

**STATEMENT OF LAWYERS AND LEGAL SCHOLARS  
AGAINST U.S. SANCTIONS ON ICC INVESTIGATORS OF ATROCITIES**

**June 2020**

As lawyers and legal scholars with experience in the fields of international law and national security, we urge the President to rescind his June 11 Executive Order targeting investigators and prosecutors of the International Criminal Court (ICC). The Order authorizes asset freezes and visa denials against ICC lawyers and officials who investigate U.S. personnel, including military and CIA personnel for alleged torture, rape, and other war crimes in Afghanistan, and relatedly at CIA “black sites” in Lithuania, Poland and Romania.

All of these States are Parties to the ICC, an international court to which 123 countries – including our democratic allies in Europe and nations such as Australia, Canada, Costa Rica, Japan, South Africa and South Korea – are parties. The ICC is authorized by its statute to prosecute genocide, war crimes, and crimes against humanity, committed on the territories of its State Parties.

The undersigned have a diversity of views on the ICC and its Afghanistan investigation. However, we share the conviction that sanctioning ICC lawyers for carrying out their responsibilities to investigate atrocities is wrong in principle, contrary to American values, and prejudicial to U.S. national security.

U.S. sanctions have long been legitimately imposed on terrorists, international criminals, and gross violators of human rights. But targeting ICC lawyers – and in some cases their families – punishes the very people who investigate atrocities. Seeking to intimidate investigators and punish prosecutors perverts the purpose and undermines the legitimacy of sanctions.

The Afghanistan investigation is not a case of runaway prosecutors. Before opening a full investigation, the prosecutors sought and received authorization to proceed from a unanimous, five-judge appeals chamber of the ICC. Their investigation also addresses alleged war crimes and crimes against humanity by Taliban forces.

Sanctioning ICC lawyers is also contrary to our longstanding national commitment to human rights, the rule of law, and accountability for those who commit atrocities. To stand against atrocities, while simultaneously opposing investigations of those who allegedly commit them, strains credibility.

If the U.S. wishes to avoid ICC jurisdiction over Americans, our government can invoke its right to investigate alleged war crimes itself. Under the ICC Statute, that would bar ICC jurisdiction. This option remains open to the U.S. But rather than assert this unquestioned right, the President has chosen the alternative route of authorizing asset and visa sanctions on ICC lawyers.

Finally, the sanctions are contrary to U.S. national interests. They will not succeed in blocking ICC investigations, which are undertaken by lawyers duty bound to carry out their responsibilities as prosecutors. Worse, the ineffectual sanctions mock our bipartisan commitment to human rights and the rule of law, alienate our allies, and encourage repressive regimes. Bloody and lawless rulers can now be expected, not only to resist, but also to follow Washington’s example of threatening and punishing ICC lawyers simply for doing what most countries and nearly all democracies of the world ask of them – to pursue justice for genocide, war crimes and crimes against humanity.

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