

**ASIL TASK FORCE
ON POLICY OPTIONS
FOR U.S. ENGAGEMENT
WITH THE ICC**



EXECUTIVE SUMMARY



American Society
of International Law



FOREWORD

Over the past decades, the relationship of the United States to the International Criminal Court (ICC) has presented some of the most notable questions of international law and policy facing the U.S. Government, presenting complex and ever-shifting legal and political considerations. The Society, as a non-partisan organization devoted to the study of international law, is well-suited to the task of bringing to bear on these questions the expertise of distinguished independent experts drawing from a broad range of perspectives among policymakers, civil society, and the public.

It has been over 12 years since ASIL President Lucy F. Reed convened a task force, chaired by Ambassador William H. Taft IV and Judge Patricia M. Wald, to examine the U.S. relationship with the ICC and to produce a set of recommendations for the then newly elected Obama Administration. The report of that Task Force, [*U.S. Policy Toward the International Criminal Court: Furthering Positive Engagement*](#), built on the more nuanced relationship and greater openness to engagement with the ICC that had begun to emerge during the second term of the George W. Bush Administration, and many of the report's suggestions were ultimately reflected in the policies adopted by the Obama Administration.

Much changed over the intervening years and in late 2019, President Sean D. Murphy commissioned a new Task Force, with generous support from the Open Society Foundations. Chaired by Todd Buchwald and Beth Van Schaack, the Task Force was charged with conducting a review of the U.S. relationship with the ICC and offering recommendations to Congress and the Administration for fostering pragmatic engagement. Since the Task Force began its work, the legal and political situation has continued to shift: the ICC opened investigations into the Afghanistan and Palestine situations; the U.S. imposed sanctions on the ICC Prosecutor and a senior staff member of the Court; a panel of nine eminent experts conducted an Independent Expert Review of the ICC and made extensive recommendations for reform; and the Assembly of States Parties elected a new Prosecutor who will take office in June 2021. Such developments emphasized both the challenge and the urgency of this effort.

Over the last 18 months, the Task Force and its 13-member Advisory Group have engaged in an extensive process of consultation and analysis that are exemplary of the engagement on matters of international law that ASIL encourages. The result is this excellent Report to recommend to policymakers concrete options that could be implemented for pragmatic engagement between the U.S. Government and the ICC. I am confident that both the process of the wide-ranging consultations that the Task Force undertook and the Report itself will help to advance understanding of international law and the United States's relationship with the ICC among policymakers and others, both in the United States and abroad. As with the previous Task

Force, the Task Force and Advisory Group members were selected to represent the diversity of views on the ICC within the ASIL membership and broader legal and policy community. Of course, the recommendations remain those of the Task Force and do not necessarily represent the views of the Society or its members.

I wish to thank the brilliant co-chairs, Todd Buchwald and Beth Van Schaack, for their expertise and commitment to this project, as well as our superb Project Director, Ben Batros, whose tireless efforts kept this complex project on track. I also extend my deep gratitude to the Task Force members—David Bosco, Sandy Hodgkinson, Saira Mohamed, and Alex Whiting—and to the members of our distinguished Advisory Group, whose insights were so important to the project’s success. Finally, I would like to express my appreciation to the Society’s Executive Director, Mark Agrast, Deputy Director, Wes Rist, and the ASIL staff, who skillfully launched and guided this project over these many months. ASIL is also of course deeply grateful to the Open Society Foundations for funding this project.

Catherine Amirfar
President

April 2021



EXECUTIVE SUMMARY

The goal of this Report is to provide relevant background about United States policy toward the International Criminal Court (ICC or Court) and to recommend options that can be implemented by the Executive Branch and Congress for engagement with the ICC. Accordingly, our recommendations are directed toward U.S. Government actors with an eye toward balancing the competing equities within the political branches and the relevant Executive agencies.

The Report describes a broad range of support that the United States has provided for international justice efforts over an extended period of time. The U.S. government has repeatedly expressed—in legislation, presidential directives, military manuals, strategic messaging, and elsewhere—its strong national interests in accountability, compliance with international humanitarian and human rights law, the prevention of mass atrocities, and the rule of law. Deep, bipartisan support for these underlying values is reflected in numerous ways, including the United States' instrumental role in establishing the Nuremberg and Tokyo tribunals to try major war criminals after World War II, its critical support for the International Criminal Tribunals for Rwanda and the former Yugoslavia, and its ongoing support to a wide range of other international, hybrid, and domestic initiatives (as the Report recounts in Section I).

In this regard, the United States played a significant role in the negotiation of the Rome Statute creating the Court and in subsequent implementation documents, such as the ICC's Elements of Crimes and Rules of Procedure and Evidence (both of which reflect significant input by U.S. negotiators). While the United States has maintained legal and policy objections to certain key aspects of the Rome Statute since the treaty's negotiation in 1998, U.S. policy toward the Court has evolved over time, depending on a range of factors both within and without the U.S. Government. And though there have been periods of significant tension, the United States has on numerous occasions and in numerous ways provided a wide range of support to the ICC in key investigations and cases (as the Report explores in Section III).

In 2009, as the Obama Administration was taking office, an earlier Task Force, convened by the American Society of International Law and chaired by Ambassador William H. Taft IV and Judge Patricia M. Wald, produced a report examining U.S. policy toward the ICC and making recommendations to assist the incoming Obama Administration in developing its policy. Although the Bush Administration had initially been hostile toward the Court, the Task Force's central recommendation was that the new Administration should build upon the greater engagement with the Court that had taken root during the second term of the Bush Administration. Many of the report's concrete suggestions were ultimately reflected in the Obama Administration's eventual "case-by-case policy" under which the United States engaged with Rome Statute parties on issues

of mutual concern and provided support for the ICC's investigation and prosecution of cases that advanced U.S. interests and values, consistent with the requirements of U.S. law and the longstanding commitment to protect U.S. personnel.

Much has changed since the 2009 report, however. By the end of the Obama Administration, the prospect of formal investigations by the ICC Office of the Prosecutor (OTP) in the Afghanistan and Palestinian situations was increasingly placing a strain on this approach. The election of President Trump in 2016 heralded a fundamentally adversarial relationship between the United States and the Court. And while much of the Court's work in a wide range of other countries continues to align well with U.S. interests, the steps to commence investigations in these two situations have dominated the relationship during the past few years. This deterioration in relations culminated in the Trump Administration's determination that the ICC's work constituted an "unusual and extraordinary threat" to national security and its unprecedented decision to impose economic sanctions and visa restrictions on senior ICC officials, including the Chief Prosecutor herself—steps that were widely criticized and led numerous friends and allies to distance themselves from the U.S. position and to reaffirm their support for the Court.

Meanwhile, the Court appears to have reached a crossroads of its own, with many of its traditional supporters increasingly expressing concerns about the Court's output, working methods, and strategic direction. Indeed, in April 2019, four former Presidents of the ICC Assembly of States Parties (ASP) published a highly critical letter reflecting their disappointment with the Court's performance, stating that it was time to "make a new deal between the ICC and its states parties" and calling for "an independent assessment of the Court's functioning." ICC states parties subsequently launched a process of review and reform that included the appointment of a group of nine eminent experts, chaired by former Justice Richard J. Goldstone of South Africa, to conduct an "Independent Expert Review." Following wide-ranging consultations, the Independent Experts issued an extensive report in September 2020 containing searching critiques of how the Court has functioned and putting forward 384 recommendations aimed at states parties and the organs of the Court.

Importantly, a number of the critiques that are driving the ICC review and reform process align with U.S. concerns, including that the Court has overextended itself and needs to find ways to better focus its efforts on situations and cases in which it can more effectively advance justice. The implementation of these recommendations forms part of a wider process in which states parties are pursuing changes within the Court to refocus its efforts. These moves for reform also coincide with the election of a new Prosecutor, Karim Khan, a British barrister with extensive experience in international prosecutions who currently serves as Special Adviser and Head of the UN Investigative Team to Promote Accountability for Crimes Committed by Da'esh/ISIL (UNITAD), who will take office in June 2021.

In the course of the Task Force’s consultations, several interlocutors questioned whether, given the growing concerns about the Court’s performance, questions about its efficacy as an instrument for combating impunity and delivering justice, and the sense that the support of so many states parties has become lukewarm, efforts to improve the U.S. relationship with the Court warranted the expenditure of political capital that would be required. In fact, our consultations have indicated that the great majority of the United States’ friends and allies remain invested in trying to improve the Court’s performance. They thus view the unalloyed hostility of U.S. policy toward the Court over the last four years, including the imposition of sanctions and other efforts widely seen as aimed at the Court’s destruction, as emblematic of the prior administration’s excesses—a view shared by a range of U.S. stakeholders whom we consulted.

The approach of the new Administration to the ICC clearly needs to account for the significant challenges that the United States currently faces in its relationship with the Court, including the politically fraught terrain presented by the Prosecutor’s commencement of formal investigations of the Afghanistan and Palestinian situations. But the Administration also can build on opportunities to address longstanding U.S. concerns presented by the unprecedented openness to constructive criticism and reform among states parties.

The Task Force notes that the U.S. commitment to atrocity prevention, accountability, human rights, and the rule of law extends far beyond the ICC. While the ICC looms large in discussions of international accountability, it can only ever be one piece of the global accountability puzzle. The United States has had, and should continue to have, a robust, effective policy toward global criminal justice that encompasses support for a variety of national, regional, and international justice mechanisms. As reflected in the Task Force’s recommendations, the United States should work to ensure that tensions in its relationship with the ICC do not overshadow, or stand in the way of, its pursuit of robust and effective atrocities prevention and response.

In addition, it should be recognized that U.S. policy toward the ICC is not developed in isolation, but rather is part of its approach to international institutions and multilateral cooperation more generally. The new Administration will thus need to find a way to address ICC issues that fits with, and contributes to, its approach to this larger policy mosaic and its interest in maintaining a leading voice on issues of accountability, human rights, and rule of law. It is the Task Force’s view that undifferentiated hostility toward the ICC will continue to entail significant diplomatic costs.

Given the terrain that this Report must cover—including the diverse U.S. interests that intersect with the ICC, the range of prior U.S. interactions with the Court, the ever-changing domestic political landscape, and the nature of the current challenges and opportunities—it is organized so as to enable readers to focus on areas of interest to them. Section I sets out basic background about the U.S. relationship with the ICC, situating the ways in which different

administrations have engaged with the ICC in the wider context of the United States' leading role in promoting accountability for international crimes prior to the formation of the Court and beyond. Section II sets out the basic legislative framework that governs U.S. relations with the ICC and how that framework has evolved over time.

Section III looks in more detail at the various ways in which the United States has engaged on ICC issues. As salient examples, the United States played a critical role in the surrender of two of the most important ICC fugitives over the last decade—Bosco Ntaganda, a rebel leader from the eastern Democratic Republic of Congo, in 2013, and Dominic Ongwen, a senior commander of the Lord's Resistance Army, which has terrorized northern Uganda and surrounding region for decades, in 2015. As another example, the U.S. decision in 2005 to allow the UN Security Council to refer the situation in Darfur to the ICC, and its subsequent support for that investigation, is a reminder that even strong concerns about the Court can be outweighed by stronger concerns about the kinds of atrocities that the Court was intended to combat. And, as yet another example, the negotiations over the crime of aggression, leading up to and including the 2010 review conference in Kampala, Uganda, illustrate both the costs of disengagement by the United States and what the United States can achieve when it participates constructively to protect its interests on issues it considers important.

Section IV describes recent developments that are particularly relevant in assessing the options for U.S. engagement with the ICC in the coming years, notably the steps taken by the ICC to commence investigations in the "situation in Afghanistan" (potentially encompassing allegations of torture by U.S. personnel) and the "situation in Palestine" (potentially encompassing allegations against senior Israeli officials, including in connection with the settlements policy). Section IV then goes on to provide background on ongoing ICC review and reform efforts, which the Task Force believes reflect an openness to constructive engagement in which the United States has a strong interest.

But these recent developments are not the only relevant considerations, and Section V endeavors to describe a broad range of ways in which numerous elements of ICC policy intersect with other U.S. interests. This includes both areas in which the Court's work potentially conflicts, and areas in which it potentially aligns, with U.S. interests. At the end of the day, there exists within the United States deep and bipartisan support for atrocity prevention and response as a key element of U.S. policy, and for the principle that those responsible for atrocities should be held to account, as evidenced, for example, by the passage of the Elie Wiesel Genocide and Atrocities Prevention Act of 2018 and other legislation supporting transitional justice and accountability measures.

In light of all these considerations, Section VI sets out the Task Force's recommendations for how the Biden Administration should engage with the ICC on a pragmatic basis moving forward.

Given the range of interests and perspectives, and the inevitable reality that different forms of engagement may be more or less feasible at different points in time, the Task Force identified four categories of recommendations: (A) initial steps to “clear the air,” recast the tone following the U.S. attacks on the Court, and reinforce the U.S. approach to multilateralism and its shared goals with the ICC; (B) steps that are constructive and consistent with U.S. interests in promoting atrocities prevention and response, regardless of concerns about the ICC; (C) approaches to the three most critical issues—the Afghanistan and Palestinian situations and the opportunities presented by the ongoing ICC review and reform process (which the Task Force see as closely related); and finally (D) possibilities for support for ICC efforts in particular situations.

(A) *“Clearing the Air”*: The U.S. relationship with the ICC does not exist in a vacuum. U.S. attacks on the Court in recent years, and especially the imposition of sanctions on the ICC Prosecutor and one of her staff, came at significant cost to the U.S. reputation and to its ability to be an effective voice on issues of importance to it. These measures also created an environment in which states parties felt that the Court needed to be defended, were forced to distance themselves from the U.S. position, and found it more challenging to pursue legitimate reforms that could be seen as benefiting the United States. Against this background, the Task Force recommends that the new Administration approach and speak about the Court and its personnel in a manner that comports with its overall approach to multilateralism, international institutions, and working with friends and allies.

(B) *Steps that Should Be Pursued Regardless of Specific Concerns About the ICC*: The Report includes eighteen specific recommendations that should be considered by relevant U.S. actors, no matter what the state of its relationship with the ICC, to promote its own interests in international justice and accountability and to present U.S. positions on the ICC and related issues. These steps fall into a number of general categories:

- Enhancing and highlighting U.S. support for international justice efforts, including by building accountability into the President’s National Security Strategy, maintaining the independence of the State Department’s Office of Global Criminal Justice and the position of Ambassador-at-Large, and assuring steady and predictable funding for initiatives to provide accountability for atrocity crimes.
- Preserving political capital by not withholding support for multilateral resolutions or declarations supporting international justice simply on the basis that those resolutions mention the ICC or insisting on the deletion of factual references to the ICC in resolutions that are devoted to issues that the United States cares about.
- Using existing U.S. authorities to target those responsible for atrocity crimes, including by maintaining and expanding the War Crimes Rewards Program, supporting sanctions

against those responsible for atrocity crimes, and implementing a no- or restricted-contacts policy.

- Strengthening the United States' ability and commitment to prosecute international crimes domestically by enacting appropriate legislation to make crimes against humanity and superior responsibility subject to prosecution under U.S. law; encouraging the prosecution of suspects within the United States for their substantive crimes rather than relying exclusively on immigration offences; and signaling that the United States will accept information and evidence from the ICC where this could assist in such prosecutions or in other enforcement actions.
- Reaffirming the U.S. commitment to victims/survivors of international crimes and those at risk because of their willingness to serve as witnesses by supporting in-country assistance to victims of atrocity crimes, considering making a contribution to the Trust Fund for Victims, and offering protection to vulnerable witnesses.
- Attending and participating as an observer state in meetings of the Assembly of States Parties and participating in other relevant meetings and conferences; actively following the substantive jurisprudence of the ICC, which will inevitably affect the way in which other states interpret their legal obligations and those of their personnel under international law; and tasking diplomatic missions to report on relevant ICC developments and the views of relevant host states on the Court.

(C) *Dealing with the Biggest Issues—the Afghanistan and Palestinian Situations and ICC Review and Reform*: Virtually every interlocutor with whom we spoke who has served in the U.S. Government underscored that, for better or worse, the extent to which the United States will be in a position to be supportive of ICC efforts will inevitably be influenced by developments in those two situations. These are of course challenging issues but, as explained in considerable detail in Section VI of this Report, the Task Force believes there are pragmatic paths forward that do not trivialize the allegations but that will help the Administration achieve its goals in these two situations.

A jumping off point for a U.S. approach is a recognition that actual cases against U.S. persons are neither underway nor a *fait accompli*, and that there are numerous reasons that such cases may never be brought. Indeed, while the allegations of torture and other abuse against U.S. personnel are serious, the situation in Afghanistan covers an enormous crime base—including crimes by the Taliban, Afghan national forces, and other non-state armed groups that are far more extensive than the allegations against U.S. personnel. Meanwhile, beyond Afghanistan, there are nearly two dozen other situations that the Prosecutor has under either preliminary examination or investigation, and an increasingly widespread sentiment that the Court is spread too thin and must find better ways to identify the situations and cases on which it focuses if it is to be successful. Against this backdrop, the Report includes recommendations on ways that the Administration can frame

arguments that, considering the totality of the circumstances and the wide range of legislation and other steps that have been taken to address the allegations involving Afghanistan, these are not cases that the ICC should pursue or prioritize.

The Task Force thus sets out specific elements that the Administration could advance in explaining its position, including a clearer public explanation of arguments related to the admissibility criteria that Court actors use in selecting and prioritizing situations and cases. It could also include a fuller articulation of the many non-criminal responses that addressed allegations of mistreatment—including investigative commissions, legal and policy reforms, the withdrawal of controversial legal advice, and other steps—all with a view to describing how such responses fit into the tests that the ICC should apply in deciding which situations and cases to pursue. The totality of these steps, together with the relative gravity of the abuses, particularly as compared with the scale and ongoing nature of crimes by the Taliban and other armed groups, provide a good faith basis to argue that the Prosecutor should not prioritize any investigation of or potential case against U.S. personnel. The objective need not be to establish that the United States' responses were ideal, but rather simply that they provide an appropriate basis for the OTP not to further pursue cases against U.S. personnel.

Court actors are not the only intended audience for such arguments, and it is at least as important that the United States provide a cohesive and persuasive explanation of its views for its friends and allies in the international community. By presenting itself as constructive, motivated to engage, wanting to provide leadership, and having a stake in the principle that those responsible for atrocities should be held to account, the Administration can do a great deal to enhance the credibility of the United States as a strong voice of issues of accountability, human rights, and the rule of law. Thus, separate from whether the United States is successful in persuading Court actors, it has a compelling interest in acting in a manner that helps persuade friendly countries that it is operating forthrightly and in good faith.

In whatever approach that the U.S. Government takes to the situations of critical concern in its relations with the ICC, however, the Task Force urges that it keep perspective. It should be realistic about the true scale of any threat to U.S. personnel; avoid making the perfect the enemy of the good; and be open to different visions of "success" that include (for example) a period of inaction that becomes stable over time.

The Palestinian situation raises different questions, and it is beyond the mandate of this Task Force to make recommendations as to how Israel should address these issues. That said, the Court's recent conclusions that Palestine is a state for purposes of the Rome Statute, and that there is jurisdiction that extends to "Gaza and the West Bank, including East Jerusalem," are inconsistent with longstanding U.S. views. As a practical matter, the U.S. posture toward the investigation will likely be driven more by the Administration's policy toward Middle East

peace process issues than by its views on the ICC. That said, Israel will have a natural interest in persuading the Court to deprioritize these case, and this will align with the general approach that the Task Force is recommending that the Administration take toward the Afghanistan situation.

In considering how to present its concerns regarding the Afghanistan and Palestinian situations, the United States should view the discussion of and momentum toward reform of the Court, which has developed independently of U.S. concerns about these two situations, as an opening to engage. These discussions offer an opportunity to propose and implement changes that could both put the Court on a firmer footing and reduce the prospect of future clashes between the ICC and the United States. Indeed, many long-standing U.S. positions regarding the Court may now find a more receptive audience, and the United States can advance those positions in a manner consistent with the reasons that the United States believes pursuing an investigation of U.S. personnel in Afghanistan would be inappropriate.

(D) *Support for Particular ICC Cases:* While developments in the Afghanistan and Palestinian situations are likely to continue to play a significant role in the extent to which the United States is willing to assist the ICC in specific cases, the new Administration has already indicated that it is open to the possibility of providing support in exceptional cases. The Task Force believes that the Administration is proceeding wisely by remaining open to such possibilities. While the political space for such support will inevitably depend on wider circumstances, including developments on the two situations of particular concern to the United States, it seems highly likely that circumstances will again arise in which the imperatives of accountability for massive crimes may outweigh concerns about the ICC as an institution (whether in existing investigations such as Darfur and Myanmar; likely investigations such as Venezuela and Ukraine; or new situations that have not yet arisen). In this regard, the Task Force recommends that the new Administration maintain its stance of being open to providing targeted support to the ICC in particular cases where the Court's investigations are consistent with U.S. interests. It also recommends that the Administration give thought in advance to categories of situations in which it would make sense to be alert to the possibility of providing such support.



ACKNOWLEDGEMENTS

An endeavor such as that undertaken by this Task Force is necessarily a collective one, drawing on the talents and time of many people, without whom we could not have accomplished a fraction of what we did and to all of whom we owe great thanks.

As Co-Chairs of this Task Force, we were privileged to work with a talented and dedicated group of individuals on this project. Thanks must start with our fellow members of the Task Force: David Bosco, Sandy Hodgkinson, Saira Mohamed, and Alex Whiting. Each brought a different perspective and set of experiences to our discussions of how the United States could best engage with the International Criminal Court, against fluid and sometimes challenging circumstances. The resulting Report is richer and more rigorous for that diversity of perspective, and we are grateful for the constructive spirit in which they addressed these issues. Our thanks likewise go to the members of our esteemed Advisory Group, who provided critical feedback and guidance at key stages of the Task Force's work. We drew heavily upon their collective wisdom in recounting the history of U.S. engagement with the ICC and recommending a course forward. Finally, Ben Batros provided consistently excellent project management, from conceptualizing arguments, to outreach to interlocutors, to shepherding the draft to completion.

We are also deeply grateful to the more than one hundred individuals across government service, legal practice, academia, and civil society with whom the Task Force spoke over the past fifteen months—for generously offering their time, insights, and expertise. For the vast majority, the COVID-19 pandemic meant that we were unable to meet in person. But the enforced reliance of virtual meetings enabled the Task Force to benefit from the perspective of a wider cross-section of interlocutors, who were willing to engage critically, candidly, and creatively with us; their contributions have enriched this Report immeasurably.

A number of staff and officers at the American Society of International Law assisted and facilitated the work of the Task Force. Thanks are due in particular to President Catherine Amirfar, former President Sean D. Murphy, Executive Director Mark Agrast, and Deputy Executive Director Wes Rist.

The Report, and the discussions of the Task Force, also benefited from the dedication and talents of our research assistant, Chris Moxley; from additional research support provided by Arthur Traldi, Molly Norburg, Schuyler Atkins, Michael Rover, Kevan Christensen, and Adib Milani; and from the exceptional editing assistance of Erin Lovall.

Finally, we would like to dedicate this Report to the memory of John Kim, our dear colleague in the State Department and at the United States Embassy in The Hague, a rare gentleman with one of the finest minds, kindest hearts, and most decent souls with whom it was ever our privilege to work and to call a friend.

TASK FORCE MEMBERS

Todd F. Buchwald (Co-Chair) served as Special Coordinator for the State Department's Office of Global Criminal Justice from 2015–2017, and was conferred the rank of Ambassador by President Obama in 2016. Prior to assuming this position, he served as a career lawyer in the Department's Office of the Legal Adviser, including as the Assistant Legal Adviser for Political-Military Affairs during the Clinton and Bush Administrations, and the Assistant Legal Adviser for United Nations Affairs during the Bush and Obama Administrations. After leaving the State Department, Mr. Buchwald was appointed as the inaugural Tom A. Bernstein Genocide Prevention Fellow at the Simon-Skjoldt Center for the Prevention of Genocide of the U.S. Holocaust Memorial Museum, served as a Fellow at the Woodrow Wilson International Center for Scholars, and is currently a Professorial Lecturer in Law at George Washington University Law School.

Beth Van Schaack (Co-Chair) is the Leah Kaplan Visiting Professor in Human Rights at Stanford Law School and a Faculty Fellow with Stanford's Center for Human Rights & International Justice. She previously served as Deputy to the Ambassador-at-Large for War Crimes Issues in the Office of Global Criminal Justice of the U.S. Department of State. In that capacity, she helped to advise the Secretary of State and the Under Secretary for Civilian Security, Democracy and Human Rights on the formulation of U.S. policy regarding the prevention of and accountability for mass atrocities, such as war crimes, crimes against humanity, and genocide. She also served on the U.S. interagency delegation to the Kampala Review Conference in 2010.

David Bosco is an associate professor at Indiana University's School of Global and International Studies, and a contributing editor at *Foreign Policy*. His research focuses on the political dynamics of international organizations and international law, including the International Criminal Court, which was the subject of his book *Rough Justice: The International Criminal Court in a World of Power Politics*. Mr. Bosco previously worked on repatriating refugees to post-war Bosnia, including as deputy director of a United Nations and NATO joint project in Sarajevo.

Sandra Lynn Hodgkinson is senior vice president for Strategy and Corporate Development at Leonardo DRS, and a retired officer in the United States Navy JAG Corps with twenty-two years of combined active and reserve service. She previously worked in a range of government positions relating to defense and international justice across the Department of Defense, United States Department of State, and the White House (during the George W. Bush and Barack Obama administrations), including as Special Assistant (Chief of Staff) to Deputy Secretary of Defense, Deputy Assistant Secretary of Defense, Deputy to the Ambassador-at-Large for War Crimes Issues, and Director for International Justice at the National Security Council.

Saira Mohamed is Professor of Law at the UC Berkeley School of Law, where her research and teaching focus on criminal law, human rights, and responses to mass atrocities. She previously

served as Senior Adviser in the Office of the U.S. Special Envoy for Sudan, where her work included addressing legal and policy issues regarding the International Criminal Court investigation in Darfur, and as an Attorney-Adviser for human rights and refugees in the State Department's Office of the Legal Adviser.

Alex Whiting is a Professor of Practice at Harvard Law School and currently serves as Deputy Prosecutor at the Kosovo Specialist Prosecutor's Office. He previously worked in the Office of the Prosecutor at the International Criminal Court (as Investigation Coordinator and then Prosecution Coordinator) and at the International Criminal Tribunal for the Former Yugoslavia (as lead prosecution counsel in three war crimes and crimes against humanity trials). He also has ten years' experience as a Federal Prosecutor in the United States.

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John B. Bellinger III, Partner at Arnold & Porter LLP, former State Department Legal Adviser (2005 to 2009) and National Security Council Legal Adviser (2001 to 2005).

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William H. Taft IV, former State Department Legal Adviser (2001 to 2005) and former U.S. Ambassador to NATO (1989 to 1992).

Clint Williamson, Senior Director for International Rule of Law and National Security at the McCain Institute for International Leadership and Distinguished Professor of Practice at the Arizona State University College of Law, former Lead Prosecutor for the European Union Special Investigative Task Force (2011 to 2014) and Ambassador-at-Large for War Crimes Issues (2006 to 2009).

In the initial stages of the Task Force's work, it also benefited from the participation of **Ashley Deeks** (then Professor of Law at University of Virginia School of Law and former State Department assistant legal adviser for political-military affairs), **Harold Hongju Koh** (Sterling Professor of International Law at Yale Law School and former State Department Legal Adviser, 2009 to 2013), and **William K. Lietzau** (former Deputy Assistant Secretary of Defense for Rule of Law and Detainee Policy) in its Advisory Group, prior to their reappointment to government posts.

The Report and its Recommendations do not necessarily reflect the views of the Advisory Group members.



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