

October 1, 2020

**STATEMENT BY THE AMERICAN BRANCH OF THE INTERNATIONAL LAW ASSOCIATION
INTERNATIONAL CRIMINAL COURT COMMITTEE:**

THE USE OF U.S. SANCTIONS TO UNDERMINE THE WORK OF THE ICC

The Committee condemns the recent declaration of a sanctions and visa restriction regime concerning the International Criminal Court contained in Executive Order 13928, and in particular the subsequent imposition of sanctions against the International Criminal Court's Prosecutor, Fatou Bensouda, and one of her chief aides, Phakiso Mochochoko. The Committee denounces the use of threats designed to bring an end to the Prosecutor's inquiry into the conduct of US nationals in Afghanistan and other states within the Court's territorial jurisdiction (including alleged acts of torture by CIA officials that have been well-documented by the United States Senate Select Committee on Intelligence).

The sanctions—previously reserved for the likes of drug traffickers, terrorists, and cyber-criminals—rest on the faulty premise that the ICC's work poses "an unusual and extraordinary threat to the national security and foreign policy of the United States," resulting in a "national emergency." The Committee notes that this conclusion is directly contradicted by the current administration's simultaneous contentions that the Court is both "grossly ineffective" and a "failed institution." Moreover, it is belied by the Court's own Statute, which provides that the United States could bring an end to the ICC's inquiry simply by instituting its own genuine investigations and, as warranted, prosecutions. Thus, the US has a clear, legitimate course of action it can take: ensure that justice is done by pursuing the rule of law instead of attempting to stymie it.

More broadly, the Committee expresses concern over the wider ramifications of the sanctions. Their imposition marks a major change for the United States: from prominent and longstanding proponent of international criminal justice efforts to an opponent of the rule of law. It likewise invites other states to similarly thwart ICC efforts to hold individuals responsible for mass atrocities, an outcome that could prove uniquely self-defeating, as much of the Court's work to date has been aligned with U.S. interests. Furthermore, in trying to block the ICC's Afghanistan investigation vis-à-vis U.S. nationals, the U.S. makes the entire Afghanistan investigation (as well as the ICC's other work) more difficult, including the ICC's investigation of alleged crimes against humanity and/or war crimes committed by members of the Taliban and affiliated forces, and members of the Afghan military.

The Executive Order is also overbroad, seemingly designed to stymie the work of the ICC more generally, beyond the targeted inquiries. It covers persons who provide "services" (Sec. 3 (a)) or "material assistance" (Sec. 1(i)(C)) to the expressly sanctioned individuals or to efforts by the ICC "to investigate, arrest, detain, or prosecute any United States personnel without the consent of the United States," or efforts by the ICC "to investigate, arrest, detain, or prosecute any personnel of a country that is an ally of the United States without the consent of that country's government." (Sec. 1(a)(i)(A)-(B).) This could have a profound impact on ICC operations, as much of the ICC's work is not necessarily segregated into specific investigations. The words "services" and "material assistance" are also extremely vague and

overbroad, potentially encompassing US law students performing *pro bono* research for the ICC through law school clinics, as well as non-governmental organizations doing general advocacy that supports the work of the ICC.

Undermining a court designed to investigate and prosecute the gravest atrocity crimes of concern to the international community also does a profound disservice to the victims of those crimes.

The Committee calls upon the President to revoke the Executive Order, and, until its revocation, urges the U.S. Government to decline to designate any further targets for sanctions.

--ABILA ICC COMMITTEE

**Professors Jennifer Trahan & Megan
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