the International Criminal Court, the Decisions of Pre-Trial Chambers on the situation in Darfur have been brought to the attention of members of the

Council; this is far from enough. We also continue to call on all governments not to invite, facilitate, or support travel for individuals subject to arrest warrants in the ICC's Darfur situation, and for Sudan to fully cooperate with the ICC. And we continue to believe that the Court's arrest warrants in the Darfur situation should be carried out.

History has shown that the road to accountability can be long and difficult, but that justice can ultimately triumph against long odds. The developments in the Extraordinary African Chambers in Senegal, including the recent conviction of former President Hissène Habré, are but one testament to the idea that the tenacity of victims of mass atrocities in seeking justice should not be underestimated. And this example shows what is possible when governments, regional bodies, and victims' groups cooperate to ensure that justice is done. I'd like to emphasize this point, because indeed, it is not just institutions and governments that have a role to play—individuals can help too, and they are essential. We are heartened by those in civil society—from South Africa to Uganda—who have continued to show their solidarity with those who have suffered so much.

And while it is easy to be daunted by the obstacles to accountability, the International Criminal Court's investigation in Darfur has brought some measure of hope to victims of atrocities there. There can be both purpose and dignity in coming forward and speaking out about atrocity crimes. We commend the bravery of these victims and look forward to the day when they, like the victims of the Habré regime, see justice delivered in a court of law.

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 13, 2016, Ambassador Isobel Coleman, U.S. Representative to the UN for UN Management and Reform, delivered remarks at a UN Security Council briefing by the ICC Prosecutor on the situation in Darfur. Her remarks are excerpted below and available at <https://2009-2017-usun.state.gov/remarks/7606>.

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It is clear that the need for justice continues. In that regard, it is far too easy to miss the tremendous suffering of victims, especially when the tempo of conflicts in Syria and South Sudan—and elsewhere—has meant that the long-lasting conflict in Darfur can all too often slip off the front pages. But we should be alarmed that there has been far more attention of late paid to criticizing the ICC's efforts in Darfur than to seeking justice for Sudanese victims of mass killings, widespread rapes, and destruction of communities that led this body to refer the situation in Darfur to the ICC Prosecutor.

We also remain deeply concerned that President Bashir—and others facing arrest warrants in the ICC's situation in Darfur—continues to be welcomed by certain Member States. The hundreds of thousands of victims of atrocities in Darfur who saw their loved ones injured and killed, their homes burned, and their communities destroyed, must see us stand with them.

...

[W]e are heartened by the many states that continue to refuse to welcome to their countries the individuals subject to ICC arrest warrants in the Darfur investigation, and we commend those who have spoken out against President Bashir's continued travel.

There is a path forward for a peaceful, stable future in Sudan. A comprehensive peace process that addresses the political, security, and humanitarian issues at the root of Sudan's conflicts is critical. We welcome the recent reduction in fighting in many parts of Darfur and the announcements that the government and three of the four largest armed groups in Sudan have committed to extend their Cessation of Hostilities through the dry season. We call on the Sudan Liberation Army-Abdul Wahid to do the same. And it is critical that UNAMID have access throughout Darfur to ensure that any alleged violations of the Cessation of Hostilities can be investigated.

Ultimately, accountability for atrocities committed in Sudan is essential for building adherence to the rule of law and breaking the cycle of impunity where past crimes beget future crimes. Instead, justice can give us a different path, breaking that cycle of impunity, and restoring dignity to victims and their families through a public acknowledgment of the gravity of the wrongs done to them. Now is a time for all of us to recommit to the pursuit of justice in Sudan.

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f. *Libya*

On May 26, 2016, Ambassador Michele J. Sison, U.S. Deputy Representative to the UN, delivered remarks at a UN Security Council briefing on Libya. Ambassador Sison's remarks are excerpted below and available at <http://2009-2017-usun.state.gov/remarks/7302>.

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The abuses that the prosecutor has described today, and which have been reported separately to the Security Council and the Human Rights Council, emerge from a broader political and security crisis in Libya. In that context, the United States welcomes the positive political developments that have taken place since the prosecutor last briefed the Security Council on the situation in Libya last year, including the arrival of the Presidency Council led by Prime Minister Sarraj in Tripoli and the decision of the Presidency Council to have the ministers of the Government of National Accord begin work in a caretaker status.

We also echo the unified message of the joint communiqué on Libya issued in Vienna on May 16 on behalf of 21 of Libya's partners, three regional organizations, and the United Nations, expressing our support for the Government of National Accord and for its efforts to restore state authority and the rule of law. Uniting behind the Government of National Accord represents the only path toward the kind of national cohesion that will be needed to defeat Da'esh and other violent extremists.

The need for progress in these areas has never been more urgent, and the human costs of its absence have been high. We continue to see deeply worrying reports of abuses against civilians, and the environment for those who seek to document or seek justice for these actions remains hostile as well. An investigation by the UN's Office of the High Commissioner for Human Rights recently reported disturbing instances of attacks against, and harassment of, judicial actors and court facilities, as well as human rights defenders and journalists. It also describes sexual violence against women in detention committed by one armed faction. The fear of abduction or other abuses has left many women in Da'esh-controlled areas effectively trapped in their homes.

The United States continues to condemn the abuses that Da'esh-affiliated groups have committed in Sirte and other areas under Da'esh control, including killings of civilians and members of the security forces. As we have made clear, the United States will support the application of targeted individual sanctions against those who engage in activity that threatens Libya's peace, security, and stability and those involved in certain serious abuses or violations of human rights. But ultimately, to halt these abuses, it will be critical for the Government of National Accord to restore confidence in the rule of law and reverse the collapse of Libya's domestic judicial system, which must be able to investigate and pass judgments without fear of reprisal, and which must do so in a way that respects the rights of defendants.

This is critical for reengaging Libyans in the political process and restoring trust in democratic institutions. To promote a culture of accountability in Libya, we strongly support efforts to promote a reckoning for the abuses that were committed in the final days of the Qadhafi regime—including the crimes against humanity of murder and persecution for which Saif Qadhafi is alleged to have been responsible in the course of helping carry out a policy to attack civilians who were holding demonstrations against his father's government.

We welcome what the prosecutor has continued to describe as a cooperative relationship between Libya's prosecutorial authorities and her office, and we urge the Government of National Accord to sustain and build upon this relationship, consistent with the Security Council's continuing call for Libya to cooperate with the prosecutor.

We also welcome the acknowledgement by Libyan authorities that Saif Qadhafi is not in their custody, and we urge the Government of National Accord to take appropriate steps to seek Qadhafi's transfer to the International Criminal Court.

Ending impunity is only one of several critical challenges the Government of National Accord faces, although success in that regard will reinforce progress in others.

We appreciate the contribution that Prosecutor Bensouda and her office have made in helping promote accountability in Libya, which reinforces what we continue to say: that the Government and the Libyan people are far from alone as they stand at the beginning of this new chapter in Libya's history, and that the United States and many other partners will stand with them as they seek to build a just and lasting peace.

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On November 9, 2016, Ambassador Sison delivered remarks at a UN Security Council briefing on Libya. Ambassador Sison's remarks are excerpted below and available at <https://2009-2017-usun.state.gov/remarks/7540>.

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Libya's ongoing crisis provides a climate of impunity for [atrocities] crimes. More broadly, it has impeded the ability of the Libyan people to see the hope of their country's revolution translated into an enduring foundation for peace, stability, and prosperity. The next step toward a solution is a stable, unified, and inclusive government, so the international community must help Prime Minister al-Sarraj consolidate progress toward implementing the Libyan Political Agreement and strengthen Libya's institutions.

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Violations and abuses continue to be committed against people from a wide range of vulnerable populations, ranging from civilians who are subject to indiscriminate or even deliberate attack, to captured combatants who have been tortured and killed, to migrants who have sought to pass through Libya and have been inhumanely detained, extorted, sexually assaulted, and otherwise exploited by smugglers and traffickers.

UNSMIL has reported that there is "total impunity" for serious abuses committed by armed groups. These violations and abuses are appalling in their own right. Furthermore, they create grievances that sustain the broader political crisis and thus work against our common efforts to achieve a lasting peace. We call on all parties to refrain from unlawfully targeting civilians, and we urge that those responsible for serious crimes be held accountable. Much more must be done to establish a functioning justice system capable of addressing this problem. We are encouraged by the progress of forces aligned with the Government of National Accord in retaking the city of Sirte, and we look forward to seeing this progress further consolidated in the coming days and weeks. Da'esh's presence is a threat to Libya's future and to regional security. Its eventual military defeat must be reinforced with progress toward reconciliation, dialogue, and the rule of law.

In that vein, the atrocities allegedly committed in the last days of the Qadhafi regime may seem far removed from today's conflict, but we believe that promoting accountability for those acts remains a key element of the broader effort to reestablish the rule of law in Libya. The ICC's investigation has helped ensure that the Qadhafi regime's acts in early 2011 were seen as the crimes that they are, and that those responsible for such acts could not count on impunity.

We remain encouraged by the reports of continued cooperation between Libya's judicial authorities and the Office of the Prosecutor. While we recognize that Saif al-Islam al-Qadhafi is not in the Libyan government's custody, we continue to urge the Government of National Accord to take appropriate steps to seek his transfer to the International Criminal Court, consistent with Libya's obligations under Resolution 1970 and the repeated calls of the Security Council for Libya to cooperate fully with the ICC and the Prosecutor.

To the extent that other actors continue to frustrate this process, we encourage this Council to add its voice to the call for Mr. Qadhafi to be transferred to The Hague and face charges there for the crimes against humanity he is alleged to have committed. We appreciate the Prosecutor's efforts to help ensure that the victims of such atrocities do not escape our continued focus.

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

a. General

On June 8, 2016, Ambassador David Pressman, Alternate U.S. Representative to the UN for Special Political Affairs, delivered remarks at a UN Security Council debate on the International Criminal Tribunal for the former Yugoslavia (“ICTY”) and International Criminal Tribunal for Rwanda (“ICTR”). Ambassador Pressman’s remarks are excerpted below and available at <https://2009-2017-usun.state.gov/remarks/7317>.

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The International Criminal Tribunal for Rwanda, the International Criminal Tribunal for the Former Yugoslavia, and now, the Mechanism for International Criminal Tribunals have been and are essential components in advancing peace and justice in Rwanda and the former Yugoslavia and the development of international law.

Most recently, in March of this year, Radovan Karadžić—a person that Ambassador Power recently described as “a man who believed he could do what he wanted, when he wanted, consequences to others be damned”—... was found guilty and sentenced to 40 years in prison for genocide, crimes against humanity, and violations of the laws and customs of war. More specifically, the underlying crimes attributed to Karadžić included persecution, extermination, murder, deportation, forcible transfer, terror, unlawful attacks on civilians, amongst others.

While legalisms and legal definitions can never adequately convey the inhumanity of what happened, what was experienced, what was done to human beings, the pursuit of sober justice and the obedience to facts inherent in that process is essential if we are ever to stop these crimes from occurring again. In the 1995 order confirming the Srebrenica indictment against Karadžić, Judge Riad wrote that the events of Srebrenica were “truly scenes from hell, written on the darkest pages of human history.” There were, he wrote, “thousands of men executed and buried in mass graves, hundreds of men buried alive, men and women mutilated and slaughtered, children killed before their mothers’ eyes, a grandfather forced to eat the liver of his own grandson.”

The establishment of facts, as part of the process of advancing justice, is critical to counter those who seek to distort facts, revise history, or rewrite reality. That genocide occurred at Srebrenica was firmly established both by the ICTY and the International Court of Justice. There is no fact-based debate. This is our history. These well-established facts render all the more sad and shameful this Council’s failure to be able to adopt a simple resolution commemorating the 20th anniversary of Srebrenica. The facts are well established and, as one speaker said following the veto last year of a draft resolution recognizing these facts, “denial is the final insult to the victims.” Denial is of course dangerous, but the challenge posed by denial also highlights one of the most important contributions of international justice—of the process of meting out facts, of identifying individual responsibility—it is that it helps us understand what happened, how it happened, who was responsible—facts that hopefully allow us to learn how to prevent it from happening again.

Although some leaders, including in other contexts today, understandably fear trials and accountability, justice, and indeed peace requires our zealous pursuit of it. And the Karadžić conviction—and indeed the December arrest by Congolese authorities of Ladislas Ntaganzwa—is an important reminder that although time may pass, this imperative will not subside. And it is to that end, that we must remain persistent in our pursuit of the eight remaining fugitives indicted by the International Criminal Tribunal for Rwanda. The Mechanism needs to reenergize its efforts to apprehend these men, and the Member States of this organization—especially in the Great Lakes region of Africa—must proactively contribute to our shared efforts of holding these men accountable. The United States of America will continue to do our part, and we reiterate our offer of up to \$5 million in rewards for information leading to the arrest of Fulgence Kayishema, Charles Sikubwabo, Aloys Ndimbati, Augustin Bizimana, Charles Ryandikayo, Pheneas Munyarugarama, Félicien Kabuga, and Protais Mpiranya.

President Meron, Prosecutor Brammertz, the United States asks that you make tracking and apprehending these remaining fugitives a primary focus of the MICT's work going forward. It has been too long.

Before concluding, I would like to commend the ICTY under the solid leadership of President Agius for the progress made in completing its work over the past reporting period, and for ensuring that justice is served expeditiously while respecting the rights of the accused. The Tribunal has now completed almost all of its cases, with only two defendants remaining at the trial stage and two appeals ongoing.

We have confidence that the ICTY can meet its commitment of completing its work by the end of 2017. In this regard—and in light of President Aguis' briefing—the United States would like to reiterate the importance of full cooperation of all concerned states with the ICTY, including with respect to the execution of arrest warrants issued by the ICTY for three individuals in a contempt case.

Mr. President, we should be circumspect of leaders who suggest that justice comes at the expense of reconciliation or unity. Trials may be inconvenient to those who bear responsibility for grave crimes—be they Milošević or Karadžić, Akayesu or Nahimana—but as our experience here has demonstrated it is simply not true that pursuing justice frustrates reconciliation or upsets unity. It does the opposite. The pursuit of justice is vital to understanding the events of dark pasts, to proving facts, and disproving fictions. That some leaders in other contexts may prefer a course other than accountability suggests they are interested in advancing objectives unrelated to our collective pursuit of sustainable peace.

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On November 9, 2016, Valerie Biden Owens, Senior Advisor for the U.S. Mission to the United Nations, delivered remarks on the reports of the International Criminal Tribunal for the former Yugoslavia ("ICTY") and Mechanism for International Criminal Tribunals ("MICT") at the 71st session of the UN General Assembly. Ms. Owens's statement is excerpted below and available in full at <https://2009-2017-usun.state.gov/remarks/7543>.

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Regarding the work of the ICTY, the United States continues to support the Tribunal's important work in moving forward thoroughly and expeditiously to render verdicts in cases that serve the broader needs of justice while protecting the rights of the accused. We have confidence that the ICTY can meet its commitment of completing its work by the end of 2017. In this regard, the United States would like to reiterate the importance of full cooperation of all concerned states with the ICTY, including with respect to the execution of arrest warrants issued by the ICTY for three individuals in a contempt case.

Turning to the Mechanism for International Criminal Tribunals, the United States commends the Mechanism's efforts to assist national jurisdictions. The pursuit of justice for victims in Rwanda and the former Yugoslavia must not end with the closure of the ICTY and the International Criminal Tribunal for Rwanda, or ICTR. While both the ICTR and the ICTY have successfully tried many high-level perpetrators, further accountability for the crimes committed now depends on fair and effective trials for mid- and lower-level perpetrators in national courts. The United States recognizes the great depth of expertise and breadth of evidence that Tribunal counsel, judges, and staff can bring to bear in assisting national prosecutions and supports the Mechanism's efforts to assist national justice sectors.

The United States further supports the Mechanism's prioritization of the location and arrest of the remaining fugitives from the ICTR. The international community must not relent in the pursuit of these defendants, whose names and associated heinous allegations, bear repeating: 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 is alleged to have 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.

We must continue to recall these names and deeds until each and every one of these men stands to answer for their alleged actions. Recognizing that state cooperation will be essential for their capture, the United States remains unwavering in its commitment to ensuring that these eight fugitives are apprehended and brought to justice. We continue to offer a reward of up to \$5 million for information leading to the arrest or transfer of these fugitives.

The United States would like to express its concern regarding the impact of Judge Akay's detention on the important work of the Mechanism. Judge Akay was arrested during a period of time when he was working on a Mechanism case. In this connection, we recall that the Statute of the Mechanism provides for judges to work remotely except for sittings or as directed by the President. With this in mind, we hope that this matter can be resolved expeditiously and in a transparent manner.

As the Mechanism commences its next phase of operations, we commend President Meron for his judicious leadership in ensuring a seamless transfer of functions from the ICTY and the ICTR to the Mechanism. Although the Mechanism's size and functions will diminish over time, a great deal of work remains to be done, and its importance remains as central as ever. 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. The successful completion of the work of the Mechanism will serve to prove that justice is not a distraction from work of advancing international peace and security, but the essence of it.

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On December 8, 2016, Ambassador Isobel Coleman, U.S. Representative to the UN for UN Management and Reform delivered remarks at a UN Security Council open debate on the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda. Ambassador Coleman's remarks are excerpted below and available at <https://2009-2017-usun.state.gov/remarks/7591>.

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The United States extends its sincere appreciation to President Agius, President Meron, and Prosecutor Brammertz for your reports today to this Council, as well as for your leadership and contributions to advancing justice for victims of the worst atrocities committed in the former Yugoslavia and Rwanda. Without the diligence and determination of jurists and staff at these tribunals, perpetrators of the worst crimes known to humanity—genocide, war crimes, and crimes against humanity—could continue to live freely, in impunity—an unacceptable outcome.

The persistent efforts of these tribunals resulted in significant milestones this year that serve to warn would-be perpetrators everywhere that there will be no escape from justice. Earlier this year, former Republika Srpska President Radovan Karadžić was found guilty and sentenced to 40 years in prison for genocide, crimes against humanity, and violations of the laws and customs of war—a historic conviction that once seemed impossible. Just this week, the ICTY commenced closing arguments in the case of Bosnian Serb military commander Ratko Mladic, who stands accused of genocide of Bosniaks from Srebrenica, terrorizing the population of Sarajevo, and taking UN peacekeepers hostage.

The United States supports the work of the Mechanism to conclude expeditiously the retrial of the case of Stanisić and Simatović and the appeals proceeding in the cases of Radovan Karadžić and Vojislav Šešelj.

The ICTY establishes facts through judicial process, which is critical to counter those who seek to distort facts, revise history, or rewrite reality. The United States notes with great concern the detrimental impact of increasingly divisive political speech in the region about the pursuit of justice for war crimes committed in the former Yugoslavia. Such inflammatory rhetoric can harm regional cooperation among the states of the former Yugoslavia, which is essential to promoting accountability for war crimes.

The United States would like to reiterate the importance of full cooperation of all concerned states with the ICTY. The United States remains concerned that three arrest warrants for individuals charged with contempt of court in relation to witness intimidation in the case of Šešelj remain unexecuted in Serbia for 22 months. Recognizing that cooperation is an on-going obligation essential to the functioning of the tribunal, the United States calls on Serbia to execute these arrests expeditiously. Failure to fully cooperate with the tribunal in accordance with its statutes and the resolutions of this Council compromises the core functions of the international justice system and must be addressed with appropriate urgency.

The United States commends recent efforts by the prosecutor's office to review its fugitive tracking efforts and implement revised strategies to address key challenges, so that the eight remaining fugitives from the International Criminal Tribunal for Rwanda may be swiftly located, arrested, and brought to justice. The United States is unwavering in its commitment to ensuring that these fugitives are apprehended and brought to justice, and we continue to offer a reward of up to \$5 million for information leading to the arrest or transfer of these eight men.

The United States would also like to express our sincere appreciation for the tribunals' efforts, especially the Office of the Prosecutor, in building capacity among national prosecutors. The pursuit of justice for victims in Rwanda and former Yugoslavia must not end with the closure of these tribunals. While both tribunals have successfully tried many high-level perpetrators, further accountability for crimes committed depends on fair and effective trials for alleged mid- and lower-level perpetrators in national courts.

The United States remains deeply concerned about the Mechanism's casework that is being severely impaired while Judge Akay, who is expected to be working on a case before the Mechanism, remains detained in Turkey. We recall that the UN Security Council designed the Mechanism in a way that provides for judges to work remotely except for sittings or as directed by the President, and we reiterate the importance of judges being able to carry out this important work on behalf of the United Nations. With this in mind, we hope that this matter can be resolved expeditiously.

Thanks to the unrelenting dedication of these tribunals, the victims of horrific atrocities have received a meaningful measure of justice. Promoting justice and accountability is all the more critical in the present moment when leaders' horrific acts against civilians have so far been met with impunity in places like Syria and South Sudan. The successful completion of the work of the Mechanism will serve to prove that justice is not an afterthought in the work of advancing international peace and security, but the core of it.

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b. International Criminal Tribunal for the Former Yugoslavia

On March 24, 2016, Ambassador Power issued a statement on the conviction of Radovan Karadzic by the International Criminal Tribunal for the Former Yugoslavia ("ICTY"). Ambassador Power's statement is excerpted below and available at <http://2009-2017-usun.state.gov/remarks/7202>.

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I welcome the decision by the International Criminal Tribunal for the Former Yugoslavia (ICTY) to convict Radovan Karadzic on 10 counts, including genocide, crimes against humanity, and violations of the laws and customs of war. As the war-time political leader of the Bosnian Serbs, Karadzic was behind countless crimes that shock the conscience. This day is long overdue.

From 1993 to 1995, I was a journalist living in the former Yugoslavia. While there, I spent considerable time in Sarajevo, the Bosnian capital, where Karadzic had lived many years before the war, ensconced in the intermingled population of Bosnian Muslims, Croats, Serbs, and Jews.

On the occasions I visited Karadzic's nearby stronghold of Pale during the war, I was always struck by the Bosnian Serb leader's nationalist zeal, as he was a gleeful propagandist for an ethnically pure Serb statelet. But more than this, I was struck by the confidence he exuded and the utter absence of concern he showed for his former friends and neighbors in the town he had once called home. Indeed, he often brought media with him when he visited the Serb forces laying siege—through devastating artillery strikes and vicious sniper attacks—to the same neighborhoods in which he had lived.

When I think back to Karadzic's long, rambling, perennially chipper press conferences, one word comes to mind: impunity. This was a man who believed he could do what he wanted, when he wanted, consequences to others be damned. I doubt that he ever seriously considered the possibility that he might one day be held accountable. Many brutal leaders today—Syrian president Bashar al-Assad, Boko Haram leader Abubakar Shekau, ISIL leader Abu Bakr al-Baghdadi—project that same self-assurance. Today's verdict sends those leaders and others like them a message: your crimes will never be forgotten, and one day you, too, will be held accountable for the horrors you have inflicted on civilians.

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c. UN Mechanism for International Criminal Tribunals ("MICT")

On March 23, 2016, the Department of State issued a press statement on the transfer of Ladislav Ntaganzwa to Rwanda by the Democratic Republic of the Congo pursuant to an arrest warrant by the UN Mechanism for International Criminal Tribunals ("MICT"). The press statement is excerpted below and available at <http://2009-2017.state.gov/r/pa/prs/ps/2016/03/255057.htm>.

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The United States welcomes the transfer of Ladislav Ntaganzwa by the Government of the Democratic Republic of the Congo (DRC) to face trial in Rwanda for several crimes, including genocide and crimes against humanity, pursuant to an arrest warrant by the United Nations Mechanism for International Criminal Tribunals (MICT). This transfer is a positive example of regional judicial cooperation and took place as a result of close coordination and consultation by the DRC government and the MICT, as well as other diplomatic partners. Ntaganzwa is the sixth individual indicted by the International Criminal Tribunal for Rwanda who has been arrested by

the Government of the DRC and transferred for trial.

Ntaganzwa's apprehension is a welcome step toward justice for the victims of the Rwandan genocide. Ntaganzwa is accused of abusing his position of power as a mayor to help plan, prepare, and carry out the massacre of over twenty-thousand Tutsis at Cyahinda parish—many of whom had gathered to take refuge from massacres in the surrounding countryside—as well as thousands of killings elsewhere in Rwanda. As a reminder of the brutal way in which sexual and gender-based violence is often used as a tactic of war, Ntaganzwa is also charged with giving direct orders for women to be brutally, and repeatedly, raped.

We commend the efforts of those involved in Ntaganzwa's transfer and whose actions made it possible for Ntaganzwa to face justice, and we encourage continued efforts to bring to justice those responsible for genocide and other atrocities in Rwanda. Eight individuals charged by the International Criminal Tribunal for Rwanda remain at large, and the United States remains committed to supporting their apprehension—and to showing the survivors of atrocity crimes around the world that the pursuit of justice knows no expiration date. ...

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3. Other Tribunals and Bodies

Extraordinary African Chambers

As discussed in *Digest 2015* at 116, the United States supported proceedings against former Chadian president Hissène Habré, brought before the Extraordinary African Chambers of Senegal by the Government of Senegal and the African Union. On May 30, 2016, Secretary Kerry issued a press statement welcoming the conviction of Habré for war crimes and crimes against humanity, including murder, torture, rape, and sexual slavery. May 30, 2016 press statement, available at <http://2009-2017.state.gov/secretary/remarks/2016/05/257811.htm>. Excerpts follow from Secretary Kerry's statement.

...This ruling is a landmark in the global fight against impunity for atrocities, including war crimes and crimes against humanity.

Habre's crimes were numerous, calculated, and grave. Beginning in 1982, his eight-year term as the president of Chad was marked by large-scale, systematic violations, including those involving murder of an estimated 40,000 people, widespread sexual violence, mass imprisonment, enforced disappearance, and torture. Without the persistence of his accusers and their demand for justice, Habre might never have faced a court of law. I especially commend the courage of the nearly 100 victims who testified, and I hope the truths uncovered through a fair and impartial trial will bring some measure of peace to his thousands of victims and their families.

As a country committed to the respect for human rights and the pursuit of justice, this is also an opportunity for the United States to reflect on, and learn from, our own connection with past events in Chad. I strongly commend the Senegalese Government, the Chadian Government, and the African Union for

creating the Extraordinary African Chambers that allowed for a fair and balanced trial. Let this be a message to other perpetrators of mass atrocities, even those at the highest levels and including former heads of state, that such actions will not be tolerated and they will be brought to justice.

Ambassador Power also issued a statement on May 30, 2016 on the conviction of Hissène Habré, which is available at <http://2009-2017-usun.state.gov/remarks/7309>.

Cross References

Treaties generally, **Chapter 4.A.1.**

Treaty transmittal including extradition and MLATs, **Chapter 4.A.2.**

Treaties receiving Senate advice and consent, **Chapter 4.A.3.**

Abu Khataallah case, **Chapter 4.C.1.**

Litigation regarding U.S.-Colombia extradition treaty, **Chapter 4.C.2.**

Meshal v. Higgenbotham, **Chapter 5.A.1.**

Trafficking in persons in periodic report on rights of the child, **Chapter 6.C.1.a.**

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Protecting human rights while countering terrorism, **Chapter 6.I.1.**

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Maritime security and law enforcement, **Chapter 12.A.5.**

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Nuclear security treaties, **Chapter 19.B.4.a.**

Nuclear terrorism, **Chapter 19.B.4.b.**